

GAHC010202182016



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

Case No. : WP(C)/767/2016

BADAN CH. BORGOHAIN
S/O- LT. DIMBESWAR BORGOHAIN, VILL.- DAKLONGI HABI, NAGAON,
P.O.- NAGAJANKA, P.S.- MARIANI, DIST.- JORHAT, ASSAM, PIN- 785634.

VERSUS

THE ASSAM ELECTRICITY GRID CORPORATION LIMITED and 3 ORS.
REP. BY THE MANAGING DIRECTOR, AEGCL, BIJULEE BHABAN,
PALTANBAZAR, GHY- 1.

2:THE GENERAL MANAGER HR
AEGCL
BIJULI BHABAN
PALTANBAZAR
GHY- 1.

3:THE DY. GENERAL MANAGER F and A
PENSION
AEGCL
BIJULI BHABAN
PALTANBAZAR
GHY- 1.

4:THE ASSTT. GENERAL MANAGER
220 KV GRID SUB-STATION
AEGCL
MARIALI
DIST. - JORHAT
ASSAM
PIN- 785634

Advocate for the Petitioner : MR.B SINHA, MR.D SARMAH

Advocate for the Respondent : , SC, AEGCL

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

ORDER

Date : 19.03.2026

Heard Mr. B. Sinha, learned counsel, appearing for the petitioner. Also heard Ms. K. Phukan, learned Standing Counsel, Assam Electricity Grid Corporation Limited (AEGCL).

2. The petitioner in the present writ petition has prayed for a direction upon the respondent authorities to promote him with retrospective effect i.e., w.e.f, July, 2010, to the rank of Fitter Grade-II and thereafter, to revise the pension and pensionary benefits received by the petitioner by reckoning the scale of pay of Fitter Grade –II.

3. The petitioner, herein, was appointed as a Sahayak under the erstwhile ASEB in Mariani Sub-Division, Mariani, vide an order dated 07-07-1987 and he had joined against the said post w.e.f., 08-07-1987. The services of the petitioner was upgraded to the post of Senior Sahayak upon completion of 8 years of service as Sahayak vide an order dated 26-08-1996. The petitioner was thereafter again upgraded as Senior Sahayak vide an order dated 12-12-2007. The petitioner projects that he was entitled to be promoted to the rank of Fitter Grade-II and a vacancy for the purpose was also available. However, his case not being considered, the petitioner had submitted a representation dated 14-07-1998, praying for his promotion to the rank of Fitter Grade-II. The said promotion, however, not being considered, the petitioner approached this Court by way of instituting a writ petition being WP(C).No.9630/2004. The said writ petition was given a final consideration by a Co-ordinate Bench of this Court vide an order dated 29-05-2013, by directing the respondents to consider the case of the

petitioner for promotion to the rank of Fitter Grade-II as and when he would come within the zone of consideration for the same. It was noticed by a Co-ordinate Bench in this order that the petitioner's seniority position as on February 2012 was at serial no.33. The petitioner, thereafter on attaining the age of superannuation retired from his services w.e.f, 30-04-2015. The petitioner was vide order dated 01-07-2015, authorized his pension and other pensionary benefits. The petitioner after superannuation from his services had instituted the present writ petition on 01-02-2016.

4. The learned counsel for the petitioner by reiterating the facts as noticed, hereinabove, has submitted that the non-consideration of the case of the petitioner for promotion to the rank of Fitter Grade-II had resulted in a violation of his fundamental right recognized in this connection. The learned counsel for the petitioner has submitted that although the petitioner had in the meanwhile superannuated from his services, however the petitioner having come within the zone of consideration and post being available in the rank of Fitter Grade-II, the petitioner is mandated to be promoted to the rank of Fitter Grade-II w.e.f, July 2010.

5 . Per contra, Ms. K. Phukan, learned Standing Counsel, AEGCL, has submitted that the claim made by the petitioner in the present writ petition would not be maintainable, inasmuch as, the same was so instituted after the cessation of employee-employer relationship between the petitioner and AEGCL, on the superannuation of the petitioner occasioning on 30-04-2015. She projects that the petitioner was authorized all due pension and pensionary benefits by reckoning the scale of pay drawn by him as a Senior Sahayak in the AEGCL. Accordingly, she submits that the present writ petition would mandate to be dismissed.

