

GAHC010054912019



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

**Case No. : WP(C)/1760/2019**

RABINDRA DEKA  
S/O. LT. DEBANDRA DEKA, R/O.- BONGAON, BELTOLA, GUWAHATI-28,  
PRESENTLY WORKING AS INSPECTOR, FOOD, CIVIL SUPPLIES AND  
CONSUMER AFFAIRS DEPTT., GOVT. OF ASSAM AND POSTED AT  
KAMRUP(M), GUWAHATI.

VERSUS

THE STATE OF ASSAM AND 6 ORS.  
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, FOOD,  
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT., DISPUR, GUWAHATI-6.

2:THE SECRETARY TO THE GOVT. OF ASSAM

FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPTT.  
DISPUR  
GUWAHATI-6.

3:THE DIRECTOR

FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
BHANGAGARH  
GUWAHATI-5.

4:THE ASSAM PUBLIC SERVICE COMMISSION  
REP. BY ITS SECRETARY  
KHANAPARA  
GUWAHATI-22.

5:RANJIT KR. BHATTACHARYYA

POSTED AS SUPERINTENDENT FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
BAKSA  
OFFICE OF THE DEPUTY COMMISSIONER  
BAKSA  
BTAD  
MASALPUR  
ASSAM  
PIN- 781366.

6:AJIT KUTUM  
POSTED AS SUPERINTENDENT FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
JONAI  
O/O. THE SUB-DIVISIONAL OFFICER(CIVIL)  
JONAI  
ASSAM  
PIN- 787060.

7:ALAKESH DAS  
POSTED AS SUPERINTENDENT FOOD  
CIVIL SUPPLIES AND CONSUMER AFFAIRS  
O/O. THE DEPUTY COMMISSIONER  
NAGAON  
ASSAM. PIN- 782001

**For the Petitioner : Mr. D. N. Bhattacharyya, Adv.**

For the Respondents: Ms. M. Bhattacharjee, Addl. Sr. GA. Assam.  
Ms. P. Sarma, SC, APSC.  
Mr. K. Kalita, Adv.

**BEFORE**

**THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing & Judgement : 23/07/2024.

**JUDGEMENT AND ORDER (ORAL)**

**1.** Heard Mr. D. N. Bhattacharyya, leaned counsel appearing for the writ petitioner. I have also heard Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam, appearing for the respondent nos.1, 2 & 3, Ms. P. Sarma, learned Standing Counsel,

APSC, appearing for the respondent no. 4 and Mr. K. Kalita, learned counsel for the respondent no. 7. None has appeared on behalf of the respondent nos. 5 & 6.

**2.** This writ petition has been filed *inter-alia* with a prayer to consider the case of the petitioner for promotion to the post of Superintendent of Food, Civil Supplies & Consumer Affairs Department with effect from 07/03/2019 and also to set aside the promotion given to his juniors i.e. the private respondent nos. 5, 6 & 7, by ignoring the case of the petitioner, although, he was senior to them. It appears that on 26/02/2019, the Departmental Selection Committee (DPC) headed by the Secretary to the Government of Assam, Food, Civil Supplies and Consumer Affairs Department, Dispur had met for considering the eligible departmental candidates serving as Inspectors, for promotion to the post of Superintendent, in accordance with the provisions of Rule 9, 12 & 13 of the *Assam (Food & Civil Supplies) Service Rules 1970 (for short the Rules of 1970)*. According to the petitioner, his name appeared at Sl. No. 36 of the Gradation List of Inspectors of the Food, Civil Supplies Department, circulated by the departmental authorities on 21/02/2019 and, therefore, he was within the zone of consideration for promotion to the next higher post of Superintendent as per Rule 13 of the Rules of 1970. However, without assigning any reason, the DPC has ignored his candidature and on the contrary, went on to recommend his juniors i.e. the private respondent nos. 5, 6 & 7 for promoting them to the post of Superintendent. Hence, this writ petition.

**3.** By referring to the materials available on record, Mr. Bhattacharyya, learned counsel for the petitioner has argued that no reason, whatsoever, has been shown by the DPC for not considering the case of the petitioner. Therefore, although his client was subsequently promoted to the post of Superintendent on 08/10/2020, yet, he became junior to the private respondents and had also missed out on his promotion with effect from the date on which his juniors were promoted. According to Mr. Bhattacharyya, even if it is assumed that the candidature of the petitioner was not considered by DPC meeting held on 26/02/2019 due to pendency of departmental proceeding, yet, it was incumbent upon the department to consider the case of the petitioner in a sealed cover awaiting the outcome of the departmental proceeding, which has apparently not been done in the present case. As such, submits Mr. Bhattacharyya, there has been flagrant violation of, not only the relevant provisions of the Rules but also fundamental and legal right of the petitioner, leading to denial of his right to be promoted with effect from the date when it became due.

