

GAHC010026832023



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

Case No. : WP(C)/807/2023

BHUGIRAM HAZARIKA
S/O- LT. KATIA HAZARIKA, R/O- LICHUBAGAN, HENGRABARI, P.S.
DISPUR, GUWAHATI IN THE DISTRICT OF KAMRUP (M), ASSAM, PIN-
781006

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, HEALTH
AND FAMILY WELFARE DEPTT., DISPUR, GHY-06

2:REVIEW DEPARTMENTAL PROMOTION COMMITTEE
REP. BY ITS CHAIRMAN-CUM-SECRETARY
HEALTH AND FAMILY WELFARE DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-06

3:THE DIRECTOR OF MEDICAL EDUCATION
ASSAM
SIX MILE
GUWAHATI
PIN- 78102

Advocate for the Petitioner : MR N SARMA

Advocate for the Respondent : SC, HEALTH

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 10.05.2024

Heard Mr. N. Sarma, learned counsel for the petitioner as well as Mr. D.P. Borah, learned standing counsel for the Health Department.

2. The decision of the government in the Health and Family Welfare Department by the impugned order dated 12.01.2023, thereby refusing to consider retrospective promotion of the petitioner for promotion to the next higher rank of Superintendent is under challenge in this writ petition filed under Article 226 of the Constitution of India.

3. The case of the petitioner, in brief, is that he entered into service as the Lower Division Assistant in the office of the Director of Medical Education, Assam in the year 1981 and he was promoted to the post of Upper Division Assistant on 21.09.2004. A Selection Board meeting was held on 01.12.2015 for considering promotion of the eligible Upper Division Assistants to the post of Superintendent. However, the Selection Board did not consider the case of the petitioner on the ground that there were two contradictory remarks in the ACR as well as in the certificate issued by the Administrative Officer in respect of the petitioner. Accordingly, the aggrieved petitioner had approached this Court by filing WP(C) 2339/2016 and this Court, by order dated 07.04.2016, took into consideration that the Selection Board had considered the ACR for last five years for promotion of the petitioner, and that the minutes of the Selection Board meeting did not specify what contradictory remarks were made in the ACR and for which years. In the said order, this Court had also issued a direction to the Director of Medical Education, Assam to give his clarification which had not come for last four years during the pendency of the said writ petition and on

consideration that the superannuation of the petitioner was due in the month of November, 2016, the said writ petition was disposed of by order dated 07.04.2016, by directing the Director of Medical Education, Assam to furnish the necessary clarification sought for by the Selection Board in its meeting held on 01.04.2015 within a period of 30 days from the date of receipt of certified copy of the order. It was provided that the clarification should be furnished to the Secretary to the Govt. of Assam, Health and Family Welfare (A) Department, who shall thereafter ensure constitution of review Selection Board to consider the case of the petitioner for promotion.

4. Accordingly, a review Selection Committee meeting was held on 21.09.2016 and the Committee in its meeting had recommended the name of the petitioner for promotion in the rank of Superintendent in the office of Director of Medical Education, Assam. However, as the petitioner was not given the benefit of promotion, the petitioner had approached this Court again by filing WP(C) 3323/2017 and this Court by order dated 28.02.2019, disposed of the writ petition with the direction to the respondent authorities to reconvene the DPC for consideration of promotion of the petitioner to the higher post of Superintendent by taking into consideration the ACRs for last five years as per rules. It was further directed that if there be any uncommunicated remarks in the ACR, the same cannot be acted upon by the DPC and the DPC was directed to proceed to examine the case of the petitioner on the basis of only such remarks which were communicated to the petitioner but not such adverse remarks which have not communicated to the petitioner. Taking note of the facts that the petitioner had retired from the service on 30.11.2016, it was further directed that the exercise of holding a review DPC shall be undertaken within a period of 3(three) months.

5. Pursuant to the said order by this Court, a review DPC was held on 04.11.2022, only after the proceedings of Cont. Cas(C) 700/2019 was instituted. Eight numbers of ACRs of the petitioner was produced for examinations by the DPC and the DPC noticed that five numbers of ACRs pertaining to the year 01.04.2008 to 31.03.2003 were having serious and adverse remarks against the petitioner and there was also a reference to the criminal case registered at Dispur Police Station under Section 420/406/506 IPC and that the DPC also noticed that the adverse ACRs of the petitioner were all written on 09.09.2013, and were not communicated to the petitioner and the ACRs for other two years w.e.f. 01.04.2013 to 31.03.2015 were not found complete and therefore, the DPC refused to consider the promotion of the petitioner to the rank of Superintendent based on only ACR for one year from 01.04.2015 to 31.08.2016, before his retirement on 30.09.2016. Accordingly, the appropriate authority in the Health and Family Welfare Department, Govt. of Assam had decided that the retrospective promotion to the petitioner for the next higher post of Superintendent could not be considered. Resultantly, the Principal Secretary to the Govt. Assam, Health and Family Welfare Department had issued the speaking order dated 12.01.2023, stating that the retrospective promotion of the petitioner to the next higher post of Superintendent could not be considered.

