



GAHC010015572018

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

Case No. : WP(C)/493/2018

ASOMI GOGOI
W/O SRI KHAGEN GOGOI
R/O SADHU PATTI BIRUBARI
R.K. MISSION ROAD, P.O. GOPINATH NAGAR,
GUWAHATI-16, KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM
THROUGH THE COMMISSIONER AND SECRETARY GOVT. OF ASSAM,
DEPARTMENT OF EDUCATION (SECONDARY), DISPUR, GUWAHATI.

2:THE COMMISSIONER AND SECRETARY

GOVT. OF ASSAM
DEPARTMENT OF EDUCATION (ELEMENTARY)
DISPUR
GUWAHATI

3:THE ASSAM PUBLIC SERVICE COMMISSION

REP. BY ITS SECRETARY
JAWAHAR NAGAR
KHANAPARA
GUWAHATI-22.

4:SRI RABI SANKAR BORGOIRY
ADDITIONAL DIRECTOR IN THE DIRECTORATE OF ELEMENTARY
EDUCATION
KAHILIPARA
GUWAHATI -19
ASSAM



5:SRI SONMONI DAS
ADDITIONAL DIRECTOR OF HILLS
N.C. HILLS
HAFLONG.

6:SMT. MAMATA HOJAI
JOINT DIRECTOR IN THE DIRECTORATE OF SECONDARY EDUCATION

ASSAM
KAHILIPARA
GUWAHATI -19

Advocate for the Petitioner : MR. U K NAIR

Advocate for the Respondent : SC, SEC. EDU.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

JUDGMENT & ORDER (ORAL)

Date: 21.06.2022

Heard Mr. UK Nair, learned senior counsel for the petitioner. Also heard Mr. R Majumdar, learned counsel for the respondents No.1 and 2 being the authorities under the Elementary & Secondary Education Department, Government of Assam and Mr. TK Barman, learned counsel for the respondents No.3 being the authorities under the Assam Public Service Commission (for short, the Commission). In respect of respondents No.4 and 5, namely Sri Rabi Sankar Borgoiry and Sri Sonmoni Das, the office note dated 09.07.2018 provides that the A/D card has been received in respect of the said two respondents and the perusal of the A/D card reveals the receipt of the notices by the said two respondents. In respect of respondent No.6, the petitioner was allowed to serve dasti as per the order dated 16.07.2018 and to that extent an affidavit of dasti

service is available which shows that the respondent No.6 Smti. Mamata Hojai had been duly served. Accordingly, service of notice on the respondents No.4, 5 and 6 are accepted. But inspite of such notices being served, none appears for the said respondents for the past four years and accordingly, we are required to proceed in the matter in the absence of the said respondents.

2. The petitioner, Dr. Asomi Gogoi and the respondents No.4, 5 and 6 were all in the cadre of Deputy Director in the Assam Education Services and as per the gradation list dated 22.12.2011 in the cadre of Deputy Director, the petitioner Dr. Asomi Gogoi is at Sl.No.14, the respondent No.4 Sri Rabi Sankar Borgoiry is at Sl. No.15, the respondent No.5 Sri Sonmoni Das is at Sl.No.17 and the respondent No.6 Smti Mamata Hojai is at Sl.No.18. It is taken note of that the respondents No.4, 5 and 6 all belongs to the reserved category respectively being S.T.(P), S.C., S.T.(H), whereas the petitioner belongs to the O.B.C category. The petitioner as well as the respondents No.4, 5 and 6 were all subjected to a process of promotion to the next higher cadre of Joint Director in the Assam Education Services. A statement is made that the promotion process was for 8(eight) available vacancies and a further resultant vacancy, the total being 9(nine) vacancies and the cadre strength for the post of Joint Director is also stated to be 9(nine).

3. The selection board constituted under the Rules initially recommended six candidates for promotion against six of the available vacancies in the following order:

1. Shri Nibaran Das



2. Shri Sanjeev Kr. Bhuyan
3. Dr. Loknath Sarma
4. Shri Rabi Sankar Borgoiry ST(P)
5. Shri Sonamoni Das SC
6. Smti Mamata Hojai ST(H)

4. The selection board further provided that there were departmental/court proceeding against three of the candidates, who were also subjected to the promotion procedure, namely 1. Shri Nagen Boro, ST(P), 2. Shri Satyapriya Brahma Patgiri ST(P), 3. Shri Prakash Ch. Baruah, and, therefore, a decision was taken to keep their recommendation in a sealed cover. As the three recommendations were subjected to the process of sealed cover method, three further candidates namely, Dr. Bhupen Talukdar, Shri Ratul Kr. Borah, the petitioner Dr. Asomi Gogoi were recommended by providing that their promotions shall be subjected to reversion to the cadre of Deputy Director in the event, the persons whose recommendations have been kept in sealed cover are to be given the benefit of promotions after the sealed cover method are given its effect. In the resultant circumstance, by the Notification dated 08.07.2014 of the Secretary to the Government of Assam in the Secondary Education Department, the petitioner Dr. Asomi Gogoi and the respondent No.6 Smti Mamata Hojai were temporarily promoted until further order(s) for a period of one year under Regulation 4(d) of the Assam Public Service Commission (Limitation of Functions) Regulations 1951 (for short, the Regulations of 1951). Upon such promotions being given effect to the cadre of Joint Director in the Assam Education Services, the Notification dated 31.08.2015 was issued by the

Secretary to the Government of Assam in the Secondary Education Department providing for a provisional gradation list in the cadre of Joint Director which comprises of 9(nine) incumbents as extracted as below:

S.I.No	Name of Officers	Date of Birth	Date of Joining in the cadre	Remarks
1.	Shri Nibaran Das	13-08-1954	30-11-2013	Retired
2.	Sri Sanjeev Kr. Bhuyan	01-01-1960	16-11-2013	
3.	Dr. Loknath Sarma	01-03-1964	12-11-2013	
4.	Sri Ravi Sankar Borgayari	01-03-1960	19-11-2013	
5.	Sri Sonomoni Das	11-05-1960	19-11-2013	
6.	Dr. Bhupen Talukdar	01-11-1957	13-11-2013	
7.	Sri Ratul Kr. Bora	01-03-1957	19-11-2013	
8.	Dr. Asomi Gogoi	01-12-1959	10-07-2014	
9.	Ms. Mamata Hojai	01-03-1967	10-07-2014	

5. It is noticed that in the said gradation list, the respondents No.4 and 5 were at Sl.No. 4 and 5 respectively whereas the petitioner and the respondent No.6 were respectively at Sl. No. 8 and 9. Accordingly, objections were invited against the aforesaid provisional gradation list dated 31.08.2015 and after taking note of the objections, a final gradation list was published as per



Notification dated 06.05.2016 of the Secretary to the Government of Assam in the Secondary Education Department. The final gradation list comprised of only 6(six) incumbents in the cadre of Joint Director, although 9(nine) persons were promoted and the cadre strength is also of 9(nine). In the truncated gradation list comprising of 6(six) number of posts of Joint Director, the name of the petitioner stood omitted and the respondents No.4, 5 and 6 were at Sl. No. 4, 5 and 6 respectively of the said final gradation list. On 06.05.2016 another gradation list in the cadre of Deputy Director was also published and the name of the petitioner appeared in the gradation list in the cadre of Deputy Director at Sl.No.3, although there does not appear to be any order reversing the petitioner from the cadre of Joint Director to the cadre of Deputy Director. By acting upon the gradation list in the cadre of Joint Director dated 16.05.2016, a further Notification dated 16.07.2016 was issued by which the respondent No.4 and respondent No.5 were promoted to officiate as Additional Directors respectively for a period of one year which is also stated to be under the Regulation 4(d) of the Regulations of 1951.

6. Thereafter, by another Notification dated 16.07.2016 of the Principal & Secretary to the Government of Assam in the Secondary Education Department, the petitioner Dr. Asomi Gogoi who was allowed to officiate as Joint Director under Regulation 4(d) of the Regulations of 1951 and was earlier promoted against the post reserved for the candidates covered by sealed cover method is shown to be adjusted in the post vacated by the respondent No.4 Sri Rabi Sankar Borgoiry after he was promoted to the cadre of Additional Director.

7. Being aggrieved by the truncated gradation list in the cadre of Joint



Director dated 06.05.2016 as well as the gradation list in the cadre of Deputy Director also dated 06.05.2016, whereby the petitioner was brought back to the cadre of Deputy Director, although she remained promoted to the cadre of Joint Director, as well as the subsequent Notifications dated 16.07.2016 whereby the respondents No.4, 5 and 6 were promoted to the cadre of Additional Director, this writ petition is instituted.

8. During the pendency of the writ petition, the respondent authorities through the Commissioner and Secretary to the Government of Assam in the Secondary Education Department had issued the order dated 19.12.2019 by which it was provided that in the promoted cadre of Joint Director, the seniority of the petitioner Dr. Asomi Gogoi as was in the feeder cadre of Deputy Director would be retained. An implication of the said provision would be that in the cadre of Joint Director the petitioner would be senior to respondents No.4, 5 and 6. We have been told that the order dated 19.12.2019 still remains in force and it has not been assailed by any one till now. Consequent thereof, by the order dated 30.12.2019 of the Commissioner and Secretary to the Government of Assam, the petitioner had been promoted to the cadre of Additional Director.

9. It is stated that on the date, the petitioner was promoted as Additional Director, she retired from service and in the circumstance, this writ petition now stands for a modified relief that because of the illegalities that alleged to have been done to the petitioner, she now be given notional promotion to the cadre of Additional Director from the date when the persons junior to her in the cadre of Joint Director i.e. respondents No.4, 5 and 6 were promoted.



10. Mr. UK Nair, learned senior counsel for the petitioner contends that the selection process for promotion from the cadre of Deputy Director to that of Joint Director constituted one selection process for 9(nine) of the available vacancies and, therefore, although the selection board may have split the recommendation into two parts, one part being in respect of 6(six) of the vacant posts and another part in respect of 3(three) of the vacant posts which were made conditional to the final outcome of the sealed cover method adopted in respect of some of the candidates under consideration. The selection process according to Mr. Nair, learned senior counsel being an inseparable process, and, it being a recommendation for 9(nine) of the available vacant posts, although, three other candidates subjected to the sealed cover method may stake a claim to three of the vacant posts, the recommendations ought to have taken note of the order of seniority of the candidates in the feeder cadre, i.e., the cadre of Deputy Director, more so, in view of the order dated 19.12.2019 by which the seniority of the petitioner in the cadre of Joint Director had been restored in terms of her seniority in the cadre of Deputy Director.

11. The petitioner being admittedly senior to respondents No.4, 5 and 6 in the feeder cadre of Deputy Director, according to the learned senior counsel for the petitioner, the seniority of the petitioner ought to have been retained even in the recommendation by the selection board for the promotion to the cadre of Joint Director. According to the learned senior counsel although the respondents No.4, 5 and 6 may belong to the reserved category, but the consideration for promotion by the selection board was in a single process for all the available 9(nine) vacancies and, therefore, the law pertaining to reservation in promotion was inapplicable in the facts and circumstances of the present case and the

respondents No.4, 5 and 6 could not have been recommended for promotion by giving precedence over the petitioner. Further, a reading of the minutes of the selection board also does not indicate that the principle of accelerated promotion under the law of reservation had been adopted by the selection board.

12. Even if the law relating to sealed cover method may have been applicable to three of the candidates under consideration, namely, Sri Nagen Boro, Sri Satyapriyo Brahma Patgiri and Sri Prakash Chandra Baruah, who were respectively at Sl.No.1, 2 and 3 of the gradation list dated 22.12.2011 pertaining to the cadre of Deputy Director, according to Mr. UK Nair, learned senior counsel, under the law, there would be a requirement of the respondent authorities to promote the other recommended candidates, and the law related to the sealed cover method can be given its effect only after the exoneration of the delinquent concerned.

13. According to the learned senior counsel if ultimately the promotions that may be given would have to give way to any promotion under the sealed cover method, the authorities at that stage may have to work out as to which of the candidates promoted to the 9(nine) available vacancies would have to give way, if necessary, by also taking into consideration as to whether the law of reservation pertaining to accelerated promotion would have to be made applicable. But, merely because the promotions would have to be made subjected to the sealed cover method that may have to be adopted subsequently, where it was a single process for promotion in respect of all the 9(nine) available vacancies, the order of seniority in the feeder cadre cannot be



disturbed and the candidate who is senior in the feeder cadre be placed below in the order of seniority in the promoted cadre.

