

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.427/2023

Sri Sukhen Debbarma & others

..... Petitioner(s).

V E R S U S

The Principal Secretary, Animal Resource Development Department & others

.....Respondent(s).

For Petitioner(s) : Mr. Anthony Debbarma, Advocate.

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

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : **08th February, 2024.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Anthony Debbarma, learned counsel for the petitioners,
and Mr. Rajib Saha, learned counsel for the State.

2. The writ petitioners who have been working on the post of Animal Resources Development Assistant (ARD Assistant, for short) have approached this Court alleging denial of promotion to the post of Senior ARD Assistant under the notification dated 12.08.2022 (Annexure-5). The promotional exercise has been held for 125 vacant posts in the cadre of Senior ARD Assistant with the following break up:

68 for UR; 35 for ST and 22 for SC as per the 100 point roster calculated in terms of the ad-hoc promotion policy dated 22.06.2021 issued by the G.A.(P&T) Department (Annexure-4), paragraph-6 & 7 in particular.

3. The DPC, however, recommended 158 candidates who have been promoted. Incidentally, on account of such recommendation, 34 supernumerary

posts had to be created. The persons who have been accommodated on supernumerary posts are those who as per their seniority in the UR cadre could not be accommodated against the 68 UR posts because candidates belonging to SC and ST category, about 34 in number, had been accommodated against the 68 UR posts as they had qualified solely on the basis of merit and have never taken the benefit of reservation and were treated to be own merit candidates entitled to occupy the posts meant for general category though reservation was to be made cadrewise. The fact that the last ST candidate who was promoted from the combined seniority list of ST category at Sl. No.99 Haradhan Debbarma stands above all the petitioners including the petitioner No.1 who is at Sl. No.102 and petitioner No.11 who is at Sl. No.145 in the ST category is not a matter of dispute, meaning thereby that in the ST quota no ST candidate who is junior to the petitioner has been promoted.

4. Petitioners do not have any quarrel with those SC quota candidates who have been promoted against their SC quota. Their grievance is against accommodation of SC or ST or UR candidates by creating supernumerary posts. These supernumerary posts have been created in terms of paragraph-7 of the ad-hoc promotion policy which provides that DPC would follow the policy enumerated at paragraph-6 of the notification dated 22.06.2021 to identify employees eligible for promotion to a particular post against the available vacancies. After this exercise DPC shall consider another exercise taking into account the procedure as stated in Rule 9(2) of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992. Due to such exercise, if any candidate is found not considered in the process as stated in the

above process then such candidate shall be considered for ad-hoc promotion by creating supernumerary posts.

5. Paragraphs-6, 7 & 8 of the notification dated 22.06.2021 containing policy for ad-hoc promotion are extracted hereunder:

"6. Now, the State Government hereby notifies the following Promotion Policy, 2021 as follows:-

(i) Rule 9 of the Tripura SC & ST Reservation Rules, 1992 and the provisos thereto shall be read in such a manner that only those SC & ST candidates who have qualified solely on the basis of merit and have never taken the benefit of reservation, will be treated to be own merit candidates and entitle to occupy the posts meant for general category and reservation shall be made cadre-wise.

(ii) 100 point roster shall apply only where the number of posts in the cadre is 4(four) or more.

(iii) Where the post in the cadre are 3(three) or less, the 3(three) point replacement roster shall be followed.

(iv) Single post or small cadres cannot be combined to make the number of posts more than 3(three).

7. Following the above policy, the DPC will identify employees eligible for promotion to a particular post against the available vacancies. After this exercise, DPC shall consider another exercise taking into account the procedure as stated in the rule 9(2) of the Tripura SC & ST Reservation Rules, 1992. Due to such exercise, if any candidate is found not considered in the process as stated in the above process, then such candidates shall be considered for ad-hoc promotion by creating supernumerary post(s).

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 Promotions 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 appointment 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."

6. Rule 9 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is also extracted hereunder:

“9. Recruitment by Promotion:

(1) The appointing authority while making a request to the Selection Committee/Selection Board/ Departmental Promotion Committee for recommending candidates for promotion shall communicate to the Selection Committee/Selection Board/Departmental Promotion Committee the details about reservation for Scheduled Castes and Scheduled Tribes and shall also furnish details about the number of candidates required against reserved vacant posts and unreserved vacant posts in accordance with the provisions of the concerned service rules. Where there is no rules for the post or service to which promotion is to be made the appointing authority will furnish the details about the candidates within the zone of consideration according to normal procedure. The particulars about reserved vacant posts available shall be based on an inspection report of 100-point roster in respect of the concerned post or service to be furnished jointly by the Director for Welfare of Scheduled Castes and Other Backward Classes and by the Director for Welfare of Scheduled Tribes as mentioned in Rule 8(1).

(2) The Selection Committee/Selection Board/ Departmental Promotion Committee will consider the suitability of the candidates, the details of whom are furnished by the appointing authority and recommend a combined list of all categories of candidates found suitable for promotion in order of their merit which shall be the determining factor about the inter se seniority of the candidates after promotion.

