

**HIGH COURT OF TRIPURA
AGARTALA
WA NO.118 OF 2023**

Debasish Sarkar,

S/o Late Samir Chandra Sarkar, resident of Shantipalli,
Charipara, P.O- Charipara, Agartala, P.S. Amtali, District – West
Tripura, Pin-799003.

Vs.

..... **Appellant(s)**

1. The State of Tripura,

to be represented by the Secretary, GA(Printing & Stationery)
Department, Govt. of Tripura, New Secretariat Building, New
Capital Complex, Agartala, West Tripura, Pin-799010.

2. The Director,

G.A (Printing & Stationery) Department, Government of Tripura,
Bardowali, Agartala, West Tripura.

.....**Respondent(s)**

For the Petitioner(s) : Mr. Somik Deb, Sr. Advocate.
Mr. P. Chakraborty, Advocate.

For the Respondent(s) : Mr. D. Bhattacharjee, G.A.
Mr. S. Saha, Advocate.

Date of hearing and delivery of
Judgment & Order : 04.10.2023.

Whether fit for reporting : YES.

**HON'BLE MR JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE ARINDAM LODH**

JUDGMENT AND ORDER(ORAL)

(Justice T. Amarnath Goud)

The appellant herein presented a writ petition
numbered as WP(C) No.317 OF 2022, before the Hon'ble Single
Bench of this Court *inter alia* praying for promoting him to the post
of Head Computer, as per the existing Recruitment Rules. The said

case fell for consideration on 05.07.2023 and after hearing the rival submissions, advanced by the parties, the said writ petition was disposed of by the Hon'ble Single Judge vide Judgment and Order dated 05.07.2023. Being dissatisfied with the said Order dated 05.07.2023, this present writ appeal has been filed seeking to quash/set aside the impugned Order dated 05.07.2023 passed in WP(C) No.317 of 2022 and thereafter to allow this Writ Appeal as well as the Writ Petition.

2. The brief fact of this case is that Sri Debasish Sarkar, the appellant herein, was appointed in the post of Computer, Tripura Government Press of the GA(Printing and Stationery), Department, on 12.06.2001. Pursuant thereto his joining was accepted vide order dated 19.06.2001. The appellant was granted *ad hoc* promotion to the post of Senior Computer vide orders dated 16th February, 2022. The petitioner thereafter made representations before the respondents for reviewing his *ad hoc* promotion to the post of Senior Computer and promoting them as Head Computer. Thereafter, the appellant filed a writ petition as mentioned here-in-above seeking redressal of his grievance. But the learned Single Judge dismissed the said writ petition filed by the appellant herein. Hence this appeal.

3. Heard Mr. Somik Deb, learned Sr. counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the appellant as

well as Mr. D. Bhattacharjee, learned G.A., assisted by Mr. S. Saha, learned counsel appearing for the State-respondents.

4. Mr. Deb, learned Sr. counsel appearing for the appellant submits that under the Recruitment Rules framed under Article 309 of the Constitution of India read with Section 29 of the Indian Boilers Act 1923, the petitioner is entitled to be promoted to the post of Head Computer. The Hon'ble Single Judge while passing the Impugned Order dated 05.07.2023, failed to appreciate that in the case of conflict between a Notification issued, in exercise of power, either under the substantive part of Article 309 of the Constitution of India on one hand, and an Administrative Instruction, issued in exercise of the powers, conferred under Article 162 of the Constitution of India, on the other hand, the former must prevail over the latter. If there is a conflict between Statutory Rules and the Rule framed under Article 162 of the Constitution of India, the Statutory Rule will override the Rule framed under Article 162 of the Constitution of India.