14. Accordingly, it is submitted by the learned senior counsel for the petitioner that as the legal right of the petitioner to have retained her seniority in the cadre of Deputy Director also in the cadre of Joint Director had been violated, the subsequent promotions meted out to the respondents No.4, 5 and 6 to the cadre of Additional Director based upon such incorrect depiction of seniority in the cadre of Joint Director, would also be vitiated. Further according to learned senior counsel, had the legal right of the petitioner been not so violated, the petitioner would have been entitled to promotion to the cadre of Additional Director on or before the date on which such promotions have been meted to the respondents No.4, 5 and 6. Consequently, in the changed circumstance also, where the petitioner had been promoted to the cadre of Additional Director by the Notification dated 30.12.2019, the benefits thereof, would be entitled to the petitioner from such date when the respondents No.4, 5 and 6 were so promoted.

15. Mr. R Majumdar, learned counsel for the respondents in the Education Departments by referring to the affidavit-in-opposition filed by the Commissioner and Secretary to the Government of Assam in the Secondary Education Department submits that as because the respondent authorities were also required to make providence in the selection process to the candidates, who were subjected to the sealed cover method, and, three such candidates were available in the selection process, the respondent authorities had reserved three of the vacancies for the sealed cover method to be applied and in respect



of the three vacancies the promotions were given under Regulation 4(d) of the Regulations of 1951 and the regular promotion was given to the petitioner only after one of the other promotee being the respondent No.4 Sri Rabi Sankar Borgoiry was promoted to the cadre of Additional Director.

16. We have heard the learned counsel for the parties.

17. One of the issues requiring an adjudication would be whether in the facts and circumstances of the present case, the selection process for the 9(nine) available vacancies could have been split into two separate processes, one being for 6(six) of the available vacancies for which no providence was required to be made for the candidates who were subjected to the sealed cover method and another separate process for 3(three) of the vacancies where providence was required to have been made for the candidates subjected to the sealed cover method. A further question for determination would be whether by splitting the selection process to two different processes the authorities could have adopted the law of reservation pertaining to accelerated promotion and given precedence to the reserved category candidates to be promoted against 6(six) of the vacancies in respect of which the sealed cover method was made applicable and subject the unreserved candidates to the 3(three) other vacancies for which providence for the sealed cover method would be adopted. A question for determination would also be whether by subjecting three of the vacancies to sealed cover method the promotions made to such vacancies could have been made under Regulation 4(d) of the Regulations of 1951.

18. The core issue raised by Mr. UK Nair, learned senior counsel is that the promotion process in respect of 9(nine) of the vacancies to the cadre of Joint Director being a single process, the order of seniority in the feeder cadre would also have to be maintained in the promoted cadre. To answer the issue, we take note of the aspect that in the feeder cadre of Deputy Director as per the gradation list contained in the Notification dated 22.12.2011, the three of the incumbents namely, Sri Nibaran Das, Sri Sanjeev Kr. Bhuyan, and Dr. Loknath Sarma all belonged to the un-reserved category and were placed at Sl.No.6, 7 and 8 respectively of the gradation list. Further the respondents No.4, 5 and 6 namely, Sri Rabi Sankar Borgoiry, Sri Sonomoni Das and Smti. Mamata Hojai all belonged to the reserved category and were at Sl.No.15, 17 and 18 respectively.

19. In the recommendation of the selection board for 6(six) of the vacancies which were not subjected to the sealed cover method, Sri Nibaran Das, Sri Sanjeev Kr. Bhuyan, and Dr. Loknath Sarma were at Sl.No.1, 2, and 3 respectively and respondents No.4, 5 and 6 namely being Sri Rabi Sankar Borgoiry, Sri Sonomoni Das and Smti. Mamata Hojai were at Sl.No.5, 6 and 7 respectively. A reading of the recommendation by the selection board makes it discernible that the recommendations were not made on the basis of any merit being evaluated by the selection board, but by following the order of seniority in the gradation list in the feeder cadre of Deputy Director. Consequently, the notifications by which the promotions were notified also followed the order of seniority in the feeder cadre.

20. With regard to the question, as to whether the single selection process could have been split into two processes, one being in respect of 6(six)

vacancies which were not subjected to the sealed cover method and the other being for 3(three) vacancies which were so subjected and thereafter apply the law of reservation pertaining to accelerated promotion and give precedence to the reserved category candidates, we have to examine whether the splitting of the vacancies would satisfy the requirement of Article 14 of the Constitution. Any classification sought to be made in order to satisfy the provisions of Article 14 would have to satisfy the test of it being a reasonable classification with a rational nexus to object at hand.

21. In the instant case, in order to arrive at a satisfaction on the existence of a reasonable qualification, if we accept the stand of the respondent authorities that the vacancies were split into two selection processes to accommodate the sealed cover method, we have to look at the law relating to the sealed cover method and as to how it has to be implemented.

22. The sealed cover method is a concept which flows in from the legal right of a prospective candidate subjected to a disciplinary or criminal proceeding to be considered for promotion with other similarly situated candidates, who are subjected to the process of promotion.

23. The ultimate consequence of the sealed cover method being adopted is provided in paragraph 26 of the proposition of law laid down by the Supreme Court in *Union of India and Others Vs. KV Jankiraman and Others*, reported in (1991)4 SCC 109 which is extracted as below:

“We are, therefore, broadly in agreement with the findings of the Tribunal that when

an employee is completely exonerated meaning thereby that he is not 'found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/ criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

24. A reading of paragraph 26 of the judgment in *KV Jankiraman (supra)* makes it discernible that when the employee concerned is completely exonerated in the proceeding, meaning thereby, that he is not found

blameworthy in the least and is not visited with the penalty even of censure, he has to be given the benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted, but for the disciplinary or the criminal proceedings that were pending against him. And on the other hand, where the disciplinary or criminal proceedings are delayed at the instance of the employee or the clearance in the disciplinary or criminal proceedings or acquittal in the criminal proceedings are with a benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc., in such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. In other words, the provisions itself gives an indication that upon the sealed cover method being given its final effect, the employee concerned will not be promoted from the date from which, otherwise, he would have been promoted, but depending on the manner in which he was exonerated either in the departmental or in the criminal proceeding, a question would remain whether he should be paid the salary and other benefits from the date on which he otherwise would have been promoted.

