
(2008) 06 GAU CK 0066
In the Gauhati High Court

Sima Biswas

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 13-06-2008

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (2009) 1 GLR 896 : (2008) 3 GLT 452

Hon'ble Judges : Asok Potsangbam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Asok Potsangbam, J.—Heard Mr. S. Deb, learned senior counsel assisted by Mr. S. Choudhury, advocate, for the petitioner and also heard Mr. S. Chakraborty, learned Additional Government Advocate, Tripura.

2. The relevant facts which have given rise to this petition are stated as follows:

The petitioner, who belongs to Scheduled Caste Community, was appointed to the post of Sub-Inspector of Unarmed Branch of Police (Women) in Tripura Police Department by an order issued on 31.01.1995 and, thereafter, she was sent for training at North Eastern Police Academy (NEPA), Barapani, Shillong, where she was awarded DGP Running Trophy and Silver Medal for proficiency in legal studies. Thereafter, on completion of training at Police Training College, Agartala, she was posted as Sub-Inspector of Police (UB) (Women) in the office of the SP (Reserved), West Tripura with effect from 30.01.1996. It is also stated that the petitioner was placed in second position amongst all the Sub-Inspectors (Men & Women) who passed out pre-promotional examination conducted by the Tripura Public Service Commission in the year 2002 and that she has also been awarded a certificate for loyalty and excellence in duty by the DGP of Tripura Police in the year 2002.

3. As per the recruitment rules framed for the post of Inspector of Police, it is a selection post and a Sub-Inspector who has served six years regular service has

to pass pre-pro-motional examination and practical tests in order to be eligible for consideration of promotion to the post of Inspector. Further, for the purpose of consideration for promotion, a Sub-Inspector has to come within the zone of consideration i.e., two times the number of vacancies plus four in case of vacancy for unreserved category and in case of reserved category, the zone of consideration can be extended if no qualified reserved category candidate is available within the normal zone of consideration, as stated above. The above is the broad criteria of eligibility for consideration of promotion to the post of Inspector.

4. For determination as to who would be in the normal zone of consideration from amongst the woman Sub-Inspector of the instant case, it would be pertinent to refer to the seniority list of the Sub-Inspector of Police (Women) of Tripura Police which was published by the Government on 01.01.2006. The seniority list dated 01.01.2006 which is marked as Annexure-4 to the writ petition, shall be required to be referred to in this judgment and accordingly, the same is reproduced herein below:

Final Gradation/Seniority List of Sub-inspectors of Police (WOMEN) of Tripura Police as On 01.01.2006.

Sl. No.

Name, Date of birth, educational qualification

Caste category

Date of first appointment with rank

Date of promotion with rank

Date of confirmation with rank

1

2

3

4

5

6

1.

Smt. Bhanisi-kha Chakma 09.01.54, B.A.

ST

18.02 81

-

2.

Smt. Srabani Dhar

TJR

13.04.82 as SI(W)

-

3.

Srat. Niyati Sarkar 7.12.51, HS Passed

SC

18.01.74 as W/C

06.04.70 as ASI(W) 7.3.85 as SI(W)

30.09.82 as W/C

4.

Smt. Shipra

Baidya 31.1.68

BA (Pt-2)

UR

30.12.92 as SI(W)

31.03.01 as SI(W)

5.

Smtlla Deb

12.09.65,

M.A.

UR

30.12.92 as SI(W)

—

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6.

Smti Sibani

Bhattacharjee

(Brahma),

81.11.65, BA,

(Honours)

Pol. Science

passed

UR

30.12.92 as SI(W)

—

—

7.

Smt. Tripti Debnath 25.01.69, MA, History

UR

01.02.94 as SI(W)

—

—

8.

Smt Mallika Das.01.09.51, HS Passed

SC

10.01.74 as W/C

22.05.81 as AS1(W) 26.12.94 as S1(W)

26.06.87 as W/C

9.

Smt. Ratna Deb Sarkar 15.5.50, BA (Pt-I) Passed

UR

17.01.74

05.04.79 as ASI(W) 17.1.95 as S1(W)

05.04.79 as ASI(W) 17.1.95 as SI(W)

10.

