
(2017) 01 TP CK 0045
In the Tripura High Court
Case No : 199of 2011

Shri Asok Bhattacharya

APPELLANT

Vs

The State of Tripura

RESPONDENT

Date of Decision : 27-01-2017

Acts Referred:

Constitution of India, Article 226 -
Power of High Courts to Issue certain writs

Citation : (2017) 01 TP CK 0045

Hon'ble Judges : S.C. Das

Bench : Single Bench

Advocate : A.K.Bhowmik, R.Datta, B.Bhattacharjee, J. Majumder

Judgement

1. By filing this writ petition the petitioners prayed for directing the respondents to create promotional posts of Subedar(Stenographer) from the post of Naib Subedar(Stenographer).
2. Heard learned senior counsel, Mr. A. K. Bhowmik, assisted by learned counsel, Mr. R. Dutta for the petitioners and learned State counsel, Mr. J. Majumder for the respondents.
3. The petitioners were appointed in the post of Naib Subedar(Stenographer) under due selection process. Petitioner No.1 joined the post on 04.01.2000, petitioner No.2 on 13.01.2000, petitioner No.3 on 01.04.2002 and petitioner No.4 on 12.04.2002. They have been performing their duties all along with all sincerity, devotion and to the satisfaction of the authority. Their recruitment was guided by the Tripura State Rifles Recruitment Rules, 1984. The Rules prescribe promotional avenues in all ranks of the service except the post of Naib Subedar(Stenographer). Under the Tripura State Rifles Recruitment Rules there were other similar services also, such as, Naib Subedar(Clerk), Naib Subedar(Accountant), Naib Subedar(Compounder) etc. Promotional avenues were prescribed under the Rules for the Naib Subedar(Clerk), Naib Subedar(Accountant) etc. Initially there was no promotional avenue for Naib

Subedar(Compounder), but ultimately by an administrative order the Naib Subedar(Compounder) was also provided with the promotional avenue of Subedar(Medical). One Pankaj Majumder and Jhutan Biswas were appointed as Naib Subedar(Compounder) and subsequently they were promoted to the post of Subedar(Medical) by an administrative order of the Government. Though the petitioners were similarly situated, but in their case no promotional avenues were created and as a result for last 14/16 years the petitioners are in the same post having no promotional avenue.

4. Respondent No.2 by a letter dated 24.01.2004 and thereafter by another letter dated 09.03.2005 requested respondent No.1 to create four posts of Subedar(Stenographer) with a view to afford promotional avenues to the petitioners, but that proposal has been regretted by respondent No.1 by a communication dated 07.05.2005. A copy of the said communication is annexed as Annexure-8 to the writ petition, which reads as follows : "No.F.42(1)-PD/2004

Government of Tripura Home Department. Dated, Agartala, 7th May, 2005.

To

The Director General of Police,

Tripura, Agartala.

Subject:- Proposal for creation of 4(four) posts of Subedar(Stenographer) (Promotional) in TSR with proposal for incorporating necessary rule provision.

Sir,

I am directed to refer to your letter No.5102/ F.8(12)-PHQ/TSR/03(Shadow) dated 24th January, 2004 on the subject mentioned above and to say that the Finance Department has regretted the proposal for creation of 4(four) promotional posts of Subedar(Stenographer).

Yours faithfully,

Sd/-

(Mrs.K.Das)

Under Secretary to the Government of Tripura."

It is contended by the petitioners that the proposal has been rejected without assigning any reason and so, the said letter is liable to be quashed.

5. The respondents contended that the creation of posts in a particular service, pay scale, promotion, etc. are administrative domain of the Government and so, the Court cannot direct to make Rules in a particular manner. The main stand of the respondents has been stated in para-6 of the counter affidavit, which reads as follows : "6. That, in the instant petition the petitioners have prayed for Writ in the nature of Certiorari for quashing the Letter No.F.42(1)-PD/2004 dated

07.05.2005 issued by the answering respondent No.1 refusing to concur with the proposal of the respondent No.2 for creation of promotional posts of Subedar(Stenographer) under Tripura State Rifles(hereinafter referred as TSR) for the purpose of promotion of petitioners and also prayed for Writ in the nature of Mandamus for directing the answering respondents to create promotional post of Subedar(stenographer) under Tripura State Rifles(Recruitment) Rules, 1984 (hereinafter referred as Recruitment Rules, 1984) for the purpose of promotion of the petitioners to the said post and to consider the cases of the promotion of the petitioners to the said post. In reply to the aforesaid prayers of the petitioners I state that questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotion and criteria to be fulfilled for such promotions pertain to the field of policy and within the exclusive discretion and jurisdiction of the State, subject, of course, to the limitations or restrictions envisaged in the Constitution of India. This Hon"ble Court will certainly not direct the Government to have a particular method of Recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by additions/substitution the qualification, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies arises/needed; subject to the situation faced by the State including that of the financial stringency. In the instant case the proposal for creation of post of Subedar(Stenographer) was made but the said proposal was negated consider all the aforementioned aspects including financial stringency faced by the State; hence, I state that the impugned Letter No.F.42(1)-PD/2004 is just, proper and valid in the eye of law and the prayer of the petitioners for direction for creation of post and promotion of the petitioners to that post be denied. I also state that there is no question of discrimination; hence, the question of violation of Article 14 and 16 of the Constitution of India does not arise. Under the facts and circumstances narrated hereinabove the petition of the petitioners may be dismissed."

6. According to the respondents there was no discrimination and the State Government at its wisdom created promotional avenue of Subedar(Medical) from the post of Naib Subedar(Compounder) and that cannot be an instance for making similar avenue for the petitioners.

7. Learned senior counsel, Mr. Bhowmik, appearing for the petitioners emphatically submitted that there cannot be a service without promotional avenue. He relied on the decision of the Apex Court in the case of State of Tripura & ors. V. Sri K.K.Roy, reported in (2004)9 SCC 6 5. Referring to that judgment learned senior counsel submits that respondent No.2 requested respondent No.1 to have promotional avenues but the proposal made by respondent No.2 has been turned down with a non-speaking decision, which is quite arbitrary and so, this Court in exercise of inherent jurisdiction can interfere

in it. According to Mr. Bhowmik, while there are promotional avenues for the similarly situated other branches of service such as clerical service, accounts service and compounder service, the promotional avenues ought to have been created for the petitioners also in the stenographer service. The petitioners are legitimately entitled to get one promotional avenue from the post of Naib Subedar(Stenographer) to the post of Subedar(Stenographer) and this Court can give the mandatory direction to the respondents.

8. Mr. J. Majumder, learned State counsel submitted that it is the domain of the State to create a service and to create further promotional and other avenues of the service. The policy decision cannot be directed by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. Referring to the decision of the Apex Court in the case of Bachhittar Singh V. State of Punjab & anr., reported in AIR 1963 SC 395, Mr. Majumder submitted that Annexure-8 is a communication between the State Government and the Director General of Police and there was no communication to the petitioners and so, the petitioners cannot maintain the writ petition itself.

9. I have meticulously gone through the pleadings and materials and considered the submissions of learned counsel of both side. It is an admitted position that the petitioners were appointed in the post of Naib Subedar(Stenographer) and there is no promotional avenue prescribed in the Rules.

10. It is an admitted position that the petitioners are entitled to the benefits of Career Advancement Scheme(CAS) and Assured Career Progression(ACP) Scheme as time to time formulated under the ROP Rules. But those benefits are not equivalent of promotion. The Supreme Court in the case of K.K.Roy(supra) has clearly held that in any service there must be at least two higher grades and that law is quite settled. In almost every service there are promotional avenues, which are not only to have greater remuneration but also to have greater responsibility and to have encouragement in the job. No doubt the petitioners joined the service knowing well that there was no promotional avenue prescribed under the Rules. But while similarly situated other services under the Rules have been given the benefit of promotional avenues, it is not understood why the case of the petitioners have not been considered. It is a fact that the communication dated 07.05.2005, i.e., Annexure-8, assigned no reason at all for refusing the proposal made by Director General of Police. The communication was not made to the petitioners, but the petitioners were the aggrieved persons. It is placed on record that several representations were made by the petitioners for affording them promotional avenues, but they received no positive response.

11. There is no doubt in my mind that creation of a particular service and employment thereto is the prerogative of the State Government. The State Government can take policy decision. But while taking the policy decision it is also the obligation of the State to follow fundamental aspect of equality. The Rule does not prescribe any promotional avenue for the post of Naib Subedar(Stenographer), but it is clearly brought on record that similarly situated

Naib Subedar(Compounder) has been afforded the promotional benefit by creating the post of Subedar(Medical). If in that branch of service under the same Rules, the promotional avenues have been created by the State Government, the petitioners, perhaps, cannot be deprived and if similar benefit is not given to the petitioners it would be amounting to a discriminatory treatment, which cannot be expected from a benevolent employer, i.e., the State Government. The State Government even keeping the number of posts fixed create promotional avenues within the strength of service itself that is up to the State Government and I think the Court is not required to interfere or issue any direction. So for the law laid down by the Apex Court in the case of K.K.Roy(supra) some promotional avenues have to be created. Since the similarly situated other people have been afforded the promotional avenues, it is expected that the State Government will consider the branch in which the petitioners were engaged as Naib Subedar(Stenographer).

12. The writ petition, therefore, is disposed of with a direction to the State Government to consider the representation of the petitioners in respect of creating promotional avenues of the post of Subedar(Stenographer) in the service keeping in view the observations made above and such decision should be taken within three months from today and the decision should be communicated to the petitioners in writing.

13. Parties to bear their own costs.