

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.674/2023

Sanjib Karmakar

..... Petitioner(s).

V E R S U S

The State of Tripura & others

.....Respondent(s).

For Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate,
Ms. A. Debbarma, Advocate,
Mr. Dipjyoti Paul, Advocate.

For Respondent(s) : Mr. Dipankar Sarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

04/07/2024

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Dipjyoti Paul, learned counsel appearing for the petitioner and Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the respondents-State.

2. The present writ petition is the second round of litigation in relation to the grievance of the petitioner for promotion to the post of Junior Operator (Control Room) under the Directorate of Fire & Emergency Services, Government of Tripura.

3. The first writ petition being WP(C) No.562 of 2023 was disposed of vide order dated 12.09.2023 without entering into the merits of the matter by directing the competent authority/respondent No.3-Additional Secretary, Home (Fire & Emergency Services) Department, Government of Tripura and respondent No.6-Director, Fire & Emergency Services, Government of Tripura

for taking a decision since the petitioner had already approached the competent authority.

4. In the first round of litigation also petitioner had raised a grievance that 12 of his juniors have been promoted to the post of Junior Operator (Control Room) vide notification dated 30.09.2021 issued by the Additional Secretary & Director, Home (Fire & Emergency Services), Government of Tripura, Agartala and even after representation made by the petitioner dated 30.12.2022, 11 more persons have been promoted to the post of Junior Operator (Control Room) (Group-C) vide order dated 13.01.2023 though they were not junior to the petitioner. Fireman is the feeder cadre of Junior Operator under the Directorate of Fire & Emergency Services. Petitioner was in service since 2000 and claimed himself to be eligible having completed 10 years of continuous service as Fireman with a minimum qualification of Class-X. On that occasion petitioner had also stated that as per the radio message dated 29.12.2022 inviting options from the Fireman possessing eligibility criteria for ad hoc promotion to the post of Junior Operator (Control Room), he submitted a willingness vide representation dated 30.12.2022 stating that he had completed 22 years of service and his academic qualification was B.Com. Though 11 Firemen were promoted vide notification dated 13.01.2023, the case of the petitioner was not considered. Thereafter, again he had made representations on 18.07.2023, 01.08.2023 and 11.08.2023.

5. Pursuant to the directions passed by this Court, his representation has been considered and rejected by the impugned order dated 29.09.2023 passed by the Director, Fire & Emergency Services, Tripura, Agartala on the following grounds:

(i) Petitioner's willingness submitted in July, 2013 was not relevant as no promotion had taken place thereafter till 2021;

(ii) Petitioner did not submit his willingness as per wireless message dated 17.09.2021. No exemption was offered to those who had communicated their willingness earlier;

(iii) Promotions made in the year 2021 are ad hoc in nature;

(iv) In his letter dated 30.12.2022, petitioner had declared that after the last promotion (ad hoc) of Leading Fireman, his name appeared at Sl. No.02 in the Final Seniority List of Fireman. Therefore, he was eligible for promotion to the next promotional post of Leading Fireman and Junior Operator (Control Room) which was the second option. In the meantime, the Recruitment Rules for the post of Sub Officer had already been notified vide Gazette Notification dated 28.11.2022 paving way for promotion from the post of Junior Operator (Control Room) to Sub Officer for the first time as it was impermissible under the preceding Recruitment Rules (unamended) for the post notified on 28.10.1971;

(v) His unresponsiveness to the radio message dated 17.09.2021 appeared to be a studied, deliberate and conscious step as his subsequent letter dated 30.12.2022 made it clear that the post of Junior Operator (Control Room) was not his first preference for getting promoted from the post of Fireman and it was so even after the post of Junior Operator (Control Room) had been included in the feeder post of Sub Officer by dint of the amended Recruitment Rules dated 28.11.2022;

(vi) The Director, Fire & Emergency Services, Tripura also recorded that legality of seeking willingness for promotion to the post of Junior Operator (Control Room) was under consideration in WP(C) No.222 of 2023

whereby this Court held that there was no infirmity in calling for option by the eligible persons for promotion to the post of Junior Operator (Control Room) in view of the detailed justification given by the respondents in their additional counter affidavit.

