

GAHC010005422014



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 504/2014

1:C CHANDRA KUMAR
S/O- LT. THIRU C. CHELLATHURAI, IN-CHARGE, DETT MAINT 1444 BCC
1444 BRIDGE CONSTRUCTION COMPANY GREF, PROJECT UDAYAK, C/O-
99 APO, PIN- 931444.

VERSUS

1:THE UNION OF INDIA and 8 ORS
REP. BY ITS SECY., MINISTRY OF ROAD TRANSPORT AND HIGHWAY,
TRANSPORT BHAWAN, NO. 1, PARLIAMENT STREET, NEW DELHI- 110001.

2:THE DIRECTOR GENERAL BORDER ROADS
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI- 110010.

3:SECRETARY
BORDER ROADS DEVELOPMENT BOARD
'B' WING 4TH FLOOR
SENA BHAWAN
NEW DELHI- 110011.

4:SECRETARY
DOPT.
NORTH BLOCK
PMO
NEW DELHI- 110001.

5:THE CHAIRMAN
UPSC
DHOLPUR HOUSE
SHAJAHAN ROAD

NEW DELHI- 110069.

6:THE COMPTROLLER and AUDITOR GENERAL OF INDIA C and AG
DEEN DAYAL UPATHYAY MARG
NEW DELHI- 110124.

7:THE CHIEF ENGINEER
PROJECT UDAYAK GREF
CE P UDAYAK
C/O- 99 APO
PIN- 931715.

8:THE COMMANDER
48 BRTF GREF
C/O- 99 APO
PIN- 930048.

9:THE OFFICER COMMANDING
1444 BCC GREF
C/O- 99 APO
PIN- 931444

Advocate for the Petitioner : MR.I H SAIKIA

Advocate for the Respondent :

BEFORE
HONOURABLE MR JUSTICE SONGKHUPCHUNG SERTO

ORDER

Date : 12-09-2019

Heard Mr. I. H. Saikia, learned counsel for the petitioner. Also heard Mr. S. C. Keyal, learned ASGI appearing for the respondents.

The petitioner joined Border Roads Organization on 19.06.1990 as Overeer which was later on changed to Junior Engineer with Diploma Degree. While in service he completed B.Tech in 2002 and thereafter, he also completed M.Tech in 2006 from IIT, Madras. Even, though he has worked for 29 years, he has never been promoted to the higher post i.e. Assistant Engineer. As per the Border Roads Engineering Service Group- B Rules, 1977 which was notified on

31st July, 2012 feeder post of Assistant Engineer Civil (Civil) is Junior Engineer (Civil) and, a Junior Engineer who has served for five years in regular service and passed Junior Officer (Civil Engineer Course) for a duration not less than four weeks is eligible for promotion to the post of Assistant Engineer (Civil). Though the petitioner like many of his colleagues is eligible for promotion to the post of Assistant Engineer (Civil) he has not been promoted due to lack of vacancy. Therefore, the petitioner has come before this Court praying for a direction directing the respondents to make necessary amendment to the Rules so that a provision providing for reservation of certain percentage of the vacancies which should be filled up through limited departmental examination may be added as it is done in the case of other Central Government Services.

Mr. I. H. Saikia, learned counsel appearing for the petitioner submitted that by such amendment employees like the petitioner who have high qualification and efficiency will have the opportunity of being promoted to higher post commensurating their qualification and experience. The learned counsel also submitted that by providing such opportunity of promotion the department will also have people in higher post who are more qualified and efficient and who can provide quality service. The learned counsel referred to Central Electrical Engineering Group- B Service Recruitment Rules, 1997 of Central Government Works Department, 1977 wherein it is provided that 50% of the vacancies in the post of Assistant Engineer (Electrical) are to be reserved for filling up through limited Departmental competitive examination to be conducted by the Central Public Works Department Training Institute from amongst the junior engineers with four years regular service in the grade. He also referred to the Military Engineer Services Assistant Engineer (Civil), Assistant Engineer (Electrical and Mechanical) and Assistant Engineer (quantity Surveying and Contracts Recruitment Rules), 2008 wherein, it is provided that for promotion to Assistant Engineer (Civil) from Junior Engineer (Civil) for those who have Civil Engineer Degree, the qualifying period of service for promotion is three years regular service whereas for Diploma holders the qualifying period of

service for promotion is seven years regular service. After having referred to the Service Rules mentioned above, the learned counsel further submitted that in the case of the Assistant Engineer (Civil) in Border Roads Organization also such provision can be added to promote career progression for Junior Engineers who have higher qualifications and, for better efficiency and productivity in the service.

Mr. Keyal, learned ASGI submits that the Service Rule of BRO has already provided the rules for promotion to Assistant Engineer (Civil) and the petitioner knowing fully well the conditions of the service had joined the same, therefore, he is bound by the Rules. If he is not satisfied with the rules he can challenge the same but since he has not done so, his prayer cannot be allowed. Mr. Keyal also submitted that for promotion to higher post there has to be a channel provided in the service rule and unless such channel is provided nobody can be promoted. Therefore, the prayer of the petitioner to promote him by considering his high qualification has no legal basis whatsoever.

Considered the submissions of both the learned counsels appearing for the parties. It is an accepted fact that the service rule does not provide any other channel for promotion than what is already there that is by promotion from amongst the persons in the feeder post who have completed five years of regular service and also completed a course of four weeks duration. Therefore, there is no other way by which the petitioner and similarly situated persons like him can be promoted to the post of Assistant Engineer except through the channel already provided. It may be true that they have served the Department for a long time without promotion but one must not forget the fact that promotion is an incident of service and it is not something which can be claimed by any employee as a matter of right. Government service is a contract between the employee and the Government, the employer. Therefore, they are bound by the terms of contract/agreement. The service rules are terms of their agreement. A Government servant cannot ask anything beyond what is provided

therein. As such, the petitioner could not have ask for amendment of the service rules.

However, considering the grounds on which the petitioner has prayed for amendment of the rule and the trend the other service rules of Central Government are following, this Court is of the view that there are reasons for the respondents to consider the same not only in the interest of the employees but in the interest of the service the employees with higher qualification can provide. Therefore, the respondents may consider the same.

The writ petition is disposed of.

JUDGE

Comparing Assistant