(1994) 04 GAU CK 0008

Gauhati High Court

Case No: Civil Rule No. 2412 of 1993

Purna Chandra Barik	APPELLANT
Vs	
State of Assam	RESPONDENT

Date of Decision: April 26, 1994

Acts Referred:

- Constitution of India, 1950 - Article 14, 16(1), 16(2), 226

Citation: (1994) 2 GLR 348

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

Bench: Single Bench

Advocate: H. Das and S.D. Das, for the Appellant; Govt. Advocate, for the Respondent

Judgement

J.N. Sarma, J.

This application under Article 226 of the Constitution of India has been filed praying the reliefs that the Petitioner be promoted as Secretary, Mahkuma Parishad/Senior BDO/SDPO with effect from 25.1.84 together with all retrospective promotion and arrear benefits with a further direction directing the Respondents, to drop all departmental proceedings initiated against the Petitioner.

2. The brief facts are as follows:

The Petitioner was appointed as an Extension Officer in 1969. He joined as B.D.O. on 30.5.76. He was promoted to Secretary, Standing Committee, Dhemaji Mahkuma Parishad on 25.1.84. As the Petitioner did not join in the said post he was retained as B.D.O. and transferred to Batadraba, Nagaon. The Petitioner was suspended on 12.9.86 and he was reinstated on 10.3.87. He was again suspended on 19.1.89 and was reinstated on 21.6.89. He was transferred to Lanka Development Block in the year 1992. He was again suspended on 4.5.92 and was reinstated in the month of April, 1993. That since 1984 the Petitioner has not been promoted and the Petitioner claims that in the gradation list published in the year 1980, the name of the Petitioner figured at Position No. 89 and persons junior to him have been promoted,

but he has been left out, The Petitioner has stated that he submitted representations on 29.3.86, 8.8.86, 3.10.89, 20.3.90 and 6.1.92, but none of those representations have been considered by the authority, The Petitioner also has not been allowed to cross the efficiency bar with effect from 1.5.87.

3. I have heard Dr. H. Das, learned advocate for the Petitioner and the learned Govt. Advocate. No affidavit-in-opposition has been filed on behalf of the Respondents nor any records has been produced.

4. Dr. Das straneously contends as follows:

(i) Non-consideration of the Petitioner for promotion after 1984 is absolutely illegal and arbitrary on the part of the authority.

(ii) The case of the Petitioner for crossing EB should have been considered by the authority.

5. Dr. Das, in this connection places reliance on 1990 SC 1308. The State of Madhya Pradesh v. Hani Singh and Anr. Dr. Das contends that the Petitioner was placed under suspension again and again but no disciplinary proceedings have been initialed against him and as such these order of suspension should not be a bar for considering the case of the Petitioner for promotion. He further submits that normally pendency or contemplated initiation of disciplinary proceedings against a candidate must be considered to have absolutely no impact upon, to his right to be considered. If the departmental enquiry had reached the stage of framing of charges alter a prima facie case has been made out, the normal procedure to be followed is the procedure of ''sealed cover''. But if the disciplinary proceedings had not reached that stage of framing of the charge after prima facie case is established the consideration for the promotion to a higher post cannot be withheld merely on the ground of pendency of such disciplinary proceedings.

6. It appears that the contention of Dr. Das have force. It is not known as to why the case of the Petitioner was not taken up for promotion from 1984 when his juniors were promoted superseding him. The representations submitted which are Annexures 5, 6, 7, 8, 9 and 10. It is settled law that a person has right to be considered for promotion though he may not be found fit to be promoted. It is also settled that when the promotion is on the basis of seniority-cum-merit, the seniority will have its role in promoting an officer and the merit will play a secondary role. In State of Kerala and Another Vs. N.M. Thomas and Others, the Supreme Court pointed out as follows:

The principle of equality is applicable to employment at all stages and in all respects, namely, initial recruitment, promotion, retirement, payment of pension and gratuity. With regard to promotion the normal principles are either merit-cum-seniority or seniority-cum-merit means that given the minimum necessary merit requisite for efficiency of administration, the senior though less meritorious shall have priority.

This will not violate Articles 14, 16(I) and 16(2).

7. In the instant case, persons junior to the Petitioner were promoted long back in 1984. But it is not known whether the case of the Petitioner was considered for promotion. Further nothing as been done by the authority to consider the case of the Petitioner for crossing the efficiency bar.

8. In view of the law as indicated above, both these actions of the authority are illegal, arbitrary and capricious. Accordingly, I allow this writ petition with the following directions:

(i) The case of the Petitioner for promotion shall be considered by the Secretary, Govt. of Assam, Panchayat & Rural Development Deptt. Dispur, Guwahati-6 or by any other officers as may be authorised by him by keeping in view the law as indicated above, and if the Petitioner is found to be suitable for promotion, be shall be promoted from 1984, i.e. the date on which persons junior to the Petitioner were promoted vide Annexure-12 with all retrospective benefits.

(ii) The prayer of the Petitioner for crossing the efficiency bar in the year 1986 as represented to the authority vide Annexure-5 to 10 shall be considered by the Secretary, Govt. of Assam, Panchayat & Rural Deptt. Dispur, Guwahati and/or by any other officers as may be authorised by him.

(iii) Both these directions shall be complied with by the authority within a period of 3 (three) months from today.

(iv) The Petitioner may obtain the certified copy of this order and may file necessary application before the authority to do the needful in terms of this order.

9. The writ application is, accordingly, disposed of at the admission stage itself.