THE HIGH COURT OF TRIPURA
AGARTALA

W. P.(C) No. 156 of 2013

Sanjit Roy,
Son of late Sukumar Roy,
Resident of A.D. Nagar Road No. 7, P.S. West Agartala, P.O. A. D. Nagar-799003, District- West Tripura.

………..Petitioner

-VERSUS–

1. The State of Tripura,
   Represented by the Secretary, Food, Civil Supplies and Consumer Department, Government of Tripura, Agartala

2. The Director,
   Food, Civil Supplies and Consumer Affairs, Government of Tripura, Agartala.

3. Sri Utpal Bhattacharjee (Accountant)
   Office of the Officer-in-charge, Central Store, A. D. Nagar, Agartala.

4. Sri Narayan Ch. Das (Accountant)
   Office of the Directorate of Food, Civil Supplies and Consumer Department, P.N. Complex, Gurkhabasti, Agartala.

5. Sri Jiban Kr. Deb(Accountant)
   Office of the S. D. M. , Teliamura.

……..Respondents

B E F O R E
THE HON'BLE MR. JUSTICE U. B. SAHA

For the petitioner	:	Mr. P. Chakraborty, Advocate.
For the respondents	:	Mr. J. Majumder, Advocate.
Date of hearing & delivery of judgment and order	:	**20.11.2015**
Whether fit for reporting	:	**NO.**

Judgment and Order (Oral)

The instant writ petition is filed by the petitioner, namely, Sri Sanjit Roy, an U.D. Clerk, for a direction to the respondents to promote him to the post of Head Clerk/Accountant with effect from the date of promotion of his juniors i.e. respondent Nos. 3 to 5 as he was not promoted to the post of Head Clerk/Accountant on the ground that he did not complete Accounts cum Administrative Training, as required under the relevant Recruitment Rules of Head Clerk/Accountant.

Pleaded facts of the case of the writ petitioner, in short, are as follows:-

[2] The petitioner was appointed as Lower Division Clerk under the Director of Food, Civil Supplies and Consumer Affairs w.e.f. 30.06.1981 and had been discharging his duties satisfactorily. He was promoted to the post of Upper Division Clerk on 26.06.2001.

[3] The petitioner was willing to undergo the aforesaid training course but the respondent No. 2 did not allow him to avail such training without any reason. The claim of the petitioner for such training was willfully avoided while the respondent Nos. 3 to 5 junior to him were sent for such training in violation of provisions of Rule 9 of Tripura Accounts cum Administrative Training Rules, 1998.

[4] In the final seniority list of Upper Division Clerk under the Food, Civil Supplies and Consumer Affairs, the name of the petitioner was placed at Sl. No. 12 and that of respondent Nos. 3 to 5 were placed at Sl. No. 19,34 and 36 respectively. Admittedly, the petitioner was senior to the

respondent Nos. 3 to 5 in the post of Upper Division Clerk. Further case of the petitioner is that after completion of 55 years, it was not necessary for the petitioner for such accounts training in view of the Rule 10 of the Tripura Accounts cum Administrative Training Rules, 1998.

[5] It is also contended that a DPC meeting was held on 20.03.2013 for consideration of promotion in respect of group-C employees and the DPC recommended the name of respondent Nos. 3 to 5 for promotion, but the petitioner was denied and ultimately his case was not recommended for promotion.

[6] As per the provisions of Recruitment Rules for promotion to the post of Head Clerk/Accountant, feeder post is UDC with at least 5 years experience in the grade and the Accounts training conducted by the State Government is required. For undergoing Accounts training as required under the Recruitment Rules, the State Government also framed a Rules, namely, the Tripura Accounts Cum Administrative Training Rules, 1998. It is indicated that these Rules are applied to the post of UDC, which is held by the petitioner for getting promotion to the post of Head Clerk/Accountant as shown under Rule 3(iii) of the Rules, 1998. It is also provided under Rule 11 of the Rules, 1998 that promotion from the feeder grade cannot be given till the examination is passed after successful completion of Accounts training.

