

**HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.353 of 2003

1. Sri Sujit Patari
S/o. Late Ashutosh Patari
Resident of Village-Barpathari
P.S. P. R. Bari
District-South Tripura.
2. Sri Tapas Ranjan Banik
S/o. Sri Nityananda Banik
Resident of Dhaleswar
Sahid Kshudiram Bose Lane
P.S. East Agartala
District-West Tripura.
3. Sri Mahitosh Das
S/o. Late Mahendra Ch. Das
Resident of Kalachan Kobra Para
P.S. Jirania
District-West Tripura.

.....Petitioners

- Vs -

1. The State of Tripura
Represented by Secretary cum Commissioner
Tribal Welfare Department
Government of Tripura.
2. The Secretary
Finance Department
Government of Tripura, Agartala.
3. The Director
Tribal Welfare Department
Government of Tripura, Agartala.

.....Respondents

4. Sri Bimal Ch. Barman
Junior Engineer, Grade-I
Presently posted at Rural Development Division
Near Jagannath Dighi, Udaipur, South Tripura.

.....Proforma Respondent

**B E F O R E
THE HON'BLE MR. JUSTICE S. TALAPATRA**

For the petitioners : Mr. A. C. Bhowmik, Senior Advocate.
Mr. A. Bhowmik, Advocate.

For the respondents : Mr. S. Chakraborty, Addl. GA.
 Date of hearing : 03.05.2013
 Date of delivery of Judgment and order : **31.07.2013**

JUDGMENT AND ORDER

01. The petitioner Nos.1, 2 and 3 were respectively appointed on 06.05.1998, 04.05.1998 and 27.05.1998 in the post of Jr. Engineer (Civil), Grade-II in the scale of pay of Rs.2000-4410/- under the Directorate of Welfare for Scheduled Tribes.

02. In the employment notification Tripura Public Service Commission's Advertisement No.8/97 dated 03.06.1997 (Annexure-1 to the writ petition), it has been categorically provided that a Diploma holder in Civil Engineering will be initially recruited as Junior Engineer Grade-II and after completion of 4 years service, he/she shall be designated as Junior Engineer Grade-I in the revised scale of Rs.2000-75-2750-80-3390-85-4410/-. The said revised scale was subsequently modified to Rs.6500-12300/- and there is no dispute in this regard.

03. The grievance of the petitioners, as canvassed in the petition, is that they have not been so upgraded on their satisfactory completion of 4 years of service as Jr. Engineer, Grade-II, despite their submission of several representations time to time (Annexure-3 series to the writ petition).

04. Mr. Bhowmik, learned senior counsel for the petitioners has drawn attention of this Court to the Notification No.F.9(12)-RD/96/2177 dated 26.04.2002 (part of Annexure-4 series to the writ petition) to hold that similarly situated Jr. Engineers, Grade-II in the Rural Development Department have been provided with the benefit by way of upgrading them to the Junior Engineer, Grade-I on completion of their 4 years of service in the Grade-II. He has also made a reference to an order of the District Magistrate & Collector, North Tripura, Kailashahar under No.Ff.1(16)/DNE/96/5947-58 dated 11.06.2002, part of Annexure-4 series to the writ petition, to show that such benefit was given to 7 Jr. Engineers, Grade-II working in the RD Department, North Tripura and they have been given the scale of pay of Rs.6500-12300/- by way of upgradation. Similar order has been passed by the District Magistrate & Collector, South Tripura for 8 Jr. Engineers, Grade-II working in the RD Department by providing them the pay scale of Rs.6500-12300/- on their completing 4 years of satisfactory service similarly.

05. But in the case of the petitioners, even though they are enjoined by the said terms and conditions of the service, were not provided the said benefits by the respondents most arbitrarily and in defiance to the service conditions as provided in the recruitment rules. Denial of such upgradation to the petitioners has deprived them from their legitimate due inasmuch as the respondents are fastened with the obligation to upgrade them as Jr. Engineer, Grade-I from the date of their completion of 4 years of service as Jr. Engineer, Grade-II.

06. The petitioner Nos.1, 2 and 3, according to Mr. Bhowmik, learned senior counsel are entitled to get the benefit of the upgradation w.e.f. 06.05.2002, 04.05.2002 and 27.05.2002 respectively.

07. From the other side, Mr. Chakraborty, learned Addl. Government Advocate has categorically submitted that the petitioners have been moved to the revised scale of pay as provided under the Tripura State Civil Services (Revised Pay) Rules, 1999, ROP Rules, 1999 in short.

08. For having the benefits of revised pay scales, an option have been asked for in terms of Rule-6 of the said ROP Rules, 1999 which provides that the option under the proviso to Rule-5 shall be exercised in writing in the form provided in Schedule-I so as to reach the respective Heads of the offices. It has been further provided that if the intimation regarding option is not received within the time mentioned in sub-rule (a), the Government servant to whom these rules apply shall be deemed to have elected to be governed by the revised scale of pay with effect on and from the 1st day of January, 1996. Sub-rule (a), as referred, provides that such option should reach to the Finance Department with 120 (one hundred twenty) days from the date of publication of the ROP Rules, 1999. It is pertinent to point out that proviso to Rule 5 has stipulated that, "Provided also that a Govt. servant may elect to continue to draw pay in the existing scale until the date on which he earns his next

increment in the existing scale between the 1st January, 1996 and 31st December, 1996, both days inclusive”.

09. Mr. Chakraborty, learned Addl. Government Advocate having referred those provisions has submitted that the petitioners did not by way of option elect the revised pay scales as provided under Rule 4 of the ROP Rules, 1999 and as such they have been deemed to have exercised option and their pay have been revised in terms of the said ROP Rules. The petitioners are receiving their pay and allowance in the revised scale without any flutter.

10. Mr. Chakraborty, learned Addl. Government Advocate has further referred to Para-14 of the counter affidavit filed by the respondents and submitted that the previous mode of movement from Jr. Engineer, Grade-II to Jr. Engineer, Grade-I on completion of 4 years of service has been revised by Rule 10-b and Rule 10-d of the ROP Rules, 1999. In Rule 10-b, it has been provided that Jr. Engineers of the non-cadre service on completion of 10 years of service in the initial grade shall move to the next higher grade i.e. Jr. Engineers of the Departments other than PWD and Power shall move to next higher scale of Rs.5500-10700/- on completion of 10 years service in the initial grade of Rs.5000-10300/-(Pre-revised scale of Rs.1450-3710/- as mentioned at Sl. No.9 of Annexure-A of the said ROP Rules and that Jr. Engineers of the cadre service in the PWD and Power Department will move to next higher scale of Rs.7450-13,000/- on completion of 8 years service in the initial grade as

mentioned in Annexure-B read with Rule-10 along with Annexure-A and B of the said ROP Rules.

11. Mr. Chakraborty, learned Addl. Government Advocate has candidly submitted that these rules have been so framed in exercise of powers conferred on the respondents by proviso to the Article 309 of the Constitution of India and those have effect of repeal on the previous rules as framed under proviso to Article 309 of the Constitution of India.

12. Rule 13 of the ROP Rules categorically provides that save as otherwise provided therein, the provisions of the Tripura State Civil Services (Revised Pay) Rules 1988 shall stand repealed and the provisions of the Fundamental Rules to the extent of inconsistency, if any, with those rules shall not apply. However, those overriding effect apparently did not encompass the service rules. But if any employee had exercised the option to move to the revised pay scales and/or in the case of the non-exercise even they shall be deemed to have overridden the relevant provisions of the service rules by way of election. On the face of certain other anomalies, the said ROP Rules, 1999 was substantially amended by the Tripura State Civil Services (Revised Pay) (15th Amendment) Rules, 2004. In the said Amendment Rules, the Rule 10 was also modified and following amongst other provisions have been incorporated.

(i) In cases where any authority has in the meantime allowed time bound movement to higher scale of pay under CAS to any Government servant holding any post covered by this amendment as

per the provision of existing RR of respective posts the concerned authority shall cancel such order and re-fix the pay of the Government servant concerned as per the provision of Rule 10 of the Tripura State Civil Services (Revised Pay) Rules, 1999 read with the provision of present amendment. Excess payment made, if any, should be recovered in lump sum immediately.

13. From Annexure-I, amongst other entries, the following entry is reproduced hereunder:

Department /Page No. & Sl. No.	Name of Post	Prefix /Suffix to the post	Existing Scale	Revised Scale w.e.f. 1.1.1996	Name of Post	Modified Revised Scale of Pay w.e.f. 1.1.1996	Remarks
	Junior Engineer Gr-I belonging to all Departments outside the cadre services viz Tripura Engineering Service and Tripura Power Engineering Service.		1450-3710	5000-10300	Junior Engineer Gr-II	5000-10300	Entry scale for diploma holder. They will move to Gr-I on completion of 8 years of continuous and satisfactory service.
	Junior Engineer Gr-I belonging to all Departments outside the cadre services viz Tripura Engineering Service and Tripura Power Engineering Service.		2000-4410 2100-4410	6500-12300 7450-13000 (As per the Court's Order in favour of Degree holder Jr. Engineer /Jr. Engineer Gr-I belonging to PWD/Power Department	Junior Engineer Gr-I	7450-13000	Entry scale for Degree holder. They will move to CAS-I scale on completion of 8 years of continuous and satisfactory service.

14. Mr. Chakraborty, learned Addl. Government Advocate has further stated by aid of the averments of Para-14 of the counter affidavit that the District Magistrate & Collector, North Tripura had wrongly allowed movement from Jr. Engineer, Grade-II to the Jr. Engineer, Grade-I on completion of 4 years of service from the date of the joining of the Jr. Engineer, Grade-II (Diploma holder) of Rural Development Department. The Finance Department had already requested the District Magistrate & Collector, North Tripura, Kailashahar to cancel such order and issue order of movement to next grade in favour of the concerned incumbents as per the provisions of TSCS(Revised Pay) Rules, 1999 by the letter dated 29.05.2003 (Annexure-R/4 to the writ petition). If the writ petitioners are not deemed to have moved to the revised pay scales in terms of the ROP Rules, 1999 or there have not been any revision of pay by way of the said ROP Rules, 1999, true it is, the petitioners have the right to claim the upgradation as stated on completion of 4 years of satisfactory service. But for introduction of the Rule 10 of the ROP Rules, 1999 and for their election of the revised pay scales in terms of the ROP Rules, 1999 their said right has eclipsed.

15. Situated thus, the writ petition is bereft of merit and accordingly it stands dismissed, however there shall not be any order as to costs.

JUDGE

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