



GAHC010145302019

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

Case No. : WP(C)/4487/2019

TAPAN KUMAR DAS
S/O- SATYALAL DAS, R/O- H/NO. 95, NIRBILI PATH, SATGAON ROAD, P.O.
UDAYAN VIHAR, P.S. SATGAON, GUWAHATI- 781171, DIST.- KAMRUP(M),
ASSAM.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA, MINISTRY OF
POWER SHRAM SHAKTI BHAWAN, RAFI MARG, NEW DELHI- 110001.

2:NORTH EASTERN ELECTRIC POWER CORPORATION LTD.
A GOVERNMENT OF INDIA ENTERPRISE)
REGISTERED OFFICE- BROOKLAND COMPOUND
LOWER NEW COLONY
SHILLONG- 793003
MEGHALAYA.

3:THE CHAIRMAN AND MANAGING DIRECTOR
NORTH EASTERN ELECTRIC POWER CORPORATION LTD.
BROOKLAND COMPOUND
LOWER NEW COLONY
SHILLONG- 793003
MEGHALAYA.

4:THE EXECUTIVE DIRECTOR PROJECTS (HYDRO)
NORTH EASTERN ELECTRIC POWER CORPORATION LTD.
BROOKLAND COMPOUND
LOWER NEW COLONY
SHILLONG- 793003
MEGHALAYA.



5:THE DIRECTOR (PERSONNEL)
NORTH EASTERN ELECTRIC POWER CORPORATION LTD.
BROOKLAND COMPOUND
LOWER NEW COLONY
SHILLONG- 793003
MEGHALAYA.

6:THE DIRECTOR (TECHNICAL)
NORTH EASTERN ELECTRIC POWER CORPORATION LTD.
BROOKLAND COMPOUND
LOWER NEW COLONY
SHILLONG- 793003
MEGHALAYA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioner : Shri B. D. Konwar, Sr. Advocate.
Shri H. Agarwal, Advocate

Advocates for the respondents : Shri D. Senapati, Advocate.

Date of hearing : **01.04.2024**

Date of Judgment : **01.04.2024**

JUDGMENT & ORDER

The present petition under Article 226 of the Constitution of India has been filed with the following grievances:

“(a) Denial of promotion to the petitioner from the post of Senior Manager (Civil) to the post of Deputy General Manager (Civil) to which the petitioner had become eligible and entitled since 01.07.2009.

(b) Denial of retrospective benefit of promotion to the petitioner in the rank of Manager (Civil) to which he was promoted after a delay of more than 2 years;

(c) Denial of the monetary benefit of the next higher post of

Deputy General Manager to the petitioner on completion of double the eligibility period prescribed for promotion to that higher post but not promoted."

2. The petitioner was an Officer of the North Eastern Electric Power Corporation Limited (NEEPCO) and had retired from service on 31.08.2021 as a Senior Manager (Civil). The petitioner who belongs to the Schedule Caste Community had joined the Organization on 30.05.1988 as SDO (Civil) and was subsequently promoted to the post of Executive Engineer (Assistant Manager) on 03.09.1996. It is the case of the petitioner that though on 01.07.1998, he had become eligible for consideration for promotion to the next higher post of Deputy Manager, he was given such promotion on 27.03.2002, however, with retrospective effect from 01.07.1998. Subsequently, on 01.07.2001, the petitioner claims to have become eligible for promotion for the post of Manager (Civil). However, there was delay in holding the DPC and it was ultimately on 29.07.2003 that the petitioner was promoted to the post of Manager (Civil), however, no retrospective effect was given. The petitioner had filed representation on 25.08.2003 for giving such benefit which was however turned down vide a reply dated 08.11.2004 in which certain reasons including pendency of Court case were cited by the NEEPCO.

3. As per the petitioner, on 01.07.2004 he had become eligible for promotion to the post of Senior Manager (Civil) and was ultimately promoted to the said post on 10.08.2006. On 01.07.2009, the petitioner claims to have become eligible for promotion to the post of Deputy General Manager and had also appeared in 5 numbers of DPC which were held on 02.03.2012, 30.04.2014, 25.06.2015, 07.03.2017 and 27.06.2017. However, the case of the petitioner was not recommended and no reasons were also communicated to him. As

regards the grievance no. 3 is concerned, the projected case of the petitioner is that he is entitled to such relief as per Rule 13.2.2 of the Manual. Though there is a reply on record by the NEEPCO that such Rules are not applicable for the post/level held by the petitioner it is contended that such benefits were given to others also and therefore the petitioner should be given such benefits.

4. I have heard Shri B. D. Konwar, the learned Senior Counsel for the petitioner assisted by Shri H. Agarwal, learned counsel whereas the NEEPCO is represented by Shri D. Senapati, the learned counsel.

5. Shri Konwar, the learned Senior Counsel has fairly submitted that the petitioner has retired from service on 31.08.2021 and therefore it is the aspect of notional benefits which he may be entitled to. As regards the delay in approaching this Court *qua* the cause of action which has arisen before 2009, Shri Konwar, the learned Senior Counsel has submitted that there were communications made to the authorities which were also replied to.

6. So far as the reasons cited for the delay in holding the DPC in the year 2001 is concerned, it is submitted that in the pending case the petitioner was not even a party and therefore the same could not have been a reason for delaying his promotion.

7. Shri Konwar, the learned Senior Counsel has drawn the attention of this Court to Rule 13.2.2 of the Manual *qua* the grievance no. 3 and has submitted that in terms of the said Rule, the relief claimed can be granted. It is submitted that in spite of appearing in the DPC on five occasions, he was wrongfully denied of the promotion. It is however clarified that such action is not the subject matter of challenge in this petition or in any other earlier petitions.

8. It is accordingly submitted that necessary directions may be issued to grant the petitioner at least the monetary benefits for which he claims to be entitled to.

9. *Per contra*, Shri D. Senapati, the learned counsel for NEEPCO by referring to the affidavit-in-opposition dated 23.11.2021 has submitted that the petitioner has been dealt with in a fair and transparent manner. By referring to the reply dated 08.11.2004 which was issued by NEEPCO to the General Secretary of the Association which was espousing the cause of the petitioner, it was informed that the grounds were spelt out in the said reply which are cogent and reasonable.

10. By referring to the Manual containing Rule 13.2.2, Shri Senapati, learned counsel has also referred to the Board of Director meeting held on 10.07.2009 whereby there was a modification of the aforesaid Rule 13.2.2 in the form of Rule 13.2.3. It is submitted that as per the modification, such benefits were limited upto the level of E 1 grade and in any case, the petitioner became eligible only thereafter on 01.07.2010 and therefore, the Rule would not be applicable to the petitioner. As regards the submissions made on behalf of the petitioner that in spite of such modification, benefits were given to certain officers who were above the E-1 grade, Shri Senapati, the learned counsel has clarified that those were given as a special measure and as a one time basis. However, such benefits have not been given in any further case.

11. In his rejoinder, Shri Konwar, the learned Senior Counsel has submitted that a reply affidavit has been filed on 05.05.2022 whereby it has been clarified that despite the modification of Rule 13.2.2, benefits were still given to some incumbents.

12. The rival submissions of the learned counsel for the parties have been duly considered and the materials placed before this Court have been carefully examined.

13. So far as the grievance no. 1 is concerned regarding denial of promotion to the petitioner from the post of Senior Manager (Civil) to the post of Deputy General Manager (Civil) which he claims to be entitled since 01.07.2009, this Court has noticed that as per records, the petitioner was considered on five occasions on DPCs held on 02.03.2012, 30.04.2014, 25.06.2015, 07.03.2017 and 27.06.2017. It is a settled law that promotion cannot be claimed as a matter of right and it is only a fair consideration for such promotion which an eligible candidate is entitled to which appears to have been done in the instant case. In any case, Shri Konwar, the learned Senior Counsel has fairly submitted that the outcome of the said DPCs are not the subject matter of challenge and in that view of the matter, the first prayer cannot be considered.

14. The second prayer is regarding a grievance of delay of more than 2 years for promotion of the petitioner in the Rank of Manager (Civil). This Court has however noticed that the aforesaid grievance of the petitioner which was espoused through the Association has been replied to vide communication dated 08.11.2004 citing certain reasons. Neither the said communication nor the reasons cited are the specific matters of challenge and therefore this Court would not be inclined to hold that there has been wrongful denial of the petitioner from such consideration. Further, the grounds cited appear to be cogent and *bona fide*.

15. As regards the third prayer concerning monetary benefit to the next higher



post of Deputy General Manager by relying upon Rule 13.2.2, this Court finds force in the contention made by the learned counsel for NEEPCO that the said Rule is not at all applicable for the petitioner. This Court has noticed that the objective behind the said Rule is to give incentive to certain class of employees/officers who do not have the promotional avenues. However, in the instant case apart from the fact that the cadre of E-6 is not covered under the said notification as it is limited upon to E-1 grade, the said notification is wholly inapplicable to the petitioner inasmuch as he became eligible much after the amendment done on 10.07.2009 i.e. on 01.07.2010.

16. In view of the aforesaid discussion, this Court is of the considered opinion that no case for interference is made out and accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant