



GAHC010200022019

Page No.# 1/5



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

**Case No. : WP(C)/6127/2019**

SKT KUMAR SHAW  
S/O- ACHCHHE LAL SHAW, R/O- (P) VARTAK, DIST.- SONITPUR, ASSAM  
AND PRESENTLY SERVING AS SKT 1084 FIELD WORKS SHOP (GREF), C/O-  
99 APO.

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY OF  
DEFENCE, SOUTH BLOCK, NEW DELHI- 110001.

2:THE SECRETARY DEPARTMENT OF PERSONNEL AND TRAINING  
MINISTRY OF PERSONNEL PG AND PENSION  
NEW DELHI- 110001.

3:THE JOINT SECRETARY (BORDER ROADS)

B WING  
4TH FLOOR  
SENA BHAWAN  
NEW DELHI- 110001.

4:THE DIRECTOR GENERAL BORDER ROADS  
SEEMA SADAK BHAWAN  
RING ROAD  
DELHI CANT.  
NEW DELHI- 110001.

5:THE ADGBR (EAST)  
LANKESWAR  
GUWAHATI  
DIST.- KAMRUP(M)  
ASSAM.



6:THE CHIEF ENGINEER  
PROJECT UDAYAK  
VARTAK  
C/O- 99 APO

**For the Petitioner :** **Mr. Tapas Das, Adv.**

For the Respondents: Mr. K.K. Parasar, CGC.

**BEFORE  
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 23/11/2023.

Date of judgement : 23/11/2023

**JUDGEMENT AND ORDER (ORAL)**

1. Heard Mr. Tapas Das, learned counsel for the writ petitioner. Also heard Mr. K.K. Parasar, learned Central Government Counsel (CGC) appearing for the respondents.
2. The writ petitioner herein is presently serving as "Supervisor Store" under the Border Road Organization (BRO). Aggrieved by his non-selection/non-appointment in the post of "Supervisor Store" pursuant to the advertisement notice No. 01/2013, the instant writ petition has been filed, seeking a Writ of Mandamus.
3. The facts of the case, in a nutshell, are that in the year 2013, the Border Roads Development Board, BRO, General Reserve Engineer Force (GREF) had issued advertisement notice No. 01/2013 inviting applications *inter alia* for filling up one post of "Supervisor Store". The post was reserved for Schedule Tribe (ST) candidate. The writ petitioner belongs to ST Category. It appears that, in response to the aforesaid advertisement notice, as many as 5 (five) candidates, including the writ petitioner, had submitted their applications. On conclusion of the selection process, a list of provisionally selected candidate was published by the authorities wherein, the name of one 'Kishore Aktar' figured. The names of the petitioner and one Makhan Lal Meena were shown as wait listed candidates at Sl. No. 1 & 2 respectively of the waiting list.

4. When the process of appointment of Kishore Aktar was in progress, the candidate was subjected to medical test, which he had failed to clear. As such, no order of appointment was issued in his favour. In the meantime, certain developments took place which had necessitated change in the holding strength of 'Supervisor Store' in the department and, therefore, a decision was taken not to fill up the post of 'Supervisor Store' by direct recruitment but to include the said post in the DPC category i.e. to be filled up by way of promotion. Aggrieved by the said decision, the petitioner had approached this Court by filing the instant writ petition seeking a Writ of Mandamus directing the authorities to issue appointment letter to him for the post of 'Supervisor Store' on the basis of his status as a selected candidate.

5. The respondents have contested the case of the petitioner by filing counter affidavit wherein, it has been *inter alia* mentioned that the projects in respect of which Store Supervisor's posts was in existence had been surrendered/handed over to the National Highway Authority of India (NHAI) and State PWD, as a result of which, the projects were kept under suspended animation. Hence, there was no necessity for filling up the post of Store Supervisor at the relevant point of time.

6. Today, when the matter was taken up for hearing, the learned counsel for both the sides have appraised this Court that by the notification dated 20/06/2023, the petitioner had been promoted as Supervisor Store with effect from 07/12/2022. Mr. Das, however, submits that although the petitioner had subsequently been promoted, yet, his seniority in the rank of 'Supervisor Store' ought to be reckoned with effect from the year 2013 when the advertised post of 'Supervisor Store' had fallen vacant since the petitioner had a legitimate right to be appointed in the said post after the selected candidate had failed to clear the medical test. In support of his above arguments, Mr. Das has relied on a decision of the Hon'ble Supreme Court rendered in the case of **Director, SCTI for Medical Science & Technology and another Vs. M. Pushkaran** reported in **(2008) 1 SCC 448**.

7. Mr. Das has further argued that employees of BRO, such as the petitioner, are required to discharge their duties and function in extremely hostile conditions and, therefore, a lenient approach be adopted by this Court in this matter so as to grant adequate relief to the petitioner.



8. Mr. K.K. Parasar, learned CGC, on the other hand, has argued that once the petitioner has been promoted as 'Supervisor Store', the writ petition has become infructuous. The learned CGC has further argued that there was no obligation on the part of the authorities to offer the appointment to the petitioner after Kishore Aktar had failed to clear the medical test since the petitioner did not have any indefeasible right to be appointed merely because his name figured in the list of wait listed candidate. Mr. Parasar has also submitted that since the project itself was kept under suspended animation as there was change in the circumstances at the ground level, there was no need to appoint any 'Supervisor Store' at that point of time. Hence, there was a policy decision not to fill up the said post by direct recruitment. Under the circumstances, submits Mr. Parasar, there is no right of the petitioner that can be enforced in this writ petition.

9. I have considered the submissions advanced at the Bar and have also gone through the materials available on record.

10. The facts of the case are more or less admitted. It is the admitted position of fact that the name of the petitioner appeared in the list of wait listed candidates. Mr. Kishore Aktar was notified as the selected candidate. However, since the selected candidate had failed to clear the medical test, no appointment letter was issued in his favour. In the meantime, the authorities took a decision not to fill up the post of 'Supervisor Store' for the reasons stated in the affidavit. The question is, can the petitioner as the wait-listed candidate, claim any right to be appointed in the advertised post of Supervisor Store merely because the selected candidate was not appointed. The answer to the said question has to be in the negative.

11. Law is fairly settled that merely because the name of a person appears in the select list, that by itself, would not be a ground for offering him the order of appointment. After considering several previous decisions on the subject, the Supreme Court has laid down in the case of **Director, SCTI for Medical Science & Technology and another (Supra)**, relied upon by Mr. Das, that a person in the select list does not have any legal right to be appointed. In the present case, the petitioner is not even selected candidate but his name appears in the waiting list. Unlike in the present case, there was no policy decision not to fill up the post even temporarily in the decision relied upon by the petitioner's counsel. Therefore, the decision relied upon the learned counsel for the petitioner, in the opinion of



this Court, would not be of any assistance to him, in the facts and circumstances of this case more so, since there is a policy decision of the authorities in this case not to fill up the vacant post of Supervisor Store by direct recruitment but to keep it reserved for being filled up by way of DPC.

12. The next question that would arise for consideration in this case is that the petitioner, having been in the meantime, promoted as Supervisor Store, which promotion he has accepted by him without any objection, whether the relief as prayed for by the petitioner's counsel be granted to him without there being any pleadings or a prayer made to that effect in the writ petition. In other words, can the petitioner seek the benefit of promotion with retrospective effect from the date on which the post of Supervisor Store was advertised in the year 2013 for being filled by way of direct recruitment. The answer to the said question also has to be in the negative.

13. The advertisement notice no. 1/2013 was an open advertisement issued for filling up the post of Supervisor Store, which process had been abandoned by the authorities after a decision was taken not to fill up the post by way of direct recruitment. The petitioner got promoted to the post of Store Supervisor on being recommended by the DPC which process is distinct and different from the process initiated vide advertisement no. 1/2013. Since it has been held that the petitioner did not have any right to claim appointment by virtue of being a wait listed candidate, the petitioner was not entitled to any relief with reference to the recruitment process initiated based on the advertisement notice. If that be so, the question of giving him retrospective seniority as Supervisor Store pursuant to his promotion to the said post, also cannot arise in the eye of law.

14. For the reasons stated herein above, this writ petition is held to be devoid of any merit, the same is accordingly dismissed.

Parties to bear their own costs.

**JUDGE**

*Sukhamay*

**Comparing Assistant**