

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C)(CAT)No.01 of 2024

Union of India and others

..... Petitioner(s)

V E R S U S

Sri Pulakesh Debbarma

..... Respondent(s)

For Petitioner (s) : Mr. Bidyut Majumder, Deputy SGI.

For Respondent(s) : Mr. P. Roy Barman, Sr. Advocate,
Mr. Dipjyoti Paul, Advocate.

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

_O_R_D_E_R_

09/07/2024

Heard Mr. Bidyut Majumder, learned Deputy SGI for the petitioners and Mr. P. Roy Barman, learned senior counsel assisted by Mr. Dipjyoti Paul, learned counsel for the applicant/respondent.

[2] Applicant/respondent herein was promoted from the post of Chowkidar by order dated 30.12.2014 *with effect from* 01.11.2012. However, his promotion was revoked on 10.03.2015 (Annexure-A/1) and in his place one Sri Anjan Barman was promoted. In the seniority list at page-66, Sri Anjan Barman's name occurs at serial number-13 (date of joining-10.12.1997 as Chowkidar) whereas applicant's name occurs at serial number-15 (date of joining-05.10.1988 on the same post of Chowkidar). Both of them belong to the Scheduled Tribe category. The impugned order dated 10.03.2015 also reflects that the promotion order dated 30.12.2014 (Annexure-A/6) has been amended as against the applicant's name occurring at serial number-66 by Sri Anjan Barman who was senior to him but was inadvertently left out. Applicant's representation made on

15.10.2018 was duly responded by letter dated 29.11.2018 (Annexure-A/2) by the Major, AGE (I), Agartala, informing him that he had been erroneously granted promotion superseding his senior. Due to non availability of vacancy in the post of Mate, he could not be accommodated for promotion in the post of Mate tradesmen. After making representations in the year 2019 and 2020, he approached the learned Central Administrative Tribunal (CAT), Guwahati Bench, Guwahati in 2020 in O.A. No.041/00111/2020. Surprisingly, Sri Anjan Barman, a necessary party, was not impleaded.

[3] The other contention advanced by the writ petitioner-Union of India and countered by the applicant are being dealt as under. It has been contended that though a decision was taken by the Union of India that *with effect from* 08.07.2013, the incumbents from the cadre of Chowkidar were taken out from the feeder cadre to the promotional post of Mate but the communication dated 17.01.2014, also referred to at paragraph-8 of the impugned order, clarified that Chowkidars/Safaiwalas were eligible for promotion to Mates, if they have passed the trade test of Mates. It was therefore declared that upto 07.07.2013 all those Chowkidars/Safaiwalas, who have passed the trade test of Mates will be government by SRO 169/2004. It is not in dispute that the other 69 persons promoted as Mates also belong to the feeder cadre of Chowkidar/Safaiwalas. As such applicant's promotion was not revoked for that reason.

[4] It is apparent from the relevant pleadings on record placed before us that the only reason for revocation of the order of promotion was that his senior Sri Anjan Barman had inadvertently been left out in the promotional exercise. Applicant, however, did not implead Sri Anjan Barman before the learned CAT. In order to press the grounds of challenge, it was necessary to implead the person who had replaced the applicant in the promotional exercise. This factual position

is reflected from the order of revocation of promotion dated 10.03.2015. As such, non-joinder of a necessary party is also fatal while considering the plea of the petitioner. Any direction to promote the applicant, therefore, would be in teeth of the principles of natural justice without hearing the affected party, Sri Anjan Barman. More so, the petitioner-Union of India, has made clear averments and also communicated to the applicant through letter dated 29.11.2018 (Annexure-A/2) that there were no available vacancy in the post Mate to accommodate him.

[5] Under Section 21 of the Administrative Tribunals Act, 1985, an aggrieved person has to move the tribunal within one year of the accrual of the cause of action. The original application was preferred after five years of the alleged cause of action and that too without any application for condonation of delay. As such, the original application was not entertainable on the grounds of delay also. However, the learned CAT after consideration of the rival case of the parties proceeded to issue the following directions:

“11. In view of the above we quash and set aside the order dated 10.03.2015 (Annexure- A/1) and direct the respondents to restore promotion Order dated 30.12.2014 with consequential benefits to the applicant within a period of two months from the date of receipt of this order.

12. Accordingly, the O.A. is disposed of with the above observations and directions with no order as to costs.”

[6] Mr. Bidyut Majumder, learned Deputy SGI for the Union of India has reiterated the submissions as reflected in the forgoing part of the order in order to assail the impugned decision.

[7] Mr. P. Roy Barman, learned senior counsel assisted by Mr. Dipjyoti Paul for the applicant/respondent herein has taken effort to draw the attention of the Court to the rival pleadings of the parties in order to impress that the promotion granted to the applicant/respondent herein was wrongly revoked. He belonged to the feeder cadre of Chowkidar whose cases were eligible for

consideration in the promotional exercise in view of the clarification contained in the office order dated 17.01.2014 duly taken note of by the learned CAT. However, learned counsel for the applicant/respondent herein has not been able to countenance as to how in the absence of the necessary party relief could have been granted in favour of the applicant. He has also not been able to dispute that the said Sri Anjan Barman was senior to him at serial number-13 vis-a-vis the applicant at serial number-15 in the same category of Scheduled Tribe candidates.

[8] The order of revocation of promotion dated 10.03.2015 did reflect the amendment of the promotion order at serial number-66 by Sri Anjan Barman in place of the applicant. Besides the above, the original application suffered due to inordinate delay as it was filed five years from the alleged cause of action on issuance of the revocation order.

[9] For all the above reasons therefore, the impugned order cannot be sustained in the eye of law and is accordingly set aside. The instant petition is allowed with the above observations. Pending application(s), if any, also stands disposed of. Stay order, if any, stands vacated.

(S. D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