

**THE HIGH COURT OF TRIPURA
AGARTALA**

W.P.(C) NO. 64 of 2015

Dr.Jayanta Kishore Dev Varma,
S/O- Lt. Bikramendra Dev Varma,
Resident of Ram Mandir,
College Tilla, Agartala,
P.O- Agartala College, P.S- East Agartala,
District- West Tripura, PIN- 799004

..... Petitioner.

- Versus -

1. The State of Tripura,
(To be represented by the Secretary
to the Government of Tripura, Health
and Family welfare Department,
New Secretariat Building,
New Capital Complex, Kunjaban,
Agartala, West Tripura, PIN-799006)

2. The Secretary,
Department of Health Services,
Government of Tripura,
New Secretariat Building,
New Capital Complex, Kunjaban,
Agartala, West Tripura, PIN-799006

3. The Under Secretary,
Health and Family Welfare Department,
Government of Tripura,
New Secretariat Building,
New Capital Complex, Kunjaban,
Agartala, West Tripura, PIN 799006

4. The Deputy Secretary,
Health and Family Welfare Department,
Government of Tripura,
New Secretariat Building,
New Capital Complex, Kunjaban,
Agartala, West Tripura, PIN 799006

5. The Director of Health Services (In- charge),
Government of Tripura
Pandit Neheru Complex,
Gorkhabasti, P.O- Kunjaban, Agartala,
West Tripura, PIN 7990006

6. Dr. Tapan Kr. Das,
Grade II Medical Officer of Tripura
Health Services, In-Charge Director,
Directorate of Health Services,
Government of Tripura,
Pandit Neheru Complex,
Gorkhabasti, P.O.– Kunjaban, Agartala,
West Tripura, PIN 799006

..... Respondents.

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

For the petitioner	: Mr. P. Roy Barman, Mr. S. Bhattacharji, Mr. K. Nath, Advocates,
For the respondents	: Mr. S. Chakraborty, Additional Govt. Advocate.
Date of hearing and delivery of Judgment and order	: 22.04.2015.
Whether fit for reporting	: No.

JUDGEMENT AND ORDER(ORAL)

Learned Counsel Mr. P. Roy Barman for the petitioner and learned Additional Government Advocate, Mr. S. Chakraborty for the respondents are present.

2. Heard learned counsel of both side.

3. The case is taken up for final disposal at the admission stage itself on the prayer of the learned counsel of both side.

4. The petitioner, a medical officer of Tripura Health Services, was promoted from Grade-II to Grade-I by Notification dated 29.11.2012 (Annexure-P/1 to the writ petition) along with five other medical officers and the name of the petitioner

appeared in Sl. No.2 of the list of medical officers so promoted in Grade-I. His existing place of posting has been shown as in the Directorate of Medical Education on the date of promotion. As per the said Notification dated 29.11.2012, Dr. Bimalendu Sekhar Choudhury was in Sl. No.1, who was senior to the petitioner. It is the case of the petitioner, which is not disputed by the respondents, that Dr. Bimalendu Sekhar Choudhury has retired in the meantime and the petitioner is the senior most medical officer in Grade-I of Tripura Health Services as of now.

5. By Notification dated 21.12.2012(Annexure-P/3 to the writ petition), the joining report of petitioner and five other medical officers, who were promoted in Grade-I, was accepted by the State Government in the Health Department and in that Notification dated 21.12.2012 the petitioner's place of posting has been shown as in the Directorate of Medical Education w.e.f. 30.11.2012.

6. By Notification dated 11.01.2013(Annexure-P/2 to the writ petition), the petitioner and other five promoted Grade-I officers were assigned posting and the petitioner was posted as Additional Director of Health Services and it has also been mentioned that he will function in the Office of the Directorate of Medical Education on deputation as OSD.

7. It is the case of the petitioner that at the time when Notification dated 11.01.2013 was issued, Dr. Satya Ranjan Debbarma, a Grade-I officer, was holding the post of Director of

Health Services and Ex-officio, Additional Secretary, Government of Tripura and he has retired from service on re-employment with effect from the afternoon of 13.12.2014. It is the case of the petitioner that by that time his senior Dr. Bimalendu Sekhar Choudhury already retired and being senior most, he was eligible to be posted as Director Health Services in place of Dr. Satya Ranjan Debbarma. But the respondents most illegally posted one Dr. Tapan Kumar Das, a Grade-II medical officer of Tripura Health Service, who was holding the post of Joint Director of Health Services, as the Director in-charge with effect from the afternoon of 31.12.2014, depriving the petitioner from holding the post of Director of Health Services.

