

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.497 of 2023

1. Sri Prashanta Saha,

S/O- Sri Bhupendra Chandra Saha, R/O- Near Shiv Shani Mandir, Near Bhati Abhoynagar, Agartala, District- West Tripura, Pin- 799002, Aged about-43 years.

2. Sri Manoj Sarma,

S/O- Sri Sushil Ranjan Sarma, R/O-Nalgaria, Ranirbazar, District- West Tripura, Pin-799035, Aged about- 40 years.

3. Sri Amardip Debbarma,

S/O- Sri Anada Debbarma, R/O-Gurkhabasti, P.O- Kathalbagan, Agartala, District- West Tripura, Pin-799006, Aged about- 42 years

4. Sri Sudip Debnath,

S/O- Late Jatindra Chandra Debnath, R/O- Nutan Nagar, P.O- Agartala, P.S- Airport, District-West Tripura, Pin- 799009, Aged about- 44 years.

5. Sri Arup Laskar,

S/O- Bibhuti Bhushan Laskar, R/O-Jagaharimura, Agartala, District- West Tripura, Pin-799004, Aged about- 44 years

6. Sri Anwesh Choudhury,

S/O- Bibhuti Bhushan Choudhury, West Gobindapur, P.O+P.S- Kailasahar, P.S-Unakoti Tripura, Pin- 799277, Aged about-38 years.

7. Sri Tarak Lal Saha,

S/O- Late Jaglal Saha, R/O-Jagaharimura, Gourbari Lane, Agartala, District- West Tripura, Pin-799004, Aged about- 47 years

8. Sri Bhaskar Roy,

S/O- Sri Bena Bhushan Roy, North Gobindapur, P.O+P.S- Kailasahar, P.S- Unakoti Tripura, Pin-799277, Aged about - 39 years

9. Smt. Sumitra Biswas,

W/O- Sri Dibakar Nath, Flat No.2-D, Roodraksh Dinesh Palace, Joynagar Road No.6, P.O-Agartala, P.S- West Agartala, District- West Tripura, Pin: 799001, Aged about- 39 years.

....Petitioner(s)

Versus

1. The State of Tripura,

Represented by its Secretary, Department of Power, Government of Tripura, P.O-Secretariat, P.S- New Capital Complex, Dist:- West Tripura, Pin-799010.

2. The Tripura State Electricity Corporation Limited,

Represented by its Managing Director, Bidyut Bhawan, Banamalipur, P.O- Agartala, P.S- West Agartala, Dist-West Tripura, Pin- 799001.

3. The Chairman,

Tripura State Electricity Corporation Limited, Bidyut Bhawan, Banamalipur, P.O- Agartala, P.S- West Agartala, Dist- West Tripura, Pin- 799001.

4. The Managing Director,

Tripura State Electricity Corporation Limited, Bidyut Bhawan, Banamalipur, P.O-Agartala, P.S- West Agartala, Dist- West Tripura, Pin-799001.

5. Tripura Public Service Commission,

Represented by its Secretary, having office at Akhaura Road, P.O- Agartala, P.S- west Agartala, District- West Tripura, Pin-799001.

6. The Secretary, G.A (P&T) Department,

Government of Tripura, New Secretariat Building, P.O- Secretariat, P.S-New Capital Complex, District- West Tripura, Pin-799010.

7. The Secretary,

Finance Department, Government of Tripura, New Secretariat Building, P.O- Secretariat, P.S-New Capital Complex, District- West Tripura, Pin-799010.

8. The LR and Secretary (Law),

Law department, Government of Tripura, New Secretariat Building, P.O-Secretariat, P.S- New Capital Complex, District- West Tripura, Pin-799010.

....Respondent(s)

For the Petitioner(s)	:	Mr. Arijit Bhaumik, Advocate
For the Respondent (s)	:	Mr. M. Debbarma, Addl. GA Mr. N. Majumder, Advocate
Date of hearing	:	16.01.2025
Date of delivery of Judgment & Order	:	17.04.2025
Whether fit for reporting	:	No

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER

All the petitioners were working as Manager Grade-A (Degree holders) under Tripura State Electricity Corporation Ltd. (for short, 'TSECL') and they were recruited in the said post

directly in the year 2008. According to them, their Recruitment Rules have been finalized and they became eligible for promotion to the immediate higher post of Senior Manager (Electrical) long ago, but despite completing 15 years of service, no promotional exercise has been conducted by the concerned respondents and, therefore, this writ petition has been filed seeking the following reliefs:

I. Issue notice upon the Respondents.

II. Call for the relevant records from the custody of the Respondents.

III. Issue rule calling upon the Respondents to show cause as to why the seniority list of Manager Grade-A (Degree Holders) under the Tripura State Electricity Corporation Limited shall not be finalised within a time frame.

