

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.321 of 2012

Sri Uttam Kumar Das,
son of late Dhirendra Chandra Das,
resident of Ramnagar Road No.1,
P.O. Ramnagar, P.S. West Agartala Police Station, Agartala,
West Tripura District

.....Petitioner

- Vs -

01. The State of Tripura,
represented by the Secretary,
GA (P&T) Department, Government of Tripura,
New Secretariat Complex, P.O. Kunjaban,
Agartala, PIN-799 006, West Tripura District
02. The Secretary,
GA (P&T) Department, Government of Tripura,
New Secretariat Complex, P.O. Kunjaban,
Agartala, PIN-799 006, West Tripura District
03. The Under Secretary,
GA (P&T) Department, Government of Tripura,
New Secretariat Complex, P.O. Kunjaban,
Agartala, PIN-799 006, West Tripura District
04. Sri Tapan Kumar Das (SC), PA-I
05. Sri Arunesh Das (SC), PA-I
06. Sri Simul Chandra Das (SC), PA-I
07. Swapa Kumar Das (SC), PA-I
08. Sri Biswajit Das (SC), PA-I
09. Sri Dhiman Das (SC), PA-I
10. Sri Sudhir Chandra Das (SC), PA-I
11. Sri Siddhartha Sarkar (SC), PA-I
12. Sri Bikash Das (SC), PA-I
13. Smti. Dipa Sakar (SC), PA-I

The respondents No.4 to 13 have been served through the
Secretary, GA (P&T) Department, Government of Tripura, New
Secretariat Complex, P.O. Kunjaban, Agartala,
PIN-799 006, West Tripura District

.....Respondents

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

For the petitioner : Mr. C. S. Sinha, Advocate
 For the respondents No.1 to 3 : Mr. G. S. Bhattacharjee, Advocate
 For the respondents No.4 to 13 : None
 Date of hearing and delivery : **27.08.2015**
 of Judgment and order
 Whether fit for reporting : **NO**

Judgment and Order (Oral)

Heard Mr. C. S. Sinha, learned counsel appearing for the petitioner as well as Mr. G. S. Bhattacharjee, learned counsel appearing for the respondents No. 1 to 3. But none appears for the remaining respondents despite due notice from this court.

02. By means of this writ petition, the petitioner has challenged the action of the respondents, denying him promotion from the date when his juniors, namely, Sri Tapan Kumar Das and others (the respondents No.4 to 13) were appointed in pursuance of Rule 10(2)(c) of the Tripura Government Stenographers' Service Rules, 1977 read with 10th Amendment of the Rules, 2007 in the post of Stenographer (PA-I) on regular basis in the scale of pay of Rs.6,500-12,300/- by the order No.F.37(3)-GA(P&T)/04 dated 21.09.2007, Annexure-3 to the writ petition. The petitioner has also given a short background which might have contributed to such denial. The petitioner was suspended for his complicity in a criminal case by the order under No.F.37(15)-GA(P&T)/97 dated 07.02.2005 w.e.f. 18.12.2004. The said order of suspension was revoked by the order of even number dated 14.05.2007, Annexure-1 to the writ

petition. Thereafter, by another order under No.F.37(15)-GA(P&T)/97 dated 05.10.2010, the departmental proceeding initiated against the petitioner was dropped without prejudice to any further course of action as the petitioner was acquitted by the Court of the Judicial Magistrate, 1st Class, Court No.4, Agartala by the order dated 28.02.2007. It has been further revealed that pursuant to the order dated 05.10.2010 no further action was taken against the petitioner.

03. By the order dated 21.09.2007, Annexure-3 to the writ petition, a large number of persons working as the Stenographers (PA-II) were appointed as the Personal Assistant (PA-I) on promotion. Sri Tapan Kr. Das (the respondent No.4) and other officers, appearing below him in the said order dated 21.09.2007 are juniors to the petitioner in the grade of the Stenographers(PA-II). The petitioner also belongs to the SC category.

