

HIGH COURT OF TRIPURA
AGARTALA

WA No.129 of 2023

1. The State of Tripura,

Represented by The Commissioner & Secretary to the Revenue Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, P.O. Kunjaban, P.S. New Capital Complex, West Tripura, Pin-799010.

2. The Commissioner & Secretary, Revenue Department,

Government of Tripura, New Secretariat Complex, Gurkhabasti, P.O. Kunjaban, P.S. New Capital Complex, West Tripura, Pin-799010.

3. The District Magistrate & Collector,

West Tripura District, Agartala.

4. The District Magistrate & Collector,

North Tripura District, Dharmanagar.

5. The District Magistrate & Collector,

South Tripura District, Belonia.

6. The District Magistrate & Collector,

Dhalai District, Ambassa.

7. The District Magistrate & Collector,

Unakoti District, Kailashahar.

8. The District Magistrate & Collector,

Sepahijala District, Bishramganj.

9. The District Magistrate & Collector,

Gomati District, Udaipur.

10. The District Magistrate & Collector,

Khowai District, Khowai.

.....Appellant(s).

Versus

1. Sri Amritangshu Bal,

son of Late Benoy Bal, Resident of
Ramnagar Road No.9, P.O.- Ramnagar, P.S. – West Agartala,
District- West Tripura, PIN – 799002.

2. Smt. Rupa Rani Dey (Saha) Accountant,

D/O Unknown, posted at the office of the District Magistrate & Collector,
Sepahijala District, Bishramganj, District – Sepahijala, PIN- 799103.

.....Respondent(s).

For Appellant(s)	: Mr. D. Sharma, Addl. G.A.
For Respondent(s)	: Mr. P. Roy Barman, Senior Advocate. : Mr. Koomar Chakraborty, Advocate. : Mr. S. Bhattacharjee, Advocate.
Date of Hearing & Judgment	: 23.04.2024
Whether fit for reporting	: NO

_B_E_F_O_R_E_

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

J U D G M E N T & O R D E R (O R A L)

Heard Mr. D. Sharma, learned Addl. G.A. appearing for the appellants as well as Mr. Koomar Chakraborty, learned counsel appearing for the respondent/writ petitioner.

[2] Notices have been properly effected upon the private respondent in this appeal also, but she has chosen not to enter appearance.

[3] The recruitment rules for the post of Head Clerk/Accountant (Group-C, Non-gazetted) under District Administration, 2021 in the schedule thereunder at Clause-11 provide for promotion from the UDC grade with at least five years experience in the grade and acquisition of accounts training conducted by the State Government to the post of Head Clerk/Accountant (Group-C, Non-Gazetted). The present dispute relates to promotion to the cadre of Head Clerk/Accountant (Group-C, Non-Gazetted) from the UDC grade. Petitioner alleged that one Smt. Rupa Rani Dey (Saha), junior to him in the UDC grade at serial no.198 (**Annexure- 6**) was promoted by office order dated 04.09.2021 (**Annexure- 7**) to the post of Head Clerk/Accountant (Group-C, Non-Gazetted) on ad-hoc basis in the prescribed scale of pay and other allowances along with others. Candidates Nos. 1 to 10 in the office order dated 04.09.2021 were undisputedly senior to the petitioner who stands at serial no.171 of the same seniority list of UDCs. Smt. Rupa Rani Dey (Saha)'s name

was substituted in place of one Smt. Lipika Datta who was selected as a candidate for 30th Session of Tripura Accounts-cum-Administrative Training and was at serial no.49 of the seniority list. However, on her expressing inability to participate in the said training, due to her pregnancy, the private respondent Smt. Rupa Rani Dey (Saha) who had not completed five years in the UDC grade like the petitioner by the cut off date as per Revenue Department's letter dated 29.11.2021 (Annexure C). However, she was sent for mandatory accounts training and consequently promoted on the recommendation of the DPC. Resultantly, petitioner got aggrieved and approached this Court.

[4] The Ld. Writ Court directed the respondents to promote the petitioner to the post of Head Clerk-cum-Accountant from the date his junior was promoted. He was held entitled to arrears of pay and other service benefits according to rules which shall be fixed notionally. Ld. Writ Court also directed that if the petitioner is promoted to the post of Accountant, then he would be sent for accounts training to discharge his responsibilities as Accountant. The entire process was to be completed within a period of two months from the date of receipt of copy of that Order.