25. In *K.V. Jankiraman (supra)* in paragraph 26, the Office Memorandum providing for the procedures to be adopted to give effect to the sealed cover method had been considered and the Hon'ble Supreme Court had provided for the provisions to be contained in the said office memorandum.

26. The provisions provided by the Hon'ble Supreme Court to be incorporated in the office memorandum concerned is extracted as below:

“However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so.”

27. A reading of the provisions provided by the Hon’ble Supreme Court to be incorporated in such office memorandum makes it discernable that the employee concerned who was subjected to the sealed cover method would be entitled to the arrears of pay for the period of notional promotion which would be preceding the day of actual promotion. In other words, the Hon’ble Supreme Court had made a distinction between the actual promotion to be given to the employee subjected to the sealed cover method and the benefits of pay that he would be entitled by means of a notional promotion.

28. Reading the concept of notional promotion accepted by the Hon’ble Supreme Court in the context of the provisions of paragraph 26 of the *KV Janakiraman (supra)* makes it further discernable that for the purpose of giving the benefits of salary and allowances and other benefits as contemplated in paragraph 26, the actual status of the employee subjected to the sealed cover method would be that of a notional promotion. The word ‘notional’ as defined in the Oxford English dictionary means hypothetical or imaginary. In other words, it has to be construed that the actual promotion would be given effect to such employee subjected to the sealed cover method only after he is exonerated in the proceedings that were initiated against him and for the period prior to it, it would only be hypothetical or imaginary by giving the benefits of salary and allowances and other benefits.

29. The actual promotion that is to be given to the employee subjected to the sealed cover method on being exonerated in the proceedings again be subjected to the whether there was any favourable recommendation by the selection board which was kept under the sealed cover during the period for which he was subjected to the proceeding against him.

30. From the above, what can be inferred is that the employee subjected to the sealed cover method would be entitled to an actual promotion only after being exonerated provided there was a favourable recommendation for promotion which was kept under sealed cover and for the period post exoneration and not for any period that too prior to the person concerned being exonerated.

31. In the circumstance, we are now required to examine as to whether there is a necessity under the law to keep one post vacant to accommodate such employee who had been subjected to the sealed cover method so as to deny such promotion to such post to all further candidates who may be in line for promotion had the employee subjected to the sealed cover method would not have been there. To answer the question, we have to visualize certain situations. Firstly, the employee subjected to the sealed cover method may have been recommended by the DPC for promotion or he may not have been, depending on the circumstance of each case. The second situation would be as to how long it would take to complete the proceedings that were initiated. If the proceedings are completed at a very short period of time, the matter can be looked from one point of view but again what would be the consequence if the proceedings take a much longer period of time where it is not uncommon to notice that in many of given cases it also takes decades to complete the disciplinary or the criminal proceeding. The third situation that cannot be ruled out is where the employee subjected to the sealed cover method never gets exonerated during his service tenure and he retires from service at that state itself. In the instant case, that precisely happened wherein the three employees who were subjected to the sealed cover retired without the disciplinary or the criminal proceeding being brought to an end.

32. When we consider, whether a post in the promoted cadre is required to be kept vacant to accommodate such employee who was subjected to a sealed cover method, we also have to visualize the situation there may or may not be any favourable recommendation for promotion, or there is a possibility that the disciplinary proceeding may take a very long

period of time to be brought to an end or it also may be a case where it may have never been brought to an end and the employee would retire in such stage itself. Accordingly, a fundamental question would arise as to why the legal right of the persons next in line to be considered for promotion would be kept in abeyance merely because the person above him was subjected to a sealed cover method and under the law there is a disentitlement to be promoted till the proceeding was continuing.

33. To answer the question we examine as to whether the legal right of the employee subjected to the sealed cover method to avail the actual promotion on being exonerated can still be protected by any other means or method to be adopted or keeping the post vacant for such employee is the only option available. In this context, we take note of the provisions under the Administrative Law for creation of a supernumerary post.

34. In *D.K. Reddy v. Union of India* reported in (1996) 10 SCC 177 in paragraph 13 thereof, the Supreme Court considered the concept of creation of supernumerary post in a situation where it was considered to be necessary to accommodate the result of the recommendation of the review DPC. The very factual background of the said matter would give an indication that the posts in the promoted cadre were filled up through some other regular method and there was a requirement to constitute a review DPC in respect of one such employee and there was a favourable recommendation and what would be a resultant solution for the authorities in such circumstance.

35. In that context the Supreme Court provided as extracted:

“.....In this connection, it was submitted that the term “supernumerary post” is a term of art, well recognised in service jurisprudence. A supernumerary post is a permanent post and Government of India's own instructions relating to creation of such posts occur under the definition of permanent posts given in Fundamental Rule 9(22) from which the following features would emerge:

- (i) It is always a permanent post.*
- (ii) It is created to accommodate the lien of an officer, who in the opinion of the authority competent to create such a post, is entitled to hold a lien against a*

regular permanent post.

(iii) It is created due to non-availability of a regular permanent post. Such post is personal to the officer for whom it is created and stands abolished as soon as the officer for whom it was created vacates it.

(iv) It is a shadow post, inasmuch as no duties are attached to it and the officer concerned performs duties in some other vacant temporary or permanent post."

36. The proposition laid down in paragraph 13 of the *DK Reddy (supra)* was given its consideration by the Supreme Court in *PPC Rawanti (Dr) and others v. Union of India and others reported in (2008) 15 SCC 332* wherein in paragraph 9 thereof supernumerary posts were held to be the posts which are non-cadre permanent posts created to accommodate the lien of officers who are entitled to hold a lien against regular permanent posts.

37. The provisions of paragraph 9 of *PPC Rawanti (Dr) (supra)* laid down by the Supreme Court are extracted as below:

".....Supernumerary posts are non-cadre permanent posts. They are created to accommodate the lien of officers who are entitled to hold a lien against regular permanent posts. Being ex-cadre posts, no specific duties are attached to them and the officers concerned usually perform duties in some vacant temporary or permanent posts. (Vide D.K. Reddy v. Union of India)"

38. The term supernumerary flows from the latin term *supernumerii* which means '*person above the number*' and or '*officials beyond the permitted number*'.

