

GAHC010042022024



2026:GAU-AS:2526

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

Case No. : WP(C)/1239/2024

UTPAL DEKA
S/O SRI UMESH CHANDRA DEKA, R/O MADHABPUR PATH, NEAR
HENGRABARI L.P. SCHOOL, P.S.-DISPUR, GUWAHATI, DIST- KAMRUP (M),
ASSAM-781036

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI

2:THE DISTRICT COMMISSIONER
KAMRUP
AMINGAON
KAMRUP
ASSAM

3:MD. NAZRUL ISLAM
PRESENTLY HOLDING THE POST OF SENIOR ASSISTANT IN THE OFFICE
OF THE DISTRICT COMMISSIONER
KAMRUP
AMINGAON
ASSAM AND ATTACHED TO SUB-DIVISIONAL OFFICER (CIVIL)
RANGIA
ASSAM

4:SMTI. CHANDANA THAKURIA
PRESENTLY HOLDING THE POST OF SENIOR ASSISTANT IN THE OFFICE
OF THE DISTRICT COMMISSIONER
KAMRUP
AMINGAON
ASSAM AND ATTACHED TO THE CIRCLE OFFICER

KAMALPUR REVENUE CIRCLE
ASSA

Advocate for the Petitioner : MS. RUKMINI BARUA, MS. PADMINI BARUA

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

19.02.2026

Heard Ms. Rukmini Barua, learned counsel for the petitioner. Also heard Mr. J K Goswami, learned Additional Senior Government Advocate for the respondents.

2. By filing the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks modification of the gradation list of grade-III employees of the amalgamated establishment of the District Commissioner, Kamrup by placing his name between serial numbers 41 & 42 instead of serial number 114, by granting him notional seniority and consequential notional promotion on the basis of his merit position in the selection process conducted pursuant to the advertisement dated 07.09.2007.

3. The advertisement dated 07.09.2007 was issued for filling up of 20 posts of Junior Assistants including the posts under General category. The petitioner participated in the said selection process and secured serial no. 4 in the merit list under General category. During the selection process, this Court in Misc. Case No. 2166/2008 arising out of WP(C) No. 5566/2007 by interim order permitted the respondents to proceed with the appointment process with

certain posts to be kept vacant pending adjudication of the matter. In consequence thereof, while three candidates under General category were appointed, the post against which the petitioner was otherwise eligible, remained vacant. Subsequently, WP(C) No. 5566/2007 was dismissed for non-prosecution on 24.06.2014.

4. Despite the interim order having ceased to operate, no appointment was offered to the petitioner. This compelled the petitioner to approach this Court by filing WP(C) No. 1012/2015. By judgment and order dated 27.04.2015, this Court directed the respondents to fill up the posts of Junior Assistants on the basis of merit under the General category pursuant to the advertisement dated 07.09.2007.

5. As the said direction was not complied with, the petitioner again approached this Court by filing WP(C) No. 2504/2019. By order dated 15.05.2019, this Court held that the petitioner, being the next meritorious candidate after the three candidates already were appointed under the General category, was entitled to appointment. The respondents were directed to issue appointment order within 45 days. In compliance thereof, the petitioner was appointed as Junior Assistant by order dated 21.10.2019. However, in the gradation list of grade-III employees, his name was placed at serial no. 114, whereas the other appointees from the same selection process were placed at Sl. Nos. 41 & 42 respectively and had already earned promotion to the post of Senior Assistants. Aggrieved by denial of seniority and promotional parity, the petitioner has approached this Court.

6. Ms. R Barua, learned counsel for the petitioner contends that the petitioner having not been given the benefit of notional seniority and promotion, vis-à-vis, the other appointees of the same selection process, the respondent

treated the petitioner in an arbitrary, discriminatory and unfair manner. She further contends that the interim order having been merged into the final order upon the writ petition having been dismissed, the wrong done to the petitioner by not appointing him while the other incumbents of the merit list were appointed to the post of Junior Assistant ought to have been undone. In support of the aforesaid she relies upon the decision of the Apex Court in the case of ***Amarjeet Singh and Ors. -Vs- Devi Ratan & Ors.***, reported in **(2010) 1 SCC 417**.

7. Per contra, Mr. J K Goswami, learned Additional Senior Government Advocate for the respondents contends that the advertisement was for 20 posts and that pursuant to the interim order passed in Misc. Case No. 2166/2018, one post under the un-reserved category and three posts across categories SC, ST, ST(P) were kept vacant. It is stated that although the petitioner stood 4th in the merit list, the 1st two candidates did not join and there existed a reservation for women under the un-reserved category, pursuant to which Smt. Chandana Thakuria joined service. It is further contended that promotion in grade-III is a continuous process governed by the gradation list and category-wise reservation in the ratio of 1:4. In accordance therewith, Md. Nazrul Islam, Zakir Hussain and Smt. Chandana Thakuria were promoted to Senior Assistants. Since the petitioner joined service only on 01.11.2019 pursuant to the judicial orders, his case for promotion could not be considered, as he was junior in the gradation list. It is thus contended that the petitioner's placement at Sl. No. 114 is lawful and calls for no interference.

