

IN THE HIGH COURT OF TRIPURA

AGARTALA

W.A. No.84 of 2024

W.A. No.95 of 2024

In W.A. No.84 of 2024

Sri Rajib Paul,

son of late Bijoy Krishna Paul, resident of Math
Chowmuhani, P.O. Agartala College, P.S. East
Agartala, Agartala, District- West Tripura, PIN-
799004

..... Appellant

By Advocate :

Ms. S. Debgupta, Adv.

– V e r s u s –

- 1. The State of Tripura,**
represented by the Commissioner & Secretary,
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
Complex, District-West Tripura, PIN-799006
- 2. The Commissioner & Secretary,**
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
Complex, District-West Tripura, PIN-799006
- 3. The Commissioner & Secretary,**
Finance Department, Government of Tripura,
having his office at Secretariat Building, PO-
Kunjaban, PS-New Capital Complex, District-
West Tripura, PIN-799006
- 4. The Deputy Secretary,**
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
Complex, District-West Tripura, PIN-799006
- 5. The Chief Engineer,**
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
Complex, District-West Tripura, PIN-799006

..... Respondents

By Advocate :

Mr. D. Sarma, Addl. GA

In W.A. No.95 of 2024

1. **Sri Shyama Prasad Sarkar,**
son of Late Atul Chandra Sarkar, resident of
village- Madhyapara, PO & PS- RK Pur,
Udaipur, District- Gomati Tripura, PIN-799120.
2. **Sri Ashis Nath,**
son of Late Nanigopal Nath, resident of village-
Shakaibari, PO- Shakaibari, PS- Dharmanagar,
Dharmanagar, District- North Tripura, PIN-
799251
3. **Sri Krishnadhan Debnath,**
son of Late Satish Chandra Debnath, resident of
village- Badharghat (opposite to TGB), PO-
Siddhi Ashram, PS- AD Nagar, Agartala,
District-West Tripura, PIN- 799003
4. **Sri Subimal Datta,**
son of Sudhir Chandra Datta, resident of village-
West Julaibari, PO- Julaibari, PS-Baikhora,
District- South Tripura, PIN- 799141
5. **Sri Himangshu Shekhar Chanda,**
son of Late Harendra Bijoy Chanda, resident of
village-Post Office road, near BBI staff quarter,
PO & PS. Dharmanagar, Dharmanagar, District-
North Tripura, PIN-799250, Age-59.
6. **Sri Ananda Debnath,**
son of Late Rajani Kanta Debnath, resident of
village-50, Office Lane, PO-Agartala, PS- West
Agartala, Agartala, District-West Tripura, PIN-
799001
7. **Sri Rahul Deb,**
son of Birendra Ranjan Deb, C/O Dipak
Chandra Deb, resident of village-340 Main road
west, near RK road, PO- New Barackpore, PS-
Kherdah, District- 24 Pargana North, West
Bengal
8. **Sri Jyotirmay Nath,**
son of Late Jatindra Chandra Nath, resident of
village, PO & PS- Panisagar, District- North
Tripura, PIN-799260.

9. **Shri Anupam Chakraborty,**
son of Late Ajit Chakraborty, resident of
Ramnagar Road No.-5, PO- Ramnagar, PS-
Durga Chowmuhani, Agartala, District- West
Tripura, PIN-799002
10. **Sri Ratan Chandra Saha,**
son of Late Rebati Mohan Saha, resident of
village-Paulpara, Office Tilla, PO & PS-
Bishalgarh, District- Sepahijala Tripura, PIN-
799102

..... Appellants

By Advocate :

Mr. Somik Deb, Sr. Adv.
Mr. P. Chakraborty, Adv.

– V e r s u s –

1. **The State of Tripura,**
represented by the Commissioner & Secretary,
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
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3. **The Commissioner & Secretary,**
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having his office at Secretariat Building, PO-
Kunjaban, PS-New Capital Complex, District-
West Tripura, PIN-799006
4. **The Deputy Secretary,**
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
Complex, District-West Tripura, PIN-799006
5. **The Chief Engineer,**
Public Works Department, Government of
Tripura, having his office at Secretariat
Building, PO-Kunjaban, PS-New Capital
Complex, District-West Tripura, PIN-799006

..... Respondents

By Advocate :

Mr. D. Sarma, Addl. GA

Date of hearing and delivery
of Judgment and order : 3rd September, 2024.

