

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.277 of 2024

Kunthal Das, Age-37 years,
S/o-Lt. Gouranga Ch. Das, resident of Town Rajarbag, Udaipur, P.O. & P.S.-
R.K. Pur, District-Gomati Tripura, Pin-799120.

....Petitioner(s)

Versus

1. The State of Tripura, to be represented by the Secretary, Rural Development Department, Government of Tripura, New Secretariat Complex, Kunjaban, Agartala, West Tripura, Pin-799010.

2. The Chief Engineer, RD Department, Govt. of Tripura, Gurkhabasti, Agartala, West Tripura, Pin-799006.

3. Sri Debasish Das, Assistant Engineer, presently posted at O/o the SDO, Belonia Sub-Division

(Notice may be served through the Chief Engineer, RD Department, Govt. of Tripura)

4. Sri Sumit Chandra Nag, Assistant Engineer, presently posted at O/o RD Dharmanagar Division,

(Notice may be served through the Chief Engineer, RD Department, Govt. of Tripura)

5. Sri Subhrajit Das, Assistant Engineer, presently posted at O/o the RD Salema, Sub-Division,

(Notice may be served through the Chief Engineer, RD Department, Govt. of Tripura)

....Respondent(s)

For the Petitioner(s) : Mr. P. Roy Barman, Sr. Advocate
Mr. K. Nath, Advocate
Mr. S. Bhattacharjee, Advocate
Mr. D. Paul, Advocate
Ms. A. Debbarma, Advocate

For the Respondent(s) : Mr. Kohinoor N. Bhattacharyya, GA

Date of hearing & delivery of judgment & order : **30.11.2024**

Whether fit for reporting : **No**

HON'BLE MR. JUSTICE ARINDAM LODH
Judgment & Order (Oral)

Heard Mr. P. Roy Barman, learned senior counsel assisted by Mr. K. Nath, learned counsel appearing for the petitioner. Also heard Mr. Kohinoor N. Bhattacharyya, learned GA appearing for the respondents-State.

The brief fact of the case is that the petitioner while serving as Junior Engineer, Grade-I had passed departmental examination on 19.12.2022 to make himself eligible to be considered for promotion to the post of Assistant Engineer under the respondents. It is the case of the petitioner that his juniors were promoted, but, he was not considered for promotion to the post of Assistant Engineer despite his eligibility. The petitioner submitted representation, but, that was not considered compelling him to approach this Court by way of filing the instant writ petition seeking a direction to issue a writ in the nature of mandamus upon the respondents to consider his promotion to the post of Assistant Engineer.

Mr. Roy Barman, learned senior counsel for the petitioner has submitted that since the petitioner was eligible on the date of consideration of promotion to the post of Assistant Engineers, his name was excluded from consideration for promotion to the post of Assistant Engineer most illegally and arbitrarily. Learned senior counsel has further submitted that the respondents in their counter affidavit have stated that the fact that the petitioner had passed departmental examination was not within their knowledge.

On the other hand Mr. Bhattacharyya, learned GA for the respondents-State has submitted that the process of promotion to the post of Assistant Engineer on ad-hoc basis was taken up to keep consistency with the policy of the State Government. The respondents had taken up the process of promotion to the post of Assistant Engineer from the post of Junior Engineer, Grade-I on 06.12.2022. During the process they found that the juniors of the petitioner had passed the departmental examination after the date of initiation of the process. According to the respondents, the department had considered the promotion of those Junior Engineers, Grade-I who had completed departmental examination prior to 06.12.2022 when the process of promotion was initiated. The name of the petitioner was not considered as he had passed the departmental examination on 19.12.2022 and by that time the process was completed consequent to which the recommended Junior Engineers were appointed under notification dated 28.12.2022. Learned GA has further submitted that the recruitment rules framed for promotion to the post of Assistant Engineer from the post of Junior Engineer, Grade-I clearly stipulates at Clause 11(b) that Junior Engineers, Grade-I have to pass departmental examination for consideration of

promotion to the next higher post i.e. Assistant Engineer. So, since the rule was framed under Article 309 of the Constitution of India it must strictly be followed.

I have considered the submissions of learned counsel appearing for the parties.

Admittedly, the petitioner had not passed the departmental examination prior to the date of initiation and consideration of the process of promotion taken up by the respondents to fill up the vacant post of Assistant Engineers.

At this juncture, Mr. Roy Barman, learned senior counsel for the petitioner has submitted that the Court may direct the respondents to consider the matter of promotion of the petitioner to the post of Assistant Engineer since his juniors were already promoted.

I have considered this submission.

It is settled proposition of law that whether a post will be filled up or not is absolutely within the prerogative of the respondents. Even, keeping this principle in mind, I request the respondents to consider the promotion of the petitioner to the post of Assistant Engineer since, according to the petitioner, vacancy in the rank of Assistant Engineer still exists.

The instant writ petition stands disposed in the above terms.

JUDGE

Snigdha

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