6. I have heard the learned counsel for the parties and perused the materials available on record.

7. The petitioner in the present writ petition has prayed for a direction upon

the respondent authorities for promoting him to the rank of Fitter Grade-II w.e.f. July 2010. Raising similar grievance, the petitioner had earlier approached this Court by way of instituting a writ petition being WP(C).No.9630/2004. The said writ petition was disposed of by a co-ordinate Bench of this Court vide order dated 29.05.2013. A perusal of the said order dated 29.05.2013, would reveal that the co-ordinate Bench had noticed that as of February 2012, the seniority position of the petitioner in the rank of Senior Sahayak was at serial no.33. Accordingly, he was not in the zone of consideration for promotion to the rank of Fitter Grade-II as of February 2012. Accordingly, the prayer of the petitioner as made in the present writ petition for consideration of his case from July 2010 would not mandate acceptance, inasmuch as, he was found, even as of February 2012 to be not within the zone of consideration for such promotion.

Further the co-ordinate Bench vide the said order dated 29.05.2013, had directed the petitioner to prefer a representation before the jurisdictional Superintendent Engineer for consideration of his case for promotion to the rank of Fitter Grade-II and it was provided that the authority shall consider the case of the petitioner for such promotion by following due process of law whenever his turn comes.

8. The petitioner in the present writ petition has referred to the cases of few of his juniors in the rank of Sahayak who were promoted to the rank of Fitter Grade-II and/or against equivalent post. While the petitioner had made the said projection in the present writ petition, he has not brought on record further particulars with regard to the promotion effected in respect of his projected juniors. The said issue was dealt with by the respondents in the affidavit filed by them, wherein, it was contended that the projected juniors of the petitioner in the rank of Sahayak were not promoted to the rank of Fitter Grade-II, but promoted to other technical post and such promotion was effected w.e.f. 16.08.2010. It is seen that the petitioner had not assailed the promotion effected in respect of his juniors in the year 2010, and has neither challenge the same, even in the present proceedings. Accordingly, the said contentions of the petitioner for maintaining parity with his erstwhile juniors in the rank of Sahayak in the matter of promotion

would also not mandate an acceptance from this Court.

9. Having drawn the said conclusions, this Court notices that the petitioner, herein, had superannuated from his services w.e.f., 30.04.2015 and it is only thereafter that the present writ petition came to be instituted on 01.02.2016. The prayers made by the petitioner in the present writ petition, accordingly have to be understood to be a prayer for promotion to the rank to Fitter Grade-II, after the cessation of the employee employer relationship, that the petitioner had with the respondent no.1/company on he superannuating from his service w.e.f. 30.04.2015, had occasioned.

10. It is a settled position of law that a retired employee cannot claim for a promotion with retrospective effect i.e., w.e.f. a date prior to the date of his superannuation from his service.

11. With regard to the non-maintainability of the present writ petition instituted for claiming promotion after retirement, this Court for the conclusions drawn by it, draws support from the following decisions of the Hon'ble Supreme Court.

12. In the case of **State of Uttaranchal Forest Rangers' Association Vs. State of U. P.**, reported in **(2006) 10 SCC 346**, the Hon'ble Supreme Court has held that no retrospective promotion or seniority can be granted from a date when an employee has not even been borne in the cadre so as to adversely affect the direct recruits appointed validly in the meantime.

13. Further the Hon'ble Supreme Court, on the issue as to whether an employee could be validly promoted after his retirement date, in the case of **Government of West Bengal Vs. Dr. Amal Satpathi** (supra) had laid down that it is a well settled principle that promotion becomes effective from the date it is granted, rather than from the date a vacancy arises or the post is created. It was further held that the Courts have recognized the right to be considered for promotion as not only a statutory right but also a fundamental right, however

there is no fundamental right to the promotion itself. It was also held that promotion only becomes effective upon the assumption of duties on the promotional post and not on the date of occurrence of the vacancy or the date of recommendation. It thus held that the petitioner in the above case had superannuated before his promotion was effectuated, the petitioner was not entitled to retrospective financial benefits associated to the promotional post, as he did not serve in that capacity.

14. Accordingly, on merits and also in view of the decisions of the Hon'ble Supreme Court noticed, hereinabove, the claims made by the petitioner in the present writ petition would not mandate an acceptance. It is also clarified that the petitioner would not be in a position to assume the charge of the post of Fitter Grade-II after his superannuation from service.

15. Accordingly, in view of the above discussion, the present writ petition is held to be devoid of any merit and the same accordingly stands dismissed. However there would be no order as to costs.

JUDGE

Comparing Assistant