04. Mr. C. S. Sinha, learned counsel appearing for the petitioner has referred to the gradation list and on perusal of the gradation list, the statement made by the petitioner in respect of his seniority position gets confirmed. Sri Tapan Kr. Das and other officers (the respondents No. 4 to 13) whose names have appeared in the promotion order dated 21.09.2007, are juniors to the petitioner, namely, Uttam Kr. Das as his name appears at serial No. 2 2 3 whereas the name of Tapan Kr. Das appears at serial No. 2 2 4. Mr. Sinha, learned counsel has submitted that despite the representation made in this regard for granting him the benefit of promotion from the date when the said juniors were promoted, no positive result has yielded. Mr. Sinha, learned counsel has also referred to an

order dated 05.04.2011 under No.F.37(15)-GA(P&T)/97 to show that even the pay and allowances of the petitioner has been regularised under FR 54B without any stigma or any stoppage or withholding.

05. However, the petitioner was appointed on promotion to the post of Personal Assistant (PA-I) in the scale of pay of Rs.9570-30000/- (PB-3) plus grade pay of Rs.3100/- w.e.f. 13.02.2012. The pay scale as referred to the notification dated 15.02.2012, Annexure-7 to the writ petition, is the revised pay scale under the Tripura State Civil Services (Revised Pay) Rules, 2009. In this context the petitioner's prayer is very definite that the petitioner be appointed w.e.f. 21.09.2007 and his seniority be restored.

06. Mr. G. S. Bhattacharjee, learned counsel appearing for the respondents No. 1 to 3 has not disputed the facts as placed by the petitioner. But he has stated that from the judgment and order dated 28.02.2008 delivered in Misc. Case No.339 of 2007, it would be apparent that the criminal case where the petitioner was charged for committing offence punishable under Section 498-A of the IPC, was compromised and the complainant did not persuade the prosecution. However, Mr. Bhattacharjee, learned counsel for the said respondents has submitted that the Family Court by the said order dated 28.02.2008 had directed the petitioner to pay a sum of Rs.3500/- per month to his wife, Smti. Soma Malakar(Das). According to Mr. Bhattacharjee, learned counsel that the petitioner is not totally purged of his misconduct as a Government employee and as such there is no infirmity in the order denying him the promotion w.e.f. 21.09.2007.

07. On appreciating the submissions advanced by the learned counsel for the parties, this Court is of the considered view that in terms of a compromise, if the complainant did not pursue the prosecution that cannot generate a presumption of misconduct against the petitioner. Apart that, the act of unlawful demand itself has been made a misconduct under the provisions of Tripura Civil Services (Conduct) Rules, 1988. Notwithstanding what has been provided therein, the departmental proceeding as initiated against the petition has been dropped and no further action has been followed. Even the petitioner has been given promotion on 15.02.2012.

08. There is no dispute that the petitioner is senior to Tapan Kr. Das and others, the respondents No.4 to 13 as per the gradation list dated 02.02.2002, Annexure-4 to the writ petition. That gradation list has not been disputed from any quarters.

09. From the counter affidavit filed by the respondents No.1, 2 and 3, it has transpired that *"During the pendency of the disciplinary proceedings against the petitioner promotion to the post of PA-I from the feeder post of PA-II was done and one post reserved for SC was kept reserved for him"*. In view of the said unequivocal statement made by the respondents, it can be conveniently assumed that there had been no difficulty in appointing the petitioner w.e.f. 21.09.2007, when his juniors, Tapan Kr. Das and others were appointed on promotion to the post of Personal Assistant (PA-I). But at the time of promotion of the respondents No. 4 to 13 there was serious embargo as against the petitioner a departmental proceeding was pending but when the departmental proceeding has been closed

without attaching any stigma on the petitioner, it was the duty of the respondents to consider the promotion of the petitioner w.e.f. 21.09.2007. Despite several representations being filed by the petitioner, as no such action was taken, the petitioner has been compelled to approach this Court.

10. However, on overall consideration of this matter, this Court is of the view that the petitioner shall be promoted w.e.f. 21.09.2007 and his seniority position shall accordingly be restored. But the petitioner shall not get any financial benefit for the period from 21.09.2007 to 14.02.2012 but the petitioner's pay shall be notionally fixed on 15.02.2012. As the petitioner did not assume the office for the disciplinary proceeding and also for his own conduct, he will not get the pecuniary benefits for the period from 21.09.2007 to 14.02.2012. His pay shall, however, be fixed afresh on 15.02.2012 notionally forwarding all the benefits on that day. The arrears that would accrue, shall be paid to the petitioner within a period of three months from today without fail.

In the result, this petition stands allowed to the extent as indicated above. There shall be no order as to costs.

JUDGE

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