

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.132 of 2015

W.P.(C) No.324 of 2015

W.P.(C) No.340 of 2015

In W.P.(C) No.132 of 2015

Petitioner:

Shri Nani Gopal Chakraborty @ Sannyashi,
son of late Shailendra Chakraborty @
Sannyashi, village – Jogendra Nagar,
Agartala, P.O. Jogendranagar,
District – West Tripura

By Advocate :

Mr. B. Dutta, Advocate

- V E R S U S -

Respondents:

- 1. The State of Tripura,**
represented by the Secretary to the
Government of Tripura, Law
Department, having its office at New
Capital Complex, P.O. Kunjaban,
District – West Tripura, Agartala
- 2. The Deputy Secretary,**
Government of Tripura, Law
Department, having its office at New
Capital Complex, P.O. Kunjaban,
District – West Tripura, Agartala
- 3. The Joint Transport Commissioner,**
Office of the Joint Transport
Commissioner, Government of
Tripura, P.O. Agartala, District –
West Tripura, Agartala
- 4. Shri Samir Paul,**
son of Shri Nikhil Chandra Paul,
Town Pratapgarh, Master Para,
Howrah Natunpally, P.O. Agartala,
West Tripura

By Advocate :

Ms. A.S. Lodh, Addl. G.A.
Mr. K. Nath, Advocate

In W.P.(C) No.324 of 2015

Petitioner:

Shri Partha Deb,
son of late Milan Chandra Deb, village –
Brahmmabari, Udaipur, P.O. R.K. Nagar,
District – Gomati Tripura

By Advocate :

Mr. A. Lodh, Advocate

-V E R S U S-

Respondents:

- 1. The State of Tripura,**
represented by the Secretary to the
Government of Tripura, Revenue
Department, having its office at New
Capital Complex, P.O. Kunjaban,
District – West Tripura, Agartala
- 2. The District Magistrate & Collector,**
Gomati Tripura, having its office at
Udaipur, P.O. R.K. Pur, District –
Gomati Tripura
- 3. The District Magistrate & Collector,**
Dhalai District, Government of
Tripura, having its office at
Jawaharnagar, P.O. Ambassa,
District – Dhalai District
- 4. The Joint Transport Commissioner,**
Office of the Joint Transport
Commissioner, Government of
Tripura, P.O. Agartala, District –
West Tripura, Agartala
- 5. Shri Amiya Dey,**
son of late Ajit Dey, care of office of
the District Magistrate & Collector,
Dhalai District, P.O. Jawaharnagar,
Ambassa

6. **Shri Ratan Debnath,**
son of late Aosik Debnath, care of
office of the District Magistrate &
Collector, Dhalai District, P.O.
Jawaharnagar, Ambassa
7. **Shri Ratan Debbarma,**
son of late Madhu Mangal Debbarma,
care of office of the District
Magistrate & Collector, Dhalai
District, P.O. Jawaharnagar,
Ambassa

By Advocate :

Ms. A.S. Lodh, Addl. G.A.
Mr. D. Bhattacharji, Advocate

In W.P.(C) No.340 of 2015

Petitioner:

Shri Tapas Sarkar,
son of late Sukhen Sarkar, village –
Arundhutinagar, P.O. A.D. Nagar, P.S.
A.D. Nagar, District – West Tripura

By Advocate :

Mr. Somik Deb, Advocate

- V E R S U S -

Respondents:

1. **The State of Tripura,**
represented by the Principal
Secretary to the Government of
Tripura, Department of Revenue,
New Capital Complex, P.O.
Kunjaban, P.S. New Capital Complex,
West Tripura, Agartala
2. **The Principal Secretary,**
Department of Transport, New
Capital Complex, P.O. Kunjaban, P.S.
New Capital Complex, West Tripura,
Agartala
3. **The Principal Secretary,**

Department of Revenue, New Capital Complex, P.O. Kunjaban, P.S. New Capital Complex, West Tripura, Agartala

