

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_

WA .No.98 of 2024

Uma Sankar Modak

.....Appellant

_V_E_R_S_U_S_

The State of Tripura and Others

.....Respondents

For Appellant(s) : Mr. P. Roy Barman, Sr. Advocate.
Mr. D. Paul, Advocate.

For Respondent(s) : Mr. M. Debbarma, Addl. G.A.

Date of hearing and delivery
of judgment and order : 14.05.2025
Whether fit for reporting : NO

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

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. D. Paul, learned counsel appearing for the appellant also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

[2] The present writ appeal has been filed under Chapter-VIII, Rule-B(A) of the High Court of Tripura Rules, 2023 read with Article-226 of the Constitution of India against the order dated 05.07.2024 passed in WP(C) No.685 of 2023 by the learned Single Judge.

[3] The facts in brief are that the appellant had filed WP(C) No.685 of 2023 challenging the illegal supersession by his juniors in the matter of promotion to the post of Junior Operator (Control Room), by order dated 30.09.2021 issued by the Additional Secretary & Director of Fire & Emergency Services, Tripura. Even though, admittedly his juniors were promoted by the above-mentioned impugned order dated 30.09.2021, the learned Single Judge dismissed the writ petition filed by the appellant solely on the ground that the appellant had not submitted his option/willingness for getting such promotion within the provided time period of only one day even though submission of willingness for getting promotion is not necessary or provided under the concerned Recruitment Rules.

[4] Mr. P. Roy Barman, learned senior counsel assisted by Mr. D. Paul, learned counsel appearing for the appellant has submitted that the learned Single

Judge has failed to consider that admittedly the appellant had been illegally superseded by his juniors in the matter of promotion to the post of Junior Operator (Control Room) by order dated 30.09.2021. As per Recruitment Rules to the post of Junior Operator (Control Room), there is no provision for calling of option/willingness from concerned Firemen and as such, submission of option/willingness is not a condition precedent to come under the zone of consideration for promotion.

[5] The learned Single Judge also failed to appreciate the observation made in para-13 of the judgment and order dated 07.07.2023 in WP(C) No.222 of 2023 wherein, the learned Single Judge had categorically observed that as a matter of fact another employee Sri Rupak Ghosh, the respondent No.5 gave his willingness on 20.09.2021 and his case was considered and he had been promoted to the same post that means his option/willingness beyond the cut-off date i.e. 18.09.2021 was entertained by the respondents. As such, the exercise of asking for willingness/option has not adhered to a uniform standard or deadline stipulated by the respondent-State and pick and choose has occurred for promotion to the post of Junior Operator (Control Room) from the same feeder cadre post of fireman. As such, injustice needs to be remedied.

[6] It has been further contended that it was never the stand of the State-respondents in WP(C) No.685 of 2023 as well as WP(C) No.222 of 2023 that the cut-off date for submission of willingness/option was extended up to 22.09.2021. As such, all on a sudden, the State-respondents cannot be allowed to make up a plea of extension of the cut-off date so as to justify the illegal deprivation made out to the appellant herein. The creating of supernumerary post for granting promotion to an incumbent belonging to UR category, who has been illegally deprived, is not specifically barred under the Promotional Policy, notified vide notification dated 22.06.2021.

[7] Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has submitted that since long there is lack of interest among the eligible Fireman for promotion to the post of Junior Operator (Control Room). Even after issuance of promotion order to the post of Junior Operator (Control Rom), many candidates have denied to accept promotion to the post of Junior Operator (Control). For example vide Order dated 03/11/2008, 4(four) persons were given promotion to the

post of Junior Operator (Control Room), but 3(three) persons refused to accept the promotion. Thereafter, vide order dated 13.01.2023, 11(eleven) persons were given promotion to the post of Junior Operator (Control Room), and out of them one person surrendered his promotion. Therefore, promotion to the post of Junior Operator (Control Room) is being considered by calling option/ willingness from the eligible Fireman. Hence, options are invited from the eligible Fireman as an established procedure in the Home (Fire & Emergency Services) Department. It is evident from available office records that at least since 16.06.2000, even earlier, promotion to the post of Junior Operator (Control Room) are being done by calling option/ willingness from eligible Fireman.

[8] It is submitted that even after calling option for promotion to the post of Junior Operator (Control Room), very poor response was received from the eligible Fireman for inclusion of the post as one of the feeder post of Sub-Officer. It is also stated that calling option from eligible Fireman has been adopted by the Department in “Good Faith” since long in view of lack of interest among the eligible Fireman for promotion to the post of Junior Operator (Control Room). It is also stated that appellant did not exercise his willingness for promotion to the post of Junior Operator (Control Room) in the year 2021. Earlier, he did not exercise his willingness for promotion to the post of Junior Operator (Control Room) in the year 2013 despite of having the requisite eligibilities for promotion to the post of Junior Operator (Control Room) on both the occasions.

[9] Learned Addl. G.A. has drawn attention of this Court to the letter submitted by the appellant dated 07.12.2022 wherein, it has been categorically admitted by the appellant that on 17.09.2021 a radio message was put to the notice of the appellant on the same day at night i.e. on 17.09.2021 and thereafter he only responded in the month of December, 2022.

[10] In view of above discussions, this Court is of the view that the appellant was not promoted to the post of Junior Operator (Control Room). But at the time of promotion, his juniors were promoted to the post as stated above. It is seen from the representation dated 07.12.2022 submitted by the appellant that the appellant was well aware about the radio message and he has admitted the said fact in his representation that a radio message was put to the notice of the appellant on

the same day at night i.e. on 17.09.2021 and to that effect, he responded in December, 2022.

[11] In that view of the matter, the present writ appeal is liable to be dismissed and the same is accordingly dismissed by confirming the order passed by the learned Single Judge dated 05.07.2024 passed in WP(C) No.685 of 2023. As a sequel, miscellaneous application, pending if any, shall stand closed

B. PALIT, J

T. AMARNATH GOUD, J

A. Ghosh

ANJAN GHOSH Digitally signed by ANJAN GHOSH
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