HIGH COURT OF TRIPURA
AGARTALA

1. WP(C) No.868/2019

Sri Jaharlal Das, S/O. Sri Dhirendra Chandra Das, R/O. Vill.-Tufania Lunga, P.O. Tebaria, P.S. Airport, District-West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director General of Police, Government of Tripura, Akhaura Road, P.O. Agartala, P.S. West Agartala, District:-West Tripura.

3. The Secretary, Finance Department, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

-----Respondent(s)

Connected with

2. WP(C) No.869/2019

Sri Arun Kumar Das, S/O. Late Anil Chandra Das, R/O. Vill. & P.O.-Karilong, P.S. Teliamura, District-Khowai.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director General of Police, Government of Tripura, Akhaura Road, P.O. Agartala, P.S. West Agartala, District:-West Tripura.

3. The Secretary, Finance Department, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

-----Respondent(s)

3. WP(C) No.870/2019

Sri Sumit Das, S/O. Late Nilmani Das, R/O. Vill.-Pelku Jote, P.O. Ranidanga, P.S. Matigara, District-Darjeeling, West Bengal.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director General of Police, Government of Tripura, Akhaura Road, P.O. Agartala, P.S. West Agartala, District:-West Tripura.

3. The Secretary, Finance Department, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

-----Respondent(s)

4. WP(C) No.871/2019

Sri Ranjit Debnath, S/O. Sri Narayan Debnath, R/O. Vill.-Dhajanagar, P.O. Gokulnagar, P.S. R.K. Pur, District-Gomati Tripura.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director General of Police, Government of Tripura, Akhaura Road, P.O. Agartala, P.S. West Agartala, District:-West Tripura.

3. The Secretary, Finance Department, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

-----Respondent(s)

5. WP(C) No.1052/2019

Sri Jayanta Kumar Chakraborty, S/O. Late Bibhuti Bhushan Chakraborty, R/O. Vill.-Dukli, P.O. Madhuban, P.S. A.D. Nagar, District-West Tripura.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director General of Police, Government of Tripura, Akhaura Road, P.O. Agartala, P.S. West Agartala, District:-West Tripura.

3. The Secretary, Finance Department, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

-----Respondent(s)

6. WP(C) No.1087/2019

Sri Swapan Das, S/O. Late Nepal Chandra Das, R/O. Vill.-1st Battalion, New Quarter Complex, Type III-1(A), P.O. Gokulnagar, P.S. Sepahijala, District-Sepahijala.

----Petitioner(s)

Versus

1. The State of Tripura, represented by its Secretary-cum-Commissioner, Department of Home, Government of Tripura, New Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

2. The Director General of Police, Government of Tripura, Akhaura Road, P.O. Agartala, P.S. West Agartala, District:-West Tripura.

3. The Secretary, Finance Department, Government of Tripura, P.O. Kunjaban, P.S. New Capital Complex, District-West Tripura.

-----Respondent(s)

For Petitioner(s) : Mr. Arijit Bhowmik, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

Date of hearing and judgment: **5th March, 2020**.

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

These petitions involve similar issues. Facts may be noted in brief:

2. In WP(C) No.868 of 2019, WP(C) No.869 of 2019, WP(C) No.870 of 2019 and WP(C) No.871 of 2019, the material facts are common. We may record them from WP(C) No.868 of 2019 filed by one Sri Jaharlal Das. He was appointed as Havildar (General Duty) in the Tripura State Rifles on 29.01.2000. He was promoted to the post of Naib Subedar (GD) on 14.03.2006. He was imparted special training of Motor Transport Officer of three months between 30.08.2010 to 13.11.2010. He was eligible for being appointed to the post of Naib Subedar (Motor Transport Officer) in terms of Rule 33 of Tripura State Rifles (Recruitment) Rules, 1984 (the Rules, for short). He was appointed to the said post of Naib Subedar (MTO) on

transfer on 12.03.2011. Facts of other three petitions in this group are similar though the dates of appointments and promotions may vary.

3. Case of these petitioners is that there are no further promotional avenues from the post of Naib Subedar (MTO) whereas from the post of Naib Subedar (GD) promotion is provided to the next higher post of Subedar (GD). These petitioners have in their entire service career received only one promotion. There is no further promotional avenue in the stream of Naib Subedar (MTO). They had, therefore, filed the said petitions with a prayer for direction to the respondents to create promotional posts so as to provide promotional avenues to them. Pending these petitions, the respondents passed an order dated 21.12.2019 posting all these petitioners back to their original post of Naib Subedar (GD). This order itself, as can be seen from the following portion, was passed in order to redress the grievances of the petitioners of non-availability of any further promotional avenues from the stream of Naib Subedar (MTO):

> "AND WHEREAS, the above mentioned personnel filed requests for providing them promotional avenues beyond the post of Nb/Subedar (MTO) and subsequently filed writ petitions before the Hon'ble High Court Tripura seeking creation of promotional avenues for them in the Motor Transport Wing.
>
> AND WHEREAS, subsequent to their filing of the writ petitions, the issue was again re-examined in-depth at PHQ. After re-examination, it has been

decided that their grievance has to be redressed by way of providing them with adequate promotional avenues for their career growth.

AND WHEREAS, these personnel were directly recruited in the General Duty Trade from where they were appointed by way of transfer to the Motor Transport Platoon. As per the existing RRs, a personnel in the Motor Transport Platoon cannot be promoted beyond Naib Subedar (MTO). However, adequate promotional avenues for them exist in the General Duty Trade in which they were initially recruited to. In the General Duty, these personnel can be considered for promotion as per seniority and merit under the existing rules.

NOW THEREFORE, in order to redress their grievance, the above mentioned personnel are hereby transferred as Nb/Subedar (GD) and posted in the Battalion mentioned against their name. They would now be eligible for all promotional avenues applicable as per rules. Their original seniority in the General Duty Trade at the time of their appointment by way of transfer to Motor Transport Platoon shall be restored and the same shall not be affected only due to the reason that they had served in the Motor Transport Platoon as Nb Sub (MTO)."

4. The petitioners amended their petitions and challenged the said order dated 21.12.2019 also. By an order dated 17.01.2020 in separate applications filed by the petitioners, the said order was stayed.

5. In WP(C) No.1052 of 2019 and WP(C) No.1087 of 2019 facts are slightly different which may be recorded from WP(C)

No.1052 of 2019 filed by one Sri Jayanta Kr. Chakraborty. Unlike the other petitions of Sri Jaharlal Das and his colleagues, he was appointed to the post of Havildar (Auto Technician) and thereafter he was promoted to the post of Naib Subedar (MTO). The grievances of these two petitioners are limited to non-availability of promotional avenues from the post of Naib Subedar (MTO).

6. Learned counsel for the petitioners submitted that as held by Supreme Court in case of ***State of Tripura and others vrs. K.K. Roy*** reported in ***(2004) 9 SCC 65*** the Government must provide at least two promotional avenues during the service span of an employee. He relied on a decision of learned Single Judge of this Court in ***WP(C) No.199 of 2011*** dated 27.01.2017 in case of ***Shri Asok Bhattacharya and others vrs. The State of Tripura and others***. In the said judgment, however, the learned Single Judge had merely left to the discretion of the Government whether further promotional avenues from the post of Naib Subedar (Stenographer) should be created.

7. Counsel submitted that in any case in case of Jaharlal Das and his other colleagues the department was completely wrong in shifting them to the post of Naib Subedar (GD). He pointed out that these petitioners had acquired special training, were brought to the cadre of Naib Subedar (MTO) on transfer. They have been discharging such duties from the year 2011. Their names are shown in the gradation list for the post of Naib Subedar (MTO). In the list

of eligible officials in the cadre of Naib Subedar (GD) for promotion to the next higher post their names are not shown.

8. On the other hand, learned Addl. Government Advocate submitted that the proposal for creation of promotional posts from the feeder cadre of Naib Subedar (MTO) is under active consideration of the Government. He, however, submitted that as of now such promotional posts would be made available only to Naib Subedar (MTO) who have been promoted from the lower post of Havildar (Auto Technician).

9. In the context of providing promotional avenues, no directions can be issued for creation of posts. The creation of posts and pay scales that may be attached to such promotional posts are essentially for the administration to consider. Such considerations would depend on range of factors such as, the availability of work, interest of administration, financial burden etc. The Court would not venture into examination of such complex factors and would always leave it to the administration to do the same. It is precisely because in every cadre it is not always possible either to provide promotional avenues or on account of stagnation in the promotional posts to provide promotions to the employees in the feeder cadres though promotional avenues are available, the Government periodically comes up with schemes for granting the benefit of higher pay scales which in popular parlance is referred to in-situ promotions. Such benefits are described under different names

such as, Assured Career Progression or Career Advancement Scheme.

10. Coming to the question of re-transfer of the petitioners i.e. Jaharlal Das and his three other colleagues, I do not find that such action is justified. The impugned order itself records that their grievance is of non-availability of promotional avenues from the post of Naib Subedar (MTO). In order to redress such grievance they have been sent back to their original posts of Naib Subedar (GD). When the petitioners have in clear terms through their advocate before me indicated their preference for being continued on the post of Naib Subedar (MTO), such action must be set aside.

11. There are other reasons also for adopting such course. Firstly, as per Rule 33 of the said Rules, the post of Naib Subedar (MTO) is to be filled by transfer of General Duty Naib Subedar, failing which from amongst Havildars (Auto Technician), failing which from amongst Havildars (Driver) who should have certain minimum educational and experience qualifications. Thus, the post of Naib Subedar (MTO) is to be filled, by way of first preference by transfer of Naib Subedar (GD). Only if this source fails, the second option can be exercised namely by way of promotion from the post of Havildar (Auto Technician). When the petitioners were already appointed on the post of Naib Subedar (MTO) way back in the year 2011, discharging their duties satisfactorily and are still willing to continue to do so, it cannot be stated that the first source for filling up of the said post has dried up.

12. Under the circumstances, impugned order dated 21.12.2019 challenged in WP(C) No. 868 of 2019, WP(C) No.869 of 2019, WP(C) No.870 of 2019 and WP(C) No.871 of 2019 is set aside. With respect to creation of promotional post from the post of Naib Subedar (MTO), it is left to the Government to take a policy decision. The question whether as and when such promotional post is created, the same can be made available only to Naib Subedar (MTO) who are promoted from the lower post of Havildar (Auto Technician) is left open. Firstly, no such situation as to decide the legality of such an action has arisen. Secondly, there is no full material or arguments made before me for such purpose.

13. All petitions are disposed of accordingly.

Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ

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