

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.458 of 2023

Somen Debnath, S/o- Late Rakhal Debnath, R/o- Village-Jambura, Khowai, P.O-
Khowai Court, P.S & District- Khowai, PIN-799202

.....Petitioner(s)

Versus

1. The State of Tripura, to be represented by the Secretary, Directorate of Family Welfare & Preventive Medicine, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S- New Capital Complex, Agartala, West Tripura, PIN-799010
2. The Director of Health Services, Govt. of Tripura, P.N. Complex, Agartala, West Tripura, PIN-799006
3. The Chief Medical Officer, Khowai Tripura, O/o the CMO, Khowai Tripura, Govt. of Tripura, P.O & P.S.- Khowai Tripura
4. Sailen Kr. Das, MPS (Male) (Previously served as MPW (Male) and attached with Dhalabil S/c, Chebri PHC under O/o the CMO, Khowai, Khowai Tripura) (Sl. No-89 of Order, dated, 21.03.2012)
5. Dilip Debbarma, MPS (Male) (Previously served as MPW (Male) and attached with East Tokehaya S/C, Tulasikhar PHC under CMO Khowai) (Sl. No.-85 of Order, dated, 21.03.2012)
6. Subrata Bhowmik, MPS (Male) (Previously served as MPW (Male), O/o the CMO (West), Agartala, West Tripura (Sl. No-23 of Order, dated, 21.03.2012) [Notice to the respondent No-4 to 6 be served through the O/o the Director of Health Services, Govt. of Tripura, P.N. Complex, Agartala, West Tripura, PIN-799006.]

.....Respondent(s)

WP(C) No.459 of 2023

Supriti Debnath, W/o- Sri Nandan Debnath, R/o- Village- Khilpara (Bhangarpar),
P.O.- Khilpara, P.S- Radhakishorepur & District- Gomati, PIN-799114

.....Petitioner(s)

Versus

1. The State of Tripura, to be represented by the Secretary, Directorate of Family Welfare & Preventive Medicine, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S- New Capital Complex, Agartala, West Tripura, PIN-799010
2. The Director of Health Services, Govt. of Tripura, P.N. Complex, Agartala, West Tripura, PIN-799006
3. The SDMO, Gandacherra, Dhalai, Tripura, O/o the CMO, West Tripura, Govt. of Tripura.

.....Respondent(s)

WP(C) No.460 of 2023

Samir Hrishi Das, S.o- Late Jatindra Hrishi Das, R/o- Village-Subhashnagar,
Dhar Para, P.O- East Pratapgarh, P.S.- East Agartala & District-West Tripura,
PIN-799004

.....Petitioner(s)

Versus

1. The State of Tripura, to be represented by the Secretary, Directorate of Family Welfare & Preventive Medicine, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S- New Capital Complex, Agartala, West Tripura, PIN-799010

2. The Director of Health Services, Govt. of Tripura, P.N. Complex, Agartala, West Tripura, PIN-799006

3. The Chief Medical Officer, West Tripura, O/o the CMO, West Tripura, Govt. of Tripura, P.O- Agartala, P.S.- West Agartala, District- West Tripura

4. Sailen Kr. Das, MPS (Male) (Previously served as MPW (Male) and attached with Dhalabil S/c, Chebri PHC under O/o the CMO, Khowai, Khowai Tripura) (Sl. No-89 of Order, dated, 21.03.2012)

5. Dilip Debbarma, MPS (Male) (Previously served as MPW (Male) and attached with East Tokehaya S/C, Tulasikhar PHC under CMO Khowai) (Sl. No.-85 of Order, dated, 21.03.2012)

6. Subrata Bhowmik, MPS (Male) (Previously served as MPW (Male), O/o the CMO (West), Agartala, West Tripura (Sl. No-23 of Order, dated, 21.03.2012) [Notice to the respondent No-4 to 6 be served through the O/o the Director of Health Services, Govt. of Tripura, P.N. Complex, Agartala, West Tripura, PIN-799006.]

.....Respondent(s)

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Samarjit Bhattacharjee, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

28/07/2023

WP(C) No.459/2023 and WP(C) No.460/2023 are being taken up together with consent of the parties as the grievances of the petitioners are common and can be disposed of by common judgment.

