

GAHC010007312024



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

Case No. : WP(C)/174/2024

MAOSUMA SWARGIARY
S/O- RAGHUDEB SWARGIARY ,
R/O- VILLAGE AND P.O- PAMUA PATHAR,
P.S- MUSHALPUR,
DIST- BAKSA, ASSAM, PIN-781372

VERSUS

THE UNION OF INDIA AND 4 ORS
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF
HOME AFFAIRS, NEW DELHI, PIN-110001

2: THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL
PUBLIC GRIEVANCES AND PENSIONS
NEW BLOCK
NEW DELHI
PIN-110001

3: THE STAFF SELECTION COMMISSION

REP. BY THE CHAIRMAN
LODHI ROAD
BLOCK NO. 12
CGO COMPLEX
NEW DELHI-110003

4: THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CGO COMPLEX
LODHI ROAD

NEW DELHI-66

5:THE REGIONAL DIRECTOR
STAFF SELECTION COMMISSION
REGIONAL OFFICE

HOUSEFED COMPLEX
DISPUR
GUWAHATI -78100

Advocate for the Petitioner : MR. S SUTRADHAR

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

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 12-01-2024

Heard Mr. S. Sutradhar, learned counsel for the writ petitioner. Also heard Ms. A. Gayan, learned CGC appearing for the respondents.

The writ petitioner herein is belongs to the ST category. In response to the advertisement notice dated 21-07-2018, issued for the purpose of filling up the posts of Constable (GD) in the Central Armed Police Force (CAPF), the petitioner had submitted his candidature and had also taken part in the selection process. However, upon completion of the selection process the name of the petitioner did not find place in the select list although he had secured more marks then the last selected/ appointed unreserved category candidate.

According to the petitioner's counsel the benefit of reservation was not extended to the petitioner on the ground that relaxation was earlier granted to him on account of measurements of height and chest. Mr. Sutradhar submits that the said relaxation was given to all the candidates belonging to the Northeastern region of India and therefore, the same could not have been substituted for the benefit of reservation which was

statutorily available to the petitioner as OBC candidate. Mr. Sutradhar has also invited the attention of this Court to the decision of this Court rendered in the case of ***Manoranjan Roy & Anr. Vs. UoI & Ors. [W.P.(C) No. 3468/2023]*** and series of other similar writ petitions wherein, similar grievance of the writ petitioners were redressed and a direction was issued upon the respondents to issue orders of appointment to such reserved category candidates as expeditiously as possible. Mr. Sutradhar, therefore, submits that similar order be passed in the present case as well.

Ms. Gayan, learned CGC has submitted, in her usual fairness, that the case of the petitioner would come within the ambit of earlier orders passed by this Court in the case of ***Manoranjan Roy (Supra)*** and to that extent, she does not resist the prayer made by the petitioner. However, at this point of time, vacancies may not be available so as to accommodate the petitioner and therefore, a writ of mandamus, directing appointment of the petitioner, may not be issued in the facts of this case.

The said submission of the learned CGC has been countered by Mr. Sutradhar by placing reliance on a decision of the Supreme Court rendered in the case of ***Gaurav Pradhan & Ors. Vs. State of Rajasthan & Ors.*** reported in ***(2018) 11 SCC 352***, wherein the Hon'ble Apex Court had held that if the appointment orders to the un-reserved category candidates were denied without any valid basis, they should be appointed, if necessary by creating supernumerary posts.

In the case of ***Gaurav Pradhan (Supra)***, the Supreme Court had taken note of the fact that the candidates who were found to have been selected and were entitled to be appointed on the basis of merit were sought to be denied their orders of appointment by taking the plea that vacancies were not available. I find that that was a case where the petitioners, who were part of the merit list, were entitled to be appointed against unreserved vacancies but the vacancies were filled up by migration of SC/ ST/ BC who had availed relaxation of age. Having found that the petitioners could establish their right, the Supreme Court has made the following observation and direction:-

“51. We, thus, for adjusting the equity between the parties, issue the following directions:

51.1 The appellant-writ petitioners who as per their merit were entitled to be appointed against unreserved vacancies which vacancies were filled up by migration of SC/ST/BC candidates, who had taken relaxation of age, should be given appointment on the posts. The State is directed to work out and issue appropriate orders for appointment of such candidates who were as per their merit belonging to general category candidates entitled for appointment, which exercise shall be completed within three months from the date, copy of this order is produced.

51.2 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."

In view of the above, this writ petition stands disposed of by providing that subject to fulfilment of other eligibility conditions, as per the advertisement notice, the respondents may issue order of appointment to the writ petitioner, appointing him as Constable (GD) in any division of the Central Armed Police Forces, as expeditiously as possible, preferably within 06 (six) months from the date of receipt of a certified copy of this order. However, if vacancies are not available, then in that event, supernumerary post, in the light and observation made in the case of **Gaurav Pradhan (Supra)**, be created for accommodating the petitioner.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant