

GAHC010132372013



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

Case No. : WP(C)/6723/2013

KUSHAL KOWAR DEKA and 5 ORS
S/O LT. LOKNATH DEKA ZOO NARENGI ROAD, NO. 2 MATHGHARIA P.O.
and P.S. NOONMATI,PIN- 781020, DIST. KAMRUP, M, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF ENVIRONMENT AND FOREST, DISPUR, GUWAHATI-
781006.

Advocate for the Petitioner : MR.S HUSSAIN

Advocate for the Respondent : MS.C MOZUMDARR- 6-8R-9

Linked Case : WP(C)/4294/2020

KUSHAL KONWAR DEKA AND ANR
S/O LT. LOKNATH DEKA
ZOO NARENGI ROAD
NO. 2 MATGHARIA
P.O. AND P.S. NOONMATI
PIN-781020
DIST. KAMRUP (M)
ASSAM

2: SAHADAT ALI
S/O LT. MAHIM UDDIN AHMED
29 LNB PATH
HATIGAON
P.O. AND P.S. HATIGAON
PIN-781038
DIST. KAMRUP (M)
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006

2:THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONAL (B) DEPTT. DISPUR
GUWAHATI-781006

3:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006

4:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HOF
ASSAM
PANJABARI
GUWAHATI-781037
5:THE SECRETARY
ASSAM PUBLIC SERVCIE COMMISSION
KHANAPARA
JAWAHARNAGAR
GUWAHATI-781022

Advocate for : MR. M K CHOUDHURY
Advocate for : SC
APSC appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/1148/2021

KUSHAL KONWAR DEKA AND ANR
S/O- LT. LOKNATH DEKA
ZOO NARENGI ROAD
NO. 2 MATGHARIA
P.O. AND P.S. NOONMATI

PIN- 781020
DIST.- KAMRUP (M)
ASSAM

2: SAHADAT ALI
S/O- LT. MAHIM UDDIN AHMED
29 LNB PATH
HATIGAON
P.O. AND P.S. HATIGAON
PIN- 781038
DIST.- KAMRUP (M)
ASSAM
VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GHY-06

2:THE SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR

GHY-06

3:THE SECRETARY TO THE GOVT. OF ASSAM
PERSONAL (B) DEPTT.

DISPUR

GHY-06

4:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR

GHY-06

5:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HOF
ASSAM
PANJABARI

GHY-37

6:ASSAM PUBLIC SERVICE COMMISSION
REP. BY ITS SECY.

KHANAPARA

JAWAHARNAGAR

GHY-22

7:ASHOK KR. DEV CHOUDHURY
A.C.F

MANGALDOI WILDLIFE DIVISION

MANGALDOI

ASSAM

8:MUSTAFA ALI AHMED
A.C.F

OFFICE OF THE DFO

GUWAHATI SF DIVISION

BASISTHA

GHY-29

ASSAM

9:KANAK BAISHYA

A.C.F

OFFICE OF THE DFO

GUWAHATI SF DIVISION

BASISTHA

GHY-29

ASSAM

10:DIBAKOR DAS

A.C.F

DHANSIRI FOREST DIVISION

UDALGURI

ASSAM

Advocate for : MR. M K CHOUDHURY

Advocate for : SC

FOREST appearing for THE STATE OF ASSAM AND 9 ORS

Linked Case : WP(C)/4948/2020

KUSHAL KOWAR DEKA AND ANR

S/O LT. LOKNATH DEKA

ZOO NARENGI ROAD

NO. 2

MATGHARIA

P.O. P.S. NOONMATI

PIN-781020

DIST. KAMRUP (M)

ASSAM

2: SAHADAT ALI

S/O LT. MAHIM UDDIN AHMED

29 LNB PATH

HATIGAON

P.O. AND P.S. HATIGAON

PIN-781038

DIST. KAMRUP (M)

ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS

REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006

2:THE SECRETARY
TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006

3:THE SECRETARY
TO THE GOVT. OF ASSAM
PERSONNEL (B)
DEPTT. DISPUR
GUWAHATI-781006

4:THE PRINCIPAL SECRETARY
TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006