Smt. Sima Biswas, 2.1.71 B. A. Passed

SC

17.01.74 as SI(W)

—

—

11.

Smt. Nahni Mog, 29.11.68, BA Passed

ST

19.06.96 as SI(W)

—

—

12.

Smt. Santi Debbanna, 07.01.69, BA

passed.

ST

22.06.96 as SI(W)

—

—

13.

Smt. Rekha Sharma, 1.10.52, BA, Part-I plucked

UR

23.04.75 as W/C

05.04.79 as ASI(W) 27.1.01 as S1(W)

30.09.82 as W/C

14.

Smt. Mani-deepa Das, 25.1.68, MDK passed

SC

23.10.87

03.01.96 as ASI(W) 30.10.02 as SI(W)

—

15.

Smt. Maini Mog Choud-hury, 25.1.67, MDK Failed

ST

17.10.87 as W/C

04.01.96 as AS1(W) 15.07.02 as SI(W)

31.12.02 as S1(W)

16.

SmtiKajal Datta, 6.1.59, HS Passed

UR

18.09.79 as W/C

03.01.96 as AS1(W) 19.08.04 as SI(W)

22.10.83 as W/C

No. 1613-40/F.62(3)/DGP/RSV/05, Government of Tripura Office of the Director General of Police, Tripura, Agartala Dated Agartala, the 19th May, 2006.

5. According to Mr. Deb, learned senior counsel for the Petitioner, there was a proposal from the Government to fill up six vacancy of Inspector of Police (UB) (Women), i.e. four vacancy for unreserved category and one vacancy each for S.C. and S.T. The normal zone of consideration for four vacancy would be $4 \times 2 + 4 = 12$. Admittedly, Serial No. 1 has expired, Serial Nos. 2, 3 and 6 have failed to clear the pre-promotional examination and, therefore, they were not qualified for consideration and Serial No. 8 having been considered against one vacancy for S.C. quota, the petitioner came in 5th position. In other words, the petitioner is very much within the zone of consideration, and the above factual position is not disputed by the respondents.

6. The respondents have filed a counter affidavit and the relevant Government files have also been produced by the learned Government Advocate. From perusal of the Government files, it transpires that the DPC held on 14.08.2007 recommended six candidates for appointment on promotion to the post of Inspector. From amongst those six candidate recommended by the DPC, Serial Nos. 1, 2 and 3, are those who are placed at Serial Nos. 4, 5 and 7 in the seniority list, referred to above, and they have been recommended for promotion against three of the four unreserved vacancy and Serial No. 4, who is placed at Serial No. 8 in the seniority list, has been recommended for appointment against SC quota and Serial No. 5, the petitioner, who is placed at Serial No. 10 in the seniority list, has been recommended for promotion against the remaining one UR vacancy and the Serial No. 6, who is at Serial No. 11 in the seniority list, has been recommended against S.T. quota. There is nothing on record to indicate as to why and how the candidate at serial No. 9 of the seniority list (Annexure-4) has not been recommended by the DPC. It appears that the candidate at Serial No. 9 has either been found unfit for promotion by the DPC or she has not cleared the pre-promotional test. The recommendation of the DPC, as available from the records submitted by the learned Government Advocate, is as follows:

After considering the fitness of the above officers the DPC recommends promotion of the following officers to the rank of Inspectors of Police UB (Women)--their names being placed as per inter-seniority.

Sl

No.

Gradation Sl. No.

Name of the Candidate

Caste

Remarks

1.

4

Smt. Shipra Baidya

UR

2.

5

Smt. Ila Deb, 12.9.1965, M.A. Passed

UR

3.

7

Smt. Tripti Debnath 25.1.1969, M.A. Passed

UR

4.

8

Smt. Mallika Das 1.9.51, H.S. Passed

SC

5.

10

Smt. Sima Biswas 1.1.71, B.A. Passed

SC

Promo-against UR vacancy

6.

11

Smt. Nahni Mog, 29.11.68, B.A. Passed

ST

Smt. Sima Biswas. SI (Women) seniority SI. No. 10

There are 4(four) vacancies of SI UB (Women) (UR), but there are only 3(three) candidates in the zone of consideration. All 3(three) candidates are found fit. Yet there is 1(one) vacancy in UR category. The DPC considered to exchange the UR-vacancy with SC Roster Point, to enable the Department to fill up the post.

2(two) S.C. candidates have been found fit, but there is only 1(one) S.C. vacancy. One of the S.C. candidates namely, Smt. Sima Biswas, SI (Women) (seniority SI. No. 10) can be considered for promotion against the UR vacancy.

Smti. Nahni Mog. SI (Women) (ST) Seniority SI. No. 11.

The DPC considered the case of Smti. Nahni Mog, (SI Women) (ST) Seniority SI. No. 11). There were 2(two) ACRs for the year 2006-2007. The longer period of her ACR was found to be "Good" for that year and therefore, the DPC graded her "Good" for the entire year of 2006-2007.

7. It is not in dispute that the recommendation of the petitioner by the DPC, as extracted above, was on the basis of exchange of UR vacancy with SC roster point. The recommendation of the DPC for appointment of the petitioner on promotion against the unfilled one vacancy of unreserved category has been turned down by the Government vide its communication dated 17.09.2007 under No. F.1(46)-PD/2005 issued by the Home Department, Government of Tripura and the relevant portion of the communication dated 17.09.2007 is reproduced herein below:

(3) Smti. Mallika Das, an S.C. candidate be promoted to the post of Inspector of Police (UB) (Women) against S.C. quota. However, the recommendation of the DPC for promoting Smti. Sima Biswas, Sub-Inspector of Police (UB) (Women) against UR category post has not been accepted as no more vacancy is available for S.C. category. In addition, exchange of Roster Point between UR and SC is not permissible under the Tripura S.C. and S.T. (Reservation of Vacancies in Services and Posts) (Second Amendment) Act, 2005.

8. From the above discussion, the only issue which emerge for consideration of this Court is-

Whether SC/ST candidates selected on their own merit, not on the basis of roster point for reservation, will be treated as general category candidate without affecting the number of posts reserved for reserved category or not.

9. Mr. Deb, learned senior counsel for the petitioner submits that the provisions

of the Tripura SC and ST (Reservation of Vacancies in Services and Posts) Act, 1991, hereinafter referred to as "the Act" have been completely overlooked, ignored and disregarded by the Government respondents while rejecting the recommendation of the petitioner by the DPC for promotion to the post of Inspector. It is submitted that Section 4(b) and Section 5(c) of the Act enable S.C. and S.T. candidate to compete with general candidate against U.R. vacancy either for direct recruitment or for promotion and in case of selection of such S.C. and S.T. candidate on merit, the selected candidate shall be included in general list, not against the reserved quota. Section 5 of the Act provides how vacancies on promotion are to be filled up and Section 5(c) which is relevant for consideration in the instant case is reproduced herein below.

Reservation for Scheduled Castes and Scheduled Tribes in vacancies to be filled up by promotion.

The reservation for members in the Scheduled Castes and the Scheduled Tribes in vacancies in services or posts to be filled up by promotion in any establishment shall be regulated in the following manner, namely:

(a) -----

(b) -----

(c) The candidates belonging to the Scheduled Castes and the Scheduled Tribes who qualify for selection on merit shall included in the general list and not against reserved quota.

10. From the above, it is clear that any candidate belonging to reserved category, who is qualified for selection on merit, either for direct recruitment or promotion, shall be treated as general category candidate without affecting the roster point reserved for reserved category. Doubt expressed in this regard have been clarified by the Government of India vide O.M., dated 11.07.2007 which runs as follows:

GI. Dept. of Per. & Trg., O.M. No. 36028/ 17/2001-Estt(Res.) dated 11.07.2002

Subject: Reservation in Promotion ? Treatment of SC/ST candidates promoted on their own merit. The undersigned is directed to say that this Department has been receiving references from various Ministers, etc., regarding adjustment of SC/ST candidates promoted on their own merit in the reservation rosters introduced vide DoP&T's O.M. No. 36012/2/96-Estt(Res.), dated 02.07.1997. While it is clear from the O.M., dated 02.07.1997 that the SC/ST/OBC candidates appointed by direct recruitment on their own merit and not owing to reservation will be adjusted against unreserved points of the reservation point, doubts have been raised about SC/ST candidates promoted on their own merit. It is hereby clarified that:

(i) The SC/ST candidates appointed by promotion on their own merit and not owing to reservation or relaxation of qualifications will not be adjusted against

the reserved points of the reservation roster. They will be adjusted against unreserved points,

(ii) If an unreserved vacancy arises in a cadre and there is any SC/ST candidate within the normal zone of consideration in the feeder grade. Such SC/ST candidate cannot be denied promotion on the plea that the post is not reserved. Such a candidate will be considered for promotion along with other candidates treating him as if he belongs to general category. In case he is selected, he will be appointed to the post and will be adjusted against the unreserved point,

(iii) SC/ST candidates appointed on their own merit (by direct recruitment or promotion) and adjusted against unreserved points will retain their status of SC/ST and will be eligible to get benefit of reservation in future/further promotions, if any.

2. All Ministers/Departments are requested to bring the contents of this O.M. to the notice of all authorities under them for information and compliance.

11. Perusal of the clarification made by the Government of India, as discussed and extracted above, along with Section 5(c) of the Act of 191, would make it crystal clear that a reserved category candidate recommended/appointed on promotion against unreserved vacancy on his own merit, not on the basis of reservation, should be treated as general category candidate and such appointment shall not affect the number of vacancies reserved for reserved category to which such candidates belong to. In other words, any candidate, either belonging to reserved or unreserved category, can compete on merit against the vacancy available for unreserved category, which is also known as open category and, even in case, any reserved category candidate is selected and appointed against such open category vacancy, the number of roster point for reserved category would still remain intact and unaffected. This point came to be considered by a Constitution Bench of the Apex Court in R.K. Sabharwal and others Vs. State of Punjab and others, wherein in para-4 of the Judgment, the Apex Court addressed the above issue in the following words:

4. When a percentage of reservation is fixed in respect of a particular cadre and the roster indicates the reserved points, it has to be taken that the posts shown at the reserved points are to be filled from amongst the members of reserved categories and the candidates belonging to the general category are not entitled to be considered for the reserved posts. On the other hand, the reserved category candidates can compete for the non-reserved posts and in the event of their appointment to the said posts their number cannot be added and taken into consideration for working out the percentage of reservation.

12. Now coming back to the case of the petitioner, admittedly, the petitioner was recommended against one unfilled vacancy of unreserved category on account of her merit position, not on the basis of roster point reserved for S.C. candidate and, as such, the Government is bound to accommodate the petitioner by issuing necessary appointment order as denial of rightful promotion to the petitioner

would amount to violation of Articles 14 and 16 of the Constitution of India. The only ground taken by the Government respondents in the affidavit is that there is no provision for exchange of roster point between the UR and SC. Be that as it may, one cannot be unmindful to the fact that the respondent Government have failed to consider the case of the petitioner on the basis of Section 5(c) of the Act of 1991 read with the clarification made by the Government of India, as referred to and extracted above, and the judgment of the Apex Court, referred to above, and as such, the grounds taken by the Government for rejection of the recommendation of the DPC for appointment of the petitioner on promotion to the post of Inspector is misconceived and unsustainable in the eye of law.

13. After having considered the rival submissions of the parties and having regard to the nature of the grievances, this Court is of the opinion that the petitioner is entitled to be promoted to the post of Inspector (UB) (Women) on the basis of the recommendation made by the DPC associated with Public Service Commission and, as such, the respondents are directed to issue an order promoting the petitioner to the post of Inspector within a period of two months from the date of receipt of this order. It is made clear that the promotion of the petitioner shall be with effect from the date the other recommended candidates have been promoted. However, the petitioner shall not be entitled to any arrear pay and allowances.

With the above direction, this writ petition stands allowed. No costs.