4. **The District Magistrate & Collector,**
West Tripura District, P.O. Agartala,
West Tripura
5. **Shri Amiyo Dey (Group-D, UR),**
Office of the District Magistrate &
Collector, Jawaharnagar, P.O.
Ambassa, Dhalai District
6. **Shri Ratan Debbarma (Group-D, UR),**
Office of the District Magistrate &
Collector, Jawaharnagar, P.O.
Ambassa, Dhalai District
7. **Shri Ratan Debnath (Group-D, UR),**
Office of the District Magistrate &
Collector, Jawaharnagar, P.O.
Ambassa, Dhalai District

By Advocate :

Mr. T.D. Majumder, G.A.
Mr. D. Bhattacharji, Advocate

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

Date of hearing : 23.09.2015
Date of delivery of
Judgment and order : **23.11.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

All these writ petitions being W.P.(C) No.132 of 2015 filed by Shri Nani Gopal Chakraborty @ Sannyashi, W.P.(C) No. 324 of 2015 filed by Shri Partha Deb and W.P.(C) No.340 filed by Shri Tapas Sarkar are taken up together for

the reason that to a larger extent the controversy as projected is fundamentally related to interpretation and mode of implementation of Rule 10 of the Tripura Government Vehicles Drivers Services Rules which was amended on 03.05.2011 incorporating that 30% of the vacancies arisen in a year shall be filled up by promotion from the regular Group- D employees having valid licence for driving vehicles. But there is variation in respect of fact and for which it would be essential to lay down briefly the relevant fact of each of the writ petition.

W.P.(C) No.132 of 2015

[2] In this writ petition, the petitioner, namely Sri Nani Gopal Chakraborty @ Sannyashi claimed to have been engaged as the DRW contingent Driver in the establishment of Legal Remembrancer and the Secretary, Law Department, Government of Tripura w.e.f. 01.09.1999 by the order dated 04.09.1999, Annexure-P/1 to the writ petition. He had been discharging the function of the driver regularly. Even his services were transferred to the Office of the District & Sessions Judge, South Tripura, Udaipur w.e.f. 07.12.2004. He was regularly appointed as the Group-D employee in the establishment of Legal Remembrancer and the Secretary, Law Department, Government of Tripura in the Scale of Pay of Rs.4,530-13,000/- with Grade Pay of Rs.1,200/- (PB-1) with other allowance as admissible from time to time by the memorandum dated 26.07.2011, Annexure-P/4 to the writ

petition. It appears from the order dated 26.07.2011, the petitioner joined as the Group-D employee in the LR's establishment and in the Law Department. A draft seniority list has been published by the memorandum dated 31.10.2011, Annexure-P/7 to the writ petition in respect of the Group-D employees of the LR's establishment. In the said list, the petitioner's name figures at serial No.13. In terms of the said draft seniority list, the final seniority list dated 28.11.2011, Annexure-P/8 to the writ petition was published. The petitioner's name was recommended along with one Samir Paul, the respondent No.4 herein, for practical test and interview for purpose of promotion to the post of Driver in terms of the said Rule 10. Both the petitioner and the respondent No.4 were found eligible for promotion to the post of Driver and according to the merit list against the department of Law, the respondent No.4 was above the petitioner in the merit position (see Annexure-P/10 to the writ petition). Accordingly, the respondent No.4 has been appointed to the post of Driver (Ex-cadre) Grade-III, Group-C under LR's establishment and the department of Law on regular basis in the scale of pay of Rs.5,310-24,000/- with Grade Pay of Rs.1,800/- in the Pay Band -2 with other allowance as admissible by the order dated 26.11.2013, Annexure-P/11 to the writ petition. The petitioner by means of this writ petition has challenged the said order of promotion dated 26.11.2013, Annexure-P/11 to the writ petition, contending that such

promotion is dehors the rule inasmuch as the promotion has to be made on seniority-cum-merit basis and for this purpose, the petitioner has referred a communication of the Transport Department dated 21.08.2013, Annexure-P/13 to the writ petition where it has been communicated to the Addl. Director, Directorate of Tribal Rehabilitation in Plantation and Particularly Vulnerable Tribal Group as under:

"Subject : Promotion of Regular Group-D employees to the post of Driver on seniority-cum-merit basis-clarification thereof.