5:ADDITIONAL SECRETARY
TO THE GOVT. OF ASSAM
DEPTT. OF ENVIRONMENT AND FOREST
DISPUR
GUWAHATI-781006

6:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HOF
ASSAM
PANJABARI

GUWAHATI-781037

7:THE SECRETARY
ASSAM PUBLIC SERVICE COMMISSION
KHANAPARA

JAWAHARNAGAR
GUWAHATI-781022

8:ASHOK KR. DEV CHOUDHURY
S/O- LATE BHABESH CHANDRA DEV CHOUDHURY
ASSISTANT CONSERVATORY OF FORESTS MANGALDOI WILDLIFE
DIVISION
MANGALDOI
ASSAM.

9:DIBAKOR DAS
S/O-LATE DR. NIKUNJA BEHARI DAS
ASSISTANT CONSERVATOR OF FORESTS
DHANSIRI FOREST DIVISION
UDALGURI.

10:MUSTAFA ALI AHMED
S/O- LATE PHUKAN ALI
ASSISTANT CONSERVATOR OF FOREST
O/O THE DFO

GUWAHATI SF DIVISION
BASISTHA
GUWAHATI-29
ASSAM.
11:KANAK BAISHYA
S/O-LATE UTCHAB BAISHYA
ASSISTANT CONSERVATOR OF FORESTS
O/O DFO
KAMRUP EAST DIVISION
BASISTHA
GUWAHATI
ASSAM.

Advocate for : MR. M K CHOUDHURY
Advocate for : SC
FOREST appearing for THE STATE OF ASSAM AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 28.03.2024.

Date of judgment : **09.04.2024**

JUDGMENT & ORDER (CAV)

Heard Mr. M. Sarma, learned counsel appearing for the petitioners in this batch of writ petitions. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam appearing for the official respondents and Mr. N. Gautam, learned counsel appearing for the private respondents. Ms. P. Sarma, learned counsel has appeared for the Assam Public Service Commission (APSC).

2. In all these writ petitions, the core issue arising for determination by this Court is pertaining to the validity of the criteria adopted by the departmental authorities for

fixing the inter-se seniority amongst the Forest Rangers recruited during 1989-91. The facts and circumstances giving rise to the filing of these writ petitions are briefly stated herein below.

3. On 28.02.1989, the Secretary to the Assam Public Service Commission (APSC) had issued a notification inviting applications for 18 stipendiary studentship for 1989-91 Rangers Course in forestry for the State Forest Department, Soil Conservation Department and District Council at the Eastern Forest Rangers College, Kurseong which was scheduled to commence on 1st of May, 1989. In response to the said advertisement, the writ petitioners had submitted their candidature. On 20.06.1989 the APSC published the result of the competitive examination (written and interview) conducted for selection of candidates for Rangers Course in Forestry, 1989-91 containing the names of 44 candidates. On 28.07.1989, the APSC had issued a notification publishing the select list of 18 candidates for undergoing training in Rangers Course in Kurseong. The names of the writ petitioners figured in the APSC select list dated 28.07.1989. Accordingly, the selected candidates were subjected to training in Forestry. After completion of the training programme the 18 successful candidates including the writ petitioners were absorbed in the department as Forest Rangers. However, the names of the private respondents did not feature in the A.P.S.C. select list.

4. It appears that some of the unsuccessful candidates including the private respondents had submitted a representation before the Secretary to the Government of Assam, Department of Forest, Dispur praying for their absorption as Rangers. It was

contended that despite facing stiff competition and even after undergoing rigorous selection process they were not appointed as Forest Rangers. Acting on such request made by the private respondents, the Deputy Secretary to the Government of Assam, Forest Department had issued notification dated 20.11.1989 publishing the list of another 15 candidates including the private respondents, thus recruiting them for the purpose of undergoing training in the Rangers Course in Forestry at North East Forest Rangers College at Jalukbari. It is to be noted herein that by that time, the training course of the writ petitioners had already commenced. Based on the notification dated 20.11.1989, the private respondents were also subsequently appointed as Forest Rangers although their names were not included in the original list of selected candidates published by the APSC on 28.07.1989. It would be pertinent to mention herein that there is no dispute about the fact that the appointment of the private respondents were not based on the APSC select list.

