

**HIGH COURT OF TRIPURA
A_G_A_R_T_A_L_A**

WP(C) No. 436 of 2017

1. **Sri Monoranjan Majumder**, son of late Puran Lal Majumder, resident of Vill-Sukanta Palli, P.O. Abhoynagar, P.S. West Agartala, District: West Tripura.

.....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, P.O. Abhoynagar, P.S. West Agartala, West Tripura.
2. **The Director**, Food, Civil Supplies & Consumer Affairs Department, Government of Tripura, Pandit Nehru Complex, Gurkhabasti, Agartala, West Tripura.
3. **The Sub-Divisional Magistrate**, Panisagar, P.O. & P.S. Panisagar, District: North 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	:	YES/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 seniority list as well as the length of service as mentioned in the Recruitment Rules for promotion with retrospective effect from the year 2007.

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

[3] Briefly stated, the petitioner was first appointed on 17.12.1997 as Junior Store Keeper. The petitioner was supposed to be promoted to the post of Inspector on completion of 5[five] years of satisfactory service as per Recruitment Rules and the next promotion would be the post of Sub-Divisional Controller or Chief Inspector on

completion of 3 [three] years of satisfactory service in the feeder post i.e. as Inspector.

[4] A disciplinary proceeding was initiated against the writ petitioner vide memo dated 15.07.2006 when he was working as Junior Store-keeper and was posted as in-charge of Transit Go-down No.6 at Dharmanagar 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 off the writ petition being No. WP(C) No. 105 of 2009 vide order dated 18.11.2016. The

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

"20. In view of the discussion made above, I am of considered opinion that the punishment inflicted on the petitioner was practically based on no cogent evidence and hence the order inflicting punishment is liable to be interfered and set aside.

22. The writ petition is accordingly allowed. the order dated 23.07.2008 passed by the disciplinary authority (Annexure-8 to the writ petition) and the order dated 26.09.2008 passed by the appellate authority are set aside and quashed. The amount if any recovered from the petitioner pursuant to those orders shall be returned to the petitioner within 90[ninety] days from today, otherwise, it shall carry interest at the rate of 9 percent per annum from the date of recovery. The petitioner also should be placed in his original position of his service immediately with all service benefits to which he is entitled before the punishment order was passed."

[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 with the order of the Court.

[10] Be that as it may, the respondents are directed to consider the case of the petitioner within a period of 2 [two] months from the date of receipt of the copy of this order. 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 06.12.2007. 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

A.Ghash

HIGH COURT OF TRIPURA



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