

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.233/2022

1. Sri Bikash Chandra Das, son of Sri Gopendra Chandra Das, resident of village North Padmabil, P.O.-Padmabil, P.S.-Panisagar, Dharmanagar, District-North Tripura, aged about 55 years.
2. Sri Shyamal Malakar, son of Sri Jogendra Malakar, resident of village-Pecharthal, P.O.-Pecharthal, P.S.-Kanchanpur, District-North Tripura, aged about 41 years.
3. Sri Sujit Das, son of Sri Akhsoy Kr. Das, resident of village-Samatal Padmabil, P.O.-Samatal Padmabil, P.S.-Khowai, District-West Tripura, aged about-49 years.
4. Sri Pradip Kumar Sarkar, Son of Sri Sachindra Kumar Sarkar, resident of village-Taxapara, P.O.-Taxapara, P.S.-Melaghar, District-Sepahijala, aged about 54 years.
5. Sri Subrata Jamatia, son of Sri Kripa Sindhu Jamatia, resident of village-Atharabola, P.O.-Manikya, P.S.-Radhakishorepur, District-Gomati Tripura, aged about 41 years.
6. Sri Prakash Debbarma, son of Sri Prafulla Debbarma, resident of village-Naliabari, P.O.-Champahour, P.S.-Khowai, District-Khowai, aged about 43 years.
7. Sri Nikhil Chandra Das, son of Sri Chitta Ranjan Das, resident of village-Ratanpur, P.O.-Ratanpur, P.S.-Belonia, District-South Tripura, aged about 55 years.
8. Sri Swapan Mohan Tripura, son of Jarmasingh Tripura, resident of village-Haria Mani Roaja Para (Natin Manu), P.O.-Chawmanu, P.S.-Longtharai Valley, District-Dhalai, aged about-39 years.
9. Sri Jayanta Tripura, son of Sri Thapan Tripura, resident of village-West Patichari, P.O.-P.P. Colony, P.S.-Radhakishorepur, District-Gomati Tripura, aged about 45 years.
10. Sri Dilip Debbarma, son of Sri Jogesh Chandra Debbarma, resident of village-Chirakuti, P.O.-Kirtan Tali, P.S.-Kailasahar, District-North Tripura, aged about 44 years.
11. Sri Mithan Das, son of Sri Hari Bandhu Das, resident of village-Kobra Khamar, P.O.-Durganagar, P.S.-Ranir Bazar, District-West Tripura, aged about 43 years.
12. Sri Jyotish Debbarma, son of Sri Debendra Debbarma, resident of village-Rabia Sardar Para, P.O.-Noabari, P.S.-Jirania, District-West Tripura, aged about 42 years.

13. Sri Mithun Das, son of Sri Matilal Das, resident of village-Nabadiganta Last near Dr. B.R Ambedkar High School, P.S.-East Agartala, District-West Tripura, aged about 39 years.

14. Sri Palash Chakma, Son of Sri Rupendra Chakma, resident of village-Pecharthal, P.O.-Pecharthal, P.S.-Kanchanpur, District-North Tripura, aged about 47 years.

15. Sri Thakurdhan Kalai, son of Sri Darasan Kalai, resident of village-Taichan Para, P.O.-Ampinmagar, P.S.-Amarpur, District-Gomati Tripura, aged about 42 years.

16. Sri Suman Das, son of Late Gopal Chandra Das, resident of Village-Ward No.1, P.O.-Madhuban, P.S.-Dukli, District-West Tripura, aged about-45 years.

17. Sri Lari Mohan Tripura, son of Sri Prabin Kumar Tripura, resident of village-Maira Satchand, P.O.-Satchand, District-South Tripura, aged about 48 years.

.....Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Department of Forest, Government of Tripura, having his office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura, Pin-799006.

2. The Commissioner & Secretary, Department of Forest, Government of Tripura, having his office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura, Pin-799006.

3. The Principal Chief Conservator of Forests & HOFF, Government of Tripura, having his office at Secretariat Building, P.O.-Kunjaban, P.S.-New Capital Complex, District-West Tripura, Pin-799006.

4. Sri Sekhar Lodh, Son of Late Pramode Chandra Lodh, resident of village-Khilpara P.O.-Khilpara, P.S.-Radha Kishorepur, District-Gomati Tripura.

5. Sri Amiya Sutradhar, son of Sri Akhil Sutradhar, resident of village-Jalbazar, P.O.-Jalbazar, P.S.-Pani Sagar, District-North Tripura.

6. Sri Shibu Lodh, son of Sri Bhusan Chandra Lodh, resident of village-Dolbari, P.O.-Dolbari, P.S.-Sabroom, District-South Tripura.

7. Sri Jhumur Chanda, son of Sri Nripendra Chanda, resident of village-Chandipur, P.O.-Chandipur, P.S.-Kailasahar, District-Unakoti Tripura.

8. Sri Hemanta Debnath, son of Sri Ram Chandra Debnath, resident of village-Santipur, P.O.-Santipur, P.S.-Pecharthal, District-Unakoti Tripura.

9. Sri Nibash Deb, son of Sri Nripendra Deb. resident of village-Ompinagar, P.O.-Ompinagar, P.S.-Amarpur, District-Gomati Tripura.

10. Sri Sukanta Sarkar, Son of Sri Kumode Sarkar, resident of village-Baikhora, P.O.-Baikhora, P.S.-Belonia, District-South Tripura.

.....Respondent(s).

For Petitioner(s)	: Mr. Somik Deb, Sr. Advocate, Mrs. Riya Chakraborty, Advocate.
For Respondent(s)	: Mr. Debalay Bhattacharya, G.A., Mr. Soumyadeep Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **09th August, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Somik Deb, learned senior counsel assisted by Mrs. Riya Chakraborty, learned counsel appearing for the petitioners, and Mr. Debalay Bhattacharya, learned Government Advocate assisted by Mr. Soumyadeep Saha, learned counsel appearing for the respondents-State.

2. The petitioners have been working on the post of Forester and belong to Scheduled Caste (SC) and Scheduled Tribe (ST) category. They are aggrieved by the promotion order dated 01.01.2022 (Annexure-3 to the writ petition) whereby ad-hoc promotions have been granted to certain persons who are junior to them as per a seniority list dated 08.03.2016 annexed by them (Annexure-1 to the writ petition). Earlier during course of the proceedings, taking note of the cryptic nature of the counter affidavit without enclosing any of the documents referred to therein, by order dated 23.06.2023 the State-respondents were allowed to file a comprehensive counter affidavit. The same has been filed thereafter with copy to the other side. No rejoinder thereto has been filed. The State-respondents in their second counter affidavit have dealt with the specific contention of the petitioners in the following manner:

"6. That, with respect to **paragraph-2.1**, I say that, it is revealed that every petitioner concern have claimed seniority serial number arbitrarily, since the last seniority list of Forester was published vide Memorandum No.F.2(190)/For/Estt-2012/39333-70 dated 08.03.2016.

A copy of seniority list of Forester is annexed hereto and Marked as **Annexure-R/2**.

But the petitioners enclosed an unauthenticated seniority list along with the Memo. dated 08.03.2016 (Annexure-1). As per the original seniority list, which is placed at Annex-B, it is seen that the seniority of Sri Bikash Ch. Das is 93 whereas, the seniority list provided by the petitioners, it is seen that his seniority is 41. Thus, there is doubt about the authenticity/ genuineness of the seniority list that was provided by the petitioners. Moreover, the fact that the seniority list submitted vide petitioner is forged one.

7. That, with respect to **paragraphs-2.2, 2.2.1 to 2.2.vi, & 2.3, 3, 3.1, 3.3**, I say that, question does not arise since the Office Order No.F.2(22)/Estt./For-2021/ADPC/FR/35378-497 dated 01.01.2022 was in connection with the Promotion Policy, 2021.

8. That, with respect to **paragraph-2.4**, I say that, on receipt of their representations, the same was processed in a file and send to G.A.(P&T) Department with a request to scrutinize the cases of promotion to the post of Forest Ranger under the light of 'Promotion Policy,21'. Notified vide No.F.2(24)-GA(P&T)/2021 dated 22.06.2021 of G.A.(P&T) Department, Government of Tripura and offer their views for doing the needful in respect of representations. Related portion of views of G.A.(P&T) Department is re-produced below:

"The matter has carefully examined in the GA(P&T) Department.