To bolster his argument, learned Sr. counsel pressed into service the following Judgments of the Hon'ble Supreme Court.

i. **Paras-5 and 6** of the Hon'ble Apex Court Judgment reported in **(1989) 1 SCC 175** titled as **Union of India and ors. Vs. Somasundram Viswanath and ors** with emphasis given to **Para-6** of the said Judgment:-

"5. According to Paragraph VII of the Office Memorandum, extracted above, it is clear that the absence of any of the members of a Departmental Promotion Committee, other than the Chairman, would not vitiate the proceedings of the Departmental Promotion Committee provided that the member absent has been duly invited but he absented himself for some reason and that there was no deliberate attempt to exclude him from the deliberation of the Departmental Promotion Committee and that the majority of the members constituting the Departmental Promotion Committee are present in the meeting. In the instant case the only person who was absent at the meeting of the Departmental Promotion Committee was the Secretary to the Government of India, Ministry of Defence who could not attend the meeting because he had to be present in Parliament at the same time at which the Departmental Promotion Committee had to meet. The Chairman of the Departmental Promotion Committee was present and the Chairman and the other members who were present constituted the majority of the Departmental Promotion Committee. It was urged on behalf of the 1st respondent that the Office Memorandum dated 30.12.1976 which contained the various administrative instructions regarding the procedure for making promotions and the functions of the Departmental Promotion Committees being merely in the nature of PG NO 152 administrative instructions could not override the Rules which had been promulgated under the proviso to [Article 309](#) of the Constitution of India.

6. It is well settled that the norms regarding recruitment and promotion of officers belonging to the Civil Services can be laid down either by a law made by the appropriate Legislature or by rules made under the proviso to [Article 309](#) of the Constitution of India or by means of executive instructions issued under [Article 73](#) of the Constitution of India in the case of Civil Services under the Union of India and under [Article 162](#) of the Constitution of India in the case of Civil Services under the State Governments. If there is a conflict between the executive instructions and the rules made under the proviso to [Article 309](#) of the Constitution of India, the rules made under proviso to [Article 309](#) of the Constitution of India prevail, and if there is conflict between the rules made under the proviso to [Article 309](#) of the Constitution of India and the law made by the appropriate Legislature the law made by the appropriate Legislature prevails. The question for consideration is whether in the instant case there is any conflict between the Rules and the Office Memorandum dated 30.12.1976, referred to above. We have already noticed that there are different rules framed under the proviso to [Article 309](#) of the Constitution of India for making recruitments to services in the different departments and provisions have been made in them for the constitution of Departmental Promotion Committees for purposes of making recommendations with regard to promotions of officers from a lower cadre to a higher cadre. But these rules are to some extent skeletal in character. No provision has been made in any of them with regard to the procedure to be followed by the Departmental Promotion Committees and their various functions and also to the quorum of the Departmental Promotion Committees. These details which were necessary for the proper functioning of the Departmental Promotion Committees, as a matter of practice, were laid down prior to 30.12.1976 by the Government of India in the form of Office Memoranda issued from time to time and that on 30.12.1976 a consolidated Office Memorandum was issued containing instructions with regard to such details which were applicable to all Departmental Promotion Committees of the various Ministries/Departments in the Government of India. said Office Memorandum deals with several topics, such as of the Departmental Promotion Committees, frequency at which Departmental Promotion Committees should meet, matters to be put up

for consideration by the Departmental Promotion Committees, the procedure to be observed by the Departmental Promotion Committees. the procedure to be followed in the PG NO 153 case of an officer under suspension whose conduct is under investigation or against whom disciplinary proceedings are initiated or about to be initiated, validity of the proceedings of the Departmental Promotion Committees when a member is absent, the need for consultation with the Union Public Service Commission, the procedure to be followed when the appointing authority does not agree with the recommendations of a Departmental Promotion Committee, implementation of the recommendations of the Departmental Promotion Committees, ad hoc promotions, period of validity of panels etc. etc. The Office Memorandum dated 30.12.1976, therefore, is in the nature of a complete code with regard to the topics dealt with by it. Unless there is anything in the Rules made under the proviso to [article 309](#) of the Constitution of India, which is repugnant to the instructions contained in the Office Memorandum, the Office Memorandum which is apparently issued under [article 73](#) of the Constitution of India is entitled to be treated as valid and binding on all concerned. In the instant case the Rules do not contain any of these details except indicating who are all the persons who constitute the Departmental Promotion Committee. We do not, therefore, find any repugnance between the Rules and the Office Memorandum. In the circumstances we feel that the plea raised by the 1st respondent in his additional affidavit dated 13th May, 1988 (page 132 of the Paper Book) that the Office Memorandum is ineffective cannot be upheld. We do not agree with the decision of the Central Administrative Tribunal that in the instant case the proceedings of the Departmental Promotion Committee on 7.8.1986 have been vitiated "solely on account of this reason viz., that secretary, Ministry of Defence, one of its members was not present". We hold that the proceedings of the Departmental Promotion Committee at its meeting held on 7.8.1986 are not invalid for the above reason.

