

(2016) 02 GAU CK 0001
In the Gauhati High Court
Case No : W.P. (C) No. 334 of 2010

Sundar Sinha

APPELLANT

Vs

State of Tripura

RESPONDENT

Date of Decision : 01-02-2016

Acts Referred:

Tripura State Rifles (Recruitment) Rules, 1984 — Rule 28, 29

Citation : (2016) 4 GauLT 106

Hon'ble Judges : S.C. Das, J.

Bench : Single Bench

Advocate : Mr. S.M. Chakraborty, Senior Advocate and Ms. B. Chakraborty, Advocate, for the Appellant; Mr. J. Majumder and Mr. D.C. Nath, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

S.C. Das, J.—By filing this writ petition the petitioners challenged the order of promotion of private respondent Nos. 4 to 14 to the post of Lance Naik Driver in the Tripura State Rifles (TSR) and also prayed for cancelling/quashing office order dated 03.08.2004 (Annexure-R/3 to the counter affidavit) of respondent Nos. 1, 2 and 3.

2. Heard learned senior counsel. Mr. S.M. Chakraborty, assisted by learned counsel. Ms. B. Chakraborty for the petitioners, learned counsel, Mr. J. Majumder for the State Respondents Nos. 1, 2 and 3 and learned counsel, Mr. D.C. Nath for the private respondent Nos. 4 to 11 and 14.

3. The petitioners and private respondent Nos. 4 to 14 joined TSR in the post of Rifleman (General Duty)[(for short, Rifleman (GD)]. It is an admitted position that the respondents joined the post of Rifleman (GD) before the petitioners and as such were senior in service in the post of Rifleman (GD).

It is the case of the petitioners that they were recruited to the post of Rifleman (Driver) from the post of Rifleman (GD) on their completion of the Driving and

Maintenance Course(for short DM course) and on their fulfilment of other qualifications as required under the rules. The private respondent Nos. 4 to 14 completed the DM course much later than the petitioners but the private respondents have been promoted to the post of Lance Naik Driver ignoring the seniority position of the petitioners in the post of Rifleman (Driver) and also ignoring the provisions prescribed under the rules and, hence, the petitioners challenged the promotion order of private respondents.

4. Rule 28 and 29 of Tripura State Rifles(Recruitment) Rules 1984 (hereinafter mentioned as Rules of 1984) deals with the provisions in respect of recruitment/promotion to the post of Rifleman Driver/Lance Naik Driver/Naik Driver and Havildar driver, for ready reference and for convenience the Rules are quoted hereunder which read as follows:-

"28. Recruitment Rules for the posts of Riflemen Drivers:

(1) These posts shall be filled by transfer of Riflemen Who-

(a) have passed at least class III education certificate or an equivalent examination;

(b) have put in at least 2 year's satisfactory service as Riflemen;

(c) have passed driving and maintenance course from an Army or Border Security force or Central Reserve Police Force institution or a similar course prescribed by the Inspector General; and.

(d) possess a valid licence to drive, as a paid employee, at least a light Motor Vehicle:

Note: A member of Rifles detailed for duty as a dispatch rider shall possess a valid licence to drive a Motor cycle.

(2) In case filling of the available posts by method specified in sub rule (1) is not possible these posts may be filled by deputation or transfer of the serving personnel of State or Central Police Organisation or by re-employment of the ex-services or ex-Central Police organisation personnel.

(3) To be eligible for appointment to these posts by deputation or transfer, as serving personnel of a State or Central Police Organisation should:

(a) be a driver in his parent organisation;

and

(b) be approved for such deputation or transfer by this Deputy Inspector-General.

(4) To be eligible for re-employment to these posts an ex-services or ex-Central Police Organisation personnel should;

(a) have been discharged or retired as a driver from formation concerned not earlier than 24 months of such re-employment;

- (b) have possessed exemplary or very good or good character while in his previous service;
- (c) possess a valid licence to drive, as a paid employee, at least a light motor vehicle issued by an authority competent to issue such licenses to civilians;
- (d) not have attained the age of 40 years as on the 1st day of July of the year in which appointment is made; and
- (e) have been approved for such re-employment by the Deputy Inspector-General, who may relax any of the conditions specified in this Sub-Rule, in suitable case. In order in writing.

29. Recruitment Rules for the posts of Lance Naiks, Naiks and Havildar Driver.

(1) The posts of Lance Naik, Naik and Havildar Driver shall be filled by promotion, on the basis of seniority subject to rejection of unfit, from amongst Riflemen, Lance Naik and Naik Drivers, respectively who satisfy the following conditions, namely:-

(a) For promotion as Lance Naik Drivers:

Riflemen drivers who (i) have put in at least 2 years satisfactory service as drivers; (ii) were not involved in any motor accident during last 12 months of the date on which they are considered for such promotion for which they were held wholly or partially responsible; and (iii) possess a valid licence to drive as a paid employee a heavy Motor vehicle;

(b) For Promotion as Naik Drivers: Lance Naik drivers who (i) have put in at least 4 years satisfactory service as drivers: (ii) were not involved in any motor accident, during the last 24 months of the date on which they are considered for such promotion, for which they were held wholly or partially responsible; and (iii) possess a valid licence to drive as a paid employee a heavy motor vehicle;

(c) For Promotion as Havildar Drivers:

Naik Drivers who (i) have put in at least 7 years satisfactory service as drivers; (ii) were not involved in any motor accident during the last 36 months of the date on which they are considered for such promotion, for which they were held wholly or partially responsible; (iii) possess a valid licence to drive as a paid employee a heavy motor vehicle; and (iv) have high proficiency in maintenance of motor vehicles and are conversant in administration of a medium sized motor fleet and management of MT stores including POL stocks.

(2) The Departmental Promotion Committee for the Promotions specified in sub-rule (1) shall consist of -

(a) the Commandant of the Battalion concerned;

(b) The Deputy Commandant, if not available, the senior most Assistant Commandant of the Battalion concerned; and

(c) an Assistant Commandant of the Battalion, concerned as may be nominated by the commandant.

(3) In case filling of the available posts by method specified in sub rule (1) is not possible, these posts may be filled by deputation or transfer of the serving personnel of State or Central Police Organisation or by re-employment of the ex-services or ex-Central Police Organisation personnel.

(4) To be eligible for appointment to these posts by deputation or transfer, a serving personnel of a State or Central Police Organisation should-

(a) hold corresponding rank as driver in his parent organisation or be qualified for promotion to such rank in his parent organisation; and

(b) have been approved for such transfer or deputation by the Deputy Inspector-General.

(5) To be eligible for re-employment to these posts, an ex-services or ex-Central Police Organisation personnel should-

(a) have retired or discharged as a driver in corresponding rank not earlier than 24 months of such re-employment from formation concerned;

(b) have possessed a very good or good character while in his previous service;

(c) possess a valid licence to drive as a paid employee a heavy motor vehicle issued by an authority competent to issue such licences to civilians;

(d) have not attained the age of 40 years as on 1st day of July of the year in which appointment is made; and

(e) have been approved for such re-employment by the Deputy Inspector-General, who may relax any of the conditions mentioned in this sub-rule, in suitable cases by order in writing."

5. A reading of Rule 28 makes it clear that the post of Rifleman Driver should be filled up by transfer from Rifleman(GD) having educational qualification of at least Class III, two years satisfactory service as Rifleman, passed DM Course from Army, Border Security or Central Reserve Police force or a similar course prescribed by the Inspector General of police and posses a valid driving license, at least to drive a light motor vehicle.

It is an undisputed fact that the petitioners were having with all the requisite qualifications and, therefore, they were recruited to the post of Rifleman Driver.

It is also an admitted fact that the petitioners were recruited to the post of Rifleman Driver prior to the private respondents Nos. 4 to 14.

6. The respondent Nos. 1, 2 and 3 submitted a joint counter affidavit. Other private respondents represented by learned counsel, Mr. Nath adopted the counter affidavit filed by respondent Nos. 1, 2 and 3.

The respondents contended that the private respondents were senior to the petitioners in respect of their date of appointment as Rifleman (GD) in TSR. The petitioners and others were sent to undergo DM course in due time but the private respondents and some others could not be sent to undergo the DM course in time because of their urgent attachment with the force in the operational field to curb the extremist activities. They efficiently performed their duties in the operational field as drivers and because of their such attachment with duties in the operational field they could not undergo DM course since the Department could not send them in time and therefore, their juniors were given promotion who completed DM course, superseding the seniors. The Department thought that since the private respondents and similarly situated other persons could not undergo DM course for no fault of them, so, to protect their interest, after they have successfully undergone DM course, they were promoted to the rank of Lance Naik Driver taking into consideration their original seniority position after relaxation of the Recruitment Rules by the State Government.

7. For convenience the date of the appointment to the post of Rifleman(GD) and date of completion of DM course of the petitioners and respondents are considered necessary and, so, quoted hereunder-

In para 5 of the writ petition the petitioners recorded their date of appointment to the post of Rifleman and date of their completion of DM course which is not disputed. It is given in a tubular form :-

Petitioner"s No.

Name

Day of Appointment as Riflemen GD

Day of Completion of DM Course

1

Sundar Sinha

15.09.1997

09/09/00

2

Krishna Kamal Paul

01/07/96

08/01/01

3

Rajib Biswas

15.09.1997

08/01/01

4

Dasan K

07/01/91

19.06.2000

5

Md. Jalil Miah

15.09.1997

05/01/01

6

Debendra Singh

04/11/98

18.01.2002

7

Mrinal Kanti Deb

15.09.1997

23.08.2001

8

Rakesh Kumar Roy

23.12.1998

21.03.2001

9

Dulal Bhowmik

02/06/99

21.03.2001

10

Sajal Sinha

23.09.1997

18.01.2001

11

Adhir Ranjan Nath

15.09.1997

27.06.2002

12

Alok Saha

15.09.1997

27.06.2002

8. The date of appointment and date of completion of DM course of private respondent Nos. 4 to 14 have been reflected in Annexure-4 to the writ petition which is also an undisputed position and the same also quoted here for ready reference in a tubular form:-

Respondent's No.

Name

Day of Appointment as Riflemen GD

Day of Completion of DM Course

4

Rana Sinha

24.04.1985

04.03.02 to 18.04.02

5

Manik Sen

15.03.1986

04.03.02 to 18.04.02

6

Chandra Bahadur Surkey

02/05/85

06.11.91 to 24.12.01

7

Ashish Laskar

01/09/85

04.03.02 to 18.04.02

8

Chandan Rudra Paul

06/01/92

25.06.01 to 04.08.01

9

Naresh Kachhap

01/07/85

04.03.02 to 18.04.02

10

Pintu Majumder

27.07.1992

26.08.02 to 11.10.02

11

Pranab Debnath

24.07.1992

06.11.01 to 24.12.01

12

Nalinakshan Acharia

31.07.1992

09.05.2k to 17.06.2k

13

Premtosh Muhuri

23.07.1992

06.11.01 to 24.12.01

14

Sudhir Singh

05/08/92

26.08.02 to 11.10.02

9. Learned senior counsel, Mr. Chakraborty has submitted that the petitioners and the private respondents were appointed as Rifleman (GD) in the TSR. The

private respondents were senior to the petitioners to the post of Rifleman (GD). Rule 28 prescribes the requisite qualification for recruitment to the post of Rifleman Driver. Sub Rule (1) Clause(c) of Rule 28 prescribes that for recruitment to the post of Rifleman Driver one must pass DM course.

10. The petitioners, submitted learned senior counsel. Mr. Chakraborty, completed DM course admittedly prior to the private respondents and they were appointed to the post of Rifleman Driver prior to the private respondents. The official respondents, giving total goodbye to the provisions prescribed in the Rule, promoted the private respondents to the Lance Naik driver after their completion of DM course, whereas the petitioners are still working in the post of Rifleman Driver. According to Mr. Chakraborty, learned senior counsel, since the petitioners completed DM course prior to the private respondents and were recruited to the post of Rifleman Driver before the private respondents, they were entitled to be promoted in the post of Lance Naik Driver before the Private respondents. He has also submitted that as prescribed in Rule 29 of the Rules, for promotion to the post of Lance Naik Driver from the post of Rifleman Driver a Rifleman Driver has to serve at least two years satisfactory service and similarly for promotion to the post of Naik Driver one has to serve at least four years satisfactory service as Lance Naik driver and similarly for promotion to the post of Havildar Driver one has to serve at least seven years of satisfactory service as Driver. The official respondents giving goodbye to the above provisions directly promoted the private respondents to the post of Lance Naik Driver, Havildar Driver though they did not perform the requisite period of service after their completion of DM course. He has also submitted that after completion of DM course the private respondents were ought to be appointed at first in the post of Rifleman Driver and thereafter their seniority ought to be determined according to rules and then after considering the requisite period of service of all the drivers in the post of Rifleman Driver further promotion could have been considered.

11. Learned State Counsel Mr. Majumder appearing for the respondent Nos. 1, 2 and 3 submitted that the private respondents and some other similarly situated persons were engaged in operational field to curb the extremist activity which was in the peak and therefore, the private respondents and some others though were eligible could not be sent to undergo DM course in time, whereas the petitioners and some other juniors were sent by the Department for DM course and after completion of DM course, they were appointed to the post of Rifleman Driver. The private respondents could not be sent to undergo DM course for no fault of them but it was for the exigency of the Department, they were retained in the job in the operational field and thereafter they were sent to undergo DM course. After they have completed the DM course, Department took into consideration the fact that they should not be deprived from their due promotion and, therefore, a proposal was made to the State Government for relaxation of the Rules as prescribed under Rule 57 of the Rules of 1984 and, accordingly, the State Government made one time relaxation of the Rules and communicated the decision of the State Government by Memo No. F.42 (18)-RD/2003 dated

10.06.2004 (Annexure-R/4 to the additional counter affidavit) to the Director General of Police and, since there was a relaxation of the Rules, the private respondents were promoted to the post of Lance Naik Driver according to seniority position taking into account their original date of appointment in the post of Rifleman (GD).

It is submitted by learned counsel. Mr. Majumder that there was nothing wrong in the action taken by the State respondents and writ petition should be dismissed.

12. Learned counsel, Mr. Nath adopted the submission of learned counsel, Mr. Majumder.

13. Rule 57 of TSR Rules prescribes power of relaxation. The provision reads as follows:-

"57. Power to relax :-

Where the State Government is of opinion that it is necessary or expedient so to do it may, be order for reasons to be recorded in writing relax any of the provisions of these rules in respect of any class or category of person."

14. Since it is an admitted position that the petitioners have undergone DM course prior to the private respondents and were recruited in the post of Rifleman Driver before the private respondents, the respondents have to show that the specific case of the private respondents was considered by the State Government for relaxation of particular rule. In the provisions of Rules 28 and 29. already quoted hereinbefore, for appointment to the post of Rifleman driver one has to acquire the requisite qualifications as prescribed in Rule 28 (1).

15. It is an admitted position that the private respondents acquired the requisite qualifications for appointment to the post of Rifleman driver after the petitioners. But Annexure-R/3, i.e. order dated 03.08.2004, issued by the Deputy Inspector General of Police shows that the private respondents and many others were given promotion to the post of Lance Naik Driver with retrospective effect from 14.11.1997, whereas private respondent No. 12 completed the DM course in the year 2000, private respondent Nos. 6, 13, 11 and 8 completed the DM course in the year 2001 and Private respondent Nos. 4,5, 7,9, 10 and 14 completed the DM course in the year 2002, which is reflected hereinbefore in para 8 of this judgment. It is not understood how the effect of promotion to the post of Lance Naik Driver was given w.e.f. from 14.11.1997.

While the private respondent No. 12 completed his DM course in the year 2000. private respondent Nos. 6, 13, 11 and 8 completed their DM course in the year 2001 and the rest completed their DM course in the year 2002, they were eligible for recruitment in the post of Riflemen Driver and were supposed to be posted as Riflemen driver first, after they completed the DM course and had other requisite qualifications. The official respondents, as it appears from Annexure-R/3, directly promoted them to the post offence Naik Driver after they completed the DM

course. There is nothing in the counter affidavit of the respondents to show that the private respondents were first recruited as Rifleman Driver and thereafter were promoted to the post of Lance Naik Driver, Naik Driver and Havildar Driver.

The rule, quoted herein before, clearly stipulates that the posts of Lance Naik Driver, Naik Driver and Havildar Driver are the promotional posts to be filled up by promotion from the post of Rifleman Driver. The initial recruitment should be in the post of Rifleman Driver having requisite qualifications as prescribed in Rule 28(1) of the Rules. No one having requisite seniority or qualifications can be directly recruited/promoted to the post of Lance Naik Driver, Naik Driver or Havildar Driver. The respondents, as it appears from Annexure-R/3, directly promoted the private respondents to the post of Lance Naik Driver without their initial recruitment in the post of Rifleman driver and without fixing their intense seniority in the post of Rifleman Driver. A Rifleman Driver will be eligible for recruitment to the post of Lance Naik Driver after satisfactory service of two years as Rifleman driver, the official respondents clearly violated the Rules and hence the promotion of the private respondents cannot stand in the eye of law.

16. It is contended by the respondents that the rule was relaxed by the State Government since the private respondents and similarly situated others were deprived of due promotion having no fault of them.

Rule 57 of Tripura State Rifles Rules, as already quoted hereinbefore prescribes that the State Government may for reasons to be recorded in writing, relax any of the provisions of rule in respect of any class or category of person if the Government is of opinion that it is necessary or expedient for doing so. The respondents relied on Annexure-R 4. a letter of Under Secretary, Home Department Government of Tripura, dated 10.6.04, addressed to the Director General of Police. The said letter reads as follows:

"No. F.42(18)-PD/2003

Government of Tripura

Home Department

Dated, Agartala the 10th June 2004

To,

The Director General of Police

Tripura: Agartala.

Sub:- Condonation of services in respect of 10 (ten) Rifleman Drivers in TSR for restoration of their seniority.

Sir,

I am directed to refer to your letter No. 913337/F.8(9)-PHQ/TSR/DVR/2004, dated 28th February, 2004 and subsequent letter No. 10907-08 F.8(9)-PHQ/TSR/

DVR/2000. dated 15th March 2004 on the subject noted above and to convey approval of the Government towards condonation/relaxation of the qualifying services of the following 10(ten) Rifleman Drivers to facilitate their promotion as per recommendation of DPC .

1. Rifleman (Driver) Rana Singh.
2. Rifleman (Driver) Naresh Kacitap
3. Rifleman (Driver) Ashish Laskar.
4. Rifleman (Driver) Manik Sen
5. Rifleman (Driver) Pintu Ghosh.
6. Rifleman (Driver) Pintu Majumder
7. Rifleman (Driver) Nalina Kashan Achari
8. Rifleman (Driver) Sudhir Kr. Singh.
9. Rifleman (Driver) BISwajit Sarkar.
10. Rifleman (Driver) Jayan S.

In this connection, it is requested to kindly clarify how the juniors got promotions before their seniors as stated in the Proposal.

Yours Faithfully

Sd/-

(M.K. Nath)

Under Secretary to the Government of Tripura."

This is the letter relied by the respondents that by this communication of the decision, the relaxation of rules were made by the State Government and pursuant to that relaxation order dated 03.08.2004 (Annexure-R/3) was issued.

17. A bare reading of the above letter shows nothing as to which of the provision was relaxed by the State Government and what was the reason for making any such relaxation. In that letter I find the name of 10 Riflemen Driver in respect of whom relaxation/condonation was made. Interestingly, the names of private respondent Nos. 6, 8, 11 and 13 are not found there, whereas they were also given promotion with retrospective effect from 14.11.1997 by Annexure-R/3. Annexure-R/3 shows the names of respondent No. 6 in serial No. 2, respondent No. 9 in serial No. 4, respondent No. 7 in serial No. 5, respondent No. 4 in serial No. 7, respondent No. 5 in serial No. 8, respondent No. 8 in serial No. 10, respondent No. 13 in serial No. 13, respondent No. 11 in serial No. 14, respondent No. 10 in serial No. 18, respondent No. 12 in serial No. 20 and respondent No. 14 in serial No. 22. They all were given promotion with retrospective effect from 14.11.1997 whereas they completed their DM course

much latter i.e. in the year 2000, 2001 and 2002 as already discussed hereinbefore. The respondents therefore, failed to show any cogent document or record as to which of the provisions of Rules of 1984 was relaxed by the State Government in exercise of power under Section 57 of the Rules and in respect to which of the private respondents and to what extent Annexure-R/4 cannot be considered as a document conveying relaxation of any particular provisions of the Rules in respect of private respondents.

18. No doubt, the State Government has power to relax any provision of the rules for any class or category of persons if the State Government is of the opinion that it is necessary or expedient to do so. In case the State Government found it necessary and expedient that some of the eligible Riflemen(GD) could not be sent for DM course in time, but they were sent subsequently for the said course whereas in the meantime their juniors were recruited in the post of Rifleman Driver because of their completion of the said course, relaxation to the extent that the effect of promotion of the senior Rifleman GD may be given with retrospective effect from the date their juniors were promoted maintaining the seniority position but in the name of relaxation total goodbye to the provisions could not be given where certain embargo has been put in respect of promotional post. The State Government is bound to follow the Rules framed by the State Government and cannot relax the Rule giving good bye to the essential requirements for promotion as prescribed under the Rules.

19. The promotional order of the private respondent Nos. 4 to 14 are, therefore, found to be in violation of provisions prescribed in Rules 28 and 29 of the Rules and therefore, are liable to be interfered and set aside. I find no reason to quash the order dated 03.08.04 (Annexure-R/3) as a whole since by the same order other persons were also promoted, whereas those promotion has not been challenged.

20. The writ petition accordingly is allowed. The promotion of private respondent Nos. 4 to 14 pursuant to order dated 03.08.2004 (Annexure-R/3 of the counter affidavit) to the post of Lance Naik driver with retrospective effect from 14.11.1997 is interfered and, accordingly, it is set aside and quashed. The official respondents are directed to prepare inter-se seniority list of all Rifleman Drivers and then to consider promotion to the next higher post as per Rules.

21. The writ petition accordingly stands disposed of.

22. Parties to bear their own costs.