

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.562 of 2015
W.P.(C) No.563 of 2015
W.P.(C) No.564 of 2015
W.P.(C) No.565 of 2015
W.P.(C) No.567 of 2015
W.P.(C) No.568 of 2015
&
W.P.(C) No.569 of 2015

In W.P.(C) No.562 of 2015

Petitioner:

Sri Sanjib Tripura,
son of Sri Sunil Tripura of Dhanu
Chandra Para, P.O. Satchal, P.S.
Manu Bazar, South Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

- V E R S U S -

Respondents:

1. **The State of Tripura,**
represented by the Secretary to the
Government of Tripura, Department
of Home, having its office at New
Capital Complex, District – West
Tripura, Agartala, PIN- 799010
2. **The Director General of Police,**
Police Head Quarters, Fire Brigade
Chowmuhani, Agartala, PIN-799001
3. **The Commandant, 8th Battalion,**
Tripura State Rifles of Lalcherra,
Chailengta, District – Dhalai Tripura
4. **The Secretary**
to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital

Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

In W.P.(C) No.563 of 2015

Petitioner:

Sri Sankar Das,
son of Sri Amritlal Das of East
Badharghat, P.O. Madhuban, Dukli,
P.S. Amtali, West Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

- V E R S U S -

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3. **The Commandant, 8th Battalion,**
Tripura State Rifles of Lalcherra,
Chailengta, District – Dhalai Tripura
4. **The Secretary**
to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital
Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

In W.P.(C) No.564 of 2015

Petitioner:

Sri Bir Kumar Debbarma,
son of late Keshab Debbarma
of Kanthamani Thakur Para,
P.O. Dinabandhu Para, P.S.
Bodhjungnagar, District –
West Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

- V E R S U S -

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to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital
Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

In W.P.(C) No.565 of 2015

Petitioner:

Sri Subi Debbarma,
son of Sri Baidhya Debbarma of
Narayan Bari, P.O. Sachindranagar
Colony, P.S. Jirania, West Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

- V E R S U S -

Respondents:

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Tripura State Rifles of Lalcherra,
Chailengta, District – Dhalai Tripura
4. **The Secretary**
to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital
Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

In W.P.(C) No.567 of 2015

Petitioner:

Sri Tapan Debbarma,
son of Rabi Ram Debbarma of
Zuricherra, P.O. West Ratiacherra,
P.S. Kumarghat, District – Unakoti,
Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

-V E R S U S-

Respondents:

1. **The State of Tripura,**
represented by the Secretary to the
Government of Tripura, Department
of Home, having its office at New
Capital Complex, District – West
Tripura, Agartala, PIN- 799010
2. **The Director General of Police,**
Police Head Quarters, Fire Brigade
Chowmuhani, Agartala, PIN-799001
3. **The Commandant, 8th Battalion,**
Tripura State Rifles of Lalcherra,
Chailengta, District – Dhalai Tripura
4. **The Secretary**
to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital
Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

In W.P.(C) No.568 of 2015

Petitioner:

Sri Amal Talukdar,
son of Pree Kishore Talukdar of
Kamalpur, P.O. Pecharthal, P.S.
Pecharthal, District – Unakoti,
Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

- V E R S U S -

Respondents:

1. **The State of Tripura,**
represented by the Secretary to the
Government of Tripura, Department
of Home, having its office at New
Capital Complex, District – West
Tripura, Agartala, PIN- 799010
2. **The Director General of Police,**
Police Head Quarters, Fire Brigade
Chowmuhani, Agartala, PIN-799001
3. **The Commandant, 8th Battalion,**
Tripura State Rifles of Lalcherra,
Chailengta, District – Dhalai Tripura
4. **The Secretary**
to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital
Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

In W.P.(C) No.569 of 2015

Petitioner:

Sri Uttam Sarkar,
son of Sri Harendra Ch. Sarkar of
Uttar Ramnagar, P.O. Airport, P.S.
Airport, West Tripura

By Advocate :

Mr. D. Bhattacharji, Advocate
Mr. S. Das, Advocate

- V E R S U S -

Respondents:

