

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.135 of 2023

Shri Sanjit Kumar Das, S/o Late Sukha Ranjan Das, resident of Rajarbag,
P.O. Rajarbag, Arunachal Sangha Road, Udaipur, Gomati Tripura

.....Petitioner(s)

Versus

1. State of Tripura, represented by Secretary to the Govt. of Tripura in the Finance Department, having its office at Civil Secretariat, New Capital Complex, P.O- Kunjaban, Agartala, District- West Tripura
2. Commissioner of Taxes and Excise, Government of Tripura, having its office at P.N. Complex, Gurkha Basti, P.O- Kunjaban, Agartala, Dist.- West Tripura
3. Secretary to the Government of Tripura in the GA (P&T) Department, having its office at Civil Secretariat, New Capital Complex, P.O- Kunjaban, Agartala, District- West Tripura
4. Tripura Public Service Commission, represented by its Chairman, having its office at Akhaura Road, P.O- Agartala, Dist.- West Tripura
5. Shri Suman Das, S/o- Late Sunil Ch. Das, resident of Town Bordwali, New Gangail Road, P.O. Agartala, West Tripura
6. Shri Manas Das, S/o Shri Jatindra Ch. Das, resident of Kumari Tilla, Kunjaban, P.O. Abhoynagar, Agartala, West Tripura

.....Respondent(s).

For Petitioner(s)	: Mr. T.D. Majumder, Sr. Advocate, Mr. T. Halam, Advocate, Ms. Rimi Debbarma, Advocate.
For Respondent(s)	: Mr. D. Sarma, Addl. G.A., Mr. S. Lodh, Advocate, Mr. Raju Datta, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

10/07/2023

Heard Mr. T.D. Majumder, learned senior counsel assisted by
Mr. T Halam, learned counsel and Ms. Rimi Debbarma, learned counsel for
the petitioner, Mr. D. Sarma, learned Additional Government Advocate for
the respondents-State, Mr. Raju Datta, learned counsel for Tripura Public

Service Commission and Mr. S. Lodh, learned counsel for the private respondents.

2. Petitioner got promoted on 23.12.2021 on ad-hoc basis to the post of TCS Grade-II from the feeder post of Inspector of Taxes which he accepted. Thereafter, on his representation and due consideration, he along with 7(seven) others were reverted to the feeder post to their parent department. The private respondents, who are also Inspector of Taxes and belonging to the same Scheduled Caste category, got promoted to the post of Superintendent of Taxes, the next promotional post, on ad-hoc basis vide notification dated 09.01.2023 which has aggrieved the petitioner to approach this Court.

3. Petitioner seeks consideration of his case for promotion to the post of Superintendent of Taxes, Finance Department by holding review DPC with effect from the date his immediate juniors have been promoted. He also prays for a direction upon the respondents and each of them to step down respondents No.5 and 6 to the post of Inspector of Taxes and he be promoted to the post of Superintendent of Taxes. Petitioner has also prayed that the notification dated 22.06.2021 of the Promotion Policy be called for and be quashed or read down as it tends to deprive the petitioner for consideration of promotion from feeder cadre.

4. Respondents-State, TPSC and private respondents, all have filed their Counter Affidavit. Petitioner has also filed his Rejoinder Affidavit. It is not disputed by the petitioner that promotion to TCS Grade-II from the

feeder post of Inspector of Taxes is in the channel of promotion apart from the promotional post of Superintendent of Taxes also. It is also not in dispute that petitioner belongs to the same Scheduled Caste category as private respondents and ranks senior to the respondents No.5 and 6 in the seniority list dated 26.03.2021. The main grievance of the petitioner is that after having been reverted to the post of Inspector of Taxes by a notification dated 30.09.2022 [Annexure-6] of the General Administration (Personnel & Training) Department, Government of Tripura [GA (P&T) Department, *for short*] along with 7(seven) others on their own representation to the substantive post, petitioner does not lose a right to be considered for next promotional post in the parent department i.e. in Superintendent of Taxes. By granting promotion to the private respondents, he has been arbitrarily discriminated. It is further submitted that the guidelines contained in the Promotion Policy dated 22.06.2021 [Annexure-5] has to be read down as being in teeth of the recruitment rules. As such, by reverting the respondents on the principle of last come first go, petitioner should be promoted on the promotional post of Superintendent of Taxes, as he does not forfeit the claim for being considered for promotion to the next promotional post under the Promotion Policy of 2021.

