

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.530 of 2024

- 1. Jiban Krishna Biswas,**
Son of Raimohan Biswas,
Resident of village- Gokulnagar (Rastharmatha),
P.O. East Gokulnagar, P.S. Bishalgarh,
District- Sepahijala Tripura,
PIN- 799102, Age- 57 years.
- 2. Sajal Chandra Das,**
Son of Late Manindra Kr. Das,
Resident of village- Gokulnagar (Rastharmatha),
P.O. East Gokulnagar, P.S. Bishalgarh,
District- Sepahijala Tripura,
PIN- 799102, Age- 56 years.

.....Petitioner

- Versus -

- 1. The State of Tripura,**
Represented by the Commissioner & Secretary to the Home
Department, Government of Tripura, New Secretariat Complex,
Gurkhabasti, Agartala, P.O. Kunjaban, P.S. New Capital Complex,
Sub-Division- Sadar, District- West Tripura.
- 2. The Director General of Police,**
Government of Tripura, Police Headquarters, Akhaura Road,
Agartala, District- West Tripura, PIN- 799001.
- 3. The Principal Secretary,**
General Administration (Personnel & Training) Department,
Government of Tripura, New Secretariat Complex, Gurkhabasti,
Agartala, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division-
Sadar, District- West Tripura.
- 4. Tripura Public Service Commission (TPSC),**
Represented by its Secretary, Akhaura Road, Agartala, District-
West Tripura, PIN-799001.

..... Respondent(s)

For the Petitioner(s)	:	Mr. P. Roy Barman, Sr. Advocate. Mr. Koomar Chakraborty, Advocate.
For the Respondent(s)	:	Mr. Mangal Debbarma, Addl. GA. Mr. Raju Datta, Advocate.
Date of hearing and delivery of Judgment & Order	:	25th April, 2025.
Whether fit for reporting	:	NO.

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

JUDGMENT & ORDER (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. Koomar Chakraborty, learned counsel appearing for the petitioners.

Also heard Mr. Mangal Debbarma, learned Addl. G.A. appearing for the State-respondents and Mr. Raju Datta, learned counsel appearing for respondent No.4.

[2] The petitioner No.1, Sri Jiban Krishna Biswas was initially appointed as Rifleman (GD) on 1.9.1985 and petitioner No.2, Sajal Chandra Das was also similarly appointed as Rifleman (GD) on 15.4.1988 under Tripura State Rifles (for short, TSR). By the passage of time, both of them got promotion to the higher positions from time to time, and ultimately, petitioner No.1 got his last promotion to the post of Subedar on 30.3.2010, and similarly, petitioner No.2 also got such last promotion to the post of Subedar on 13.8.2012. Their next promotional post, as per Rule 5 of the Tripura Police Service Rules, 1967 (for short, the Rules), now is the post of TPS, Grade-II. The relevant Rule 14 of the Rules, which deals with the procedure of selection of TPS, Grade II by way of promotion is extracted hereunder :

"Rule 14. Conditions of eligibility and procedure for selection:-

(1) The Committee shall consider from time to time the cases of officers eligible under clause (b) of sub-rule (1) of rule 5, who have serve in the cadre of Inspectors of Police and Subedars of Tripura State Rifles Battalions, for not less than 5 years, and prepare a list of officers recommended taking into account the actual vacancies at the time of selection and those likely to occur during a year. The selection for inclusion in the list shall be on merit and suitability in all respects, for appointment to the service with due regard to seniority.

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

(3) Minimum educational qualification for promotion to Grade-II of the service shall be Graduation.

(4) The Committee shall not consider the cases of the officers in the feeder posts who have attained the age of 53 years on the 1st day of January of the year in which the Committee meets."

[3] As per the said Rules, the highest age limit as prescribed for promotion to the post of TPS, Grade-II was earlier 53 years. However, vide 14th Amendment of the Tripura Police Service Rules, 2013, the upper age limit for such promotion has been made 55 years from 53 years. Rule 34 further empowers the State Government to relax any provisions of these Rules with respect to any class or category of persons or posts after consultation with the Tripura Public Service Commission (TPSC). The relevant Rule 34 is extracted hereunder for useful reference :

"Rule 34. Power to relax:- Where the State Government is of the opinion that it is necessary or expedient so to do, it may by order, for reasons to be recorded in writing and in consultation with the Commission, relax any of the provisions off these rules with respect of any class or category of persons or posts."

