

THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(C) No.386 of 2011

1. Sri Dilip Ray,
son of Sri Gopal Chandra Ray,
resident of Drop Gate Police Quarter, D/8, Type-IV Quarter,
P.O. Agartala, P.S. West Agartala, District – West Tripura,
-presently holding the post of-
Dy. Commandant, (TPS Grade-I), 8th Bn.,
Tripura State Rifles, (IR-III), Chailengtha,
P.S. Longthorai Valley, District-Dhalai, Tripura
2. Sri Nagendra Debbarma,
son of late Kusum Debbarma,
resident of Village-Baralutma, P.S. Salema,
District-Dhalai, Tripura,
-presently holding the post of-
Addl. Superintendent of Police, (TPS, Grade-I),
P.S. Ambassa, District-Dhalai, Tripura

.....Petitioners

- Vs -

01. The State of Tripura,
represented by the Commissioner & Secretary to the
Department of Home, Government of Tripura,
having its office at New Capital Complex, Khejur Bagan,
PO – Kunjaban, Agartala, West Tripura
02. The Director General of Police,
Government of Tripura,
03. Secretary to the Government of Tripura,
General Administration (P&T) Department,
having its office at New Capital Complex, Khejur Bagan,
PO – Kunjaban, Agartala, West Tripura
04. Secretary to the Government of Tripura,
Tribal Welfare Department,
having its office at New Capital Complex, Khejur Bagan,
PO – Kunjaban, Agartala, West Tripura
05. Secretary to the Government of Tripura,
SC, OBC and Minorities Welfare Department,
having its office at New Capital Complex, Khejur Bagan,
PO – Kunjaban, Agartala, West Tripura
06. Sri Pradip Dey, TPS, Gr-I
07. Sri Uttam Kumar Bhowmik, TPS, Gr-I
08. Sri Krishnendu Chakrabarty, TPS, Gr-I
09. Sri Prabir Majumder, TPS, Gr-I
10. Sri Sankar Debnath, TPS, Gr-I

11. Sri Rati Ranjan Debnath, TPS, Gr-I

(to be served through the Director General of Police, having its office at PHQ, Fire Service Choumohani, Agartala, PO-Agartala Head Office, West Tripura)

12. Sri Kamal Chakrabarty, TPS, Gr-I

13. Sri Sanjoy Roy, TPS, Gr-I

(to be served through the Director General of Police, having its office at PHQ, Fire Service Choumohani, Agartala, PO-Agartala Head Office, West Tripura)

.....**Respondents**

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners	: Mr. D. K. Biswas, Advocate
For the respondents	: Mr. J. Majumder, Advocate
Date of hearing	: 23.06.2015 & 09.10.2015
Date of Delivery of Judgment and Order	: 27.11.2015
Whether fit for reporting	: YES

Judgment and Order

By means of this writ petition, the petitioners have challenged the memorandum under No.F.41(12)-GA(P&T)/11 dated 17.08.2011, Annexure-P/11 to the writ petition and also the notification under No.F.2(5)-GA(P&T)/88(L-I) dated 20.12.2011, Annexure-P/12 to the writ petition so far it relates to the officers named against Sl. Nos. 17 to 22 of the notification, the respondents No.6 to 11, in the writ petition. It has been further prayed that while making posting of the officers borne in Tripura Police Service, Grade-I (Selection Grade) to the post of Superintendent of Police and the Commandant, the reservation roster in terms of the Tripura SC and ST Reservation Act and the Rules made thereunder be strictly followed, meaning thereby even

in the posting of the Superintendent of Police and the Commandant from the officers borne in the same grade i.e. Tripura Police Service, Grade-I (Selection Grade), the reservation rule should apply.

02. As consequence of the prayer made above, a writ prohibiting the respondents No.1, 2 and 3 from making any posting to the post of Commandant and the Superintendent of Police from the officers of the TPS, Grade-I (Selection Grade) without maintaining roster and also from recommending the names to the Indian Police Service till disposal of the writ petition on merit, has been urged by the petitioner.