2. The brief cases of the individual petitioners are narrated hereunder:

(i) Petitioner Somen Debnath joined service on 15.07.2006 on the post of Multi Purpose Worker (MPW, *for short*) in the Department of Health

and Family Welfare (Preventive Medicine) and has been posted at Jambura HWC under Chebri Primary Health Centre, Khowai. According to the petitioner, he is suffering from 40% Loco Motor Disability in proof of which, the Identity Card is annexed at Annexure-1. As per the Recruitment Rules, the post of MPW is the feeder post for the post of Multi Purpose Supervisor (MPS, *for short*). Petitioner has relied upon the office memorandum dated 09.01.2019 which lays down the guidelines and modalities for effecting reservation for the persons with benchmark disabilities in case of direct recruitment [Annexure-2]. According to the petitioner, in terms of Rights of Persons with Disabilities Act, 2016 which came into effect from 19.04.2017 and the notification of the Rights of Persons with Disabilities Rules made effective from 15.06.2017 in case of direct recruitment 4% of the total number of vacancies to be filled up by direct recruitment in the cadre strength in each group of posts i.e., Group-A, Group-B, Group-C & Group-D shall be reserved horizontally for persons with benchmark disabilities. Thereafter, vide notification dated 07.09.2021 issued by the Department of Social Welfare and Social Education, Government of Tripura, the office memorandum dated 09.01.2019 was amended and in addition to the horizontal reservation for persons with benchmark disabilities for posts to be filled up by direction recruitment, 4% reservation has also been provided to each post to be filled up by promotion in the cadre strength in each group of posts, i.e. Group-A, B, C & D horizontally for persons having benchmark disabilities. It applies to all services under the State Government. As per the petitioner, the 100 point roster prescribed under memorandum dated 09.01.2019 should be applied in promotion in favour of employees with benchmark disabilities who are already eligible for those posts.

Mr. Samarjit Bhattacharjee, learned counsel for the petitioner, has further referred to the memorandum dated 26.10.2018 issued by the Director, Family Welfare & Preventive Medicine which is a tentative seniority list in respect of MPW (Male) as on 30.09.2018 inviting objection from the concerned employees. Petitioner's name appears at Sl. No.276 and his seniority position has been shown rightly [Annexure-4]. However, till date, no final seniority list has been published. Petitioner contends that vide order dated 13.12.2022 [Annexure-5] issued by the Director, Family Welfare & Preventive Medicine-respondent No.2, 90 MPW (Male) have been promoted to the post of MPS (Male) in the Pay Matrix Level-9 of the Tripura State Civil Services (Revised Pay) Rules, 2018 on ad-hoc basis with prospective effect. It appears therefrom that the notification has been issued on the recommendation of D.P.C held on 04.11.2022. Prior to that, 10 MPWs (Male) were promoted to MPS (Male) and out of 90 promotees covered by the order dated 13.12.2022, only one belongs to PH disabled category being Prasanta Debbarma. His name appears at Sl. No.90 of the list of the promotees. Based on these facts, petitioner Somen Debnath has contended that by virtue of the memorandum dated 07.09.2021, 4% horizontal reservation is to be granted to persons with benchmark disabilities to each category of post which has not been followed in the impugned promotional exercise. The respondents have, therefore, acted in disobedience of the Act of 2016, the Rules made thereunder and the notifications dated 09.01.2019 and 07.09.2021 denying valuable, legal and fundamental rights of the petitioner. Petitioner, being aggrieved, has preferred representation on 03.04.2023 to the Director, Family Welfare & Preventive Medicine, Government of Tripura through proper channel [Annexure-6] which has been forwarded also to the Director, Family Welfare & Preventive Medicine vide Annexure-7 dated

26.04.2023. However, the grievances of the petitioner have not been redressed till date and, therefore, petitioner has approached this Court. Petitioner has impleaded some of the promotees as respondents No.4 to 6 in representative capacity in terms of Order 1 Rule 10(2) of the C.P.C and seeks leave in that regard to enable them to represent the other promotees.

