

**HIGH COURT OF TRIPURA  
AGARTALA**

**WP(C) No.668/2023**

Sri Sudhangshu Sarkar, S/O. Late Purnachandra Sarkar, Permanent Resident of Joynagar Middle Road, Agartala, West Tripura, Presently residing at Mirzapur PWD Quarter Complex, P.O.-Belonia, South Tripura.

..... Petitioner(s).

**V E R S U S**

1. The State of Tripura, Represented by its Principal Secretary, Department of General Administration (Personal & Training), Government of Tripura, New Capital Complex, Agartala, West Tripura.

2. The Secretary, Department of General Administration (Personal & Training), Government of Tripura, Agartala, District-West Tripura.

3. The Deputy Secretary, Department of General Administration (Personal & Training), Government of Tripura, Agartala, District-West Tripura.

4. The Review Selection Committee, (as constituted by the Government for promotion to the post of TCS Grade-I (Selection Grade), Department of General Administration (Personal & Training), Represented by the Chairman, Official Address at-Office of the Tripura Public Service Commission, Agartala, District-West Tripura.

5. The Selection Committee, (as constituted by the Government for promotion to the post of TCS Grade-I (Senior Selection Grade), Department of General Administration (Personal & Training), Represented by the Chairman, Official Address at-Office of the Tripura Public Service Commission, Agartala, District-West Tripura.

6. The District Magistrate & Collector, Khowai, Tripura.

7. The Under Secretary, Department of General Administration (Personal & Training), Government of Tripura, Agartala, District-West Tripura.

.....Respondent(s).

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For Petitioner(s) : Ms. R. Purkayastha, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

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**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH**

Date of hearing and judgment: **27<sup>th</sup> September, 2024.**

Whether fit for reporting : **NO.**

**JUDGMENT & ORDER(ORAL)**

Heard Ms. R. Purkayastha, learned counsel appearing for the petitioner and Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the respondents-State.

2. At the outset, be it indicated that during pendency of the writ petition, an order was passed on 15.02.2024 by the General Administration (Personal & Training) Department, Government of Tripura whereby the competent authority has held that there is no scope for giving retrospective effect to the promotion of the petitioner from TCS Grade-II (TCS Grade-I on ad hoc basis) to the post of TCS Grade-I (Selection Grade) with effect from the date of cessation of minor penalty on 01.07.2018. Petitioner was allowed promotion from TCS Grade-II to TCS Grade-I on ad hoc basis prospectively w.e.f. 03.07.2021 after expiry of his currency period of minor penalty on 01.07.2018 along with others as per the ad hoc Promotion Policy, 2021 of the State Government. According to the respondents, he was not superseded by any of his juniors within the period when he became entitled to be considered for promotion, i.e. from 01.07.2018 to 03.07.2021. This order dated 15.02.2024 has been challenged by way of an amendment which was allowed by order dated 29.02.2024.

3. It is pertinent to refer to the background of the original writ petition in brief to appreciate the questions raised. Petitioner had approached this Court with a prayer to direct the respondents to treat the promotion of the petitioner to TCS Grade-I with retrospective effect. Petitioner had originally approached this Court for setting aside the minutes of the Review Selection Committee dated 05.04.2023 whereby he had been found ineligible for promotion retrospectively w.e.f. 26.03.2015. He also had prayed for a direction upon the respondents to treat his promotion to the post of TCS Grade-I (Selection Grade) on regular basis w.e.f. 30.03.2015 alleging that his juniors were promoted to the post of TCS Grade-I (Selection Grade) along with all

consequential benefits. He also sought consequential promotion to the post of TCS Grade-I (Senior Selection Grade) with retrospective effect from 22.03.2022 when his juniors were promoted to the post of TCS Grade-I (Senior Selection Grade) with all consequential benefits.

4. Petitioner has also laid challenge to the decision dated 15.02.2024 through the amended writ petition whereby the respondents have declined to grant retrospective effect to his promotion w.e.f. 01.07.2018, i.e. the date of cessation of minor penalty. Petitioner has superannuated in the meantime in the month of July, 2024.

The petitioner's case was that upon cessation of the minor penalty imposed upon him w.e.f. 01.07.2018, he was eligible for further promotion. The Review Selection Committee meeting held on 12.01.2024 opined that petitioner could get ad hoc promotion with prospective effect to the post of TCS Grade-I (Selection Grade) as per ad hoc Promotion Policy dated 22.06.2021 as a one-time measure. It is pertinent to mention here that no Review Selection Committee meeting had been held to consider the case of the petitioner for promotion to TCS Grade-I (Selection Grade) after cessation of the minor penalty on 01.07.2018 till he was granted promotion to TCS Grade-I (Selection Grade) on 03.07.2021 on ad hoc basis with prospective effect.

5. Learned counsel for the petitioner contended that non-holding of Review Selection Committee meeting even after cessation of his minor penalty w.e.f. 01.07.2018 any time earlier to 03.07.2021 has resulted in denial of further promotion from the due date. In substance, the legitimate expectation of the petitioner for being considered for promotion to TCS Grade-I (Selection Grade) after cessation of minor penalty w.e.f. 01.07.2018 was not taken up

with any promptitude delaying the chances of promotion to TCS Grade-I (Senior Selection Grade) in the background that his juniors have been granted such promotion. A Review Selection Committee meeting was held on 12.01.2024 during pendency of the writ petition that led to passing of the order dated 15.02.2024. The order dated 15.02.2024 which contains the details of the sequence of events and the grounds on which the respondents have refused to grant retrospective effect to the promotion to TCS Grade-I (Selection Grade) is extracted hereunder:

"No.F.41(10)-GA(P&T)/2023  
GOVERNMENT OF TRIPURA  
GENERAL ADMINISTRATION (PERSONNEL & TRAINING) DEPARTMENT  
Dated, Agartala, the 15<sup>th</sup> February, 2024

**ORDER**

**WHEREAS;** a Selection Committee meeting was held on 26-03-2015 to consider promotion of TCS Gr-II officers to the post of TCS Gr-I (Selection Grade). In the said meeting, name of 8(eight) TCS Gr-II officers were under the zone of consideration wherein name of Shri Sudhangshu Sarkar, TCS Gr-II was at Sl. No. 6.

**AND**

**WHEREAS;** at that material period a disciplinary proceeding was initiated against Shri Sudhangshu Sarkar, TCS by the GA(AR) Department (Disciplinary Authority) vide Memo. No.F.11(5)-GA(AR)/2013/2012-14 dated 23-10-2013 on five article of charges and the said proceeding was pending against him.

**AND**

**WHEREAS;** the Selection Committee after due consideration of the ACR gradings and other aspects found 3(three)TCS Gr-II officers suitable and recommended their names for promotion to the post of TCS Gr-I (Selection Grade). But, the Selection Committee could not decide whether Shri Sudhangshu Sarkar (SC), TCS Gr-II was "Fit" or "Unfit" for promotion due to non-availability of all relevant ACRs.

**AND**

**WHEREAS;** on receipt of the findings of the Inquiring Authority, the GA(AR) Department had imposed a Major Penalty of withholding 2(two) increments with cumulative effect upon Shri Sudhangshu Sarkar, TCS Gr-II vide order No.11(5)- GA(AR)/2013/522-24 dated 17-03-2017.

**AND**

**WHEREAS;** Shri Sudhangshu Sarkar filed a writ petition vide WP(C) No. 1230 of 2018 before the Hon'ble High Court of Tripura against the above order, and as per direction/judgment of the Hon'ble High Court of Tripura, the Disciplinary Authority passed a fresh order imposing a Minor penalty of withholding 2(two) increments without cumulative effect upon Shri Sudhangshu Sarkar, TCS vide order No. 11(5)-GA(AR)/2013/172-73 dated 19-01-2021. Shri Sudhangshu Sarkar further filed a writ appeal WA No. 203 of 2020 before the Hon'ble High Court and the Hon'ble Divisional Bench by order dated 29-07-2022 reduced the penalty of 2(two) increments without cumulative effect to 1(one) increment without cumulative effect. In compliance with the said direction of the Hon'ble High Court of Tripura, the Disciplinary Authority had issued a fresh order imposing a penalty of withholding of 1(one) increment without cumulative effect upon Shri

Sudhangshu Sarkar, TCS vide order No.11(5)-GA(AR)/2013/1452-1453 dated 29<sup>th</sup> October, 2022.

**AND**

**WHEREAS;** as per norms, no one can be allowed promotion during the pendency of the Disciplinary Proceeding. Moreover, during the currency period of punishment, promotion can also be not allowed.

**AND**

**WHEREAS;** Para-26 of Chapter 2-Suspension-A Digest of CCS(CC&A) Rules, 1965 provides that "If any penalty is imposed on the officer as a result of the disciplinary proceeding or if he is found guilty in the Court proceedings against him, the findings in the sealed cover(s) will not be acted upon. His case for promotion has to be considered in the usual course by the next Departmental Promotion Committee, after the conclusion of the disciplinary/Court proceedings, having regard to the penalty imposed on him.

**AND**

**WHEREAS;** Shri Sarkar has been awarded a statutory Minor penalty as defined in the Rule, 11 of the CCS(CC&A) Rules, 1965, hence, it is crystal clear that Shri Sarkar has not been fully exonerated from the Disciplinary Proceeding. Therefore, Shri Sudhangshu Sarkar, TCS is not entitled to get promotion to the post of TCS Gr-I (Selection Grade) with effect from the date on which his junior was allowed promotion.

**AND**

**WHEREAS;** currency period of the penalty of Shri Sarkar has been expired on 01-07-2018 & he has become eligible for promotion to the post of TCS Gr-I (Selection Grade), but, promotion of the State Govt. employees remained with held w.e.f. 01-04-2017 due to "Status quo" order passed by the Hon'ble Supreme Court of India in connection with SLP (C) No.19765-19767 of 2015 regarding Reservation Policy of State Govt.

**AND**

**WHEREAS;** the State Govt. has framed an ad-hoc Promotion Policy on 22-06-2021 to allow ad-hoc promotion with prospective effect as one time measure pending final outcome of the SLP.

**AND**

**WHEREAS;** as per above promotion policy, Shri Sudhangshu Sarkar, TCS Gr-II has already been promoted to the post of TCS Gr-I (Selection Grade) on ad-hoc basis as a one-time measure with prospective date vide this Department Notification No.F.2(11)-GA(P&T)/2021 dated 3<sup>rd</sup> July, 2021.

**AND**

**WHEREAS;** having been aggrieved with the ad-hoc promotion with prospective effect Shri Sarkar has filed a writ petition No. WP (C) 829 of 2022 before the Hon'ble High Court of Tripura. As per direction of the Hon'ble High Court of Tripura dated 07-02-2023, a Review Selection Committee meeting has been held on 05-04-2023.

**AND**

**WHEREAS;** Review Selection Committee in its meeting held on 05-04-2023, viewed that as per DPC procedure adopted by the State Govt. vide GA(P&T) Department Memo dated 14<sup>th</sup> June, 2004, CCS Rules, 1965 and other regulation of DoPT, GOI, during the material period, a D.P was pending and Shri Sudhangshu Sarkar was not clear from vigilance angle. Moreover, such proceeding was also concluded with imposition of Minor penalty and he was not fully exonerated.

**AND**

**WHEREAS;** Review Selection Committee has also viewed that since a Minor penalty has been imposed upon Shri Sarkar, hence he has not fully exonerated from D.P. Accordingly, DPC has not recommended him for promotion with retrospective effect.

**AND**

**WHEREAS,** the above recommendation of the Review Selection Committee has been communicated to Shri Sudhangshu Sarkar, TCS Gr-I (Selection Grade) through DM & Collector, Khowai District on 3<sup>rd</sup> July, 2023.

**AND**

**WHEREAS;** Shri Sudhangshu Sarkar being aggrieved has again filed a writ petition bearing No.668 of 2023 before the Hon'ble High Court of Tripura. As per direction of the Hon'ble High Court of Tripura dated 14-12-2023, a Review Selection Committee meeting has further been held on 12-01-2024. Review Selection Committee has viewed that on the basis of available ACR grading and the DPC procedure as adopted by the State Govt. vide

Memo. No.F.11(1)-GA(P&T)/72 dated 10<sup>th</sup> June, 2004 found that Shri Sudhangshu Sarkar, TCS Gr-II is "fit" for promotion to the post of TCS Gr-I (Selection Grade) on and from 12-01-2024.

**AND**

**WHEREAS;** Shri Sudhangshu Sarkar, TCS Gr-II has been allowed promotion to TCS Gr-I on adhoc basis with prospective date of effect on 3<sup>rd</sup> July, 2021, after expiry of his currency period of punishment on 01.07.2018, following the extant adhoc promotion Policy, 2021 of the State Government along with others. But, the petitioner, Shri Sarkar was in no way superseded by any of his junior from and within the period when he becomes entitled to be considered for promotion.

Now, therefore, it has carefully been re-examined by the Competent Authority taking all the relevant factors into consideration having relation to the scope of promotion of the petitioner Shri Sudhangshu Sarkar, TCS Gr-II (now TCS Gr-I, on adhoc) to the post of TCS Gr-I (Selection Grade) w.e.f. the date of cessation of minor penalty on 01.07.2018 but found not tenable in view of above explanation. Consideration and resultant fresh decision of the Government has been taken in terms of the order of the Hon'ble High Court vide W.P.(C) No.668 of 2023 dated 25-01-2024.

By order of the Governor.  
(Jai Datta) 15.02.24  
Under Secretary to the  
Government of Tripura."

6. A perusal of the impugned order dated 15.02.2024 in the background facts indicate that petitioner was suffering from a minor penalty up to 01.07.2018. It is also evident that promotions of State Government employees were kept in abeyance w.e.f. 01.04.2017 due to status quo order passed by the Hon'ble Supreme Court of India in connection with SLP(C) Nos.19765-19767 of 2015 regarding Reservation Policy of the State Government. Thereafter, the State Government framed an ad hoc Promotion Policy on 22.06.2021 to allow ad hoc promotion with prospective effect as one-time measure pending final outcome of the SLP. Consequent thereto, petitioner's case was considered and promotion to TCS Grade-I (Selection Grade) on ad hoc basis was granted with prospective effect vide notification dated 03.07.2021. Aggrieved thereby, petitioner had approached this Court by filing WP(C) No.829 of 2022. Upon directions passed by this Court on 07.02.2023, a Review Selection Committee meeting was held on 05.04.2023 which arrived at an opinion that since a minor penalty was imposed upon the petitioner, he was not fully exonerated. Therefore, DPC had not recommended

him for promotion. Being aggrieved by the Review Selection Committee meeting decision conveyed to the petitioner on 03.07.2023, he preferred the present writ petition. Thereafter, the Review Selection Committee meeting was held on 12.01.2024 which viewed his case on the basis of available ACR's Grading and DPC procedure as adopted by the State Government and found that petitioner was fit for promotion to TCS Grade-I (Selection Grade) on and from 12.01.2024.

7. Learned counsel for the petitioner has once again reiterated her submission that promotion to TCS Grade-I (Senior Selection Grade) ought to have been given from the due date since the minor penalty of withholding of one increment without cumulative effect had expired by 01.07.2018. This contention of the petitioner has been refuted by Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the State. He has also referred to the order dated 15.02.2024 which contains detailed reasons as to why retrospective promotion could not be given to the petitioner i.e., both for the reason that he was suffering from a penalty till 01.07.2018 and between 01.04.2017 to 22.06.2021 no juniors of the petitioner were promoted as the State Government had withheld promotion of its employees w.e.f. 01.04.2017 due to the order of status quo passed by the Apex Court in the Special Leave Petitions.

8. Learned counsel for the State submits that upon framing of the ad hoc Promotion Policy as a one-time measure, promotion has been granted to the petitioner to the post of TCS Grade-I (Selection Grade) from 03.07.2021 with prospective effect.

9. Upon consideration of the pleadings and the materials placed on record and upon hearing learned counsel for the parties, two things are evident; one that from the period 01.04.2017 till the ad hoc Promotion Policy was framed by the notification dated 22.06.2021 no junior to the petitioner had been granted promotion in view of the status quo order passed in SLP(C) Nos.19765-19767 of 2015 by the Supreme Court. The minor penalty of the petitioner ceased w.e.f. 01.07.2018 but consideration for promotion of the petitioner was not undertaken for 3(three) years till the ad hoc Promotion Policy was framed on 22.06.2021. Under the ad hoc Promotion Policy, ad hoc promotion could be given only for one instance. The petitioner was granted promotion to TCS Grade-I (Selection Grade) on ad hoc basis by notification dated 03.07.2021.

10. In these circumstances, this Court is of the considered view that as on date in view of the ad hoc Promotion Policy applicable to the employees of the State Government, no further ad hoc promotion to TCS Grade-I (Senior Selection Grade) could be granted to the petitioner. The Special Leave Petitions regarding the Reservation Policy of the State Government are still pending. Since the matter is *sub judice* before the Apex Court, such claim of the petitioner, for giving effect to his promotion to TCS Grade-I (Selection Grade) w.e.f. 01.07.2018, could only be entertainable dependent upon the decision rendered by the Apex Court in SLP(C) Nos.19765-19767 of 2015. As such, the proceedings are closed.

Petitioner is at liberty to approach the respondent authorities with the aforesaid prayer as per the decision rendered by the Apex Court in SLP(C) Nos.19765-19767 of 2015.



11. With the above observation and decision, the writ petition is disposed of.

Pending application(s), if any, also stands disposed of.

(APARESH KUMAR SINGH), CJ

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