[7] There is a note appended to Rule 11 of the Rules, 1998, from which it appears that the requirement of passing the qualified Accounts Training would not apply in case of temporary promotion. Under Rule 9 of the Rules, 1998, the Rule making authority prescribed the procedure for selection of trainees, wherein it is stated that the selection of trainees shall be on the basis of seniority and individual Department of the Government shall prepare a panel of trainees on the basis of seniority and sponsor the names of trainees as and when requested by the Finance Department. In the aforesaid Rules also, there is an exemption clause as evident from Rule 10 of the Rules, 1998.

[8] Rule 10 is reproduced hereunder as that would be a beneficial one for coming to a proper decision:

"10 Exemption:

a) The following categories of Govt. servants shall be exempted from the examination:-

(I) Government servants who have passed the SAS examination of India Audit and Accounts Department;

(ii) Qualified Divisional Accountants (i.e. those who have passed the Divisional Accounts' Examination and posted as such by the Accountant General to various Public Works Divisions);

(iii) Government servants who have duly passed the Accounts Training examination conducted earlier by the Accountant General, Assam/Tripura;

(iv) An employee for whom successful completion of the training under these Rules is obligatory may be exempted from the operation of these Rules on his/her attaining the age of 55 years.

If he could not avail of or successfully completed the Training under these Rules.

(v) Under any special circumstances the Governor may exempt any Government servant from these examinations.

b) The employees who are exempted under sub-rule(a) of the Rule shall have all benefits under these Rules except that provided for under sub-rule(a) of Rule 11".

[9] It is the admitted position that the name of the petitioner was sponsored by his department to the Finance Department for accounts training. But ultimately his name was not selected for training by the Finance Department and as a result, the petitioner could not undergo the said training as required.

[10] It is also the admitted position that the respondent Nos. 3 to 5 were sent for training. By that time, the petitioner did not complete 15 years of service in the post of UDC, though he had attained the age of 55 years.

[11] The State respondents by way of filing counter affidavit have contended that as the petitioner has not completed 15 years in the grade of UDC as required in the Recruitment Rules he is not entitled to promotion to the post of Head Clerk/ Accountant even after attaining the age of 55 years.

[12] It is further case of the petitioner that the petitioner was within the zone of consideration vide Sl. No. 11 under Seniority position No. 12 in the Unreserved Category.

The note of DPC Meeting reveals that the petitioner was not considered for promotion since he did not complete 15 years of service in the grade of UDC as required by the Recruitment Rules.

[13] It is the further case of the petitioner that the name of the petitioner was sponsored to the Finance Department from the year 2007 onwards. Panel of names of candidates sent to the Finance Department as per requirement of the Rules considering seniority position as well as willingness of the person concerned. It is also contended that no juniors of the petitioner were accommodated for such training in the respective period when the name of the petitioner was empanelled and sponsored for such training.

[14] Mr. Chakraborty, learned counsel appearing for the petitioner while urging for the reliefs sought for, has contended that a person cannot be denied his right for consideration of his promotion for no fault of him. In the instant case, though the department sent the name of the petitioner for Accounts cum Administrative training and the same was received by the Finance Department but for no reason his name was not selected and as a result, the petitioner did not get opportunity for getting training.

[15] He further submits that admittedly, the petitioner did not complete 15 years of service in the post of UDC, while the respondent Nos. 3 to 5 were sent for training and were

recommended by the DPC. He further contends that as the petitioner has completed his 55 years of age and come within the zone of exemption clause i.e. (iv) and (v) of Rule 10 of the Rules, 1998, which provides that an employee for whom successful completion of training under these Rules is obligatory may be exempted from the operation of these Rules on his/her attaining the age of 55 years, if he could not avail of or successfully completed the training under these Rules and under any special circumstances the Governor may exempt any Government servant from these examinations. Mr. Chakraborty, learned counsel appearing for the petitioner further submits that some of the employees who have not completed 15 years of service in the feeder post but attained the age of 55 years were also given promotion to the post of Head Clerk. Thus, the authority may be directed to consider the case of the petitioner in the same line.

[16] Though facts are not similar, but a similar question came up before a coordinate Bench of this Court in WP(C). No. 231 of 2008, wherein this Court, while disposing of the same, noted, inter alia, that a note is appended to Rule 11 of the Tripura Accounts cum Administrative Training Rules, 1998, which however provides that the requirement of passing qualifying accounts training would not apply in case of temporary promotions and wherein it is also noted that " ***it is not in doubt that selection for training and training***

itself, is to be imparted by the authorities and it is only for the default of the Government authorities, the petitioner has been deprived of acquiring the qualification of accounts training. Since the 1998 Rules provide for granting temporary promotion, I am of the view that to mitigate the hardship caused to the petitioner by the default of the respondents authorities, it would be appropriate to direct consideration of the case of the petitioner for temporary promotion by disregarding his lack of accounts training, if he has otherwise fulfilled the requirements for getting such promotion".

[17] In the instant case, the special circumstances are that though the petitioner was willing to join the Accounts cum Administrative training as required under the Rules, but for the failure of the State respondents, he could not get opportunity to avail the said Accounts cum Administrative training and complete the same. Therefore, according to Mr. Chakraborty, learned counsel appearing for the petitioner it is a fit case where the authority should promote the petitioner temporarily to the post of Head Clerk/ Accountant by way of exempting him from the Accounts cum Administrative Training.

[18] On the other hand, Mr. Majumder, learned counsel appearing for the State respondents while countering the

contentions made by Mr. Chakraborty learned counsel appearing for the petitioner contended that the petitioner has not yet completed 15 years of service in the post of UDC as required for promotion to the post of Head Clerk/Accountant as per the Recruitment Rules.

[19] He has further contended that none of the juniors of the petitioner were sent for accounts training by the Finance Department. Thus, it would not be proper to say that the petitioner was deprived of in any way.

[20] Having heard the learned counsel appearing for the parties and upon going through the pleadings of the parties as well as documents annexed therewith, this Court is of the considered opinion that a person cannot be punished for no fault of him.

[21] In the instant case it is admitted position that the petitioner did not get any opportunity for the Accounts cum Administrative training and not only that he is also senior to the respondent Nos. 3 to 5 in the feeder grade of UDC. Admittedly, the petitioner did not complete 15 years of service while the respondent Nos. 3 to 5 was sent for Accounts/Administrative training. Thus, it cannot be said that the State respondent has committed any wrong sending these respondents for training. Though, the petitioner has not completed 15 years of service as required but he has attained the age of 55 years. Therefore, the authority should have

exempted him from successful completion of that training as required under the Rules.

[22] In the writ petition, the petitioner asked for quashing the promotion of the private respondents herein, but that would not be proper for this Court to quash their promotion as they have been promoted after completion of the Accounts cum Administrative training under the Rules, 1998, but the authority should consider the case of the petitioner as he has attained the age of 55 years.

[23] In the Rules, 1998 though certain discretionary power was given to the Governor for exempting a Government servant from appearing in the Accounts cum Administrative Training, but what would be the special circumstances that have not been defined, meaning thereby that the Rule making authority has empowered the Governor to exercise his unlimited discretion considering the facts and circumstances of a particular case of an employee concerned.

[24] It is also submitted by the learned counsel appearing for the petitioner that the petitioner is on the verge retirement, thus, the authority may be directed to consider his case even at this stage for his promotion to the post of Head Clerk/ Accountant.

[25] It has been stated by the learned counsel for the petitioner that the petitioner is going to be retired very soon

and some of the employees are given promotion only after attaining the age of 55 years without completion of 15 years of service in the feeder post. But these facts are not stated in the writ petition. Therefore it would not be proper for this Court to give any specific direction to the authority to consider the case of the petitioner for promotion to the post Head Clerk/ Accountant. It would be proper to direct the petitioner to submit the representation stating all these facts including mentioning the name of the person concerned who has got promotion even without completion of 15 years of service in the feeder post after attaining the age of 55 years. Accordingly, the petitioner is directed to submit a representation within a period of 1 month from today stating all his grievances as stated (supra) and the respondent No. 2 shall consider the representation of the petitioner within a period of 6 weeks from the date of receipt of the representation by a reasoned order.

[26] With the above, the instant writ petition is disposed of.

JUDGE

A.Ghosh