

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 523 OF 2012

Shri Santi Gopal Choudhuri,
son of late Manindra Chandra Choudhuri,
Dhaleswar, Road No.2, P.O. Dhaleswar,
P.S. East Agartala, Agartala, Tripura West,
PIN- 799007

..... Petitioner

- Vs -

1. The State of Tripura
(To be represented by the Principal Secretary,
Department of Industries and Commerce,
Government of Tripura, New Secretariat Building,
New Capital Complex, P.O. Agartala, Agartala,
West Tripura, PIN- 799001)
2. The Director,
Department of Industries and Commerce,
Khejur Bagan, (Near Ginger Hotel)
P.O. Kunjaban, Agartala, West Tripura,
PIN- 799006
3. Tripura Public Service Commission
(To be represented by the Secretary, Tripura
Public Service Commission, Akhaura Road,
P.O. Agartala, P.S. West Agartala, West Tripura,
PIN- 799001)
4. Shri Samir Gupta,
Manager(M&E) District Industries Centre,
Near Ginger Hotel, P.O. Kunjaban, Agartala,
West Tripura, PIN- 799006

..... Respondents

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

For the petitioner	:	Mr. S. Deb, Senior Advocate Mr. Samarjit Bhattacharji, Advocate
For the respondents	:	Ms. A.S. Lodh, Addl. Govt. Advocate Mr. P. Datta, Advocate

Date of judgment & order : 02.12.2015

Whether fit for reporting : No

JUDGMENT & ORDER (ORAL)

Heard Mr. S. Deb, learned Senior Counsel assisted by Mr. Samarjit Bhattacharjee, learned counsel appearing for the petitioner as well as Ms. A.S. Lodh, learned Additional Government Advocate appearing for the respondents No. 1 and 2 and Mr. P. Datta, learned counsel appearing for the respondent No.3. None appears for the respondent No.4, even though he has filed the counter affidavit after entering in the appearance.

2. By means of this writ petition, the petitioner who has been working as the Manager (M&RM) under the Department of Industries and Commerce has challenged the final combined seniority list of the Manager/Dy. Director of Industries and Commerce as on 31.08.2012, published under Memorandum No. F.DI/ESTT/GTD/II-16/2011/18531-42 dated 31.10.2012 (Annexure-P/12 to the writ petition) and also the order under No. F.DI/ESTT/II-16/2011/1848 dated 30.10.2012 (Annexure-P/10 to the writ petition).

3. The petitioner's case in short is that in the same selection process the comparative merit of the petitioner and the respondent No.4 along with others were assessed for purpose of bringing them on deputation to the post of

Manager(M&RM), Manager(EIRET) and Manager(KVI/RAP). Both the petitioner and the respondent No.4 were assessed Grade-A, but the selection committee having due regard to their qualification, experience and performance placed the petitioner above the respondent No.4. In this regard Para-7 of the Selection Committee's minutes available at Annexure-P/9 may be reproduced:

"Therefore, keeping in mind the Vacancy position as per 100 - Point Roster and considering the grading awarded by the Selection Committee for the post of Manager(KVI/RAP), Shri Nikhil Sarkar, against R.P. No.5(SC) as a single candidate is selected. And as per grading awarded by the Selection Committee, the name of Shri Santi Gopal Choudhury may come up. But it appears Shri Choudhury has applied for the post of Manager(EIRET/M&RM), but vacant post is available against R.P. No. 7 U.R. is Manager(M&E). Therefore, as per grading, the next name of Shri Samir Gupta may be considered for the post of Manager(M&E)."

4. As there was no vacancy for the post of Manager(M&RM) or the Manager(EIRET) the petitioner could not be brought on deputation. It transpires further that, when the post of Manager(M&RM) was dereserved, the petitioner was brought on deputation with effect from 05.12.2002. It is to be noted here that both the petitioner and the respondent No.4 were initially appointed on deputation but indisputably they were absorbed as per the recommendation of the D.P.C in the respective posts from 05.12.2002 and 01.11.2012 the date of their appointments on deputation.

