

GAHC010202272023



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

Case No. : WP(C)/5251/2023

UTPAL DAS
SON OF LATE BANESWAR DAS,
RESIDENT OF VILLAGE- NATUNRANI,
P.O.- RANI, P.S.- PALASHBARI,
DISTRICT- KAMRUP(R),
PIN- 781131, ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
FOREST DEPARTMENT, DISPUR,
GUWAHATI-06.

2:THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-06.

3:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS
ARANYA BHAWAN
PUNJABARI

GUWAHATI-37

ASSAM.

4:DIVISIONAL FOREST OFFICER
EAST DIVISION BASISTHA
DISTRICT- KAMRUP
PIN- 781029

ASSAM.

5:OFFICE OF THE DEPUTY COMMISSIONER
KAMRUP DISTRICT
AMINGAON
DIST.- KAMRUP

PIN- 781031
ASSAM

Advocate for the Petitioner : MR. J KALITA, MS B KALITA,MS S KAR

Advocate for the Respondent : SC, FOREST, GA, ASSAM

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

ORDER

Date : 25.02.2026

Heard Mr. A. Ali, learned counsel, appearing for the petitioner. Also heard Mr. I. Borthakur, learned Standing Counsel, Forest Department, appearing for the respondent nos.1, 3 & 4 as well as Mr. J. K. Goswami, learned Additional Senior Government Advocate, appearing for the respondent nos.2 and 5.

2. The petitioner by way of instituting the present proceeding, has assailed the decision arrived at by the District Level Committee (DLC), rejecting the claim of the petitioner for appointment on compassionate grounds, holding that the father of the petitioner at the time of his death did not have a residuary service of 3 (three) years and accordingly in terms of the provisions of point 1 of the Office Memorandum dated 01-06-2015, the petitioner was not entitled to have his case considered for appointment on compassionate grounds.

3. The father of the petitioner, Banewar Das, while working as a Forest Guard in the establishment of the respondent no. 4, died in harness on 22-01-2012. The petitioner, thereafter, submitted an application for consideration of his case for appointment on compassionate grounds. The application submitted by the petitioner was considered by the jurisdictional DLC in its meeting held on 23-11-2017. However, no recommendation came to be made in favour of the petitioner, herein, on the ground that there was no vacant post available within the 5% quota mandated for appointments on compassionate grounds.

The petitioner being aggrieved assailed the said decision of the District

Level Committee (DLC) before this Court by way of filing a writ petition being WP(C).No.9426/2019.

4. It is to be noted that the application of the petitioner was again placed before the jurisdictional DLC in its meeting held on 13-11-2020, however, the application now was rejected on the ground that on the date of death of the father of the petitioner, his father did not have a residuary service of 3 (three) years and accordingly, applying the provisions of Point 1 of the Office Memorandum dated 01-06-2015, the application of the petitioner was rejected.

5. A Co-ordinate Bench of this Court vide an order dated 01-08-2022, proceeded to set aside the said decision in so far as it concerns the petitioner, herein, and remanded back the matter to the jurisdictional DLC for a fresh consideration of the claim of the petitioner for appointment on compassionate grounds.

Thereafter, in pursuance of the directions passed by this Court in the proceedings of WP(C).No. 9426/2019, the case of the petitioner was again placed before the jurisdictional DLC in its meeting held on 12-09-2022 and the said Committee on a reconsideration reiterated its earlier decisions that the claim of the petitioner was barred by the provisions of point 1 of the Office Memorandum dated 01.06.2015 on account of the fact that the father of the petitioner at the time of his death, did not have a residuary service of 3 (three) years left.

Being aggrieved, the petitioner has instituted the present proceedings.

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

7. At the outset this Court notices that a Co-ordinate Bench of this Court in the proceedings of WP(C).No.1646/2021 had an occasion to examine the provision of Clause 1 of the Office Memorandum (OM) dated 01.06.2015. On examination of the provisions of Clause 1 of the said OM dated 01.06.2015 the Co-ordinate Bench of this Court vide Judgment and Order dated 30.01.2023 passed in WP(C).No.1646/2021 and other analogous matters proceeded to interfere with the said provision.

8. The decision of the Co-ordinate Bench of this Court in WP(C) No. 1646/2021 and other analogous matters was carried up on appeal by the State Government, by way of instituting writ appeals, one of them being W.A.No.287/2023.

9. The Division Bench of this Court upon considering the challenge so made, vide judgment and order dated 12.12.2025, passed in W.A.No.287/2023 and other analogous matters, proceeded to dismiss the said appeals as preferred by the State and thereby, upheld the decision of the Co-ordinate Bench of this Court rendered vide Judgment dated 30.01.2023 in WP(C).No.1646/2021 and other analogous matters.

10. The conclusions drawn by the Division Bench of this Court vide judgment and order dated 12.12.2025 passed in W.A.No. 287/2023 and other analogous appeals, being relevant, is extracted hereinbelow:-

*“**12.** After having said that, we deem it appropriate to examine the correctness of the decision of the learned Single Judge in declaring Clause 1 of the Office Memorandum dated 01.06.2015 to be unconstitutional.*

***13.** We find that the classification made on the basis of the remaining*

service period left for the deceased employee is neither intelligible nor has any nexus with the differentia sought to be achieved.

14. *The respondents constitute a homogenous class of persons, whose bread-earners have died in harness. They come within exception laid down in **D.S. Nakara** (supra). It would be inappropriate for the State to contend that the purpose of the classification was to avoid fraud or misuse. Fraud or misuse may occur, irrespective of the length of service remaining. Limiting the benefits to dependants of the deceased employees, who have 3(three) years of service remaining, does not necessarily reduce the risk of fraudulent claims; a would-be fraudster could equally fabricate or collude in cases where a deceased employee had long remaining service. There is no logical causal connection between the duration of remaining service and the likelihood of such misuse.*

15. *We find force in the reasoning of the learned Single Judge that the claim of the State that the Office Memorandum dated 01.06.2015 is in accordance with the 10(ten) principles enunciated in the case of **Achyut Ranjan Das** (supra) and the Office Memorandum dated 16.01.2013 issued by the Department of Personnel & Training, Government of India, is factually incorrect. The learned Single Judge did not find any rationale in the draft note preceding the Office Memorandum dated 01.06.2015 was approved by the State Cabinet.*

16. *The absence of any contemporaneous reasoning diminishes any claim of the State that the choice of 3(three) years was the product of considered administrative evaluation for it not to be interfered with on the ground of such administrative policy being within the domain of executive and the usual restraint of the Courts in treading in such field. The executive must always conform to Article 14 of the Constitution of India. Policy classifications must not be arbitrary, irrational or*

discriminatory without an intelligible basis. Compassionate appointment may not be an absolute vested right but it is a benefit conferred by the employer subject to policy conditions. The non-vested status of compassionate employment does not immunize arbitrary classifications from constitutional scrutiny.

17. *On these grounds, we find the declaration of Clause 1 of the Office Memorandum dated 01.06.2015 to be constitutionally invalid by the learned Single Judge, to be wholly justified.”*

11. The Division Bench of this Court after having drawn the said conclusions with regard to the declaration of Clause-1 of the Office Memorandum dated 01.06.2015 to be unconstitutional by a Co-ordinate Bench of this Court, had proceeded to draw the following further conclusions:-

“20. *Though we have taken the argument of the learned Advocate General with some seriousness that the judgment of the Supreme Court in **Debabrata Tiwari** (supra) prohibits compassionate appointment after long passage of time, but in the present set of cases, closing the chapter for the private respondents would not be appropriate.*

21. *We thus affirm the relegating order passed by the learned Single Judge.*

22. *While making such application before the concerned authorities, the private respondents, we may caution, must not entertain any false hopes and the concerned authorities also shall consider the “passage of time” aspect seriously while assessing the suitability of the private respondents for compassionate appointment, which would be the most important factor in recommending the cases of the private respondents for compassionate appointment, which ultimately may not withstand the*

judicial scrutiny if such recommendation is made after a long lapse of time since the death of the deceased employees.”

12. The case of the petitioner, herein, is squarely covered by the decisions of the Co-ordinate Bench of this Court in WP(C).No. 1646/2021 as well as the decision of the Division Bench of this Court in WA No. 287/2023 and other analogous matters.

13. In view of the decision of the Division Bench of this Court in W.A.No.287/2023 and other analogous matters, the challenge presented in the present writ petition to the minutes of the DLC meeting held on 12.09.2022 need not be gone into.

14. Accordingly, the respondent authorities are directed to consider the claim of the petitioner for appointment on compassionate grounds strictly in accordance with the observations made by the Division Bench of this Court vide judgment and order dated 12.12.2025 in W.A.No.287/2023 and other analogous matters.

15. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant