



GAHC010098462019

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

**Case No. : WP(C)/2969/2019**

BALWANT SINGH  
SON OF LATE BRIJLAL SINGH, R/O. FLAT NO. 3B, PRAKASH ENCLAVE, 9TH  
HARABALA ROAD, ULUBARI, GHY.- 781001.  
PRESENTLY SERVING AS EXECUTIVE ENGINEER (C), PWD (BUILDING)  
NORMAL BRANCH, IN THE OFFICE OF THE CHIEF ENGINEER, PWD  
(BUILDING), ASSAM, CHANDMARI, GHY.-3.

VERSUS

THE STATE OF ASSAM AND 18 ORS.  
REP. BY THE ADDL. CHIEF SECRETARY, PUBLIC WORK DEPTT. (ROADS)  
AND PWD (B AND NH), DISPUR, GHY.- 781006. (CHAIRMAN OF THE  
SELECTION COMMITTEE).

2:THE COMMISSIONER AND SPL. SECRETARY TO THE GOVT. OF ASSAM

PUBLIC WORKS (ROAD) DEPTT.  
DISPUR  
GHY.- 781006.

3:THE COMMISSIONER AND SPL. SECRETARY  
PUBLIC WORKS ( BUILDING AND NH ) DEPTT.  
DISPUR  
GHY.- 781006.

4:THE DY. SECRETARY TO THE GOVT. OF ASSAM  
PUBLIC WORKS ( ROAD) DEPTT.  
CONFIDENTIAL CELL  
BLOCK-B  
DISPUR  
GHY.- 781006.



5:THE SECRETARY

PUBLIC WORKS (ROAD) DEPTT.  
DISPUR  
GHY.-6.

6:SRI BHUPENDRA CHANDRA SARMA  
SUPERINTENDENT ENGINEER  
PW(R)D  
GUWAHATI ROADS CIRCLE  
FANCY BAZAR  
GUWAHATI.- 781001  
ASSAM.

7:PRAKHIT BARUAH  
EXECUTIVE ENGINEER  
TRAFFIC ENGINEERING CELL  
O/O. THE SUPERINTENDING ENGINEER (C)  
TRAFFIC ENGINEERING CELL  
CHANDMARI  
GHY.-3.

8:PRANAB KUMAR CHOUDHURY  
EXECUTIVE ENGINEER  
UDALGURI (RURAL) DIVISION  
UDALGURI- 784509  
ASSAM.

9:DEBESH CHAKRABORTY  
EXECUTIVE ENGINEER  
NALBARI RURAL ROADS DIVISION  
NALBARI- 781335  
ASSAM.

10:PRANAB KUMAR ADHIKARI  
EXECUTIVE ENGINEER  
PUBLIC WORKS ROADS DEPTT.  
SARUPATHAR RURAL ROAD DIVISION  
SARUPATHAR  
GOLAGHAT- 785601  
ASSAM.

11:JOGESH CHANDRA SARMA  
EXECUTIVE ENGINEER  
PWD  
NAGAON BUILDING DIVISION  
NAGAON- 782001  
ASSAM.



12:DWIJEN HAZARIKA  
EXECUTIVE ENGINEER  
PWD  
DIBRUGARH NH DIVISION  
DIBRUGARH- 786001  
ASSAM.

13:BISHNU PRASAD DAS  
EXECUTIVE ENGINEER  
PWD  
KARIMGANJ NH DIVISION  
KARIMGANJ- 788710  
ASSAM.

14:TARUN CHANDRA HAZARIKA  
CHARAIDEO RURAL ROAD DIVISION  
CHARAIDEO  
ASSAM- 782445  
ASSAM.

15:PARESH CHANDRA DEKA  
EXECUTIVE ENGINEER  
PWD  
GUWAHATI NH DIVISION  
FANCY BAZAR  
GHY.-01.

16:PAKSHAPATI HAZARIKA  
EXECUTIVE ENGINEER  
PWD  
GUWAHATI BUILDING DIVISION-II  
DISPUR  
GHY.-06.

17:SAILADIP DAS  
EXECUTIVE ENGINEER  
PWD  
GUWAHATI BUILDING DIVISION-I  
FANCY BAZAR  
GHY.-01.

18:ARUN CHANDRA GOSWAMI  
EXECUTIVE ENGINEER  
PWD  
SIVASAGAR BUILDING DIVISION  
SIVASAGAR- 785640  
ASSAM.



19:SALEH AHMED CHOUDHURY  
EXECUTIVE ENGINEER  
PWD  
NH ROADS BRANCH  
O/O. THE CHIEF ENGINEER  
PWD  
NH DIVISION  
CHANDMARI  
GHY.-03

**Advocate for the Petitioner** : MR. H. BURAGOHAIN

**Advocate for the Respondent** : MR. D. NATH,  
SENIOR GOVERNMENT ADVOCATE, ASSAM

**- B E F O R E -**

**HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

Date of order : 03.06.2022

**O R D E R**  
**(CAV)**

- 1.** Heard Mr. H. Buragohain, learned counsel for the petitioner. Also heard Mr. D. Nath, learned senior Government Advocate, Assam for the State respondents. No one appears for the private respondents, though notice is served upon them as per order dated 20.11.2020.
- 2.** Petitioner's grievance is with regard to the consideration of the petitioner's case by the DPC held on 21.09.2017, for promotion from the post of Assistant Executive Engineer to the post of Executive Engineer, PWD (Roads), Government of Assam. The grievance of the petitioner is that the DPC did not consider the 2015-2016 ACR of the

petitioner and other eligible candidates, in respect of the vacancies that occurred in the post of Executive Engineer (EE) in the year 2016. The DPC considered the ACRs of the petitioner and other eligible candidates for the years 2010-2011 to 2014-2015. The stand of the petitioner is that if the respondents/DPC had considered the petitioner's 2015-2016 ACR (in which he was graded "Outstanding") for the 2016 vacancies, the petitioner would have secured the benchmark for promotion to the post of EE and consequently, would have retained his seniority over the private respondents.

**3.** Petitioner's case in brief is that the petitioner had always been senior to the private respondents in the Grade of Assistant Engineer (AE) and Assistant Executive Engineer (AEE). The State respondents, while considering promotion of the petitioner and the private respondents from the post of AEE to EE, had promoted the petitioner against a 2017 vacancy, while the private respondents were promoted against 2016 vacancies. In view of the petitioner being promoted against a later vacancy, the petitioner's seniority position in the inter-se seniority list/gradation list was placed below the private respondents. Accordingly, the petitioner has made a challenge to the inter-se seniority lists dated 01.09.2018 and 11.04.2019.

**4.** Petitioner's counsel submits that in terms of Rule 13(1) of the Assam Engineering (PWD) Service Rules, 1978 (hereinafter referred to as the 1978 Rules), the Government, before the end of each year, is to make an assessment of the likely number of vacancies to be filled up by promotion in the next year in each cadre. Rule 2(j) of the 1978 Rules defines 'year' to mean a 'calendar year'. In terms of the Notification No. CON-5/2003/50 dated 28.04.2003 issued by the Government of Assam, Public Works Department, promotion to the rank of Executive Engineer has to be made on the basis of 'merit and suitability with due regard to seniority'. He submits that in terms of the Notification dated 28.04.2003, the total points against each officer

in the zone of consideration is to be calculated on the basis of the guidelines stipulated in the said Notification, while considering the ACRs for a period of 5 years on 1<sup>st</sup> January of the year of promotion. As the petitioner was considered for promotion by the DPC in the year 2017, the ACRs upto the year 2016, i.e. 2015-2016 ACR should have been considered. He submits that in terms of the said Notification dated 28.04.2003, persons who secure 21.3 marks and above, on the basis of the ACRs, are to be classified as Class-A category, while the persons who secure between 11.3 to below 21.3 marks are to be classified as Class-B category. Further, Class-A category would get preference over Class-B for promotion. However, as all the vacancies for the year 2016 were filled up by the private respondents who were categorized as Class-A, while the petitioner was classified as Class-B, the private respondents stole a march over the petitioner. Thereafter, while considering the case of the petitioner for promotion against a vacancy that occurred in the year 2017, the petitioner was categorized as Class-A, in view of the fact that the marks secured by the petitioner had risen to 21.3 due to the petitioner being graded as 'Outstanding' in the ACR for the year 2015-2016, which had not been considered by the respondents while considering his candidature for promotion against the 2016 vacancies.

**5.** Petitioner's counsel submits that the respondents should have considered the petitioner's ACR for the years 2011-2012 to 2015-2016 for the 2016 vacancies in terms of the Notification dated 28.04.2003. In support of his submission, the learned counsel for the petitioner has relied upon the judgment of the Apex Court in the case of *S.B. Bhattacharjee -vs- S.D. Majumdar & Ors.*, reported in **(2007) 10 SCC 513**.

**6.** The petitioner's counsel thus prays that the Notifications dated 01.09.2018 and 11.04.2019 should be set aside and a direction should be issued to the respondent authorities, to undertake a fresh exercise for preparing and publishing a fresh gradation list, after considering the case of the petitioner for promotion from the post

of AEE to EE, by taking into account the petitioner's ACR for the year 2015-2016 for the 2016 vacancies.

**7.** Mr. D. Nath, learned senior Government Advocate, Assam, on the other hand, submits that the DPC did not commit any infirmity, in not considering the petitioner's ACR for the year 2015-2016 for the 2016 vacancies, inasmuch as, the Notification dated 28.04.2003 requires that the DPC should consider the final accepted remarks in the ACR immediately preceding the year in which the vacancy had arisen. He submits that as the vacancy had occurred in the year 2016, the last completed ACR of the petitioner and the private respondents would be ACR for the year 2014-2015, i.e. between 01.04.2014 and 31.03.2015. The learned senior Government Advocate, Assam submits that the vacancy that had occurred in a year would have to be considered as a vacancy that occurred between 1<sup>st</sup> January and 31<sup>st</sup> December in a calendar year and, as such, even if the vacancy occurs in January or December of a calendar year, the same would have to be considered to be a vacancy that occurred for the whole year. Mr. D. Nath also relies upon the same judgment of the Apex Court in *S.B. Bhattacharjee* (supra), in support of his submission that the DPC had rightly not considered the petitioner's ACR for the year 2015-2016, for promotion to the vacancies that occurred in the year 2016.

**8.** I have heard the learned counsels for the parties.

**9.** Rule 2(j) of the 1978 Rules defines a 'year' to mean a 'calendar year'. Rule 13(1) of the 1978 Rules states 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. Rule 5 of the Assam Service (Confidential Rolls) Rules, 1990 (hereinafter referred to as 'the 1990 Rules') provides that a confidential report assessing the performance, character, conduct and qualities of every employee shall

be written for **each financial year**.

**10.** Thus, as can be seen from the foregoing paragraph, ACR would have to be written for the period from 1<sup>st</sup> April to 31<sup>st</sup> March of the subsequent year. On the other hand, the occurrence of vacancies would have to be considered in relation to a calendar year in terms of Rule 13(1) of the 1978 Rules.

**11.** The relevant extract of the Notification dated 28.04.2003 reads as under:

*“Promotion upto the rank of Superintending Engineer:*

*Merit and suitability with due regard to seniority. The appointing authority will allocate the following points to the **final accepted remarks** in the ACRs in case of merit and category 3 shall not be eligible to be suitable for promotion in case of merit and suitability.*

<i>Below Average</i>	<i>=</i>	<i>0 point</i>
<i>Average</i>	<i>=</i>	<i>1 point</i>
<i>Good</i>	<i>=</i>	<i>2 points</i>
<i>Very Good</i>	<i>=</i>	<i>3 points</i>
<i>Outstanding</i>	<i>=</i>	<i>4 points</i>

*The total points against each officer in the zone of consideration is to be calculated on the basis of the guidelines stated above considering ACRs **for a period of 5 years on the 1<sup>st</sup> January of the year of promotion.***

.....  
*(B) Promotion from AEE to EE*

<i>Class-A</i>	<i>=</i>	<i>21.3 and above</i>
<i>Class-B</i>	<i>=</i>	<i>11.3 to below 21.3</i>

*Class-A will get preference over Class-B and inter-se-seniority within Class-A will remain unchanged.”*

**12.** The question that arises for consideration is as to whether the petitioner’s ACR for the year 2015-2016 should have been considered for the vacancies that arose in



the year 2016, keeping in view the 1978 Rules, the 1990 Rules and the Notification dated 28.04.2003.

**13.** The extract of the Notification dated 28.04.2003 clearly shows that the total points against each officer in the zone of consideration is to be calculated on the basis of the guidelines stated in the Notification, considering the ACRs for a period of five years on 1<sup>st</sup> January of the year of promotion. The Notification also states that points have to be allocated to the final accepted remarks in the ACR in case of merit. Thus, a reading of the above extract of the Notification dated 28.04.2003 clearly shows that only the “final accepted remarks” in the ACRs for a period of five years would have to be considered keeping in view 1<sup>st</sup> January of the year of promotion.

**14.** In the opinion of this Court, the words “1<sup>st</sup> January of the year of promotion” reflected in the extract of the Notification dated 28.04.2003, would have to relate back to the vacancy year and not to the actual year of promotion. Assuming that agenda papers for a vacancy that occurred in the year 2016 had been considered by a DPC in the year 2020 and promotion order had been issued on the basis of the DPC recommendation in the year 2022, then in terms of the literal meaning of the words “1<sup>st</sup> January of the year of promotion”, the ACR of a candidate for the year 2020-2021 would also have to be considered by the DPC, while considering promotion to a vacancy that occurred in 2016. However, this would create an ambiguous situation, inasmuch as, the ACRs beyond the year of vacancy and non-existent ACRs beyond the year of the sitting of the DPC would have to be considered. Accordingly, in the opinion of this Court, the words “1<sup>st</sup> January of the year of promotion”, which is reflected in the Notification dated 28.04.2003, would have to relate back to the year of vacancy.

**15.** In the present case, the year of vacancies is 2016 and in terms of the 1978 Rules, a year means ‘a calendar year’, i.e. from 1<sup>st</sup> January to 31<sup>st</sup> December.

Therefore, for a vacancy that occurred in the year 2016, the final accepted remarks in the ACR would be the ACR for the period 2014-2015. "Final accepted remarks in the ACR", which is reflected in the extract of the Notification dated 28.04.2003, would mean the ACR which has been finally accepted by the Accepting Authority. As such, the ACR for the year 2015-2016 could not be considered by the DPC/ respondent authorities for the vacancy year 2016, as the ACR for 2015-2016 could not have been finally accepted prior to 31.03.2016 by the Accepting Authority.

**16.** In the case of *S.B. Bhattacharjee* (supra), the Apex Court was seized of a case wherein the DPC was required to consider the service records of the candidates for promotion, with particular reference to the ACRs for five preceding years. The Apex Court held that the ACRs for five preceding years must be held to mean five preceding years of ACRs which have attained finality. This Court is of the view that the decision of the Apex Court in *S.B. Bhattacharjee* (supra) supports the case of the State respondents, as the ACRs which had attained finality, for a period of five years preceding the date of vacancy, would entail that the ACRs of the candidates from 2010-2011 to 2014-2015 only, would have to be considered for the 2016 vacancies.

**17.** In view of the reasons stated above, this Court does not find any ground to interfere with the non-consideration of the petitioner's ACR for the year 2015-2016 for the vacancies that occurred in the year 2016.

The writ petition is accordingly dismissed.

**JUDGE**

**Comparing Assistant**