1. **The State of Tripura,**
represented by the Secretary to the
Government of Tripura, Department
of Home, having its office at New
Capital Complex, District – West
Tripura, Agartala, PIN- 799010
2. **The Director General of Police,**
Police Head Quarters, Fire Brigade
Chowmuhani, Agartala, PIN-799001
3. **The Commandant, 8th Battalion,**
Tripura State Rifles of Lalcherra,
Chailengta, District – Dhalai Tripura
4. **The Secretary**
to the Government of Tripura,
Department of Finance, having its
office at New Capital Complex, P.O.
New Secretariat, P.S. New Capital
Complex, District – West Tripura,
Agartala, PIN- 799010

By Advocate :

Mr. T.D. Majumder, G.A.

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

Date of hearing : 23.06.2016
 Date of delivery of
 Judgment and order : **31.08.2016**
 Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

All these writ petitions being W.P.(C) No.562 of 2015 [Sri Sanjib Tripura vs. State of Tripura and others] W.P.(C) No.563 of 2015 [Sri Sankar Das vs. State of Tripura and others], W.P.(C) No.564 of 2015 [Sri Bir Kumar Debbarma vs. State of Tripura and others], W.P.(C) No.565 of 2015 [Sri Subi Debbarma vs. State of Tripura and others], W.P.(C) No.567 of 2015 [Sri Tapan Debbarma vs. State of Tripura and others], W.P.(C) No.568 of 2015 [Sri Amal Talukdar vs. State of Tripura and others] and W.P.(C) No.569 of 2015 [Sri Uttam Sarkar vs. State of Tripura and others] are clustered for disposal by a common judgment having regard to the controversy raised in these writ petitions.

[2] The reliefs sought in these writ petitions are identical. Those are for quashing the memorandum No.F.455/TSR-8/ACCTTS/P.FIX/2013/767 dated 23.01.2015, for a direction for fixation of pay in accordance with Tripura State Civil Services (Revised Pay) Rules, 2009, in particular to

fix the pay at least in the same manner as that of one Arun Debbarma, Nayeb Subedar (GD), 11th Battalion, TSR (IR-VII), for payment of interest @14% per annum on the difference i.e. on outstanding pay and allowances and for removing disparity of pay between the petitioners and the juniors who are directly recruited to the post of Nayeb Subedar (GD) forthwith and that for staying the operation of the recovery of the purported excess amount from the salary of the petitioners till necessary amendment of Tripura State Civil Services (Revised Pay) Rules, 2009 relating to the pay anomalies is carried out. According to the petitioners, they were promoted to the post as Nayeb Subedar (GD). On introduction of Tripura State Civil Services (Revised Pay) Rules, 2009, the pay of the petitioners was re-fixed by the respondents. In the year 2013, by the memorandum under No.F.6(1)-FIN(PC)/2008 dated 21.06.2013, the state introduced guidelines as a matter of clarification for fixation of pay at the time of promotion of employees commenced on and after 01.01.2006. According to the petitioners, they are entitled to be fitted in the Clause 2 (ii) of the said memorandum dated 21.06.2013 but the respondents by misreading the said clarification fitted them against Clause 2(i) *ibid* and consequent thereupon, the petitioners are compelled to get a reduced salary in comparison to the others, holding the same position and from their juniors in the grade. For purpose of reference, the

clarification/illustrations as provided under the memorandum dated 21.06.2013 are extracted hereunder:

**" Government of Tripura
Department of Finance**

No.F.6(1)-FIN(PC)/2008

Agartala, 21 June 2013

MEMORANDUM

Subject : Fixation of pay under the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009-clarificaiton thereto.

