

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.222 of 2023

1. Uma Sankar Modak, Son of - Late Nani Gopal Modak, Resident of -
Khayerpur, Near Assam Agartala Road, Agartala, West Tripura, Pin - 799008.

-----Petitioner(s)

VS

1. The State of Tripura, (to be represented by) the Secretary, Home (Fire and
Emergency Services) Department, Government of Tripura, New Secretariat
Complex, Kunjaban, Agartala, West Tripura, Pin - 799010.

2. The Secretary, General Administration (Personnel and Training) Department,
Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West
Tripura, Pin - 799010

3. The Director, Fire and Emergency Services, Govt. of Tripura, Directorate of
Fire and Emergency Services, Fire Brigade Chowmuhani, Agartala, West
Tripura, Pin - 799001.

4. The Joint Director, Fire and Emergency Services, Govt. of Tripura,
Directorate of Fire and Emergency Services, Fire Brigade Chowmuhani,
Agartala, West Tripura, Pin - 799001.

5. Rupak Ghosh, Junior Operator(Control Room), C/o - Udaipur Fire Station,
Office of the Divisional Fire Officer, Gomati Division, Udaipur Fire Station
Premises, P.O. - Radhakishorepur, District - Gomati, Tripura, Pin - 799120.

6. Rajib Roy, Junior Operator(Control Room), C/o - Fire Service Directorate,
Fire and Emergency Services Headquarter, Fire Brigade Chowmuhani, Agartala,
Tripura, Pin - 799001.

7. Biplab Chakraborty, Junior Operator(Control Room), C/o - Fire Service
Directorate, Fire and Emergency Services Headquarter, Fire Brigade
Chowmuhani, Agartala, Tripura, Pin - 799001.

8. Bikash Dey, Junior Operator(Control Room), C/o - Fire Service Directorate,
Fire and Emergency Services Headquarter, Fire Brigade Chowmuhani, Agartala,
Tripura, Pin - 799001.

9. Dipen Roy, Junior Operator(Control Room), C/o - Dharmanagar Fire Station,
Office of the Divisional Fire Officer, Unakoti Division, Kailashahar Fire Station
Premises, P.O. - Kailasahar, District - Unokoti, Tripura, Pin - 799277.

10. Govinda Patwari, Junior Operator(Control Room), C/o - Udaipur Fire
Station, Office of the Divisional Fire Officer, Gomati Division, Udaipur Fire
Station Premises, P.O.- Radhakishorepur, District - Gomati, Tripura, Pin -
799120.

11. Amalendu Roy, Junior Operator(Control Room), C/o- Wireless Wing, Badharghat, Fire and Emergency Services Complex, Martipally, Badharghat, Agartala, Tripura, Pin - 799003.

12. Chiranjit Banik, Junior Operator(Control Room), C/o- Udaipur Fire Station, Office of the Divisional Fire Officer, Gomati Division, Udaipur Fire Station Premises, P.O. - Radhakishorepur, District - Gomati, Tripura, Pin - 799120.

13. Satyayjit Bhattacharjee, Junior Operator(Control Room), C/o - Fire Service Directorate, Fire and Emergency Services Headquarter, Fire Brigade Chowmuhani, Agartala, Tripura, Pin - 799001.

14. Dipsu Ranjan Das, C/o - Divisional Fire Office, Udaipur, Office of the Divisional Fire Officer, Gomati Division, Udaipur Fire Station Premises, P.O.- Radhakishorepur, District - Gomati, Tripura, Pin - 799120.

15. Siddartha Sankar Datta, Junior Operator(Control Room), C/o - Wireless Wing, Badharghat, Fire and Emergency Services Complex, Matripally, Badharghat, Agartala, Tripura, Pin - 799003.

-----Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. D. Paul, Advocate.

For Respondent(s) : Mr. D. C. Saha, Advocate.

Date of Judgment & Order: 07.07.2023

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT AND ORDER (ORAL)

Heard learned counsel for the parties.

2. Petitioner is aggrieved as he was not granted *ad hoc* promotion to the post of Junior Operator (Control Room) though he fulfilled the eligibility criteria of 10(ten) years of service and requisite educational qualification of matriculation. The *ad hoc* promotion was granted after the interim order passed by apex Court in SLP(C) No.19765-19767 of 2015 dated 27.07.2015 vide notification dated 22.06.2021 of General Administration (Personnel & Training) Department, Government of Tripura to several persons including respondents No.5 to 15 who are said to be junior

to the petitioner in the gradation list. The grievance of the petitioner mainly arises out of the fact that only one day time was given to exercise the option vide notice dated 17th September, 2021 (Annexure-4) which reads as under:

“ IN LIEU OF MESSAGE FROM

To ALL OCs FIRE STATION / OC TS BGT/OC CS BGT/ OC WW BGT (.)
INFO ALL DFOs (.)
FROM DIRECTOR, FES, TPA, AGT (.)

