

**HIGH COURT OF TRIPURA
AGARTALA**

WA No. 28 of 2021

1. Tripura Gramin Bank
(A Government Undertaking),
Abhoynagar, P.O. Abhoynagar,
Sub-Division- Agartala, Dist. West Tripura,
Pin-799005,
represented by its Chairman,
having his office at Tripura Gramin Bank,
Head Office- Abhoynagar, P.O. Abhoynagar,
Sub-Division- Agartala, Dist. West Tripura,
Pin-799005

2. The Chairman,
Tripura Gramin Bank
(A Government Undertaking),
Head Office- Abhoynagar, P.O. Abhoynagar,
Sub-Division- Agartala, Dist- West Tripura,
Pin-799005

Appellant(s)

Vs

Sri Abhishek Majumder,
son of Sri Arun Majumder,
resident of Narayan Kutir,
Sukanta Palli, Town Bardowali,
P.S. West Agartala, P.O. & Sub-Division- Agartala,
Dist. West Agartala, Pin- 799001

Respondent(s)

WA No. 30 of 2021

1. Tripura Gramin Bank
(A Government Undertaking),
Abhoynagar, P.O. Abhoynagar,
Sub-Division- Agartala, Dist. West Tripura,
Pin-799005,
represented by its Chairman,
having his office at Tripura Gramin Bank,

Head Office- Abhoynagar, P.O. Abhoynagar,
Sub-Division- Agartala, Dist. West Tripura,
Pin-799005

2. The Chairman,
Tripura Gramin Bank
(A Government Undertaking),
Head Office- Abhoynagar, P.O. Abhoynagar,
Sub-Division- Agartala, Dist- West Tripura,
Pin-799005

Appellant(s)

Vs

Sri Pritam Saha,
son of Sri Narayan Chandra Saha,
resident of Geet Bharati Para,
P.O. & P.S.-R.K. Pur, Sub-Division- Udaipura,
Dist. West Tripura, Pin-799120

Respondent(s)

For Appellant (s) : Mr. A Roy Barman, Advocate.
For Respondent(s) : Mr. S Lodh, Advocate.
Whether fit for reporting : **NO**

HON'BLE THE JUSTICE MR. S. TALAPATRA
HON'BLE THE JUSTICE MR. S. G. CHATTOPADHYAY

Judgment & Order (Oral)

11/02/2021

Heard Mr. A Roy Barman, learned counsel appearing for the appellants- Tripura Gramin Bank, a Government Undertaking, and its officer as well as Mr. S. Lodh, learned counsel appearing for the respondents.

2. Both these appeals, being WA 28 of 2021 [Tripura Gramin Bank & Anr. Vs. Sri Abhishek Majumder] and WA 30 of 2021 [Tripura Gramin Bank & Anr. Vs. Sri Pritam Saha] are combined for disposal by a common judgment inasmuch as in these appeals, a common judgment dated 07.10.2020 delivered in WP(C)27 of 2020 [Sri Abhishek Majumder Vs. Tripura Gramin Bank & Ors.] and WP(C) 28 of 2020 [Sri Pritam Saha Vs. Tripura Gramin Bank & Ors.] is under challenge.

3. The brief facts, relevant for appreciating the challenge in these appeals, may be introduced at the outset.

4. Both the respondents, after their long service were appointed as the Officer Middle Management (Scale-III), Group A. There is no dispute at the bar that the respondents were appointed in the specialized cadre when they were directly recruited. On perusal of Rule-4 of the Recruitment Rules in respect of the appointment to the post of Officer Middle Management (Scale-II), it appears that 75% of the vacancy in the said cadre is to be filled by promotion and the remaining 25% is to be filled up by direction recruitment. The respondents were considered in the direct recruitment quota which is to the extent of 25%. From a reading of the recruitment rules, it further appears that out of 25% vacancies, 10% is earmarked for the specialist cadre, namely the candidates from Information

Technology, Agriculture, Treasury, Law, Marketing, Chartered Accountant, etc.