5. On 01.10.2004, a draft gradation list of Assam Forest Service (Class-II) Officers, as on the 1st day of October, 2004 was published. In the gradation list dated 01.10.2004 the names of the six writ petitioners as well as the private respondents i.e. respondent Nos.7, 8, 9 and 10 were included as per their merit position. The seniority position of the candidates, as reflected in the draft gradation list dated 01.10.2004 is reproduced herein below in a tabular form :-

Petitioners	Sr. No.	Respondents	Sr. No.
Kushal Konwar Deka	146	Ashok Kr. Dev Choudhury	160
Pradip Kumar Bhuyan	149	Mustafa Ali Ahmed	161
Sahadat Ali	150	Sunil Kr. Nath	162

Ranjit Kumar Medhi	151	Amarendra Talukdar	172
Praneswar Das	157		
Jiten Bora	159		

6. The Secretary to the Government of Assam, Environment and Forest Department had, thereafter, issued another notification dated 20.12.2005 in supersession of the earlier notification, providing that the *inter se* seniority of Forest Rangers appointed as per the merit list of APSC shall be fixed in order of preference of the select list of the APSC with effect from 01.04.1986 subject to the condition that the Officer trainee must pass the training during the stipulated period failing which he shall lose his seniority.

7. According to the writ petitioners, the draft gradation list as well as the notification dated 20.12.2005 maintains the seniority position of the petitioners above the private respondents and therefore, there was no occasion for the petitioners to assail the same. However, on 08.02.2006, the Deputy Secretary of the Department had issued a notification keeping the earlier notification dated 20.12.2005 in abeyance. In the result, the Government circulars maintaining the position of APSC merit list for determining the inter-se seniority of the officers of their cadre stood temporarily interfered with.

8. On 16.10.2006, the impugned draft gradation list was published whereby, the seniority positions of the Forest Rangers were altered and the private respondents were assigned higher seniority position over the writ petitioners. Thereafter, vide notification dated 09.11.2012 the private respondents were promoted to the rank of

Assistant Conservator of Forest (ACF) by ignoring the seniority position of the writ petitioners. Aggrieved thereby, the six writ petitioners had jointly approached this Court by filing WP(C) No.6723/2013 *inter-alia* praying for quashing the order of promotion dated 09.11.2012 as well as the gradation list published on 16.10.2006. In the said writ petition, a prayer was also made before this Court to issue a writ of mandamus to finalise the gradation list published on the basis of notification dated 20.12.2005 and to promote the writ petitioners to the post of Assistant Conservator of Forest against the existing vacancies.

9. During the pendency of WP(C) No.6723/2013, two writ petitioners viz., Sri Kushal Konwar Deka and Sri Sahadat Ali filed WP(C) No.4294/2020 with a prayer to implement the Office Memorandum dated 11.02.2020 and to finalise the gradation list of the Forest Rangers pertaining to the 1989-91 batch. However, in the meantime, by issuing notification dated 07.11.2020, the Office Memorandum dated 11.02.2020 was also kept in abeyance. As such, WP(C) No.4948/2020 was instituted by the two above named writ petitioners viz., Kushal Konwar Deka and Sahadat Ali challenging the O.M. dated 07.11.2020.

10. Finally, WP(C) No.1148/2021 was instituted by the aforementioned two petitioners primarily seeking an order from this Court not to give any further promotion to the private respondents until finalization of the gradation list. However, it appears that the private respondents had already been promoted to the next higher rank of DCF/DFO in which posts they are presently serving.

