

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.685 of 2023

Uma Sankar Modak

.....Petitioner(s);

Versus

The State of Tripura & others

.....Respondent(s)

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

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

05/07/2024

Heard Mr. P. Roy Barman, learned senior counsel for the petitioner and Mr. M. Debbarma, learned Additional Government Advocate for the respondents-State.

2. Petitioner has sought quashing of the order dated 30.09.2021 issued by the Additional Secretary & Director, Home (Fire and Emergency Services), Tripura by which allegedly his juniors had been granted promotion from the post of Fireman to Junior Operator (Control Room). Petitioner has also sought quashing of the order dated 03.10.2023 issued by the Director, Fire and Emergency Services, Tripura whereby his matter has been rejected upon reconsideration pursuant to the direction passed by this Court in the earlier writ petition being WP(C) No.222/2023 judgment dated 07.07.2023. Petitioner has also prayed for promotion to the post of Junior Operator (Control Room) with effect from the date which is anterior to the date on which juniors of the petitioner superseded him in the matter of promotion to the post of Junior Operator (Control Room).

3. In the earlier writ petition the Court had, after taking note of the pleadings and submissions of the parties, observed that calling for option in the promotional exercise by giving one day option to express willingness on the part of the eligible candidates in the cadre of Fireman left the petitioner out of contention. As such, petitioner suffered since juniors got promoted. In such circumstances, the competent authority was directed to consider his request for promotion to the post of Junior Operator (Control Room) in accordance with law taking his willingness for promotion to the said post in case vacancy exists on the post of Junior Operator (Control Room). This Court also observed that in such exercise, the Director, Fire and Emergency Services would be entitled to entertain objection from any persons who are junior to the petitioner and have been promoted by notification dated 30.09.2021 to meet the ends of justice before taking such a decision. The reasoned order indicates that there is no vacancy in the cadre of Junior Operator (Control Room). Moreover, respondents No.5 to 15 have made written objection against promotion of the petitioner to the post of Junior Operator (Control Room) since he had not submitted his willingness within time. It is only much later that he made a belated claim for promotion on 07.12.2022 after having failed to comply with the department's radio-message dated 17.09.2021. On an earlier date, this Court had adjourned the matter on the submissions of learned Additional Government Advocate for obtaining instructions whether supernumerary posts could be created to accommodate the petitioner in consultation with the Finance Department. The additional affidavit filed by the respondents thereafter has expressed inability to create a supernumerary post *inter alia* stating as under:

“(i)The Home (Fire & Emergency Services) Department consulted with the Law Department, which, after having examined the issue, Law Department was pleased to opined that it is for the Home (Fire & ES) Deptt and the Finance Deptt to decide whether a supernumerary post to accommodate the petitioner in the promotion post would be created with such retrospective effect or not, though under the ad-hoc Promotion Policy of 2021 of the State Government, the scope of creating supernumerary post for promotion exist to accommodate reserved category candidates only when UR category candidates inter-se junior to them get promotion and thus such reserved category candidates (Senior as per seniority list) are deprived. Here the petitioner could not avail the promotion due to non-communication of his willingness when his juniors were promoted as per their willingness conveyed.”

4. This reason may not only detain the consideration of the case of the petitioner for relief since in an identical matter [WP(C) No.674/2023] decided yesterday by this Court concerning promotion from the post of Fireman to the post of Junior Operator (Control Room), in the same exercise it has come to the notice of the Court that the time period for submission of willingness/option by the eligible candidate by the same radio-message dated 17.09.2021 was extended on the same date by another radio message dated 17.09.2021 till 22.09.2021. All those who had furnished their willingness by the cut-off date 22.09.2021 were considered and as such promoted.

5. Mr. P. Roy Barman, learned senior counsel for the petitioner, submits that if the said case has been decided on this issue of submission of willingness by the extended cut-off date 22.09.2021 under the same exercise then the case of the present petitioner would be covered by the said decision. But he submits that the plea taken in the counter affidavit for non-creation of a supernumerary post to accommodate the petitioner who was left out while his juniors were promoted is not tenable in law.

6. Mr. M. Debbarma, learned Additional Government Advocate for the respondents-State, has defended the impugned order dated 03.10.2023

passed by the Director, Fire and Emergency Services and also adverted to the statements made in the counter affidavit that no supernumerary posts could be created under Ad-hoc Promotion Policy, 2021 for a UR candidate.

7. I have considered the rival submission of the parties after taking note of the relevant pleadings borne from record in the foregoing part of this order. On the question of furnishing of willingness for being considered for promotion to the post of Junior Operator (Control Room) since the case of the petitioner is covered by the ratio rendered by this Court in the case of *Sanjib Karmakar v. The State of Tripura & others* passed in *WP(C) No.674/2023* decided yesterday, this Court is not inclined to make any exception in the case of the present petitioner who is identically situated with the petitioner of *WP(C) No.674/2023*. This petitioner had also not submitted his willingness by 22.09.2021. Submission of willingness was consistently followed by the department in respect of all eligible candidates since long. As such, this Court does not find any reason for interference in the matter.

The instant petition is accordingly dismissed.

(APARESH KUMAR SINGH), CJ

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