5. There is no dispute that the respondents were eligible to be considered for promotion to Officer Middle Management (Scale-III), Group-A as they had fulfilled the criteria provided by recruitment rule 13(3) which reads as follows:

“13(3). A one-time relaxation of one year service during the entire service period will be given to such candidates who have passed Junior Associate of the Indian Institute of Bankers (JAIIB) of Indian Institute of Banking and Finance for promotion both under the normal channel and fast track channel to the Group ‘A’ posts specified in column (3), against serial numbers 1, 2 and 3, of the First Schedule and one more year in case of such candidates who have passed Certified Associate of the Indian Institute of Banking and Finance.”

6. Mr. Roy Barman, learned counsel has submitted that the petitioners were eligible for promotion to the post of Officer Middle Management (Scale-III) but the petitioners were not considered, even though they had claimed to have fulfilled the eligibility for consideration for promotion to the post of Officer Middle Management (Scale-III).

7. Being aggrieved thus, the petitioners approached this court by filing the respective writ petitions, as noted above.

8. The respondents-Bank [Tripura Gramin Bank] in the writ petitions by filing their reply have explained their position

by stating that a specialized officer cannot be promoted in a general category vacancy. However, the Board of the Bank may take a decision of merger of the specialized category cadre with the general category cadre at appropriate scale and that may be part of manpower planning of RRB (Regional Rural Bank), to be prepared in consultation with the sponsor bank.

9. The said position as taken by the bank-respondents, the appellants herein, has been rejected by the learned Single Judge while passing the said common judgment dated 07.10.2020 by observing inter alia, that the recruitment rules for promotion to the Officer Middle Management (Scale-III) does not make any distinction between an Officer Middle Management (Scale-II) recruitment against general category or against specialized cadre. No such distinction can be introduced through the executive instruction. In other words, when the rules prescribe eligibility for promotion, no additional condition can be imposed by way of executive instructions. It is well settled that where the recruitment rules are silent on any aspect it is always open to the employer to fill the gap through the executive instructions. However, it is equally well settled that an executive instruction cannot run counter to the statutory recruitment rules. In other words, if the field is occupied by the statutory rules, executive instructions cannot govern the field.

10. Learned Single Judge has referred to a decision of the Apex Court in **Dr. Rajinder Singh Vs. State of Punjab & Ors.** reported in **(2001) 5 SCC 482** where the apex court has unambiguously worded their enunciations as follows:

"7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution."

11. In the same line, another judgment of the Apex Court in **K K Parmar and Ors. Vs. H. C of Gujarat thr. Registrar & Ors.** reported in **2006 AIR SCW 2856** has been considered.

12. Having observed thus, [the writ petitioners] denial of the promotion to the respondents has been interfered with and the communications dated 04.12.2019 and 30.12.2019 were set aside and it has been declared that the respondents herein were eligible for being considered for promotion in the fast track channel to the post of Officer Middle Management (Scale-III) for which their tests were conducted. The respondents, the

appellants herein, have been directed to proceed to declare the result of the examination and they will be at liberty to grant promotion to the selected candidates.

13. The said finding has fallen for our scrutiny.

14. Mr. A Roy Barman, learned counsel has contended that even the writ petitions were bad for non-joinder of parties inasmuch as the decision of the Board as communicated to the respondents (the writ petitioners) by communication dated 04.12.2019 and 30.12.2019 were taken in consultation with the sponsor bank or NABARD. As these entities are not made party in the proceedings, this court may not adjudicate the right of the respondents.

15. We are unable to accept the contention inasmuch as the recruitment rules are in place and the bank respondents are bound by these recruitment rules while filling up the post of Officer Middle Management (Scale-III). When they have deviated from the course as prescribed by the recruitment rules, as quoted above, and when they have acted in contravention thereof, the sponsor bank or NABARD are not necessary parties inasmuch as their role is only advisory in nature.

16. Having observed thus, we do not find any merit in these appeals and accordingly, the same stand dismissed. However, there shall be no order as to costs.

17. The respondents shall carry out the order of the learned single judge in the manner as directed therein. They are directed to complete the exercise within a period of six weeks from this day.

JUDGE

JUDGE



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