5. When the respondent No.2, the Director of Industries and Commerce published a combined Draft Seniority list by the memorandum dated 03.09.2012 (Annexure-P/6 to the writ petition), the petitioner raised an objection contending that since the petitioner and the respondent No.4 were selected by the same Selection Process, the said merit position has to be maintained in the seniority list. The said objection dated 14.09.2011, Annexure-P/7 to the writ petition, was disposed by the respondent No.2 by the order dated 30.10.2012, Annexure-P/10 to the writ petition.

6. On examination of the records, the said objection was disposed on observing that the petitioner cannot be placed above the respondent No.4. The reasons assigned for such decision are as under :

"The matter has been carefully examined with reference to the records on this issue. The sequence of events appears to be as follows:

2. a) The Director of Industries & Commerce had some vacant posts in the Grade of Manager against promotion quota. These were different functional posts like Manager(KVI/RAP), Manager(M&E), Manager(EIRET), etc. In the UR category to which Sri Choudhury belongs, there were initially 3 vacancies, out of which 2 had been filled up and only one post of Manager(M&E) was left vacant.

b) Since there were no eligible officers available in the feeder grade and the Directorate was suffering administratively due to shortage of officers, it was decided to fill up the vacant posts by taking officers on deputation for 3 years. Both Sri Samir Gupta and Sri Santi Gopal Choudhury applied for the vacant post in UR Category. In addition, there were candidates under Reserved Quota as well. Total 9 candidates applied for

joining the Directorate on deputation against 6 vacant posts.

c) The Selection Committee held its meeting on 21.07.2001 and decided to categorize the 9 candidates into 3 grades/categories, namely, Grade-A, Grade-B and Grade-C. Grade-A was to be given highest priority for taking the officers on deputation. Grade-B was to serve as waiting list panel and Grade-C candidates were to be rejected outright. Both Shri Gupta and Shri Choudhury were put in Grade-A. It is seen from the Minutes of the Selection Committee that the Committee simply categorized the officers in A, B & C categories. No marks were given as such and there is no mention of any inter-se seniority between candidates in a particular Grade/Group. Thus, the Committee did not decide any inter-se seniority between Shri Gupta and Shri Choudhury. The Committee Meeting Minutes further mentioned that at the time of meeting, since the vacancy is in the post of Manager (M&E) and Sri Santi Gopal Choudhury has applied for the post of Manager (EIRET/M&RM), Sri Choudhury cannot be considered and that Sri Samir Gupta who had applied for the post of Manager (M&E) may be taken on deputation against the vacant post. Thus, the decision to prefer Sri Samir Gupta over Choudhury was taken on the basis of availability of posts and not on the basis of any inter-se seniority in the selection panel. Shri Samir Gupta joined the Directorate on deputation on 01.11.2001.

3. It is further seen that since a number of SC/ST posts were left vacant, the Department later on initiated a proposal for temporary de-reservation of these posts for 3 years, so that general category officers could be taken on deputation for a limited period to meet the administrative requirements of the Directorate till the time SC/ST candidates become available. After obtaining approval for such temporary dereservation, Sri Santi Gopal Choudhury was taken on deputation and he joined on 05.12.2002 on deputation.

4. Later on, since there were no officers in the feeder grade to fill up the posts of Manager for next few years and the Department would have suffered if the officers taken on deputation were allowed to go back; it was decided to move a proposal for permanent absorption of the officers taken on deputation. There was no objection from the feeder grade because it was affecting anyone adversely. Accordingly, the proposal was moved to TPSC and the TPSC held a DPC meeting on 25.10.2005 and recommended 3 officers who

are on deputation for permanent absorption in the Directorate w.e.f. the dates on which they had joined the Directorate on deputation. Accordingly, Sri Samir Gupta(UR) was absorbed w.e.f. 01.11.2001 and Sri Santi Gopal Choudhury was absorbed w.e.f. 05.12.2002. Thus, Sri Samir Gupta is placed as senior to Sri Choudhury in the seniority list.

5. Here, it is also stated that as per the guideline mentioned in the 'Swamy's complete Manual on Establishment and Administration' the seniority of absorbees is determined as below :

"The relative seniority of persons appointed by absorption to a Central service from the Subordinate Offices of the Central Government or other departments of the Central or a State Government shall be determined in accordance with the order of their selection for such absorption".

6. From the above, it is clear that the seniority of Sri Santi Gopal Choudhury in the draft seniority list of Manager/Dy. Director of Industries has been correctly fixed at SI No.2 below Sri Samir Gupta(SI. No.1). With this, the objection of Sri Choudhury stands disposed of."

