

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

**W.P.(C) No.359 of 2013**

**Sri Ratan Sarkar,**  
son of late Ruhhidas Sarkar,  
resident of village: A.D. Nagar, Road No.1,  
P.O. A.D. Nagar, District: West Tripura,  
PIN : 799003

.....**Petitioner**

**- Vs -**

- 1. The State of Tripura,**  
represented by Secretary,  
Department of Industries & Commerce,  
Government of Tripura,  
New Capital Complex, Agartala,  
P.O. Secretariat, West Tripura,  
PIN:799 010
- 2. The Director,**  
Department of Industries & Commerce,  
Government of Tripura,  
Khejurbagan, Agartala,  
P.O. Kunjaban, PIN: 799 006
- 3. Tripura Public Service Commission,**  
represented by its Secretary,  
P.O. Agartala, West Tripura, PIN: 799 001
- 4. Sri Dulal Chandra Majumder,**  
Industrial Development Officer,  
office of the Block Development Officer,  
Hrishyamuk RD Block,  
Belonia Sub-Division,  
District: South Tripura

.....**Respondents**

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

For the petitioner	: Mr. D.C. Saha, Advocate
For the respondents	: Mr. T.D. Majumder, G.A. Mr. P. Dutta, Advocate Ms. S. Deb Gupta, Advocate

Date of hearing : 17.11.2017  
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 action of the respondents in respect of fixing the seniority position of the petitioner vis-a-vis the respondent No.4 and for not considering his name for promotion to the post of Assistant Director of Industries/Industrial/Development Officer. The petitioner who seeks the relief as stated above has urged this court to quash the order No.F.DI/ESTT/10-II/2008/PART/5223-27 dated 26.04.2013 [Annexure-5 to the writ petition] and the notification No.F.DI/ESTT/II-10/2008/Part-1/12068-12133 dated 06.09.2013 [Annexure-2 to the writ petition].

**02.** Briefly stated the case of the petitioner is that the petitioner was initially appointed as Field Assistant on 01.01.1990. In the course of time, he was promoted to the post of Extension Officer on 29.02.1996 and thereafter to the post of Superintendent of M & RM on 26.03.2001. These facts were not indisputed from any corner. According to the petitioner he is eligible to be considered for promotion to the post of Assistant Director/Industrial Development Officer.

**03.** By the notification dated 06.09.2013 [Annexure-2 to the writ petition] 21(twenty one) persons were promoted from the post of Superintendent (M & RM), Superintendent (KVI/RAP), Superintendent (EIRET), Superintendent (ITI) etc. to the post of Assistant Director or Industrial Development Officer (Group-B Gazetted) with concurrence of Tripura Public Service Commission (TPSC, in short). It appeared to the petitioner from the said notification dated 06.09.2013 that his junior in the post of Superintendent namely Sri Dulal Chandra Majumder, the respondent No.4, has been promoted to the post of Industrial Development Officer. The petitioner was appointed on promotion to the post of Superintendent (M & RM) on 26.03.2001 whereas the respondent No.4 was so appointed on 15.03.2007. Both the petitioner and the respondent No.4 belonged to the Scheduled Caste community. It has transpired to the petitioner from the Order No. No.F.DI/ESTT/10-II/2008/PART/5223-27 dated 26.04.2013 [Annexure-5 to the writ petition] that the Director of Industries & Commerce on considering one representation dated 10.01.2013 filed by the respondent No.4 for inclusion of his name in the seniority list of the Superintendent (non-engineering) showing him senior to the petitioner, has observed and decided as under:

**"2. Sri Dulal Ch. Majumder, Superintendent (KVI/RAP) joined in the post of Field Assistant under the Directorate of Industries & Commerce on 10.12.1987 and Sri Ratan Sarkar had joined in the same post on 01.01.1990. According to their date of joining in the post of Field Assistant, Sri Dulal Ch.**

**Majumder is senior than Sri Ratan Sarkar. Their seniority as on 30.06.98 was published vide Memo No.DI/Estt/9(44)/70/Vol-I/9622-699 dated 29.08.1998, wherein Sri Dulal Ch. Majumder was senior to Sri Ratan Sarkar.**

**3. Sri Dulal Ch. Majumder was posted on ad-hoc basis to the post of Extension Officer and Sri Ratan Sarkar was also promoted on ad-hoc basis to the post of Inspector (equivalent grade of Extension Officer) vide order No.F.DI/ESTT/3(325)/94/19, 791-830 dated 24.02.1996 which was subsequently confirmed vide order No.F.DI/ESTT/3(322-A)/98/PART-III/14,411-90 dated 08.12.1998. Sri Majumder joined on 15.03.96 as Extension Officer and Sri Sarkar joined on 29.02.96 as Extension Officer.**

**4. Sri Ratan Sarkar was promoted from the post of Extension Officer during the year 2001 along with other eligible candidates to the post of Supdt (M & RM). The name of Sri Dulal Ch. Majumder was not considered at the relevant time as there was a Police case pending against him.**

**5. Subsequently, in the year 2007 Sri Majumder was promoted from the post of Extension Officer to the post of Superintendent (KVI/RAP) as no penalty was imposed by the Court to Sri Dulal Ch. Majumder.**

**6. Now, considering the fact after careful scrutiny of available records it is found that Sri Dulal Ch. Majumder, Superintendent (KVI/RAP) is senior to Sri Ratan Sarkar, Superintendent (M & RM) and the seniority of Sri Majumder is restored accordingly."**

**04.** The said order dated 26.04.2013 [Annexure-5 to the writ petition] has also been challenged in this writ petition on the ground that the respondent No.4 has been promoted to the post of Superintendent in the year 2007 whereas the petitioner was promoted to the post of Superintendent on 26.03.2001 and as such, the respondent No.4 cannot be declared to be senior to the petitioner in the grade of Superintendent under the Directorate of Industries and Commerce. Even in the final combined seniority list the respondent No.4 has been shown senior to the petitioner.

When the final seniority list by the memorandum dated 07.06.2013 was published, it did not come to his knowledge and without any objection from him, the final seniority list was published showing the respondent No.4 above the petitioner. The petitioner has averred that the petitioner was thus deprived of his due opportunity to contest the said decision. The final seniority list of the grade of Superintendent was, as stated, published by the memorandum dated 07.06.2013 (Annexure-4 to the writ petition). On the premises as stated above, the memorandum dated 07.06.2013 and the order dated 26.04.2013 have been challenged by the writ petitioner.

**05.** The petitioner has further averred that at no point of time any adverse ACR was communicated to the petitioner despite that by the notification dated 06.09.2013 as many as 21 Superintendents of various wings have been appointed to the post of Assistant Director of Industries/Industrial Development Officer on promotion under the Directorate of Industries and Commerce in the scale of pay of PB-3, Rs.9570-30000/- with grade pay of Rs.3500/- (Group-B Gazetted) with other admissible allowances. The respondent No.4 has been given promotion, but the petitioner was not given promotion though, according to the petitioner, he is evidently senior to the respondent No.4. Thus in this writ petition the order dated 26.04.2013, the memorandum dated 07.06.2013 and the notification dated 06.09.2013 have been challenged. What appears at the threshold is that the entire

dispute hinges on the question of seniority between the petitioner and the respondent No.4 inasmuch as the petitioner has contended that the respondent No.4 was appointed in the grade of Superintendent much later than the petitioner and hence he cannot be senior to the petitioner in that grade, neither can he get the promotion to the post of Assistant Director/Industrial Development Officer earlier than the petitioner.

**06.** Mr. D. C. Saha, learned counsel appearing for the petitioner has strenuously argued that while the order dated 26.04.2013 [Annexure-5 to the writ petition] was issued the petitioner had no opportunity to assert his seniority vis-a-vis the respondent No.4 to the competent authority and as such without affording any opportunity to the petitioner to have say in this matter, the said order dated 26.04.2013 [Annexure-5 to the writ petition] was issued by the Director, Industries and Commerce. The said order is grossly illegal inasmuch as the respondent No.4 was never appointed retrospectively in the grade of Superintendent and that fact would evince from the order dated 26.04.2013 as reproduced above.

**07.** Mr. Saha, learned counsel did not contest the fact that the respondent No.4 was initially appointed in the post of the Field Assistant under the Directorate of Industries and Commerce on 10.12.1987 whereas the petitioner was so appointed on 01.01.1990. By the seniority list published vide

memorandum No.DI/Estt/9(44)/70/Vol-I/9622-699 dated 29.08.1998, the respondent No.4 was shown senior to the petitioner in the grade of Field Assistant. Later on, the respondent No.4 as well as the petitioner were appointed on promotion respectively to the post of Extension Officer and the post of Inspector (equivalent grade of the Extension Officer) by the order No.F.DI/ESTT/3(325)/94/19, 791-830 dated 24.02.1996 which was subsequently confirmed by the order No.F.DI/ESTT/3(322-A)/98/PART-III/14,411-90 dated 08.12.1998. The respondent No.4 had joined the post of Extension Officer on 15.03.1996 whereas the petitioner had joined the post on 21.02.1996 as Extension Officer. When the promotion of the respondent No.4 was due to be considered, he was entangled in a police case and finally he was discharged from the said case and as consequence, his promotion to the post of Superintendent (KVI/RAP) was made on 15.03.2007. However, Mr. Saha, learned counsel has insisted that when the promotion was not made retrospective how the respondent No.4 can be shown as senior to the petitioner in view of the facts as narrated above.

**08.** From the other side, Mr. T.D. Majumder, learned G.A. appearing for the respondents No.1 and 2 has submitted that the petitioner was promoted to the post of Extension Officer on ad-hoc basis on 24.02.1996 and which was later on confirmed by the order dated 08.12.1998. Mr. T.D. Majumder, learned G.A. has reiterated that in the seniority list which was

published on 29.08.1998 showing the seniority position as on 30.06.1998 the respondent No.4 was shown senior to the petitioner and there was/is no challenge against the said seniority position as finally published by the memorandum dated 29.08.1998.

**09.** The respondents have admitted that the petitioner was promoted to the post of Superintendent in the year, 2001 to the exclusion of the respondent No.4 without any basis, though the respondent No.4 had the eligibility for consideration for promotion to the post of Superintendent. Such wrong has been undone by promoting the respondent No.4 in the post of Superintendent giving seniority over his junior in the feeder cadre [see para-8 to the reply filed by the state-respondents].

**10.** Thereafter having due regard to the seniority in the grade of Superintendent, the respondent No.4 was promoted to the grade of Assistant Director/Industrial Development Officer by the notification dated 06.09.2013 [Annexure-2 to the writ petition]. The state-respondents have vehemently denied the contention of the petitioner that the petitioner is senior to the respondent No.4 in the cadre of the Superintendent. When the respondent No.4 was excluded from consideration for promotion to the grade of Superintendent he approached the Gauhati High Court for mandating the respondents to undo the injustice as was heaped on him.



**11.** The respondent No.4 had also made representation to the Director of Industries & Commerce on 10.05.2004 [Annexure-R/3 to the reply filed by the state-respondents]. On the basis of the said representation the competent authority i.e. the Director of Industries and Commerce had considered the promotion of the petitioner and the respondent No.4 was accordingly appointed on promotion to the post of Superintendent. By the order dated 26.04.2013, the seniority position of the respondent No.4 was restored as consequence thereof and in order to undo the deprivation that had been caused to the respondent No.4, in para-11 of the reply filed by the state-respondents it has been averred as under:

**"...the Order No.F.D1/ESTT/10-11/2008/PART/5223 dated 26<sup>th</sup> April 2013, contained in Annexure-5 to the petition was issued by the Respondent No.2 taking into consideration that the case of the Respondent No.4 was not considered when petitioner and other's case for promotion was considered to the exclusion of the Respondent No.4 without any valid reason. Therefore, the authority had undone the wrong when the Criminal Proceedings against the Respondent No.4 has ended with exoneration. This being the factual matrix the seniority position of the Respondent No.4 has been restored in the promoted post as per D.P.C Procedures. Since petitioner will be made junior after promotion of the respondent No.4 he was served a copy of the aforesaid order."**

**12.** To rebut the contention that the petitioner was not aware of the final seniority list, the state-respondents have categorically stated that the final seniority list was received by the petitioner himself and thus the allegation of not-receiving

the final seniority list as averred in the writ petition is grossly misleading. It appears from the records produced with the reply filed by the state-respondents that the writ petition filed by the respondent No.4 being W.P.(C) No.141 of 2004 was disposed of by the order dated 12.06.2013 recording that the relief as prayed for in the writ petition was granted by the respondents. The said order had been passed in presence of the petitioner herein who was the party in the said writ petition. Thus, according to the state-respondents no fault can be attributed to them. For purpose of reference, the said order dated 12.06.2013 as delivered in W.P.(C) No.141 of 2004 [Annexure-R/5 to the said reply] is extracted hereunder for extensive reference:

**"Mr. C. S. Sinha, learned counsel appearing for the writ petitioner submits that the relief as prayed for in the writ petition has been granted by the respondents.**

**In view of the above, it is expected that appropriate action for promotion to the petitioner will be taken.**

**Accordingly, this petition stands disposed of."**

**13.** Mr. T.D. Majumder, learned G.A. appearing for the state-respondents has very specifically submitted that the writ petitioner was a party in W.P.(C) No.141 of 2004 and as such the developments which were taking place during pendency of the said writ petition were all known to the petitioner in this writ petition. Hence, he cannot resort to a plea that he was taken unaware by the respondents while passing the said

order by restoring the seniority position of the respondent No.4.

**14.** Mr. P. Dutta, learned counsel has entered appearance for the respondent No.3, Tripura Public Service Commission. He has simply contended that on observing all the requirements for making promotion to a selection post, the name of the petitioner was recommended by the Public Service Commission. As such, there is no illegality in selection of the respondent No.4. The allegation as advanced by the petitioner is without any substance. The petitioner has filed a rejoinder without any new material and as such the said rejoinder does not in anyway help the petitioner.

**15.** The state-respondents have further asserted in unambiguous words that the petitioner was not debarred from consideration because of his poor performance in the ACR grading. The case of the petition for promotion to the post of Industrial Development Officer could not be materialized because of the non-availability of a vacancy to accommodate the petitioner in accordance with rule. No junior of the petitioner has been given berth in the promotion post. Those respondents have categorically stated that in no manner the petitioner has suffered any detriment to his interest, inasmuch as it is an admitted fact that the respondent No.4 was junior in the feeder post of the promotion post of Superintendent for a temporary period for interim disability, as the respondent No.4

was entangled in a criminal case, his promotion was not considered till he was exonerated from the criminal prosecution. On discharge of the respondent No.4 from the criminal prosecution he was given the promotion. The respondent No.4 was entitled to the seniority as there was no embargo to deprive him from the senior in the said grade of Superintendent. His seniority position was restored as consequence. By the order dated 26.04.2013 [Annexure-R/4 of the reply and Annexure-R/5 to the writ petition], the seniority of the respondent No.4 was restored.

**16.** Mr. T.D. Majumder, learned G.A. appearing for the respondents No.1 and 2 has vehemently submitted that by restoring the seniority position, due promotion in favour of the respondent No.4 was restituted, but the respondent No.4 did not get the blanket retrospective benefit of the promotion in the grade of Superintendents nor did he get the financial benefit. According to Mr. T.D. Majumder, learned G.A., the respondent No.4 was entitled to the said benefit.

**17.** Having appreciated the submissions of the learned counsel for the parties, this court is of the view that the non-consideration of the respondent No.4 for promotion to the grade of the Superintendent as he was entangled in a police case cannot have any perpetual effect. If the person who was under embargo had been cleared of the said embargo, such as discharge from the criminal prosecution or exoneration from

the departmental proceeding, he is entitled to reconsideration of such promotion or appointment with retrospective effect with or without full wages. What this court has observed is that the respondent No.4 was not given the retrospective promotion even though according to this court he should have been considered for retrospective operation of his promotion to the grade of Superintendent, but the state-respondents by the order dated 26.04.2013 [Annexure-5 to the writ petition] has restored only the seniority position of the respondent No.4 vis-a-vis the petitioner.

Further this court is of the view that the respondents should have appointed the respondent No.4 retrospectively at least from the date when the petitioner who is admittedly junior to the respondent No.4 was appointed in the grade of Superintendent i.e. 26.03.2001. If the respondent No.4 was appointed on promotion retrospectively in the said manner, there would have no confusion. Even though the promotion was not given with retrospective benefit, but the seniority was restored. Such restoration of seniority cannot be questioned on the ground that there was no substantive appointment in the post of Superintendent of the respondent No.4 on before 26.03.2001. The specific order of restituting the seniority has by implication extended the promotion partly with retrospective operation.

**18.** True it is that the order dated 26.04.2013 [Annexure-5 to the writ petition] has not given the retrospective operation of the promotion of the respondent No.4 in the grade of Superintendent. It can be treated as irregularity. But in the circumstances of the present case, the said irregularity has been impliedly obviated by the said order of restituting the seniority position. Hence, the respondent No.4 shall have to be treated as the senior to the petitioner. Merely for some defective orders passed by the official respondents, the seniority of the respondent No.4 cannot be eclipsed and as such this court does not find, on considering the cumulative effect, any infirmity in the order dated 26.04.2013 [Annexure-5 to the writ petition]. Having observed thus, for promotion of the respondent No.4, to the next grade of Assistant Director of Industries/Industrial Development Officer the petitioner cannot have any grievance. The petitioner's claim over seniority the grade of Superintendents is unsustainable.

In the result, this writ petition is dismissed being bereft of merit.

There shall be no order as to costs.

**JUDGE**

Moumita