

HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A
WP(C) No.667 of 2023

Sri Nitai Adhikari S/O. late Kanu Lal Adhikari, resident of Hapania Bazar,
P.O. O.N.G.C, Agartala, Pin-799014, West Tripura.

..... Petitioner(s)

V E R S U S

1. The State of Tripura represented by the Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, P.O. Secretariat, Agartala, Pin-799010.
2. The District Magistrate & Collector, West Tripura District, P.O. Agartala, Pin-799001, West Tripura.
3. Sri Dipak Majumder, Driver, SDM office, Jirania, P.O. Birendranagar, West Tripura, Pin-799035.
4. Sri Pratap Nag, Driver, SDM office, P.O. Udaipur, Gomati District, Pin-799120.

..... Respondent(s)

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

For Respondent(s) : Mr. S.S. Dey, Advocate General,
Ms. Ayantika Chakraborty, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

JUDGMENT & ORDER (ORAL)

Date of Judgment & Order: **23rd February, 2024**

Whether fit for reporting: NO.

Heard Mr. C.S. Sinha, learned counsel appearing for the petitioner and also heard Mr. S.S. Dey, learned Advocate General assisted by Ms. Ayantika Chakraborty, learned counsel appearing for the State-respondents.

[2] This Court vide order dated 23rd November, 2023 observed as follows :

“Petitioner’s representation made pursuant to the order dated 18.05.2023 passed in WP(C) No.304/2023 for consideration of his case for promotion to the post of Driver has been rejected by the impugned order dated 05.08.2023 [Annexure-6] by the District Magistrate &

Collector, West Tripura District, Agartala on the ground that there are no available vacancies of unreserved category for the promotional post.

Mr. C.S. Sinha, learned counsel for the petitioner, submits that though the name of the petitioner was proposed thrice and some of his juniors were also promoted; now his case has been rejected on the ground of non-availability of vacancy. As such, petitioner has approached this Court.”

[3] A counter-affidavit was filed by the respondents dated 6th January, 2024 *inter alia* making the following statements:

“That, in regard to the statements made in paragraph 3 of the writ petition, it is stated that, at the time of DPC held on 01.04.2022 the name of the petitioner Sri Nitai Adhikari, Peon figured at Serial Number 248 in the circulated corrected Final Seniority List published vide Memo dated 18.11.2021 and as such had not come in the zone of consideration for promotion to the post of Driver since he did not fulfill the criteria as per requirement of the Recruitment Rules. Accordingly, his juniors Sri Dipak Majumder figured at Serial No.253 and Sri Pratap Nag figured at Serial No.259 who passed practical driving test and interview earlier conducted by Transport Department had come in the zone of consideration in the DPC and appointed on promotion to the post of Driver, Grade-III (Gr.-C) on ad-hoc basis against available vacancies of districts.”

[4] This plea of the respondent was objected to by learned counsel for the petitioner relying upon a letter dated 18th October, 2021 at page 22 to 24 of the writ petition which is a request by the District Magistrate & Collector, West Tripura to the Transport Department, Government of Tripura to conduct practical test and interview of the Group-D employees as furnished in formats at Annexure-A & B.

[5] Learned counsel for the petitioner submitted that in the annexed format, petitioner's position is at serial No.1 whereas Dipak Majumder, who has been promoted was at serial No.2. The remarks column shows that practical test and interview were scheduled for others on 23.09.2021. Why the petitioner was left out in the practical driving test and interview is not

known to the petitioner. That is why in the DPC held on 1st April, 2022 petitioner was kept out of the zone of consideration.

[6] The matter was adjourned earlier taking note of the aforesaid contentions of the parties for the State counsel to seek instructions. Why the petitioner was left out of the driving test between 18th October, 2021 and 1st April, 2022 when the DPC was held, despite recommendation by the District Magistrate, West Tripura, Agartala by the letter dated 18th October, 2021 was not clear.

