

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.872 of 2021

1. **Sri Shyama Prasad Sarkar**, son of Late Atul Chandra Sarkar, resident of village- Madhyapara, PO & PS- RK Pur, Udaipur, District- Gomati Tripura, PIN-799120.
2. **Sri Ashis Nath**, son of Late Nanigopal Nath, resident of village- Shakaibari, PO- Shakaibari, PS- Dharmanagar, Dharmanagar, District- North Tripura, PIN-799251, Age-58.
3. **Sri Krishnadhan Debnath**, son of Late Satish Chandra Debnath, resident of village- Badharghat (opposite to TGB), PO- Siddhi Ashram, PS- AD Nagar, Agartala, District-West Tripura, PIN- 799003, Age-57.
4. **Sri Subimal Datta**, son of Sudhir Chandra Datta, resident of village- West Julaibari, PO- Julaibari, PS-Baikhora, District- South Tripura, PIN- 799141, Age-58.
5. **Sri Himangshu Shekhar Chanda**, son of Late Harendra Bijoy Chanda, resident of village-Post Office road, near BBI staff quarter, PO & PS- Dharmanagar, Dharmanagar, District- North Tripura, PIN-799250, Age-59.
6. **Sri Rajib Paul**, son of Late Bijoy Krishna Paul, resident of village- Math-Chowmuhani, PO- Agartala College, PS- East Agartala, Agartala, District-West Tripura, PIN-799004, Age-56.
7. **Sri Ananda Debnath**, son of Late Rajani Kanta Debnath, resident of village-50, Office Lane, PO-Agartala, PS- West Agartala, Agartala, District-West Tripura, PIN-799001, Age-57.
8. **Sri Rahul Deb**, son of Birendra Ranjan Deb, C/O Dipak Chandra Deb, resident of village-340 Main road west, near RK road, PO- New Barackpore, PS-Kherdah, District- 24 Pargana North, West Bengal, Age-58.
9. **Sri Jyotirmay Nath**, son of Late Jatindra Chandra Nath, resident of village, PO & PS- Panisagar, District- North Tripura, PIN-799260.
10. **Shri Anupam Chakraborty**, son of Late Ajit Chakraborty, resident of Ramnagar Road No.-5, PO- Ramnagar, PS- Durga Chowmuhani, Agartala, District- West Tripura, PIN-799002, Age-58.
11. **Sri Ratan Chandra Saha**, son of Late Rebati Mohan Saha, resident of village-Paulpara, Office Tilla, PO & PS- Bishalgarh, District- Sepahijala Tripura, PIN-799102, Age-59.

....Petitioner(s)

Versus

1. **The State of Tripura**, represented by the Commissioner & Secretary, Public Works Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN- 799006.
2. **The Commissioner & Secretary**, Public Works Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN- 799006.
3. **The Commissioner & Secretary**, Finance Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN- 799006.
4. **The Deputy Secretary**, Public Works Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN- 799006.
5. **The Chief Engineer**, Public Works Department, Government of Tripura, having his office at Secretariat Building, PO- Kunjaban, PS- New Capital Complex, District- West Tripura, PIN- 799006.

....Respondent(s)

For the Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate Mr. P. Chakraborty, Advocate
For the Respondent(s)	:	Mr. D. Sarma, Addl. GA
Date of hearing & delivery of judgment & order	:	08.04.2024
Whether fit for reporting	:	Yes

HON'BLE MR. JUSTICE ARINDAM LODH
JUDGMENT & ORDER (ORAL)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. P. Chakraborty, learned counsel appearing for the petitioners. Also heard Mr. D. Sarma, learned Addl. GA appearing for the respondents-State.

2. By means of filing the instant writ petition, the petitioners have prayed for consideration of promotion from Grade-IV to Grade-III in the Engineering Service Cadre.

3. Mr. Deb, learned senior counsel to justify the claim of the petitioners has submitted that Tripura Engineering Service Rules, 1987(for

short, TES Rules) together with Tripura State Civil Services(Revised Pay) Rules,2009(here-in-after referred to as 'Principal Rules') provide automatic movement of Diploma-holder Engineers from Grade-IV to Grade-III. The second fold of argument is that Rule 31 embodied in the notification dated 19.03.2007 speaks about transitional arrangement. Sub-clause (2) of Rule 31 provides that "*Diploma holders, found in excess in Grade-IV, if any, shall immediately be adjusted against the vacancies of the direct recruitment posts for Degree holders in Grade-IV, the same shall be adjusted finally as per amended rules hereby on availability of future vacancies.*"

4. Learned senior counsel for the petitioners has laid much emphasis to persuade this Court that both the TES Rules and Principal Rules contemplate automatic movement to higher grade from the lower grade and the respondents have no option but to adjust the Diploma-holders Engineers occupying one grade to the next higher grade. Undisputedly, all the petitioners herein are Diploma-holder Engineers.

5. Under notification dated 30.09.2021, the petitioners in pursuance of TES Rules had been appointed to the post of TES Grade-IV(Civil), Group-A Gazetted on ad-hoc basis from the post of TES Grade-V(A)(Civil) Group-B Gazetted. On such appointment to the post of TES Grade-IV(Civil) their pay scales had been determined at Rs.15,600/- to Rs.39,100/- in PB-4 having Grade Pay Rs.6,600/-, i.e. at Level-15 of the Tripura Pay Matrix, 2018 with prospective date subject to final outcome of SLP(C) No.19765-19767 of 2015 pending before the Hon'ble Supreme Court of India(*Annexure-1* to the writ petition). Some of the writ petitioners, in the meantime, went on retirement by this time.

6. Mr. Sarma, learned Addl. GA has submitted that the service conditions of the petitioners are guided by TES Rules and the amendments made from time to time. Learned Addl. GA has drawn my attention to the method of recruitment as prescribed in the TES Rules and having laid much emphasis on the said Rule has further submits that the petitioners are not entitled to the reliefs sought for in the present writ petition.

7. I have considered the submissions of learned counsel appearing for the parties. There is no dispute that all the petitioners had entered into service in the post of Grade-V(B), Group-C, Non-gazetted, which is a re-designated post of “Overseers/Estimators”.

7.1. Part-II of TES Rules deals with constitution of the Engineering Services. Rule 3 of Part-II of TES Rules is relevant herein, which reads as under:

“3. Constitution of the Service and its classification.

(1) There shall be constituted a State Civil Service to be known as the Tripura Engineering Service.

(2) The Service shall have the following seven Grades, namely-

(i) Grade-I(A)- Group-A, gazetted

(ii) Grade-I(B)- Group-A, gazetted

(iii) Grade-II- Group-A, gazetted

(iv) Grade-III- Group-A, gazetted

(v) Grade-IV- Group-A, gazetted

(vi) Grade-V(A)- Group-B, Non-gazetted; and

(vii) Grade-V(B)- Group-C, Non-gazetted.

7.2. Rule 5 of Part-III of TES Rules deals with methods of Recruitment. The relevant portion of Rule 5 of Part-III is reproduced hereunder, for convenience:

“5. Appointment to the service shall be made by the following methods, namely:

(1) Direct recruitment

- (a)**** **** ****
 (b)**** **** ****
 (c)**** **** ****

(2) Recruitment by selection

The remaining substantive vacancies in the permanent strength of various Grades of the Service shall be filled by selection in the manner as specified in PART-V of these rules;

Provided that –

- (a) 70% of the posts in Grade-III of the service shall be filled by Degree holder engineers and the remaining 30% by Diploma holder engineers;

- (b) ***** **** ****
 (c) **** **** ****”

(Underlined for emphasis)

7.3. Part-V of TES Rules prescribes recruitment by selection. Sub-rule (1) and (2) of Rule 14 under Part-V of TES Rules provide that recruitment to Grade-I(A), Grade-I(B), Grade-II, Grade-III and Grade-IV of the Service under Sub-rule (2) of Rule-5, shall be made on recommendation of a Selection Committee.

(Underlined for emphasis)

7.4. Rule 15 deals with the conditions of eligibility for selection. Sub-rule (4) of Rule 15 is relevant to the subject in issue, which reads as under:

“(4) **Grade-III posts** shall be filled in the manner as specified in sub-rule (2) of rule-5 by officers who hold **Grade-IV posts** and have rendered not less than 7 years’ regular service in the Grade;”

8. Keeping the above rules in mind, this Court will proceed to decide whether the petitioners are entitled to be considered for promotion to the post of Grade-III from Grade-IV with retrospective effect.

8.1. To decide the present dispute raised in the pleadings of both the writ petition and the counter affidavit, in my opinion, the most relevant factor falls for consideration is the notification dated 30.09.2021(supra) whereby and whereunder the petitioners were appointed to the post of TES Grade-IV(Civil) on ad-hoc basis prospectively subject to final outcome of **SLP(C) No.19765-19767 of 2015** pending before the Hon'ble Supreme Court of India.

8.2. There is no dispute that the petitioners had accepted the conditions of their appointment to Grade-IV cadre stipulated in the notification dated 30.09.2021. It would be apposite to mention herein that the said SLP relates to the reservation policy of the Government which still remains pending for final decision of the Hon'ble Supreme Court. For substantial years no promotion could be made out of the disputes raised in various writ petitions challenging the reservation policy of the Government in view of the case of **Pankaj Chakraborty & Ors. vs. State of Tripura & Ors., WP(C) No.109 of 2011** following the decision of the Hon'ble Supreme Court in **M. Nagraj & Ors. vs. Union of India & Ors., (2006) 8 SCC 212**.

8.3. In the year 2021, the Government of Tripura had taken a policy decision to make ad-hoc promotion to meet the administrative exigencies since the judgment rendered in the case of **Pankaj Chakraborty(supra)** was stayed by the Hon'ble Supreme Court of India. In that circumstance, the Public Works Department, Government of Tripura had issued the notification dated 30.09.2021(*Annexure-1* to the writ petition).

9. Now, reverting back to the merits of the present writ petition, it is noticed that recruitment to the post of Grade-III could be made by selection on the recommendation of a Selection Committee and on fulfillment of the conditions as embodied in Sub-rule (4) of Rule 15 of the TES Rules as quoted here-in-above.

9.1. Rule 16 of TES Rules is also relevant, which reads as under:

“16. Procedure for selection

(1) The Committee constituted under sub-rule (1) and sub-rule (2), as the case may be, of rule-14 shall consider from time to time, cases of those officers who are eligible under rule-15 for promotion to a higher Grade and prepare a list of persons recommended taking into account the actual number of vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be based on merit and suitability in all respects for appointment to the Service with due regard to seniority.

Provided that where a person is considered for such appointment to a higher grade from a lower Grade, all persons senior to him in the lower feeder grade shall also be considered irrespective of whether or not they fulfill the requirement of the minimum period of regular service in the lower grade as provided in rule-15.

(2) The names of persons included in the list shall be arranged in the order of merit and be forwarded to the government.”

9.2. A plain reading of Rule 16 quoted here-in-above suggest that the petitioners would have to undergo a selection process by a properly constituted Selection Committee. Further, under Sub-rule (4) of Rule 15, Officers for consideration of promotion to the post of Grade-III must have completed 7 years' of regular service in Grade-IV.

10. At this juncture, learned senior counsel appearing on behalf of the petitioners has clarified that his bone of contention is that there shall be

automatic adjustment of the Diploma-holder Engineers by promoting them in any of the next higher grade alike the movement of Diploma-holder Engineers from Grade-V(B) to Grade-V(A) and Grade-V(A) to Grade-IV.

11. On careful perusal of Rule 31 of TES Rules, I am unable to accept the submissions of learned senior counsel for the petitioners. Rule 31 is, however, very specific to consider the promotion of Diploma-holder Engineers from Grade-V(A) to Grade-IV, and in contra thereto there is visible absence of any provision providing automatic adjustment of Grade-IV Diploma-holder Engineers to the post of Grade-III. The Principal Rules as referred to by Mr. Deb, learned senior counsel also does not make any such provision for automatic adjustment of Grade-IV Diploma-holder Engineers to the posts of Grade-III cadre.

12. *On cumulative reading of Rule 3, Rule 5(2), Sub-rules (1) and (2) of Rule 14, Sub-rule (4) of Rule 15 and Rule 16 of TES Rules, it comes to fore that there is prescribed mechanism in clear terms that the eligible Diploma-holder Engineers in Grade-IV must go through a proper selection process. There shall be a properly constituted Selection Committee, which after assessment of overall merits and suitability of such engineers coupled with other factors mentioned in Rule 16 of TES Rules shall recommend their consideration for promotion to the posts of Grade-III cadre. So, it can safely be held that TES Rules does not provide for automatic adjustment of Grade-IV Diploma-holder Engineers to the next higher grade, that is, Grade-III, and the selection for inclusion in the selection list for recruitment to the post of Grade-III cadre is subject to the requirement of successfully undergoing a selection process.*

[emphasis supplied]

13. In addition, each of such Diploma-holder Engineers shall have to render minimum 7(seven) years' of regular service in Grade-IV cadre to become eligible or to come within the zone of consideration for the purpose of selection and recruitment to the post of Grade-III cadre.

14. In the instant case, the petitioners were appointed only on *ad hoc* basis and, needless to say, have not rendered/completed 7(seven) years' of regular service in Grade-IV cadre, which is a pre-requisite; or to say it otherwise, a condition precedent for the Diploma-holder Engineers to become eligible and enter into the consideration zone for selection/recruitment to the posts of Grade-III cadre. Therefore, this Court cannot pass any direction upon the respondents to adjust the petitioners against the posts meant for Grade-III.

15. When there is specific rule that recruitment to the post of Grade-III from Grade-IV shall be made on recommendation of a Selection Committee, then, there is no scope to bypass the said rule as mentioned in Rule 14(1) and Sub-rule (4) of Rule 15 because the language of the said rules is seemingly clear and unambiguous. *According to the basic rule of interpretation, where plain wordings used in a rule/statutory provision are clear and unambiguous, then, the Court is to go by the rule of literal construction and it is precluded to include or exclude or mend or to make any interpretation by means of taking external aids.*

[emphasis supplied]

Here, I may profitably refer to a decision of the Hon'ble Supreme Court in *Shiv Shakti Coop. Housing Society vs. Swaraj Developers*, reported in (2003) 6 SCC 659 where it was observed that:[SCC p. 669, para 19]

“19. It is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. A statute is an edict of the legislature. The language employed in a statute is the determinative factor of legislative intent.”

Again, in ***Union of India vs. Hansoli Devi***, reported in **(2002) 7 SCC 273**, the Hon’ble Supreme Court has observed thus:[SCC p.281, para 9]

“9.....It is a cardinal principle of construction of a statute that when the language of the statute is plain and unambiguous, then the court must give effect to the words used in the statute and it would not be open to the courts to adopt a hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.”

In ***Hiralal Rattanlal vs. State of U.P.***, reported in **(1973) 1 SCC 216**, the Hon’ble Supreme Court has observed that:[SCC p. 224, para 22]

“22.... In construing a statutory provision, the first and the foremost rule of construction is the literary construction. All that the court has to see at the very outset is what does that provision say. If the provision is unambiguous and if from that provision the legislative intent is clear, the court need not call into aid the other rules of construction of statutes. The other rules of construction of statutes are called into aid only when the legislative intention is not clear.”

16. Now, considering the submissions of learned senior counsel for the petitioners that the Government should invoke Rule 31 for transitional arrangement by way of accommodating Grade-IV Diploma-holder Engineers to the post of Grade-III cadre, in the opinion of this Court, transition period has to be considered by the respondents-State and the need for making

transitional arrangement is entirely within the domain of the respondent-employer.

17. In my further opinion, the Government had already invoked Rule 31 of TES Rules and made transitional arrangement by way of promoting the eligible Diploma-holder Engineers to the post of TES Grade-IV(Civil) on *ad hoc* basis despite the pendency of the SLP before the Hon'ble Supreme Court of India vide notification dated 30.09.2021 taking into account administrative exigencies.

I have not lost sight to notification dated 30.09.2021, it is clearly stated that *"the appointments on promotion are purely on ad hoc basis subject to final outcome of the SLP pending before the Hon'ble Supreme Court of India."*

18. In the light of the above, I do not find any merit in the present writ petition and accordingly, it is dismissed. However, there shall be no order as to cost. Pending application(s), if any, also stands disposed.

JUDGE

Snigdha

SAIKAT
KAR

Digitally signed
by SAIKAT KAR
Date: 2024.04.18
17:18:47 +05'30'