ii. **Paras 27, 28 and 29** of the Hon'ble Apex Court Judgment reported in **(2022) 12 SCC 1** titled as **SK. Nausad Rahaman and ors. Vs. Union of India and ors:-**

"27. The above principle was cited with approval in *Union of India v. SL Abbas* where the Court held that transfer is an incident of service:

"7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline however does not confer upon the Government employee a legally enforceable right."

28. 28 Fourth, norms applicable to the recruitment and conditions of service of officers belonging to the civil services can be stipulated in:

- (i) A law enacted by the competent legislature;
- (ii) Rules made under the proviso to Article 309 of the Constitution; and

(iii) Executive instructions issued under Article 73 of the Constitution, in the case of civil services under the Union and Article 162, in the case of civil services under the States.

29. Fifth, where there is a conflict between executive instructions and rules framed under Article 309, the rules must prevail. In the event of a conflict between the rules framed under Article 309 and a law made by the appropriate legislature, the law prevails. Where the rules are skeletal or in a situation when there is a gap in the rules, executive instructions can supplement what is stated in the rules."

iii. On the point that Special Rules override General Rules, learned Sr. counsel appearing for the appellant referred to the relevant part of the Hon'ble Apex Court Judgment reported in **(1992) 1 SCC 335** titled as **R.S. Raghunath and State of Karnataka and anr:-**

" It may be noted that Sub-Rule 3(2) with which we are mainly concerned was inserted in the year 1982. Shri Chidambaram strongly relying on the non-obstante clause in Rule 3(2) with which this Sub-Rule begins, contended that this general rule dearly supersedes the special law and therefore, according to him, the Tribunal was right in holding that the promotion to the post of Deputy Commissioner of Transport could be only on the basis of seniority-cum-merit. It is true that a simple reading of Rule 3(2) appears to lay down that notwithstanding anything contained in the General Rules or in the Special Rules, the promotion to the post of a Head or Additional Head of a Department only shall be by selection and that the promotion to all other posts shall be on the basis Of seniority- cum-merit. This clause (b) of Sub-Rule (2) is in general terms and as already noted the General Rules indicate that they regulate general recruitment to all the Karnataka State Civil Services broadly. It is not in dispute that just like the Special Rules providing for recruitment of the Transport Department there are such special rules in respect of many other departments also. It is therefore clear that while General Rules broadly indicate that they regulate general recruitment including promotion to all the State Civil Services but at the same time each Department has its own Special Rules of recruitment and they are co-existing. Such Special Rules of recruitment for the Motor Vehicles Department are not repealed by any provision of the General Rules which are later in point of time. As a matter of fact Rule 21 which provides for repeal does not in any manner indicate that any of the Special Rules stood repealed. It is in this background that we have to consider the interpretation of non-obstante clause in Rule 3(2) of the General Rules."

In terms of the above argument, learned Sr. counsel argued that the Judgment and Order as passed by the learned Single Judge is bad in law and liable to be quashed.

5. Heard and perused the evidence on record.
6. Learned Sr. counsel appearing for the appellant herein has contended that if there is a conflict between Recruitment Rules framed under Article 309 of the Constitution of India read with Section 29 of the Indian Boilers Act, 1923 and the Rule framed under Article 162 of the Constitution of India, the Statutory Rule will override the Rule framed under Article 162 of the Constitution of India. Learned Sr. counsel indicated that these are some administrative instructions issued which have no statutory force of law and cannot have an overriding effect over the Act. On the other hand, he also contended that the case of the petitioner is governed under the Special Rules and there cannot be any conflict.
7. To properly appreciate the fact of the case in hand, we may extract herein Articles 309, 162 of the Constitution of India:-

"309. Recruitment and conditions of service of persons serving the Union or a State.- Subject to the provisions of this Constitution, Acts of the appropriate Legislature may regulate the recruitment, and conditions of service of persons appointed, to public services and posts in connections with the affairs of the Union or of any State:

Provided that it shall be competent for the President or such person as he may direct in the case of service and posts in connection with the affairs of the Union, and for the Governor of State or such person as he may direct in the case of services and posts in connection with the affairs of the State, to make rules regulating the recruitment, and the conditions of service of persons appointed, to such services and posts until provision in that behalf is made by or under an Act of the appropriate Legislature under the article, and any Rules so made shall have effect subject to the provisions of any such Act."

