

THE HIGH COURT OF MEGHALAYA

WP(C). No. 106 of 2017

1. Shri. Chandrika Thakur
S/o Shri Sita Ram Thakur
R/o Village Balesara,
P.O. Dantpur, District Chapara,
Bihar, presently posted at No.
MAINT Group AR-19, C/o 99 APO.

... Petitioner

-Versus-

1. The Union of India, through
Secretary Ministry of Home Affairs,
Govt. of India, New Delhi.
2. The Director General of Assam Rifles,
Shillong, Meghalaya.
3. The DGAR (Records) (ADM-I),
Shillong.
4. The Chief Engineer, Director
General of Assam Rifles,
(Engineering Branch),
C/o Mahanideshalaya Assam Rifles,
Shillong, Meghalaya.
5. The Deputy Commandant. Offg.
So-2 (ADM), DGAR, Shillong.

.....Respondents

BEFORE THE HON'BLE MR JUSTICE S.R.SEN

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|---------------------|---|----------------------|
| For the petitioner | : | Mr. K.C.Gautam, Adv. |
| For the respondents | : | Mr. N. Mozika, CGC |
| Date of hearing | : | 23.01.2018 |
| Date of Judgment | : | 23 .01.2018 |

JUDGMENT AND ORDER (ORAL)

1. Heard Mr. K.C.Gautam, learned counsel on behalf of the petitioner as well as Mr. N.Mozika, learned CGC on behalf of the respondents.

2. The petitioner's case in a nutshell is that:

"The petitioner before your Lordships is an Assam Rifles personnel serving in the rank of Subedar Major SKT (Engg) w.e.f. 1st July 2016.

The Ministry of Home Affairs Govt. of India vide letter under No. II/13015/3/96/PF.IV dated 26-08-2003 (Annexure-I) conveyed the sanction of the President of India for Restructuring of the Assam Rifles with revised PE allotted to each unit. The sanction of restructured PE units was forwarded to all units by the Headquarter DGAR vide its communication dated 01-10-2003 which provided all promotion upgradation etc would be carried out in terms of restructured PE in respect of posts approved by the PE and no communication for extra man power beyond approved strength by the PE will be made by the units.

That as per Annexure-I the restructured post of PE Assam Rifles 2003 contained 1 (one) vacancy of Subedar Major/ SKT (ENGGR). The post of Subedar Major being approved by the Restructured PE 2003 was lying vacant at the Headquarters at Shillong. The petitioner being the senior most in the seniority roll of SKT Engg applied for promotion to the vacant post as his promotion along overdue the respondent authorities rejected the prayer of the petitioner for promotion to the next higher post on the plea that the Recruitment Rules for the post of Subedar Major SKT (Engg) has not been approved by the Ministry of Home Affairs, Govt. of India. Thereafter the petitioner filed a writ petition before this Hon'ble High Court which was registered and numbered as W.P.(C) No. 89 of 2016 subsequent thereto the Respondents promoted the petitioner to the post of Subedar Major SKT vide letter dated 29th June 2016 with effect from 01.07.2016 and not from 2006 when the petitioner became eligible for consideration for promotion and the

post of Subedar Major SKT (Engg) was lying vacant at Hqrs., Shillong. The petitioner being deprived of his legitimate service benefits on account of omission and inaction of respondents in before your Lordships.”

3. Mr. K.C.Gautam, learned counsel on behalf of the petitioner submits before this Court that the petitioner was actually eligible for promotion to the rank of Subedar Major/SKT Engineer in the year 2006 but since there was no Recruitment Rules, his promotion was denied and ultimately he had to approach the Hon'ble High Court and when the matter was still pending, he was promoted to the rank of Subedar Major/SKT Engineer w.e.f. 2016. Learned counsel for the petitioner raised the question that since the petitioner was eligible for promotion w.e.f. 2006, so after framing of the Recruitment Rules his promotion should have been considered w.e.f. 2006 and not 2016.

4. On the other hand, in reply, Mr. N.Mozika submits that it is a fact that the petitioner was eligible for promotion from 2006, but his case could not be considered as the Recruitment Rules was not published in the Gazette Notification in the year 2006 and subsequently, it was published only in 2015. Thereafter, immediately the promotion of the petitioner to the rank of Subedar Major/SKT Engineer was considered w.e.f. July, 2016.

5. Learned counsel for the petitioner also brought to my notice paragraph 2-a at page 2 of the counter affidavit file by the respondents wherein it appears that the petitioner was eligible against the vacancy of 2003, but his promotion was held up only because the Recruitment Rules were not approved and published in the Gazette of India at that point of time. The relevant portion of paragraph 2-a at page 2 of the counter affidavit is reproduced herein below:

“2-a.Though, the petitioner was eligible for promotion to the rank of Subedar Major/SKT (Engineer) against the existing vacancy as per the Revised Peace Establishment – 2003, but, he could not be promoted because the Recruitment Rules for promotion from Subedar to Subedar Major/SKT Engineer were not approved and published in the Gazette of India. Hence, his case for promotion to the rank of Subedar Major/SKT (Engineer) was held up due to want of Recruitment Rules.”

6. Similarly, paragraph 2-d at page 3 of the counter affidavit was also taken as defence. The same is reproduced herein below:

“2-d. That notwithstanding the fact that the petitioner was fulfilling all promotional qualitative requirements for promotion to the next higher rank of Subedar Major/SKT (Engineer) in the year 2006, but, however, the petitioner could not be promoted due to non availability of Recruitment Rules for the same. Being aggrieved by the actions of the respondents in not granting him promotion from the year 2006, the petitioner has now filed the present Writ Petition for directions to the respondent authorities to grant him promotion from the year 2006 instead of 01.06.2016.”

7. From the submissions advanced by the learned counsels for the parties and after scanning the counter affidavit filed by the respondents, it is amply clear that the petitioner was eligible for promotion against the existing vacancy of 2003 in the year 2006, but he could not be promoted only because of the reason that there was no Gazette Notification of the Recruitment Rules.

8. Therefore, I am of the considered view that publishing of the Recruitment Rules in the Gazette Notification was not in the hands of the petitioner, so definitely he should not suffer for the laches or omissions on the part of the respondents. On the other hand, it can

be said that since the petitioner was eligible for promotion from 2006, so after the Recruitment Rules was published in the Gazette Notification he should have been given promotion w.e.f. 2006. Therefore, I feel that the act on the part of the respondents is not in accordance with the principle of natural justice and equity thereby causing loss and damage to the petitioner. A person should be promoted, if found fit, with effect from the date he is due for promotion.

9. Therefore, this Court directs that the petitioner's promotion be considered w.e.f. 2006 and to give him all the benefits he is entitled as per rule w.e.f. 2006 including further promotion, if any.

10. With this observation and direction, the writ petition is allowed and stands disposed of.

JUDGE

S.Rynjah