

(2008) 12 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (C) No's. 476, 477, 478 and 480 of 2006

Rama Rakshit and Others

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 22-12-2008

Acts Referred:

Administrative Tribunals Act, 1985 — Section 14
Constitution of India, 1950 — Article 226, 309
Tripura Police Service (3rd amendment) Rules, 1975 — Rule 29, 3
Tripura Police Service Rules, 1967 — Rule 2, 28, 29, 29(4), 3

Citation : (2009) 2 GLT 945

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Advocate : K.N. Bhattacharjee, S. Talapatra, S. Acharjee and B. Banerjee, for the Appellant; S. Chakraborty, S. Deb, S. Chaudhury, C.S. Sinha and D.C. Saha, for the Respondent

Final Decision : Dismissed

Judgement

B.D. Agarwal, J.—This common judgment will dispose of all the aforesaid four writ petitions since in all the writ petitions basically the Notification dated 27.12.2002, issued by the General Administration Department of the Government of Tripura promoting the Petitioners and private Respondent No. 8 to Tripura Police Service (TPS) Grade-I (Selection grade), placing the Respondent No. 8 Sri Uttam Majumder above the writ Petitioners who were senior to Sri Majumder in TPS Grade-II, has been challenged, besides this, the Petitioners have also assailed the Notification dated 16.12.2008 whereby the Government has published separate final seniority list of TPS Grade-I keeping R-8 above the Petitioners.

2. I have heard Sri K.N. Bhattacharjee and Sri S. Talapatra, learned Sr. Counsels for the writ Petitioners. Private Respondent No. 8 was represented by Sri S. Deb, learned Sr. Counsel whereas the State Respondents were represented by Sri S. Chakraborty, learned Addl. Government Advocate. Respondent Nos. 9 and 10 got

themselves impleaded only with a limited prayer that the writ petitions maybe disposed of at the earliest possible since their career was also affected because of the litigation. It is an admitted fact that R-9 and R-10 are undisputedly senior officers than the Petitioners as well as R-8 by dint of their seniority in TPS Grade-II.

3. Learned Counsel for the Petitioners have basically challenged the final seniority list of TPS Grade-I on the premise that "Tripura Police Service Rules, 1967" does not contemplate preparation and publication of any separate seniority list for Grade-I. Learned Counsel for the Petitioners submitted that the Petitioners as well as Respondent No. 8 were appointed in the TPS Grade-II simultaneously by the common order dated 23.3.1992. Since then, the Petitioners were always considered senior to R-8 and this position was to some extent changed while promoting them to the Selection Grade by the notification dated 27.12.2002. Against this notification various representations were submitted, which did not find favour with the Government. After rejecting the objections the Government published final seniority list of TPS Grade-I putting R-8 at Sl. No. 3 followed by the writ Petitioners. The seniority position of R-9 and R-10 remained undisputed and they were put at Sl. Nos. 1 and 2 respectively.

4. It is the further case of the Petitioners that under TPS Rules, 1967 there is only one "service" i.e. Tripura Police Service as defined in Rule 2(f). It was contended by the learned Counsel for the Petitioners that in view of this statutory position the Government had published a common final seniority list of all the officers of Tripura Police Service both in Grade-II and Grade-I on 8.11.2004 (Annexure-7) wherein the seniority position of Sri U. Majumder (R-8) was maintained below the Petitioners despite their promotion to the rank of Grade-I took place on 27.12.2002. Learned Counsel for the Petitioners also referred to Rules 28 and 29 of TPS Rules to contend that there is no scope for changing the seniority during promotion from TPS Grade-II to Grade-I. Learned Counsel for the Petitioners also submitted that while doing so, the Government must have taken into consideration certain guidelines issued by the Government of India on 10.3.1989 which were adopted by the State of Tripura vide office memorandum dated 23.3.1992. In the opinion of the learned Counsels since TPS Rules, 1967 provides the method and modalities for promotion, the guidelines of Government of India to be followed by the Departmental Promotion Committees (DPC) during promotion have no application and any promotion or preparation of gradation list based on such guidelines are ultra vires being de-hors to the Rules. On these premises, it was urged that the impugned notification dated 27.12.2002 (Annexure-5) should be quashed only for the purpose of bringing the seniority of R-8 below the writ Petitioners and the Office Memorandum dated 16.12.2006, i.e. the Final Seniority List of TPS Grade-I (Annexure-II) should be quashed in its entirety since there is no scope for publishing separate seniority list for TPS Grade-I.

5. On the other hand, it was submitted by Sri Deb, learned Sr. Counsel for R-8

that TPS Rules are not exhaustive with regard to the promotion of officers from. Grade-II to Grade-I and as such the procedure for promotion to be adopted by the DPCs issued by the Government of India and time to time adopted by the State Government would hold the filed. In support of this submission, the learned Counsel Med upon the hudgments of the Hon''ble Supreme Court of India rendered in the case of Union of India (UOI) Vs. K.P. Joseph and Others, , Union of India Vs. Madras Tele S.C. and S.T. Social Welfare Association, and The Meghalaya State Electricity Board and Another Vs. Shri Jagadindra Arjun,

6. Learned Counsel for the R-8 further submitted that TPS Rules were initially framed only to cover the services of Grade-II officers. However, the Rules were amended in the year 1975 whereby the "service" was divided into Grade-I (selection grade) and Grade-II and as such publication of separate gradation list for Grade-I officers is within the ambit and parameters of the Rules. In support of this submission, the learned Counsel also pointed out that long before a separate seniority list for TPS Grade-II was also published vide office memorandum dated 24.7.2000, which is a part of the W.P.(C) No. 476 of 2006 under Annexure-3.

7. Sri Deb, learned Sr. Counsel for the Respondent No. 8 also raised a technical objection with regard to the maintainability of the writ petitions. According the learned Counsel since the gradation list will have a direct bearing for nominating the TPS officers for promotion to TPS cadre the grievance of the Petitioners ought to have been vindicated before the Central Administrative Tribunal (CAT) u/s 14 of the Administrative Tribunals Act, 1985.

8. Sri S. Chakraborty, learned Addl. Government Advocate submitted that the Government guidelines regarding promotion and seniority are being followed since 1960. One such office order dated 12.7.1960 has been annexed with the counter affidavit of the Government under Annexure-R/4. The learned Addl. GA also submitted that even the Petitioners are also relying the Government guidelines, as will be evident from their pleadings and as such now the Petitioners are estopped from questioning the applicability of the Government guidelines dated 10.3.1989 which were subsequently revised by the Government of India and adopted by the State of Tripura under O.M. dated 23.3.1992 and 10.6.2004. It may be put on record that these notifications of Government of India have been annexed by the writ Petitioners themselves. The learned Addl. GA also submitted that since the promotion of the Petitioners and the R-8 were effected in the year 2002, the procedure laid down under office memorandum dated 10.3.1989 (prerevised) were followed and there is no infirmity in publishing separate seniority list for TPS Grade-I.

9. At the outset I would like to dispose of the objection raised by R-8 with regard to the maintainability of the writ petitions allegedly being hit by Section 14 of the Administrative Tribunals Act, 1985. It is true that there is a reference in the writ petitions that if the seniority list of Grade-I is not interfered with by this Court chances of the Petitioners for their promotion to the IPS cadre may be affected.

In my considered opinion, such apprehension of the Petitioners cannot give the jurisdiction to the CAT nor can it oust the jurisdiction of the High Court under Article 226 of the Constitution. I am also of the view that till date the Petitioners and the private Respondent are the members of Tripura Police Service and as such their dispute relating to promotion and preparation of seniority list under the provisions of TPS Rules can only be examined by the High Court in absence of any State Tribunal for this purpose. Hence, the objection of the R-8 is hereby overruled.

10. Coming to the case of the writ Petitioners it is noticed that the Petitioners have challenged the promotion of R-8 adhering to the procedure laid down by the O.M., dated 10.3.1989 (pre-revised) and it was pleaded that DPC ought to have followed the guidelines revised in the year 2004. However, during the course of argument, Sri K.N. Bhattacharjee, learned Sr. Counsel appearing in W.P.(C) Nos. 476, 477 and 478 of 2006 for the Petitioners orally withdrew his pleadings and submitted that the impugned orders were challenged due to wrong understanding of O.M. dated 10.3.1989 adopted by the State on 23.3.1992. To put it straight the learned Counsel confined his argument to challenge the impugned gradation list on the basis of TPS Rules.

11. Sri S. Talapatra, learned Sr. Counsel for the Petitioner in W.P.(C) No. 480 of 2006 submitted that he had never pleaded that office memorandum dated 23.3.1992 would be applicable for promotion and fixing the seniority. However, the pleadings more particularly the averments made in para 16 of the writ petition would clearly show that the Petitioners of this case had also relied on the procedure laid down under office memorandum for the promotion. For ready reference para 16 of the writ petition is reproduced below:

16. That, in Rule 29 the following mode has been prescribed by the Tripura Police Service (3rd amendment) Rules, 1975 which came into effect from 21.10.1972.

4 (i) The appointment of the members of the service to the selection grade shall be made by the State Government in consultation with the Commission on the basis of merit with due regard to the seniority.

Therefore, in absence of any specific provision the policy adopted by the Respondent Nos. 1 and 2 vide memorandum No. F.33 (1)-GA/92 dated 23.3.1992 would be applicable where it is categorically stated that there cannot be any suppression among those are graded as feeder in terms of their prescribed benchmark and their inter se seniority in the feeder grade shall remain intact but the candidate must fulfill the conditions prescribed by the concerned recruitment Rules or the service Rules.

12. There was no controversy at the Bar that if statutes and Rules issued under Article 309 of the Constitution are not exhaustive or are silent about the procedure for promotion and fixation of seniority list, the executive/administrative orders can be followed. I need not burden this judgment by referring to various authorities from the Apex Court and also by this Court in this

regard. The question now is whether TPS Rules is a self-contained Rule and whether the Government instructions have no role in the matter of promotion or fixation of seniority.

13. As mentioned earlier TPS Rules, 1967 were initially framed only to constitute one service being Tripura Police Service. In the gradual course under notification dated 10.2.1975 Rule 3 was amended to introduce two grades of Police Service being Grade-I and Grade-II. For appreciating the rival submissions it is also necessary to look at Rule 3, of TPS Rules, which is quoted hereinbelow:

3. Constitution of the service and its classification

(i) There shall be a State Police Service known as the Tripura Police Service;

(ii) The service shall have two Grades, namely:

(a) Grade-I (Selection Grade); and

(b) Grade-II

(iii) The posts in Grade-I (Selection Grade) shall be Group-A gazetted posts.

14. After noticing the definition of "service" employed in Clause (f) of Rule-2 which defines "service" as "Tripura Police Service" I do not see any conflict with the amended Rule 3. In my considered opinion, formation of two grades would have no effect on the Tripura Police Service as a whole. Besides this, I have also mentioned earlier in this judgment that long back also the Government had published separate seniority list for Grade-II officers in the year 2000, although TPS Grade-I was introduced in the year 1975. In the final seniority list of TPS Grade-II the name of the present Petitioners also find place. However, they did not take any exception to the aforesaid list which was separately published for Grade-II officers. In fact, the Petitioners of W.P.(C) No. 480 of 2006, inter alia, made a prayer to direct the State Respondents to prepare a fresh seniority list for TPS Grade-I. However, during the course of argument, Sri S. Talapatra, learned Sr. counsel for the Petitioner submitted that now he is not pressing the aforesaid prayer made under Clause (iv). In my considered opinion, despite withdrawal of the written prayer the fact remains that in the past also separate seniority list was prepared for Grade-II officers and the Rules also do not specifically prohibit publishing separate seniority list gradewise.

15. Rule 28 deals with fixation of seniority and Rule 29 is basically for showing pay and allowances for both the grades, but Sub-rule (iv) introduced in 1975 also deals with the criteria for promotion. Relevant portions of Rule 28 and Rule 29 are also extracted below:

28 (i) In the case of persons appointed on the result of competitive examination or by selection under Clause (b) of Sub-rule (1) of Rule 5, seniority in the Service shall be determined by the order in which appointments are made to the Service.

(ii) Omitted

(iii) xxxxx xxxxx xxxxx

(iv) xxxxx xxxxx xxxxx

29.(1) to (3) xxxxx xxxxx xxxxx

(4) (i) Appointment of the members of the service to the Selection Grade shall be made by the State Government in consultation with the Commission on the basis of merit with due regard to seniority, (emphasis mine)

(ii) xxxxx xxxxxxxxxxx

16. After comparing the original Rules vis-a-vis amendments it is found that Rule 28 was not amended in the year 1975, only Clause (ii) of Rule 28 was omitted by 2006 amendment. This clause had dealt with seniority of the members at the time of initial constitution of the service. Hence, omission of Clause (ii) has no bearing in the present case. The remaining provision of Rule 28 clearly relates to the fixation of inter se seniority in between direct appointees and promotees in Gr. II. Since Grade-II is the feeder post of Grade-I, the Rules regarding seniority Grade-II has nothing to do with the promotion and fixation of seniority of Grade-I officers.

17. The next question that also falls for consideration is whether the DPC was competent to put the name of Respondent No. 8 above the writ Petitioners while recommending their promotion. Under Rule 29(4) there is clear indication that merit should be the basis for promotion with due regard to seniority. Since TPS Rules is not exhaustive to define the benchmark for promotion the DPC and the Government were competent to take into consideration the guidelines/procedure issued by the Government of India on 10.3.1989 and adopted by the State of Tripura on 23.3.1992. The relevant procedure for promotion, which was holding the filed in the year 2002 had cetegorically mentioned that promotions to Group-A posts would be on the basis of the benchmark. The relevant portion of the office memorandum (pre-revised) is also reproduced below:

Wherever promotions are made for induction to Group-A posts or service from lower groups, the benchmark would continue to be "Good". However, officers graded as "outstanding" would rank en-block senior to those who are graded as "Very Good" and officers graded as "Very Good" would rank en-block senior to those who are graded as "Good" and vacancies, officers with same grading maintaining their inter se seniority in the feeder post.

18. Having regard to the fact that the aforesaid guideline was in tandem with Rule 29(4) of the TPS Rules I hold that there was no infirmity in placing the Respondent No. 8 above the writ Petitioners, which was in the domain of the DPC. I make it clear that the legal position for promotion to Gr. I would be different after 2004 Amendment of the Rules. Similarly, I find no difficulty to hold that there maybe two different seniority lists, one can be termed as common seniority list for both Grade-I and Grade-II officers and there may be separate seniority list for Grade-I and Grade-II officers. It is true that the Government had

issued a common Seniority List on 8.11.2004 showing the name of R-8 below the Petitioners. However, after looking at the notification it is difficult to hold that this notification was final in true sense inasmuch as in this notification there is no reflection of the promotion of Petitioners and private Respondents in the rank of Grade-I (selection grade). Hence, I find no difficulty to hold that the impugned Seniority List dated 16.12.2006 exclusively for TPS Grade-I can override the seniority list dated 8.11.2004. In other words, I am of the view that the Government is competent to issue a conjoint seniority list as well as separate seniority list for Grade-I and Grade-II officers.

19. In fee result, I hold that the writ petitions have no merit. Consequently, all the four writ petitions are hereby dismissed. There shall be no order as to costs. Stay order dated 22.12.2006 stands vacated.