

HIGH COURT OF TRIPURA
AGARTALA

WP(C) No.540 of 2024

Sri Padma Mohan Tripura,

Son of Sri Kharendra Tripura, resident of Chatakchari, P.O. Sonai Bazaar, P.S. Sabroom, Dist. South Tripura, PIN 799145.

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

- V e r s u s -

- 1. The State of Tripura,**
Represented by its Principal Secretary, Public Works Department (R&B), Govt. of Tripura, P.O. Secretariat, P.S. New Capital Complex, Dist. West Tripura, PIN 799010.
- 2. The Deputy Secretary, Public Works Department (R&B),**
Govt. of Tripura, P.O. Secretariat, P.S. New Capital Complex, Dist. West Tripura, PIN 799010.
- 3. The Chief Engineer, Public Works Department (R&B),**
Govt. of Tripura, P.O. Agartala, P.S. West Agartala, Dist. West Tripura, PIN 799001.
- 4. Engineering Officer to the Chief Engineer,**
Public Works Department (R&B), Govt. of Tripura, P.O. Agartala, P.S. West Agartala, Dist. West Tripura, PIN 799001.
- 5. The Principal Secretary, Social Welfare and Social Education Department,**
Govt. of Tripura, P.O. Secretariat, P.S. New Capital Complex, Dist. West Tripura, PIN 799010.
- 6. Sri Dharmendra Reang,**
Son of Unknown, Presently serving as Junior Overseer in the Office of the Sub-Divisional Officer (Asst. Engineer), Water Resource Sub-Division, Kanchanpur, Govt. of Tripura, P.O. + P.S. Kanchanpur, Dist. North Tripura, PIN 799270.

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

For the Petitioner(s) : Mr. Arijit Bhaumik, Advocate.
Ms. I. Chakma, Advocate.

For the Respondent(s) : Mr. D. Sarma, Addl. G.A.

Date of hearing
and delivery of
Judgment & Order : **14th August, 2025.**

Whether fit for reporting :

YES	NO
	√

HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA
JUDGMENT & ORDER (ORAL)

Heard Mr. Arijit Bhaumik, learned counsel for the petitioner and Mr. D. Sarma, learned Addl. G.A. for the State-respondents.

[2] The case of the petitioner is that in the year 2000, he was appointed as Work Assistant vide Memorandum dated 23.10.2000 (Annexure 1) and after about 23 years there from he was promoted to the post of Junior Overseer (Group-C Technical) vide Memorandum dated 30.11.2023 (Annexure 4). By said promotional order, total 100 persons were promoted though as per the counter affidavit submitted by the respondents, there were only 83 numbers of total vacant posts (UR-49, ST-19, SC-15). But, as the Department decided to give promotion to total 100 nos. of employees, 17 nos. of employees were promoted by creating supernumerary posts. After such promotion order was issued, it was detected that 3(three) nos. of Work Assistant under PH category namely, Sri Manindra Debnath, Sri Dharmendra Reang, (ST) i.e. respondent no.6 and another Smt. Sabita Debnath were missed out from promotion due to inadvertent mistake, rather in their place, other three persons (one from SC category and two from UR category) were promoted who were junior to them. The Department thereafter examined the matter afresh and recommended promotion of said 3 (three) persons against PH category alongwith 1 (one) candidate of SC category. The

respondents while going to accommodate these 4(four) persons in the promotional list and simultaneously to maintain the total number of promotees to be 100, ultimately cancelled the promotion order of the present petitioner vide said Memorandum dated 17.02.2024 (Annexure 5) along with promotion of said three persons who were promoted earlier against PH category of posts. The petitioner, as stated, was actually promoted against supernumerary post and was at the bottom of the promotional list as ST candidate and while going to accommodate said PH category of candidate i.e. respondent no.6 who is also a ST candidate, the petitioner was excluded from the promotion list. For purposeful reference, the entire notification dated 17.02.2024 is extracted hereunder:

"GOVERNMENT OF TRIPURA
OFFICE OF THE CHIEF ENGINEER
PUBLIC WORKS DEPARTMENT (R&B)
TRIPURA, AGARTALA

No.F.6(40)-PWD(E)/2023/18606-86 Dated,Agartala, 17/02/2024

NOTIFICATION

In pursuance to Notification No.F.2(24)-GA(P&T)/2021 dated 22.06.2021 of the Deputy Secretary GA(P&T) Department, Govt. of Tripura & subsequently modification of Notification No.F.6(38)-PWD(E)/2023/13,029-114 dated, Agartala 30th November, 2023. Departmental Promotion Committee (DPC) is pleased to appoint the following Work Assistant, (Group-C, Technical) to the post of Junior Overseer (Group-C, Technical) (Non-Gazetted) on ad-hoc basis in the pre-revised pay scale of Rs.5,700-24,000/- in PB-2 having Grade Pay Rs.2,800/- i.e., at level-9 of the Tripura State Pay Matrix 2018 of Tripura State Civil Services (Revised Pay) First Amendment Rules, 2018 **with effect from 30.11.2023 retrospectively** subject to final income of SLP(C) No.19765-19767 of 2015 pending in the Hon'ble Supreme Court of India.

