

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.164 of 2023

Shri Narayan Chakraborty

..... Petitioner(s)

V E R S U S

State of Tripura and others

..... Respondent(s)

For Petitioner(s) : Mr. T.D. Majumder, Senior Advocate.
Ms. Rimi Debbarma, Advocate.

For Respondent(s) : Mr. D. Bhattacharya, GA.
Ms. Sibangi Purkayastha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
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27/09/2023

Heard Mr. T.D. Majumder, learned senior advocate appearing for the petitioner and Mr. D. Bhattacharya, learned Government Advocate appearing for the State.

Petitioner has two grievances. One that he has not been promoted to the post of Handloom Development Officer whereas four juniors to him have been promoted vide notification dated 16.01.2023. Petitioner has joined as Inspector (Handloom) on 30.09.1989 under the Directorate of Industries of Handloom, Handicrafts and Sericulture, Government of Tripura. Petitioner has also prayed for directing the respondents to provide him 3rd ACP which was due on completion of 25 years of service as on 2014 with interest on the consequential benefits which may accrue to him.

Petitioner was facing a departmental proceeding since 2012 which culminated in a minor punishment withholding of one increment without cumulative effect vide order dated 08.11.2019 (Annexure-5) issued by the Directorate of Handloom, Handicrafts & Sericulture. Petitioner's case was

considered by the Departmental Promotion Committee. Out of the five years of ACR which are to be reckoned, performance of the petitioner was recorded as average for the period 2016-17, 2017-18 and 2018-19 whereas for the subsequent two years i.e. 2019-20 and 2020-21, his ACR was recorded as good. Since his three consecutive ACRs were found to be average, he was found unfit for promotion as per the DPC minutes. These average ACRs were not communicated to the petitioner.

Mr. T.D. Majumder, learned senior counsel for the petitioner submits that in view of the decisions rendered by the Apex Court in *Abhijit Ghosh Dastidar vs. Union of India and others* reported in (2009) 16 SCC 146 and also a recent decision rendered in the case of *Union of India and others vs. G.R. Meghwal* reported in 2022 SCC Online SC 1291, the uncommunicated adverse or below benchmark ACRs could not have been taken into consideration by the DPC for the purposes of recommending the case of the employee/petitioner for promotion. In such situation, the Apex Court has remanded the matter to the Departmental Promotion Committee/Screening Committee to reassess the suitability of the applicant by excluding the adverse ACRs for the relevant years which have remained uncommunicated.

Learned counsel for the petitioner further submits that since the petitioner was facing the departmental proceeding in the year 2014, his claim for 3rd ACPS on completion of 25 years of service may not have been considered but after the period of minor punishment is over, the respondents ought to have considered and granted him 3rd ACPS from the due date. During pendency of the writ petition, however, he has been granted the benefit of 3rd MACP vide Memo dated 10.07.2023 (Annexure-1 to the rejoinder affidavit) w.e.f. 30.08.2014. He submits that petitioner ought to have been granted the 3rd

ACP under Rule 10 of the Tripura State Civil Services (Revised Pay) Rules, 2009 which provides for up-gradation of grade pay also. Petitioner has, thus been a loser on that count. Therefore, both the issues need to be remitted back to the competent authority to consider it afresh and as per the decision of the review DPC.

Learned counsel for the State respondents and the TPSC have filed counter affidavit. It is the common stand of the official respondents that the DPC in its meeting held on 09.01.2023 examined the case of the petitioner and recorded its opinion in the following manner:

“As per information made available to DPC, disciplinary proceedings was contemplated against Sri Narayan Chakraborty, Inspector (HL) of SL.No.1 and the Commissioner of Departmental Inquiries disposed off the case with one minor penalty during last consecutive 5 years. There was doubt in his integrity and his ACRs grading is “Average”. So, Sri Chakraborty is treated as “Un-fit” for promotion.”

He submitted that since the petitioner was facing departmental proceeding, therefore, his case for grant of 3rd ACP also could not have been considered at the relevant point of time on completion of 25 years of service. However, learned counsel for the respondent State is not in a position to dispute the contention of the petitioner that the adverse ACRs of the petitioner remained uncommunicated.

If that be so, upon consideration of the rival submission of the parties and the relevant pleadings taken note of in the foregoing paragraphs, this Court is of the opinion that the matter requires to be remitted to the competent authority in the light of the decisions rendered by the Apex Court in the case of *Abhijit Ghosh Dastidar (Supra)* and also *G.R. Meghwal (Supra)*. The competent authority would constitute a review DPC and place the case of the petitioner with the relevant remarks and notings so that his case can be

reconsidered on the basis of the remaining ACRs other than those adverse ACRs for the relevant years 2016-17, 2017-18, 2018-19 which remained uncommunicated. The competent authority would also examine the plea of the petitioner as regards the grant of 3rd ACP from the date on which he completed 25 years of service in accordance with law. Let it be made clear that this Court has not made any observations as to whether the petitioner is fit to be granted promotion which would depend upon the decision to be taken by the review DPC or 3rd ACP. Let such exercise be completed within a period of 16(sixteen) weeks from the date of receipt of copy of this order.

The writ petition is disposed of. Pending application(s), if any, shall also stand disposed of.

(APARESH KUMAR SINGH), CJ

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