[Emphasis supplied]

The observation that there was no mention in the DPC minutes as to the inter se seniority is not wholly correct as the inter se position of the petitioner and the respondent No.4 had been determined. Finally, in terms of the said order dated 30.10.2012, the seniority list has been finalised and published by the memorandum dated 31.10.2012, Annexure-P/12 to the writ petition.

7. Mr. S. Deb, learned Senior Counsel appearing for the petitioner has submitted that the petitioner was assessed for the post of Manager(EIRET) and Manager(M&RM) and the respondent No.4 was assessed for the post of Manager(M&E). Since the panel continued for appointment of the petitioner in

the post of Manager(M&RM) the merit position as determined by the Selection Committee cannot be ignored while publishing the seniority list. As such the reasoning so offered by the respondent No.2 in his order dated 31.10.2012 (Annexure-P/10 to the writ petition) cannot be sustained and as such, both the order dated 30.10.2012 and the consequential final Seniority List published by the memorandum dated 30.10.2012, Annexures P/10 and P/12 respectively are liable to be interfered with.

8. From the other side, Ms. A.S. Lodh, learned Additional Government Advocate while defending the reasons given by the respondent No.2 in the order dated 30.10.2010, has submitted that the relative seniority of the person appointed by absorption can only be determined in accordance with the order of their selection and by no other means and that principle is well - recognised in the service jurisprudence.

9. Having regard to the rival contention so projected by the learned counsel for the parties, this court has occasion to scrutinize the records showing available vacancies at that relevant time in the different posts of Managers.

10. In Para 5 of the minutes, the selection committee has observed as under :

"Thus, there are total 3 UR, 2 ST and 2 SC Posts. Further, out of 3 UR Posts, 2 UR Posts have already been filled up on deputation, by Shri A. Datta and Shri U.K. Sarkar. Hence, presently only one more UR candidate can be taken".

Finally, they have observed that as per grading awarded by the selection committee, the name of the petitioner may come above the respondent No.4. But the petitioner applied for the post of Manager (EIRET/M&RM). The vacant post that was available against the roster point No.7 for UR Category is the post of Manager(M&E) for which the petitioner did not apply. As such, the Selection Committee recommended the name of the respondent No.4. That Selection of the respondent No.4 on 01.11.2001 in the post of the Manager(M&E) on deputation at the first instance and thereafter the absorption of the respondent No.4 on the said post from the date of deputation was never questioned by the petitioner till the draft seniority list was published notwithstanding that every bit of the fact was within his knowledge.

11. The petitioner even in this writ petition has not challenged the premise that at that point of time there was no post of Manager (EIRET) or the Manager (M & RM) vacant for the UR category. As such, there had been no scope for the respondent Nos.1 and 2 to appoint the petitioner on deputation in that post. However, the post for which the respondent No.4 had applied was available. Accordingly, he was appointed as the Manager (M & E) on deputation with effect from 01.11.2001. He was also absorbed in the said post later on from the date of his appointment on deputation.

12. The respondents, without resorting to the further selection process for the reasons best known to them, accommodated the petitioner in the subsequent vacancy arising for dereservation in the post of Manager(M&RM). The petitioner was also absorbed in the post of Manager (M&RM) from the date of his appointment on deputation i.e. on 05.12.2002. When there was no vacancy for the post for which the petitioner had applied and he was appointed on deputation in the vacancies which arose subsequently, the comparative merit position between the petitioner and the respondent No.4 became stale for all purposes. It cannot be utilised for determining inter se seniority between two incumbents who were appointed by the two distinct appointment exercises. The reasons so given by the respondent No.2, that the seniority in such circumstances has to be determined by the date of absorption only cannot therefore be faulted with. Moreover, the petitioner has allowed the position to get settled by efflux of time. Now the petitioner cannot even be allowed to question the appointment of the respondent No.4. As such the comparative merit as determined in the selection process held in the year 2007 cannot have any impact for determination of the seniority for the post of Manager (M & RM) and Manager (M & E) in this context.

13. This writ petition is bereft of merit and accordingly, the same is dismissed. However, in the circumstances of the case, there shall be no order as to costs.

JUDGE

Sabyasachi B