

WP(C) 7608/2005

BEFORE

THE HON'BLE MR JUSTICE AMITAVA ROY

The petitioner seeks a writ of mandamus for his appointment as Sectional Assistant under the Executive Engineer, Public Works Department Rural Road Division, Bodoland Territorial Autonomous District, Udalguri, on the basis of his selection therefor.

I have heard Mr. HRA Choudhury, Sr. Advocate, assisted by Mr. Z Hussain, Advocate, for the petitioner, Ms. R. Deka, learned Standing Counsel, Public Works Department, and Mr. D. Das, learned Standing Counsel, Bodoland Territorial Council.

The petitioner's case in brief is that he is an unemployed youth and having offered his candidature for the post of Sectional Assistant under the PMDNT Road Division, BAC area of Darrang District, Darrang. He was in the meeting of the District Recruitment Committee, BAC, held on 17/2/1999 selected therefor having been placed at the top of the list of selectees. Incidentally, in the same meeting one Mr. Nicholas Daimari was also recommended for being appointed against the Grade III post of LDA under the Udalguri and Orang PWD Sub-Division under the BAC Area. The Executive Engineer, PWD, Mangaldai NT Road Division and Member Secretary of the Recruitment Committee on 25/2/1999 forwarded the minutes of the said meeting along with the select list to the Chief Engineer, PWD (Roads), Assam, for onward transmission to the Officer-in-Charge, Personal Branch and Public Relation Officer, BTC, Kokrajhar. By his letter dated 24/1/2000, the Officer-in-Charge, Personal Branch and Public Relation Officer, BAC, Kokrajhar, intimated the Executive Engineer, Public Works Department, Mangaldai NT Road Division, the approval of the BAC for the appointment of the Mr. Nicholas Daimari and the petitioner to the posts for which they had been selected. The addressee was requested to take necessary action for their appointment. This letter was duly forwarded to the Chief Engineer, PWD (Roads), Assam, for instructions for the appointment of the selectees on 29/4/2000. As nothing moved thereafter, Shri Nicholas Daimari approached this Court with WP(C) 5641/02. The petitioner also followed suit with the instant petition. The Executive Engineer, PWD, Udalguri Rural Road Division, by his letters dated 14/8/2006 and 28/9/2006 while narrating the above facts recommended the appointment of the petitioner and Shri Nicholas Daimary. By judgment and order dated 20/12/2006, WP(C) 5641/02 was allowed and the respondents were directed to appoint the petitioner therein (Mr. Nicholas Daimary) as an LDA as per his selection fixing a deadline of 31/1/2007. In compliance of the said direction, the Secretary to the BTC, Kokrajhar, by his letter dated 24/1/2007 approved the candidature of Mr. Nicholas Daimary for appointment to the post of LDA in the Office of the Executive Engineer, PWD Udalguri Rural Road Division, Udalguri. Subsequent thereto by order dated 25/1/2007, Mr. Nicholas Daimary was appointed as such.

Mr. Choudhury has in the above factual premise argued that the petitioner being equally placed with Mr. Nicholas Daimary in all respects, he is entitled to the same direction for redressal of his grievance. To reinforce his contention, the learned Sr. Counsel has taken this Court through the aforementioned correspondences and the decision of this Court rendered in WP(C) 5641/02.

The learned Counsel for the respondents has not disputed the background of the pleaded facts.

Due consideration has been extended to the recorded facts and the supporting documents. The respondents not having filed any affidavit, the sworn statements available in the writ petition have remained unrebutted. A perusal of the judgment and order dated 20/12/2006 rendered in WP(C) 5641/02 endorses the correctness of the facts leading to the filing of the instant petition. The decision amongst others contains a reference of the communication dated 24/1/2000 of the Officer-in-Charge, Personal Branch and Public Relation Officer, BTC, Kokrajhar, conveying the approval of the BAC for the appointment of the petitioner and Mr. Nicholas Daimary. Negating the plea of expiry of the select list raised in the said proceeding this Court issued a direction for appointment of the petitioner therein. As noticed hereinabove, in deference thereto, Mr. Nicholas was ap

pointed to the post for which he had been selected. Having regard to the concordance of facts of the two proceedings, I am of the view that the petitioner ought not to be denied the relief prayed for. True it is that this petition is delayed compared to WP(C) 5461/02 but there being no material on record to hold that the petitioner was in any way responsible for the delay in the completion of the process of appointment, he ought not to be non-suited on that ground alone. In the above view of the matter, the petition is allowed. The respondents are hereby directed to appoint the petitioner as Sectional Assistant in the Office of the Executive Engineer, PWD Rural Road Division, BTAD, Udalguri, within six weeks from the date of receipt of certified copy of this order. No costs.