

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.446 of 2011

- 1. NK(GD) 920221132,**
Shri Chandrahari Hrangkhal,
care of 8th BN TSR-IR-III,
Commandant, TSR, Lalchera, P.O.
Chailengta, District – Dhalai
- 2. L/NK(GD) 97050272,**
Shri Uttam Malakar,
son of Shri Dhirendra Ch. Malakar,
care of 8th BN TSR-IR-III,
Commandant, TSR, Lalchera, P.O.
Chailengta, District – Dhalai
- 3. Rfn(GD) 01080538,**
Shri Nitish Ch. Das,
son of Shri Umesh Ch. Das, care of 8th
BN TSR-IR-III, Commandant, TSR,
Lalchera, P.O. Chailengta, District –
Dhalai
- 4. Rfn(GD) 99010506,**
Shri Arun Sarkar,
son of late Khetra Mohan Sarkar, care
of 11th BN TSR-IR(VII), P.O.
Gakulnagar, Agartala, District – West
Tripura
- 5. Rfn(GD) 20004532,**
Shri Jadhu Ranjan Chakma,
son of Shri Indra Kumar Chakma, care
of 4th BN, Commandant, TSR, P.O.
Kanchanpur, North Tripura
- 6. Rfn(GD) 20005208,**
Shri Maniram Tripura,
son of late Jer Ch. Tripura, care of 2nd
Bn, Commandant, TSR, P.O. R.K.
Nagar, District – West Tripura

..... **Petitioners**

V e r s u s

1. **The State of Tripura,**
represented by the Secretary, Home
Department, Government of Tripura,
New Secretariat Complex, P.O.
Kunjaban, District – West Tripura
2. **The Director General of Police,**
Government of Tripura, P.O. Agartala,
West Tripura District
3. **The Deputy Inspector General of
Police (ADM & TRF) TPA ,**
P.O. Agartala, Tripura West
4. **The Commandant,**
8th Bn. TSR (IR-III) , P.O. Chailengta,
Dhalai District
5. **The Commandant,**
11th Bn. TSR (IR-VII), P.O.
Gokulnagar, West Tripura District
6. **The Commandant,**
4th Bn. TSR , P.O. Kanchanpur, North
Tripura District
7. **The Commandant,**
2th Bn. TSR P.O. R.K. Nagar, Agartala,
West Tripura District, Agartala

..... Respondents

**BEFORE
THE HON'BLE MR.JUSTICE S. TALAPATRA**

For the petitioners : Mr. C.S Sinha, Advocate

For the respondents : Ms. A.S. Lodh, Addl. G.A

Date of delivery of : **25.06.2015**
judgment & order

Whether it is fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

Heard Mr. C.S Sinha, learned counsel appearing for the petitioners as well as Ms. A.S Lodh, learned Addl. G.A. appearing for the respondents.

[2] The grievance of the petitioners falls within a short compass. All the petitioners were eligible to appear in the limited departmental examination in terms of the memorandum dated 24.10.2009, Annexure-1 to the writ petition. The said memorandum dated 24.10.2009 was issued in terms of one time relaxation granted by the competent authority, subject to the qualifications as under:

(a) Must have at least 8(eight) years satisfactory service from the date of appointment in TSR.

(b) Must have passed second class certificate of education or 9th standard and also subject to their successful passing limited examination for the final selection.

There is no dispute that the petitioners could not clear the firing test and as a result, the competent authority afforded them another opportunity to appear in the final test on 10.08.2010 in the TSR Centre at R.K. Nagar as would be evident from the communication dated 09.08.2010, Annexure-5 to the writ petition. But the petitioners could not appear as they were detained by their Commandant, 8th Battalion TSR-IR(III) for operational commitment. The Commandant, 8th Battalion TSR-IR(III) had communicated by a message dated 11.08.2010, Annexure-6 to the writ petition, that the petitioners could not be

released for appearing in the firing test due to operational commitment in the context of the independence day celebration. Thereafter, by another communication dated 19.08.2010 available at Annexure-7 to the writ petition, the Commandant, 7th Battalion TSR-(IR-VI) had informed that the date for the firing test for the unsuccessful candidates had been fixed on 25.08.2010 at TSR Centre, R.K. Nagar. There is no dispute that in the said test, the petitioners succeeded to clear the final firing test and accordingly, the result was published on 31.08.2010, Annexure- 10 to the writ petition. On 01.10.2010 by an order under No.8436-51/F.(14)/DAP/TSR/RSV/09, Annexure-9 to the writ petition, 198 persons were appointed as the Havilder(GD) in the Pay Band of Rs.5310-2400/- with Grade Pay of Rs.1800/- as per inter se seniority against the existing vacancies reserved for SC/ST category in the post of Habilder(GD) in the TSR BNs (1st to 13th BN) in terms of one time relaxation as allowed by the Government. At this juncture, it is to be noted that the total number of vacancies to the post of Havilder(GD) as declared by the memorandum dated 24.10.2009 for the SC/ST candidates were 313.