Whether fit for reporting :

YES	NO
✓	

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

JUDGMENT & ORDER (ORAL)

Both the Writ Appeals having arisen out of the judgment and order dated 08.04.2024 passed by the learned Writ Court in W.P.(C) No.872 of 2021, are heard together and are disposed of by this common judgment. By the impugned judgment, the writ petition was dismissed.

[2] Admittedly all the writ petitioners, the appellants herein, are Diploma holder Junior Engineers working in the Public Works Department (in short, PWD) guided by Tripura Engineering Service Rules, 1987. As per the said Rules, initially there were total 5(five) grades of Engineers in the service which were as follows:

Gr.I - (i) Chief Engineers and (ii) Additional Chief Engineer & Arbitrator

Gr.II -Superintending Engineers

Gr.III-Executive Engineers or equivalent Engineering posts.

Gr.IV-Assistant Engineers and equivalent Engineering posts.

Gr.V. -(i) Junior Engineer and (ii) Overseers/Estimator

[3] Some changes were thereafter made in those grades by 3rd Amendment of the year 2007 AD and now after the 7th Amendment of the said Rules came into force with effect from 10.06.2014, the classification of different grades in the service are made in the following manners:

- | | |
|-----------------|------------------------|
| (i) Grade-I | Group-A, gazetted |
| (ii) Grade-II | Group-A, gazetted |
| (iii) Grade-III | Group-A, gazetted |
| (iv) Grade-IV | Group-A, gazetted |
| (v) Grade-V(A) | Group-B, gazetted |
| (vi) Grade-V(B) | Group-C, Non- gazetted |

As per rule 4, the Strength of the Service is as follows:

- 1) The authorized permanent strength of the service and the duty posts included therein shall be as specified in the Schedule to these rules.
- 2) The Government may, be order, create duty posts for such period as may be specified therein.
- 3) **Distribution of posts of Grade-V between Grade V(A) and V (B) shall be 70:30.**
- 4) **Distribution of posts between Degree Holder and Diploma Holder in Grade-V [Grade-V(A) and Grade-V(B) together shall be 50:50.**

[4] It is the case of the petitioners that all of them having Diploma in Civil Engineering were appointed to the post of Overseer/Estimator in the pay scale of Rs.600-35-950-40-990-45-1440/- on different dates. Thereafter, as per the addendum issued by the State of Tripura dated 30.03.1989 in respect of State Civil Services Revised Pay Rules, 1988, the designation of Overseer (both Diploma holders and non-Diploma holders/non-Degree holders) were re-designated as Junior Engineer Grade-II and it was also provided therein that a Junior Engineer Grade-II (Diploma holders) who had completed 4(four) years of service including services as Overseer after coming over to the revised pay scale as per Revised Pay Rules, 1988, shall be designated as 'Junior Engineer, Grade I' in the revised pay scale of Rs.2000-4410/- from the date of completion of 04 years of service. According to the petitioners, they were accordingly given automatic grade movement in the said revised scale of Rs.2000-4410/- in the post of Junior Engineer Grade-I. Thereafter, Tripura State (Revised Pay) Rules, 1999 came into force and again by a notification dated

03.07.2000, the Finance Department, Government of Tripura made certain amendments of Rule 10 thereof by making a provision of movement to the next higher grade of an employee to any cadre service excepting [Grade-V Junior Engineer (Diploma) of Tripura Engineering Service/Tripura Power Engineering Service] on completion of 17 years of continuous and satisfactory service in his/her existing Grade in the respective cadre without promotion. However, by said amendment, the Junior Engineers (Diploma) in Grade-V of the Tripura Engineering Service/Tripura Power Engineering Service were allowed to move to the next higher grade on completion of 19 years of continuous and satisfactory service **without promotion**. It was also further provided that in the event of such movement, the benefit shall be personal to the employee concerned and should not involve any increase in the cadre strength and where the cadre rules so require, or as per the rules it was not possible to accommodate in higher grade, the movement may not necessarily entail change or nature of duties. It was also further provided therein that while the past service in the grade would be taken into account for allowing movement to next grade, the actual benefit would accrue on and from 01.04.2000.

[5] Thereafter, on 19.05.2001 [Annexure-7 to the writ petition] another notification was issued by the Finance Department and the relevant portion of the said notification is extracted below:

“2. If a Group C employee in any cadre service gets scale advancement by movement to a next Higher grade of Group-B posts after a specified period, he will move to the next higher grade on completion of seventeen years' continuous and satisfactory service in the grade of Group-B posts.

