

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.452 of 2024

Dr. Nazaru Debbarma

S/o: Sanjib Kr. Debbarma, R/o: Vill.-Bishrambari, P.O- NIT College, P.S- Jirania, Dist.-West Tripura, Age-34 years.

....Petitioner(s)

Versus

1. The State of Tripura

(to be represented by the Principal Secretary, Health & Family Welfare Department, Government of Tripura), New Secretariat Building, New Capital Complex, Kunjaban, P.S-New Capital Complex, Agartala, West Tripura, Pin-799010

2. The Under Secretary

Health & Family Welfare Department, Government of Tripura, New Secretariat Building, New Capital Complex, Kunjaban, P.S- New Capital Complex, Agartala, West Tripura, Pin-799010.

3. The Director

Directorate of Medical Education, Government of Tripura, Bidurkarta Chowmuhani, Agartala, West Tripura, Pin-799001.

4. The I/C,

Director of Medical Education, Government of Tripura, Bidurkarta Chowmuhani, Agartala, West Tripura, Pin-799001.

....The official Respondent(s)

5. Dr. Chandan Kumar Tripura, M.S (ST)

[Sl. No.15 of Notification, dated, 27.06.2024, issued by the Under Secretary, Department of Health & Family Welfare Department, Govt. of Tripura]

{Notice upon the respondent no.5 be served through the O/o the Directorate of Medical Education, Government of Tripura, Bidurkarta Chowmuhani, Agartala, West Tripura, Pin-799001 }

....The Private Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate Mr. Samarjit Bhattacharjee, Advocate Mr. Kawsik Nath, Advocate
For the Respondent(s)	:	Mr. Kohinoor N. Bhattacharyya, G.A

HON'BLE MR. JUSTICE ARINDAM LODH

Order

03/10/2024

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharyya, learned G.A appearing for the State-respondents.

2. By means of filing the instant writ petition, the petitioner has challenged absorption of Dr. Chandan Kumar Tripura, private respondent herein to the post of Basic Teacher in the discipline of General Surgery in terms of the advertisement dated 11.02.2022 (*Annexure-1* to the writ petition).

3. It appears from the record that three numbers of posts are lying vacant for absorption. Out of these three posts, one post is reserved for UR, one for ST and one for SC. It is stipulated in the advertisement that absorption will be made on the basis of 'seniority and marks'.

4. Mr. Roy Barman, learned senior counsel appearing for the petitioner has taken me to notification dated 05.08.2023 (*Annexure-6* to the writ petition) where distribution of marks were mentioned against each eligible candidate in the discipline of General Surgery. It is seen that at Sl. No.5, the name of Dr. Chandan Kumar Tripura is mentioned under ST category candidate for filling up the vacant post of Basic Teacher in the discipline of General Surgery. It further appears that Dr. Chandan Kumar Tripura has secured 53.97 API score where Dr. Nazaru Debbarma, who admittedly is junior to Dr. Chandan Kumar Tripura, has obtained 53.6 API score.

5. The main contention of learned senior counsel appearing for the petitioner is that since Dr. Chandan Kumar Tripura has already been promoted as Grade-II Medical Officer on *ad hoc* basis, his selection and absorption as Basic Teacher in the discipline of General Surgery is illegal, arbitrary and discriminatory and against the relevant rules embodied in the '*Tripura Government Medical Education (Administrative & Faculty) Services Conditions Rules 2015*' under notification dated 4th August, 2015[for short, 'Rules of 2015'] (*Annexure-9* to the writ petition). According to learned senior counsel for the petitioner, the name of the writ petitioner being the next eligible ST candidate ought to have been considered by the respondents for absorption to the post of Basic Teacher in the discipline of General Surgery.

6. On the other hand, Mr. Bhattaharyya, learned G.A appearing for the State-respondents has submitted that Dr. Chandan Kumar Tripura still holds the post of Grade-III Medical Officer post since his promotion to the Grade-II was made only on *ad hoc* basis. In view of this, the action of the

respondents cannot be said to be arbitrary and discriminatory and the claim of the writ petitioner is not tenable in law.

7. I have considered the submissions of learned counsel appearing for the parties.

7.1 At the outset, I have taken note of the fact that Rules of 2015 published vide notification dated 04.08.2015 governs the service conditions including promotion and absorption of the Medical Officers to different posts including Basic Teacher. Under the said Rules of 2015, the methodology of appointment to different teaching posts under Tripura Medical Service has been mentioned in Schedule-II. The relevant portion of the Rule mentioned in Schedule-II is reproduced hereunder in tabular form:

<i>“Category & No. of Post.</i>	<i>Name of Post</i>	<i>Age</i>	<i>Educational and other qualifications required for appointment</i>
<i>Group-A (Gazetted) 84 Posts</i>	<i>Basic Teacher</i> <i>Tutor, Registrar/Senior Resident</i>	<i>Note more than 40 years relaxable by 5(five) years for ST/SC/PH candidates and Govt. in-service candidates.</i>	<i>Essential qualification and experience</i> <i>i) 50% of the posts by direct recruitment through TPSC, failing which by deputation from THS. ii) Remaining 50% of the posts by absorption from Medical Officers of Grade-III & Grade-IV of THS.</i> <i>Educational and other qualification required for direct recruitment:</i> <i>i) Minimum qualifications as prescribed by the MCI and specified in the “Minimum qualifications for Teachers in Medical Council Regulations, 1998 published in Part-III, Section-4 of the Gazette of India dated 5.2.1998 and as amended from time to time.”</i>

7.2 On plain reading of the aforesaid methodology, I find that 50% of the posts of Basic Teacher will be filled up by direct recruitment through Tripura Public Service Commission (TPSC) and remaining 50% by way of deputation from Medical Officers of Grade-III & Grade-IV of Tripura Health Service.

8. Based on the above quoted methodology, learned senior counsel for the petitioner strenuously has argued that since Dr. Chandan Kumar Tripura has already been promoted to Grade-II of THS, though on *ad hoc* basis, he cannot be absorbed against one reserved post, and in his place, the name of

the petitioner ought to have been considered for absorption under the Rules of 2015.

9. I am not in agreement with the above submission of learned senior counsel for the petitioner. *Ad hoc appointment or* promotion to a post is merely a stop-gap arrangement to meet certain administrative exigencies. An *ad hoc* appointee cannot be said to be the holder of the post on permanent or regular basis. Moreso, the latest policy regulating promotion of the state government employees categorically stipulates that *ad hoc* appointment on promotion would not be treated as regular appointment on promotion.

10. In the light of the aforesaid principle, the *ad hoc* promotion of Dr. Chandan Kumar Tripura to Grade-II post cannot be said to be a promotion on permanent basis. Since undisputedly, Dr. Chandan Kumar Tripura is senior to the writ petitioner and further, has secured more API score than that of the writ petitioner, his absorption to the post of Basic Teacher in the discipline of General Surgery against the reserved category cannot be said to be inconsistent with the Rules of 2015.

11. As such, this Court holds that the absorption of Dr. Chandan Kumar Tripura, the private respondent herein is not bad in law. Accordingly, the challenge made by the writ petitioner against the absorption of Dr. Chandan Kumar Tripura to the post of Basic Teacher in the discipline of General Surgery under reserved category is not sustainable.

12. As a corollary, the writ petition is devoid of merit and thus, stands dismissed. However, there shall be no order as to cost.

JUDGE