03. The petitioners filed another writ petition on the same subject matter in the Gauhati High Court, which then exercised its jurisdiction over the State of Tripura, being W.P.(C) No.329 of 2011. However, the said writ petition was not disposed of on merit but by the order dated 05.08.2011 it had been observed as under:

"It is further stated that the petitioners are eligible to be posted in the post of the Superintendent of Police and the post of Commandant as per roster prescribed in the Tripura Scheduled Castes and Scheduled Tribes Reservation Act, 1991 and they became eligible on 04.08.2011, but the respondent are going to take hasty decisions only for depriving the present petitioners. Petitioners also have made representation to the Principal Secretary, General Administration (P & T) Department vide Annexure-P/4 and P/6 to the writ petition but the Secretary has not yet disposed of the representations and without disposing the representation, the respondent authorities are going to fill up the post of Superintendent of Police and the post of Commandant, which is unfair and unreasonable."

04. Thereafter, the Principal Secretary/Secretary, General Administration (P & T), Government of Tripura had been directed by the said final order dated 05.08.2011 to dispose of the representation of the petitioners, Annexures-P/4 and P/6 of the writ petition by a speaking order within a period of 10 (ten) days from that day and till then no entrustment to the post of Superintendent of Police and Commandant shall be made without prior permission of this court. However, the petitioners were given liberty to approach the appropriate forum if they are aggrieved by the decision of the respondent No.3, the Principal Secretary/Secretary, General Administration (P & T) Department, Government of Tripura.

05. It is not in dispute that in compliance of the said order, the respondent No.3 disposed of the representation of the petitioners dated 01.07.2011 and 30.06.2011 claiming maintenance of roster in the posting of the Superintendent of Police and the Commandant of the TSR (IR-III) from the officers of the TPS, Grade-I (Selection Grade) as per the provisions of the Tripura SC & ST Reservation Act, 1991 read with Tripura SC & ST Reservation Rules, 1991, by the memorandum dated 17.08.2011, which has been challenged by this writ petition and as such the said memorandum dated 17.08.2011 would thereafter be referred to as the impugned memorandum which is available at Annexure-P/11 to the writ petition.

06. By the impugned memorandum the respondents No.1, 2 and 3 have communicated their decisions that the Commandant and the Superintendent of Police are included in the duty post of

the TSR Grade-I. Note-2 below the schedule of Rule 67 provides that an officer who holds a Grade-I post and also continues three years service in Grade-I post may be posted as the Commandant or Superintendent of Police on the basis of seniority.

07. Posting of a TPS Grade-I officer as Commandant or Superintendent of Police may be given from the duty post of the same grade just after three years of experience in the Grade and it cannot be treated as promotion, upgradation of scale or an officer of the lower rank as entrusted of the charge and powers of a higher post. So the post of TSR Grade-I officer in the post of the Commandant and the Superintendent of Police after three years of service in the grade cannot be treated as promotion and as such question of maintenance of roster as per the Tripura SC & ST Reservation Act, 1991 is not tenable. According to the petitioners the reservation rule is bound to be followed in the posting of the Commandants and the Superintendents of Police. On such basis the petitioners have challenged the posting order as made by notification No.F.2(5)-GA(P&T)/88(L-I) dated 20.12.2011 as unsustainable as the relevant rule as provided under the Tripura SC & ST Reservation Act and Rules has not been followed while issuing the said posting order.

08. Mr. D. K. Biswas, learned counsel has appeared for the petitioners and submitted that according to the petitioners the impugned action of the respondents is in conflict with Note-5 below the schedule appended to the Tripura SC & ST Reservation Act, 1991. In Note-5 below the said schedule provides as under:

"Within each category of service or post roster shall be maintained separately for (i) permanent appointment and temporary appointment likely to continue indefinitely (ii) adhoc appointment or entrustment, in any form or manner to an officer of lower rank of the charge and powers of a higher post and (iii) contingent appointment."

09. Mr. Biswas, learned counsel has submitted that the posting in the rank of the Commandants and the Superintendents of Police are definitely the entrustment of position of the higher responsibility and as such even if there is any incongruity in reading together the said Note-5 below the schedule of the Tripura SC & ST Act, 1991 and the Note-2 below the schedule of the TPS Grade-I as appended to the Tripura Police Service Rules, 1967, the provisions of reservation rules would override the provisions of the Tripura Police Service Rules, 1967 as amended from time to time. For the purpose of reference, the Note-2 as appearing below the schedule of TPS Grade-I, may be reproduced:

"(2) An officer who holds a Grade-I post and has completed 3 years' service in Grade-I post may be posted as Commandant or Superintendent of Police on the basis of seniority."

