

THE HIGH COURT OF TRIPURA AGARTALA

W.P.(C) No. 577 of 2015

Sri Jakir Miah,
son of Abdul Rab, resident of village & P.O. Khupilong,
District- Gomati, Udaipur, Tripura

... Petitioner

- **Versus** -

1. **The State of Tripura,**
represented by the Principal Secretary, Government of Tripura,
Forest Department, New Secretariat Building, New Capital
Complex, Kunjaban, Agartala, West Tripura
2. **The Principal Secretary,**
Department of Forest, New Secretariat Building, New Capital
Complex, Kunjaban, Agartala, West Tripura
3. **The Principal Chief Conservator of Forest,**
Government of Tripura, Arannuya Bhavan, P.N. Complex,
Gurkhabasti, P.O. Kunjaban, Agartala, West Tripura
4. **The Chief Conservator of Forest (Administration),**
Government of Tripura, Arannuya Bhavan, P.N. Complex,
Gurkhabasti, P.O. Kunjaban, Agartala, West Tripura
5. **Sri Bikash Chowdhury,**
son of Sunil Chowdhury, resident of Bachir Nagar,
P.O. Rajnagar, District- South Tripura
6. **Sri Sanjoy Nath,**
son of Golok Nath, resident of village + P.O. Satnala,
P.S. Kanchanpur, District- North Tripura
7. **Sri Gopal Debnath,**
son of Haripada Debnath, resident of village Kadamtali,
P.O. Brajapur, District- West Tripura

... Respondents

W.P.(C) No. 332 of 2017

Sri Souman Kumar Bhattacharjee,
son of Sri Pradip Kumar Bhattacharjee, resident of Ramnagar
Road No. 8, Gangail Road, P.O. Ramnagar, P.S. West
Agartala, District- West Tripura

... Petitioner

- **Versus** -

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represented by the Principal Secretary, Government of Tripura,
Forest Department, New Secretariat Building, New Capital
Complex, Kunjaban, Agartala, West Tripura

2. **The Principal Secretary,**
Department of Forest, New Secretariat Building, New Capital
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3. **The Principal Chief Conservator of Forest,**
Government of Tripura, Arannuya Bhavan, P.N. Complex,
Gurkhabasti, P.O. Kunjaban, Agartala, West Tripura
4. **The Chief Conservator of Forest (Administration),**
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5. **Sri Bikash Chowdhury,**
son of Sunil Chowdhury, resident of Bachir Nagar,
P.O. Rajnagar, District- South Tripura
6. **Sri Sanjoy Nath,**
son of Golok Nath, resident of village + P.O. Satnala,
P.S. Kanchanpur, District- North Tripura
7. **Sri Gopal Debnath,**
son of Haripada Debnath, resident of village Kadamtali,
P.O. Brajapur, District- West Tripura

... **Respondents**

**BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. A.K. Bhowmik, Sr. Advocate
Mr. S. Bhattacharjee, Advocate

For respondents : Mr. B. Datta, Advocate
Ms. S. Deb Gupta, Advocate

Date of hearing & delivery
of judgment and order : **30.11.2018**

Whether fit for reporting : NO

JUDGEMENT AND ORDER

These writ petitions, being **W.P.(C) No.577/2015** [Sri Jakir Miah vs. The State of Tripura and others] and **W.P.(C) No.332/2017** [Sri Souman Kumar Bhattacharjee vs. The State of Tripura and others] are consolidated for disposal by a common judgment, inasmuch as a fundamental common question wades through the controversy, as raised in these writ petitions.