39. A reading of the concept of supernumerary post as held by the Supreme Court as well as the meaning thereof as flows from the latin term *supernumerii* gives it a meaning that the supernumerary posts are created over and above the sanctioned permanent post in a given cadre to accommodate the lien of a given employee who otherwise has an entitlement to a lien to such permanent post.

40. By taking into consideration the concept of supernumerary post when examine from the

aspect of the issues involved in the present writ petition, we are required to consider a situation where three of the employees were subjected to the sealed cover method as there were pending proceedings disciplinary or criminal against them and the posts in the promoted cadre were required to have been kept vacant for the three employees subjected to the sealed cover method so as to accommodate them when ultimately they are exonerated in their respective proceedings.

41. As per the law laid down in *K.V. Jankiraman (supra)*, as discussed hereinabove, the employees who were subjected to a sealed cover method would have an entitlement for an actual promotion on being exonerated in the proceeding and would also have a legal right for a notional promotion for the purpose of benefits of salary and allowances and other benefits for the period earlier to their exoneration. In other words, upon attaining the legal right for an actual promotion on being exonerated, the employees concerned are entitled to a lien to a permanent post in the promoted cadre.

42. It being so, we are of the view that as per the accepted proposition of administrative law, the legal right that may be created to the employees were was subjected to the sealed cover method can also be satisfied by creating a supernumerary post to give effect to the actual promotion whenever it is entitled to such employees and the supernumerary post may stand abolished when the regular sanctioned permanent post become vacant in order to adjust them against such posts.

43. Accordingly, we are of the view that the proposition to keep a post in the promoted cadre vacant in order to accommodate the employee subjected to the sealed cover method in future when he will be exonerated is not a requirement of law and the entitlement of such employee can still be mitigated by adopting the method of creating a supernumerary post.

44. As a result a situation would arise where an administrative authority would have to exercise a discretion as to whether posts would have to be kept vacant in order to

accommodate the candidates who may be subjected to the sealed cover method for giving effect to a promotion if recommended after being exonerated or acquitted in the proceedings or the method of creating a supernumerary post can be adopted to accommodate such employee.

45. The concept of discretion as provided by the Hon'ble Supreme Court in Union of India Vs. Kuldip Singh reported in (2004) 2 SCC 590 in paragraphs 20, 21 and 24 is that 'discretion is to discern between right and wrong and therefore whoever has the power to act at discretion is bound by the Rule of reason and law and it is to be not arbitrary, vague and fanciful but legal and regular'. In Reliance Airport Developers (P) Ltd. Vs. Airport Authority of India reported in (2006) 10 SCC 1 in paragraph 29 it has been provided that though the word 'discretion' literally mean and denotes an uncontrolled power of disposal, yet in law, the meaning given to this word is a power to decide within the limits allowed by positive rules of law. In paragraph 30, it has been provided that discretion in general is the discernment of what is right and proper and it is a science or understanding to discern between falsity and truth, between wrong and right, between shadow and substance and between equity and colorable glosses and pretences.

46. In respect of the concept discretion, in the Administrative Law by HWR Wade and C.F. Forsyth at page 296 it is provided as extracted:

The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected and in a system based on the rule of law, unfettered governmental discretion is a contradiction in terms.

It is often expressed by saying that the decision is unlawful if it is one to which no reasonable authority could have come and this is the essence of what is most commonly called 'Wednesbury unreasonableness.....'

In the law of a number of European countries- the doctrine is Prussian in origin- there is a 'principle of proportionality' which ordains that administrative measures must not be more drastic than is necessary for attaining the desired result.

Under the 'structured test' there are four questions which the decision-maker must address. The questions are cumulative in that everyone must be satisfactorily answered if the decision is to survive scrutiny. The questions are:

1. Whether the legislative objective is sufficiently important to justify limiting a fundamental right.

2. *Whether the measures designed to meet the legislative objective are rationally connected to it.*
3. *Whether the means used to impair the right or freedom are no more than is necessary to accomplish the objective. (This is the 'necessity question,')*
4. *Whether a fair balance has been struck between the rights of the individual and the interests of the community which is inherent in the whole of the Convention. (This is sometimes called 'narrow proportionality').*

Applying the test is plainly not a mechanical task since each element requires the making of a judgment by the primary decision-maker. But the decision-maker (or the judicial review court when his decision is challenged) cannot avoid these difficult substantive judgments by taking refuge in procedure.

But were it possible to calibrate with sufficient precision the extent to which a right was impaired, it would be clear that there would be only one impairment that was 'no more than is necessary to accomplish the objective'. And if only one outcome passes the test of proportionality, there is only one right answer and the test is a test of the merits.

47. A reading of the afore-extracted passages from Administrative Law by HWR Wade and C.F. Forsyth makes it discernible that to exercise a discretion, the authority is required to act within the confines of reasonableness. In other words, if the action following the exercise of the discretion is reasonable i.e., it is not so absurd that no sensible man could ever dream that it lay within the powers of the authority, the discretion exercised would be acceptable. But the said principle is circumscribed by the principle of proportionality which under the structured test would be whether the action was no more than what was necessary to accomplish the objective. In other words, even if the action satisfies the requirement of it being reasonable, but if such action is not necessary to accomplish the objective, such exercise of discretion may not pass the test of proportionality. If the other option in exercising the discretion is sufficient to accomplish the objective for which the discretion is to be exercised, the said other option itself would be the one to pass the test of proportionality and would be the right answer in the exercise of the discretion.

48. If we examine the discretion to be exercised by the authority circumscribed by the test of proportionality by applying the structured test on the aspect as to whether the posts in the promoted cadre are to be kept vacant to give effect to the sealed cover method, we can take note that one manner of exercising the discretion would be to keep the post vacant and the other manner of exercising the discretion would be to adopt the method of creating a

supernumerary post. The objective to be achieved is that when the sealed cover method would be given its effect the employees concerned may have to be accommodated to give effect to the promotion for which they may be recommended. As already indicated, if the objective can be achieved by creation of a supernumerary post, doing more by keeping the post vacant to accomplish the same objective cannot be accepted to be necessary.

Accordingly by applying the principle of proportionality and adopting the structured test, it can be concluded that the requirement of keeping one post vacant would be no more than is necessary to accomplish the objective of accommodating the promotion and, therefore, while exercising the discretion the only acceptable answer can be said to be to adopt the method of creating a supernumerary post.