10. In this regard, it is relevant that 'duty post' in terms of Rule 2 of the Tripura Police Service Rules, 1967 means any post specified in the schedule appended to the rules. According to Mr. Biswas, learned counsel, the petitioners' case is that while making posting to the rank of the Commandant or the Superintendent of Police even though those posts were included in the duty post of the TPS Grade-I, the reservation rule for purpose of maintaining the roster has to be followed. It is not in dispute that both the petitioners and the respondents No.6 to 13 were appointed to the

TPS Grade-I Selection Grade on promotion from the TPS Grade-II in pursuance to the Tripura Police Service Rules, 1967 read with notification dated 05.07.2008 and the petitioners are shown below the respondents No.6 to 13. There is no dispute in respect of the seniority of the respondents No.6 to 13 over the petitioners.

11. Mr. J. Majumder, learned counsel has appeared for the respondents No.1 to 5 and for the respondents No.6, 9-13. It is to be noted that the respondents No.1 to 5 and each of the respondents No.6 and the respondents No.9 to 13 filed separate counter affidavits for resisting the claim of the writ petitioners. According to those respondents, the posting to the rank of the Commandants and the Superintendents of Police are made simply on the basis of the seniority and no further selection is made and the procedure is laid clearly in Note-2 below the schedule of the duty post for the TPS Grade-I as appended in the TPS Rules, 1967. Mr. Majumder, learned counsel appearing for the respondents has categorically submitted these postings are not promotions by any stretch of interpretation nor are those upgradation to any grade of higher responsibility or pay scale following the selection. Therefore, Note-5 below the schedule appended to the Tripura SC & ST Reservation Act, 1991 as made in view of the provisions of Sections 4 and 5 of the said Act cannot be applied and hence the respondent No.3 has rightly rejected the representation of the petitioners by the impugned memorandum dated 17.08.2011. Mr. Majumder, learned counsel has further submitted that the impugned notification dated 20.12.2011, Annexure-12 to this writ petition has

been passed and that does not come in conflict with the order dated 05.08.2011 delivered in W.P.(C) No.329 of 2011.

12. Thus, the question that falls for consideration before this Court is whether the posting to the rank of Commandants and Superintendents of Police in terms of Note-2 below the schedule of the duty post for the TPS Grade-I as appended to the TPS Rules, 1967 as amended from time to time is covered by the Note-5 below the schedule appended to the Tripura SC & ST Reservation Act, 1991. Note-5 clearly provides that within each category of service or post roster shall be maintained separately for permanent appointment and temporary appointment likely to continue indefinitely, adhoc appointment or entrustment in any form or manner to an officer of lower rank, of the charge and powers of a higher post and for contingent appointment.

13. From the averments made in the writ petition it transpires clearly that the duty post as provided in the schedule for Tripura Police Service Grade-I (Selection Grade) includes Addl. Superintendents of Police, Deputy Commandants, Vice Principal, Police Training College, Commandants, Asstt. Inspector General (Personnel), Asstt. Commandants, Dy. Supdt. of Police of several battalions, Branch or wing along with the Superintendents of Police and Commandants. It is apparent that the petitioners have not challenged the said Note-3 in the writ petition inasmuch as according to them the said Note-5 of the Tripura ST & SC Reservation Act, 1991 would have an overriding effect over the provisions of the Note-2 as appearing below the schedule of the duty post for the TPS Grade-I (Selection Grade). It has further

transpired from the Tripura Police Service Rules, 1967 there are two grades in the Tripura Police Service viz. Tripura Police Service, Grade-II and Tripura Police Service, Grade-I (Selection Grade). It is not in dispute that while making appointment to the Tripura Police Service, Grade-I (Selection Grade), the reservation roster is strictly followed. Even the petitioners have not raised any challenge in respect of maintaining the roster while making appointment to the Tripura Police Service, Grade-I (Selection Grade). The challenge is confined to whether the posting in terms of the seniority in the Grade-I (Selection Grade) on completion of 3 years service would come within the purview of Note-5 provided below the schedule of the Tripura SC & ST Reservation Act, 1991 for the purpose of applying the reservation rule and the roster for that matter. The position is apparently clear and that cannot be stated as unreasonable principle inasmuch as Note-2 provides that on having 3 years' experience in the TPS Grade-I (Selection Grade) an officer may be posted as the Commandant or the Superintendent of Police subject to the seniority, meaning thereby that a junior officer would never be provided the posting in the rank of the Commandant or the Superintendent of Police over the senior officers. Both the petitioners and the respondents are in agreement that the post of Commandants and the Superintendents of Police are assigned with certain supervisory and controlling power over the post of Addl. Superintendents of Police and the Dy. Commandants Etc. It is also not in dispute that both the posts of the Addl. Superintendents of Police, Dy. Commandants etc. and the Superintendents of Police and the Commandants of the battalion are in the same grade and scale. Whether such posting can be treated the entrustment of an

