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

Case No. : WP(C)/3476/2022

HRISHIKESH SHARMA
(UIN- 13041327)
S/O SRI RAM NIWAS SHARMA
R/O VILL- AND P.O. MASAURAH
P.S. PALIGANJ, DIST. PATNA (BIHAR), PIN-804452

VERSUS

THE UNION OF INDIA AND 11 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA, NEW DELHI- 110001

2:THE DIRECTOR GENERAL
SASHASTRA SEEMA BAL
FORCE HEADQUARTERS
EAST BLOCK-V
R.K. PURAM
NEW DELHI-110066

3:THE ASSISTANT DIRECTOR

SASHASTRA SEEMA BAL (SSB)
FORCE HEADQUARTERS
EAST BLOCK-V
R.K. PURAM
NEW DELHI-110066

4:DEPUTY INSPECTOR GENERAL (PERS)
OFFICE OF THE DIRECTORATE GENERAL
SASHASTRA SEEMA BAL
FORCE HEADQUARTERS
EAST BLOCK-V

R.K. PURAM
NEW DELHI-110066

5:THE INSPECTOR GENERAL
FRONTIER HEADQUARTERS
SSB
GUWAHATI NIKITA COMPLEX-345
G.S. ROAD
KHANAPARA
RESEARCH GATE

GUWAHATI-781022

6:SRI BALWAN SINGH
DIG
SECTOR HEADQUARTERS
SSB GANGTOK (SIKKIM).

7:SRI ANIL KUMAR SHARMA

DIG
CI AND JW SCHOOL
GWALDAM (UTTARAKHAND).

8:SRI RAKESH KUMAR

DIG
FORCE HEADQUARTERS
SSB
R.K. PURAM
NEW DELHI

9:SRI DURGA BAHADUR SONAR

DIG
FRONTIER HEADQUARTERS
SSB SILIGURI (WEST BENGAL).

10:SRI MAHESH KUMAR

DIG
FRONTIER HEADQUARTERS
SSB LUCKNOW.

11:SRI SURESH SUBRAMANIAM
DIG
FORCE HEADQUARTERS
SSB

R.K. PURAM
NEW DELHI.

12:SRI DEVIDAS NAMDEO BHOMBE

DIG
FRONTIER HEADQUARTERS
SSB RANIKHET (UTTARAKHAND)

Advocate for the Petitioner : MR. D P BORAH, MR B PAUL,MS. S BORO

Advocate for the Respondent : ASSTT.S.G.I.,

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

28.09.2026

The instant petition under Article 226 of the Constitution of India has been filed with the following reliefs:

"*In the premises aforesaid, it is therefore prayed that Your Lordships may be pleased to issue a Rule calling upon the Respondents to show cause as to why a suitable Writ, Order or Direction should not be issued-*

(i) directing the respondent authorities to consider the case of the Petitioner for promotion to the post of Deputy Inspector General w.e.f. 03.11.2021, the date on which his juniors, i.e. the Respondent Nos. 6 to 11 were promoted along with all consequential benefits by conducting review DPC in the rank of Deputy Commandant, Second-in-Command and Commandant, as per DoPTOM No. 14017/12/88-Estt.(RR) dated 25.03.1996;

and

(ii) directing the Respondents to review the seniority list of the Deputy Inspector General thereby placing the Petitioner above SGri Balwan Singh, DIG who is immediate junior and others as per Seniority list circulated by Force Headquarters, SSB, New Delhi, vide OM No 19/16/2019/SSB/Pers-1/9909-10059 dated 03.08.2020.

Call for the records of the case and on perusal of the records and hearing the parties be pleased to make the Rule absolute;

And be further pleased to-

(i) direct the respondent authorities to consider the case of the Petitioner for promotion to the post of Deputy Inspector General w.e.f. 3.11.2021. the date on which his juniors, i.e. the Respondent Nos. 6 to 11 were promoted along with al consequential benefits by conducting review DPC in the rank of Deputy Commandant Second-in-Command and Commandant, as per DoPT OM No. 14017/12/88-Estt.(RR) dated 25.03.1996; and

(ii)direct the Respondents to review the seniority list of the Deputy Inspector General thereby placing the Petitioner above Sri Balwan Singh, DIG who is immediate junior and others a per Seniority list circulated by Force Headquarters, SSB, New Delhi, vide OM No. 19/16/2019/SSB/Pers-I/9909-10059 dated 03.08.2020;

And/or pass such further or other order(s) as to Your Lordships may deem fit and proper.

-And-

In the interim further be pleased to the Respondent authorities not promote any incumbent to the post of Deputy Inspector General without considering the case of the Petitioner."

2. As per the facts projected, the petitioner was appointed as an Assistant Commandant, SSB, Bongaigaon Group Centre on 01.10.1999. It is, however, the case of the petitioner that though he was placed above in the merit list, persons below him were appointed in the middle of the year 1998 and due to certain delay on the part of the authorities, the appointment of the petitioner was delayed by almost a year. Consequently, the petitioner's promotions to higher grades were also delayed than the junior ranked officers. Presently, the petitioner is holding the post of DIG. It is, in this context of claiming seniority and proper fitment that the instant writ petition has been

filed which would be revealed from the relief extracted above.

3. I have heard Shri B.P. Borah, learned counsel for the petitioner. I have also heard Shri S. Kakati, learned C.G.C., who has filed the affidavit-in-opposition on 28.02.2023.

4. Shri Borah, learned counsel for the petitioner has submitted that there is no dispute about the aspect that the petitioner was placed above in the merit list and due to no fault of his, his initial appointment as Assistant Commandant was delayed by a year. He submits that under those conditions, the petitioner would be entitled to a direction for giving such promotion effect from the date when his juniors were appointed/ promoted and a proper fitment. In this connection, the learned counsel has submitted that a similarly situated officer, who, in fact, was placed below to the petitioner in the same merit list, had approached this Court with a similar grievance in **WP(C)/3786/2017 (*Shri Durga Bahadur Sona Vs. The Union of India & Ors.*)** and the said writ petition was disposed of vide an order dated 26.11.2019. He submits that this Court recognized the legitimate grievance of the petitioner in that case and had passed the following directions:

> "*25. In the present case, as mentioned above, since the delay was not occasioned on account of any fault or contribution or negligence to the petitioner, the petitioner could not have been put to a disadvantageous position vis-a-vis officers who were less meritorious than him in the recruitment process. In fact, because of the intervention of the Court, the authorities did rectify the said discrepancy and placed the petitioner above the private respondents in the seniority list. However, the fact also remains that because of his belated joining in service, he could complete 6 years of regular service after his juniors had completed it. It is to deal with such situation that Next Below Rule has been invoked and applied by the Courts in this country to offer equal opportunity to the seniors as given to the*

juniors during any promotion. This Next Below Rule is in effect a jurisprudential method to effectuate Article 16 of the Constitution, which guarantees equality of opportunity in matters of public employment.

26. Accordingly, this Court by applying the aforesaid Next Below Rule would hold that the petitioner also would be entitled to be considered for promotion when his juniors were promoted. Normally, this Court would have remanded the matter to the concerned authority to hold another review DPC for considering promotion of the petitioner to the post of Deputy Commandant for the vacancy year 2005-2006 for which the said review DPC was held on 25.09.2014. However, considering the fact that about more than 15 years have elapsed since the initial supplementary DPC was held on 09.08.2005 and more than 5 years have elapsed since the subsequent review DPC was also held on 25.09.2014, it would cause undue delay in the processing the promotion of the petitioner, if the matter is remanded to the authorities again."

5. Shri Kakati, learned C.G.C. has submitted that since the appointment of the petitioner was on a subsequent point of time, his subsequent promotion was done at a later period. He, however, fairly submits that from the records, it does not appear that the delay in appointment of the petitioner was attributable to any fault on his part.

6. The contentions advanced at the Bar and the materials placed before this Court have been duly considered.

7. The issue raised in this writ petition is almost identical to the issue raised in the foresaid WP(C)/3786/2017. Shri Borah, learned counsel for the petitionerhas reiterated that the petitioner in that case was, in fact placed below the petitioner in the present case in the same merit list. The directions passed by this Court in the aforesaid WP(C)/3786/2017 have already been extracted above. This Court is in humble

agreement with the said view and endorses the said direction.

8. Since the delay in the initial appointment of the petitioner as Assistant Commandant is not because of any fault on his part, the petitioner cannot be deprived of his seniority and fitment in the posts to which he was subsequently promoted. Therefore, following the directions passed in WP(C)/3786/2017, similar directions are issued to give the seniority and fitment to the petitioner by following the principles of Next Below Rule which was also the direction in the aforesaid case of ***Shri Durga Bahadur Sona*** (*supra*).

9. The writ petition accordingly stands allowed in the manner indicated above.

JUDGE

Comparing Assistant