

**HIGH COURT OF TRIPURA
AGARTALA
WA No.230 of 2022**

Majahar Ali,
Son of late Wahid Ali,
Resident of village-Fulbarikandi,
P.O. & P.S. Kailashahar,
District: Unakoti, Tripura, PIN:799 277
Age: 54 years

---- Appellant(s)

-VERSUS-

- 1. The State of Tripura,**
To be represented by the Secretary,
Department of Revenue,
Government of Tripura,
New Secretariat Complex,
New Capital Complex, Agartala,
West Tripura, PIN: 799 010
- 2. The District Magistrate & Collector,**
West Tripura District,
Government of Tripura,
Office of the DM & Collector, Agartala,
West Tripura, PIN: 799 001

---- Respondent(s)

For Appellant(s)	:	Mr. P. Roy Barman, Sr. Adv. Mr. K. Nath, Adv.
For Respondent(s)	:	Kohinoor N Bhattacharya, G.A.
Date of hearing and delivery of judgment and order	:	05.03.2024
Judgment & order	:	
Whether fit for reporting	:	YES/NO

**HON'BLE MR. JUSTICE T. AMARNATH GOUD
HON'BLE MR. JUSTICE BISWAJIT PALIT**

Judgment & Order (Oral)

The present writ appeal is filed seeking for the following reliefs:

- A. Admit the Appeal;**
- B. Call for the records**
- C. After hearing both the parties, modify the impugned Order, dated 05.12.2022, passed by L'd Single Judge, in WP(C) No.681/2021, to the effect, that the Appellant shall be entitled to all consequential and ancillary financial benefits including pay and salary with effect from the date which is anterior to the date on which his juniors superseded the Appellant in the matter of promotion to the post of UDC in the year 2012;**

D. Pass any other order/orders as the Hon'ble High Court may deem fit and proper

02. The case of the petitioner is that due to pendency of a disciplinary proceedings against the appellant, his promotion to the post of UDC was kept in abeyance and the decision was pending under a sealed cover. Thereafter, by virtue of an order dated 06.09.2021 the respondents have communicated their decision about the promotion of the petitioner from LDC to UDC.

03. In pursuance thereof, the petitioner has submitted before this Court that he is entitled for seniority and other benefits. Since, his case is squarely covered by a decision of Hon'ble Supreme Court of India in **Union of India and Others vs. K.V. Jankiraman and Others** reported in **(1991) 4 SCC 109**. In para-8 of the said judgment the Hon'ble Apex Court has observed as under:

"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are:-- (1) what is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be, adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date?' The 'sealed cover procedure' is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over'. Hence, the relevance and importance of the questions."

04. The petitioner has approached this Court by filing an appeal under Section 226 of the Constitution of India read with Chapter V A Rule 2(2) of the Gauhati High Court Rules, as applicable against the Order dated 05.12.2022 passed by Learned Single Judge in WP(C)No.681 of 2021.

05. The present appeal is filed before this Court and the order passed by the Learned Single Judge on 05.12.2022 are only a piecemeal to the relief granted and the petitioner prayed for further reliefs and prayed to allow the writ appeal.

06. Heard Mr. P. Roy Barman, Learned senior counsel assisted by Mr. K. Nath, Learned counsel appearing for the appellant and also heard Mr. Kohinoor N Bhattacharya, Learned G.A. appearing for the respondents.

07. It is seen from the record from the record that the petitioner on 12.01.2021 referred before the matter before the respondents seeking to grant the relief in terms of his disciplinary enquiry and also the promotions thereof and in pursuance thereof in 06.09.2021 the respondents considered the case of the petitioner has awarded promotion from LDC to UDC.

08. Now, coming to the issue of benefits as raised by the petitioner before this Court is concerned, it is seen from the record that the petitioner has approached the respondents seeking relief/s in terms of his promotion and former seniority and other benefits along with financial benefits and any other benefits whichever is entitled.

09. The impugned proceeding or action whichever is under challenge the writ petition is not maintainable has been taken on record and the Learned Single Judge has decided the matter on merits.

10. This Court itself considers that the writ appeal is not maintainable under Section 226 of the Constitution of India nor any impugned action of the respondents when the matter came to be

issued in the absence of which this Court considers case of the petitioner and grants relief to the petitioner to the extent that the petitioner is at liberty to file the representation before the respondents and placed all the materials in support of his claim and on receipt of such representation, the respondents shall consider the same in accordance with law within a period of 3(three) months from the date of receipt of a copy of this order.

This order is passed without expressing any opinion on merits.

In terms of the above, the present writ appeal is disposed of.

JUDGE

JUDGE



**SABYASACHI
BHATTACHARJEE**

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