[7] Today, Mr. S.S. Dey, learned Advocate General has appeared since learned Additional Government Advocate Mr. Dipankar Sharma is in personal difficulty on account of some bereavement in his family. He has produced an order dated 22.02.2024 passed by the District Magistrate & Collector, West Tripura in relation to the case of the petitioner. After delineating the relevant provisions of Rule 10(b) and (c) of the Tripura Government Vehicles Drivers Services Rules, 1979 and making reference to the letters dated 6th October, 2009 of the Transport Department, 18th October, 2021 by the District Magistrate & Collector, Tripura and 01.12.2012 again by the District Magistrate & Collector, West Tripura in response to the communication dated 30.11.2012 of the Transport Department, Tripura for holding practical test and interview of petitioner along with others, it has been stated that as per record it is not evident that he had been called for the driving test and interview by the Transport Department.

[8] Incidentally, in the counter-affidavit it has been pointed out that those two persons, namely, Dipak Majumder and Pratap Nag had cleared the driving test and interview much earlier as would appear from the corrected final seniority list in respect of the Group-D employee as on 01.07.2019 under RD organization whereas petitioner had not done so earlier. The remarks at column No.10 against their names at serial Nos.253, 259 indicate that they have qualified for the TD for driving government vehicle at the time of preparation of the final seniority list on 01.07.2019 whereas the remarks column is blank as regards the petitioner who is at serial No.248. However, this may not have derogated from consideration of the case of the petitioner if a driving test as proposed was held by the department before the date of DPC i.e. 1st April, 2022. Even after repeated indulgence, the State has not come clear as to why that driving test was not held or why the name of the petitioner was left out in any such driving test, if held during that period. However, in the test held on 22nd August, 2022 petitioner did qualify but by that time these two persons at serial No.253 and 259 had already been recommended for promotion as Group-C employees. In effect, it appears that because of non-holding of test prior to the date of DPC i.e. 1st April, 2022 not on account of any fault of the petitioner, he was left out of the zone of consideration and certain juniors to him were promoted.

[9] Learned Advocate General submits that though there is no UR vacancy after the last promotional exercise as on date but in the event of occurrence of any UR vacancy, the case of the petitioner would be considered and in case his juniors have been granted promotion, he would be

conferred the benefit of promotion to Group-C, in accordance with law, from the date his juniors have been promoted.

[10] Mr. C.S. Sinha, learned counsel for the petitioner submits that the injustice that has been caused to the petitioner has to be remedied by creation of supernumerary post. This Court may, therefore, direct the respondents to create a supernumerary post to grant him promotion from the due date when his juniors have been promoted.

[11] The conspectus of facts and sequence of events which have been noted in the foregoing paragraphs indicate that petitioner's case could not be taken up in the DPC held on 1st April, 2022 as he could not face and clear the driving test and interview despite proposed to be held in terms of the communications between the Transport Department and the District Magistrate & Collector, West Tripura. The reasons behind that have not been explained to the satisfaction of the Court. The situation that has now emerged is that petitioner has qualified the test but after recommendation of DPC, some juniors to him had been granted promotion who had qualified the test prior in point of time than the petitioner, as is reflected in the final seniority list of Group-D employees published on 01.07.2019 under RD organization. Had the petitioner been given an opportunity to face the practical test and interview within time, he could not have been ousted from the zone of consideration when DPC was held on 1st April, 2022 despite the fact that seniority list of 01.07.2019 shows that petitioner had not qualified the driving test by that point of time.

[12] In order to correct the wrong which has consequently resulted, the department proposes to consider his case no sooner a UR vacancy occurs and grants him promotion from a retrospective date when his juniors were promoted. In the opinion of the Court, this approach would address the grievance of the petitioner. Creation of a supernumerary post as an exception could not be recommended in the present facts of the case. Therefore, this Court directs the competent authority under the respondent-department to consider the case of the petitioner for promotion to Group-C in the event of occurrence of a vacancy in UR category within a reasonable time preferably within a period of 4(four) months from the date of receipt of copy of this judgment. As has been noted above, petitioner has already qualified the practical test and the interview held on 22nd August, 2022 but certain juniors of him at serial No.253 and 259 appeared to have been promoted as Group-C employees ahead of him. Therefore, the respondents would also consider granting him promotion with retrospective effect from the date these two juniors to the petitioner have been promoted.

[13] With these observations and directions, the writ petition stands disposed of. Pending application(s), if any, also stands disposed of.

Order dated 22.02.2024 passed by the District Magistrate & Collector, West Tripura, Agartala is kept on record.

(APARESH KUMAR SINGH) CJ