[3] Mr. C.S. Sinha, learned counsel appearing for the petitioners has submitted that the petitioners cannot be made responsible under any pretext for not appearing in the firing test held on 10.08.2010 and hence, they cannot be deprived from their promotion when they had cleared the firing test.

[4] From the other side, Ms. A.S. Lodh, learned Addl. G.A. appearing for the respondents having referred to the counter affidavit filed by the respondents No.1 to 7 has submitted that the final test was scheduled on 10.08.2010 and that date, time and place were intimated to the petitioners. The petitioners could not appear in the final test as the Commandant, 8th Bn. TSR did not release them on the schedule date due to operational commitment in connection with the independence day celebration. Thereafter, the Commandant, 7th Bn. TSR (IR-VI) conducted the firing test on 25.08.2010 at TSR Center at R.K. Nagar and that was also informed to the concerned TSR Commandants. There is no dispute as Ms. A. S. Lodh, learned Addl. G.A. submits, that all the petitioners passed the final firing test. She has referred the following passage from Para-7 of the counter affidavit which reads as under:

"It is to be submitted here that personnel who had qualified their failed subject by attending in the final test held on 25.08.2010 could not be promoted to the rank of Havilder (GD) by way of direct promotion as one time relaxation for the purpose accorded by the State Government, Home Department vide dated 17.08.2009 had already been availed by giving direct promotion of 198 personnel on 01.06.2010."

[5] Ms. Lodh, learned Addl. G.A. appearing for the respondents has further submitted that the petitioners could not be promoted along with 198 successful candidates as they did not appear in the final firing test held on 10.08.2009 but subsequently the petitioner No.1 has been promoted to the post of Havilder (GD). Ms. Lodh, learned Addl. G.A. has submitted

that the petitioners namely, Arun Sarkar, Maniram Tripura and Jadhu Rn. Chakma appeared in the firing test held on 10.08.2010 but they could not succeed. Later on, they have been given opportunity to appear on 25.08.2010 and they cleared the firing test. Ms. Lodh, learned Addl. G.A has expressed her anguish as the petitioners have not revealed the fact which are relevant for adjudication of their right.

[6] At this juncture, Mr. C.S. Sinha, learned counsel has produced the copy of the promotion order whereby the petitioner No.1 namely, Shri Chandrahari Hrangkhal has been promoted to the post of Havilder (GD). It is apparent from the order dated 28.10.2011 that the petitioner No.1 has been promoted as the Havilder (GD) but the other petitioners have not been so promoted.

[7] For appreciating the submissions made by the learned counsel for the parties, this Court has also perused the order dated 17.08.2009, Annexure-R/1 to the counter affidavit filed by the respondents where it has been stated that vacant post of Havilder (GD) from amongst eligible Naik (GD), Lance Naik (GD) and Riflemen (GD) who fulfilled the criteria as already taken note of by this Court. Thus, the vacancies available in the Battalions of TSR were filled up by promotion to the rank of Havilder (GD). It is apparent that there were 313 vacancies and all 313 vacancies were earmarked for ST/SC candidates.

Therefore, even after filling up of 198 vacancies from the total vacancies of 313, there are 115 more vacancies left to be filled up by promotion in terms of the order dated 17.08.2009, Annexure-R/1 to the writ petition. Therefore, this Court is of the considered view that the reason so advanced by the respondents for not giving promotion to the petitioners is not tenable. Accordingly, the respondents are directed to appoint the petitioners on promotion w.e.f. 01.10.2010. However, since the petitioners did not assume the duty along with those persons who was appointed on promotion as the Havilder (GD) by the order dated 01.10.2010, they may not be entitled to actual financial benefit but their pay shall be fixed notionally, deeming their promotion to the post of Havilder (GD) w.e.f. 01.10.2010. But from this day, they would be entitled to get the actual financial benefits. The formal appointment letters be issued by the competent authority within a period of one month from the day when a copy of this judgment and order would be made available.

With this observation and direction, this writ petition stands allowed to the extent as indicated hereinabove.

There shall be no order as to costs.

JUDGE

Sujay