Consequent upon the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009 vide Notification No.F.6(1)-FN(PC)/2012(P-I) dated 19.12.2012 queries have arisen from certain quarters in respect of fixation of initial pay at the time of direct recruits appointed on or after 01.01.2006 and in respect of fixation of pay at the time of promotion of employees. The points raised and clarification thereto are stated above:

Sl. No.	Point raised	Clarification
1)	What will be the initial pay in the pay band of a Government employee appointed directly on or after 01.01.2006 in the revised pay structure under the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009?	<p>The figure shown in the column Pay in the Pay Band against each Grade Pay in respect of PB-1, PB-2, PB-3 & PB-4 as appended as PART-F at Page-2 of the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009 will be the initial Pay in the Pay Band.</p> <p>Example : Mr. 'A' was appointed directly to a particular post in the pay structure of PB-4 (₹13,575-37,000/-)+ G.P. ₹.3700/- on 01.01.2012.</p> <p>His initial pay in the pay band will be ₹14,510/- and his basis pay will be ₹18,210/- (₹14,510 + ₹3700) on and from 01.01.2012 (date of appointment) in the above mentioned pay structure as per the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009.</p>
2)	How will the pay of Government employee be fixed at the time of promotion to the higher post in the different Bands?	<p><u>The pay of a Government employee at the time of promotion to the higher post in the different pay Bands will be fixed as per Rule 12 of the Tripura State Civil Services (Revised Pay) Rules, 2009.</u></p> <p>Example : Mr. 'B' with basic pay of ₹17,820/- (Band Pay ₹14,720 + Grade Pay ₹3,100/-) in the pay structure of PB-</p>

		<p>3(₹9570-30000/-) + GP. ₹4,500/- on 11.04.2011. His pay will be fixed on promotion to the higher post as follows:</p> <p><u>(i) If option exercised by him to get his pay fixed in the higher post directly on the date of promotion i.e. on 11.04.2011.</u></p> <ul style="list-style-type: none">➤ Pay to be fixed on promotion on 11.04.2011: ₹19,760/- (₹14,720/- + 3% of ₹17,820/- i.e. ₹540/- + ₹4,500/-)➤ Pay as on 01.07.2011 : ₹19,760/- <p><u>(ii) If option exercised by him to get his pay fixed in the higher post on the date of accrual of next increment of the lower post i.e. on 01.07.2011:</u></p> <ul style="list-style-type: none">➤ Pay to be fixed on promotion on 11.04.2011 : ₹19,220/- (₹14,720/- + ₹4,500)➤ Pay be re-fixed on 01.07.2011 : ₹20,310/- (₹14,720+ 3% of ₹17,820/- + ₹540) i.e. ₹550/- + ₹4,500)
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By order etc.
Sd/
Illegible
(R. Debbarma)
Dy. Secretary to the
Government of Tripura

[3] By the memorandum under No.F.(6)-FIN(PC)/2008 dated 19.02.2015, the respondents with reference to Rule 5 and 6 of the Tripura State Civil Services (Revised Pay) Rules, 2009, has provided that a State Government employee had an option to elect to switch over to the revised pay structure from 01.01.2006 or from the date of next increment or from the date of promotion, or as the case

may be. For the cases commenced prior to the notification of the said rules, it has been provided that the concerned employees shall be asked to exercise such an option in the prescribed form within 3(three) months from the date of publication of the said order. The sub Rule 4 of Rule 6 of the Tripura State Civil Services (Revised Pay) Rules, 2009 provides that the option once exercised shall be final. It is observed in the memorandum dated 19.02.2015 that in many cases the Government employees are drawing less pay compared to their juniors even though they exercised their option for coming over to the revised pay structure from the date of having the higher pre-revised pay scale on account of promotion or, as the case may be or for financial up-gradation under Career Advancement Scheme, in short CAS. Having regard to that situation, the respondents by the said notification dated 19.02.2015 had permitted to re-exercise their option to come over to the revised pay structure in relaxation of stipulation under Rule 6(4) of the Rules as stated subject to the conditions as under:

"(i) Option on Revision of Pay, 2009 shall be re-exercised under Rule 6 of the Tripura State Civil Services (Revised Pay) Rules, 2009 within a period of 3(three) months from the date of issue of this order.

(ii) Option shall be re-exercised in accordance with the normal rules for fixation of pay in the revised pay structure as prescribed in PART-B of SCHEDULE II of the Tripura State Civil Services (Revised Pay) Rules, 2009.