8. It is the grievance of the petitioner that he has been compelled to serve under his junior, Dr. Tapan Kumar Das, since his substantive post is Additional Director. The petitioner, therefore, challenged the order dated 31.12.2014 (Annexure P/6 to the writ petition) and also prayed for directing the respondents to consider the petitioner for the post of Director of Health Services, Government of Tripura.

9. Respondents by filing counter affidavit contended that the petitioner is not serving under respondent No.6, his junior. According to the respondents, the petitioner has been posted in the Directorate of Medical Education as OSD and so, he is not under the control of the Director in-charge i.e. respondent No. 6. It is also contended by the respondents that for posting as

Director of Health Services one has to serve for five years as a Grade-I officer as per Rule 5(a)(i) of Tripura Health Service Rules, 1974 and so, the petitioner is not eligible for such posting. By filing additional affidavit, as per order passed by this Court on 21.03.2015, the respondents contended that there are three posts of Directors under the Department of Health and Family Welfare, Government of Tripura and those are:- (i) Director of Health Services, Government of Tripura, (ii) Director of Family Welfare and Preventive Medicine, Government of Tripura; and (iii) Director of Medical Education, Government of Tripura. It is however, not disputed by the respondents that the petitioner is the senior most Grade-I officer of Tripura Health Services at present.

10. Rule 5(a)(i) of Tripura Health Service Rules, 1974 prescribes method of appointment to the post of Director of Health Services, which reads as follows:-

"Appointment to the duty posts of the service after commencement of these rules shall made by the following methods:-

(a) (i) Appointment to the post of Director of Health Services in Grade-I shall be made by promotion from officers of Grade-I and failing that from officers of Grade-II, having not less than 5 (five) years service in Grade -I and/or Grade-II, on the recommendation of the Selection Committee and on the basis of merit with due regard to seniority; provided that the post may be filled up by direct recruitment on the recommendation of the Commission or on deputation in case of non- availability of suitable person for promotion."

11. As per the above provision, the post of Directors under the Health Services shall be filled up by a Grade-I officer on promotion **and failing that** from officers of Grade-II having not less than five years service in Grade-I and/or in Grade –II on the recommendation of the Selection Committee and on the basis of merit with due regard to seniority. Since there are officers in Grade-I, the post of Director shall be first filled up from the officers of Grade-I and failing that only it will be from the post of Grade-II officers. So, while there were Grade-I officers in service, the official respondents would first consider a medical officer from Grade-I for filling up the post of Director and failing that only a Grade-II officer may be posted as Director of Health Services.

12. I find sufficient force in the argument made by learned Counsel Mr. Roy Barman that after promotion by Notification dated 11.01.2013 (Annexure P/2 to the writ petition), the petitioner was posted as Additional Director, which is a cadre post of Tripura Health Services, and it was also mentioned that he shall function in the office of the Directorate of Medical Education on deputation as OSD. The post of OSD is not a cadre post of Tripura Health Services. So, the substantive post of the petitioner after the promotion was the Additional Director of Health Services.

13. So long Dr. Satya Ranjan Debbarma was Director of Health Services, the petitioner had no grievance. The petitioner has got grievance in the event of retirement of Dr. Satya Ranjan Debbarma and when respondent No. 6 was posted as Director in-

Charge and it is the case of the petitioner that he has been compelled to serve under a junior officer of him as Additional Director. There is sufficient force in the contention of the petitioner. It is an admitted position that on the date of passing impugned order dated 31.12.2014, the respondent No. 6 was a Grade-II medical officer. Learned Additional Government Advocate has mentioned that the respondent No. 6 also has now been promoted in Grade-I of Tripura Health Services, w.e.f. 31.03.2015.

14. Be that as it may, order dated 31.12.2014, (Annexure-P/6 to the writ petition), as it appears, is violative of the right of the petitioner. The petitioner's right to be considered for the post of Director of Health Services in any of the Directorate has not been considered by the respondents. He being the senior most officer in Grade-I of Tripura Health Services, is entitled to be considered for posting in any of the Directorate as Director and the respondents cannot keep him in the post of Additional Director or OSD and post somebody else, who is junior to him in the post of Director, without considering his case.

15. In the facts and circumstances mentioned above, I think the writ petition should be allowed. The impugned order dated 31.12.2014 (Annexure P/6 to the writ petition) appointing respondent No.6 as in-charge of Director of Health Services is quashed. The respondents are directed to take decision for filling up the post of Director of Health Services from Grade-I of Tripura

Health Services and failing to do so from Grade-II of the officers as per Rule 5(a)(i) of Tripura Health Service Rules, 1974 within 60(sixty) days from today .

16. The writ petition accordingly stands disposed of.

17. The parties to bear their own costs.

JUDGE