

**(2005) 04 GAU CK 0030**

**Gauhati High Court**

**Case No:** WP (C) No. 6482 of 2002

Dharmeswar Choudhury

APPELLANT

Vs

State of Assam and Another

RESPONDENT

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**Date of Decision:** April 12, 2005

**Acts Referred:**

- Assam Engineering (Public Works Department) Service Rules, 1978 - Rule 11, 13, 13(1), 13(2), 13(5)
- Constitution of India, 1950 - Article 16, 21

**Citation:** (2006) 2 GLR 777 : (2006) GLT 817 Supp

**Hon'ble Judges:** H.N. Sharma, J

**Bench:** Single Bench

**Advocate:** S.P. Deka and N. Choudhury, for the Appellant; I. Choudhury, for the Respondent

**Final Decision:** Allowed

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**Judgement**

H.N. Sarma, J.

Heard Mr. S.P. Deka, learned Counsel for the petitioner. Also heard Mr. I. Choudhury, learned standing counsel for the respondents, PWD.

2. The necessary facts leading to file this writ petition, inter alia, are that the petitioner, on the basis of a recruitment made by PWD to fill-up certain existing vacancies of Jr. Engineers, was appointed under Regulation 3(f) of the APSC Regulation (Limitation of Function), 1951 and thereafter vide notification No, E/18 A/27 3/67/1 dated 7.12.1967 issued by the Chief Engineer, PWD(Rand B), the service of 339 Jr. Engineers including the petitioner were regularised.

3. In the said list of regularization, the name of the petitioner finds its place at Serial No. 275. The initial appointment of the petitioner was at Jr. Engineer at Dibrugarh N.H. Division. Thereafter, the petitioner was transferred to different places of the State of Assam. While petitioner was in-charge of Section Officer at Tinsukia, he had

to face a departmental proceeding, alleging certain irregularities against him. In the said proceeding, petitioner was inflicted with punishment of recovery of a sum of Rs. 3,89,272. The said order of punishment was challenged by the petitioner before the Assam Administrative Tribunal, Guwahati in Case No. 33 ATA/95. The learned Tribunal after hearing the appeal, allowed the same and set aside punishment inflicted upon the petitioner inflicted upon him in the departmental proceeding vide judgment and order dated 25.4.1996. In the said judgment and order it was also directed that in the event of recovery of any amount from the petitioner, the same should be refunded to the petitioner. On passing of the aforesaid judgment the Chief Engineer, PWD (Roads) vide order dated 29.11.1996 directed that the recovery order issued from his office vide order dated 4.8.1994 and 15.5.1995 in respect of the petitioner would remain stayed and it was also directed by the said order that an amount of Rs. 9,840 already recovered from the petitioner be refunded to him. Although, the learned Tribunal kept it open for the department to initiate fresh departmental proceeding, the department considered it fit not to initiate such further proceeding and the said departmental proceeding come to an end and petitioner was absolved from all the charges in view of the order of the tribunal, referred to above, for all intents and purposes.

4. In the meantime, vide notification dated 30.10.2000, the petitioner was temporarily promoted to the post of Junior Engineer (Senior Grade) with retrospective effect from 1.1.1989. The effect of this order is that since 1.1.1989 the status of the petitioner in his service career was Junior Engineer (Senior Grade). Till the order issued in the year 2000, the petitioner put into 33 years of service as Junior Engineer and till date the petitioner is serving as Junior Engineer (Senior Grade) w.e.f. 1.1.1989. By virtue of the aforesaid long period of service and position in the seniority list, the petitioner is entitled to be considered for promotion to the next higher grade, i.e., to the rank of Assistant Engineer. In the meantime, the department initiated a process for promoting the qualified Jr. Engineers to the rank of Assistant Engineer. After completion of the said process, ultimately a select list was prepared. In the said select list as many as 141 Jr. Engineers was selected for promotion to the rank of Asstt. Engineer. But surprisingly enough the name of the petitioner did not find place in the said select list of promotion. It is submitted by Mr. Deka that names of some junior persons whose names found place below the petitioner in the merit list of appointment were selected for promotion. Pursuant to aforesaid selection, the selected persons have been promoted to the rank of Asstt. Engineer.

5. It is submitted by Mr. I. Choudhury, learned standing counsel that all the persons whose names found place in the select list has not been promoted at a time. Be that as it may, the name of the petitioner does not find place in the said select list of promotion and names of the persons junior to the petitioner find place.

6. Mr. Deka has pointed out that the name of the petitioner ought to have been included in between serial Nos. 15 and 16 of the list, his position in the merit list being higher than that of the persons at Serial Nos. 15 and 16.

