

(2007) 06 GAU CK 0030

Gauhati High Court

Case No: None

Chandan Malakar

APPELLANT

Vs

Assam State Electricity Board
and Others

RESPONDENT

Date of Decision: June 21, 2007

Acts Referred:

- Constitution of India, 1950 - Article 14, 16

Citation: (2007) 3 GLT 844

Hon'ble Judges: B.K. Sharma, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

B.K. Sharma, J.

The petitioner presently working as a Junior Engineer under the official respondents, has filed this writ petition for a direction to the respondents to promote him as Assistant Engineer. He has also prayed for setting aside and quashing of Annexure-"F" order of promotion dated 31.12.2004 by which the private respondents have been promoted as Assistant Engineer.

2. The petitioner, who is a member of Scheduled Caste community, has claimed that the respondents have violated the provisions of the Assam Scheduled Caste and Scheduled Tribe (Reservation of vacancies in services and posts) Act, 1978 and the rules framed thereunder namely, the Assam Scheduled Caste and Scheduled Tribe (Reservation of Vacancies in Services and Posts) Rules, 1983. Referring to Section 5 of the Act and Rules 4 and 5 of the Rules, it is the case of the petitioner that since the respondents have violated the said provisions, he has been deprived of his promotion to the next higher grade of Assistant Engineer.

3. The petitioner has stated that the respondents have ignored his case while issuing the orders of promotion. It will be pertinent to mention here that as per the

seniority list of Junior Engineer published on 15.5.1997, the seniority position of the petitioner is at Sl. No. 757.

4. The respondents have filed their counter affidavit and their only contention is that since the petitioner does not come within the zone of consideration, as per his seniority position, his case could not be considered for promotion and consequently, there is no question of deprivation of the petitioner from promotion. It has been stated in the affidavit that the incumbents up to Serial No. 290 have been promoted and since the petitioner figures at serial No. 757 of the seniority list, his turn for promotion has not yet come. As per the affidavit, as many as 260 Junior Engineers, senior to the petitioner, are yet to be considered for promotion.

5. Referring to the office memorandum dated 22nd August, 1987, it is the stand of the respondents in their affidavit that the zone of consideration is determined by applying the test of 1:4, meaning thereby that in case of there being one vacancy, four persons on the basis of the seniority in the particular cadre are to be considered for promotion. On the other hand, it is the case of the petitioner that as per the provisions of Section 5 of the Act and Rules 4 and 5 of the Rules referred to above, it being the requirement of forwarding the separate list of the reserved category candidates, irrespective of whether the petitioner, as per his seniority, is within the zone of consideration or not, his case is required to be considered for promotion.

6. Mr. P. Roy, learned Counsel for the petitioner, referring to the aforesaid provisions of the Act and the Rules and also the decision of the Apex Court as reported in [Superintending Engineer, Public Health, U.T. Chandigarh and others Vs. Kuldeep Singh and others](#), submits that the action on the part of the respondents in not forwarding the name of the petitioner for consideration is illegal and arbitrary and the same has resulted in violation of Article 14 and 16 of the Constitution of India.

7. Mr. B.D. Das, learned Counsel for the respondents, on the other hand, submits that when the petitioner is not within the zone of consideration as per his seniority position in the seniority list, the petitioner cannot make any grievance alleging deprivation of promotion. He submits that even in case of reserved category candidates, they will have to be within the zone of consideration. He has placed reliance on the decision of this Court as reported in (2005) 3 GLT 275 (Raj Kumar Manta v. State of Assam and Ors.).

8. I have considered the submissions made by the learned Counsel for the parties and the materials on record. As per own admission of the petitioner, his position in the seniority list is at Serial No. 757. As per the counter affidavit filed by the respondents, the incumbents up to Serial No. 290 only have been considered for promotion, they having come within the zone of consideration. Applying the test of 1:4 ratio, the respondents have considered the case of the incumbents, who have

come within the zone of consideration. If the petitioner did not come within the zone of consideration as per his position in the seniority list, there is no question of consideration of his case merely because he belongs to the reserved category. One will have to be within the zone of consideration for getting preferential treatment as a reserved category candidate.

9. In the decision, on which Mr. Das, learned Counsel for the respondents has placed reliance i.e., *Raj Kumar Manta (supra)*, is somewhat under similar circumstances. In that case also, referring to the service Rules and the provisions of the aforesaid Act and the Rules as well as Article 16 of the Constitution of India, it was contended that since the petitioner was eligible for being considered for promotion, his case ought to have considered irrespective of whether he comes within the zone of consideration. Repealing the contention, it has been held that all the candidates, whose cases are to be considered by the selection board, must come within the zone of consideration in terms of the seniority and eligibility and not mere eligibility.

9.1. The decision on which Mr. Roy, learned Counsel has placed reliance i.e., *Kuldeep Singh (supra)* is of no help to the case of the petitioners. The case is simply misplaced. That was a case relating to interchangeability for availing the benefit of reservation. A carried forward vacancy was filled up by a general category candidate without considering an eligible Scheduled Caste candidate, who was available at that point of time. In such circumstances, the direction of the Tribunal to consider the case of the Scheduled Caste candidate from the date he was actually due for promotion with consequential benefits in the place to which the general candidate was promoted, was upheld. The same is not the case in hand.

10. In the instant case, the petitioner is not within the zone consideration and thus, could not be considered for promotion. The provisions of Section 5 of the Act and Rules 4 and 5 of the Rules are all in relation to consideration of the case of the reserved category candidates and sending of a separate list for them. Nowhere in the provisions, there is even remotest suggestion that the reserved category candidates should be considered out of turn even when they are not within the zone of consideration. The preparation of a separate list does not mean that irrespective of whether the reserved category candidates are within the zone of consideration or not, their names will have to be forwarded for consideration. Rule 5(1) of the Rules rather suggests that while forwarding the names of the eligible candidates, the appointing authority will furnish the details about the candidates equal to four times the number of vacancies. Needless to say that if any vacancy is left out in absence of any reserved category candidate carry forward, the rule will apply.

11. In view of the above, I do not find any merit in the writ petition and accordingly, it is dismissed. However, there shall be no order as to costs.