

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.333 of 2022

Subhrasarathi Majumder, son of Sri Kanai Lal Majumder, resident of Netaji Subhash Road, (East), PO- Agartala, PS- West Agartala, District- West Tripura, Pin-799001.

.....Petitioner(s)

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary to the Department of Power, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura
2. The Commissioner & Secretary, Department of Power, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura
3. The Additional Secretary, Department of Power, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura
4. The Commissioner & Secretary, Department for Welfare of Scheduled Castes, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura
5. The Tripura Public Service Commission, represented by the Secretary, Tripura Public Service Commission, Akhaura Road, PO- Agartala, PS- West Agartala, Sub-Division- Sadar, District- West Tripura, Pin- 799001
6. The Secretary, Tripura Public Service Commission, Akhaura Road, PO- Agartala, PS- West Agartala, Sub-Division- Sadar, District- West Tripura, Pin-799001.

.....Respondent(s).

For Petitioner(s)	: Mr. P. Roy Barman, Sr. Advocate, Mr. Koomar Chakraborty, Advocate, Mr. Samarjit Bhattacharjee, Advocate.
For Respondent(s)	: Mr. Dipankar Sharma, Addl. G.A., Mr. Raju Datta, Advocate.

Date of Judgment & Order: 21.06.2023

Whether Fit for Reporting: YES.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT AND ORDER (ORAL)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel for the petitioner. Also heard Mr. Dipankar Sharma, learned Additional Government Advocate for the State respondents and Mr. Raju Datta, learned counsel for the Tripura Public Service Commission.

2. Petitioner has approached this Court with the following prayers:

(i) To rescind the impugned Roster Register System at Page 42 and 43 of the writ petition [Annexure-9], and also the impugned letters dated 29.01.2022 and 15.03.2022 [Annexure-10 and Annexure-12 respectively]. By letter dated 29.01.2022 [Annexure-10], the Secretary, Tripura Public Service Commission (TPSC, *for short*) stated that there was no eligible Degree Holder candidate in the feeder post of Assistant

Engineer (Mechanical) Grade-IV and that there was no eligible scheduled caste candidate under Diploma Holder category [Petitioner belongs to unreserved category being a Diploma Holder in the feeder post of Assistant Engineer (Mechanical) Grade-IV]. By the impugned letter dated 15.03.2022 [Annexure-12], the representation of the petitioner to promote him to the post of Executive Engineer (Mechanical) Grade-III was rejected on the ground that the one post out of 4(four) posts of Executive Engineer (Mechanical) Grade-III is reserved for scheduled caste category as per the operation of roster.

(ii) Petitioner has also prayed to treat the single vacant post of Diploma Holder Executive Engineer (Mechanical) Grade-III, Department of Power, Government of Tripura as outside the purview of Roster Register System, thereby declaring the same as an unreserved post.

(iii) Petitioner has further sought *Writ of Mandamus* upon the respondents to promote him from the feeder post of Assistant Engineer (Mechanical) Grade-IV to the promotional post of Executive Engineer (Mechanical) Grade-III with retrospective effect from the date (12.01.2022) on which the Department of Power, Government of Tripura

had sent the proposal to TPSC for making the promotions to the vacant posts of Executive Engineer (Mechanical) Grade-III.

3. The relevant facts, borne from the pleadings on record, show that the petitioner is a Diploma Holder who was appointed as Junior Engineer (Mechanical) Grade-II/V(B) by Public Works Department (PWD) on 11.05.1990 [Annexure-1]. He joined the post on 17.05.1990. On completion of 4(four) years of service, he was upgraded as Diploma Holder Junior Engineer (Mechanical) Grade-I/V(A) with effect from 17.05.1994. By a memorandum dated 19.02.2000 issued by the Chief Engineer (Electrical), Department of Power, Government of Tripura, petitioner was included in Grade-V of the T.P.E.S. Rules, 1987 and absorbed in the Department of Power with effect from the date of his joining i.e. 17.05.1990 [Annexure-2]. On 01.01.2005, he was placed on deputation in the Tripura State Electricity Corporation Limited (TSECL, *for short*). Thereafter, pursuant to the notification dated 31st July, 2006 issued by the Under Secretary, Department of Power, Government of Tripura, he was promoted to the post of Assistant Engineer (Mechanical) Grade-IV with effect from the date of assumption of charge [Annexure-3]. He assumed charge as Assistant Engineer (Mechanical) Grade-IV on

04.08.2006. By notification dated 10th February, 2016, he was placed on deputation under Urban Development Department, Government of Tripura [Annexure-4].

4. According to the petitioner, the next promotional post of Assistant Engineer (Mechanical) Grade-IV is Executive Engineer (Mechanical) Grade-III. Rule 15(4) of the Tripura Power Engineering Services Rules, 1987 prescribes that a person who has rendered 7 years' regular service in Grade-IV post [i.e. Assistant Engineer (Mechanical) Grade-IV] is eligible for promotion to the post of Grade-III [i.e. Executive Engineer (Mechanical) Grade-III]. According to the petitioner, since he has assumed the charge of Assistant Engineer (Mechanical) Grade-IV from 04.08.2006, he has already completed requisite period of 7 years on 04.08.2013, and is eligible to be promoted to the post of Executive Engineer (Mechanical) Grade-III thereon, subject to fulfillment of criteria of seniority, availability of vacant posts, etc. Petitioner has also duly passed the departmental examination, requisite for promotion to the higher grade; but the same is not applicable in his case since he has attained the age of 58 years. As such, he is exempted under Rule 21(g) of

the Tripura Power Engineering Services Rules, 1987 (7th Amendment, 2017) from passing departmental examination.

5. It is also the contention of the petitioner that the post of Executive Engineer (Mechanical) Grade-III is made by 100% promotion. The Schedule to the Tripura Power Engineering Services Rules, 1987 (7th Amendment, 2017) [Annexure-6] provides that there are presently 4(four) number of posts for Executive Engineer (Mechanical) Grade-III out of which 3(three) numbers of posts are reserved for Degree Holders and the remaining 1(one) number of post is reserved for Diploma Holder only. All the 4(four) posts are lying vacant. According to the petitioner, as per the updated seniority list of Assistant Engineer (Mechanical) for both Degree and Diploma Holders as on 30.06.2021 issued by the Department of Power, Government of Tripura, the seniority list of Assistant Engineer (Mechanical) for Degree Holders and Diploma Holders are distinct and separate. Memorandum dated 13th September, 2021 [Annexure-7] contains the updated seniority list of both Assistant Engineer (Mechanical) Degree Holder and Diploma Holder respectively. Petitioner has obtained the Roster Register System under Right to Information Act, 2005 which is the basis for making promotions to the post of Executive

Engineer (Mechanical) Grade-III. It came to his notice that the roster arrangement for considering promotions for 4(four) number of vacant posts of Executive Engineer (Mechanical) Grade-III has been done in the following manner:- [Annexure-9]

Point on the Roster	Whether reserved or unreserved	Whether Degree or Diploma Holder
1.	Scheduled Tribe	Degree
2.	Unreserved	Degree
3.	Unreserved	Degree
4.	Scheduled Caste	Diploma

This Roster Register System has also been impugned by the petitioner.

6. Thereafter, petitioner has contended that out of 4(four) number of vacant posts, 3(three) numbers of posts are reserved only for Degree Holders and the remaining 1(one) number of post is reserved for Diploma Holders. As such, the 4th post could only be occupied by a Diploma Holder who belongs to the scheduled caste category. The promotional exercise was initiated pursuant to the letter dated 12.01.2022 issued by the Power Department upon the TPSC to conduct DPC for promotion to the vacant post of Executive Engineer (Mechanical)

Grade-III. In response thereto, the impugned letter dated 29.01.2022 was issued by the Secretary, TPSC stating that there is no eligible Degree Holder in the feeder post of Assistant Engineer (Mechanical) Grade-IV and there is no eligible scheduled caste candidate under Diploma Holder category from the feeder post of Assistant Engineer (Mechanical) Grade-IV [Annexure-10].

7. Petitioner is aggrieved because of the erroneous operation of the Roster by declaring the Executive Engineer (Mechanical) Grade-III post for Diploma Holders as reserved for only scheduled caste category and thus rendering the petitioner out of the zone of consideration for promotion. According to the petitioner, there are 3(three) numbers of incumbents in the feeder post of Assistant Engineer (Mechanical) Grade-IV as per the updated seniority list being 1(one) Degree Holder and 2(two) Diploma Holders including the petitioner; but the Degree Holder Sri Dilip Debbarma is not eligible for promotion since he has not passed the Departmental Examination nor attained the age of 55 years. Due to only 1(one) promotional post of Diploma Holder, Sri Prahlad Singh, the other Diploma Holder being junior to the petitioner, is not eligible for promotion. It is, however, stated that if the existing Roster Management

System is modified declaring that the one post of Diploma Holder Executive Engineer (Mechanical) Grade-III being a single post is out of roster arrangement and, therefore, treated as “*unreserved*”, then the petitioner could have been promoted thereto. As such, petitioner made representations dated 15.01.2022, 23.02.2022 and 15.03.2022 [Annexure-11 series] for grant of promotion. However, by the impugned letter dated 15.03.2022 [Annexure-12], the Additional Secretary (Power), Department of Power, Government of Tripura rejected the said prayer on the premise that the single vacant post of Diploma Holder Executive Engineer (Mechanical) Grade-III is reserved for scheduled caste category.

8. Mr. P. Roy Barman, learned senior counsel for the petitioner, submits that the impugned action is arbitrary as the single vacant post of Diploma Holder Executive Engineer (Mechanical) Grade-III could not be reserved under the 100 point roster. It is hit by Article 16 of the Constitution of India. It is further submitted that 3(three) posts of Degree Holders and 1(one) post of Diploma Holder are not mutually interchangeable or exchangeable, and hence, 100 point roster cannot be applied to the single vacant post for Diploma Holder Executive Engineer (Mechanical) Grade-III. As per the Promotion Policy, 2021 bearing

notification dated 22.06.2021 issued by the General Administration (Personnel & Training) Department, Government of Tripura, Para 6(ii) and 6(iv) thereof provides that 100 point roster shall apply only where the number of posts in the cadre is 4(four) or more and single post or small cadres cannot be combined to make the number of posts more than 3(three) [Annexure-13]. As such, according to the petitioner, if the single post of Diploma Holder Executive Engineer (Mechanical) Grade-III cannot be combined to make the number of posts more than 3(three) to make it 4(four) or more, the 100 point roster system cannot be applied to it. Learned senior counsel for the petitioner further submits that if the contention of the petitioner is not accepted, grave injustice would be caused to him as he has already completed more than 15 years in the feeder post and has not been promoted as yet. Based on these averments and the legal propositions, petitioner has prayed for the above reliefs.

9. The Department of Power has filed a Counter Affidavit, so has the respondents No.5 and 6-TPSC. Mr. Dipankar Sharma, learned Additional Government Advocate for the respondents-State and Mr. Raju Datta, learned counsel for TPSC have drawn the attention of this Court to the operation of the roster in terms of the Tripura Scheduled Castes &

Scheduled Tribes Reservation Rules, 1992 [Rules of 1992, *for short*] and the Schedule framed in terms of the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 [Act of 1991, *for short*]. “The Schedule” thereto under Section 4 and 5 as has been subsequently referred to, indicate the operation of the 100 point roster in case the number of posts are 4(four) or more. Learned Additional Government Advocate for the State has also referred to the Form-3 framed under Rule 13(1) of the Rules of 1992. According to him, the 100 point roster operates amongst the 4(four) posts of Executive Engineer (Mechanical) Grade-III in the following manner –

- (1) *Unreserved (UR)*
- (2) *Scheduled Tribe (ST)*
- (3) *Unreserved (UR)*
- (4) *Scheduled Caste (SC), and so on.*