No. F.4-15/TFES/2021/7823 DATED 17TH SEPTEMBER, 2021 (.)

OPTION IS HEREBY INVITED FROM THE FIREMAN THOSE WHO ARE IN POSSESSION OF FOLLOWING ELIGIBILITIES FOR PROMOTION TO THE POST OF JUNIOR OPERATOR (CONTROL ROOM) (.)

1. 10 (TEN) YEARS CONTINUOUS SERVICE AS FIREMAN (.)
2. READ UPTO CLASS X (.)

ALL CONCERNED OCs OF THE FIRE STATION / UNIT AREA HEREBY DIRECTED BRING AFORESAID INFORMATION TO THE NOTICE OF ALL CONCERNED FIREMAN IMMEDIATELY AND SEND WRITTEN OPTION / WILLINGNESS FOR PROMOTION TO THE POST OF JUNIOR OPERATOR (CONTROL ROOM) OF ALL CONCERNED FIREMAN TO THE THIS DIRECTORATE BY 18.09.2021 BY SPECIAL MESSENGER WITHOUT FAIL (.) MATTER MOST URGENT (.) DFOs CONCERNED SHALL ENSURE STRICT COMPLIANCE(.)

SD/-
JOINT DIRECTOR
FIRE & EMERGENCY SERVICES
TRIPURA, AGARTALA”

3. Learned counsel for the State-respondents were allowed time to file counter affidavit, by order dated 26th April, 2023. In the counter affidavit they contended that since petitioner did not submit his willingness/option to be promoted to the post of Junior Operator (Control Room), Group-C, his case was not considered whereas 12(twelve) willing Firemen were promoted by order dated 13th September, 2021. However, counter affidavit did not refer to any rule where such willingness is a requirement. Therefore, learned counsel for the respondent-State is asked to produce the relevant rules where such willingness is a mandatory condition for promotion of such employees to the next higher post.

4. The additional affidavit has been filed thereafter on 6th July, 2023. The additional affidavit is exhaustive in its content seeking to justify as to why the necessity for asking an option by the eligible candidates from the feeder post arose. It is stated that the post of Leading Fireman and Junior Operator (Control Room) are identical in Home (Fire & Emergency Services) Department, Government of Tripura. Fireman is the feeder post of both the posts. The post of Leading Fireman is feeder post of Sub-Officer. But, prior to 28.11.2022 vide Notification dated 28.10.1971 i.e. Old Recruitment Rules, the post of Junior Operator (Control Room) was not included as the feeder post of Sub-Officer. As per new Recruitment Rules, 2022 for the post of Sub Officer under Home (Fire & Emergency Services) Department, as notified vide Notification dated 28.11.2022, the post of Junior Operator (Control Room) is now among the feeder post of Sub-Officer besides the posts of Leading Fireman, Driver and Fireman. The old Recruitment Rules and new Recruitment Rules are annexed as Annexure R/A and R/B.

5. It is further contended by respondents No.1 to 4 that since long there is lack of interest among the eligible Fireman for promotion to the post of Junior Operator (Control Room). Even after issuance of promotion order to the post of Junior Operator (Control Rom), many candidates have denied to accept promotion to the post of Junior Operator (Control). For example vide Order dated 03/11/2008, 4(four) persons were given promotion to the post of Junior Operator (Control Room), but 3(three) persons refused to accept the promotion. Thereafter, vide order dated 13.01.2023, 11(eleven) persons were given promotion to the post of Junior Operator (Control Room), and out of them one person surrendered his promotion. Therefore, promotion to the post of Junior Operator (Control Room) is being considered by calling

option/ willingness from the eligible Fireman. Hence, options are invited from the eligible Fireman as an established procedure in the Home (Fire & Emergency Services) Department. It is evident from available office records that at least since 16.06.2000, even earlier, promotion to the post of Junior Operator (Control Room) are being done by calling option/ willingness from eligible Fireman. Minutes of the Meeting of Departmental Promotion Committee (DPC) dated 16.06.2000, Wireless Message dated 12.07.2013 have been annexed. Other office orders of later date upto 12.07.2013 have been annexed with the additional affidavit.

6. It is submitted that even after calling option for promotion to the post of Junior Operator (Control Room), very poor response was received from the eligible Fireman for inclusion of the post as one of the feeder post of Sub-Officer. A chart has been included under paragraph-8 of the additional affidavit showing willingness/option received from the eligible Fireman for promotion to the post of Junior Operator (Control Room) in last 10(ten) years.

7. It is also stated that calling option from eligible Fireman has been adopted by the Department in “Good Faith” since long in view of lack of interest among the eligible Fireman for promotion to the post of Junior Operator (Control Room).

8. It is also stated that petitioner did not exercise his willingness for promotion to the post of Junior Operator (Control Room) in the year 2021. Earlier, he did not exercise his willingness for promotion to the post of Junior Operator (Control Room) in the year 2013 despite of having the requisite eligibilities for promotion to the post of Junior Operator (Control Room) on

both the occasions. In September, 2021 the petitioner was claiming promotion to the post of Junior Operator (Control Room) without exercising any option earlier. He had submitted a representation after 14 months on 07.12.2022 though he did not submit his willingness.

9. It is further stated that the nomenclature of the post of Control Room Operator under Home (Fire Service) Department had been re-designated as Junior Operator (Control Room) vide Tripura State Civil Services (Revised Pay) Rules, 1988.

10. Therefore, learned counsel for the respondents submits that the writ petition deserves to be dismissed.

11. The name of the petitioner appears in the draft seniority list of Fireman as on 25th May, 2021 at Sl. No. 182 whereas the names of the respondent Nos.5 to 15 appear at Sl. Nos. 255, 388, 395, 401, 406, 428, 429, 435, 532, 535 and 669 respectively.

12. Mr. P. Roy Barman, learned senior counsel for the petitioner submits that petitioner has been denied fair opportunity for exercising his willingness for promotion to the post of Junior Operator (Control Room) by giving only one day notice.

13. As a matter of fact another employee, Sri Rupak Ghosh, respondent No.5, gave his willingness on 20.09.2021 and his case was considered and he had been promoted to the post of Junior Operator (Control Room) that means his option/willingness beyond the cut-off date i.e. 18.09.2021 was entertained by the respondents. As such, the exercise of asking for willingness/ option has not adhered to a uniform standard or deadline stipulated by the respondent-State themselves and pick & choose

has occurred for promotion to the post of Junior Operator (Control Room) from the same feeder cadre post of fireman. As such, injustice needs to be remedied.

14. The issue involved in the present writ petition is on a very short canvas. The notice to exercise option at Annexure-4 has been quoted hereinabove whereunder all concerned fireman were asked to offer their option/ willingness for promotion to the post of Junior Operator (Control Room) to the Directorate, Fire & Emergency Services, Tripura, Agartala by 18.09.2021. This message was issued on 17.09.2021 vide letter No.F.4-15/TFES/2021/7823. It stipulated minimum criteria of 10(ten) years of continuous service as fireman and read upto Class-X both of which the petitioner had fulfilled. Respondents seem to have entertained willingness of candidates after the cut-off date 18.09.2021 such as one Rupak Ghosh who has been promoted by the order dated 30.09.2021.

15. Respondents through their additional counter affidavit have taken a plea that requirement for asking for option/willingness became a necessity as several persons who have been promoted to the post of Junior Operator (Control Room) have refused to accept the promotion. They also contended that earlier in 2013 this petitioner had also refused to offer his willingness. However, the respondents at paragraph-9 of the additional counter affidavit clearly state that the petitioner was having the requisite eligibilities for promotion to the post of Junior Operator (Control Room) on the both the occasions, though he did not exercise his willingness for promotion to the post of Junior Operator (Control Room). But, after expiry of 18(eighteen) months of promotion to the post of Junior Operator (Control

Room) in September, 2021 he is claiming promotion to the post of Junior Operator (Control Room) without exercising his option.

16. The facts noted above show that in the matter of asking for willingness/ option the respondent-department has not adhered to the deadline i.e. 18.09.2021. As a matter of fact only one day was granted for exercising of option which any person could have missed for genuine reasons. Even if that had been the case, the stand of the official respondents could be understandable but having entertained the option of another candidate who got promoted to the post of Junior Operator (Control Room) even after exercising option beyond 18.09.2021, the legal plea raised by the respondent-department does not appeal to the test of fairness and non-discriminatory approach on the part of the department.

17. This Court does not find any infirmity in calling for option by eligible persons for promotion to the post of Junior Operator (Control Room) in view of the detailed justification given by the respondents in their counter affidavit. But having failed to adhere to the cut-off date for calling option in the same promotional exercise and giving only one-day option, left person like the petitioner out of contention. As such, it also appears from the contention of the petitioner that his name appears in the draft seniority list at Sl. No.182 which is above those who have been promoted like the private respondents. In such circumstances, it would be proper on the part of the competent authority under the respondents to consider the request of the petitioner for promotion to the post of Junior Operator (Control Room) in accordance with law, treating his willingness for promotion to the said post, in case a vacancy exists on the post of Junior Operator (Control Room). In such exercise the competent authority/ respondent No.3, the Director, Fire

and Emergency Services, Govt. of Tripura shall be entitled to entertain and consider any objections from persons who are junior to the petitioner and have been promoted to the post of Junior Operator (Control Room) vide notification dated 30.09.2021 to meet the ends of justice before taking a decision. Needless to say if such exercise entails promotion to the petitioner, he would be entitled to the promoted post notionally from a retrospective date with actual benefits from the date on which he joins the post. Let it be made clear that the directions made herein above are confined to the facts of the instant case.

18. Accordingly, the instant petition is disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