49. When we examine the rational nexus to the object at hand for classifying the 9(nine) vacant posts into the group of 6(six) posts where regular promotions were made and the other group of 3 (three) posts against which regular promotions were not made by keeping such posts available for promotion of the employees under the sealed cover method, we necessarily would have to arrive at a conclusion that the object at hand was to keep the vacant posts available for the purpose of giving effect to the sealed cover method. If we go by the by the proposition of law laid down in KV Jankiraman (supra) and also the conclusions arrived hereinabove, the only requirement, depending on the manner in which the employees concerned were either exonerated or acquitted would be whether or not to pay the salary and allowances in the promoted cadre from the date when the other employees were promoted or as a matter of fact when the employee concerned would otherwise have been promoted. In the circumstance, there would be no requirement to keep the post vacant for such employees to give effect to the actual promotion from such date from which he otherwise would have been



promoted.

50. By accepting the propositions regarding the ultimate effect of the sealed cover method, the conclusion that can be arrived at would be that there was no rational nexus to the object at hand to keep three of the vacant posts available in order to accommodate the three employees who were subjected to the sealed cover method and to give them the promotions whenever in future the sealed cover method is to be given its effect. In the absence of the rational nexus to the object at hand, we have to view that no reasonable classification can be brought between the 6(six) of the vacant posts out of the 9(nine) posts for which the regular promotions were made and the other 3(three) posts which were kept available for giving effect to the sealed cover method and as such the entire promotional process was a single promotion in respect of the entire 9(nine) available vacant posts. Having arrived at such conclusion, we also have to accept that the procedure adopted by the selection board in its minutes of 06.08.2013 to separate 6(six) of the available vacant posts and recommend for regular promotions against the same and to further recommend three other candidates against the balance of the 9(nine) posts with a condition that they shall be subjected to a reversion to the cadre of Deputy Director as and when the proceedings in respect of the candidates who were subjected to the sealed cover method would be given its effect, would violate Article 14 of the Constitution of India.

51. Accordingly, the recommendation made by the selection board in its meeting dated 06.08.2013 would now have to be construed to be a single recommendation of the 9(nine) of the selected candidates in the same process

in respect of all the 9(nine) available vacant posts.

52. We have also noticed that by splitting the 9(nine) available vacant posts into 6(six) vacant posts for regular promotion and 3(three) vacant posts to accommodate the candidates subjected to the sealed cover method, apparently, the law of reservation related to accelerated promotion had also been adopted whereby the respondents No.4, 5 and 6 being the reserved category candidates, who otherwise would have been lower in the order of seniority in the gradation list of Deputy Director, have been promoted on a regular basis and in such endeavour, the petitioner who otherwise is a candidate belonging to the OBC category had been left out from being promoted against the 6 (six) vacancies. If the splitting of the vacancies into 6(six) and 3(three) had violated Article 14 of the Constitution of India, correspondingly, adhering to the method of accelerated promotion in favour of the respondents No.4, 5 and 6 as reserved candidates and to bring down the petitioner who is an OBC candidate although otherwise senior in the feeder cadre, would also be unsustainable in law.

53. In any view of the matter, to apply the law of accelerated promotion for the reserved category candidates certain conditions precedent would also have to be satisfied i.e., the availability of quantifiable data and existence of the backwardness and absence of representation of such community in the promoted cadre. In other words, a further process of arriving at a satisfaction that the principle of accelerated promotion would have to be adopted in the given matter would also be a requirement before providing the benefit of accelerated promotion to any reserved category candidate. The minutes of the DPC by which the respondents No.4, 5 and 6 were promoted against the 6(six)



of the vacancies do not indicate that the satisfaction was arrived at or the required procedure was followed for invoking the principle of accelerated promotion.

54. The further fact to be also taken note of is that the sealed cover method which was adopted in respect of three of the candidates was never acted upon and it is stated that the three candidates have in the meantime retired from service without availing the benefit of the sealed cover method. In other words, the 3(three) posts out of the 9(nine) posts for which the regular promotion was not given with a view to accommodate the candidates subjected to the sealed cover method remained unutilized resulting in the consequence where the persons next in the line for such promotion were deprived from being regularly promoted at that stage itself.

55. Be that as it may, we have noticed that in the resultant process, the petitioner was given her promotion from the cadre of Deputy Director to Joint Director as per the notification dated 08.07.2014 of the Secretary to the Government of Assam in the Secondary Education Department. A bare perusal of the notification makes it discernible that the promotion to the petitioner to the cadre of Joint Director was under Regulation 4(d) of the Regulations of 1951. Considering the promotion given to the petitioner to the cadre of Joint Director to be under Regulation 4(d) of the Regulations of 1951, subsequently by another notification dated 16.07.2016, the purported promotion of the petitioner under Regulation 4(d) of the Regulations of 1951 was adjusted against a post in which the respondent No. 4 Sri Rabi Sankar Borgoiry was earlier promoted pursuant to the same promotion process as per the minutes of

the selection board dated 06.08.2013. In other words, having split the available vacancies into 6(six) vacancies and 3(three) vacancies, respectively as indicated, the promotion given to the respondent No. 4 Sri Rabi Sankar Borgoiry was considered to have been a regular promotion at that point of time and it being a regular promotion the said respondent was subsequently promoted to the next higher cadre of Additional Director. Upon such promotion, as the post in the cadre of Joint Director fell vacant, the petitioner was adjusted against the said post. In other words, the classification that was earlier made by splitting the available 9(nine) vacant posts into 6(six) and 3(three) respectively, continued to have its effect even on the further service condition of the petitioner.

56. In the circumstance, we examine the correctness of the notification dated 08.07.2014, by which the petitioner was promoted to officiate in the cadre of Joint Director under Regulation 4(d) of the Regulations of 1951. In order to examine the said aspect, we first take look at the relevant Rules governing the promotion from the cadre of Deputy Director to that of Joint Director, which is provided under Rule 12 of the Assam Education Service Rules, 1982. For better appreciation, Rule 12 is extracted as below:-

*“12. **General procedure of promotion-** (1) Before the end of each year the Government shall make an assessment of the likely number of vacancies to be filled up by the promotion in the next year in each cadre.*

(2) The appointing authority shall then furnish to the Selection Board the following documents and information with regard to as many officers in order of seniority as four times the number of vacancies as assessed under sub-rule (1)-

(a) Information about the number of vacancies;

(b) List of Officers in order of seniority eligible for promotion (separate list

for promotion to different cadres shall be furnished) indicating the cadre to which the case of promotion to be considered;

(c) Character Rolls and other records of the officers listed;

(d) Any other documents and informations as may be considered by the appointing authority or required by the Board

(3)The appointing authority shall simultaneously request the Board to recommend within one month a list of officers, found suitable for promotion in order of preference in respect of promotion to each of the cadres in which retirement is to be made by promotion.

(4) The Selection shall be made on the basis of merit-cum-seniority in each case of promotion.

(5) The Board, after examination of the documents and information furnished by the appointing authority shall recommend to the appointing authority a select list of officers about double the probable number of vacancies in order of preference found suitable for promotion.

(6) The appointing authority shall consider the select list prepared by the Board along with character rolls and other records and approve the list unless it considers any change necessary. If the appointing authority considers it necessary.”

57. Rule 12(1) provides that before the end of each year, the Government shall make an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre and it is understood that by following the requirement of Rule 12(1), the assessment was that the number of vacancies would be 9(nine) i.e. 8(eight) existing and 1(one) likely. Having made the assessment the number of vacancies, the provision of Rule 12(2) would be applicable i.e. the appointing authority would furnish to the selection board the



documents and information with regard to as many officers in order of seniority comprising of four times the number of vacancies that may have been assessed. Importantly, Rule 12(4) provides that the selection board would make the selection on the basis of the criteria merit-cum-seniority in case of promotion, where further Rule 12(5) provides that the selection board after examination of the documents and information furnished by the appointing authority shall recommend to the appointing authority the select list of officers about double the probable number of vacancies in order of preference found suitable for promotion.

58. Rule 12(6) provides that the appointing authority shall consider the select list prepared by the selection board along with character rolls and other records and approve the list unless it considers that changes are required to be made. The list that may be approved by the appointing authority under Rule 12(6) would be required to be sent to the Assam Public Service Commission (in short APSC) for its approval and the list as may be approved by the APSC would remain valid for a period of 12(twelve) months.

59. But again Rule 12(9) provides that the promotion shall be in accordance with the list finally approved by the appointing authority.

60. In the instant case, no material is available before the Court as to whether the select list prepared by the selection board was approved by the appointing authority, but what remains on record is that the said select list was acted upon to give effect to the promotions to the cadre of Joint Director.

61. Without expressing any view and further taking note that it is not a *lis* between the parties, we have noticed that the select list prepared by the selection board, apparently with the adjustment for the purported accelerated promotion, is a reflection of the order of seniority in the cadre of Deputy Director, although Rule 12(4) specifically provides that the selection by the selection board is to be made by following the criteria of merit-cum-seniority.

62. On the other hand, Regulation 4 of the Regulations of 1951 is as extracted below:-

*“4. **Promotion**- It shall not be necessary to consult the Commission on the principles to be followed in making promotions or on the suitability of candidates for promotion in the following cases-*

(a) promotion to a service by an authority other than the Governor;

(b) promotion from a lower to higher grade or post within the same service according to the rules of the service;

Provided that if it is proposed to promote an officer from one grade to another, the Commission shall be consulted if direct requirement to the higher grade can be made after consulting the Commission;

(c) as regards the suitability for promotion from one service to another of a candidate not recommended by the authority prescribed in the rules regulating such promotion;

(d) officiating promotion for a period which is not likely to last for more than a year;

Provided that if the period of officiating promotion is extended beyond the term for which it was originally sanctioned, the period of promotion shall, for purposes of this regulation, be reckoned from the date when the promotion

originally took effect and not from the date of the extension of the period.”

63. As pointed out by Mr. UK Nair, learned senior counsel for the petitioner, the Regulations of 1951 are framed in exercise of the powers under Article 320(3) of the Constitution of India, which provides for, amongst others, the functions of the Public Service Commissions. Regulation 4 of the Regulations of 1951 apparently is a general provision as regards the necessity to consult the APSC in respect of promotions to be made.

64. Regulation 4(b) of the Regulations of 1951 provides that promotions from a lower to higher grade or post within the same service would be governed by the Rules of service prevailing in the matter and for such promotions, the necessity of the general law to have a consultation with the APSC would be absent. In other words, such promotions would be governed according to the provisions of the Rules governing the service, which would be a special law for the purpose and in such cases, the general law requiring the consultation of the APSC would not be there.

65. As a corollary to it, we have to understand that if the special law relating to the service of the employees concerned do require any such consultation, the same may prevail, but such consultation would be a requirement of the special law rather than it being a requirement of the general law regarding such consultation provided under Regulation 4 of the Regulations of 1951.

66. The proviso to Regulation 4(b) provides that if it is proposed to promote

an employee from one grade to another, the APSC shall be consulted if a direct recruitment to the same higher grade can also be made after consulting the Commission. In other words, if for the same grade or post or cadre a direct recruitment can also be made and such direct recruitment requires a consultation of the APSC, then in respect of promotions also to such post, grade or cadre, a consultation of the APSC would be required and such requirement would be a part of the general law provided under the Regulations of 1951.

67. It is further discernible that in order to effect an officiating promotion under Regulation 4(d) of the Regulations of 1951, there is a condition precedent that the officiating promotion should be for a period which is not likely to last more than one year. In other words, prior subjective satisfaction would have to be arrived in order to satisfy the condition precedent that the promotion which is sought to be made on an officiating basis would be for a period less than one year. Further, if such satisfaction can be arrived that the officiating promotion would be for a period of less than one year, Regulation 4(d) of the Regulations of 1951 provides that the consultation of the APSC in such promotions would not be required.

68. In other words, we have to understand that in order to make the promotion under Regulation 4(d) of the Regulations of 1951, firstly there has to be a prior decision that the promotion to be made would be on an officiating basis and, secondly, the period for which such officiating promotion is to be made effect would be for a period less than one year. In the absence of the two conditions precedent being satisfied, we have to understand that even if the nomenclature of Regulation 4(d) of the Regulations of 1951 is incorporated in

any order of promotion that may be made, such promotion merely by virtue of including the expression 'Regulation 4(d)' will not make it officiating promotion under Regulation 4(d) of the Regulations of 1951, but it has to be construed to be a promotion other than that of under Regulation 4(d).

69. Regulation 4(d) of the Regulation of 1951 can also be understood in-contra distinction to the provisions of the Regulation 3(f) of the Regulation of 1951.

70. 3(f) of the Regulation of 1951 is extracted as below:

“3(f) when an appointment is to be made by direct recruitment to a temporary post created in a service, if it is necessary in the public interest that the appointment should be made immediately and reference to the Commission would cause undue delay; provided that if the post has been sanctioned for, or is likely to last for more than four months, the Commission shall, as soon as possible, be consulted in all matters mentioned in sub-clause 3 of Article 320 of the Constitution.”

71. A reading of the provisions of Regulation 3(f) makes it discernable that the provisions thereof are applicable in case of a direct recruitment to a temporary post created in a service, if it is so necessary in the public interest that the appointment should be made immediately and reference to the Commission would cause undue delay. In other words, whenever in the exigencies of public service, the administrative authority are of the view that there is a necessity for creating of a temporary post and such temporarily created post are to be filled up by a direct recruitment and the authorities are of the view that the reference to the Commission for such appointment would cause undue delay as because the appointments are to be made immediately, the authorities can resort to the provisions of the Regulation 3(f) of the Regulation of 1951.

72. Regulation 3(f) of the Regulation of 1951 itself provides an inbuilt limitation that in the

event the post that had been created temporarily is likely to last for more than four months, the Commission as soon as possible be consulted as required under Article 320(3) of the Constitution of India. In other words, the conditions precedent in making an appointment under Regulation 3(f) would be that it cannot be against a permanent sanctioned post already in existence and on the other hand, it can be invoked only in a situation where the administrative authorities are of the view that for the purpose of administrative exigencies post beyond the permanent sanctioned post are required to be created and such posts on being created would last for a period lesser than four months and in such situation there can be a direct recruitment for which no consultation with the APSC would be required. If the posts so created in the administrative exigencies are required to exist for a period beyond four months then mandatorily consultation with the APSC would be required to retain and further continue with such direct recruitment.

73. In other words, Rule 4(d) pertains to a promotion which is likely to be for a period lesser than one year and for such promotion there would be no requirement for a consultation with the APSC whereas regulation 3(f) pertains to a direct recruitment to a temporary created post which would remain in existence for a period lesser than four months, for which also consultation with the APSC would be required.

74. To the corollary, we also find that on one hand Rule 12(7) of the Rules of 1982 requires an approval upon consultation of the APSC, but on the other hand, if the provisions of Regulation 4(d) of the Regulations of 1951 is read in its proper perspective, such promotions made under Regulation 4(d) are not required to be sent for consultation of the APSC and in such circumstance, if a promotion which is otherwise not a promotion under Regulation 4(d) is referred for consultation of the APSC, an inconsistent and incoherent situation would arise which will result in a conflict of two different provisions of law.



75. Having arrived at such conclusion, when we examine the notification dated 08.07.2014 by which the petitioner was promoted to the cadre of Joint Director under Regulation 4(d) of the Regulations of 1951, it is discernible from the records that firstly no satisfaction was arrived at that the promotion to be meted out would be an officiating promotion and further that the said promotion is likely to be for a period of less than one year. In other words, both the conditions precedent to make the promotion under Regulation 4(d) of the Regulations of 1951 is not satisfied in the present case and accordingly we have to understand that although the expression 'Regulation 4(d) of the Regulations of 1951' is incorporated and referred in the notification dated 08.07.2014, the promotion meted out to the petitioner would not be a promotion under Regulation 4(d) and on the other hand, it would have to be accepted that the said promotion is a promotion otherwise than that of Regulation 4(d).

76. When we further look into the minutes of the selection board dated 06.08.2013 coupled with the conclusions that had already been arrived that splitting of the vacancies into 6(six) for regular promotions and 3(three) for accommodating the sealed cover method would violate Article 14 of the Constitution of India, we have to understand that the promotion of the petitioner to the cadre of Joint Director was a part of the single process for promotion to the 9(nine) available vacant posts.

77. Accordingly, it has to be accepted that the promotion meted to the petitioner by the notification dated 08.07.2014 would have to be construed to be otherwise a regular promotion subject to the approval of the APSC that is required under Rule 12(7) of the Rules of 1982. The subsequent materials



available on record do not indicate that there was no approval by the APSC to the promotion of the petitioner other than certain queries being raised as regards the aspect that 3(three) of the posts were kept separately to accommodate the candidates governed by the sealed cover method. In any view of the matter, a formal approval was also given by the APSC by the communication dated 27.02.2017. In other words, even the requirement of Rule 12(7) in respect of the petitioner had been satisfied as regards the promotion to the cadre of Joint Director.

78. In the aforesaid circumstances, we declare that the promotion of the petitioner by the notification dated 08.07.2014 was a regular promotion to the cadre of Joint Director.

79. It is stated that after the promotion was given to the petitioner by the notification dated 30.12.2019 to the post of Additional Director, she had retired from service on the very next day. In the circumstance, as the petitioner was regularly promoted to the cadre of Joint Director by the notification dated 08.07.2014, she otherwise would also have been entitled to the benefit of being promoted to the cadre of Additional Director on and from the said date when the other similarly situated candidates who were also promoted pursuant to the selection board meeting dated 06.08.2013 were promoted to the cadre of Additional Director.

80. It is stated that the others from the said promotional process pursuant to the selection board meeting of 06.08.2013, were promoted as Additional



Director on 16.07.2016. Accordingly, as the petitioner had already retired from service, the notional benefits pertaining to salary and other benefits of the cadre of Additional Director be given to the petitioner on and from 16.07.2016 including the increments thereof and accordingly the pensionary benefits given to the petitioner be now also adjusted accordingly.

81. The consequential benefits be given to the petitioner within a period of three months from the date of receipt of a certified copy of this order.

82. We also take note of the order dated 19.12.2019 of the Commissioner and Secretary to the Government of Assam in the Secondary Education Department, which provides that the petitioner would be entitled to retain her seniority of the cadre of Deputy Director also in the promoted cadre of Joint Director as per the views expressed by the Personnel (B) Department.

83. Writ petition stands allowed in the above terms.

JUDGE

Comparing Assistant