

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 383 OF 2010

Sri. Subhas Lodh,
S/O-Lt. Aparna Charan Lodh,
a resident of Damdam, Netaji road,
P.O & P.S- Sabroom,
District- South Tripura.

..... *petitioner.*

- *Vs* -

1. The State of Tripura,
Represented by the Secretary
To the Government of Tripura
Home Department
New Secretariat
P.S- East Agartala, P.O- Kunjaban
Agartala- 799006.

2. The Director General of Police,
Government of Tripura
Police Headquarters,
P.S- West Agartala,
P.O- Agartala- 799001
District- West Tripura.

3. The Superintendent of Police,
South Tripura, Udaipur
P.O & P.S- R.K.Pur
Pin- 799120, South Tripura.

..... *Respondents.*

**BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS**

For the petitioner : Mr. D. Bhattacharya,
Ms. J. Bhusan,
Advocate,
For the respondents : Ms. A. S. Lodh, Addl. G.A.
Date of hearing & delivery
of Judgment & order : **17.06.2015**

Whether Fit for Reporting :

Yes	No
	√

JUDGMENT & ORDER (ORAL)

By filing this writ petition the petitioner prayed for issuing direction to the respondents to give him the benefit of movement in the grade of Head Constable Driver w.e.f. 08.02.1995 and Selection Grade Head Constable Driver w.e.f. 08.02.1998 and further to pay him arrears of pay and allowances from the date of such movement.

2. Heard learned counsel, Mr. D. Bhattacharji for the petitioner and learned Addl. Government Advocate, Ms. A. S. Lodh for the State respondents.

3. The petitioner was appointed as a Constable of police under the respondents on 05.04.1979. He was appointed as a Driver Constable w.e.f. 17.10.1982 by the departmental order No.359 dated 08.02.1985 after due process of selection. Though he was appointed as a Driver Constable, the pay and allowances admissible to a Driver Constable was not given to him even after representation submitted by him and, therefore, he filed writ petition WP (C) No.56 of 1993 before the then Gauhati High Court of Agartala bench and the learned Single Judge of the High Court by judgment dated 07.08.2000 allowed the writ petition and directed the respondents to extend the benefits of the time scale, driving allowances and other benefits as permissible under the rules w.e.f. 08.02.1985. The respondents carried the judgment passed by the learned Single Judge to the Division Bench in appeal vide Writ

Appeal No.17 of 2001 and the Division Bench of the then Gauhati High Court by judgment dated 18.01.2007 upheld the order passed by the learned Single Judge and thereby dismissed the appeal.

4. The State-respondents i.e. the respondent No.2 by D.O. No.875 of 2007 dated 30.04.2007 allowed the petitioner all admissible reliefs as per the direction given by the Gauhati High Court. By filing the present writ petition the petitioner claimed that as per the Tripura Police Drivers (Man and Woman) (Recruitment and Condition of Service) Rules 2009 (for short 'Rules of 2009'), the petitioner is entitled to promotion to the post of Head Constable Driver, Grade-II after 10 years of continuous service and to the post of Head Constable Grade-I (Selection Grade) after next 7 years of continuous service. Since the petitioner got all benefits as a Driver Constable w.e.f. 08.02.1985, he was eligible for promotion to the post of Head Constable Driver w.e.f. 08.02.1995 and then Selection Grade Head Constable w.e.f. 08.02.1998. Accordingly, claimed the benefits in the writ petition.

5. The respondents contended that the petitioner was eligible for promotion to the post of Head Constable Driver w.e.f. 08.02.1995 and DPC found him fit for promotion and on the basis of the recommendation of the DPC he was promoted to the post of Head Constable Driver w.e.f. 28.12.2009. He will be eligible for Head Constable Selection Grade after completion of 7 years of service w.e.f. 28.12.2016 and if DPC is held and found him fit, he

will be promoted for the post of Selection Grade Head Constable thereafter.

6. Rule 9 of the Rules of 2009 prescribes provision for appointment to the post of Head Constable Driver Grade II and Rule 10 prescribes provision for appointment to the post of Selection Grade Head Constable Driver Grade I, which read as follows:-

"9. APPOINTMENT OF HEAD-CONSTABLE DRIVERS GRADE-II (MAN & WOMAN) :-

Head Constable Drivers Grade-II shall be made by promotion on the basis of seniority from amongst Constable Drivers Grade-III who fulfill the following conditions subject to rejection of unfits:-

(a) Constable Driver Grade-III will be eligible for promotion to Head Constable Driver Grade-II after completion 10(ten) years continuous service as on 1st Day of March of the year in which DPC is convened.

(b) Future change, if any, will be followed according to ROP time to time in cases as mentioned in Rule 9(a). The suitability of a candidate will be determined by the DPC subject to rejection of unfit persons.

(c) Prior to selection for promotion to Head Constable Drivers Grade-II, Constable Drivers shall produce a valid license to drive heavy vehicle as paid employee before the Departmental Promotion Committee and such drivers shall also be free from DP/Criminal case and Vigilance cases."

"10. APPOINTMENT OF SELECTION GRADE HEAD CONSTABLE DRIVERS GRADE-I(MAN & WOMAN) :-

Except as provided in Rule-5, future appointment to the selection Grade Head Constable Drivers shall be by promotion on the basis of seniority from amongst the Head Constables Drivers subject to rejection of unfits and who fulfill the following conditions :-

(a) Have put in 7 years of service as Head Constable Driver Grade-II as on 1st day of March of the year in which Departmental Promotion Committee is convened.

(b) Possess a valid license to drive a heavy motor vehicle."

7. The above Rules clearly prescribe that a Driver Constable will be eligible for promotion to the post of Head Constable Driver Grade-II on his completion of 10 years of continuous service as on 1st day of March of the year in which DPC is convened. Similarly after 7 years of service he will be entitled to promotion as Head Constable Driver Grade-I as on 1st day of March of the year in which the DPC is convened.

8. The petitioner in the writ petition made no averment that after 08.02.1985, when he became eligible for promotion to the post of Head Constable Driver, there was vacancy and there was DPC held for promotion to the post of Head Constable and he was not given the promotion.

9. In the absence of any such material, it is very difficult to arrive at a conclusion that the petitioner was deprived from promotion which was due to him. One does not automatically become eligible for promotion on his completion of 10 years of continuous service. 10 years of continuous service is the minimum criteria for the promotion and that is subject to availability of the post and/or vacancy as well as convening of the DPC. The petitioner was given promotion to the post of Head Constable Driver w.e.f. 28.12.2009. There is nothing before us that before 28.12.2009 there was any vacancy in the post of Head Constable Driver and that there was DPC also but the petitioner was not considered for the promotion after his completion of 10 years continuous service in the post of Driver Constable. He will be eligible for promotion to the

post of Selection Grade Head Constable after 7 years of service in the post of Head Constable Driver. So, this contention of the petitioner that in the event of his completion of 10 years and then 7 years of service he is entitled to get promotion cannot stand in the eye of law in the absence of any material that there was vacancy for such promotion and that DPC also held but the petitioner was excluded from consideration illegally.

10. Learned counsel, Mr. D. Bhattacharji has emphatically contended that no responsible person can arrive at a conclusion that from 1995 till 2009 there was no vacancy for promotion to the post of Head Constable and no DPC held and the State was supposed to answer it for all fairness.

11. I cannot agree with the submission of the learned counsel, Mr. Bhattacharji since it is a writ petition and the pleadings as well as the evidence is to be adduced by the petitioner. There is neither pleadings nor evidence to show that there was vacancy during the period from 1995 to 2009 and there was also DPC held during the period and the petitioner was not considered for promotion.

12. Under such circumstances, the writ petition is found to be devoid of merit and hence, it stands dismissed. No costs.

JUDGE