Illustration: In the Tripura Engineering Service/Tripura Power Engineering Service, a diploma holder engineer is directly recruited to Group V(B) in the pay scale of Rs.5000-10300 which is a Group-C post. He moves to the next higher grade V(A) after eight years' continuous and satisfactory service in the pay scale of Rs.7450-13000 which is of Group-B post. A degree holder Engineer is directly recruited to Grade V(A) of the service. Both degree holders and diploma holder Engineers shall move in Grade-IV on completion of seventeen years' continuous and satisfactory service in Grade V(A).

(3) An employee of any cadre service appointed to a grade of Group-B or A posts shall move to the next higher grade on completion of seventeen years' continuous and

satisfactory service in the existing grade, if in the mean time he does get any promotion.

(4) The benefit of movement to a higher grade shall be personal to the employee concerned and shall not involve any increase in the cadre strength. Where the cadre rule so requires or as per the rules it is not possible to accommodate the employee within the cadre strength of the higher grade, the movement shall not entail change or nature of duties.

Provided further that while the past services in the grade would be taken in to account for allowing movement to the next grade, the actual benefit would accrue on and from 01.04.2000.”

[6] Thus, by said notification, it was clarified that said movement to the higher grade on completion of 17 years of service will be given where the employee does not get promotion and such financial upgradation will be personal to the employee concerned and shall not involve any increase in the cadre strength.

[7] As stated by the petitioners, they were given the benefit of such movement of pay in the next higher grade i.e. in the Grade-IV of Tripura Engineering Service during the period 2007-08 on successful completion of their 17 years of service without according any promotion and were given full duty charge meant for the post of Assistant Engineer. Therefore, according to them, now they are also entitled to get promotion to the next grade i.e. Grade-III of Tripura Engineering Service on completion of 7(seven) years of service in terms of Rule 15 of Tripura Engineering Service Rules as amended from time to time, but without according such promotion, suddenly the department has issued a notification dated 30.09.2021 as impugned in the writ petition appointing them to the post of Tripura Engineering Service Grade-IV (Civil), Group-A Gazetted on ad-hoc basis in the pre-revised scale of Rs.15600-39100/- in PB-4 with Grade Pay of Rs.6600/- with prospective effect subject to outcome of the SLP(C) No.19765-19767 of 2015.

[8] In view of above, challenging the said notification, the writ petitioners-appellants have filed the writ petition for issuing writ of mandamus or in the nature of

the same, directing the respondents to revoke the said impugned order dated 30.09.2021 and to grant them promotion to the post of Grade-IV of Tripura Engineering Service with retrospective effect and now to the Grade III of the service forthwith with all financial benefits.

[9] The learned writ court rejected the writ petition holding that TES Rules did not provide for automatic adjustment of Grade IV Diploma-holder Engineers to the next higher grade, i.e. in Grade-III, and the selection for inclusion in the selection list for recruitment to the post of Grade-III cadre is subject to the requirement of successfully undergoing a selection process. The relevant observations of the learned writ court are extracted hereunder:

“12. On cumulative reading of Rule 3, Rule 5(2), Sub-rules (1) and (2) of Rule 14, Sub-rule (4) of Rule 15 and Rule 16 of TES Rules, it comes to fore that there is prescribed mechanism in clear terms that the eligible Diploma-holder Engineers in Grade-IV must go through a proper selection process. There shall be a properly constituted Selection Committee, which after assessment of overall merits and suitability of such engineers coupled with other factors mentioned in Rule 16 of TES Rules shall recommend their consideration for promotion to the posts of Grade-III cadre. So, it can safely be held that TES Rules does not provide for automatic adjustment of Grade IV Diploma-holder Engineers to the next higher grade, that is, Grade-III, and the selection for inclusion in the selection list for recruitment to the post of Grade-III cadre is subject to the requirement of successfully undergoing a selection process.

13. In addition, each of such Diploma-holder Engineers shall have to render minimum 7(seven) years” of regular service in Grade-IV cadre to become eligible or to come within the zone of consideration for the purpose of selection and recruitment to the post of Grade-III cadre.

14. In the instant case, the petitioners were appointed only on ad hoc basis and, needless to say, have not rendered/completed 7(seven) years” of regular service in Grade-IV cadre, which is a pre-requisite; or to say it otherwise, a condition precedent for the Diploma-holder Engineers to become eligible and enter into the consideration zone for selection/recruitment to the posts of Grade-III cadre. Therefore, this Court cannot pass any direction upon the respondents to adjust the petitioners against the posts meant for Grade-III.