Sir,

I am directed to refer your letter No.F.2-38/ESTT/TRP & PGT/86/1542 dated 05th July, 2013 and to inform you that as per Rule 10(b) (c) of the Tripura Government Drivers Services Rules, 1979, 30% of total posts of Drivers are to be filled up by promotion. So, promotion is to be given on the basis of seniority combined with merit.

Therefore, I am directed to request you to kindly take necessary action for giving promotion to the recommended Group-D employees to the post of Drivers on the basis of Seniority-cum-merit."

[3] By the memorandum dated 14.02.2014, it has been clarified that as per the provisions under Clause-10 (C) Tripura Government Drivers Services Rules, 1979 (7th Amendment), 30% of total posts of Drivers are to be filled up by promotion from regular Group- D employees having licence for driving the vehicles. As per Clause-10 (C) Tripura Government Drivers Services Rules, 1979 (7th Amendment), the Transport Department is authorized to take driving test and interview to assess the suitability of Group-D employees for promotion to the post of driver on the basis of the list as

forwarded from various departments. The Transport Department recommends the eligible Group-D employees to the respective departments out of the list so received for filling up the promotional posts of Drivers. It has been further clarified that the respective departments will give promotion to the post of driver on the basis of their *inter se* seniority and the merit list prepared by the Transport Department after obtaining roster verification from the Welfare of Scheduled Tribes and Scheduled Castes Departments and the seniority position of the selected candidates in the department. Hence, seniority-cum-merit is the determining factor in the selection process while giving promotion of Group-D employees to the post of Group-C drivers. The grievance of the petitioner is that his name was not duly considered while appointing the respondent No.4 by the impugned order dated 26.11.2013 and the respondent Nos.1 to 3 did not properly consider his representation dated 02.12.2013. The said representation was disposed of by a non-speaking order. The petitioner has assumed that the due process have not been followed and as such, on cancelling the said impugned order dated 26.11.2013, the official respondents be directed to reconvene the DPC to give the petitioner promotion to the post of the driver retrospectively. The promotion has to be given, according to the petitioner, on the seniority-cum-merit basis. The petitioner has also relied a decision of this Court in **Tapan Chandra Lodh and others vs. State of Tripura and others** [order

dated 07.03.2014 in W.P.(C) 100 of 2014] wherein it has been observed as under:

"This Court finds sufficient force in the submission of Mr. Datta Majumder, learned G.A. that since the post of driver is non-selection post, it is not the merit but the seniority shall be given preference over. Accordingly, the contention of Mr. Sinha, learned counsel for the petitioners is rejected by this Court.

However, it is made clear that until and unless this merit list as published vide memorandum dated 20.06.2013, Annexure-2 to the writ petition is exhausted no person shall be appointed from the subsequent merit list."

[4] The petitioner filed a representation on 12.01.2015 wherein he had asserted that the respondent No.4 was appointed in the Group-D post long after his appointment even in the seniority list dated 28.11.2011, the name of the respondent No.4 does not appear as he was not borne in the said cadre at the time of publishing the said seniority list. Hence, his consideration for promotion to the post of driver is entirely illegal and arbitrary.

[5] The respondents No.4 has filed the counter-affidavit contesting the claim of the petitioner and contending that:

"In respect to Draft Seniority List and Final Seniority List of Peon in LR's Establishment of Law Department, the respondent No.4 submits, that, the respondent's No.4 seniority ought to be determined by taking into account the period served by him as DRW before his regularisation. As the respondent No.4 before his regularization serving as contingent DRW Driver, in computing the seniority in the post of driver

during which he served as DRW Driver should be reckoned with."

The respondent No.4 has contended that the petitioner has been regularised most irregularly before he could complete 10 years of uninterrupted service as the DRW.

[6] Against the said counter-affidavit, the petitioner has filed a reply stating succinctly that there was no break in the service as his period of non-rendering service w.e.f. 17.10.2004 to 19.12.2007 was regularised without any financial benefit by the order dated 28.12.2010 and that benefit was granted with the concurrence of the Finance Department. As such, there was no break in his service as the DRW.

[7] Mr. B. Dutta, learned counsel has appeared for the petitioner and Ms. A.S. Lodh, learned counsel has appeared for the official respondents whereas Mr. K. Nath, learned counsel has appeared for the respondent No.4. It is to be noted that no paper has been placed on records and even no affidavit-in-opposition has been filed by the official respondents. From the statement made by the respondent No.4 it appears that unless the period of contingent service is added for purpose of counting seniority, the respondent No.4 cannot steal the march.

W.P.(C) No.324 of 2015

[8] In this writ petition, the petitioner, namely Sri Partha Deb claimed to have been regularised in the post of the Group-D in the District Administration, Gomati District by the memorandum dated 18.06.2008 w.e.f. 01.12.2007. His name was forwarded to the Transport Department for assessing his suitability for purpose of promotion to the post of driver. Even though the Transport Department has recommended the name of the petitioner by the memorandum dated 20.06.2013, Annexure-P/4 to the writ petition, the petitioner has not been appointed in the unreserved category of the driver, Grade-III but the respondents No.5 & 6 have been appointed. In terms of the draft seniority list as published by the competent authority, the final seniority list was published. The petitioner's name appears at serial No.587 in the final seniority list of Group-D employees of the District Administration (Revenue) as published by the memorandum No.F.9.(1-B)-DM/W/ESTT/ESTT/2006/2976-85 dated 21.08.2015 whereas the name of the respondent No.5 appears at serial No.557 and the respondent's No.6 name at serial No.605. Despite that and on ignoring the seniority position of the petitioner, the respondent No.6 has been appointed as the Driver by the respondent No.3 by means of the impugned memorandum dated 29.06.2013, Annexure-P/5 to the writ petition. The petitioner has also referred to the communication dated

21.08.2013 and the memorandum dated 14.02.2014 as referred above. Apart that, the petitioner has relied a decision of this Court in **Tapan Chandra Lodh and others vs. State of Tripura and others** [order dated 07.03.2014 in W.P.(C) 100 of 2014] and also the decision of **Tapan Chandra Lodh and others vs. State of Tripura and others**, judgment and order dated **24.06.2015** in **W.A. No.53 of 2014** where while affirming the order dated 07.03.2014 delivered in W.P.(C) No.100 of 2014, a Division Bench of this Court has observed that the intention of the State was that the test is to be held in regard to sub Rule (C) of the said Rule only to asses the suitability of the candidate and once a candidate is found suitable then there would be no utility of the merit list, he would be promoted in the order of the seniority position in the lower grade. It has been also observed as under :

"Therefore, we find no merit in this appeal which is accordingly rejected. We also uphold the direction of the learned Single Judge that the select list of Group-D employees found suitable shall remain valid till it is totally exhausted. Only thereafter fresh recruitment of driver by promotion from Group-D employees shall be started. It is, however, made clear that since we have given this interpretation to the Rules, the State shall follow this interpretation in all the departments and will not follow any other system in any other case.

[9] Mr. A. Lodh, learned counsel appearing for the petitioner has submitted quite emphatically that the appointment of the respondent No.6 is entirely illegal and in contrast to the law enunciated by this Court.

[10] Ms. A. S. Lodh, learned Addl. G.A. has appeared for the official respondents and produced the finally published seniority list as referred whereas Mr. D. Bhattacharji, learned counsel has appeared for the respondents No.5,6 & 7. It is to be noted here that the respondent No.7 has got the promotion as the ST candidate and as such, the petitioner being a candidate from the unreserved category cannot challenge his appointments.

[11] The records as produced have not been challenged by either of the parties. It has not been also reported that there is any issue as to the seniority positions as reflected in the final seniority list as referred.

