

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

WP(C) No. 437 of 2017

- 1. Sri Pradip Kumar Debbarma**, son of Sri Akul Debbarma, resident of Sutarmura, P.O. Sutarmura, P.S. Bishramganj, District: Sepahijala

.....Petitioner

-V E R S U S-

- 1. The State of Tripura**, represented by the Secretary Cum Commissioner, Department of Food & Civil Supplies and Consumer Affairs, New Secretariat Complex, P.O. Kunjaban, P.O. New Capital Complex, West Tripura.
- 2. The Director**, Food, Civil Supplies & Consumer Affairs Department, Government of Tripura, Pandit Nehru Complex, P.O. Gurkhabasti, Agartala, West Tripura.
- 3. The Sub-Divisional Magistrate**, Bishalgarh, P.O. & P.S. Bishalgarh, District: Sepahijala.
- 4. Officer-in-charge**, Central Store, Food and Civil Supplies and Consumer Affairs, Arundhuti Nagar, P.O. A. D. Nagar, P.S. A. D. Nagar, Agartala, West Tripura.

..... Respondents

B _ E _ F _ O _ R _ E
HON'BLE MR. JUSTICE ARINDAM LODH

For Petitioner(s)	:	Mr. D. Sarkar, Advocate.
For Respondent(s)	:	Mr. R. G. Chakraborty, Advocate.
Date of hearing and Delivery of Judgment	:	29.01.2021
Whether fit for reporting	:	NO

J _ U _ D _ G _ M _ E _ N _ T (O _ R _ A _ L)

Heard Mr. D. Sarkar, learned counsel appearing for the petitioner and Mr. R. G. Chakraborty, learned counsel appearing for the respondents.

[2] By way of filing this instant writ petition, the petitioner has sought for following reliefs:

"(I) Issue notice upon the respondents,

(II) Call for relevant records,

(III) Admit this petition,

(IV) Issue Rule calling upon the respondents to show cause as to why the petitioner shall not be allowed to be promoted to the post of Sub-Divisional Controller considering the final seniority list as well as the length of service as mentioned in the Recruitment Rules for promotion with retrospective effect from the year 2010.

(V) And after hearing the parties be pleased to make the rule absolute."

[3] Briefly stated, the petitioner was first appointed on 30.04.1990 as Junior Store Keeper under the respondent No.2, the Director, Food & Civil Supplies Department. Thereafter the petitioner was promoted in the post of Inspector by the DPC dated 03.01.2007. The petitioner was supposed to be promoted to the post of

Sub-Divisional Controller or Chief Inspector on completion of 3[three] years of satisfactory service as per Recruitment Rules.

[4] A disciplinary proceeding was initiated against the writ petitioner vide memo dated 20.04.1998 when he was working as Junior Store-keeper and was posted as in-charge of Transit Go-down No.6 at Damcharra Food Go-down under the Directorate of Food, Civil Supplies & Consumer Affairs Department, Government of Tripura.

[5] Articles of charges were framed. The petitioner was held guilty. Thereafter, the petitioner had challenged the order of imposition of penalty imposed by the Disciplinary Authority before the appellate authority who upheld the penalty imposed by the Disciplinary Authority and thus, held the petitioner guilty of the charge framed against him.

[6] The said penalty was challenged by the petitioner in the High Court by way of filing writ petition under Article-226 of the Constitution of India. The High Court had disposed of the writ petition being No. WP(C) No. 276 of 2012 vide order dated 27.01.2016. The

operative part of the order may be reproduced herein-
below:

"[15] Having held so, the respondents No.1 and 2 are directed to reconvene the DPC to reconsider the case of the petitioner on 24.11.2006, if required and on 03.11.2007, if necessary for promotion to the post of Inspector (Food) on 24.11.2006. If the DPC finds him fit for promotion without taking any notice of the recovery, the petitioner shall be promoted w.e.f. 03.01.2007 when the respondents No.4 & 5, who are admittedly junior to the petitioner, were promoted to the post of Inspector (Food) in the scale of pay of Rs.5000-10300/-. But the petitioner would get the notional benefit till the date of filing of this writ petition i.e. 06.06.2012 and thereafter, he will be entitled to pecuniary benefits. In the event, the DPC does not find the petitioner fit to be promoted on 04.11.2006 for any reason other than the currency of penalty, then his case would be considered with the persons who were considered on 03.11.2007 and the respondent No.2 shall promote the petitioner to the post of Inspector (Food) w.e.f. 06.12.2007 when the respondent No.6 was promoted in the said post, if the DPC finds the petitioner suitable to be promoted on 03.11.2007. It is reiterated that the currency of the penalty shall not be any ground for denying the petitioner for promotion to the post of Inspector (Food) on the dates when the respondents No.4,5 & 6 were considered by those DPCs and the petitioner shall get the pecuniary benefits from 06.06.2012. For the preceding period, if he is promoted in terms of this direction, the petitioner's pay shall be fixed notionally in the event of his promotion to the post of Inspect (Food) from the date when his juniors, the respondents No.4,5 & 6 were promoted. The necessary consequential orders shall follow in respect of the respondents No.4,5 & 6. The respondents No.1 and 2 however shall

be at liberty to create a supernumerary post for a period which may be required to adjust the new situation..”

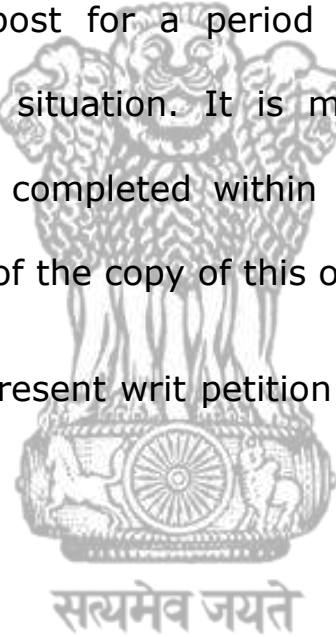
[7] It is the grievance of the petitioner that despite specific order passed by this Court as reproduced hereinabove, the respondents till today has not implemented the said order, despite filing of repeated representations. Ultimately, he has filed the present writ petition to enforce the judgment and order of this Court directing him to promote to the post of Sub-Divisional Controller (SDC, for short) with retrospective effect with all service and pecuniary benefits.

[8] Mr. R. G. Chakraborty, learned counsel appearing for the respondents has submitted that the petitioner could not be promoted as per order of this Court for the reason that there was no suitable vacancy in the post of SDC or Chief Inspector.

[9] In my opinion, this cannot be the ground to deprive a person for consideration of his right to be promoted and more particularly when his junior was promoted. Further, respondents are duty bound to enforce the order of the Court.

[10] Having held so, the respondents are directed to enforce the order of this Court as reproduced in para-6 of this judgment. Consequently, the petitioner is entitled to be considered for promotion to the next higher post/posts. Needless to say, that the petitioner is entitled to get all pecuniary benefits notionally. In furtherance thereof, the petitioner would be entitled to get benefit of next promotion as per Recruitment Rules from the date when his juniors were promoted i.e. with effect from 2010. If there is no vacancy at present, the respondents shall create supernumerary post for a period which may be required to adjust new situation. It is made clear that entire exercise shall be completed within 2(two) months from the date of receipt of the copy of this order.

In the result, the present writ petition stands allowed and disposed of.



JUDGE