

(2002) 08 GAU CK 0032

Gauhati High Court (Agartala Bench)

Case No: Civil Rule No. 456 of 1996

Sushanta Ghosh

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision: Aug. 9, 2002**Citation:** (2002) 3 GLR 509 : (2002) 3 GLT 504**Hon'ble Judges:** B.B. Deb, J**Bench:** Single Bench**Advocate:** B. Das, I. Chakraborty and P.S. Chakraborty, for the Appellant; A. Ghosh, for the Respondent**Final Decision:** Dismissed

Judgement

B.B. Deb, J.

The petitioner challenged the seniority list, issued vide Memo. No. 294-447/F.1(151)-DLSR/ESTT/80-81 dated 12th January, 1983 by which the seniority position of Junior Amins in the Directorate of Land Records & Settlement (hereinafter referred to as the "DLRS"), Government of Tripura had been finalised and subsequently issued Memorandum bearing No. 5539-939/F.1 (5)-DLSR/ESTT/82/P.II dated 9th April, 1991 by which the final seniority list for the posts of Amin under the DLRS, Govt. of Tripura had been published.

2. The petitioner along with others were temporarily appointed to the posts of Junior Amin vide Memorandum dated 5.1.1979. Subsequently, the petitioner and other Junior Amins had been re-designated as Amins w.e.f. 1.2.1983 pursuant to Memo, dated 16.6.1983. The petitioner along with other Amins/Junior Amins had been deputed to undergo training at the Training Centre of the DLRS in the year 1979-80 and among the 34 trainees, the petitioner secured the highest mark and in the result sheet, his name figured at serial No. 1 in that training, but while publishing the seniority list dated 12.1.1983, the petitioner's name was figured much below his colleagues whose performance in the training had admittedly been inferior to the petitioner, but in the subsequent seniority list, the seniority of the incumbents

holding the posts of Junior Amins/Amins had been determined according to the position secured in the departmental training and as such the petitioner sought for a writ of certiorari directing the quashment of the aforementioned two seniority lists and also a writ of mandamus directing the State respondents to fix the seniority of the petitioner vis-a-vis the private respondents according to the merit position available in the result sheet of the aforesaid training.

3. The State respondents filed the counter-affidavit contending, inter alia, that result of any training, departmental or otherwise, cannot be the criterion for determining the seniority and in fixing the seniority of the petitioner vis-a-vis the private respondents, the authority followed the existing rules.

4. Mr. B. Das, learned senior counsel appearing on behalf of the petitioner submits that since the petitioner secured highest position, with reference to the result published on successful completion of the training course, his seniority must be fixed in accordance with the merit position in the training.

5. On the other hand, Mr. A. Ghosh, learned counsel appearing on behalf of the State respondents submits that the general principle for determining the seniority of various categories of persons employed under Tripura Administration as had been formulated and published vide Office Order No. F. 1 (16)-GA/59 dated 12th July, 1960 holds the field in absence of any particular service Rules to the contrary.

6. In the present case, there is no particular Service Rule governing the seniority of Junior Amins/Amins serving under the DLRS and as such in my considered opinion, the general principle for determining the seniority as had been formulated and published vide Office Order dated 12th July, 1960 by the Tripura Administration in the Appointment Department is to be applied.

7. In the Service jurisprudence seniority cannot be made dependant upon the result of any in-service training etc. conducted after the appointment of an incumbent. The seniority is to be determined with reference to the date of appointment itself and any events happened subsequent to the date of appointment cannot be a criterion for determining the seniority.

8. On perusal of the Office Order dated 12th July, 1960, it appears that the seniority of all direct recruits "shall be determined in order of merit in which they are selected for such appointments".

9. On being asked by the court, Mr. Ghosh, learned counsel for the State respondents produced the related file wherein the initial appointment was originated. From the departmental file, bearing No. 1 (41) DLRS/ESTT/79/P-II, it appears that an interview was held on 18.7.1979 for the purpose of selecting the candidates for the posts of Junior Amins and the result of the interview with the scroll of marking is available in the file. That scroll sheet contains the signatures of O/C Training, Deputy Director of Land Records & Settlement and the Settlement

Officer. Names of as many as 41 general candidates, 13 Scheduled Castes candidates and 3 Scheduled Tribes candidates are also available with marks obtained by each of them in the Said interview. In the top of that scroll the following endorsement is available :-

"In pursuance of the Memorandum No. 7992-94/F.1 (41)-DSLR/ Estt/79 dated 10.7.1979, the interview of the candidates present" among the list enclosed was held on 18.7.1979 for preparation of a panel for appointment to the posts of Junior Amin , 27 from general, 10 from ST and 5 from SC candidates. The panels of candidates so selected are arranged below in order of merit."

The aforesaid prepared panel contains the signatures of aforementioned officers with date 25.7.1979 and pursuant to that selection, the appointments had been made.

10. Mr. Das, learned senior counsel for the petitioner submits that in the following year, some more Junior Amins had been appointed, but their seniority has been determined in accordance with the result of their training after appointment and as thus such type of double standard followed by the authority cannot be given recognition by the court.

11. The matter relating to the determination of seniority of the Junior Amins appointed subsequent to the appointment of the petitioner and the private respondents has not been put under challenge in this writ petition and as such the court is not called upon to examine the validity of the seniority determined by the authority regarding the incumbents appointed subsequent to the appointment of the petitioner. However, Mr. Ghosh, learned counsel for the State respondents, submits that if there be any such wrong procedure adopted by the authority, that could be cured applying the general principle for determining the seniority, issued vide Office Order dated 12th July, 1960.

12. Under the aforementioned circumstances, I am constrained to hold that the writ petition is devoid of merit and is hereby dismissed. But the authority is directed to review the entire matter and the seniority of Junior Amins/Amins must be reviewed and the seniority be fixed applying the principle formulated vide Office Order No. F. 1 (16)-GA/59 dated 12th July, 1960 and that must be done within a period of 60 (sixty) days, of course before that all the incumbents concerned must be given opportunity to represent their cases. No costs.