W.P.(C) No.340 of 2015

[12] In this writ petition, the petitioner, namely Sri Tapas Sarkar claimed to have been regularly appointed in the post of the Group-D in the District Administration, West Tripura District by the order dated 21.08.1997 in the scale of pay of Rs.775-1130/-. His name was forwarded to the Transport Department for assessing his suitability for purpose of promotion to the post of driver and the petitioner was found suitable by the Transport Department and his suitability was communicated to the DM & Collector, West Tripura, Agartala by the memorandum dated 20.06.2013, Annexure-R/3 to the counter affidavit filed by the respondents No.1 to 4. From the

final seniority list as produced before this Court published for the Group-D employees working under the District Administration (Revenue), it appears that the seniority position of the petitioner is at serial No.383 whereas the seniority position of the respondent No.5 is at serial No.557, the respondent No.6 is at serial No.603 and of respondent No.7 is at serial No.605. Despite that the petitioner has not been appointed as the driver on promotion. Rather, the respondents Nos.5 & 7 have been appointed to the post of the driver superseding the petitioner and hence, the petitioner has challenged the order dated 08.08.2014, Annexure-R/1 to the counter affidavit filed by the official respondents.

[13] The official respondents and the respondents No.5,6 & 7 have filed separate counter affidavits. The official respondents on the face of the challenge have categorically stated that the Transport Department has recommended the name of the petitioner for consideration of promotion. On the point of supersession, those respondents have stated in Para-13 of their counter affidavit as under:

"It is evident that on receipt of recommended list of eligible group-D employees from Transport Department for promotion like West District. The Dhalai District has considered promotion of 3(three) officials under Group-D category who are junior to the petitioner without maintaining the process of DPC that caused serious dislocation in considering promotion of recommended Group- D employees under the Revenue Department by holding DPC wherein the petitioner may got a chance of consideration."

[14] In the counter affidavit filed by the respondents No.5,6 & 7 they have simply stated that since the eligibility test was not carried out together, the performance of the petitioner cannot be considered along with the performance of those private respondents. That assertion is of no value in view of the well laid procedure by the Rule 10 (C) read with the interpretation provided by the judgment of this Court as referred above.

[15] Mr. Somik Deb, learned counsel has appeared for the petitioner whereas Mr. T.D. Majumder, learned G.A. has appeared for the official respondents and Mr. D. Bhattacharji, learned counsel has appeared for the respondents No.5,6 & 7.

[16] As agreed by the learned counsel appearing for the parties, these writ petitions have been taken for disposal at this stage inasmuch as a very small issue has fallen for decision by this Court.

[17] Having appreciated the records and the submission made by the learned counsel for the parties, this Court finds that there had been substantial breach of procedure in making promotion to the post of driver in terms of Rule 10 (C) of Tripura Government Drivers Services Rules, 1979. It transpires that for purpose of promotion the seniority amongst the suitable Group-D employees, as determined by the Transport Department, was not given its due weightage.

This Court has unambiguously laid down that it is more than amply obvious that the intention of the State was that the test to be held in regard to Sub Rule (C) was only a test to assess the suitability of the candidate and once a candidate is found suitable then there would be no question going by the merit list. He has to be promoted in the order of the seniority enjoyed in the lower grade. It has been also observed that the said interpretation shall be followed by all the departments and they will not follow any other system. It is apparent that in W.P.(C) No.132 of 2015 by the impugned order dated 26.11.2013, Annexure-P/11 to the writ petition, the respondent No.4 has been appointed on promotion to the post of driver in supersession of the petitioner who is admittedly senior to the respondent No.4. It is also on record that unless the contingent service of the respondent No.4 is counted towards seniority in the regular Group- D post, he would not be senior to the petitioner. As regards the objection that the petitioner's contingent service was interrupted, it is to be noted that the said respondent did not contest the order under No.F.3(26)-LAW/E-3/09 dated 28.12.2010, whereby the petitioner's non-rendering service w.e.f. 17.10.2004 to 19.12.2007 had been regularised without any financial benefit. The contingent service either of the petitioner or of the respondent No.4 cannot be counted for purpose of seniority as under a policy of the Government they have been regularised with a particular date. The seniority according to the rule has