2. The petitioners were eligible for their appointment in the post of the Forester under the Forest Department and they had applied for the said post in response to the advertisement dated 10.02.2010 [Annexure P-1 to the writ petitions]. The petitioners had participated in the selection process, as initiated for filling up of 50 posts of Forester (Group C) under the Forest Department. Out of those 50 posts, 40 posts were earmarked for unreserved (UR) category, whereas 2 were earmarked for SC category and the remaining were for ST category. According to the petitioners, it has been mentioned in the advertisement that interview of 500 marks would be the sole basis for selection, and that would be followed by the physical test and walking test. It came to the knowledge of the petitioners that the petitioner in WP(C) 577 of 2015 secured 152 marks in the interview. Subsequently, by the corrigendum, the marks of the petitioner in WP(C) 577 of 2015 have been shown to be 211. According to the petitioners, those persons who secured the less marks, in comparison to the petitioners were selected for the post of Forester. Hence, the selection of the private respondents, namely Sri Bikash Chowdhury (the respondent no.5), Sri Sanjoy Nath (the respondent no.6) and Sri Gopal Debnath (the respondent no.7) had been challenged and the petitioners have approached this court for directing the official respondents for cancelling the office order No. F.2.II/Estt/FOR/2009/39880-937 dated 04.03.2014, issued by the PCCF, Tripura, so far those respondents are concerned. It has been further urged to direct the official respondents to consider the petitioners for appointment to the post of the Forester under the Forest Department.

[the reference to Annexures is being made from WP(C) 332 of 2017, if not, in the circumstance, is required differently]

For purpose of appreciation of the fact, it would be apposite that the facts as emerged from the writ petitions and the replies filed by the respondents thereto, be separately dwelled upon.

W.P.(C) No.577 of 2015 [Jakir Miah vs. The State of Tripura and Ors.]

3. In response to the advertisement dated 10.02.2010, the petitioner applied for the post of Forester under the Forest Department. By the notice dated 30.06.2010 as published in 'Daily Desher Katha', a local daily, the PCCF published the programme for interview for the post of Forester. As per the said programme, interview of the petitioner was fixed on 07.07.2010 and in the advertisement it was specifically mentioned that no separate call letter would be issued. The petitioner had duly appeared in the interview and performed well. On 25.02.2014, the PCCF had published another notice in 'Dainik Sambad' and 'Daily Desher Katha' for general information that on the basis of the performance in the interview conducted from 17.05.2010 to 05.06.2010, the candidates, whose token number appeared in the said notice, were asked to appear for walking test, measurement and the physical test for selection in the post of Forester but, the petitioner's token number did not appear in the said notice. The petitioner since did very well in the oral interview, he had desperately attempted to find out what went wrong. Thus, he made a request to the State Public Information Officer (SPIO) for disclosure of the information as listed in the said petition. In the first place, it was informed to the petitioner that since the process has yet not been complied, the information cannot be shared inasmuch as such information is protected under section 8 of the Right to Information Act. Even though the selection process was complete but, on the pretext that the selection process has not been complete, the SPIO declined to give information to the petitioner. The petitioner had preferred an appeal to the First Appellate Authority i.e. CCF (R&T) against the order of the SPIO. The First Appellate Authority held that there was no justification of denying the information to the petitioner but, the First Appellate Authority had also observed that if in the opinion of the SPIO

any information as sought could not be given, then the SPIO would issue a speaking order within 7 days. Despite the order dated 25.06.2014, as stated, the SPIO had neither furnished any information to the petitioner nor had passed any speaking order as to why the information sought for by the petitioner could not be furnished. Consequently, the petitioner filed a complaint to the State Information Commission on 26.08.2014, but the State Information Commissioner had declined to enforce the request of the petitioner. Later on, the petitioner filed a Second Appeal to the State Information Commission and the said appeal was disposed of, by the order dated 22.12.2014 directing the SPIO that if the selection process is complete, the marks of the selected candidates and information whether they had satisfied the physical measurement and other physical tests may be given. Individual physical measurement of the selected candidates will be an invasion of privacy and hence need not be given. The interview marks obtained by the appellant, as the appellant had asked for, shall also be furnished. Thereafter, the information in terms of the order of the State Information Commission was disclosed showing that the petitioner had secured 211 in the interview for the post of Forester. The said disclosure was made by the letter dated 02.02.2015 [Annexure P-13 to the writ petition]. Subsequently, by the letter dated 08.01.2015 the SPIO disclosed the list of the selected candidates appointed in the post of the Forester and the report of performance in the physical test and walking test. The said list was provided by a letter dated 08.01.2015 [Annexure P-15 to the writ petition]. From the said disclosure, it has surfaced that the petitioner secured 152 marks out of 500 marks in the interview. According to the petitioner's self assessment, he cannot get such low marks. The petitioner had downloaded the list of the selected candidates who were appointed in the post of Forester in the year 2014 with the marks obtained in height and chest measurement. The petitioner has found a variation between the information

supplied to the petitioner by the SPIO and the list that the petitioner had downloaded from the official website of the forest Department. In this context, the petitioner has averred as under:

“In the list of 50 selected candidates supplied by the SPIO, the name of Sanjoy Nath, S/O Golok Nath appeared at serial no. 7 and marks obtained by him had been shown to be 458. But in the list downloaded from the website, the name of Sanjoy Nath appeared at serial no. 45 and marks obtained by him had been shown as 184. Similarly, name of Sukhajojoy Tripura S/O Babujojoy Tripura appeared at serial no. 23 of the list provided to the petitioner by the SPIO and marks obtained by him had been shown as 433. But in the list downloaded by the petitioner, name of Sukhajojoy Tripura appeared at serial no. 31 marks obtained by him had been shown to be 195.”

It has been further averred in para 27 of the writ petition that one Bikash Chowdhury, S/O Sunil Chowdhury, appeared at serial no. 49 and marks obtained by him had been shown to be 279. On the other hand in the list obtained by the petitioner from the website the name of Bikash Chowdhury appeared at serial no. 124 and marks obtained by him had been shown to be 190.

In paragraph 28, the petitioner has made a reference to one Litan Das appearing in serial no.19 who obtained 438 whereas in the downloaded list his name appeared in serial no.2 and he got only 198. Similarly, illustration has been made in respect of one Nakuljojoy Reang. Except him, none of the candidates is impleaded as the party. That apart, they belong to ST category. The petitioner has given all information as illustrated in those paragraphs in a tabular form which is as under:

Sl. No.	Token No.	Name of the candidates	Marks obtained by the candidates in the list of the SPIO	Marks obtained by the candidates in the list downloaded by the petitioner from the website.
1	83	Sanjoy Nath	458	184
2	UD/47/M/SC	Litan Das	438	198
3	31	Sukhojoy Tripura	433	195
4	165	Nakuljojoy Reang	310	188
5	184	Bikash Chowdhury	279	190
6	UD/816/M	Jakir Miah	211	211

Thus, the petitioner has asserted that he obtained much higher marks than Sanjoy Nath and as such he ought to have been appointed before Sanjoy Nath was appointed. The action of appointment of Sanjoy Nath, the respondent no.6, has been challenged on discrimination and liable to be interfered with.

The recruitment rules for the post of Forester was published by the Principal Secretary, Government of Tripura, Forest Department by the notification under No.F.2(126)/For/Estt-95/3986-4186 dated 06.02.2014. There the educational qualification, physical standard and medical fitness has been provided. Presently, for this writ petition, the controversy hinges on the physical standard and as such the physical standard for SC candidates and UR candidates are referred from the recruitment rules in a tabular form which is as under:

Physical standard for general and scheduled caste candidates:

	Distance to be covered on foot in 4 hours in the walking test	Height (in CM)	Chest (In CM) Normal	Expansion
Male	25 km	163	79	05
Female	16 km	150	74	05

Physical standard for scheduled tribe candidates:

	Distance to be covered on foot in 4 hours in the walking test	Height (in CM)	Chest (In CM) Normal	Expansion
Male	25 km	152	79	05
Female	16 km	145	74	05

The petitioner has gathered that Gopal Debnath, the respondent no.7 whose name appeared in the serial No. 18 was measured as under:

Sl. No.	Name and father's name with address	Educational qualification				Marks obtained in the interview out of 500
			Height (in cms)	Chest Normal (in cms).	Chest expansion (in cms)	
18	Sri Gopal Debnath, S/O Haripada Debnath vill- Kadamtali, P.O. Brajapur, West Tripura	H.S.(+2) stage passed	168	75	101	439

It is apparent, according to the petitioner, that Gopal Debnath's normal chest has been shown to be 75 and expanded 101. So, as per the

prescribed standard for the General candidates, the chest in normal should have been 79 cm. and by expansion, it should have been 5 cm. The petitioner has asserted that normal chest of 75 cm. cannot be expanded to 101 cm. Thus, Gopal Debnath was not eligible for recruitment for the post of Forester.

In reply, the official respondents have categorically stated that it is not correct to state that Jakir Hossain is eligible for appointment to the post of Forester. The selection committee, following due procedure, in terms of the government policy had conducted interview, assessed on seniority-cum-merit and need, the petitioner was in the process found not eligible. Initially, there a sub-division wise marking sheet was prepared and thereafter the combined list was prepared for recommending the suitable candidate for appointment to the post of Forester but so far the allegation in respect of Sanjoy Nath is concerned, no averment has been made in their reply. The respondents No.5, 6 and 7 have separately filed their reply, but they could not shed any light over that aspect of the matter. The petitioner has filed the rejoinder and repeated the earlier averments. The petitioner had also separately filed the rejoinder traversing the reply filed by the respondents Nos.5, 6 and 7 much later, with the leave of this court. The respondents Nos.1, 2 and 4 in terms of the order dated 16.01.2017 and 16.02.2017 filed one additional affidavit where the official respondents have stated that although no separate marks were awarded in terms of the criteria as laid in the government employment policy viz. (i) educational qualification (b) good physic (c) sound health / fitness for field works/ arduous nature of field work (d) merit (e) need, but the members of the selection committee has awarded marks in lumpsum after consultation amongst themselves. It has been further asserted in paragraph 4 of the additional affidavit, filed by the official respondents, that the petitioners appeared in the interview on 07.07.2010. According to the revised employment policy of the government, 70% vacancies shall be filled up on seniority-cum-

merit basis and 30% on the basis of the need. The selection committee has found, on completion of the process that the petitioner has not figured in the select panel for appointment to the post of Forester and hence, his name was not recommended for appointment against the vacancy for the UR category candidates.

**IN WP(C) 332 of 2017 [Souman Kumar Bhattacharjee vs.
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4. Pursuant to the same advertisement dated 10.02.2010, the petitioner had also applied for the post of Forester under the Forest Department, Government of Tripura against the vacancies reserved for UR category candidates. In the said advertisement, it was provided that the candidates should have passed H.S.(+2) or equivalent examination. Their age should be between 18-37 years as on 15.02.2010. The physical measurement for UR/SC/OBC candidates should be as laid down [physical height- 163 cm, chest expanded 84 cm with 5 cm expansion and, for ST candidates, physical height- 152.5 cm, chest expanded 82 cm with 5 cm expansion]. The candidates should have the walking capacity of crossing 25 km. in four hours during the selection process. The petitioner was since eligible for the said post, he had applied and he was asked to appear before the interview board. At the time of receiving the application from the petitioner, a token bearing No. Sadar/447 dated 03.03.2010 was issued to the petitioner. By a notice dated 30.06.2010, published in the daily local, 'Desher Katha', the petitioner and others were asked for interview and it was also cautioned that no separate call letter would be issued. When the result of the said interview was published on 25.02.2014 in the local dailies viz. 'Dainik Sambad' and 'Desher Katha', the petitioner came to know that he could not succeed in the interview. As a result, he was not asked to appear in the walking test and the physical standard test

for the post of Forester, but the petitioner has asserted that his performance was well to succeed in the interview and for appearance in the subsequent test, as stated. In paragraph 8 of the writ petition, the petitioner has averred as under:

“That, the result of the interview conducted by the Forest Department was not published. The entire selection process based on oral interview followed by the physical test has been shrouded in mystery. Though in terms of specific direction of the Right to Information Act, 2005, the Respondent had been under obligation to cause disclosure in respect to the selection process in public domain, but that was not done. The petitioner had filed an application under RTI Act to know the particulars of 50 candidates selected in oral interview, but could not get full details. The respondents along with the reply furnished a memorandum dated 26.05.2012 issued by the Government of Tripura, GA(P&T) Department whereby the State Government issued a purported revised employment policy inter alia providing that 70% vacancies to be filled up on the basis of seniority cum merit and 30% on the basis of need totally disobeying and violating the decision rendered by this Hon’ble Court in the case of Shri Tanmoy Nath and others.”

Though the statement has been made but the said policy was not challenged in the writ petition. However, the petitioner has stated that he had collected necessary documents from Jakir Miah and has come to know therefrom that there is a huge discrepancy in the marks of the respondents No.5, 6 and 7. The respondent No.5, 6 and 7 have been shown to have obtained 279, 458 and 455 marks respectively in the interview whereas as per records maintained in the website of the department relating to Amarpur Sub-Division, the respondent no.5 obtained 190 marks, respondent no.6 obtained 184 marks and the respondent no. 7 obtained 217 marks. The petitioner has been shown to have obtained 209 marks at serial 334 in the list of the candidates in Sadar Sub-division. The said downloaded lists from the website (Annexure 7, 8 and 9 to the writ petition) has been relied by the petitioner. The other averments of the writ petition have been gathered from the writ petition filed by one Jakir Miah, being WP(C) 577 of 2015. As such, it would be repetitive if those averments are referred here.

5. In the reply filed by the official respondents, they have almost replicated the stand taken in the other writ petition. However, in paragraph 20, the official respondents have candidly admitted that the information was sent from the Statistical section of the Forest Department through e-mail for uploading the list along with the marks, to ICAT Department, in the departmental website. Some error occurred and wrong numbers were uploaded in the website, compared to the list submitted by the selection committee. The authenticity of the list uploaded is always subject to verification with the list prepared by the selection committee. The official respondents have further stated that the selection for the post of Forester was carried out as per the existing Employment Policy by the selection committee. The other respondents have separately filed their reply in the similar fashion but in this case the petitioner did not file any rejoinder even not against the statement made by the respondents in respect of errors, occurred at the time of uploading of the result. .

6. This court has heard Mr. AK Bhowmik, learned senior counsel appearing for the petitioner in WP(C) 332 of 2017 as well as Mr. S. Bhattacharjee, learned counsel appearing for the petitioner in WP(C) 577 of 2015.

The learned counsel appearing for the petitioners having referred to the discrepancies, as stated above, have submitted that the appointment of the respondents No.5, 6 and 7 warrants to be interfered with.

7. Mr. S. Chakraborty, learned Additional Government Advocate has appeared for the official-respondents in WP(C) 332 of 2017 whereas Mr. B. Datta, learned counsel has appeared for the official-respondents in WP(C) 577 of 2015 whereas Ms. S. Debgupta, learned counsel has appeared for the private-respondents in both the cases. Mr. Chakraborty, learned Additional Government Advocate has pointed out to the averments made by the

respondents in WP(C) 332 of 2017 where they have stated that the actual physical standard of the respondent no. 7 is 95 cm (the chest normal instead of 75 cm). This has happened due to typographical error. This statement has not been controverted by the petitioner by filing the rejoinder.

8. Mr. Datta, learned counsel has submitted that the respondents have produced the original records signed by the members of the interview board with a softcopy (written in the DVD). When scrutinized the said records, it appears that Bikash Choudhury, the respondent no.5 belongs to SC category and in the interview he got 279 marks, but the said number is found interpolated, however, signed below, for correction. Sri Sanjoy Nath, the respondent no.6 secured 458 marks in the interview, again this entry is interpolated and signed below for correction.

9. The petitioner in WP(C) 577 of 2015, as per record secured 215 marks in the interview whereas the petitioner in WP(C) 332 of 2017 secured 209 marks. It may be noted that as per the records, Gopal Debnath, the respondent no.7 received 439 marks. The pages of the original records are signed by the members of the selection committee and their signatures on the records are not under challenge. So far, the respondent no. 5 and 7 are concerned, this court does not find any material based on which, a valid challenge can be maintained. Their appointment cannot be questioned as the respondent no.5 belongs to SC category. The chest measurement of the respondent no.7 is the only basis for challenge.

10. In the writ petition, it has been clarified well by the official-respondents and such statement has not been controverted by either of the writ petitioners, at least the writ petitioner of WP(C) 332 of 2017. So far, Sanjoy Nath is concerned, there is interpolation, but the said interpolation is duly signed by one of the members of the selection committee. It is really unfortunate that even in the final records such interpolations exist arousing

suspicion. This court is totally at dismay the way the records have been prepared by the selection committee. Serious displeasure is noted. In future, after finalization of the records, such records should be converted in PDF and be authenticated by the digital signature. Only the digitally signed records be uploaded in the website.

11. Be that as it may, in the circumstances as emerged, this court is unable to interfere with the selection or the consequential appointment made in favour of the private respondents.

Having observed as such, these writ petitions are bound to fail and accordingly, the writ petitions are dismissed.

Return the records forthwith to the official respondents.

No order as to costs.

JUDGE

Saikat