(ii) Petitioner Supriti Debnath was appointed on 23.03.2015 on the post of MPW (Female) and posted at Laxmipur HWC under Gandacherra Sub-Divisional Hospital, Dhalai. She suffers from 40% Loco Motor Disability as per the ID Card at Annexure-1. This petitioner has also relied upon the provisions of the Act of 2016 and the Rules made thereunder. She has also relied upon the seniority list of MPW (Female) dated 26.10.2018 in which her position is rightly shown at Sl. No.638 [Annexure-4]. She contends that till date, no final seniority list has been published. She also refers to the office memorandum dated 07.09.2021, by which 4% horizontal reservation is allowed to persons with benchmark disabilities to each category of posts i.e. Group-A, B, C & D. Petitioner is aggrieved as by order dated 13.12.2022, by which about 44 persons were promoted to the post of MPS (Female) and earlier vide order dated 31.12.2021, 99 persons were also promoted to the post of MPS (Female) category upon the recommendation of the D.P.C dated 28.12.2021; but no person with disability has been promoted like the petitioner. Petitioner has also made representation on 03.04.2023 to the Director, Family Welfare & Preventive Medicine through proper channel, but the same has not been heeded to. Being aggrieved, she has approached this Court with similar grievance as that of petitioner Somen Debnath.

(iii) Petitioner Samir Hrishi Das has been working on the post of MPW since 07.12.2011 without any regular promotion. This petitioner is suffering from 45% Loco Motor Disability as per certificate dated 04.09.2002 [Annexure-1]. Petitioner has also relied upon the Act of 2016, the Rules made thereunder and the office memorandum dated 09.01.2019 as also the amended notification dated 07.09.2021 which provided 4% horizontal reservation in promotion for persons with benchmark disabilities in all category of posts. Petitioner is placed at Sl. No.465 in the seniority position as per the tentative seniority list of MPW (Male) published on 26.10.2018. He is satisfied with his seniority position in the tentative list, however, no final seniority list has been published as per the case of this petitioner also. With the same grievance as that of the petitioner Somen Debnath as regards non-promotion to the persons like him with benchmark physical disability, as against the promotion order dated 13.12.2022, he has also represented on 03.04.2023 through proper channel to the Director, Family Welfare & Preventive Medicine, Government of Tripura. However, since his representation has not been heeded to, the present writ petition has been filed.

3. Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel for the petitioners, submits that grave injustice has been caused to the petitioners who are entitled to promotion from the category of physically disabled persons having benchmark disabilities of 40% or above in the individual cases in the promotional exercise conducted by the respondent-Department, both in respect of the MPW (Male) and MPW (Female) to the post of MPS (Male) and MPS (Female) in respective cases. Therefore, the respondents may be directed to consider and grant them due

promotion to the post of MPS (Male) / MPS (Female) after examining the case of individual petitioners.

4. Mr. Mangal Debbarma, learned Additional Government Advocate for the respondents-State, at the outset submits that since the petitioners have already represented before the competent authority/respondent No.2, Director of Health Services, the respondent may be allowed to take a decision on their representation in accordance with law at this stage.

5. I have considered the submissions of learned counsel for the parties and taken note of the relevant foundational facts pleaded and placed from the record. The cases of the petitioners is based on the provisions of the Rights of Persons with Disabilities Act, 2016 and the Rules framed thereunder which provide 4% reservation for direct recruitment to persons belonging to the disabled category in all category of posts. The provisions of the Act and the Rules have been acted upon by the respondents-State and vide notification dated 09.01.2019, horizontal reservation has been provided to persons with benchmark disabilities for posts to be filled up by direct recruitment i.e. 4% recruitment to each category of post. Subsequently by amendment dated 07.09.2021, similar benefit of horizontal reservation to the extent of 4% in favour of persons with benchmark disabilities in matters of promotion has been provided for in all category of posts such as Group-A, B, C & D.

6. Petitioners have approached this Court as according to them, in the MPS (Male) category, only 1(one) person with physical disability has been granted promotion whereas in the MPS (Female) category, no one has been provided promotion. It appears further that the petitioners have approached the

competent authority/Director of Family Welfare & Preventive Medicine, Government of Tripura through proper channel with their grievances which have remained unredressed. As such, at this stage this Court, without expressing any opinion on the merits of the cases of the petitioners, is inclined to dispose of the writ petitions with a direction to the competent authority/respondent No.2 to take a decision in accordance with law on their representation after due scrutiny of all material facts concerning the petitioners and the applicability of the relevant office memorandum dated 09.01.2019 and 07.09.2021 framed under the Act of 2016 and the Rules made thereunder. Let such decision be taken within a reasonable time, preferably 8(eight) weeks from the date of receipt of the copy of this order.

7. Writ petitions stand disposed of. Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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