162. Extent of executive power of State Subject to the provisions of this Constitution, the executive power of a State shall extend to the matters with respect to which the Legislature of the State has power to make laws.

Provided that in any matter with respect to which the Legislature of a State and Parliament have power to make laws, the executive power of the State shall be subject to, and limited by, the executive power expressly conferred by the

Constitution or by any law made by Parliament upon the Union or authorities thereof Council of Ministers.”

8. We may also produce the Recruitment Rules regulating the method of recruitment to the post of Head Computer in the Tripura Government press under the G.A.(Printing & Stationery) Department, Government of Tripura:-

“Government of Tripura
G.A.(Printing & Stationery) Department

No.F.1(1)-TBP/Cabinet/2007/Part-IV/3131 dated Agartala, the 17th June, 2014

Notification

In exercise of the power conferred by the proviso to article 309 of the Constitution of the India read with Section 29 of the Indian Boilers Act, 1923, the Governor of Tripura in consultation with the Tripura Public Service Commission is hereby pleased to make the following rules regulating the method of recruitment to the post of Head Computer in the Tripura Government Press under the G.A.(Printing & Stationery), Department, Government of Tripura, namely:-

1. Short title and commencement:-

a) These rules may be called “Recruitment Rules, 2014” for the post of Head Computer in the Tripura Government Press Under the G.A.(Printing & Stationery) Department.

b) They shall come into force on the date of their publication in the Official Gazatee.

2. The name of the post(s) shall be specified in Column-1 of schedule annexed hereto.

3. Number, classification and scale of pay:-

The number of the said post, its classification and the scale of pay attached thereto shall be as specified in Column 2 to 4 of the Schedule annexed hereto.

4. Method of recruitment, age limit, qualification, etc.

The method of recruitment to the said post, age limit, qualification and other matters relating to the said post shall be a specified in columns 5 to 13 of the said schedule.

5. Disqualification- No Person.

a) Who has entered into or contracted a marriage with a person having spouse living

OR

b) Who having a spouse living, has entered into a contracted a marriage with persons, shall be eligible for appointment to the said post.

Provided that the State Government may, if satisfied that such marriage is permission under the personal law applicable to such person and the other party to the marriage and that there are other grounds for so doing exempt any persons from the operation of this rules.

6. Power to relax:-

Where the State Government is of the opinion that it is necessary or expedient to do so, it may, by order, for reasons to be recorded in writing and in consultation with the Tripura Public Service Commission, may relax any of this provisions of these rules with respect to any class or category of persons.

7. Saving:

Nothing in these rules shall effect reservations, relaxation of age limit and other concessions required to be provided for the Scheduled Castes, the

Scheduled Tribes, Ex-Servicemen and to other special categories of persons in accordance with the orders issued by the State Government from time to time in this regard.

8. Interpretation

If any question arises relating to the interpretation of these rules, it shall be referred to G.A.(Printing & Stationery) Department, Government of Tripura, whose decision thereon shall be final."

9. The relevant part of the notification dated 22.06.2021 of GA(P&T) Department, Government of Tripura which is also known as the Promotion Policy of 2021 is also produced here-in-under:-

"8. It has also been decided by the Government to allow such appointment on ad hoc promotion as one time measure, following the below mentioned conditions:-

(i) Appointment on Promotion may be allowed purely on ad-hoc basis subject to final outcome of the SLP pending before the Hon'ble Supreme Court of India.

(ii) Ad-hoc appointment on promotion shall be considered keeping in view of the latest available seniority list of the feeder post/ grade subject to condition that he/she is otherwise suitable & eligible for promotion.

