

**HIGH COURT OF TRIPURA**  
**A\_G\_A\_R\_T\_A\_L\_A**  
**WP(C) No.462 of 2023**

Sri Goutam Sarkar, aged 48 years, son of late Joy Chandra Sarkar, resident of Mukta Dar J.B. School, Village Tal Tala, P.O. Chaachuria, Mohanpur, Tripura, Pin-799211

..... Petitioner(s)

V E R S U S

1. The State of Tripura, to be represented by the Secretary Department of Home, Government of Tripura, New Secretariat Building, New Capital Complex, Agartala, West Tripura, Pin-799010.

2. The Deputy Inspector General of Police, AP(Adm. & Trg.) Lal Charra, Tripura.

3. The Commandant, 8<sup>th</sup> Battalion Tripura State Rifles, (IR-III), Lal Charra, Tripura.

..... Respondent(s)

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For Petitioner(s) : Ms. A. Debbarma, Advocate.

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

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

Date of hearing and judgment : *1<sup>st</sup> September, 2023.*

Whether fit for reporting : YES / NO

**JUDGMENT & ORDER(ORAL)**

Heard Ms. A. Debbarma, learned counsel appearing for the petitioner and Mr. Mangal Debbarma, learned Additional Government Advocate appearing for the State-respondents.

[2] The case of the writ petitioner is encapsulated in the order dated 03.08.2023 which is extracted hereunder :

“Ms. A. Debbarma, learned counsel for the petitioner, submits that petitioner had failed in the PPET (1.6 km run & chin-up) written 1st paper in the final test of List-‘C’ cadre course in the year 2015. It is submitted that by communication dated 10.06.2023 [Annexure-2] issued by the Commandant, 8th Bn. TSR (IR-III), all those who had failed in previous batches were allowed to clear failed subjects and appear in the final test of List-‘C’ cadre course. Petitioner is a Havildar who would be entitled to be promoted to the post of Naib Subedar, if he succeeded in the test. However, by a subsequent communication dated 22.06.2023, petitioner has been

debarred by the Commandant from participating in the final test due to over age as per Rule 5(1) of Tripura State Rifles (Discipline, Control, Service Conditions etc.) (5th Amendment) Rules, 2014. Ms. A. Debbarma, learned counsel for the petitioner, has drawn the attention of this Court to the relevant rule which prescribes an upper age limit of 47 years. Petitioner has attained the age of 48 years now. It is submitted that to his knowledge, no examinations for final test were held in the recent past. Due to non-holding of exam at regular intervals, petitioner could not be declared ineligible on grounds of over age. Besides that, learned counsel for the petitioner has relied upon Rule 50 under Chapter-V (Miscellaneous Provision) of the Tripura State Rifles (Discipline, Control, Service Conditions etc.) (5th Amendment) Rules, 2014 which provides the power of relaxation to the State Government of any of these Rules in specific cases. It is further submitted that the case of the petitioner is genuine and such relaxation can be validly granted. Therefore, petitioner has approached this Court. Mr. Mangal Debbarma, learned Additional Government Advocate for the respondents-State, is allowed 3(three) weeks' time to obtain instructions in this matter and file Counter Affidavit. Matter be listed after four weeks (01.09.2023) so that petitioner, if so advised, may file Rejoinder Affidavit in the meantime."

[3] Respondents have filed a counter-affidavit pursuant thereto.

The counter-affidavit states that the petitioner could not pass the final test of said pre-promotion cadre list-'C' conducted in the year 2016 as per final result-sheet circulated to all the concerned TSR units dated 18.02.2017 (Annexure-R/1). Petitioner neither submitted any representation nor appeared in person before the authority for submission of his grievance in connection with conducting final test of pre-promotion cadre list-'C' to clear his failed subjects after his failure in the final test conducted in the year 2016 prior to his overage. Therefore, his claim for not giving him an opportunity to clear the failed subjects in due course of time is not tenable. At the time of second nomination of the petitioner to clear the failed subject(s) in the month of June, 2023, it appeared that he had already crossed the prescribed age limit as laid down in Rule-5(1) of Tripura State Rifles (Discipline, Control, Service Conditions, etc.) (5<sup>th</sup> Amendment) Rules, 2014 (Annexure-R/2). He further submitted that a board was constituted for conducting final test of

pre-promotion cadre list-‘C’ at Head Quarter 10<sup>th</sup> Battalion TSR, Jirania in which the name of the petitioner was included but on scrutiny of service records including the petitioner out of these 09 Havildars (GD), only one Havildar (GD) Somnath Chakraborty of 7<sup>th</sup> Battalion TSR was found to be within the prescribed age limit of 42 years who was allowed to appear the final test in the current batch and remaining 8 Havildars (GD) including the name of the petitioner were not considered to appear the final test of pre-promotion cadre list-‘C’ due to overage as per Rule-5(1) of Tripura State Rifles (Discipline, Control, Service Conditions, etc.) (5<sup>th</sup> Amendment) Rules, 2014. Petitioner has been duly communicated about his cancellation of nomination with reasons. As per Tripura State Rifles (Recruitment) Rules, 1984 and Tripura State Rifles (Discipline, Service Conditions, etc.) Rules, 1986, (*TSR (discipline) Rules, 1986, for short*) there is no provision to conduct final test of failed candidates. It has been found after scrutiny of the service record of the petitioner that he has been overage. The final test of current batch has been completed in June, 2023.

[4] Mr. Mangal Debbarma, learned Additional Government Advocate submits that the petitioner failed to represent for conduct of a re-test for clearing the pre-promotion cadre list-‘C’ exercise before he became overage in the year 2019. There being no rules for permitting overage failed candidates to face the pre-promotion cadre list-‘C’ test. As per the TSR (discipline) Rules 1986, the representation of the petitioner was rejected. As such, no relief can be granted to him under the instant rules. The counter-

affidavit is silent on the scope of Rule-50 i.e. the relaxation power to the competent authority under the TSR (discipline) Rules, 1986.

[5] Learned counsel for the petitioner submits that non-conduct of a re-test for pre-promotion cadre 'list-C' exercise over all the years since 2015 till 2023 has rendered not only the petitioner but several others ineligible as is also evident from the counter-affidavit of the respondents-State. The petitioner and other such similarly situated Havildars (GD) are not responsible for not holding the pre-promotion cadre list-'C' tests. As such, petitioner should not be disadvantaged because of inaction on the part of the respondent-authorities. Therefore, they may be directed to invoke the power of relaxation under Rule-50 in the case of the petitioner and similarly situated persons on account of the hardship endured upon them due to inaction of the respondent-authorities.

[6] I have taken note of the submissions of learned counsel for the parties and pleadings placed from record and also the relevant provisions of TSR (Discipline) Rules, 1986. The background facts reveal that there has been no test for pre-promotion cadre list-'C' since 2015 till 2023. Petitioner had failed in the test in the year 2015 and became overage in the year 2019. Similar other 8 Havildars (GD) who were shortlisted were also found to be overage. The respondents for their own reasons have not conducted the test after 2015 on regular intervals which could have entitled such failed candidates to appear and clear the pre-promotion cadres list-'C' exercise for being eligible to the next higher post. This appears to have entailed hardship on the petitioner and other similarly situated persons for no fault of theirs. If

such a test would have been held at regular intervals and person like the petitioners who have failed again then such an employee could not have a sought for a re-test after he became overage. It appears that Rule 50 of TSR (discipline) Rules, 1986 provides for power of relaxation and is extracted hereunder :

**Relaxation :**

“Where the State Government is satisfied for reasons to be recorded in writing that it is necessary or expedient to do so, it may by order relax any of these rules in specified cases.”

[7] As such, it is for the competent authority under the State Government to consider whether the rules relating to conduct of pre-promotion cadre list-‘C’ exercise could be relaxed for persons in the category of petitioners taking into account that no such test was held for the last 8 years from 2015 till 2023. Petitioner shall make a representation before the competent authority through proper channel within a period of 2(two) weeks from today along with facts, documents and the relevant rules. Needless to say, the competent authority under the respondents-State shall take a decision on the representation of the petitioner, in accordance with law, within a reasonable time.

[8] In terms of the above, the writ petition is disposed of. Pending application(s), if any, also stands disposed of.

**(APARESH KUMAR SINGH) CJ**

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