

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.500 of 2022

Sri Manojit Nath, S/O:- Sri Makhan Debnath, R/O:- South Barjala, Near Shib Kali Mandir, P.O:- Ramnagar, P.S:- West Agartala, District:- West Tripura, Pin:-799002, Age:-43 years

.....Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary, Finance Department, Government of Tripura, P.O- Kunjaban, P.S- New Capital Complex, District- West Tripura, Pin-799006
2. The Deputy Secretary, Directorate of Audit, Finance Department, Government of Tripura, P.O- Kunjaban, P.S- New Capital Complex, District- West Tripura, Pin-799006
3. The Director of Audit, Directorate of Audit, Govt. of Tripura, P.N. Complex, Gurkhabasti, P.O-Agartala, P.S- West Agartala, District- West Tripura, Pin-799006
4. The Principal Secretary, Transport Department & SC Welfare Department, Chairman, Departmental Promotion Committee, Notice to be served through the Respondent No.3
5. The Principal Secretary, Department of Welfare of S.T, Government of Tripura, Member, Departmental Promotion Committee, Notice to be served through the Respondent No.3
6. The Secretary, Finance Department, Government of Tripura, Member, Departmental Promotion Committee, Notice to be served through the Respondent No.3
7. The Secretary, Department of Welfare of OBC and Minority, Government of Tripura, Member, Departmental Promotion Committee, Notice to be served through the Respondent No.3
8. The Tripura Public Service Commission, Represented by it's Secretary, Akhaura Road, P.O:- Agartala, P.S:- West Agartala, District:- West Tripura, Pin:-799001

.....Respondent(s).

For Petitioner(s)	: Mr. A. Bhaumik, Advocate, Mr. S. Dey, Advocate, Mr. Ankan Tilak Paul, Advocate.
For Respondent(s)	: Mr. M. Debbarma, Addl. G.A., Mr. Raju Datta, Advocate.

Date of hearing and Judgment & Order: 06.07.2023

Whether Fit for Reporting: NO

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT & ORDER (ORAL)

Heard Mr. Arijit Bhaumik, learned counsel for the petitioner and Mr. Raju Datta, learned counsel for the respondent-TPSC. Also heard Mr. M. Debbarma, learned Additional Government Advocate for the State-respondents.

2. Petitioner has approached this Court for setting aside the adverse entries in the Annual Confidential Reports (ACRs) of the petitioner for the year 2013-2014, 2017-2018, 2019-2020 and 2020-2021. Petitioner also sought a direction for promotion to the post of Audit Officer/Accounts Officer (TAAS Grade-IV) from the post of Assistant Audit Officer/Assistant Accounts Officer (TAAS Grade-V) under the respondent-Department.

3. The case of the petitioner rested on the ground that nothing adverse was pending against the petitioner, but he has been denied promotion from the due date. Petitioner contended that initially, he was appointed on the post of Assistant Audit Officer/Assistant Accounts Officer (TAAS Grade-V) on 28.12.2005. Subsequently, the Tripura Audit and Accounts Service Rules, 2007 was promulgated which came into force vide notification dated 31.12.2007. Petitioner and other similarly situated candidates, who were serving as Assistant Audit Officer/Assistant Accounts Officer, were encadred in the lowest grade of the service vide notification dated 31.10.2008 under the new Rules. Petitioner was serving as a TAAS Grade-V officer in the post of Assistant Audit Officer/Assistant Accounts Officer since 28.12.2005 and had an unblemished service. As per the Rules