5. It is the case of the respondents-State that the promotion to the post of TCS Grade-II on ad-hoc basis by notification dated 23.12.2021 was as per the Promotion Policy dated 22.06.2021. Petitioner joined the promotional post on being released from his parent department and later submitted representation to revert him back to the parent department to the

substantive post owing to various reasons. The department considered the representation of the petitioner along with 7(seven) others and vide notification dated 30.09.2022, reverted him after serving 9(nine) months on the promoted post of TCS Grade-II. Respondents rely upon Clause 8(iv) of the Promotion Policy, 2021 framed by the GA (P&T) Department on 22.06.2021 which *inter alia* reads as under :

“8. (iv) Benefit of the ad-hoc appointment on promotion shall be available to accommodate a candidate to the immediate next higher promotion post/grade only and such benefit shall not be considered to accommodate the said candidate to multiple higher posts/grade with prospective effect.”

Since petitioner has already availed the benefit of ad-hoc promotion as per Promotion Policy, 2021, there is no scope for promotion on ad-hoc basis for second time. Promotions on ad-hoc basis are subject to final outcome of the pending S.L.P and there appears no loss of inter se seniority for not allowing such reconsideration. It is also contended that petitioner got promoted to the post of TCS Grade-II from feeder post on ad-hoc basis as one time measure on probation, subject to the final outcome of the S.L.P. It is also their case that petitioner cannot avail multiple promotions in view of Clause 8(iv) of the Promotion Policy, 2021.

6. Mr. D. Sarma, learned Additional Government Advocate for the respondents-State, submits that the reversion has been made as per Clause (4) of Rule 21 of TCS Rules, 1967 and as per FR 9 and 11(2). All ad-hoc promotions in various departments were made as per guidelines framed by the Promotion Policy 2021 and DPC conducted in all departments. The first

promotion was allowed to the writ petitioner in TCS Grade-II in GA (P&T) Department, i.e. to the higher post. Therefore, he cannot claim second promotion to the higher post; even if the DPC is conducted in the parent department. Respondents-State finally, at Para 17 of their Counter Affidavit says that further promotion is made almost in every grade at every department following the ad-hoc Promotion Policy. Deviation from any of the conditions of the Policy may have chain effect if the reverted employees are further promoted by demotion of an already promoted employee as it may result in administrative chaos. Therefore, the writ petition is without any merit and deserves to be dismissed.

7. Mr. Raju Datta, learned counsel for the Tripura Public Service Commission, has also filed a Counter Affidavit and categorically stated at Para 5 that while considering the cases of the private respondents for promotion to the post of Superintendent of Taxes, the advice of GA (P&T) Department was taken. The GA (P&T) Department, however, came out with a clear advice that after the petitioner has been reverted on his own request in terms of the Promotion Policy, 2021, his case cannot be considered for promotion for second time on ad-hoc basis to the post of Superintendent of Taxes. Such promotions are ad-hoc in nature and subject to final outcome of pending S.L.P and there appears to be no loss of seniority for not allowing such reconsideration. Therefore, petitioner's case does not have any merit.

8. Mr. S. Lodh, learned counsel for the private respondents No.5 and 6, also submits that the private respondents were in line of promotion to the post of TCS Grade-II when the petitioner was considered and promoted

on 23.12.2021. Had the petitioner refused to accept the promoted post of TCS Grade-II, respondents No.5 at least could have been considered for promotion to that post. Petitioner accepted the post, continued in that post for 9(nine) months and then was reverted on his own request in terms of the relevant service rules and fundamental rules. Now, in view of the Promotion Policy, 2021, the respondents No.5 and 6 have thereafter been promoted as Superintendent of Taxes, therefore petitioner again cannot claim to be considered for promotion to the post of Superintendent of Taxes thereby excluding the chance of promotion of the respondents No.5 and 6. He also states that though Respondents No.5 and 6 are admittedly junior to the petitioner as per the seniority list but the petitioner cannot claim multiple promotion in teeth of the Promotion Policy 2021. The principle of approbate and reprobate would apply in such case. It is further submitted that the Promotion Policy of 2021 is being applied uniformly in view of the pendency of the S.L.P and any deviation therefor may result in administrative chaos as is also the case of the respondent department.