to be counted from the day of regular appointment as the Group-D employee not from any other day, unless the competent authority changed their policy in this regard. As such, by superseding the petitioner the official respondents have acted illegally and hence, the impugned order dated 26.11.2013, Annexure-P/11 to the writ petition, whereby the respondent No.4 has been appointed on promotion to the post of driver has been made cannot stand the scrutiny and accordingly, the said order dated 26.11.2013 is set aside and quashed. The DPC shall be re-convened for making recommendation on considering the petitioner's case for appointment on promotion to the post of driver having regard to the law as enunciated by this Court. It is further directed that the entire exercise of reconvening the DPC and making appointment on promotion to the post of driver shall be completed within a period of three months from today. The seniority list and the recommendation made by the Transport Department shall be the basis for such recommendation by the DPC. It is made clear that the rule has been interpreted that if a Group-D employee having the valid driving licence is found suitable by the Transport Department, he shall be appointed on the basis of the seniority position alone.

[18] In W.P.(C) No.324 of 2015, it is apparent on the face of records that the respondent No.6 even though junior to the petitioner in terms of the final seniority list he has been

appointed as the driver on promotion by the impugned memorandum dated 29.06.2013. So far the appointment of the respondent No.7 to the post of driver on promotion is concerned, the challenge by the petitioner does not hold any substance inasmuch as the respondent No.7 was appointed as the Scheduled Tribe candidate. In view of the provisions of Rule 10(C) of Tripura Government Drivers Services Rules, 1979 and interpretation thereof made by this Court, the memorandum dated 29.06.2013 so far the appointment of the respondent No.6 is concerned cannot survive the scrutiny and hence, his appointment is interfered with and accordingly set aside. The DPC shall be re-convened for making recommendation on considering the petitioner's case for appointment on promotion to the post of driver having regard to the law as enunciated by this Court. It is further directed that the entire exercise of reconvening the DPC and making appointment on promotion to the post of driver shall be completed within a period of three months from today. The seniority list and the recommendation made by the Transport Department shall be the basis for such recommendation by the DPC. It is made clear that the rule has been interpreted that if a Group-D employee having the valid driving licence is found suitable by the Transport Department, he shall be appointed on the basis of the seniority position alone.

[19] In W.P.(C) No.340 of 2015, the official respondents have admitted substantive breach of procedure while appointing the respondents No.5 & 7. They have categorically contended that the Dhalai District has considered promotion of three officials under Group-D category who are junior to the petitioner without maintaining the process of the DPC and that caused serious dislocation in considering the promotion of the recommended Group-D employees under the Revenue Department. The petitioner might get a chance of promotion. As such, the impugned memorandum dated 08.08.2014, Annexure-R/1 is interfered with and set aside. The DPC shall be re-convened for making recommendation on considering the petitioner's case for appointment on promotion to the post of driver having regard to the law as enunciated by this Court. It is further directed that the entire exercise of reconvening the DPC and making appointment on promotion to the post of driver shall be completed within a period of three months from today. The seniority list and the recommendation made by the Transport Department shall be the basis for such recommendation by the DPC. It is made clear that the rule has been interpreted that if a Group-D employee having the valid driving licence is found suitable by the Transport Department, he shall be appointed on the basis of the seniority position alone.

[20] Having regard to the cumulative effect of the directions made hereinabove, the official respondents or the reconvened DPC is given liberty to adjust the recommendation vis-à-vis the persons whose appointments have not been interfered with. The appointments after having recommendation from the DPC shall be made from the day when the impugned orders of appointment on promotion to post of the driver were made. The persons whose appointments have been made irregularly or illegally may be accommodated in the vacancies that would be available or would fall vacant subsequently in view of the decision of this Court that until and unless the list containing the suitable persons is exhausted no person shall be appointed from the subsequent selection process as may be conducted by the Transport Department.

Accordingly, the writ petitions are allowed to the extent as indicated above, leaving the parties to bear their own costs.

JUDGE

Sujay