

**HIGH COURT OF TRIPURA
AGARTALA**

Cont. Cas (C) No.12 of 2024

Shri Narayan Chakraborty, Son of late Krishna Kumar Chakraborty, resident of Shyamali Apartment, Nandannagar, P.O. Kunjaban, Ward No.6, District-West Tripura.

..... Petitioner (s).

Versus

1. Sri L. T. Darlong, Occupying the post of Secretary, Government of Tripura in the Industries and Commerce (Handloom, Handcrafts & Sericulture), Civil Secretariate, New Capital Complex, P.O-Kunjaban, Agartala, West Tripura.
2. Shri Tarun Debbarma, holding the post of Director, Directorate of Handloom, Handicrafts and Sericulture, having office at I.T.I. Road, Indranagar, P.O. Kunjaban, Agartala, West Tripura.
3. Smt. Rina Debbarma, presently holding the post of Under Secretary, Government of Tripura in the Industries & Commerce Department, Capital Complex, P.O. Kunjaban, Agartala, West Tripura.
4. Smt. Vishwashree B. IAS, presently holding the post of Director, Directorate of Industries and Commerce, Government of Tripura, having office at Gorkha Basti, P.O. Kunjaban, Agartala, West Tripura.

..... Respondent(s).

For Petitioner (s) : Mr. T.D. Majumder, Sr. Advocate,
 Mr. Dalit Kalai, Advocate,
 Ms. Rimi Debbarma, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

02/08//2024

Heard Mr. T.D. Majumder, learned senior counsel assisted by Mr. Dalit Kalia, learned counsel for the petitioner and Mr. Mangal Debbarma, learned additional Government Advocate for the respondents.

[2] The present contempt petition was preferred alleging the willful disobedience of the order dated 27.09.2023 passed by this Court in WP(C) No.164/2023. The operative part of the said order reads as under:

“If that be so, upon consideration of the rival submission of the parties and the relevant pleadings taken note of in the foregoing paragraphs, this Court is of the opinion that the matter requires to be remitted to the competent authority in the light of the decisions rendered by the Apex Court in the case of *Abhijit Ghosh Dastidar (Supra)* and also *G.R. Meghwal (Supra)*. The competent authority would constitute a review DPC and place the case of the petitioner with the relevant remarks and notings so that his case can be reconsidered on the basis of the remaining ACRs other than those adverse ACRs for the relevant years 2016-17, 2017-18, 2018-19 which remained uncommunicated. The competent authority would also examine the plea of the petitioner as regards the grant of 3rd ACP from the date on which he completed 25 years of service in accordance with law. Let it be made clear that this Court has not made any observations as to whether the petitioner is fit to be granted promotion which would depend upon the decision to be taken by the review DPC or 3rd ACP. Let such exercise be completed within a period of 16(sixteen) weeks from the date of receipt of copy of this order.

The writ petition is disposed of. Pending application(s), if any, shall also stand disposed of.”

[3] Four juniors to him have been promoted to the post of Handloom Development Officer vide notification dated 16.01.2023. Petitioner was facing a departmental proceeding since 2012 which culminated in a minor punishment of withholding of one increment without cumulative effect vide order dated 08.11.2019 which obviously ceased to have effect upon expiry of one year thereafter. Since, uncommunicated ACRS for three years, which were average, were taken into consideration by the DPC to declare him unfit in the promotional exercise, petitioner had approached this Court with two grievances, one relating to promotion and the other relating to benefit of 3rd ACP on completion of 25 years of service. In this background, the writ petition was disposed of with the directions as above. Thereafter, the

petitioner approached this Court with a grievance that the order under offence has not been complied with in its letter and spirit since the consequential benefits of promotion from the effective date and also his claim for 3rd ACP has not been addressed on the recommendation of the review DPC. When the matter was taken up on 25.07.2024, the last affidavit-in-reply filed by the respondents was taken note of. The order dated 25.07.2024 contains the relevant stand of the respondents and is extracted hereunder:

“By the last affidavit-in-reply filed by the respondents, it has been made clear that a supernumerary post has been created on 08.07.2024 to accommodate the petitioner on the recommendation of the review DPC. Moreover, by order dated 15.07.2023 the benefits of MACPS-II and III have also been conferred in his favour and arrears have also been paid to the tune of Rs.2,60,202/-. The affidavit further states that the issuance of promotion order is in process.

Mr. T.D. Majumder, learned senior counsel assisted by Mr. Tapash Halam, learned counsel for the petitioner, submits that the promotion order, if any, on a supernumerary post should also be from the due date, i.e. when his juniors were promoted, otherwise petitioner would suffer.

Mr. Mangal Debbarma, learned Addl. G.A., seeks short time to obtain instructions and make categorical statements in that regard.

List the matter on **02.08.2024.**”

[4] The only question that remain was whether petitioner on the recommendation of review DPC and creation of a supernumerary post, petitioner would be granted promotion prospectively or from the due date when his juniors were promoted vide notification dated 16.01.2023. The review DPC had not indicated as to whether the promotion would be prospective or from the due date. That is why instructions were sought by learned additional Government Advocate on the last date. Upon instructions, he submits that the promotion would be on *ad hoc* basis in view of the *ad hoc* promotion policy and for that purposes concurrence of the Tripura Public Service Commission is required which may be completed within a period of

two months. Hence, the administrative department in pursuance to the DPC decision would execute the promotion prospectively in the light of the notification dated 22.06.2021.

[5] Mr. T.D. Majumder, learned senior counsel for the petitioner submits that petitioner's case was left out in the promotional exercise whereunder four juniors to him have been promoted *with effect from* 16.01.2023. Upon direction of this Court, the review DPC has found the case of the petitioner tenable for promotion taking into consideration only the communicated ACRs and also the cessation of the punishment of withholding of one increment within the period of one year from the penalty order dated 08.11.2019. Therefore, as on date of promotion of his juniors, petitioner was eligible. As such, if the litigation process and the review DPC have caused the delay, the effect of the promotion should not be granted prospectively but from the due date from which his juniors have been promoted.

[6] I find substance in the submissions of learned counsel for the petitioner. In the background circumstances explained above, since the review DPC has recommended creation of a supernumerary post to promote the petitioner, the same should be given effect from the date his juniors were promoted and not prospectively otherwise, the legal right which has accrued in favour of the petitioner upon the decision of the review DPC in the light of the directions passed by the writ Court, could be defeated. Let such promotion order be issued within a period of six weeks from today from the due date.

[7] Accordingly, the instant contempt petition is disposed of.
Pending application(s), if any, shall also stand disposed of

(APARESH KUMAR SINGH), CJ