Junior Overseer, (Group-C, Technical) (Non-Gazetted)		
Sl. No.	Name	Category
1	2	3
1.	Sri Rakesh Das	SC

2.	Sri Manindra Debnath (PH)	UR
3.	Sri Dharmendra Reang (PH)	ST
4.	Smt. Sabita Debnath (PH)	UR

1. The above officials shall continue to hold the charges of the post presently held by them until further order.
2. Their pay etc. shall be fixed as per normal rules.
3. The appointment on promotions are purely on ad-hoc basis subject to final outcome of SLP pending before the Hon'ble Supreme Court of India.
4. No inter-se seniority is determined/published in respect to this ad-hoc promotion.
5. Joining should be completed with immediate effect.

Further, ad-hoc promotion to the post of Junior Overseer (Group-C, Technical) was offered in respect to Smt. Chandana Das (SC, PH), Sri Chandan Datta (UR, PH), Sri Anupam Debnath (UR, PH) & Sri Padma Mohan Tripura (ST) shall be treated as cancelled.

Sd/-
Deputy Secretary, PWD”

[3] The petitioner thereafter issued legal notice to the respondents against which from the Office of respondent no.3, a reply was given on 06.05.2024 (Annexure 8) showing the above said reason for exclusion of the petitioner from the promotional list. The relevant paragraphs of the said communication is also extracted hereinbelow:

“GOVERNMENT OF TRIPURA
OFFICE OF THE CHIEF ENGINEER (R&B)
PUBLIC WORKS DEPARTMENT

No.F.6(40)-PWD(E)/2023/868 Dated. 06/05/2024.

To
Sri Arijit Bhaumik, Advocate
High Court of Tripura
Chamber No.6, High Court of Tripura
Kunjaban, Agartala, Tripura(W).

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Of late 3(three) no's Work Assistant under PH category Shri Manindra Debnath (UR), Shri Dharmendra Reang (ST) & Smt. Sabita Debnath (UR) of this Department had submitted their representation

for promotion to the post of Junior Overseer, Group-C (Technical) with retrospective date 30.11.2023, where similarly situated persons have been promoted.

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Accordingly, Department had examined their representation and observed that the name of 3(three) candidates Sri Manindra Debnath (UR), Sri Dharmendra Reang (ST) & Smt. Sabita Debnath (UR) were appears at Sl.No. 217, 218 8219 respectively in the seniority list published on 29.09.2023 & were not considered as PH, resulting which they could not promoted to the post of Junior Overseer, Group-C, (Technical), on ad-hoc basis and their Junior Work Assistants belongs to PH category appears at Sl.No 620,621 & 622 in the same seniority list have got promoted to the post of Junior Overseer, Group-C (Technical), (Non Gazetted) on ad-hoc basis.

Accordingly, Department had rectified the Seniority List of the Work Assistant which was published vide Memorandum No.F.3(17)-PWD/2020/14571-654 dated 26.12.2023. Based on the Seniority List published on dated 26.12.2023, further review Departmental Promotion Committee (DPC) meeting was held on 12.02.2024 at 4.00 P.M in the office Chamber of the Chief Engineer, PWD(R&B), Agartala.

Accordingly, Departmental Promotion Committee (DPC) had recommended 4(four) left out of Work Assistant (UR-2(PH), ST-1(PH) & SC-1) namely Sri Manindra Debnath (UR, PH). Sri Dharmendra Reang (ST, PH) & Smt. Sabita Debnath (UR, PH) whose position appears at SL.No.217,218 & 219 in the seniority list of Work Assistant & may be considered for promotion to the post of Junior Overseer, instead of Smt. Chandana Das (SC, PH), Sri Chandana Datta (UR, PH) & Sri Anupam Debnath (UR, PH) who were promoted earlier vide order dated 30.11.2023. So, the promotion order dated 30.11.2023 by which Smt. Chandana Das (SC, PH), Sri Chandan Datta (UR, PH) & Sri Anupam Debnath (UR.PH) was promoted to the post of Junior Overseer (Group-C, Technical) stands cancelled.

Further, one PH candidate belonging to ST category Shri Dharmendra Reang ((ST, PH) (SL-218)) was considered for promotion vide Notification dated 30.11.2023. Due to non- availability of ST posts occupied by (ST, PH) candidate, the ad-hoc promotion of Shri Padma Mohan Tripura (ST) vide Notification No.F.6(38)-PWD(E)/2023/13029-114 dated 30.11.2023 has been cancelled.

....."

[4] Now challenging the said order of cancellation of promotion of the writ petitioner, he has filed the writ petition.