The Administrative Department is advised that if any candidate does not deprived of promotion in between two exercises i.e., para-6 & 7 of the Promotion Policy, 2021 dated, 22.06.2021, in that case their case will not come.---

A copy of the Note sheet is enclosed herewith and Marked as **Annexure-R/3**.

Further it is to mention that, there were a total of 34 nos. of post vacant for promotion from Forester to Forest Ranger where, for UR there were 18 posts, for ST-11, SC-5. As per rule 7 of promotion policy 2021, the exercise was conducted where 3 nos. SC category candidate were in the zone of consideration as per seniority & merit and therefore 3 nos. Supernumerary post were created as 8 nos. of SC candidates were also considered for promotion. The last SC candidate considered for promotion was Sri Dhruba Das (Seniority-92). Since Sri Bikash Das was at seniority 93, he could not be considered for promotion even after creation of supernumerary post (3 nos). Thus, he

is not eligible for promotion as per rule 6 & 7 of ad-hoc promotion policy.

Copy of promotion policy as well as DPC minutes is annexed hereto and Marked as **Annexure-R/4 & R/5** respectively.

9. That, with respect to **paragraph-2.6, 3.4 to 3.5**, I say that, there is no comments about Rule 9(2) of the Tripura Scheduled Castes & Scheduled Tribes Reservation Rules, 1992. The Tripura Scheduled Castes and Scheduled Tribes Reservation Rules 1992 para 9(2) stated here that, the Selection Committee/ Selection Board/Departmental Promotion Committee will consider the suitability of the candidates, the details of whom are furnished by the appointing authority and recommend a combined list of all categories of candidates found suitable for promotion in order of their merit which shall be the determining factor about the inter seniority of the candidates after promotion.

Provided that a Scheduled Caste or Scheduled Tribe candidates who occupies on merit or seniority-cum-fitness etc. an unreserved point of the 100 point roster in the combined list, shall not be shown against any reserved point.

Provided further that at the time of recommending candidates for promotion to any post, the names against unreserved (Vacant post) shall first be recommended in order of their merit or seniority or seniority-cum-fitness de, as the case may be and then the names against reserved (vacant posts) shall be recommended.

The Office Order No.F.2(22)/Estt./For-2021/ ADPC/ FR/ 35378-497 dated 01.01.2022 was issued in connection with the Promotion Policy, 2021.

10. That, with respect to paragraph-3.2, 4 to 6, I say that, There is no comment about Clause 11 and 12 of the Schedule appended to the Notification, dated 27/07/2021 regarding Recruitment Rules for the post of Forest Ranger under the Forest Department, Government of Tripura.

It may be added here that there is no post namely "Forest Officer".

3. During course of submission, Mr. Somik Deb, learned senior counsel appearing for the petitioners, has relied upon the seniority list annexed by the respondents where the petitioners' positions are at Sl. Nos.93, 94, 96, 99, 100, 101, 102, 104 to 110, and 112 to 114. The seniority list contains the status of individual incumbents, the date of birth, the date of first entry in

Government service, date of last promotion, date of appointment to the present post and whether confirmed in service or not. As per the Column-4 containing the status of individual incumbents of the cadre, all these petitioners belong to the SC/ST category. As per the stand of the respondents, the seniority list annexed by the petitioners is not correct. The promotional exercise was undertaken by the DPC in terms of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 (*hereinafter referred to as "the Reservation Act, 1991"*) and the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 (*hereinafter referred to as "the Reservation Rules, 1992"*), specifically Rule 9(2) of the Reservation Rules, 1992 and also the promotion policy dated 22.06.2021 against 34 nos. of posts with the following breakup:

SC-05, ST-11 and UR-18 posts.

4. According to the respondents, as per Rule 7 of Promotion Policy, 2021, the exercise was conducted where 3(three) number of SC category candidates in the zone of consideration as per seniority and merit were there and for them 3(three) nos. of supernumerary posts were created. As such, $(5 + 3) = 8$ numbers of SC candidates were promoted. The last SC candidate considered for promotion was Sri Dhruba Das (Seniority number-92). The first petitioner herein Sri Bikash Das is at Sl. No.93 in the seniority list and, therefore, could not be promoted even after creation of 3 (three) supernumerary posts.