(iii) The pay of the concerned employees shall be fixed in the revised pay structure from the date of option to be re-exercised for coming over to the revised pay structure under the Tripura State Civil Services (Revised Pay) Rules, 2009 and thereafter, notionally regulated under the same rules upto the period prior to the issue of this order. The financial benefit of re-exercise of

option shall be payable in cash with effect from date of issue of this order.

(iv) The excess amount to be refunded will be adjusted from the arrears due to re-exercise of option. The balance amount, if any, has to be refunded will be adjusted from the salary of the incumbent concerned."

[4] The respondents by the order under No.F.455-TSR-8/ACCTTS/ P.FIX/2013/767 dated 23.01.2015, which was sent by a radio message, directed for recovery of the overdrawn amount by way of deduction from the salary of the petitioners in equal monthly instalments. Even in the said order, the amount to be recovered has been calculated. That order dated 23.01.2015 has been challenged by the writ petitioners in this batch of the writ petitions.

[5] The respondents No.1,2 & 3 by filing the counter affidavit have admitted the averments of the writ petitions, except that the petitioners are covered by the Clause 2(ii) of the memorandum dated 21.06.2013. According to the respondents, the salary of the petitioners are required to be fixed under Clause 2(i) of the said memorandum dated 21.06.2013 meaning that the pay of a Government employee at the time of promotion to the higher post in the different pay bands will be fixed as per Rule 12 of the Tripura State Civil Services (Revised Pay) Rules, 2009 read with 4th Amendment Rules, 2010 to the Tripura State Civil Services (Revised Pay) Rules, 1999. In the said memorandum dated 21.06.2013, below the Clause 2 examples have been cited for purpose of

clarification. One reads that if Mr. 'B' with basic pay of ₹17,820/-(PB- ₹14,720+ G.P. ₹3,100/-) in the pay structure of PB-3 (₹9,570 -30,000) + GP ₹4,500 on 11.04.2011. His pay will be fixed on promotion to the higher post in the manner as provided in sub Clause (i) as reflected in the memorandum dated 21.06.2013. If option exercised by the employee to get his pay fixed in the higher post directly on the date of promotion i.e. on 11.04.2011. Pay to be fixed on promotion on 11.04.2011 at ₹19,760/- (₹14,720+ 3% of ₹17,820/- i.e. ₹540/- + ₹4,500/-). Hence, the pay as on 01.07.2011 would be ₹19,760/-. The petitioners claimed that their pay is required to be fixed under sub Clause 2(ii) as the other illustration provides that if option exercised by the employee to get his pay fixed in the higher post on the date of accrual of the next increment of the lower post on 01.07.2011, the pay to be fixed on promotion on 11.04.2011 is ₹19,220/- (₹14,720/- + G.P. ₹4,500/-) and on the day of increment i.e. 01.07.2011, the pay shall be re-fixed at ₹20,310/- [₹14,720+3% of ₹17,820/- i.e. ₹540/- + 3% of (₹17,820+ ₹540/- + 3% of (₹17,820/- + ₹540/-) i.e. ₹550 + ₹4,500/-]. This principle of fixation is at variance to the Clause 2(i) of the memorandum dated 21.06.2013.

[6] Now the substantial question that arises for decision is that whether the petitioners are entitled to exercise

the option for Clause 2 (ii) for fixing their pay or not. While dealing with that aspect of the matter, the respondents have categorically stated that *'as per Government of Tripura, Finance Department Notification No.F.6(1)-FIN(PC)/2008 No.19.02.2015, it is clearly stated that the pay of the concerned employees shall be fixed in the revised pay structure from the date of option to be exercised for coming over to the revised pay structure under the TSCS (Revised Pay) Rules, 2009 and thereafter, notionally regulated under the same rules up to the period prior to the date of issue of this order. The petitioner does not come within the scope of concerned employee. As such, the fixation case of the petitioner does not cover under the Memorandum No. F.6(1)-FIN (PC)/2008 dated 19.02.2015, since he was promoted after issue of the TSCS (Revised Pay) Rules, 2009.'*