Based on these grounds, his representation was rejected.

6. In the fresh round of challenge, petitioner has, *inter alia*, more or less raised the same grounds. It has been averred that calling of option is not a statutory requirement. Promotion of juniors as per the tentative seniority list by the office order dated 30.09.2021 was discriminatory and violative of Articles 14 and 16 of the Constitution of India. Conferment of willingness in the year 2013 should have been treated as exercise of option by the petitioner for promotion as nobody intends to forego his promotion in the impugned exercise in September, 2021. As such, the grounds for rejection recorded in the reasoned order are not proper and tenable in the eye of law.

7. Mr. Dipankar Sarma, learned Addl. Government Advocate appearing for the State, has controverted the grounds of challenge. He has placed reliance upon the averments made in the counter affidavit. According to the learned counsel for the State, promotion to the post of Junior Operator (Control Room) is done on the basis of option from the eligible Firemen of the department as per convention followed from the very beginning. Petitioner's contention that radio message dated 17.09.2021 required submission of option only within one day by 18.09.2021 is not correct since by the second wireless message of the same date the sending of option by eligible Firemen was modified up to 22.09.2021 instead of 18.09.2021. All those who exercised options by 22.09.2021 were taken into consideration for promotion. In the

subsequent exercise though petitioner exercised his option but the only candidate promoted from UR category was senior to the present petitioner at Sl. No.1 as per Final Seniority List of Fireman dated 01.08.2023.

Learned counsel for the State further reiterates that expression of willingness made in July, 2013 is meaningless since 8 years had elapsed before the fresh exercise of promotion was undertaken in September, 2021. All those who exercised their options were duly considered and promoted as per the vacancy and seniority position. He further reiterates the other grounds referred to in the rejection order and submits that the writ petition is without merit and may be dismissed.

8. I have considered the submissions of learned counsel for the parties and taken note of the relevant materials placed on record.

9. This Court finds that calling of options/willingness from eligible candidates on the post of Fireman for being considered for promotion to the post of Junior Operator (Control Room) has been a consistent practice in the department. As pointed out by the learned counsel for the State, options are called as not all such eligible candidates are willing to go out of their headquarters after being promoted and prefer to remain in the feeder post of Fireman. Rationale for calling of options is at the discretion of the appointing authority but if such a criteria has been uniformly applied to all eligible candidates, petitioner cannot complain only on the ground that he had not been able to offer his option or willingness as per the radio message dated 17.09.2021 by the cut-off date i.e. 22.09.2021. It is petitioner's own case that he had given his option/willingness earlier in July, 2013. Petitioner had thus acquiesced to the condition of submission of option/willingness for being

considered for promotion to the post of Junior Operator (Control Room). In the absence of proper option exercised by the cut-off date, petitioner was left out of the zone of consideration in the first exercise undertaken in September, 2021. In the second exercise undertaken in December, 2021/January, 2022 though petitioner had expressed his option/willingness, but the person at Sl. No.1 above him in the UR category was only promoted, a fact which the petitioner had also accepted in the earlier round of litigation. Though much emphasis has been laid upon the tentative seniority list published on 25.06.2021 but the Final Seniority List was published on 01.08.2023. Petitioner's position in the tentative seniority list and his challenge on the basis of discrimination vis-à-vis junior persons would not hold good as the pre-condition of exercise of option/willingness by all eligible candidates in the cadre of Fireman was not exercised by the petitioner as per radio message dated 17.09.2021 up to the cut-off date i.e. 22.09.2021. If a uniform yardstick has been followed in matters of consideration of eligible candidates in the zone of consideration, petitioner cannot complain to be treated differently from rest of the candidates who did opt for being considered for promotion and they were accordingly included in the zone of consideration.

10. As such, for all these above reasons, this Court does not find any infirmity in the impugned order. The writ petition is accordingly dismissed.

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

(APARESH KUMAR SINGH), CJ

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