**4.** Responding to the above arguments, Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam, has argued that the reason as to why the petitioner's case could not be considered by the DPC held in the year 2019, had been furnished in the counter affidavit filed on behalf of the respondent nos. 1 & 2, which is pendency of the departmental proceeding against him and also non-availability of his complete ACR. Ms. Bhattacharjee submits that the petitioner has not only failed to assail the minutes of the DPC meeting held on 26/02/2019 in the present writ petition but he has also failed to demonstrate as to in what manner, the promotion given to the petitioner in the year 2020 can now be interfered with so as to grant relief to the writ petitioner. It is also the submission of Ms. Bhattacharjee that the private respondent nos. 5 to 7 against whom the petitioner is claiming seniority have already retired from service on attaining the age of superannuation. As such, no live issue survives in this proceeding at this stage, more particularly, since the petitioner has also, in the meantime, been promoted to the post of Assistant Director of Food, Civil Supplies and Consumer Affairs Department.

**5.** Ms. P. Sarma, learned Standing Counsel, APSC, appearing for the respondent no. 4, has adopted the submission of the learned Government Advocate, Assam. Mr. K. Kalita, learned counsel for the respondent no. 7 has submitted that since his client has already retired from service, he does not have any submission to make in this case.

**6.** I have considered the arguments made at the Bar and have also gone through the materials on record.

**7.** There is no doubt or dispute about the fact that the conditions of service of the writ petitioner is governed by the provision of the Service Rules of 1970. Rule 13(2) lays down that selection for the purpose of promotion is to be made on the basis of merit-cum suitability in all respects with due regard to seniority and in reference to the other criteria laid down therein. There is also no dispute about the fact that the writ petitioner herein was senior to the private respondents in the Gradation List of Inspectors circulated in the year 2019. However, the petitioner has not denied the fact that at the time when the DPC meeting dated 26/02/2019 was held, there was a departmental proceeding pending against him.

**8.** The department has furnished the reason for not considering the case of the petitioner by filing their counter affidavit. The averments made in para 9 of the counter affidavit filed by the department are relevant and, therefore, are being reproduced herein

below for ready reference :-

*“9. That with regard to the statement made in paragraph nos. 12 and 13 of the writ petition; the deponent begs to state that the promotion of the petitioner was not considered by the Selection Committee due to inadequate ACRs in respect of the petitioner at the time of the meeting of the Departmental Selection Committee dated 26/02/2019. However, the DP drawn against the petitioner was not finalized till the date of holding the meeting of the Departmental Selection Committee.*

*It is connection, it is further informed that the petitioner was recommended for selection for promotion to the post of Superintendent, FCS & CA in the year 2020 by Departmental Selection Committee in its meeting held on 08/10/2020, which was kept under sealed cover due to pending Departmental Proceeding and was later promoted to Superintendent, FCS & CA vide No. FSB.50/2014/Pt/125 dated 19/08/2021 with retrospective effect from 07/11/2020. He was further promoted to the post of Assistant Director, FPD & CA vide No. E-220375/279 dated 27/12/2023.”*

**9.** It is no doubt correct that when the DPC dated 26/02/2019 was held, it was incumbent upon the departmental authorities to consider the case of the petitioner for promotion to the post of Superintendent in a sealed cover awaiting the outcome of the departmental proceeding since he was within the zone of consideration. However, as has been noticed herein above, the same was not done in the present case.

**10.** The writ petitioner had approached this Court by filing the present writ petition at the relevant point of time. However, no interim order was passed by this Court protecting the interest of the petitioner, in so far as sealed cover proceeding is concerned. The interim order dated 29/03/2019 passed in this case merely mentions that the promotion of juniors to the petitioner would be provisional and subject to the outcome of the writ petition. From the above, it is apparent that the interim order dated 29/03/2019 was merely to protect the seniority of the petitioner and the same was not connected with the issue of date on which the promotion of the petitioner ought to be given effect to.

**11.** Subsequently, by the order dated 21/09/2023 passed by this Court in IA(C) No.

2165/2023 arising out of WP(C) No. 1760/2019, the interim order dated 29/03/2019 was vacated by the learned Single Judge. Thereafter, the promotion given to the private respondents were regularized. All the three private respondents have in the meantime retired from service. The petitioner is, however, continuing in service in the post of Assistant Director till date.

**12.** The core question that would, therefore, arise in the present case is as to whether the writ petitioner, having accepted his promotion given to the rank of Superintendent with effect from 08/10/2020 and having failed to challenged the resolution dated 26/02/2019 as well as the order of promotion given to his juniors vide notification dated 07/03/2019, was entitled to the relief prayed for which is to give effect to his promotion with effect from 07/03/2019. The answer to the said question, in the opinion of this Court, has to be in the negative. Since the petitioner was not considered by the DPC held on 26/02/2019, directing the respondents to consider his case so as to give effect to his promotion to the rank of Superintendent based on the recommendation of the DPC dated 26/02/2019 would not arise in the eyes of law. If the petitioner was serious about protecting his interest by keeping the consideration of his case under sealed cover, than it was incumbent upon the petitioner to obtain an interim order to that effect from this Court, but he has failed to do so. Under the circumstances, I find force in the submission of Ms. M. Bhattacharjee, learned Government Advocate, Assam, that no live issue survives for decision by this Court in the present proceeding at this distant point of time. The clock cannot be set back now so as to direct sealed cover proceeding nor can the petitioner be given seniority above the respondent nos. 5, 6 & 7, who have already retired from service.

**13.** For the reasons stated herein above, this writ petition is held to be devoid of any merit. The same is accordingly, dismissed.

There shall be no order as to costs.

**JUDGE**

*Sukhamay*

## **Comparing Assistant**