AND

Issue rule calling upon the Respondents to show cause as to why the pre promotion exam/departmental exam of the petitioners shall not be conducted within a time frame.

AND

Issue rule calling upon the Respondents to show cause as to why the promotion exercise for the post of Senior Manager(electrical) from the post of Manager Grade-A (Degree Holders) initiated vide Annexure 24, 25 and 26 shall not be brought to its logical conclusion by recommending the petitioners for promotion to the post of Senior Manager (Electrical) under the Respondent Corporation upon finalisation of the seniority list and conducting pre promotion exam/departmental exam in terms of the prayer above within a time frame.

IV. And after hearing the parties be pleased to make the rule absolute.

AND/OR

Pass any other order/orders as deemed fit and proper"

2. According to the Petitioners, as per the Recruitment Rules, 45 posts are required to be filled up by way of promotion from Degree Holder Engineers having minimum three years of service experience in the post of Manager, Grade-A (Electrical) under TSECL and as per Clause 13(ii) of said Recruitment Rules, selection for such promotion shall be done through interview with

the Selection Committee and candidates will be called for interview by the Selection Committee as per the Seniority List, provided that, the candidate must pass Departmental Exam (Written Test) conducted by some professional agency or firm on behalf of TSECL, with the concurrence of Managing Director of TSECL.

3. Mr. Arijit Bhaumik, learned counsel submits that petitioner nos.1, 4, 6, 7, and 9 have appeared and cleared such pre-promotional examinations conducted by TPSC in the year 2012 and 2015 and petitioner nos.2, 3, 5 and 8 could not get any scope to appear in such examination inasmuch as no departmental examination has been conducted by the department since the year 2021. Mr. Bhaumik, learned counsel also submits that at least 106 posts of Senior Manager (Electrical) are lying vacant and vide memorandum dated 31.03.2023, a Performance Evaluation and Recommendation Committee for *ad-hoc* promotion was constituted in consonance with the policy decision of the State to allow one time *ad-hoc* promotion issued vide Notification No.F.2(24)-GA(P & T)/2021 dated 22.06.2021 issued by General Administration (Personnel & Training) Department, Government of Tripura, but after that the respondents were sitting over the promotional exercise.

4. Mr. Bhaumik, learned counsel also refers to a minutes dated 28.07.2021 (Annexure-23) issued by Additional Secretary (Power), Govt. of Tripura wherein it was decided that ACRs of

different categories of employees of Power Department shall be collected, vigilance clearance report shall be obtained in prescribed format and updated seniority list shall also be prepared. It was also further noted in the said decision that as Service Rules of TSECL recruited employees were not yet framed/approved, TSECL may propose for adoption of Tripura Power Engineering Service(TPES) Rules as amended up-to-date for its engineering officials and existing Service Rules of PWD for its ministerial employees to facilitate extending of the benefit of Promotion Policy of 2021 to all categories of TSECL recruited employees and it was also urged that entire process of promotion proposal of all categories of employees shall be completed by 31.08.2021, but despite the same, the department was sitting over the same.

5. Thereafter, vide memorandum dated 21.03.2023, Vigilance Clearance Certificates of Manager, Grade-A (Degree holders) were called for and vide memorandum dated 31.03.2023 a Performance Evaluation and Recommendation Committee for *ad-hoc* promotion was also constituted. By issuing another memorandum dated 31.03.2023 one Promotion Committee was also constituted. The Performance Evaluation and Recommendation Committee was to act as a panel for checking and verifying the updated seniority list, performance appraisal report, vigilance integrity certificate, etc. of eligible candidates for *ad-hoc* promotion and it was also further provided that said committee would recommend the list of eligible employees for *ad-*

hoc promotion to the Promotion Committee and the entire process was to be completed by 05.04.2023. However, as no progress was made thereafter, the present writ petition was filed.

6. Mr. Bhaumik, learned counsel submits that so far the prayers relating to finalization of seniority list and holding of pre-promotional examination were concerned, same was already mitigated. Therefore, the writ petitioners are now pressing only the last relief, i.e., for completing the promotional exercise for filling up the post of Senior Manager, Grade-A as indicated above.

7. Mr. Bhaumik, learned counsel also relies on a decision of Hon'ble Apex Court in the case of **Nagpur Improvement Trust vs. Yadaorao Jagannath Kumbhare & Others, (1999) 8 SCC 99**, wherein it is observed that it is the general principle of service jurisprudence that in the absence of any statutory rules governing service conditions of the employees, the executive instructions and/or decisions taken administratively would operate in the field and appointments/promotions can be made in accordance with such executive instructions/administrative directions.

8. Mr. Bhaumik, learned counsel also further relies on another decision of the Hon'ble Apex Court in the case of **State of Orissa and Ors vs. Mamtarani Sahoo and Anr., (1998) 8 SCC 753**, where in similar line, the said principle was reiterated that till the statutory rules are framed, the Government can issue administrative instructions regarding principles to be followed in

promotions of the officers concerned to the selection grade posts. It has also further been observed that though the Government cannot amend or supersede statutory rules by administrative instructions, but if the rules are silent on any particular point, the Government can fill up the gaps and supplement the rules and issue instructions not inconsistent with the rules already framed.

9. Learned Addl. GA, Mr. M. Debbarma referring to an additional affidavit submitted by the State-respondent no.1 contends that both matter of creation of 45 (forty five) numbers of new post of Senior Manager (Electrical) and finalization of draft Recruitment Rules for these posts are pending with the Government. However, obtaining approval from the Government, next course of *ad-hoc* promotion would be taken up by the concerned authority. Basic challenge of learned Addl. GA, Mr. Debbarma is that in the absence of any Recruitment Rules, promotional exercise cannot be done and moreso, new posts are required to be created.

10. Mr. N. Majumder, learned counsel for the respondents-TSECL also submits in the same tune and challenges the claim of the petitioners that in absence of vacant posts and also due to non-finalization of Recruitment Rules, the department is not in a position to complete the promotional exercise.

11. So far as the challenge regarding non-creation of post is concerned, it appears from notification dated 28.03.2023 (Annexure-11) issued by TSECL that already 45 (forty five) numbers of posts of Senior Manager (Electrical) for Degree Holder

Engineers are created, therefore, such plea of the respondents is not maintainable. Mr. Bhaumik, learned counsel already relies on another document as discussed earlier i.e. minutes dated 28.07.2021 (Annexure-23) wherein the Power Department, Government of Tripura already decided that as the Service Rules of TSECL recruited employees were not yet framed/approved, TSECL may propose for adoption of Tripura Power Engineering Service (TPES) Rules as amended up-to-date for its engineering officials in the existing Service Rules of PWD for its ministerial employees by the TSECL Board of Director to facilitate extending the benefit of 'Promotion Policy, 2021' to all categories of TSECL recruited employees. Therefore, non-framing of rules cannot be a hurdle for the department to do such exercise for filling up the post of Senior Manager, Grade-A (Degree Holders). The relevant portion of that decision of State Government is extracted hereunder:

"8. As the Service Rules for TSECL recruited employees are not yet framed/approved, TSECL may propose for adoption of Tripura Power Engineering Service (TPES) Rules as amended up-to-date for its Engineering Officials and existing Service Rules of PWD for its ministerial employees by the TSECL's Board of Directors to facilitate extending the benefit of "Promotion Policy, 2021" to all categories of TSECL's recruited employees.

[Action: TSECL]

9. Entire process for the Promotion proposal for all categories of employees shall be completed by 31-08-2021

[Action: TSECL/TPGL]"

12. In view of the decision of the Hon'ble Apex Court in above said ***Nagpur Improvement Trust (supra)*** and ***Mamtarani Sahoo (supra)***, in the absence of any Recruitment Rules, administrative instructions will govern the field of

promotional exercise for filling up the vacant posts in Tripura State Electricity Corporation Limited. When the State Government has already instructed to complete the entire process of promotion for all categories of employees of Power Department by 31.08.2021, it was expected that TSECL would also proceed with such exercise in the same manner. Considering thus, this Court does not find any valid reason to accept the contention of the respondents for postponing or deferring such promotional exercise to detriment and financial loss to the eligible officers.

13. In view of the above discussions, so far the third prayer of the petitioners as indicated above is concerned, the instant writ petition is allowed. The respondents are therefore directed to go with such promotional exercise for filling up the vacant posts of Senior Manager Grade-A (Degree Holders) immediately and to complete such exercise within 12(twelve) weeks of receipt of copy of this Judgment.

14. With the above observations and directions, the writ petition is disposed of.

Interim application(s), if any, also stands disposed of.

JUDGE