5. Mr. Debalay Bhattacharya, learned Government Advocate assisted by Mr. Soumyadeep Saha, learned counsel appearing for the respondents-State,

submits that the DPC minutes at pages-126 to 133 would show that eligible candidates who had completed 5(five) years of service in the cadre of Forester and had also passed the final examination at Forest Training Institute, Hatipara, Gandhigram, Agartala were considered and promoted against the quota, i.e. SC, ST or UR, of available vacant posts. It is the case of the respondents that petitioners did not come into the zone of consideration as per the seniority list against the available vacant posts of SC/ST category and as such, in this promotional exercise they could not be promoted.

6. Mr. Somik Deb, learned senior counsel appearing for the petitioners, has in rebuttal drawn the attention of this Court to Rule 9(2) of the Reservation Rules, 1992 which is extracted hereunder:

"9. Recruitment by Promotion:

xxx xxx xxx

(2) The Selection Committee/Selection Board/ Departmental Promotion Committee will consider the suitability of the candidates, the details of whom are furnished by the appointing authority and recommend a combined list of all categories of candidates found suitable for promotion in order of their merit which shall be the determining factor about the inter se seniority of the candidates after promotion.

Provided that a Scheduled Caste or Scheduled Tribe candidate who occupies on merit or seniority or seniority-cum-fitness etc. an unreserved point of the 100 –point roster in the combined list, shall not be shown against any reserved point.

Provided further that at the time of recommending candidates for promotion to any post, the names against unreserved vacant posts shall first be recommended in order of their merit or seniority or seniority-cum-fitness etc., as the

case may be, and then the names against reserved vacant posts shall be recommended."

According to him, the first proviso to Rule 9(2) mandates that an SC or ST candidate who occupies on merit or seniority or seniority-cum-fitness etc. an unreserved point of the 100 point roster in the combined list shall not be shown against any reserved point. Taking a cue from this proviso, the attention of the Court has been drawn to the seniority list annexed by the respondents wherein, according to him, respondents who are of the UR category and at Sl. Nos.116, 132, 133, 134, 135, 136 and 138, have been promoted ahead of the petitioners. Since the petitioners occupy a position higher in the seniority list, the available vacancies should have been filled up in order of seniority by these petitioners in seriatim. Therefore, the order of promotion suffers from illegality since the statutory rules could not have been superseded by the promotion policy framed by the Executive vide notification dated 22.06.2021 in exercise of the powers under Article 162 of the Constitution of India.

7. I have considered the submissions of learned counsel for the parties, taken note of the relevant material facts and documents placed on the record. The plea of the petitioners is based upon an interpretation of Rule 9(2) of the Reservation Rules, 1992 and its proviso. A plain reading of the instant rules along with the first proviso does give to an interpretation that in case a Scheduled Caste or Scheduled Tribe candidate occupies an unreserved point on the basis of his merit or seniority or seniority-cum-fitness in the 100 point roster in the combined list, he shall not be shown against any reserved point. As per the seniority list enclosed by the respondents and also relied upon by the

petitioners, none of the petitioners occupies an unreserved post as all of them starting from Sl. No.93 till 114 have been occupying the posts reserved for SC or ST category in the seniority list. If the contention advanced by the petitioners is accepted, then in any such promotional exercise against vacant post to the higher cadre, for example the Forest Ranger in Group-C, Non-Gazetted post in this case, the availability of breakup of vacancies for reserved category, i.e. SC, ST and unreserved category would have no meaning as the promotion would have to be given to the incumbents against all the vacant posts irrespective of the reservation by following the seniority list alone. This could lead to incongruous results.

8. On a plain reading of the relevant rules with the promotion policy of 2021, therefore, it does not appear that the policy of 2021 in any manner supersedes the application of the statutory rules in this regard. In the facts of the present case, promotion has been granted to SC and ST candidates against the 5(five) and 11(eleven) available vacancies respectively in their quota and 3(three) supernumerary posts have been created as 3(three) SC category candidates were in the zone of promotion as per their seniority and merit. The last person promoted from the SC category is at Sl. No.92 whereas the first petitioner who is the senior-most amongst the petitioners occupies the position at Sl. No.93. As such, in the impugned promotional exercise, the petitioners cannot allege any hostile discrimination or violation of the statutory rules and the promotion policy of 2021.

9. As such, this Court does not find any merit in the writ petition. It is accordingly dismissed.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

PULAK BANIK

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