in force for promotion to the post of Audit Officer/Accounts Officer in TAAS Grade-IV, the eligibility criteria is provided by Rule 15(4) of TAAS Rules, 2007 which provides that Grade-IV posts shall be filled up from amongst Grade-V post holders, who have rendered not less than 8 years of regular service and passed the Departmental Examination conducted by the Commission. Petitioner applied for information through RTI for supply of copy of DPC minutes and ACRs of the last 10(ten) years which were refuted. Petitioner was denied the minutes of DPC held on 13.08.2021 and 18.08.2021. Aggrieved thereby, he sought disclosure of information and vide reply dated 13.04.2022, he was supplied with the copy of the ACRs for last 10(ten) years, but was denied the minutes of DPC held on 13.08.2021, 18.08.2021 and 23.02.2022. His wife also submitted an application under the RTI Act, 2005 for seeking information whether petitioner had been issued any show cause notice or any Departmental/Criminal Proceedings existed against him. By reply dated 02.04.2022, he was informed that no such information was available as per records. Petitioner, therefore, contended that non-recommendation of his case for promotion to the post of Audit Officer/Accounts Officer w.e.f. the date other similarly situated candidates have been promoted i.e. on 14.03.2022 is arbitrary and illegal. Moreover, adverse entries, if any, cannot be taken into consideration by the DPC without being communicated. On these facts, petitioner approached this Court for relief.

4. Counter Affidavit has been filed by the respondent No.8-TPSC detailing the sequence of facts. It appears therefrom that because of lack of

clarity in the ACR of petitioner for 2020-2021, the DPC had not recommended his name. The Counter Affidavit also states that 1(one) post of unreserved category was available. DPC held on 23.02.2022 did not recommend the case of the petitioner due to lack of clarity of ACR of 2020-2021. The Counter Affidavit filed by the State-respondents, however, does not give any specific reason for denial of promotion to the petitioner. In that background, learned counsel for the petitioner has fairly pointed out to the notification dated 26.10.2022 contained at Annexure-1 to the Rejoinder Affidavit filed by the petitioner, whereunder petitioner has been granted promotion on ad-hoc basis with retrospective effect on notional basis w.e.f 14.03.2022 i.e. with effect from the date on which his immediate junior was promoted, subject to final outcome of S.L.P(C) No.19765-19767 of 2015 pending before the Hon'ble Supreme Court of India. Further conditions have been laid down therein.

5. Having regard to the aforesaid development, Mr. Arijit Bhaumik, learned counsel for the petitioner, submits that petitioner has not been granted actual monetary benefits from the date of promotion i.e. 14.03.2022, though the respondents, by issuance of this notification, accepted their fault that petitioner was wrongfully denied promotion from that date. As such, direction may be issued to the respondents to grant the petitioner monetary benefits w.e.f 14.03.2022 i.e. the date of promotion.

6. I have considered the submission of learned counsel for the parties and taken note of the relevant material facts and the documents

referred to hereinabove placed from the record. As an upshot of the narration of facts and events indicated above, it is clear that petitioner has been granted promotion with retrospective effect from 14.03.2022 i.e. the date on which his immediate junior was promoted. However, such promotion has been made on notional basis. Petitioner has a grievance that due to fault of the respondents, he has been denied actual monetary benefits of the promoted post from the effective date i.e. 14.03.2022. However, this Court is of the considered view that actual monetary benefits of the promoted post are accruable from the date on which the incumbent joins the post. The respondents have acknowledged the legal claim of the petitioner for promotion from 14.03.2022 i.e. the date on which his immediate junior was promoted, but they have also indicated that because of lack of clarity in the ACR of the petitioner for the relevant year 2020-2021, the Departmental Promotion Committee (DPC) had not made recommendation in his favour in its meeting held on 23.02.2022. As such, the action of the respondents cannot be said to be de hors any reason or justification. However, after due examination of the records of the petitioner, he has been granted promotion retrospectively on notional basis from the due date i.e. 14.03.2022, the date on which his immediate junior was promoted. It means that petitioner would be entitled to count his seniority from 14.03.2022, but the monetary benefits would be available to him from the actual date of joining on the promoted post, as no salary can be paid for the period when the incumbent was not serving on the promoted post.

7. Having regard to the reasons recorded hereinabove, the contention of the petitioner for grant of actual monetary benefits from 14.03.2022 cannot be accepted since the effective relief has already been granted to the petitioner.

8. The instant writ petition is disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

