

**THE HIGH COURT OF TRIPURA**  
**AGARTALA**

**WP(C) 431 of 2012**

**Sri Sankar Lal Deb,**  
resident of Indranagar,  
P.S. East Agartala, District : West Tripura

.....**Petitioner**

**- Vs -**

**1. The State of Tripura,**  
to be represented by the Secretary to the  
Power Department, Government of Tripura,  
New Capital Complex, P.O. Khejurbagan/  
Kunjaban, Agartala, District : West Tripura

**2. The Chairman-cum-Managing Director,**  
Tripura State Electricity Corporation Limited,  
Vidyut Bhavan, North Banamalipur, P.O. North  
Banamalipur, Agartala

.....**Respondents**

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

For the petitioner	: Mr. N. Das, Advocate
For the respondents	: Mr. Nepal Majumder, Advocate
Date of hearing	: 08.11.2017
Date of delivery of Judgment and Order	: 28.02.2018
Whether fit for reporting	: NO

**Judgment and Order**

By means of this writ petition, the petitioner has challenged the Seniority List of Junior Engineers (Electrical), Degree Holder under Power Department whose services are now placed under Tripura State Electricity Limited, in short, TSECL showing the seniority position as on 29.02.2012 by the memorandum under No. F.6(17)-TSECL/Estt-II/11/P-

III/6,403 dated 21.03.2012 [Annexure-15 to the writ petition] on allegation that the said seniority list does not reflect the correct seniority position of the petitioner. Further, it has been urged by the petitioner for directing the respondents for publishing a fresh final seniority list showing the final correct position of the petitioner or by making necessary correction/modification placing the petitioner immediately below the Serial No.60.

2. Briefly stated the petitioners' case is that on 06.04.1990, the petitioner entered in the service under the Power Department as Junior Engineer (Electrical) as Diploma Holder on fixed pay basis in terms of the order dated 05.04.1990 [Annexure-1 to the writ petition]. In the year 1990 and 1992, 23 (twenty three) Degree holder junior Engineers entered in the said service under the Power Department on the fixed pay basis. One of those Degree Holder Junior Engineers (Electrical) left the service. Those 22 (twenty two) Junior Engineers (Electrical) Degree Holder have been accommodated in the Final Seniority List [Annexure-15 to the writ petition] in the seniority positions No. 38 to 59. The petitioner does not dispute their position as admittedly, they are senior to the petitioner in the said post.

3. The petitioner along with similarly situated Junior Engineers (Electrical) Degree Holder were given the regular pay scale of Rs.1450/- to 3710 with effect from 22.10.1992 by virtue of the office order dated 22.10.1992 [Annexure-2 to the writ petition]. They were adjusted against the post created with concurrence from the Finance Department. The petitioner moved to the higher pay scale of 7,450-13,000/- with effect from 01.01.1996 in terms of the order dated 12.10.2001 [Annexure-3 to

the writ petition] which was issued in consequence of the order dated 04.06.2001 of the Gauhati High Court delivered in C.M. Appl. 198 of 2001 in WP(C) 101 of 1999 subject to the final outcome. The petitioner has averred that movement to the regular pay scale or to the higher pay scale amounts to the regularization.

4. Another batch of 44 (forty four) Junior Engineers (Electrical) Degree Holders had joined the service in the year 1997 on fixed pay basis by the order dated 09.09.1997 [Annexure-4 to the writ petition] whose names have been shown in the final seniority list at seniority position No. 60 to 104. Those 45 (forty five) Junior Engineers (Electrical) degree holder were regularized, according to the petitioner, with effect from 01.05.2002 by the order dated 17.05.2002 in the scale of pays of 7,450-13,000/- [Annexure-5 to the writ petition]. The petitioner passed the degree of B-Tech. from North East Regional Institute of Science and Technology (NERIST) as the in-service candidate on 13.06.2000. The petitioner has averred in the writ petition that the petitioner "was treated as Degree Holder Junior Engineer (Electrical) w.e.f. 13.06.2000. So the name of the petitioner was listed under Sl.No.24 of the file index register as there was no seniority list of Ex-cadre junior Engineer prior to 2003." The petitioner was serving as the Degree Holder, Junior Engineer (Electrical) in the regular establishment with effect from 13.06.2000, even though, he had initially joined in the service on 06.04.1990 as the Diploma Holder Junior Engineer (Electrical).

5. By the notification under No. F.2(25)-Power/2007/927-34 dated 29.10.2007 [Annexure-8 to the writ petition] 140 (One hundred forty) Ex-cadre junior engineers were en-cadred in the Department of

Power with retrospective with effect from 30.12.2003. The list of encadred junior engineers who were so encadred have appeared in Annexure-1, appended to the notification dated 29.10.2007. In the said list, the name of the petitioner appears at serial No.68.

6. In view of the said notification dated 29.10.2007, the petitioner on 15.11.2007 submitted a representation for correction in the seniority positions. But the respondents since did not take any action over the said representation, the petitioner had served a notice on 07.12.2007 requesting the respondents to place the name of the petitioner at Serial No.23 of Annexure-1 by upgrading his name from Serial No.68. Since such modification has not been made, the petitioner has filed the writ petition urging the reliefs above noted.

7. The respondent No.2 had published a draft seniority list of Junior Engineers (Electrical) Degree Holder under the Power Department showing the seniority position as on 29.02.2012 by the memorandum dated 05.03.2012 [Annexure 12 to the writ petition] showing the seniority position of the petitioner at Serial No.105 . It is to be further noted that in the meanwhile, the petitioner secured the degree of M-Tech on 03.08.2007 and that qualification has been recorded in the said draft seniority list. The petitioner filed an objection on 13.03.2012 [Annexure 13 to the writ petition] claiming that his seniority position should be 60 in lieu of 105. The claim was re-drafted.

8. It is pertinent to record that by the office order dated 16.05.2011 it was shown that the petitioners' pay scale was upgraded to Rs.10,000-15,100/- revised from the pay scale of Rs.7,450-13,000 (revised). It is to be further noted that the said pay scale of Rs.7,450-

13,000/- is the pay scale for the Junior Engineers (Electrical) diploma holder and on completion of 8 (eight) years of continuous service on 12.06.2008 the said up-gradation to the pay scale of Rs.10,000-15,100/- was extended to the petitioner with effect from 13.06.2008. Thus it clear that on 13.06.2008, the petitioner was not absorbed in the post of Junior Engineers (Electrical) degree holder. However, in the final seniority list dated 21.03.2012 [Annexure-15 to the writ petition] which is under challenge, the petitioner has been shown at Serial No.105 as the Junior Engineers (Electrical) Degree Holder recording the entry of the petitioner in the post of Junior Engineers (Electrical) Degree Holder on 30.12.2003.

9. The petitioner has asserted in the writ petition that he was regularized in the service in the post of the Junior Engineers (Electrical) Degree Holder on 13.06.2000. This is the basis of the petitioners' claim of seniority over the persons whose name has entered in the Serial No.60 to 104 of the final seniority list.

10. The respondents by filing the reply has admitted the most of the factual aspects but categorically asserted that the petitioner was regularized in the cadre with effect from 30.12.2003. The respondents have clarified in Para-19 in respect of the acquisition of degree of B-Tech in Electrical Engineering by the petitioner as under :

**"The petitioner completed B. Tech in Electrical Engineering Degree from the NERIST on 13.06.2000 while he was Ex-cadre Junior Engineer Electrical, prior to his acquiring B. Tech Engineering Degree, a good number of degree holder B.E. Electrical Engineers joined as Junior Engineer Electrical in the department of Power. Hence, the petitioner's position in seniority list come under the senior degree holder Ex-cadre Junior Engineer."**

11. The respondents have further asserted that even though, the petitioner was enjoying the regular pay scale but they were outside

Tripura Power Engineering Service before 30.12.2003 and that they were en-cadred on 30.12.2003 by virtue of the policy decision as reflected in the said notification dated 29.10.2007 and the subsequent notification dated 15.11.2007, and as such, there is no infirmity in fixing the seniority of the petitioner treating him as the Junior Engineer (Electrical), Degree Holder with effect from 30.12.2003. Even though, there was no formal order of his absorption as the Junior Engineer (Electrical) Degree Holder. For the up-gradation of the pay scale on completion of 8 (eight) years the petitioner was receiving the pay scale equivalent to that of the Junior Engineers (Electrical) Degree Holder.

12. Mr. N. Das, learned counsel appearing for the petitioner has submitted that as the petitioner has become Junior Engineers (Electrical) Degree Holder on 13.06.2000 with regular pay scale and on that day, the Junior Engineers (Electrical) Degree Holder in the seniority positions No.60 to 104 were not in the substantive post on 13.06.2000, the petitioner is entitled to be treated as the senior to them. Those were given regular pay scale of the service only on 17.05.2002 by virtue of office order No.F.6(47)-CEE/EST-II/97(S)/10,353-78 dated 17.05.2002 [Annexure-5 to the writ petition]. Hence, they cannot be shown as senior to the petitioner. Mr. Das, learned counsel has contended that the final seniority list as published by the memorandum dated 21.03.2012 [Annexure-15 to the writ petition] has followed no principle in determining the seniority positions. Hence, this court would not hesitate to interfere in the said seniority list for directing the official respondents for framing a modified final seniority list showing the correct seniority position of the petitioner.

13. Mr. N. Majumder, learned counsel appearing for the respondents has submitted that the Junior Engineers (Electrical) Degree Holder shown in the seniority positions No. 1 to 37 were appointed in the cadre service during the period from 1990 to 30.12.2003. Admittedly, the Junior Engineers (Electrical) Degree Holder who have been shown in the seniority positions No. 38 to 49 are senior to the petitioner as the petitioner was appointed as the Junior Engineers (Electrical) Degree Holder on 30.12.2003 as stated. Therefore, there is no inadequacy, insufficiency and infirmity in the seniority positions as reflected in the said final seniority list. The respondents did not dispute that Rule 6(f)(i) of Tripura Power Engineering Service Rules provides that an Overseer/Estimator who possessed the aforesaid qualification of degree in Engineering or equivalent qualification in Engineering from a recognized University or Institution and was already in service under the Power Department on the date of publication of those rules, shall be absorbed in the grade of Junior Engineer. The Rule 6(f)(iv) also provides that the date of publication of the result of the final examination for degree in Engineering or an equivalent qualification shall be taken into consideration in determining the seniority in the grade of Junior Engineer, of an Overseer/Estimator who obtained such a degree or qualification .

14. Having appreciated the submissions as advanced by the learned counsel for the parties, the solitary questions that emerges for determination is that unless the petitioner was en-cadred, he cannot claim the seniority from the date of publication as he cannot be deemed to have absorbed as the Junior Engineers (Electrical) Degree Holder. There cannot be any amount of dispute that the final seniority list as published by the memorandum dated 21.03.2012 is the final seniority list

of Junior Engineers (Electrical) Degree Holder under Power Department. There cannot be any amount of dispute that there are two categories of Junior Engineers (Electrical) Degree Holder viz. those who were appointed in the Tripura Power Engineering Service and those who are ex-cadre Junior Engineers (Electrical) Degree Holder who were subsequently integrated in the cadre service with effect from 30.12.2003. The petitioner has not challenged the notification of en-caderization dated 29.10.2007 [Annexure-8 to the writ petition] and as such he cannot claim en-caderization anterior to 30.12.2003 as declared by the said notification dated 29.10.2007. Therefore, the ground as advanced by Mr. Das, learned counsel appearing for the petitioner that since the petitioner had acquired the Degree of Electrical Engineering on 13.06.2000, the petitioner should be shown above the persons who are shown in Serial Nos.60 to 104.

15. In the course of the hearing, this court asked the respondents to clarify how the seniority position has been determined between the Junior Engineers (Electrical) Degree Holder who were en-bloc en-caderised with effect from 30.12.2003 by dint of notification dated 29.10.2007. To meet this query made by the order dated 11.08.2017, the respondents have filed one additional counter affidavit to contend as under :

**"In the final Seniority list published on 21.03.2012 the name of the petitioner was correctly listed at Serial No.105. It would be seen from the final seniority list that, Serial No. 60 to 104 having qualification of B.E. (Electrical) degree in the year 1997 as Degree Engineer prior to the petitioner, whereas the petitioner being Diploma holder obtained B.Tech Degree 13.06.2000 and M. Tech degree on 03.08.2007. Therefore there is no error in the final seniority list as on 29.02.2012 published on 21.03.2012. Before obtaining the B. Tech Degree the petitioner cannot be treated as Degree Engineer.**

**Therefore, the grievances as raised now in the year 2012 by preferring a writ petition for quashing the Annexure-15 to the writ petition deserves to be rejected.**

**16. That, in the final Seniority list published on 21.03.2012 the name of the petitioner was correctly listed at Serial No.105. It would be seen from the final seniority list that, Serial No. 60 to 104 having qualification of B.E. (Electrical) degree in the year 1997 as Degree holder Engineer prior to the petitioner, whereas the petitioner being Diploma holder obtained B. Tech Degree on 13.06.2000 and M. Tech degree on 03.08.2007. Therefore there is no error in the final seniority list published on 21.03.2012. Before obtaining the B. Tech Degree the petitioner cannot be treated as Degree Engineer.**

**17. That, in the final seniority list as on 29.02.2012 of Degree holder Junior Engineer (Cadre Service) Sl. No. 1 to 37 are appointed through TPSC during the period from 1990 to 30.12.2003. Serial No.38 to 59 Degree holder Junior Engineers are senior to the petitioner (they appointed as Degree holder Junior Engineer (Ex- Cadre) during 1990 to 1992 and the petitioner appointed as Diploma holder Junior Engineer on 06.04.1990 and he became illegible for Degree holder Junior Engineers w.e.f. 13.06.2000 as the petitioner acquired the B. Tech Degree on 13.06.2000. According to seniority the position of the petitioner has been fixed as at Sl. No. 105 of the Seniority list of Degree Holder Junior Engineers (Cadre Service) below the Degree holder Junior Engineer who were appointed as Degree holder Ex-Cadre Junior Engineers during September 1997 (Sl No. 60 to 104). And in the final Seniority list as on 29.02.2012 published on 21.03.2012 the name of the petitioner was correctly listed /shown at Serial No. 105.”**

16. Thus, it transpires that different and inconsistent rule has been applied for determination of the seniority such as (a) Acquisition of the degree and (b) the appointment as the Junior Engineers (Electrical) degree holder in the ex cadre post. For example, the seniority of the Junior Engineers (Electrical) Degree Holder who are occupying the seniority positions at Serial No.60 to 104 acquired the degree of B.E. Electrical in the year 1997 and the petitioner has obtained the degree of B-Tech on 13.06.2000 and the degree of M-Tech on 05.03.2007. He has been shown juniors to those Junior Engineers. Even though, they were admittedly appointed in the said capacity much after the petitioner was so appointed on adhoc or fixed pay basis. The petitioner was shown to have been appointed as the Junior Engineers (Electrical) Degree Holder

with effect from 13.06.2000 in subsequent records. The other Junior Engineers (Electrical) Degree Holder were shown senior to the petitioner as they were appointed as the Junior Engineers (Electrical) Degree Holder much before the petitioner had acquired the degree of B-Tech. Even, the petitioner did not challenge the seniority positions of the Junior Engineers (Electrical) Degree Holder who are occupying seniority positions No. 38 to 59 and of the Junior Engineers (Electrical) Degree Holder who are occupying the seniority positions No.1 to 37 as they were appointed directly in the cadre much prior to the petitioner was integrated in the cadre.

17. The ancillary questions now falls for consideration is that whether the acquisition of degree before the appointment or engagement can be treated as the factor for determining the seniority? In the given context the answer must be in the negative inasmuch as there is no rule in this regard, neither in the Tripura Power Engineering Service Rules, 1987 nor in the general principles for determining seniority of various categories of persons employed under the Government of Tripura, as laid down by the memorandum No.F.23(3)-GA(P&T)/2004 dated 18.05.2006. But this court cannot pass any affirmative order inasmuch as the Junior Engineers (Electrical) Degree Holder who are occupying the seniority positions of 60 to 104 are not made party in this writ petitions.

18. In view of this, the petitioner is permitted to file a fresh representation to the respondent No.2 and to the Secretary to the Power Department, Government of Tripura, Agartala to re-determined the seniority positions between the Junior Engineers (Electrical) Degree Holder who are occupying the seniority positions No.60 to 104 and the

petitioner. The appropriate procedure shall be observed by the respondent No.2 or the Secretary to the Power Department, Government of Tripura in determining the seniority position in terms of the extant rule or the general principles as adopted by the memorandum dated 18.05.2006 issued by the General Administration (P&T) Department, Government of Tripura. For this purpose, the petitioner shall file the representation to those authorities within 60 (sixty) days from the day when he would receive a copy of this order, else, the seniority position as declared by the memorandum dated 21.3.2012 [Annexure-15 to the writ petition] shall be treated as final for all purposes.

In terms of the above, this writ petition stands disposed of.

There shall be no order as to costs.

**JUDGE**

Sabyasachi. B