15. When there is specific rule that recruitment to the post of Grade-III from Grade-IV shall be made on recommendation of a Selection Committee, then, there is no scope to bypass the said rule as mentioned in Rule 14(1) and Sub-rule (4) of Rule 15 because the language of the said rules is seemingly clear and unambiguous. *According to the basic rule of interpretation, where plain wordings used in a rule/statutory provision are clear and unambiguous, then, the Court is to go by the rule of literal construction and it is precluded to include or exclude or mend or to make any interpretation by means of taking external aids.*

[emphasis supplied]

Here, I may profitably refer to a decision of the Hon^{ble} Supreme Court in **Shiv Shakti Coop. Housing Society vs. Swaraj Developers**, reported in (2003) 6 SCC 659 where it was observed that:[SCC p. 669, para 19]

“19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.”

Again, in **Union of India vs. Hansoli Devi**, reported in (2002) 7 SCC 273, the Hon^{ble} Supreme Court has observed thus:[SCC p.281, para 9]

“9.....It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.”

In **Hiralal Rattanlal vs. State of U.P.**, reported in (1973) 1 SCC 216, the Hon^{ble} Supreme Court has observed that: [SCC p. 224, para 22]

“22.... In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.”

[10] We have heard Mr. S. Deb, learned senior counsel assisted by Mr. P. Chakraborty and Ms. S. Deb Gupta, learned counsel appearing for the appellants and Mr. D. Sarma, learned Addl. GA appearing for the respondents at length.

[11] As per the Rules, movement from Junior Engineer, Grade-II to Junior Engineer Grade-I, on completion of 4(four) years of service was automatic. Ms. S. Deb Gupta, learned counsel referred the definition of duty post as provided in Rule 2(b) in the following terms:

2(b) ‘Duty post’ means any post specified in the Schedule appended to these rules are includes a temporary post carrying the same designation as any of the post specified in the schedule and the scale of pay of which is identical to that attached to any Grade of the Service.

[12] According to both the learned counsel of the appellants, the appellants were not only given the financial benefits of Grade-IV of Tripura Engineering Service but they also discharged the duties of Grade-IV of Tripura Engineering service in the duty post and therefore, in terms of Rule 31, they should be treated to be

accommodated in Grade-IV of the service and on completion of 7 (seven) years of service in Grade-IV, they are now eligible to be promoted to the Grade-III of the service. The relevant extract of Rule 31 of the Rules of 1987 which deals with transitional arrangement of the cadre in Grade-III, IV & V of the service, are reflected below:

31. Transitional arrangement:

Transitional arrangement for adjustment of existing members of the service wherever found in excess, shall be considered in the following manner:

(1) Degree holders found in excess in Grade-IV, if any, shall immediately be adjusted against both the direct recruitment and promotion posts for Degree holders. These shall be adjusted finally as per amended rules hereby on availability of future vacancies.

(2) Diploma-holders, found in excess in Grade-IV, if any, shall immediately be adjusted against the vacancies of direct recruitment posts for Degree holders in Grade-IV. The same shall be adjusted finally as per amended rules hereby on availability of future vacancies.

(3) Degree holders found in excess, in Grade V(A), if any, shall immediately be adjusted against the vacancies in Grade V(A) for Diploma holders and shall be adjusted finally as per amended rules hereby on availability of future vacancies.

(4) Diploma-holders found in excess, in Grade-V(A), if any, shall immediately be adjusted against the vacancies in Grade V(B) for Diploma holders and the same shall be adjusted finally as per amended rules hereby on availability of future vacancies.

[13] Both the learned counsel of the appellants submit that after 33/34 years of rendering service satisfactorily in the department, suddenly by the impugned order dated 30.09.2021 they have now been shown to be promoted to the Grade-IV of the service, which, according to the learned counsel, is highly illegal, arbitrary and serious detrimental to the interest of the petitioners and same is liable to be quashed with a direction to the respondents for taking step for their promotion to the Grade-III on completion of 7 (seven) years of service. According to both the learned counsel, both the original rules and the amendments made thereupon contemplate that there should be automatic movement to the higher grade from the lower grade i.e. from Grade-V to Grade-IV and the respondents were/are, therefore, under statutory obligation to adjust all the appellants in Grade-IV making them eligible for their next promotion in the

Grade-III of the service. It is also informed by the Ld. Counsel that some of the appellants meanwhile have also gone on retirement.