[4] Mr. Roy Barman, learned senior counsel referring to a judgment dated 27.8.2021, passed by a coordinate bench of this Court in the case of ***Sri Prithish Bhattacharjee & 26 others vs. The State of Tripura & 4 Ors., [WP(C) No.582 of 2021]***, submits that earlier similarly situated persons of Inspector rank, who were not getting promotion, as the department was not taking up such promotional exercise for certain grounds for a long period, filed the said writ petition after crossing their 55 years of age limit with a prayer for relaxing their age bar by invoking the provisions of said Rule 34. This Court, thereafter, hearing the parties in the said judgment directed the petitioners to submit a common representation to the Government of Tripura, particularly, the Secretary, General Administration (P&T) and the Secretary, Home Department, Government of Tripura, to consider their promotion to the post of TPS, Grade-II by invoking said Rule 34 of the Rules, 1967 for relaxation of age of 55 years, as a one-time

measure. It was further directed that the petitioners should submit representation before the authorities concerned within a period of 4 (four) days from the date of judgment and the competent authorities of the government were directed to consider the representation within next 7 (seven) days and to dispose of the same by a speaking order. It was however made clear in the judgment that the said order will be confined only to the petitioners of said writ petition.

[5] According to Mr. Barman, learned senior counsel, thereafter, all the said petitioners submitted representations before the competent authority of the State Government but such representations were rejected by the authority vide order dated 8.9.2021. Thereafter, being aggrieved thereby, those petitioners again filed another writ petition bearing WP(C) No.670 of 2021.

[6] The said writ petition was disposed of vide judgment dated 9.1.2023, by a bench of this Court with the following observations and directions :

"37. In the light of above analysis and discussions on the subject, in my considered view, the present case is an appropriate and fit case to invoke the provision as enshrined under Rule 34 of TPS Rules relaxing the age bar of the petitioners for consideration of their promotions to higher post, i.e. TPS Grade-II to obviate the hardship caused to the senior most Inspectors of police.

38. Accordingly, I am constrained to direct the respondents to relax the age bar of the petitioners for consideration of their promotions to the next higher rank i.e. TPS Grade-II.

The entire exercise of promotion of the eligible officers shall be completed within a period of 3(three) weeks from today. Needless to say, this judgment will be applicable to all the eligible senior police Inspectors.

39. As a sequel, the impugned order dated 08.09.2021 issued by the Principal Secretary to the Government of Tripura stands set aside and quashed.

With the above observations and directions, the instant writ petition stands allowed and thus disposed of."

[7] Learned senior counsel submits that the present petitioners have also completed 55 years of age but their cases were not taken into

consideration by the department invoking provisions of Rule 34 of said Rules of 1967, though they were similarly situated persons. Learned senior counsel also submits that both the present petitioners submitted representations to the competent authority of the department, but till date, their representations remain undisposed, however, recently the petitioners could learn that the department is going to convene a DPC meeting for such promotional exercise again, and therefore, the present writ petition has been filed with the following prayers :

"(i) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to consider the Petitioners for promotion to the posts of TPS, Grade-II, by granting age-relaxation, in exercise of 'power to relax', as conferred under Rule 34 of the Tripura Police Service Rules, 1967, by relaxing the age criteria as laid down under Rule 14(4) thereof;

(ii) In the Ad-Interim, and after hearing the parties, in the Interim, an Order/Direction, restraining the Respondents from proceeding with the DPC, for promotion to TPS, Grade-II from the feeder posts (i.e., Subedar, TSR), till the decision for exercising 'power to relax' under Rule 34 of the Tripura Police Service Rules, 1967 is taken for relaxing the age criteria for promotion to TPS, Grade-II from Subedars, TSR, or, during the pendency of this Writ Petition;

(iii) Call for the records, appertaining to this Writ Petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) & (ii) above;

(v) Costs of and incidental to this proceeding;

(vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;"

[8] According to learned senior counsel, the petitioners, being similarly situated persons like the petitioners of above said writ petition bearing WP(C) No.670 of 2021, necessary directions may be issued to the respondents to relax the age bar in case of the present petitioners by invoking Rule 34 of the said Rules, 1967.