7. There is a statutory rules framed under 309 of the Constitution of India known as The Assam Engineering (Public Works Department) Service Rules, 1978 which regulates and guides the matters relating to promotion to the rank of Asstt. Engineers from the subordinate/Jr. Engineers. Rule 11 of the said Rules provides that subject to the suitability as may be decided by the Selection Board, the Appointing Authority, in consultation with the Commission shall promote an officer belonging to the corresponding cadre of Subordinate Engineer Grade-1 in the Assam Subordinate Engineering (PWD) Service under the Government, possessing the necessary qualifications as mentioned therein, to the cadre of Assistant Engineers in the manner provided in Rules 13 and 14.

The vacancies to be filled up by promotion of Subordinate Engineers shall be so fixed that the promoted Assistant Engineers do not exceed 30% of the total corresponding cadre strength of permanent and temporary Assistant Engineers.

As per Rule 13 of the Rules the appointing authority shall furnish to the Selection Board the necessary documents and information with regard to as many officers in order of seniority as four times the number of vacancies, as assessed under Sub-rule (1).

Rule 13(5) provides that the selection Board, after examination of the documents and information furnished by the Appointing Authority shall recommend to the appointing authority a select list of officers about double the probable number of vacancies, in order of preference found suitable or promotion. In case the Board does not consider an officer suitable for promotion according to seniority, it shall record the reasons thereof in writing and forward to the Appointing Authority together with the select list.

Rule 14 of the Rules provides that on receipt of the select list for the posts of Assistant Engineer from the Selection Board the appointing authority shall forward it to the Commission together with the information and documents as referred to in Sub-rule (2) of Rule 13 with a request to approve the list.

The Commission shall consider the select list recommended by the Selection Board together with the information and documents and such other documents and information as may be required by the Commission and obtained from the appointing authority. The Commission shall finally approve the list with such modification as it consider just and proper.

The appointing authority shall finally approve the select list forwarded by the Commission within 15 days from the date of receipt from the Commission. If, however, the appointing authority considers necessary for any modification in the

select list it shall record the reasons in writing and approve the list with modifications.

The select list as finally approved shall be published by the appointing authority in the Assam Gazette within 15 days from the date of approval.

8. On scrutiny of the above it is clear that promotion to the rank of Asstt. Engineer from the cadre of Jr. Engineers, seniority is only the criteria.

9. Coming to the case in hand, the documents and materials enclosed with the writ petition disclose that the petitioner is a senior Sub-Engineer having more than 33 years of service as Jr. Engineer has justification for claiming promotion, above the officer placed at serial No. 16, namely, Debi Das Bhowmick in the select list dated 8.8.2002 prepared by the authority. Records do not disclose any infirmity which disentitle the petitioner from getting promotion to the next higher grade. In fact the person at SI. Nos. 16 to 24 of the select list are all juniors to the petitioner. The State respondent did not file any affidavit-in-opposition nor produced the connected record.

10. Mr. Deka, learned Counsel for the petitioner has submitted that the petitioner is due to retire from service on attaining the age of superannuation in the month of January 2006. Promotion of a person to a higher grade is made on certain contingency such as seniority in service, attainment of necessary qualification to hold the promotional post. Promotion of a public officer is his ultimate goal in service life which gives him impetus to work with utmost sincerity. Unreasonable denial of promotion of an officer not only effect the quality of work but also puts him in serious mental strain causing deterioration of the quality by a negative force. In the instant case no reason could be shown as to why the petitioner is deprived of his due promotion. Non-consideration of promotion of an employee is violative of fundamental rights as enshrined in Articles 16 and 21 of the Constitution of India and that is what has happened in the instant case.

11. No reason would be found from the records as to why the petitioner was denied his legitimate promotion while other persons junior to him was promoted to the next higher post and in fact there is no such reason available on record. A reading of relevant Rules clearly discloses that seniority is the only criteria for promotion to the rank of Asstt. Engineer from Subordinate/Jr. Engineers.

12. Upon consideration of the aforesaid factual and legal aspect of the matter, the writ petition is allowed with a direction that the concerned respondents, namely, respondent No. 1, Commissioner and Secretary to the Government of Assam, PWD shall within a period of one month from the date of receipt of certified copy of this order shall take up the case of the petitioner for promotion to the rank of Asstt, Engineer and will pass appropriate order granting necessary relief. The petitioner would be entitled to be promoted w.e.f. from the date when his junior Sri Devi Das Bhowmik was promoted and necessary order would be passed accordingly within

the said period. However, the petitioner will not be entitled to for higher financial benefits from the said date, i.e., with retrospective effect but the said date shall be counted for all other purpose of service benefits as well as retiral benefits.

13. The writ petition is allowed with the above directions. The petitioner will be entitled to submit a certified copy of this order before the said authority for carrying out the direction within the period indicated above.

14. No order as to costs.