(iii) No inter-se seniority list shall be determined/ published in respect of these ad-hoc promotions.

(iv) Benefit of the ad-hoc appointment on promotion shall be available to accommodate a candidate to the immediate next higher promotion post/ grade only and such benefit shall not be considered to accommodate the said candidate to multiple higher posts/ grade with prospective effect.

(v) To create supernumerary posts, administrative Department shall assess the number of posts to be created to materialize the promotion as per above procedure and inform the total number of posts so determined to Finance Department. No, further concurrence of Finance Department is required.

(vi) This ad-hoc appointment on promotion shall not be treated as regular appointment on promotion.

(vii) The ad-hoc appointment on promotion as per guidelines illustrated above shall be started in the highest grade of a cadre/ service first. Due to such promotion, the resultant vacancies shall be added with the vacancies in the lower grade, and to be filled up subsequently.

(viii) Regular DPC may be held based on the existing seniority list. However, while issuing the orders it should be stipulated that these promotions are provisional and subject to the final outcome of the S.L.P pending before the Hon'ble Supreme Court of India. Subsequently, when the directions become available, a review DPC may be held and the necessary adjustments be made in the promotions of officers based upon the revised seniority list. In case any of the officers/ candidate appointed

on ad-hoc promotion do not figure in the list approved by the review DPC they may be reverted to the posts held by them earlier.

9. As the persons to be appointed on ad-hoc basis subject to final verdict if the Hon'ble Supreme Court in SLP(C) No.19765-19767 of 2015 are likely to hold such ad-hoc promotion posts for a period of more than 1(one) year, consultation with the TPSC is required, wherever the same is necessary, following the provisions of the TPSC (Exemption form Consultation) Regulations, 1973.

10. Relevant portion of the conditions as mentioned in Para-8 above shall invariably be incorporated while issuing the promotion order/ notification for appointment on ad-hoc promotion."

10. The guidelines framed by the Government of Tripura GA (P&T) Department dated 22.06.2021 for granting *ad hoc* promotion, in particular para-8(iv) makes it clear that the benefit of the *ad hoc* appointment on promotion shall be available to accommodate a candidate to the immediate next higher promotion post/grade only and such benefit shall not be considered to accommodate the said candidate to multiple higher posts/ grade with prospective effect. The appellant has accepted joining the post of Senior Computer upon issuance of the order of promotion dated 16.02.2022. As per the Recruitment Rules extracted hereinabove 5(five) years experience in the post of Sr. Computer is required for promotion to the post of Head Computer and failing which it would be filled up from the post of Computer having 10(ten) years experience in the grade. The appellant though contends that the post of Head Computer was vacant since 2017 and they were eligible in terms of requisites seniority and experience, he have approached this Court only after acceptance of the promotion to the next higher post of Senior Computer. Under the Promotion

Policy, 2021 multiple promotions in such a manner is not permissible. More so, when the appellant has to complete the minimum number of years in the next higher grade of Senior Computer to be eligible to be promoted to the post of Head Computer.

11. Here the point advanced and emphasized by the learned Sr. counsel appearing for the appellant which fall for consideration before this Court is that, if there is any conflict in following the Rules while considering the case of the appellant in terms of promotion is concerned.

12. As cited supra originally, the appellant was appointed in the post of Computer and thereafter he was granted promotion to Senior Computer. This kind of arrangement in creating a post of Senior Computer through General Rules is only the creation of a post in between and this does not amount to conflict between both the Rules. There is no inconsistency or any overriding effect of one statute over the other and there is no administrative instruction to say that it is having the overriding effect on the statute.

13. In this present case, this Court is of the opinion that there is no conflict between the Recruitment Rules framed under Article 309 of the Constitution of India read with Section 29 of the Indian Boilers Act, 1923, and Administrative Instruction, issued in exercise of the powers, conferred under Article 162 of the

Constitution of India. As such, this present appeal is devoid of merits and liable to be dismissed.

14. Accordingly, the Judgment and Order of the Hon'ble learned Single Judge dated 05.07.2023 passed in WP(C) No.317 of 2022 is confirmed and the instant appeal stands dismissed.

15. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.

JUDGE

JUDGE



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