9. Mr. T.D. Majumder, learned senior counsel for the petitioner, has drawn the attention of this Court to the notification dated 10.05.2023 [Annexure-2] by which one Shyamal Chandra Das, Superintendent of Taxes who was appointed to the post of TCS Grade-II on ad-hoc basis vide notification dated 23.12.2021 has been reverted to his substantive post of Superintendent of Taxes on his own request. It is further pointed out that two other persons – Sri Manish Kumar Deb (promoted against UR quota) and Sri Shantanu Deb Barman (promoted against ST Supernumerary post) to the

post of Superintendent of Taxes on ad-hoc basis along with 10(ten) others vide notification dated 09.01.2023, have also been reverted to the next lower grade from which they were earlier promoted in view of FR 9 of the F.R.S.R. to accommodate Sri Shyamal Chandra Das in the grade of Superintendent of Taxes. As such, precedence are there for accommodation of a promoted employee to the equivalent promotional post in the parent department i.e. Superintendent of Taxes. Respondents-State and TPSC, therefore, should not be allowed to make an exception in the case of the petitioner.

10. Mr. D. Sarma, learned Additional Government Advocate for the respondents-State, categorically rebuts the aforesaid contention based on the notification dated 10.05.2023 and submits that the reversion of one Sri Shyamal Chandra Das from TCS Grade-II has not been to the lower post but to the equivalent post of Superintendent of Taxes on his representation and as such, the two persons – Sri Manish Kumar Deb and Sri Shantanu Deb Barman have been reverted to their substantive post of Inspector of Taxes as per FR 9 of the F.R.S.R. It is not a case that Sri Shyamal Chandra Das got reverted to his substantive post of Inspector of Taxes and then has been allowed promotion to the post of Superintendent of Taxes by reverting the earlier promoted persons. As such, parity cannot be drawn on that instance.

11. I have considered the submission of learned counsel for the parties, taken note of the relevant materials placed from the records by them including the order of promotion of the petitioner dated 23.12.2021, the notification of his reversion dated 30.09.2022, notification of promotion dated 09.01.2023 of the private respondents, the Promotion Policy, 2021

notified on 22.06.2021 and also the notification dated 10.05.2023 [Annexure-2] apart from the other documents placed by the parties. Here is a case where the petitioner, after having accepted joining on a promoted post in the normal channel of promotion from the feeder substantive post of Inspector of Taxes in TCS Grade-II sought reversion during his period of probation on his own application. That request was considered along with 7(seven) other such applicants and petitioner was reverted after 9(nine) months of serving on the promoted post of TCS Grade-II. These ad-hoc promotions are being done as per Promotion Policy, 2021 notified on 22.06.2021 in view of the pendency of the S.L.P on the larger issue and the interim order granted by the Apex Court to carry on ad-hoc promotions to the promotional posts by the respective State Governments. The Promotion Policy, 2021, issued by GA (P&T) Department, has been applied uniformly in all such cases. In fact, while considering the promotion of the private respondents, the TPSC sought opinion from the GA (P&T) Department as to whether an incumbent reverted to his parent post after accepting promotion on the higher post on ad-hoc basis could still be considered for promotion to the next higher post in an independent exercise along with other eligible persons. GA (P&T) Department has categorically opined against it and also taken the plea that it would result in administrative chaos. The petitioner has challenged the Promotion Policy, 2021. However, the Promotion Policy, 2021 has been framed in view of the peculiar situation operating in the departments of the State Government since regular promotions were not being granted in view of the pendency of the S.L.P before the Apex Court. Therefore, ad-hoc promotions are being granted under certain guidelines and

conditions. One of the guidelines at Clause 8(iv) of the Promotion Policy stipulates that a person cannot be allowed to avail multiple promotions after grant of ad-hoc promotion and that too in the present case when the petitioner has duly accepted the promotion to the next higher post of TCS Grade-II and served on that post for almost 9(nine) months. The plea, that the Promotion Policy, 2021 cannot operate in teeth of the recruitment rules, does not cut ice as apparently the Promotion Policy has been issued by the GA (P&T) Department taking into consideration the interim order passed by the Apex Court on 27.07.2015 and that promotion in the services of the State Government had remained withheld since 01.04.2017 whereby quite a large number of posts to be filled up on promotion had to remain vacant thereby causing hindrance in the day-to-day discharge of administration of the State Government to the detriment of public interest. Therefore, in order to augment efficiency of State administration, the State Government decided to fill up posts lying vacant on ad-hoc basis pending determination of the appeal *sub judice* before the Apex Court. It also considered that promoting eligible State Government employees on ad-hoc basis by following the process contemplated under the different recruitment rules regulating promotion criteria and procedures for such posts would be in the larger interest of the State administration and the employees.