11. Mr. Sarma, learned counsel appearing for the writ petitioners submits that his

clients were duly selected by the APSC in the selection process and were also subjected to training course in the designated Forestry College which training they successfully completed. It is after completion of the training course by the petitioners and after their absorption in the department that the private respondents were appointed. It is contended that the appointment of the private respondents is dehors the rules. Notwithstanding the same and despite the fact that the private respondents were junior to the petitioners in service, they have not only been treated as seniors to the writ petitioners but have also been promoted to the rank of DCF/DFO by ignoring the legitimate claim of the writ petitioners. Mr. Sarma has, therefore, prayed for quashing the promotional order dated 09.11.2012 issued by the Under Secretary to the Government of Assam, Environment and Forest Department promoting the private respondents to the post of ACF/DCF by ignoring the claims of the petitioners and also for a direction upon the departmental authorities to finalise the gradation list of Range Forest Officers (1989-91 batch) and thereafter, give all consequential service benefits to his clients.

12. Responding to the plea raised in these writ petitions, Mr. D. Gogoi, learned Standing Counsel, Forest Department, Assam has submitted, in his usual fairness, that as per departmental records the appointment of the private respondents as Forest Ranger does not appear to be based on any valid selection process conducted by the APSC and to that extent, he is not disputing the claim of the writ petitioners that they, having been selected by the APSC in a valid selection process and their names having featured in the list of selected candidates of Forest Rangers published by the APSC, the private respondents, who were recruited subsequently and were below the

writ petitioners in order of merit, ought not to have been treated as senior to the petitioners in service nor could they have been promoted to the higher posts ahead of the writ petitioners. Mr. Gogoi, however, submits that although the department is accepting that there is some anomaly in the process, yet, considering the long years of service rendered by the private respondents and in the interest of proper functioning of the department, this Court may not interfere with the appointment and promotion given to the private respondents. The learned departmental counsel Mr. Gogoi has assured this Court, on instruction obtained by him, that if a direction is issued by this Court, the seniority position of the writ petitioners would be restored in terms of the O.M. dated 11.02.2020, as reiterated by the notification dated 20.12.2005 and consequential service benefits would also be given to them, as per law.

13. Mr. N. Gautam, learned counsel appearing for the private respondents has submitted that if no adverse order is passed against his clients in this batch of writ petitions, then he would have no objection to the submission made by the learned departmental counsel.

14. After hearing the arguments advanced by the learned counsel for the parties and on a careful scrutiny of the materials on record, this Court is of the view that the writ petitioners herein were duly selected by the APSC for recruitment in the post of Forest Ranger and were also subjected to training. As per the merit position in the APSC select list dated 20.06.1989 the writ petitioners, undoubtedly ranked higher than the private respondents. Under the circumstances, the question of treating the petitioners as junior to the private respondents did not arise in the eyes of law. The

learned departmental counsel has failed to convince this Court that the recruitment of the private respondents as Forest Rangers was pursuant to a valid selection process conducted in accordance with law. If that be so, the question of giving seniority to the private respondents above the writ petitioners cannot arise in the eyes of law. Be that as it may, in view of the categorical submission made by the learned departmental counsel, as noted above, this Court is of the opinion that it would not be necessary for the Court to delve any further into the question of validity of the process of appointment of the private respondents.

15. Taking note of the submissions of the learned counsel for the parties as well as the stand of the learned departmental counsel and as agreed to by them, these writ petitions are being disposed of by directing the departmental authorities to fix the inter-se seniority of the Forest Rangers of 1989-91 batch by following the mandate of O.M. dated 11.02.2020 as reaffirmed by the O.M. dated 20.12.2005 and thereafter, publish the final gradation list of Forest Rangers for the relevant period. Based on the final gradation list, consequential seniority and other service benefits be given to the writ petitioners in the promotional posts. The department shall also consider the claim of the petitioners for promotion to the rank of DCF/DFO by taking into account their seniority position in the feeder cadre. The aforesaid exercise be carried out and completed within a period of three(3) months from the date of receipt of a certified copy of this order.

The notifications dated 08.02.2006 and 07.11.2020 stands interfered with.

With the above observation, these writ petitions stand disposed of.

Parties to bear their own costs.

JUDGE

T U Choudhury/Sr.PS

Comparing Assistant