8. I have given my prudent considerations to the arguments advanced by the learned counsels appearing for the contending parties and have also perused

the material available on record.

9. The short issue that arises for determination is whether the petitioner who was denied appointment initially solely due to an interim order and was later appointed pursuant to directions of this Court, is entitled to the notional seniority and consequential notional promotion from the date the other three candidates were accorded such benefits.

10. Apparent that the petitioner was selected on merit and placed at Sl. No. 4 in the merit list under General category. His non-appointment at the relevant point of time was not attributable to any fault, ineligibility or omission on his part, but solely on account of an interim order passed by this Court directing certain posts to be kept vacant. The embargo created by the interim order stood lifted upon dismissal of the writ petition in the year 2014. Thereafter, repeated judicial interventions were required to secure the petitioner's appointment, which ultimately materialized only in the year 2019.

11. The respondent's justification that promotion is a continuous process and that the petitioner joined at a later stage cannot be accepted in the facts and circumstances of the present case. The delayed appointment of the petitioner was entirely occasioned by judicial proceedings and administrative inaction and not by any conduct attributable to the petitioner.

12. The concept of retrospective or notional promotion as a remedial measure is well settled. Notional promotion is granted where an employee is wrongfully denied appointment or promotion due to circumstances beyond his control, so as to restore him to the position he could have occupied but for such denial. Though notional promotion does not ordinarily entail arrears of pay for the period during which the employee did not actually discharge higher duties, it

necessarily carries seniority and all consequential service benefits.

13. The Apex Court in ***Union of India & Ors. -Vs- K.V. Jankiraman & Ors.***, reported in ***(1991) 4 SCC 109*** has categorically held that where an employee is otherwise found fit and is denied promotion for reasons not attributable to him, he is entitled to be considered for promotion from the date his immediate junior was promoted, with all consequential benefits. Hence, an employee cannot be made to suffer for no fault of his own, particularly when the delay or denial of appointment or promotion is attributable to administrative lapses or legal impediments.

14. Similarly, in ***P.S. Mahal & Ors. -Vs- Union of India & Ors.***, reported in ***(1984) 4 SCC 545***, the Apex Court observed that where an employee is wrongly denied promotion, the normal rule is to give him promotion retrospectively from the date of his junior was promoted, so as to remove the injustice caused.

15. In ***Union of India & Anr. -Vs- Tarsem Lal & Ors.*** reported in ***(2006) 10 SCC 145***, the Apex Court categorically has clarified that while monetary benefits may be restricted, denial of seniority and promotional avenues would amount to perpetuating injustice.

16. Viewed thus, to deny the petitioner seniority and promotional parity solely on the ground that he joined service later would amount to penalizing him for no fault of his as he was not appointed at the relevant point of time when the other three candidates of the selection process were appointed despite a post having been available for the petitioner to be appointed due to the interim stay granted by this Court in a writ petition filed by other prospective candidates of the subject selection process and would run contrary to the constitutional

mandate of equality and fairness in public employment.

17. I am thus of the unhesitant view that once this Court held that the petitioner was entitled to appointment on the basis of his merit position, the logical and legal consequence was to place him in the gradation list in accordance with that merit position. Any other interpretation would render the earlier judicial directions illusory. Wrong having been done to the petitioner, the same is to be undone.

18. The respondents cannot be permitted to take advantage of the delay occasioned by the interim order to defeat the petitioner's legitimate claim for seniority and promotion. Administrative convenience cannot override constitutional guarantees of equality and fairness in public employment.

19. This Court therefore holds that the petitioner was wrongly deprived of his timely appointment solely due to an interim order and subsequent administrative inaction. Upon appointment pursuant to judicial directions, the petitioner became entitled to notional seniority from the date the other three appointees from the same selection process were appointed. The petitioner is also entitled to consideration for notional promotion, with all consequential service benefits, except arrears of pay for the notional period.

20. In view of the aforesaid findings, the instant writ petition is allowed with the following directions –

- i) The respondents shall revise the gradation list of grade-III employees by placing the petitioner in accordance with his merit position pursuant to the advertisement dated 07.09.2007, i.e., along with the incumbents placed at Sl. Nos. 41 & 42.
- ii) The petitioner shall be granted notional seniority from the date of the

other three appointees from the same selection process were appointed and were promoted and;

iii) The petitioner shall be accorded notional promotion to the post of Senior Assistant, if the said appointees have been promoted, with all consequential service benefits, except monetary benefits for the notional period.

21. The aforesaid exercise shall be completed within a period of two months from the date of receipt of certified copy of this order.

22. With the above observations and directions, the instant writ petition stands allowed and disposed of.

JUDGE

Comparing Assistant