[9] Mr. Debbarma, learned Addl. G.A., on the other hand, opposes the prayer of the petitioners mainly on two grounds:- firstly, that earlier due to the pendency of Special Leave Petition before the Hon'ble Supreme Court bearing No.SLP(C) 19765-19767 of 2015,

wherein direction was given by the Hon'ble Supreme Court to maintain 'status-quo' by the parties, no promotional exercise was taken by the State for a considerable period and when a policy decision was taken by the State by formulating a promotional policy issued vide notification dated 22.6.2021, such promotional exercise was done and vide notification dated 9.12.2021, promotion was given to all eligible candidates. The second ground, as agitated by Learned Addl. G.A., is that the present petitioners were also within the zone of consideration for promotion but due to absence of any vacant post they could not be promoted.

[10] This Court has given due consideration to the submissions of both parties and also has gone through the records. As extracted hereinabove, in the said judgment passed by this Court on 9.1.2023 in abovementioned WP(C) No.670 of 2021, direction was given by the Court to complete such promotional exercise within a period of 3 (three) weeks and it was further observed that the judgment would be applicable to all the eligible senior Police Inspectors (*emphasis laid*). In the present case, the present petitioners are though not of the cadre of Inspectors of Police, rather they belong to the category of Subedars of TSR, but as per Rule 5(1)(b) of the said Rules, the feeder posts for promotion to the post of TPS, Grade II are the Inspectors of Police and the Subedars of TSR both, and therefore, for such promotional exercise, they are similarly situated category of persons like Inspectors of Police and therefore they are required to be treated in similar manner. Record shows that after the said judgment dated 9.1.2023 was passed by this Court, the department, in compliance thereof, processed the matter of promotion to the post of TPS, Grade-II and promoted some of the petitioners of said case vide notification dated 25.7.2023 (Annexure 9 to the writ petition). It is not disputed by the parties that said notification

was issued in compliance with the above said judgment of the Court by relaxing the upper age limit in case of those petitioners under Rule 34 of the Rules, 1967.

[11] As per the counter affidavit submitted by the State-respondents, after the promotional policy was framed by the State on 22.6.2021, the present petitioners also came into the zone of consideration but their names could not be recommended by the selection committee due to non-availability of UR posts. Such assertions necessarily indicate that such promotional exercise done by them, culminated into publication of notification dated 9.12.2021 (Annexure 5 to the writ petition), whereby promotion was given to many other Inspectors of Police and Subedars of TSR after such promotional policy was framed by the State Government. However, nothing is placed to show that after the judgment passed on 9.1.2023, any such benefit was provided to the present petitioners as was given to other Police Inspectors who got promotion on 25.7.2023.

[12] As indicated in the seniority list of Subedars (Annexure-4 to the writ petition), the date of birth of petitioner No.1 is 25.9.1966 and the date of birth of petitioner No.2 is 12.9.1967, which means when said promotional notification dated 25.7.2023 was issued, they already crossed the age of 55 years. However, the benefit of relaxation under Rule 34 was not provided to them like the Inspectors, atleast there is no such contra claim of the respondents in this regard that benefit of such relaxation was extended to them too. Therefore, such treatment appears to be discriminatory in nature. The petitioners ought to have been given such benefit of relaxation like the Inspectors of Police.

[13] Though it is submitted from the side of the petitioners that they have their information that the DPC meeting is likely to be held by

the concerned department recently however no material is placed on record in this regard to assume so. On the contrary, it is also found that both the petitioner No.1 and petitioner No.2 submitted their respective representations to the Director General of Police, respectively, dated 1.5.2024 and another dated nil, seeking such age relaxation and same were also duly forwarded to Assistant Inspector General of Police (Estt.), PHQ, Tripura but said representations appear to be still un-responded.

[14] Considering all these aspects and also in view of the discussions made hereinabove, the writ petition is disposed of with the following direction(s) :

Whenever the next DPC will be convened by the department for the promotional exercise to the post of TPS, Grade-II from the feeder posts of Subedar, the respondent Nos.1, 2 and 3 shall consider and dispose of the above said representations of both the petitioners before such promotional exercise is completed, keeping in mind the applicability of Rule 34 of the Rules, 1967, the judgment dated 9.1.2023 passed by this Court in WP(C) No.670 of 2021 and also the observations made by this Court in this judgment.

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

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

JUDGE