officer of the lower ranks of the charge and powers of a higher post? The apex court on several occasions addressed the concept of promotion and upgradation. In ***Lalit Mohan Deb & Ors. vs. Union of India & Ors.*** reported in **(1973) 3 SCC 862**, the apex court has held as under:

"It is well recognised that a promotion post is a higher post with a higher pay. A selection grade has higher pay but in the same post. A selection grade is intended to ensure that capable employees who may not get a chance of promotion on" account of limited outlets of promotions should at least be placed in the selection grade to prevent stagnation on the maximum of the scale. Selection grades are, therefore, created in the interest of greater efficiency."

14. In ***Tarsem Singh vs. State of Punjab*** reported in **(1994) 5 SCC 392** the apex court has observed that:

"Promotion as understood under the service law jurisprudence means advancement in rank, grade or both. Promotion is always a step towards advancement to a higher position, grade or honour."

15. In ***Union of India vs. S. S. Ranade*** reported in **(1995) 4 SCC 462** the apex court has further held as under:

"9. Undoubtedly, a Commandant who becomes a Commandant (Selection Grade) secures a promotion to a higher pay scale. But it is a higher pay scale in the same post. The use of the word 'promotion' in Rule 6 and the Constitution of a Departmental Promotion Committee for selection of Commandant (Selection Grade) in Rule 7, do not necessarily lead to the conclusion that the promotion which is contemplated there is necessarily a promotion to a higher post. Promotion can be either to a higher pay scale or to a higher post. These two Rules and the use of the word 'promotion' there do not conclude the issue."

14. In the present case, an element of selection is involved in granting selection grade because there is no automatic promotion to the selection grade pay scale. But this factor is not decisive. In the present case also, as in the above cases, Selection Grade posts are created entirely for the purpose of granting some relief to those who have very limited avenues of

getting promotion to a higher post. That is why a higher pay or pay scale is granted in the same post. Thus, by its very nature, a selection grade post cannot be considered as a higher post for the purposes of Rule 9.

15. Because the creation of a selection grade in the same post stands on a very different footing. By its very nature a selection grade provides a higher pay or a higher pay scale in the same post. The beneficiary of a selection grade does not thereby occupy a post which is higher in rank than the post earlier occupied by him. "

16. In **State of Rajasthan vs. Fateh Chand Soni** reported in **(1996)1SCC 562** which is much celebrated in the service law jurisprudence, it has been held as under:

"The High Court, in our opinion was not right in holding that promotion can only be to a higher post in the service and appointment to a higher scale of an officer holding the same post does not constitute promotion. In the literal sense the word "Promote" means "to advance to a higher position, grade, or honour". So also "Promotion" means "advancement of preferment in honour, dignity, rank or grade". [See : Webster's Comprehensive Dictionary, International Edition, p. 1009]. "Promotion" thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. In service law also the expression "Promotion" has been understood in the wider sense and it has been held that "Promotion can be either to a higher pay scale or to a higher post."

17. In a subsequent decision in **Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy and others** reported in **(2011)9 SCC 510** the apex court on considering the precedents in the field has enunciated as under:

"21. The distinction between upgradation and promotion was spelt out by a Full Bench of the Kerala High Court in N.G. Prabhu vs. Chief Justice, Kerala High Court - 1973 (2) Lab. IC 1399, thus :

"Promotion is, of course, appointment, to a different post carrying a higher scale of pay in the service. If, to better the conditions of service of the incumbents in posts in the same category the scale of pay of all the posts in the category is raised, the incumbents would

naturally get the higher scale of pay. But in such a case it may not be proper to characterize the event as a promotion to higher posts though a benefit of a higher scale of pay is obtained by all concerned. In other words, if the upgradation relates to all the posts in a category naturally, there is no sense in calling it a promotion of all the persons in that category. That is because there is no question of appointment from one post to another. Parties continued to hold same posts but get a higher scale of pay. It may be that it is not all the posts in a particular category that are so upgrade, but only a part of it. Normally, the benefit of such upgradation would go to the seniors in the category. They would automatically get a higher scale of pay. That is because though their posts continue in the same category a higher scale of pay is fixed for those posts. It is appropriate then to say that the seniors have been nominated to the higher grade which has been so created by upgradation. This phenomenon does not differ from the case where all the posts are upgraded and, it appears to us that those who get the higher grade cannot be said to have been 'promoted' because here again there is no question of appointment from one post to another. They continue to hold the same post, but because of seniority in the same post they are given a higher scale of pay. When a person is nominated to the higher scale of pay from time to time based on seniority, it may perhaps be loosely termed as a promotion."

22. But even in cases where no additional posts were created, but where a process of selection was involved in the upgradation, the process has to be considered not as an upgradation simplicitor, but a process of promotion and therefore the principles of reservation would be attracted. We may refer to the Constitution Bench decision of this Court in Ram Prasad (supra) where this Court held that appointment from senior scale to selection scale is a promotion though it may not be a promotion to a higher position and consequently the reserved candidates are entitled to be promoted to the selection scale by way of roster points. For this purpose, the Constitution Bench relied upon the decision of Fateh Chand Soni.

23. In Fateh Chand Soni (supra), the issue was whether seniority in the selection grade (in the Rajasthan Police Service) was to be fixed on the basis of date of appointment to the selection scale or on the basis of seniority in the senior scale irrespective of the date on which appointment was made to the selection scale. This Court held that appointment to the selection scale of an officer in the senior scale in the service constituted promotion and seniority in the selection scale had to be fixed on the basis of the date of selection and a person selected and appointed as a result of an earlier selection would rank senior to a person who is selected and appointed as a result of a

subsequent selection. We note below the reasoning of this Court :

"In Lalit Mohan Deb v. Union of India, the pay scale of all the Assistants in the Civil Secretariat in Tripura was Rs.80-180 and on the basis of the recommendations of the Second Pay Commission appointed by the Government of India the scales were revised and 25% of the posts were placed in the Selection Grade in the scale of Rs. 150-300 and the rest continued in the old pay scale of Rs.80-180. For the purpose of filling the Selection Grade posts, a test was held and those who qualified in the said test were appointed to the Selection Grade. The Assistants in the Selection Grade and the Assistants in the old pay scale were doing the same type of work. This Court observed that "provision of a Selection Grade in the same category of posts is not a new thing" and that "a Selection Grade is intended to ensure that capable employees who may not get a chance of promotion on account of limited outlets of promotions should at least be placed in the Selection Grade to prevent stagnation on the maximum of the scale" and that "Selection Grades are, therefore created in the interest of greater efficiency". The Court took note of the fact that the basis for selection of some of the Assistants to the Selection Grade scale was seniority-cum-merit which is one of the two or three principles of promotion widely accepted in the administration and, therefore, the creation of Selection Grade in the category of Assistants was not open to challenge. In that case, the Court had proceeded on the basis that the appointment to the higher grade amounted to promotion.

The Rules governing appointment to the Selection Scale in the Service also envisage that such appointment constitutes promotion. The relevant provision is contained in Rule 28(A) of the Rules which prescribes the criteria, eligibility and procedure for promotion to Junior, Senior and other posts encadred in the Service. Under sub-rule (5) of Rule 28(A) promotion from the lowest post or category of post in the Service to the next higher post or category of post in the Service is required to be made strictly on the basis of seniority-cum-merit. Sub-rule (6) of Rule 28(A) provides that selection for promotion to all other higher posts or higher categories of posts in the Service shall be made on the basis of merit and on the basis of seniority-cum-merit in the proportion of 50:50."

(emphasis supplied)

24. In Dayaram Asanand Gursahani v. State of Maharashtra - 1984 (3) SCC 36 a three Judge Bench of this Court held :

".....As mentioned earlier, the selection grade post is not a post to which promotion has to be made nor is

there any efficiency bar rule attached to it. Further it is not shown that the Governor had issued any executive instructions as it had been done in Sant Ram Sharma v. State of Rajasthan and Anr. (1968) 1 SCR 111 and in Lalit Mohan Deb and Ors. v. Union of India and Ors. (1973) 3 SCC 862 enabling the High Court to withhold increments in the extended pay scale which is in this case called as selection grade pay scale. The pay scale to which a judicial officer is entitled is a condition of service which can be regulated by a statute or rules made under the proviso to Article 309 or by executive instructions issued under Article 162 of the Constitution. It cannot come within the range of the expression 'control' in Article 235 of the Constitution. (See B.S. Yadav and Ors. etc. v. State of Haryana and Ors. etc. (1981) 1 SCR 1024). It is only where there is such a law, rule or executive instruction, the High Court may act under Article 235 of the Constitution to sanction it or to refuse to sanction it. We are of the view that in the present case the mere nomenclature given to the extended pay scale as the selection grade pay scale does not lead to the inference that there is an element of selection involved in sanctioning it. In the circumstances it should be treated as just an extended pay scale which forms part of the pay scale of Rs. 900-1800 as clarified in two Government orders sanctioning the selection grade posts."

25. The aforesaid decision in Dayaram Asanand Gursahani was distinguished in Fateh Chand Soni on the following reasoning :

"The High Court has referred to the decision of this Court in Dayaram Asanand Gursahani v. State of Maharashtra and Ors. [1984] 2 SCR 703, wherein, after considering the resolution of the State Government sanctioning the post of District Judge in the Selection Grade, this Court has held that the said resolution did not indicate that there was any process of promotion by selection or otherwise from the cadre of District Judges to the Selection Grade District Judges. In the particular facts of that case it was held that mere nomenclature given to the extended pay scale as the Selection Grade pay Scale does not lead to the inference that there is no element of selection involved in sanctioning it and that it should be treated as just an extended pay scale which forms part of the pay scale. The position in the present case is, however, different. Here the Selection Scale is a separate scale and is not an extension of the Senior Scale. Moreover appointment to the Selection Scale is made by selection on the basis of merit and seniority-cum-merit in accordance with Rule 28(A) of the Rules."

26. In view of the decisions in Dayaram Asanand Gursahani, Fateh Chand Soni and Ram Prasad, the position that emerges is that even where the upgradation does not involve appointment to a

different or higher post, but is as a result of a promotional process involving selection, then the principles of reservation are attracted.”

18. It is apparent that in ***Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy and others***, the apex court has edged out the minimal incongruities by laying down the principles in simple words that where the upgradation does not involve appointment to a different or higher post, but is as a result of a promotional process involving selection, then the principles of reservation are attracted. In the case in hand, there is no selection process at all for posting of the Commandants and Superintendents of Police borne in the duty post of the TPS Grade-I (Selection Grade) but merely on completion of 3 years in the said grade the postings are made strictly on the basis of the seniority. Hence, according to this Court the said process cannot be brought within the purview of Note-5 below the schedule of the Tripura SC & ST Reservation Act, 1991 inasmuch as there is no selection from the lower rank to the higher rank. As corollary, there cannot be any application of reservation rules or for that purpose there is no requirement of observance of the roster even though those posts are assigned with some higher responsibility. As stated, the posts of Addl. Superintendents of Police, Dy. Commandant and the Commandants and Superintendents of Police etc. are included the duty post of the same grade as would be evident from the notification dated 20.12.2011.

19. In ***Bharat Sanchar Nigam Limited vs. R. Santhakumari Velusamy and others***, the principles relating to

promotion and upgradation in the light of the precedents have been culled out as under:

"29. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge:

(i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both - that is advancement to a higher position and advancement to a higher pay scale - are described by the common term 'promotion', does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain

adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation. A

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(vi) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation."

20. The principles sought to be curved out can be gathered from the following passage:

"But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation."

21. It can be gathered from those said principles that merely some persons have been given the higher assignments cannot mean that they have been given promotion or upgradation which might be termed as promotion. For the purpose of application of the reservation rules, such entrustment to the superior post from the lower post has to be preceded by a selection

process. Therefore, if there is any ambiguity in Note-5 below the schedule appended to the Tripura SC & ST Reservation Act, 1991 such ambiguity has to be clarified in that line only, meaning, in absence of any selection process for any upgradation or for assignment of the higher rank, the reservation rule cannot be applied. Moreover, this Court does not find any unreasonableness in the provisions of Note-2 appearing below the schedule of the duty post of TPS Grade-I (Selection Grade) appended to the Tripura Police Service Rules, 1967 as amended from time to time. The said note prescribing how to make the posting to the rank of Commandants and the Superintendents of Police, does not suffer from any vice of unconstitutionality.

Hence, this writ petition is considered to be bereft of merit and accordingly the same is dismissed. There shall be no order as to costs.

JUDGE