[5] Learned Counsel for the writ petitioner have relied upon Para 11 of the recruitment rules to contend that stipulation of five years in the grade of UDC is not a condition precedent for sending a UDC for mandatory accounts training. Para-11 of the recruitment rules is extracted hereunder:

"11 In case of recruitment of by promotion / transfer on deputation, grades from which promotion / transfer on deputation is to be made	"Promotion from the UDC grade with at least 5(five) years experience in the grade and acquired Accounts training conducted by State Government in respect of promotion to the posts of Head Clerk/Accountant. Transfer on deputation from holder of analogous post of other Department having passed the Accounts Training. Note:- Departmental candidates having completed 15(fifteen) years of service or more in the grade of UDC etc. as well as have attained the age of 55(fifty five) years may be exempted
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*from the passing out the proposed"
Accounts training."*

[6] We have considered the submissions of the parties.

[7] Construction of the relevant paragraph 11 of the schedule to the recruitment rules extracted above indicates that the expression 'and' should be interpreted conjunctively. Otherwise a person may claim eligibility simply on completion of five years in the grade of UDC without having undergone the accounts training for being promoted to the post of Head Clerk/Accountant. This doesn't appear to be the intention of the rule making authority as promotion to a post of Head Clerk/Accountant should necessarily require training in accounts for an incumbent to the UDC grade who has at least five years experience. Though we have specifically asked as to the pre-existing rules prior to the rules of 2021 but the learned counsel for both the parties have placed reliance on the 2021 rules only to place their submissions. This 2021 rules has repealed the existing recruitment rules of Head Clerk/Accountant dated 23.03.2006. The DPC was also held on 18.08.2021 on the basis of the new rules of 2021 notified on the same date. As such, the consideration of the case of eligible persons was made upon coming into force of the new rules in 2021 which has fallen for interpretation. Petitioner's name was not recommended for mandatory training in 30th Session of Tripura Accounts-cum-Administrative Training as he had not completed five years of service in the UDC grade at that point of time as per categorical statements made at paragraph 11 of the counter affidavit. If that was so, then the private respondent who had also not completed five years of service in the UDC grade since she was junior to the petitioner and at serial no.198, could not have been sent for mandatory training and considered eligible for promotion to the post of Head Clerk/Accountant. Petitioner's entire claim is based upon promotion granted to the private respondent who was junior to him. On construction of the recruitment rules of 2021 which have been applied to the case of the present parties, it is thus clear that promotion of the private

respondent as the last candidate in the office order dated 04.09.2021 based on the recommendation of the DPC dated 18.08.2021 was not in accordance with law. Petitioner has also assailed the minutes of the DPC meeting held on 18.08.2021 and the order of promotion dated 04.09.2021 (*Annexures- 5 & 7* respectively).

[8] It is not the case that petitioner was exempted for training on any permissible grounds for being eligible to be promoted. The respondents were not right in substituting the eligible candidate Lipika Datta by the private respondent for undergoing training though she was in the zone of consideration having not completed five years in the grade of UDC. Petitioner cannot claim a legal right to be promoted to the post of Head Clerk/Accountant without fulfilling the eligibility criteria of five years when the 30th Session of Tripura Accounts-cum-Administrative Training was held. No positive right to equality under Articles 14 and 16 of the Constitution of India flows out of an illegality or wrong committed by the respondents by promoting an ineligible candidate to the post of Head Clerk/Accountant i.e. the private respondent Smt. Rupa Rani Dey (Saha). The Ld. Writ Court, however, failed to consider this aspect of the matter while directing the respondents to promote the petitioner to the post of Head Clerk/Accountant from the date his junior i.e. Smt. Rupa Rani Dey (Saha), the only private respondent was promoted ahead of him and also directed petitioner to undergo training upon being promoted. Since, petitioner or Smt. Rupa Rani Dey(Saha) both have not completed five years in the UDC grade for being sent to mandatory accounts-cum-administrative training in the 30th session convened by the respondents, the petitioner as well as the private respondent lack the necessary eligibility criteria for being considered for promotion to the post of Head Clerk/Accountant. The decision relied upon by the petitioner in the case of *Anil Chakraborty vs. The State of Tripura & Ors.* in *W.P.(C) No.93 of 2010* is distinguishable on facts since Anil Chakraborty had attained the age of fifty five years whereby he was exempted from

the operation of the rules which required an employee to undergo the mandatory accounts-cum-administrative training for being promoted to the higher post. Moreover, when persons junior to him were sent for training. The learned court found that said petitioner could not acquire training as he was not sent for training due to the fault of the department.

[9] As such, the order of promotion as regards the private respondent contained in the office order dated 04/09/2021 (*Annexure-7*) is set aside. Consequently, since the petitioner is also not eligible having completed five years in the UDC grade, the directions passed by the Ld. Writ Court for his promotion cannot be upheld. Accordingly, the impugned judgment is set aside.

The appeal is allowed.

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

(S. DATTA PURKAYASTHA),J (APARESH KUMAR SINGH),CJ

SATABDI DUTTA

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