

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.1066 of 2022

Sri Ranjit Bhowmik, son of late Surjya Mohan Bhowmik, resident of Flat No.-“A” Block (Ground Floor), Laxmi Kunja, Ramnagar, Road No.6, Agartala, West Tripura, Pin-799002.

....**Petitioner(s)**

Versus

- 1. The State of Tripura**, represented by the Commissioner and Secretary, Public Works Department, Government of Tripura, having his office at Secretariat Building, P.O-Kunjaban, P.S-New Capital Complex, District-West Tripura, Pin-799006.
- 2. The Commissioner and Secretary**, Public Works Department, Government of Tripura, having his office at Secretariat Building, P.O-Kunjaban, P.S-New Capital Complex, District-West Tripura, Pin-799006.
- 3. The Deputy Secretary**, Public Works Department, Government of Tripura, having his office at Secretariat Building, P.O-Kunjaban, P.S-New Capital Complex, District-West Tripura, Pin-799006.
- 4. The Chief Engineer**, Public Works Department, Government of Tripura, having his office at Secretariat Building, P.O-Kunjaban, P.S-New Capital Complex, District-West Tripura, Pin-799006.
- 5. The Tripura Public Service Commission**, represented by its Secretary, having his office at TPSC Bhawan, P.O-Agartala, P.S-West Agartala, Sub-division-Agartala, West Tripura, Pin-799001.
- 6. The Secretary**, Tripura Public Service Commission, having his office at TPSC Bhawan, P.O-Agartala, P.S-West Agartala, Sub-division-Agartala, West Tripura, Pin-799001.

....**Official Respondent(s)**

- 7. Sri Jhutan Dey**, son of not known, holding the post of TES, Grade-IV, (Assistant Engineer) (Mechanical), under the PWED (R&B/WR/DWS).
- 8. Sri Sanjib Bhattacharjee**, son of not known, holding the post of TES, Grade-IV, (Assistant Engineer) (Mechanical), under the PWED (R&B/WR/DWS).

....**Private Respondent(s)**

For the Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate
For the Respondent(s)	:	Mr. M. Debbarma, Addl. GA Mr. Kundan Pandey, Advocate Mr. B. Majumder, Advocate
Date of hearing & delivery of judgment & order	:	20.09.2024
Whether fit for reporting	:	No

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

Heard Mr. Somik Deb, learned senior counsel appearing for the petitioner. Also heard Mr. M. Debbarma, learned Addl. GA appearing for respondents no.1 to 4, Mr. Kundan Pandey, learned counsel appearing for respondents no.5 and 6 and Mr. B. Majumder, learned counsel appearing for respondent no.8.

2. The petitioner has filed the present writ petition challenging the promotion of respondent no.7 and the order assigning the current charge upon the respondent no.8.

3. It is the case of the petitioner that he is senior to both the respondents in the service. For many years the promotion to the post of TES, Grade-III, (Mechanical) (Degree) from the post of TES, Grade-IV, (Mechanical) (Degree) was stalled due to litigations as regards reservation policy now pending before Hon'ble Supreme Court of India. However, the State-respondents had taken a policy decision to recommence the process of promotion of the officers in view of administrative exigencies. Accordingly, the State-respondents had issued a notification dated 22.06.2021 formulating the criteria/guidelines for promotion of the employees of the State Government on ad-hoc basis.

4. On the basis of this policy, the State-respondents constituted DPC for effectuating promotion of TES, Grade-IV (Mechanical) (Degree) to the post of TES, Grade-III (Mechanical) (Degree) on ad-hoc basis. The DPC after consideration all the guidelines considered the promotion of the respondent no.7. To decide the present writ petition, the case of respondent no.8 cannot be taken into account as he was not promoted, but, was given

the current duty charge. So, the petitioner is only concerned with the promotion of respondent no.7 to the post of TES Grade-III (Mechanical) (Degree).

5. Mr. Deb, learned senior counsel for the petitioner has drawn the attention of this Court to Clauses 6 and 7 of the notification dated 22.06.2021. Mr. Deb, learned senior counsel has also brought to the notice of this Court paras 6 and 11 of the minutes of the DPC(Annexure-7 to the writ petition). According to learned senior counsel for the petitioner, the petitioner was/is eligible for promotion to the post of TES Grade-III (Mechanical) (Degree). Learned senior counsel has submitted that it is the obligation of the State-respondents to create supernumerary posts if no vacancy is found against the said promotional post.

6. On the other hand, Mr. Debbarma, learned Addl. GA for the respondents-State has submitted that the DPC minutes clearly postulate that the members have taken into account all aspects to evaluate the merits of the eligible candidates, and after such consideration, the list of the officers entitled to be considered for promotion to the post of TES Grade-III (Mechanical) (Degree) was prepared. So, no interference is called for upon the decision of the DPC.

7. I have considered the submissions of learned counsel appearing for the parties.

8. Keeping in view the submissions advanced by learned senior counsel for the petitioner, it would be relevant to reproduce para 6 and para 7 of the notification dated 22.06.2021.

*“6. Now, the State Government hereby notifies the following **Promotion Policy, 2021** as follows:*

- (i) Rule 9 of the Tripura SC & ST Reservation Rules, 1992 and the provisos thereto shall be read in such a manner that only those SC & ST candidates who have qualified solely on the basis of merit and*

have never taken the benefit of reservation, will be treated to be own merit candidates and entitle to occupy the posts meant for general category and reservation shall be made cadre-wise.

- (ii) 100 point roster shall apply only where the number of posts in the cadre is 4(four) or more.
- (iii) Where the post in the cadre are 3(three) or less, the 3(three) point replacement roster shall be followed.
- (iv) Single post or small cadres cannot be combined to make the number of posts more than 3(three).

7. Following the above policy, the DPC will identify employees eligible for promotion to a particular post against the available vacancies. After this exercise, DPC shall consider another exercise taking into account the procedure as stated in the rule 9(2) of the Tripura SC & ST Reservation Rules, 1992. Due to such exercise, if any candidate is found not considered in the process as stated in the above process, then such candidates shall be considered for ad-hoc promotion by creating supernumerary post(s).”

It is also relevant to reproduce para 6 and para 11 of the DPC minutes which are as under:

“6. As per information made available to the Selection Committee through the Self Contained Note and the Final Seniority list published vide Memorandum No.F.F.6(35)-PWD(E)/92 dated 04-06-2021 the following Tripura Engineering Service, Grade-IV (Mechanical) (Degree & Diploma) are coming in the zone of consideration for promotion to the post of TES Gr-III (Mechanical) (Degree & Diploma), since they have completed more than 7 years of service in TES Gr-IV (Mechanical) (Degree & Diploma) and passed the Departmental Examination in full:-

Tripura Engineering Service, Grade-IV (Mechanical) (Degree)

Sl. No.	Name of officer	Date of appointment in TES Gr-IV	Whether departmental exam cleared or not	Whether qualifying service completed or not	Whether initially appointed the post meant for SC/ST or subsequently availed reserved post
1.	Sri Shyamal Acharya	01-01-1986	Cleared	Completed	UR
2.	Sri Salil Bhattacharjee	25-06-1987	-do-	-do-	UR
3.	Sri Rajesh Reang	22-12-2007	-do-	-do-	ST
4.	Sri Sankar Das	22-12-2007	-do-	-do-	SC
5.	Sri Sanjoy Das	22-12-2007	-do-	-do-	SC
6.	Sri Lalit Debbarma	22-12-2007	-do-	-do-	ST
7.	Sri Bishu Debbarma	04-10-2008	-do-	-do-	ST
8.	Sri Manas Roy	20-12-2008	-do-	-do-	UR
9.	Sri Ranjit Bhowmik	27-12-2008	-do-	-do-	SC

10.	Sri Jhutan Dey	28-02-2014	-do-	-do-	UR
11.	Sri Apur Deb Barma	05-03-2014	-do-	-do-	ST

Tripura Engineering Service, Grade-IV (Mechanical) (Diploma)

Sl. No.	Name of officer	Date of appointment in TES Gr-IV	Whether departmental exam cleared or not	Whether qualifying service completed or not	Whether initially appointed the post meant for SC/ST or subsequently availed reserved post
1.	Arun Kanti Das	24-04-2002	Cleared	Completed	SC
2.	Biswa Kr Jamatia	25-04-2002	-do-	-do-	ST Denied Vigilance Clearance
3.	Jayanta Chakraborty	22-12-2007	-do-	-do-	UR
4.	Tanmoy Majumder	22-12-2007	-do-	-do-	UR
5.	Ranjan Kanti Bhowmik	04-10-2008	-do-	-do-	SC

11. The Selection Committee, have recommended the names of the following TES Gr-IV (Mechanical) (Degree & Diploma) officers for promotion to TES Grade-III (Mechanical) (Degree & Diploma) on ad-hoc basis as one time measure following various guidelines in Cabinet Notification No.F.2(24)-GA(P&T)/2021 dated 22-06-2021, subject to final verdict of the Hon'ble Supreme Court in SLP (C) No.19765 of 2015:-

(Mechanical) (Degree)

Sl. No.	Name of Officer	Recommended against
1.	Sri Shyamal Acharya (UR) as UR	UR
2.	Sri Salil Bhattacharjee (UR) as UR	UR
3.	Sri Rajesh Reang (ST) as ST	ST
4.	Sri Sankar Das (SC) as SC	SC
5.	Sri Sanjoy Das (SC)	Subject to creation of supernumerary post
6.	Sri Lalit Debbarma (ST) as ST	ST
7.	Sri Bishu Debbarma (ST) as ST	ST
8.	Sri Manas Roy (UR)	UR
9.	Sri Jhutan Dey (UR)	UR
10.	Sri Apur Deb Barma (ST)	Subject to creation of supernumerary post

(Mechanical) (Diploma)

Sl. No.	Name of Officer	Recommended against
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1.	<i>Sri Arun Kanti Das (SC)</i>	<i>SC</i>
2.	<i>Sri Jayanta Chakraborty (UR)</i>	<i>UR</i>
3.	<i>Sri Tanmoy Majumder (UR)</i>	<i>UR</i>
4.	<i>Sri Ranjan Kanti Bhowmik (SC)</i>	<i>Subject to creation of supernumerary post</i>

The serial number show in column No.1 of the table at para-11 above shall not denote Inter-se-seniority.”

9. From the DPC minutes it appears that the petitioner came within the zone of consideration for promotion along with other officers(para 6). On plain reading of para 11 of the DPC minutes it appears that the Selection Committee recommended the names of the officers for promotion to the post of TES Grade-III (Mechanical) (Degree holder) on ad-hoc basis as one time measure following various guidelines in Cabinet Notification dated 22.06.2021 subject to final verdict of the Hon’ble Supreme Court in SLP (C) No.19765 of 2015. The names of the officers considered for promotion to the post of TES Grade-III (Mechanical) (Degree) have been mentioned in tabular form here-in-above.

10. From para 11 of the DPC minutes it also comes to fore that though the petitioner came within the zone of consideration but his name was not recommended by the DPC for promotion to the post of TES Grade-III (Mechanical) (Degree). The grievance of the petitioner is regarding the promotion of the respondent no.7 Sri Jhutan Dey, who belongs to UR category. It further reveals from the para 11 of the DPC minutes that two candidates namely, Sri Sanjay Das(SC) and Sri Apur Deb Barma (ST) were promoted by way of creation of supernumerary posts.

11. On careful scrutiny of the DPC minutes, it comes to light that DPC has considered all aspects required for promotion of TES Grade-IV (Mechanical) (Degree) officers. There is no allegation of bias or mala fide

against the DPC. According to this Court, when the DPC has stated that they have recommended the suitable candidates in accordance with the guidelines, then, the Court has very limited power to re-examine and interfere with the decision of the DPC, particularly when its action appears to be bonafide.

12. Again, the creation of supernumerary posts falls exclusively within the realm of State policy, which the Court should refrain from interfering with in the context of this particular case.

13. In view of this, this Court refrains from issuing any direction upon the respondents to consider the promotion of the petitioner to the post of TES Grade-III (Mechanical) (Degree). However, since it is evident from para 11 that two persons namely, Sri Sanjay Das and Sri Apur Deb Barma were promoted by creating supernumerary posts, the respondents may consider the promotion of the petitioner by creating supernumerary post of TES Grade-III (Mechanical) (Degree), however, considering its necessity.

14. The decision of the respondents may be communicated to the petitioner within a period of 3(three) months from the date of receipt of a copy of this judgment and order.

The instant writ petition stands disposed in the above terms.

JUDGE

Snigdha

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