10. It is submitted by the learned counsel for the respondents-State that the roster repeats after every operation and the fourth post would fall in the SC category in any case. It is further submitted that since the four posts belonged to one cadre i.e. Executive Engineer (Mechanical) Grade-III, the 3(three) posts from the feeder cadre of Assistant Engineer (Mechanical) Degree Holders and 1(one) post from Assistant Engineer (Mechanical) Diploma Holder cannot be segregated. If the second

contention of the petitioner is accepted that the operation of the roster should have started from the Diploma Holders category, in that case also any incumbent of the Diploma Holder Assistant Engineer (Mechanical) Grade-IV category belonging to scheduled caste category or scheduled tribe category would get no chance to be promoted. Any working of the roster in such manner would lead to the anomalous situation i.e. incumbents from the Assistant Engineer (Mechanical) Grade-IV from the other categories would be ineligible for promotion. It is also submitted by the learned counsel for the respondents that the operation of the roster is non-discriminatory and applies in a uniform and transparent manner to all services. As such, the operation of the roster is in conformity with the rules and there is no illegality or arbitrariness in the operation of roster. As per Rule 13 of the Rules of 1992, separate blocks in a roster i.e. 3(three) numbers of posts for Degree Holders and 1(one) number of post for Diploma Holders has to be counted continuously and so Roster Point No.1 and 3 is for UR (Degree Holders), Roster Point No.2 for ST (Degree Holder) and Roster Point No.4 for SC (Diploma Holder).

11. Learned counsel for the respondents contends that the post of Executive Engineer (Mechanical) Grade-III to be filled up by promotion

from Diploma Holder candidate cannot be declared unreserved at the whims and desires of the petitioner as it would deprive an eligible scheduled caste candidate in future. The Department of Power has rightly declared the said source of promotion to the Executive Engineer (Mechanical) Grade-III from Diploma Holder candidate (reserved for scheduled caste). A separate seniority list maintained by the department will not have any effect for the aforesaid purpose. It is submitted that separate sources for promotion for a category of post creating separate blocks in a roster cannot be termed differently to make sources of promotion distinct and separate.

12. As per the Counter Affidavit of respondents-TPSC, in pursuance to the letter dated 12.01.2022 issued by the Department of Power, the Commission examined the proposal, verified all the documents attached with the proposal and found that there is no eligible Degree Holder candidate in the feeder grade of TPES Grade-IV [Assistant Engineer (Mechanical)] and there is no eligible SC Diploma Holder candidate in the feeder grade of TPES Grade-IV [Assistant Engineer (Mechanical)] for consideration of ad-hoc promotion

to the post of TPES Grade-III [Executive Engineer (Mechanical)] under the Department of Power.

13. It is also contended in reply to statement made at para 2.18 of the writ petition that the representations of the petitioner to Urban Development Department was placed before the authority, but was not considered at that stage by the Commission. Learned Additional Government Advocate for the respondents-State and learned counsel for respondents-TPSC, therefore, submit that since the operation of the Roster Register is in accordance with the Act of 1991 and the Rules framed thereunder; and is non-discriminatory, petitioner has not been able to make out any illegality or arbitrariness so far as his claim for promotion to Executive Engineer (Mechanical) Grade-III is concerned. As such, the writ petition, being devoid of merit, may be dismissed.

14. I have considered the submissions of learned counsel for the parties. The chronology of facts, the relevant supporting documents, the Act of 1991 and the Rules of 1992 framed thereunder have also been taken into consideration. From the conspectus of facts and the chronology of dates and events narrated hereinabove, it transpires that the grievance

of the petitioner actually relates to the operation of the roster under which the post of Executive Engineer (Mechanical) Grade-III for the Diploma Holder category falls at serial number 4 which is reserved for scheduled caste category. Learned counsel for both the parties have not disputed that the roster would operate in similar manner after every exercise and the post of Diploma Holder would, in any case, fall for reservation to the scheduled caste category only. It is the case of the petitioner that had the roster been operated in a manner by allotting the first post to the Diploma Holder which is the unreserved post, petitioner who is otherwise eligible in terms of seniority, clearance of departmental examination and eligibility, could have been promoted as Executive Engineer (Mechanical) Grade-III from the Diploma Holder category itself. The operation of the Roster Register System has thus also been challenged.