6. Per contra, the respondent no.2, in their affidavit-in-opposition has reiterated that five ACRs for the year 2008-09, 2009-10, 2010-11, 2011-12 and 2012-13, though having serious adverse remarks against the petitioner, were found not to be communicated to the petitioner and that all those ACRs were written on 09.09.2013. Accordingly, the ACRs of the petitioner for the said period were treated as "no ACR" and it was also projected that the ACR of the

petitioner for the period from 2013-14 and 2015-15 were not complete. Hence, the stand of the respondent no.2 is that the unanimous decision of the DPC was not to consider the case of the petitioner for promotion.

7. It is seen that the respondents authorities have already taken a decision that ACRs for five years period from 2008-2013 were not communicated to the petitioner for which those ACRs were treated as "no ACR" and the adverse remarks against the petitioner were not considered. The stand of the respondent no.2 is that the ACRs for the period from 2013-15 were not complete.

8. Definitely, in the absence of any specific statement made in the affidavit-in-opposition filed by respondent no.2, it cannot be presumed that the petitioner has any hand in his complete ACRs. It is not the case of the respondent no.2 that the ACRs of the petitioner were kept in his custody. Therefore, in this case the petitioner has been denied promotion for none of his fault.

9. Instead of drawing a proceedings under those persons who are In-charge of writing ACRs, being the Reporting and the Reviewing authorities, the respondent in the Health and Family Welfare Department have penalized the petitioner for his incomplete ACR, over which he has no control. There is nothing on record to show that even the incomplete ACR was brought to his notice. Therefore, the Court is no hesitation in setting aside and quashing of the impugned order no. HLA.240141/588 dated 12.01.2023 issued by the Principal Secretary to the Govt. of Assam, Health and Family Welfare Department.

10. It is noted that every time the consideration of the promotion of the petitioner was previously taken up and promotion was denied to him, this Court

by orders passed in WP(C) 2339/2016 as well as WP(C) 3323/2017, had directed a review DPC to be taken up to reconsider the promotion of the petitioner. In the first review DPC, which was held on 21.09.2016, recommendation was made for promotion of the petitioner to the rank of Superintendent, but the petitioner was not given the benefit of promotion. After the order of the Court passed on 28.02.2019 in WP(C) 3323/2017, separate review DPC was held in respect of the petitioner and as per the minutes dated 04.11.2022, the DPC could not take a decision on the promotion of the petitioner based on one year ACR. Therefore, the Court is inclined to set aside and quash the proceedings of the DPC meeting held on 04.11.2022 for reconsidering the promotion of the petitioner to the rank of Superintendent as well the consequential order no. HLA.240141/588 dated 12.01.2023 issued by the Principal Secretary to the Govt. of Assam, Health and Family Welfare Department, only in respect of the petitioner.

11. The Court takes note of the fact that this Court had already held that the uncommunicated ACRs for the year 2008-13 cannot be considered for the adverse entries not being communicated to the petitioner and the two ACRs for the period from 01.04.2013 to 31.03.2015 were incomplete. Therefore, the respondent authorities, including the Departmental Promotion Committee (by whatever name called) has to consider the case of the petitioner for promotion only on the basis of the only available ACR for the period from 01.04.2015 to 31.08.2016. The respondents cannot shirk their responsibility of considering the candidature of the petitioner for promotion based on the said sole ACR from 01.04.2015 to 31.08.2016.

12. Accordingly, the Principal Secretary to the Govt. of Assam, Health and Family Welfare Department is directed to convene a review DPC within an outer

period of 60 days from the date of service of certified copy of this order for considering the candidature of the petitioner for promotion to the rank of Superintendent on the basis of the only ACR available for consideration i.e. for the period 01.04.2015 to 31.08.2016. Accordingly, the Principal Secretary to the Govt. of Assam, Health and Family Welfare Department shall also issue a direction to the DPC to consider the candidature of the petitioner on the said sole available ACR alone, without being influenced by uncommunicated remarks and/ or incomplete ACRs that may be found available in any other ACR of the petitioner. The review DPC shall pass an appropriate recommendation within a period of 30 days from the date of its constitution.

13. It is needless to say that as the petitioner has already superannuated, the Principal Secretary to the Govt. of Assam, Health and Family Welfare Department shall ensure that the whatever recommendation/ orders are made, would be communicated to the petitioner in his e-mail address or WhatsApp number to be provided by the petitioner. It is needless to say that if the petitioner is found entitled to any consequential benefit, the same shall be extended to him within a reasonable time thereafter.

14. The petitioner shall produce a certified copy of this order before the Head of the Department i.e. Principal Secretary to the Govt. of Assam, Health and Family Welfare Department, Assam.

15. With the aforesaid direction, this writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant