

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.762 of 2023

G/184375W Havildar (General Duty) Anil Kumar

..... Petitioner(s);

Versus

The Union of India & others

.....Respondent(s)

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

For Respondent(s) : Mr. Bidyut Majumder, Deputy SGI.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Order

22/01/2024

Heard Mr. C.S. Sinha, learned counsel for the petitioner and Mr. Bidyut Majumder, learned Deputy SGI for the respondents.

2. The case of the petitioner is captured in the order dated 15.12.2023 which is quoted hereunder to avoid repetition:

“Petitioner while on deputation from December, 2015 to December, 2018 in Subsidiary Intelligence Bureau (SIB), Mumbai got proforma promotion as Havildar (General Duty) by a decision of his parent department w.e.f. 01.02.2016. SIB, Mumbai vide memorandum dated 28.04.2016 asked the petitioner to give written willingness to continue on deputation in the same post to which he replied by letter dated 04.06.2016 that he would work as SA/G in SIB till end of his deputation period. When he returned from deputation, his promotion w.e.f. 01.02.2016 was shifted to 16.01.2019. He represented before the employer vide Annexure-9 dated 29.06.2023 which has been replied vide Annexure-10 dated 04.09.2023. Relying upon paragraph-17.4.1 - 17.4.2 of the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training Office Memorandum No.22011/5/86-Estt.(D) dated 10th April, 1989 the parent department has justified the grant of promotion w.e.f. 16.01.2019 post repatriation to his parent unit in 18 Assam Rifles from SIB, Mumbai since the petitioner expressed his willingness and continued on deputation on his own volition in the rank of Rifleman (General Duty) instead of assuming the rank of Havildar (General Duty) to avoid repatriation to his parent unit.

Mr. C.S. Sinha, learned counsel for the petitioner, submits that petitioner was initially sent on deputation not on his request. However, he continued on deputation after proforma promotion was granted since such promotion was given only two months after his deputation and the deputation period had also not come to an end. It is also submitted that the office memorandum dated 10.04.1989 would not apply to his case as it deals with cases of officer serving on ex-cadre post on his own volition but are required to be reverted to the parent cadre immediately when due for promotion, failing which his name shall be removed from the panel. It is not the case that petitioner was due for promotion and his name was included in the panel only. Proforma promotion was, in fact, granted to him w.e.f. 01.02.2016 while on deputation. In that case, the relevant

circular which would apply to the case of the present petitioner is DOPT O.M. dated 17.06.2010 which has also been quoted in the memorandum dated 28.04.2016 (Annexure-3) issued by the Assistant Director, SIB. As such, the shifting of the date of promotion by his parent department to 16.01.2019 is not in accordance with law.

Mr. Bidyut Majumder, Deputy S.G.I., prays for and is allowed 4(four) weeks' time to seek instructions and file counter affidavit, if any.

List the matter on **18.01.2024**.”

Mr. Bidyut Majumder, learned Deputy SGI however seeks four weeks' more time to file Counter Affidavit.

3. Mr. C.S. Sinha, learned counsel for the petitioner, submits that the respondents are unnecessarily delaying the issue, though there has not been any proper application of mind to the request of the petitioner for restoring the proforma promotion granted by the parent department earlier with effect from 01.02.2016 in place of 16.01.2019. It is submitted that the matter may require reconsideration at the end of the respondent-department.

4. Mr. Majumder, learned Deputy SGI, submits that in case the Court feels proper, the matter may be remitted at this stage without observing anything on the merits of the case of the parties.

5. Having regard to the totality of the facts and taking note of the case of the parties, it appears that while rejecting the claim of the petitioner vide Annexure-10 dated 04.09.2023, the parent department has relied upon paragraph 17.4.1 – 17.4.2 of the office memorandum dated 10.04.1989 issued by the Ministry of Personnel, Public Grievances & Pension, Department of Personnel and Training. On the other hand, petitioner has relied upon the office memorandum of the DOP&T dated 17.06.2010 which has also been quoted in the memorandum dated 28.04.2016 [Annexure-3] issued by the Assistant

Director, SIB. Be it also noted here that petitioner was sent on deputation for the period December, 2015 to December, 2018 and just after two months thereof, proforma promotion was granted to the petitioner as Havildar (General Duty). Petitioner who was on deputation obviously gave his willingness to continue on the deputation post on being asked by letter dated 04.06.2016. The office memorandum dated 17.06.2010 which has been quoted in the memorandum dated 28.04.2016 reads as under:

“If during the period of deputation, on account of proforma promotion in the parent cadre the official concerned becomes entitled to a higher Pay Scale/Pay Band & Grade Pay in the parent cadre vis-à-vis that of the ex-cadre post, the official shall complete his/her normal/extended tenure of deputation already sanctioned with the approval of the competent authority. The pay shall be regulated as under :

If the Grade pay of the officer in the parent cadre becomes higher than that of the deputation post after getting proforma promotion, he may be allowed the pay in the pay band + Grade Pay of the post to which he is promoted till the time he completes the normal/extended period of deputation (if he gets proforma promotion in the extended period) already sanctioned, if he so opts. No extension in the period of deputation shall be allowed to him after completing the sanctioned period of deputation.”

6. It appears that the order dated 04.09.2023 [Annexure-10], whereby the representation of the petitioner dated 29.06.2023 [Annexure-9] was addressed, did not take into consideration the office memorandum dated 17.06.2010 quoted in the memorandum dated 28.04.2016 [Annexure-3]. It therefore appeals to the Court that the matter requires reconsideration at the level of the competent authority under the respondent-department.

7. Accordingly, writ petition is disposed of with a direction upon the respondent No.2 to reconsider the prayer of the petitioner for restoration of his proforma promotion with effect from 01.02.2016 in place of 16.01.2019 in accordance with law within a period of 12(twelve) weeks from the date of receipt of the copy of this order. Let it be made clear that no observations made

hereinabove shall be treated as comments on the merits of the case of the petitioner.

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

(APARESH KUMAR SINGH), CJ

