

GAHC010036432024



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

Case No. : WP(C)/1030/2024

ROKTIM HAZARIKA
S/O SRI BHOROT HAZARIKA,
RESIDENT OF VILLAGE BALIJAN GAON, PO JALUKBARI, PS TITABOR,
DIST JORHAT, ASSAM 785630

VERSUS

THE UNION OF INDIA AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS, GOVT. OF INDIA, NEW DELHI 01

2:THE STAFF SELECTION COMMISSION
REPRESENTED BY THE CHAIRMAN
BLOCK 12 CGO COMPLEX
LODHI ROAD
NEW DELHI 3

3:THE REGIONAL DIRECTOR
STAFF SELECTION COMMISSION GUWAHATI ASSAM
HOUSEFED COMPLEX
DIST. GUWAHATI 06

4:THE DIRECTOR GENERAL
BORDER SECURITY FORCE
BLOCK NO. 20 CGO COMPLEX
LODHI ROAD
NEW DELHI .

3

5:THE DIRECTOR GENERAL
SASTRA SEEMA BAL
5-6 VIVEKANANDA MARG

EAST BLOCK
R.K PURAM
NEW DELHI 22

6:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE (RECRUITMENT) EAST BLOCK 07
LEVEL 4
SECTOR 01
R.K PURAM NEW DELHI 66

7:THE DIRECTOR GENERAL
CENTRAL INDUSTRIAL SECURITY FORCE
BLOCK 13 CGO COMPLEX
LODHI ROAD
NEW DELHI 0

Advocate for the Petitioner : MR. S D ROY

Advocate for the Respondent : DY.S.G.I.

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

ORDER

08.05.2024

Heard Mr. S. D. Roy, learned counsel for the petitioner, also heard Mr. S. S. Roy, learned CGC for the respondents.

2. The case of the petitioner is that pursuant to an employment advertisement dated 21.07.2018, issued by the Staff Selection Commission for the recruitment of Constables (General Duty) in Central Armed Police Forces (CAPFs) National Investigating Agency (NIA) and Secretariat Security Force (SSF) and Rifleman (General Duty) in Assam Rifles Examination, 2018, whereby 54,953 vacancies were advertised, the petitioner who belongs to an OBC category had applied and was successful after availing the benefit of relaxation

in the "height" and "chest" which are available for unreserved category candidates for the State of Assam. It is projected that on merit the candidature of the petitioner could have been considered under unreserved category as the petitioner had scored higher than the last general category candidate.

3. Therefore, assailing his non-selection, the present writ petition has been filed under Article 226 of the Constitution of India.

4. Having regard to the facts of the present case in hand, we find that the case of the petitioner is squarely covered by the ratio laid down in the case of *Gaurav Pradhan and Others v the State of Rajasthan and Others*, (2018) 11 SCC 352 and order dated 01.02.2024, passed by this Court in *WP(C) No 5212/2023-Jintumani Talukdar v the Union of India and Others*. The relevant Paragraph nos. 48 to 52 of the case of *Gaurav Pradhan (supra)* are quoted below:-

48. *We are thus of the opinion that the Division Bench erred in modifying the judgment of the learned Single Judge and holding that candidates availing relaxation of age belonging to reserved category candidates who find place in merit list of the general/open category has to be treated to be included in the general/open category. The above conclusion of the Division Bench is unsustainable for the reason as indicated above.*

49. *In view of the foregoing discussion, we are of the considered opinion that the candidates belonging to SC/ST/BC, who had taken relaxation of age, were not entitled to be migrated to the unreserved vacancies; the State of Rajasthan has migrated such candidates who have taken concession of age against the unreserved vacancies which resulted displacement of a large number of candidates who were entitled to be selected against the unreserved category vacancies. The candidates belonging to unreserved category who could not be appointed due to migration of candidates belonging to SC/ST/BC were clearly entitled for appointment which was denied to them on the basis of the above illegal interpretation put up by the State. We, however, also take notice of the fact that the reserved category candidates who had taken benefit of age relaxation and were migrated on the unreserved category candidates, are working for more than last five years. The reserved category candidates who were appointed on migration against unreserved vacancies are not at fault in any manner.*

Hence, we are of the opinion that SC/ST/BC candidates who have been so migrated in reserved vacancies and appointed, should not be displaced and allowed to continue in respective posts. On the other hand, the unreserved candidates who could not be appointed due to the above illegal migration are also entitled for appointment as per their merit. The equities have to be adjusted by this Court.

50. *On the question of existence of vacancies, although the learned counsel for the appellant submitted that vacancies are still lying there, which submission, however, has been refuted by the learned counsel for the State of Rajasthan. However, neither the appellants had produced any details of number of vacancies nor has the State been able to inform the Court about the correct position of vacancies.*

51. *We, thus, for adjusting the equity between the parties, issue the following directions;*

51.1. *The State shall make appointments against the existing vacancies, if available, and in the event there are no vacancies available for the above candidates, the supernumerary posts may be created for adjustment of the appellants which supernumerary posts may be terminated as and when vacancies come into existence.*

52. *All the appeals are allowed accordingly.*

5. The relevant paragraph nos. 2 and 7 to 9 of the case of *Jintumani Talukdar and others (supra)* are quoted below :-

2. *The petitioners herein belong to SC category. The petitioner had applied under the reserved category in response to the advertisement notice dated 21/07/2018 for recruitment in the post of Constable (General Duty) in the Central Armed Police Forces (CAPFs), the petitioner had submitted his candidature and had also participated in the selection process. However, on conclusion of the process, the petitioner was not selected despite having scored more marks than the unreserved candidates and no appointment order was issued to the petitioner.*

7. *After perusal of the order dated 11.08.2022 passed by this Court in W.P.(C) No. 3764/2021 and also the Judgment of the Division Bench of Delhi High Court in W.P.(C) No. 4982/2021 (Hemant Pokhriyal Vs. Staff Selection Commission & Ors) as well as Judgment dated 07.12.2021 passed by the Tripura High Court in W.P.(C) No. 117/2021 (Arpan Chowdhury Vs. Union of India & Ors) and also taking note of the submissions advanced by the learned counsels for the parties, this Court finds that the matter is covered. Accordingly, this Court is of the view that the respondents cannot disentitle the petitioner for consideration against general category vacancies if he had secured more marks than the last selected general category candidates.*

8. In view of the reasons stated above, the respondents are directed to accommodate the petitioner and appoint him in vacant posts of Constable (GD) in any Central Armed Police Force within a period of three (3) months from the date of receipt of a certified copy of this order, after verifying whether the petitioner has secured higher marks than the last selected general category candidates.

9. With the above observations, the writ petition stands disposed of.

6. Accordingly, this writ petition stands allowed in terms of the directions which are contained in paragraph 51.2 in the case of *Gaurav Pradhan (supra)*, read with paragraph 8 of the case of *Jintumani Talukdar (supra)*.

7. Accordingly, the respondents are directed to make appointment of the petitioner against the existing vacancies, if available, and in the event if there are no vacancies available for the petitioner, a supernumerary post may be created for adjustment of the petitioner which is terminable as and when regular vacancies come into existence. The accommodation of the petitioner shall be made in any Central Armed Police Forces (CAPFs)/National Investigating Agency (NIA)/ Secretariat Security Force (SSF)/ Rifleman (General Duty), Assam Rifles. This process shall be done within a period of 3 months from the date of the receipt of the certified copy of this order, however, after verifying whether the petitioner has secured higher marks than the last selected candidate in the General category in the recruitment process in 2018 pursuant to the advertisement dated 21.07.2018.

8. Hence, this writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant