

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.541 of 2022

Dhananjoy Roy Mondal

S/o. Late Haribal Roy Mandal,
resident of Kumkaristilla Government Quarter No.1
at Kumaritilla Quarter Complex, Kunjaban,
Agartala, West Tripura.

....Petitioner(s)

Versus

1. The Tripura Legislative Assembly Secretariat

represented by its Secretary at Secretariat Complex, P.O. Secretariat,
Agartala, Pin- 799010

2. The Additional Secretary,

Tripura Legislative Assembly, Secretariat Complex, P.O. Secretariat,
Agartala, Pin- 799010

3. Sri Abhijit Debbarma,

Section Officer (ad-hoc), Tripura Legislative Assembly, Secretariat
Complex, P.O. Secretariat, Agartala, Pin- 799010

....Respondent(s)

For the Petitioner(s) : Mr. C. S. Sinha, Advocate

For the Respondent(s) : Mr. D. Bhattacharya, Sr. Advocate
Mr. S. Saha, Advocate

Date of hearing & delivery

of Judgment & Order : **05.01.2024**

Whether fit for reporting : **No**

HON'BLE MR. JUSTICE ARINDAM LODH

JUDGMENT & ORDER (ORAL)

Heard Mr. C. S. Sinha, learned counsel appearing for the petitioner. Also heard Mr. D. Bhattacharya, learned senior counsel assisted by Mr. S. Saha, learned counsel appearing for the respondent nos.1 and 2.

2. The grievance of the petitioner, Sri Dhananjoy Roy Mondal (SC) is that he being senior to one Sri Abhijit Debbarma (ST) has not been promoted to the post of Section Officer from the post of Office

Superintendent (Feeder Post). Admittedly, there is no dispute in the final seniority list as on 28.02.2019 (Annexure-1 to the writ petition) wherein the name of the petitioner, Sri Dhananjoy Roy Mondal appeared at serial no.4 and the name of Sri Abhijit Debbarma, respondent no.3 herein appeared at serial no.5.

3. It transpires from the record that the men at serial no.1 and 2, both belonging to scheduled tribe community had been promoted on ad-hoc basis to the post of Section Officer by creating supernumerary post without disturbing the roster for UR category candidates. It is also revealed that the man at serial no.3 of the said seniority list, namely, Sri Sanjib Biswas (SC) was promoted to the post of Section Officer from its feeder post on ad hoc basis against the resultant vacancy under SC category. Subsequently, in another resultant vacancy against ST category, Sri Abhijit Debbarma was promoted as Section Officer from the post of Office Superintendent. In the additional counter affidavit filed by the respondents-Tripura Legislative Assembly (for short, "TLA"), it emanates that there was no scope to promote Sri Dhananjoy Roy Mondal (SC), the petitioner herein against the resultant vacancy(ST) as per rule. Here lies the grievance of the petitioner.

4. Mr. Sinha, learned counsel for the petitioner has candidly submitted that when Harinanda Hrangkhawal (ST) and Sishir Kumar Reang (ST) were promoted to the post of Section Officer, there were no vacant posts for filling up the ST Posts, but to enforce the ad-hoc promotion policy made by the Government of Tripura, the respondents-TLA felt it necessary to create supernumerary post to promote Shri Hrangkhawal and Sri Reang since they were senior officers than those of Sanjib Biswas, Sri Dhananjoy Roy Mondal and Sri Abhijit Debbarma.

5. It is pertinent to mention herein that at that point of time, no UR category candidate was available to fill up the vacant posts under the UR category.

6. At this juncture, the statements made by respondents-TLA in their additional counter affidavit dated 07.09.2023 may be reproduced hereunder:-

*“2. That, with regard to paragraphs-1 to 5 of the petitioner, I say that as per record the petitioner is senior to Sri **Abhijit Debbarma** who was promoted to the post of Section officer as per the recommendation of DPC against resultant vacancy after carefully examining recruitment rules and other service records. It is also fact that he has made a representation for his promotion.*

*3. That, with regard to paragraphs-6 to 12 of the petition, I say that as per records, there are **3 vacancies** in the post of Section Officer (**UR-2; SC-1**).*

As per minute of DPC meeting, Sri Harinanda Hrangkhwal(ST), Head Assistant and Sri Shishir Kr. Reang(ST), Head Assistant have been promoted to the post of Section Officer after creating supernumerary posts against 2 UR vacancies as there were no UR candidates available.

In addition, Sri Sanjib Biswas(SC), Head Assistant has been promoted to the post of Section Officer against the vacant post of SC.

*Consequent upon the promotion of Sri Rakesh Debbarma(ST), Section Officer to the post of Under Secretary against 1(UR) vacant post, Sri **Abhijit Debbarma**(ST), Head Assistant has been promoted to the post of Section Officer(ST) as recommended by the DPC. There has been no scope to promote Sri Dhananjoy Roy Mandal(SC) against the resultant vacancy(ST) as per rule.”*

7. According to Mr. Sinha, learned counsel for the petitioner, the respondents-TLA to implement the policy of the Government of Tripura ought to promote the petitioner by creating supernumerary post since no post fell vacant under SC category before the promotion of the respondent no.3, Sri Abhijit Debbarma to the post of Section Officer on ad-hoc basis.

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

9. Before I delve into the merits of the submissions of learned counsel appearing for the parties, I deem it necessary to extract relevant portions laid down in the notification dated 22.06.2021 issued by the General Administration (Personnel & Training) Department, Government of Tripura to effectuate the promotion of the employees of the Government of Tripura to bring efficiency in administration. At Para 8(ii) of the said notification, it is laid down that- *“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”*. Under Para 8(v), it is stated that- *“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”*. It is further stated under Para 8(vii) that- *“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.*

From the above relevant policies of the Government under the notification dated 22.06.2021, it is clear that Government can create supernumerary posts in addition to the number of posts to materialize the promotion of the employees.

10. Coming to the context of the case, the respondents-TLA had created 2 supernumerary posts to promote the senior most persons holding

the post of Office Superintendent considering the fact that they were the senior most persons as per the final seniority list, and furthermore, at that point of time there were no vacancies for ST category candidates for promotion to the post of Section Officer. Two posts were found vacant against UR category candidates. But, no candidate was available to fill up the post under UR category. In that situation, the respondents-TLA did not want to disturb the roster position meant for UR category persons and they created supernumerary posts for effectuating the promotion of Sri Harinanda Hrangkhawal (ST) and Sri Sishir Kumar Reang (ST). During the process, one post of Section Officer under SC category fell vacant and respondents-TLA had filled up this post by Sri Sanjib Biswas whose name appeared at serial no.3 of the final seniority list dated 28.02.2019. Subsequently, one Rakesh Debbarma was promoted to the post of Under Secretary from the post of Section Officer resulting one vacancy of ST category candidate. To fill up this resultant vacancy under ST category candidate, the respondents-TLA did not consider the promotion of the petitioner Sri Dhananjoy Roy Mondal who belongs to SC category, but, considered the promotion of Abhijit Debbarma who was junior to the petitioner.

11. In my considered view, to promote Abhijit Debbarma to the post of Section Officer before the promotion of the petitioner did not follow the terms of the promotion policy laid down under Para 8(ii) and 8(v) of the notification dated 22.06.2021, vis-à-vis the precedence made by the respondents-TLA in the cases of consideration of promotion of Harinanda Hrangkhawal and Sri Sishir Kumar Reang. Admittedly as per the final seniority list dated 28.02.2019, the petitioner was senior to Abhijit Debbarma, so following the precedence made by respondents-TLA they

ought to have considered the promotion of Dhananjoy Roy Mondal, the petitioner herein by way of creating another supernumerary post.

In the opinion of this Court, on this aspect, the submission of Mr. Sinha, learned counsel for the petitioner appears to be reasonable.

12. Keeping in mind the precedence made by the respondents-TLA in promoting Sri Harinanda Hrangkhawal and Sri Sishir Kumar Reang, I direct the respondents-TLA to apply their mind on this aspect and consider the promotion of Sri Dhananjoy Roy Mondal, the petitioner herein by creating supernumerary post of Section Officer. Accordingly, I remit the matter to respondents-TLA to revisit the grievance of the petitioner since it appears to be genuine, considering the precedence made by the respondents-TLA in promoting Harinanda Hrangkhawal and Sri Sishir Kumar Reang maintaining the seniority position at the level of Office Superintendent from which promotion was made to the post of Section Officer.

13. The entire exercise shall be made within a period of 3(three) months from the date of receipt of copy of this order.

With the aforesaid observation and directions, the instant writ petition stands disposed.

JUDGE