

IN THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) 459 OF 2014

Sri Chittaranjan Saha,
son of late Chandra Kisore Saha,
of Bhattapukur, Kalitilla, P.O. A.D. Nagar,
P.S. East Agartala, District : West Tripura,
presently posted at Central Work Shop,
TRTC Barjala, District : West Tripura,
as Gr-C employee

..... Petitioner

- Vs -

1. Tripura Road Transport Corporation,
(A Govt. Of Tripura undertaking)
represented by its Chairman,
having its office at Krishnanagar,
P.O. Agartala, P.S. West Agartala,
District : West Tripura
2. The Managing Director,
Tripura Road Transport Corporation,
(a Govt. of Tripura undertaking),
having its office at Krishnanagar,
P.O. Agartala, P.S. West Agartala
District : West Tripura

.....Respondents

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

For the petitioner : Ms. R. Purakayastha, Advocate

For the respondents : Mr. P. Dutta, Advocate

Date of hearing,
judgment & order : 23.09.2015

Whether fit for reporting :

Yes	No
	✓

JUDGMENT & ORDER (ORAL)

Heard Ms. R. Purakayastha, learned counsel appearing for the petitioner as well as Mr. P. Dutta, learned standing counsel for the Tripura Road Transport Corporation-respondents.

[2] The petitioner since was not promoted to the post of Assistant Mechanic when his juniors were promoted, has filed this writ petition praying a writ directing the respondents to give him promotion to the post of Assistant Mechanic with effect from 05.10.2013 when his juniors namely Sri Moloy Bhusan Dey, Sri Babul Kr. Singh, Sri. Shymal Ch. Deb and Sri Manik Lal Sutradhar were appointed by the order dated 05.10.2013 (Annexure-D to the writ petition).

[3] It is an admitted position that as per the seniority list published by the respondent No.1, the petitioner's seniority position is at Serial No.15 as on 30.11.2009 whereas the seniority position of those Helpers who have been promoted by the order dated 05.10.2013 are below him.

[4] Ms. R. Purakayastha, learned counsel appearing for the petitioner has vehemently urged before this court that even the petitioner was not considered by the concerned Departmental Promotion Committee of the respondents and he has been left out most arbitrarily and in serious breach of

the Rules. According to her, the post of Assistant Mechanic is a non-selection post and promotion was made from the feeder post of the Helper on the basis of the seniority, subject to fitness. Finally, Ms. R. Purakayastha, learned counsel appearing for the petitioner has submitted that non-consideration of the petitioner for promotion to the post of Assistant Mechanic during the exercise, which has culminated in the order dated 05.10.2013. It is ex-facie an arbitrary action, which requires intervention by this court.

[5] Appearing for the respondents, Mr. P. Dutta, learned counsel has seriously refuted such submission would contended that for such non-consideration, none but the petitioner has to be blamed. When that process was going on the petitioner insisted that he should be treated as Group-D employee so that he can avail the superannuation age of 60 years, which was only for the Group-D employees at that time. Mr. P. Dutta learned counsel has pointed out that the age of superannuation for the Group-C employee then was 58 years. He has further submitted that by virtue of the judgment and order dated 22.07.2013 delivered in WP(C) No. 141 of 2012 and others, the petitioner has been treated as Group-C employee. Even if the petitioner is now treated now as the Group-C employee, in view of the change in the policy of the Corporation, he would be allowed to continue in the service till

he attains the age of 60 years, which is now the age of superannuation for all categories of employees. According to Mr. Dutta, learned counsel appearing for the respondents, the petitioner did not raise any objection when by the order dated 05.10.2013 his juniors were promoted and as such that position has now become crystallized by efflux of time and the petitioner cannot be allowed to destabilise that settled position. He has further submitted that on due consideration of the service records, the juniors of the petitioner were given promotion on 05.10.2013.

[6] Having due regard to the submission made by the learned counsel appearing for the parties and on appreciating the records available with the writ petition and the counter affidavit, this court does not find the answer to the question, what prevented the respondents to consider the promotion of the petitioner along with the juniors, as stated. It was the duty of the respondents to consider the petitioner if he was within the zone of consideration for promotion to the post of Assistant Mechanic. The perspective of denial as referred by Mr. P. Dutta learned counsel, in the considered opinion of this court, cannot held adequate reason to exclude the petitioner from the zone of consideration. Hence, this court is inclined to accept the submission of Ms. R. Purakayastha, learned counsel that exclusion of the petitioner from the zone of consideration

was absolutely arbitrary and that cannot be sustained in as much as it is in contrary to the provisions of Article 14 and 16 of the Constitution of India.

[7] Having observed thus, the respondents are directed to reconvene the DPC and to assess whether the petitioner is suitable to be promoted to the post of Assistant Mechanic in the scale of pay of Rs. 5,310-Rs.24,000/- with the grade pay of Rs.1800-2000-2100-2400/- and other allowances with effect from 05.10.2013.

[8] If it is found that the petitioner was fit for promotion with effect from 05.10.2013, the petitioner shall be promoted accordingly. Since the petitioner has approached this court belatedly, the pecuniary benefits would be restricted from the date of the judgment. However, the pay of the petitioner, if he is found suitable for promotion, would be fixed notionally from 05.10.2013, when his juniors were promoted as the Assistant Mechanic. The exercise of considering the petitioner's suitability in the manner as stated shall be completed within a period of 3 (three) months from today and the outcome shall be communicated to the petitioner immediately thereafter.

[9] With this observation and direction this writ petition stands allowed to the extent as indicated above.

There shall be no order as to cost.

JUDGE

Sabyasachi B