[5] Mr. Arijit Bhaumik, learned counsel for the petitioner strongly argues that petitioner was never promoted against any regular vacant post rather his promotion was against one

supernumerary post and therefore, when such supernumerary post was created only for his promotion, no person can exclude him for said post. Learned counsel referring to the seniority list published vide Memorandum dated 28.06.2023 (Annexure 3) submits that the seniority position of the petitioner is at serial number 98 whereas the seniority position of the present respondent no.6 is at serial number 225 and therefore, the promotion of the petitioner ought not to have been disturbed while going to promote another person who was much junior to him, more particularly when the promotion of the petitioner was against one supernumerary post. On the above said grounds, Mr. Bhaumik, learned counsel earnestly prays for quashing the Notification dated 17.02.2024 (Annexure 5) so far it relates to cancellation of promotional order of the present petitioner.

[6] Mr. D. Sarma, learned Addl. G.A., on the other hand, argues that as per the provisions of the Rights of Persons with Disabilities Act, 2016 and also in accordance with the guidelines and modalities for effecting reservation for persons with benchmark disabilities as issued by the State Government vide Office Memorandum dated 09.01.2019 (Annexure 9), the respondent no.6 being a person with disabilities came within the zone of consideration of promotion and therefore, he was promoted later on vide above said Notification dated 17.02.2024. Mr. Sarma, learned Addl. G.A. also submits that vide earlier promotion order dated 30.11.2023, other three persons of PH category (SC-1, UR-2)

were promoted but those persons were junior to the respondent no.6 and other two persons who were promoted lateron. Said three persons, Mr. Sarma continues, submitted representation to the department for consideration of their promotion under PH category and therefore, promotion of other three persons namely, Smt. Chandana Das, Sri Chandan Datta and Sri Anupam Debnath who were promoted vide notification dated 30.11.2023 as PH category candidates were also cancelled and in that place, other three persons i.e. respondent no.6, Sri Manindra Debnath and Smt. Sabita Debnath were included in the promotion list against PH category quota. Mr. Sarma, learned Addl. G.A. further tries to clarify that as because by the subsequent promotional order dated 17.02.2024, respondent no.6 was promoted against ST reserved post, the person who was the last candidate in the previous promotional order i.e. the present petitioner was excluded from the promotional list and accordingly, his promotion was cancelled. Mr. Sarma, learned Addl. G.A. submits that all the above said process was done strictly for the purpose of giving effect of the provisions of Rights of Persons with Disabilities Act, 2016 and therefore, no illegality or irregularity was done by the Department. Mr. Sarma, learned Addl. G.A. also submits that in that process, the supernumerary post which was created for giving promotion to the present petitioner was also cancelled.

[7] This Court has given due consideration to the submissions made by both sides and has also considered the relevant documents placed by the parties.

[8] It is not disputed that by virtue of the provision of Section 34 of Rights of Persons with Disabilities Act, 2016, the promotion of respondent no.6 will be against regular ST category post. Therefore, by virtue of promotion, the respondent no.6 would occupy 1 (one) ST post under PH category in the regular cadre but the present petitioner was promoted against a supernumerary post and not against any regular sanctioned post of ST category.

[9] The State of Tripura issued one notification bearing no. F.2(24)-GA(P&T)/2021 dated 22.06.2021 in view of pendency of SLP(C) No.19765-19767 of 2015 before the Hon'ble Supreme Court of India, by framing a policy of ad-hoc promotion and the relevant Clause 6 and 7 of said policy are reproduced hereunder:

"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)."

[10] As per said policy, while doing the promotional exercise, the DPC is required to go for another exercise taking into account the procedure as envisaged in Rule 9(2) of the Tripura SC & ST Reservation Rules, 1992 and while doing such exercise if any candidate is found to be not considered in the process, then such candidate is required to be considered for ad-hoc promotion by creating supernumerary post(s). Here, in the case in hand, due to promotion of respondent no.6 who was junior to the present petitioner, the petitioner has been excluded or rather has been deprived from getting promotion against ST quota and therefore, as per said policy, he is required to be promoted by creating 1(one) supernumerary post. In the said promotional policy, no restriction has been imposed in the matter of creating any number of such supernumerary post according to need. Therefore, without cancelling said supernumerary post which was created for the present petitioner in the earlier exercise of promotion, could easily be maintained by the Department specially on the ground that the petitioner was senior to respondent no.6 in the seniority list.

[11] In view of above discussions, the Court thinks it proper to allow the writ petition and accordingly it is allowed. The respondents are directed to restore the promotion of the respondents w.e.f. 30.11.2023 by creating 1 (one) supernumerary

post in terms of said notification dated 22.06.2021 issued by the State of Tripura. Consequently, the notification dated 17.02.2024 issued from the office of Chief Engineer, PWD (R&B) (Annexure 5) is quashed only to the extent of cancellation of promotional order of the present petitioner namely, Padma Mohan Tripura.

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

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

JUDGE