[14] Mr. D. Sarma, learned Addl. GA appearing for the State-respondents vehemently opposes the contentions of the learned counsel of the appellants that there is significant difference between a duty post and a functional post and automatic promotion to the higher grade is not permitted as per the rules. According to Mr. Sarma, learned Addl.GA, holding of any duty post or providing of any financial upgradation cannot be compared at par with the person holding a regular post in a cadre unless there has been a regular promotion in accordance with the procedure of the promotion as prescribed in Tripura Engineering Service Rules. He also contends that promotion to the Grade-III would be permissible if the appellants would have hold a substantive post in Grade-IV and not otherwise and in the present case, none of the appellants was ever promoted to Grade-IV of the service. Therefore, according to him, learned writ court was completely justified in rejecting the claims of the appellant-petitioners.

[15] We have given thoughtful consideration to the submissions made by both the parties. The financial upgradation as indicated above was provided to the appellants in terms of Revised Pay Rules, 1999 or the previous pay rules and different instructions issued by the State Government thereupon and it was specifically mentioned in both the notifications dated 03.07.2000 and 19.05.2001 that such financial benefits were given by way of pay upgradation when no promotion was provided to the concerned engineers and it was also categorically noted in those notifications that such benefit of movement to the higher grade should be personal to the employee concerned and would not involve any increase in the cadre strength.

[16] In view of the above, according to us, such financial upgradation did not/does not confer any right upon the appellants to claim that already they were promoted to the post of Grade-IV of Tripura Engineering Service. In view of change in the grades of the service, the Engineering Service Rules of 1987 by its 3rd Amendment w.e.f. 31.08.2006 brought certain changes in the mechanism for recruitment in various grades by way of promotion through selection procedure as provided in Part-V of the rules. Rule 14 provided constitution of Selection Committee consisting of 5 members for recruitment for the posts of Grade-I(A), Grade-I(B), Grade-II, Grade-III and Grade-IV of the service. Rule 15 laid down the conditions of eligibility for selection and procedure for selection was laid down in Rule 16. For useful reference, Rule 16 as noted below:

16. Procedure for selection:

(1) The Committee constituted under sub-rule (1) and sub-rule (2), as the case may be, of rule 14 shall consider from time to time, cases of those officers who are eligible **under rule-15** for promotion to a higher Grade and prepare a list of persons recommended taking into account the actual number of vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be based on merit and suitability in all respects for appointment to the service with due regard to seniority.

Provided that where a person is considered for such appointment to a higher grade from a lower grade, all persons senior to him in the lower feeder grade shall also be considered irrespective of whether or not they fulfil the requirement of the minimum period of regular service in the lower grade as provide in rule-15.

(2) The names of persons included in the list shall be arranged in the order of merit and be forwarded to the Government.

Provision for consultation with the the commission was also provided there in Rule 17 which are as follows:

17. Consultation with the Commission.

(1) The list prepared under sub-rule (2) of rule-16 shall be forwarded by the Government to the Commission along with the relevant records, where consultation with the Commission is necessary or where the Chairman of the Commission desires that a reference be made to the Commission.

(2) If the Commission considers it necessary to make any change in the list received from the Government, the Commission shall inform the Government of the changes proposed.

(3) The list shall finally be approved by the Government after taking into account the changes, if any, proposed by the Commission.

(4) The list thus finally approved shall ordinarily be in force until a fresh list is prepared for the purpose in accordance with these rules.

Further, certain modifications without changing the basic structure in such selection process were brought by 7th Amendment of the Rules as notified vide notification dated 10.06.2014.

[17] In view of the above said provisions, in no way the financial upgradation can be treated to be a promotion to the next higher post. As it appears, all through there has been a complete scheme or mechanism in the Rules of 1987 regarding the procedure for promotion to the higher post and as such, there is no scope to accept the contention of the appellants that they were automatically promoted to the Grade-IV on completion of 17 years of service.

[18] Moreover, the appeals raise a claim for promotion to Grade IV and consequently to Grade-III from a much anterior date. The appellants have been promoted on ad-hoc basis in Grade-IV by a notification dated 30.09.2021 as per Tripura Engineering Service Rules and ad-hoc promotion policy dated 22.06.2021. There is no explanation from the side of the appellants for the delay in approaching this court for promotion since 2008 to Grade-IV and consequently, now to Grade-III. Therefore, there are laches apparent on the part of the appellants as vested rights might have been created in favour of the incumbents who have already got into those Grade-IV & III posts by way of promotion during this period. Learned writ court also like us has given due consideration on the issues raised from the side of the appellants keeping in mind the interplay of various rules of Tripura Engineering Service as well as the operation of ROP Rules of which the appellants got the financial upgradation as Career Advancement Scheme (CAS).

[19] In view of the above, there is no merit in the both the appeals requiring any interference with the impugned judgment and consequently, both the appeals are dismissed.

Interim application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA), J

(APARESH KUMAR SINGH), CJ



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