12. Following the above policy, the DPC identifies employees eligible for promotion to a particular post against the available vacancies. After the exercise, DPC considers another exercise taking into account the procedure as stated in Rule 9(2) of the Tripura SC & ST Reservation Rules,

1992 and in such exercise, if any candidate is found fit, then he is recommended for ad-hoc promotion by creating supernumerary post(s) also.

Para 8 of the Promotion Policy, 2021 prescribes certain guidelines which are relevant for appreciation of the issue at hand and are extracted hereunder :

“8. It has also been decided by the Government to allow such appointment on ad-hoc promotion as one time measure, following the below mentioned conditions:-

(i) Appointment on Promotions may be allowed purely on ad-hoc basis subject to final outcome of the SLP pending before the Hon’ble Supreme Court of India.

(ii) Ad-hoc appointment on promotion shall be considered keeping in view of the latest available seniority list of the feeder post/grade subject to condition that he/she is otherwise suitable & eligible for promotion.

(iii) No inter-se seniority list shall be determined/published in respect of these ad-hoc promotions.

(iv) Benefit of the ad-hoc appointment on promotion shall be available to accommodate a candidate to the immediate next higher promotion post/grade only and such benefit shall not be considered to accommodate the said candidate to multiple higher posts/grade with prospective effect.

(v) To create supernumerary posts, administrative Department shall assess the number of posts to be created to materialize the promotion as per above procedure and inform the total number of posts so determined to Finance Department. No, further concurrence of Finance Department is required.

(vi) This ad-hoc appointment on promotion shall not be treated as regular appointment on promotion.

(vii) The ad-hoc appointment on promotion as per guidelines illustrated above shall be started in the highest grade of a cadre/service first. Due to such promotion, the resultant vacancies shall be added with the vacancies in the lower grade, and to be filled up subsequently.

(viii) Regular DPC may be held based on the existing seniority list. However, while issuing the orders it should be stipulated that these promotions are provisional and subject to the final outcome of the S.L.P. pending before the Hon’ble Supreme Court of India. Subsequently, when the directions become available, a review DPC may be held and the necessary adjustments be made in the promotions of officers based upon the revised seniority list. In case any of the officers/candidate appointed on ad-hoc promotion do not figure in the list approved by the review DPC they may be reverted to the posts held by them earlier.”

It clearly stipulates that benefit of ad-hoc promotion on appointment by promotion shall be available to accommodate a candidate to the immediate next higher promotional post/grade only and such benefit shall not be

considered to accommodate the said candidate to multiple higher posts/grades with prospective effect. As per Para 8 Clause (iii), no inter-se seniority shall be determined/published in respect of these ad-hoc promotions. It is true that when the petitioner was promoted in TCS Grade-II, no inter-se seniority amongst the petitioner and private respondents were disturbed. Once having accepted the promotion, petitioner has been reverted on his own request. Petitioner, therefore, cannot be allowed to approbate and reprobate in such circumstances and then question the Promotion Policy, 2021 under which only he had promoted to the post of TCS Grade-II.

13. From perusal of the notification dated 10.05.2023, it appears that it is not a case of reversion of one Sri Shyamal Chandra Das who was promoted to the post of TCS Grade-II on ad-hoc basis to his substantive feeder post of Inspector of Taxes. He has only been reverted to the parent department on the equivalent post of Superintendent of Taxes on his request and to accommodate him, two persons have been reverted from different categories to the substantive post of Inspector of Taxes as per FR 9 of F.R.S.R. As such, the case of the petitioner cannot stand on the same footing as that of Sri Shyamal Chandra Das covered under notification dated 10.05.2023. It cannot be said that the Promotion Policy, 2021 issued purportedly in exercise of the powers under Article 162 of the Constitution of India are in teeth of the recruitment rules in fact, it intends to fill up the gaps in matters of promotions on ad-hoc basis in the peculiar circumstances when the matter is sub judice before the Apex Court and vide interim order dated 27.07.2015, the State parties have been allowed to conduct promotion

exercise to fill up large number of posts which had remained vacant affecting discharge of administration of the State Government to the detriment of public interest. If the Promotion Policy, 2021 has been applied uniformly and without any discrimination, it cannot be said that it operates arbitrarily or discriminatively to the disadvantage of one or the other employee and is in teeth of the recruitment rules.

14. As such, this Court does not find any merit in the writ petition, which is accordingly dismissed. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