15. Learned senior counsel for the petitioner has, in particular, relied upon Clause 6(ii) and 6(iv) of the notification dated 22.06.2021 i.e. the Promotion Policy, 2021 and submitted that such single post or small cadres could not have been combined to make the number of posts more than 3(three) to be operational under the 100 point roster which applies to number of post being 4(four) or more. Petitioner's contention is that if this

roster system is operated continuously, no unreserved category candidate from the Diploma Holder category could ever be promoted despite being eligible. However, it appears that the contention of the petitioner is not correct since irrespective of the sources or feeder cadres from which the incumbents are to join the higher cadre of TEPS Grade-III Executive Engineer (Mechanical), the cadre of Executive Engineer (Mechanical) does not become different on account of being filled up from different feeder cadres. As per the structure of the cadre of Assistant Engineer (Mechanical) Grade-IV under the Department of Power, both the Degree Holders and the Diploma Holders form the combined cadre. The Diploma Holders join the cadre of Assistant Engineer from the feeder post of Junior Engineer as has been the case of the petitioner also. Since the cadre is one and combined, the roster cannot operate separately depending upon the sources from which the incumbents have joined the cadre. It could lead to incongruous results; neither is it mandated under the Act of 1991 and the Rules of 1992 framed thereunder. Since the posts are 4(four) or more than 4(four), even as per the Promotion Policy, 2021 bearing notification dated 22.06.2021, the 100 point roster shall apply to these posts. If the contention of the petitioner is accepted, and the first post is allotted to Diploma Holders, even then it could lead to the same result as

the first post could be available for unreserved category for all times to come denying the availability to promotion to SC and ST categories. The roster has to be worked out as per the Act framed by the Legislature and the Rules framed thereunder. Since the cadre is a combined cadre of Executive Engineer (Mechanical) Grade-III, 1(one) post out of 4(four) posts belonging to Diploma Holders category cannot be segregated and treated as single post for the purpose of promotion. Promotion to the next higher cadre under the Department of Power has also to be made from the feeder post of Executive Engineer (Mechanical) Grade-III which cannot be worked out if the posts are segregated and are operated by different roster points or are treated as single unreserved post.

16. Having given anxious consideration to the contention of the petitioner so far as the challenge to the impugned Roster Register System at Annexure-9 is concerned, in the light of the discussions made hereinabove, this Court is of the considered view that 1(one) post out of the 4(four) posts of Executive Engineer (Mechanical) Grade-III cannot be segregated and treated as unreserved and taken out of the operation of 100 point roster as it would also be in teeth of the Promotion Policy, 2021 as well. Any operation of the roster would result in harsh consequence to one

or the other category; and if tested on grounds under Article 14 of the Constitution of India, it cannot be termed as arbitrary or unreasonable. On an overall consideration of the attendant facts, the proposition of law and the application of the Act of 1991 and the Rules of 1992, the operation of the roster cannot be termed as illegal and arbitrary. As such, no grounds are made out on behalf of the petitioner to allow the relief as prayed for.

17. At the end, learned senior counsel for the petitioner submits that on account of such situation, not only are individuals like petitioner, bearing a sense of perceived injustice, but the functioning of the department is also suffering in the absence of any incumbent to the post of Executive Engineer (Mechanical) Grade-III. Learned senior counsel for the petitioner submits that both in the interest of the department and in view of the long service rendered by the engineers like the petitioner, the department may be asked to consider the representation of the petitioner for grant of current duty charge to the post of Executive Engineer (Mechanical) Grade-III to ensure that the functioning of the department does not suffer in the absence of a regular Executive Engineer (Mechanical) Grade-III.

18. This Court, at this stage, is not in a position to comment whether the functioning of the department is suffering in the absence of regular Executive Engineer (Mechanical) Grade-III. However, it is always open to the respondent department to consider such representation, if made by the petitioner for the purpose of grant of current duty charge so that the functioning of the department does not suffer in the ultimate analysis.

19. With these observations, the writ petition is disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