Provided that a Scheduled Caste or Scheduled Tribe candidate who occupies on merit or seniority or seniority-cum-fitness etc. an unreserved point of the 100 –point roster in the combined list, shall not be shown against any reserved point.

Provided further that at the time of recommending candidates for promotion to any post, the names against unreserved vacant posts shall first be recommended in order of their merit or seniority or seniority-cum-fitness etc., as the case may be, and then the names against reserved vacant posts shall be recommended.

(3) In addition to the combined list mentioned in Sub-Rule (2) the Selection Committee/Selection Board/ Departmental Promotion Committee shall furnish separate lists of candidates belonging to Scheduled Castes and Scheduled Tribes and a list of candidates of unreserved category in order of their merit for promotion against the vacant posts shown as reserved or unreserved as the case may be.

(4) The inspection report of the 100 Point Roster as furnished by the Director for Welfare of Scheduled Castes and Other Backward Classes and the Director for Welfare of Scheduled Tribes shall form a part of the record of the minutes/proceedings of the Selection Committee/Selection Board/Departmental Promotion Committee etc.

(5) The appointing authority shall consider the recommended list in accordance with the provisions of the respective service rules and shall, after consultation with the Commission where such consultation is necessary finally approve the list.

(6) The appointing authority shall thereafter make promotion in accordance with the 100 Point Roster as shown in the Schedule to the Act in order of merit /preference as indicated in the list. A Scheduled Caste or Scheduled Tribe candidate who occupies an unreserved point of the 100 – Point Roster in the combined list of candidates shall not be fitted against any reserved point.

(7) In case of non-availability of required number of Scheduled Caste or Scheduled Tribe candidates against the reserved vacancies, the vacancies shall be carried forward. In such case the appointing authority may take action under rule 8(8) and 8(9) if considered necessary.”

7. The seniority list is part of the memorandum dated 25.04.2022 (Annexure-3). The notification of promotion dated 12.08.2022 is Annexure-5 to the writ petition. If the methodology of working out the principle enshrined

in the ad-hoc promotion policy dated 22.06.2021 read with Rule 9 of the Tripura Scheduled Castes and Scheduled Tribes Reservation Rules, 1992 is understood in this manner, petitioners who have entered into the feeder cadre of ARD Assistant on the basis of their reservation quota of ST category cannot have a genuine grievance against the promotional exercise since the last ST candidate whose seniority stands at Sl. No.99 and have been promoted as Senior ARD Assistant are ranked above the petitioners in the combined seniority list. Petitioners have compared themselves with those reserved category or UR candidates who have been promoted against supernumerary posts which were created to meet the exigency of accommodating candidates as per the seniority list of UR category who were left out on account of promotion of candidates belonging to SC/ST category (who had qualified on their merit) and who had been promoted against 34 of the 68 UR category vacancies.

8. Petitioners belong to a class of ST category candidates who have entered into service on the basis of the reservation to ST category and no one in that category has been promoted junior to them. Petitioners in such manner cannot compare themselves with those who have been promoted against the UR vacancy without availing the benefit of reserved quota and having qualified on merit though belonging to SC/ST category and those of UR category for whom 34 supernumerary posts were created to accommodate them as per paragraph-7 of the ad-hoc promotion policy dated 22.06.2021. Paragraph-8(iii) of the ad-hoc promotion policy itself indicates that no inter-se seniority shall be determined/published in respect of these ad-hoc promotions. These appointments on promotion shall not be treated as regular appointment on promotion and the appointment on promotion would be purely on ad-hoc basis

subject to final outcome of the SLP pending before the Hon'ble Supreme Court of India. Considered thus, the grievances of the petitioners are misconceived.

9. Learned counsel for the petitioners has laboured to impress that juniors belonging to SC, ST and UR category have been promoted by creating supernumerary posts. However, petitioners have failed to realize that these supernumerary posts have been created to accommodate 34 candidates belonging to the UR category out of the total 68 vacancies in UR category because SC/ST candidates who had qualified on their merit at the time of entry in service have got promotion against that 34 vacancies. They do not form a same class with the petitioners as they have qualified on their own merit and as such, they are entitled to occupy posts meant for general category as per paragraph-6(i) of the promotion policy contained in notification dated 22.06.2021.

10. Learned counsel for the State has taken pains to explain as to how the methodology of granting promotion under the ad-hoc promotion policy of 22.06.2021 is being carried out by the department so that it does not result any discrimination or injustice to any category or persons keeping into mind that promotions to all these category of employees were withheld in all departments of the State due to the pendency of the Special Leave Petition Nos.19765-19767 of 2015. The promotion policy of 22.06.2021 framed by the G.A.(P&T) Department, Government of Tripura is only pursuant to the interim order dated 27.07.2015 passed by the Apex Court.

11. As such, this Court finds that petitioners do not have a case for interference for quashing of the notification of promotion dated 12.08.2022. Writ petition is accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ

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