[7] In this context, it would be apposite to lay the perspective of issuance of the notification dated 19.02.2015. In the Para-2 of the said memorandum dated 19.02.2015, it has been clearly provided that some of the employees had exercised their option in the lower pre-revised pay scale for coming over to the revised pay structure w.e.f. 01.01.2006 under the Tripura State Civil Services (Revised Pay) Rules, 2009 although they were placed in the higher pay scale on account of promotion or by way of financial up-gradation. For

that, in many cases such government employees are drawing less pay, compared to their juniors who had exercised their option for coming over to the revised pay structure from the date of placing in the higher pre-revised pay scale on account of promotion or the case may be, by way of financial up-gradation under CAS. It is an admitted position of fact that all the petitioners were promoted to the post of Nayeb Subedar after publication of the notification containing the Tripura State Civil Services (Revised Pay) Rules, 2009 on 06.05.2009 and thus, the benefit of re-exercising the option under that notification to come over to the revised pay structure cannot be applied for the petitioners *per se*. Hence, there is no room for the petitioners. But a new situation has emerged. The memorandum dated 21.06.2013 has taken care of such situation and observed as follows:

"Consequent upon the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009 vide Notification No.F.6(1)-FN(PC)/2012(P-I) dated 19.12.2012 queries have arisen from certain quarters in respect of fixation of initial pay at the time of direct recruits appointed on or after 01.01.2006 and in respect of fixation of pay at the time of promotion of employees."

In response thereto, the clarifications have been made by the same memorandum dated 21.06.2013. It can safely be deduced that there was a fair amount obfuscation which compelled the Finance Department to make the clarification for guidance and those clarifications have the force of rule. Hence, to avail the benefit that accrued from such clarifications as reflected in the memorandum dated

21.06.2013, if any of the petitioners are inclined to re-exercise their option, they shall be permitted to re-exercise the option electing either Clause 2(i) or under Clause 2(ii) of the memorandum dated 21.06.2013 for fixation of pay against their promotional post. Even though the petitioners are not covered by the memorandum dated 19.02.2015, but the memorandum dated 21.06.2013 has apparently generated a new position by way of clarification for fairness action. Now the respondents are under obligation to allow the petitioners to re-exercise the option electing either Clause 2(i) and or Clause 2(ii) of the memorandum dated 21.06.2013, inasmuch as it has been clearly laid down in the memorandum dated 21.06.2013 that it would applicable for the promotions that would commence from and after 01.01.2006 and 'thereafter'. For purpose of further reference to the Services particulars of the petitioners, the relevant dates with initial pay are shown in tabular form:

Name with DOB of the petitioner	W.P.(C) No.	DOJ as Hab.	Initial Pay	DOP as Nab. Sub.	Scale of Pay
Sanjib Tripura DOB- 15.08.1984	W.P.(C) No.562 of 2015	23.09.2006	3300-100-4800-110-5900-120-7100	01.03.2011	PB.2 ₹5310-24000/- GP-2400
Sankar Das DOB- 23.06.1977	W.P.(C) No.563 of 2015	20.03.2002	3300-100-4800-110-5900-120-7100	20.09.2010	PB.2 ₹5310-24000/- GP-2400
Bir Kumar Debbarma DOB- 16.02.1986	W.P.(C) No.564 of 2015	23.09.2006	3300-100-4800-110-5900-120-7100	01.03.2011	PB.2 ₹5310-24000/- GP-2400
Subi Debbarma DOB-07.01.1982	W.P.(C) No.565 of 2015	25.09.2006	3300-100-4800-110-5900-120-7100	01.03.2011	PB.2 ₹5310-24000/- GP-2400
Tapan Debbarma DOB-05.01.1985	W.P.(C) No.567	27.09.2006	3300-100-4800-110-	01.03.2011	PB.2 ₹5310-

	of 2015		5900-120-7100		24000/- GP-2400
Amal Talukdar DOB-17.05.1982	W.P.(C) No.568 of 2015	15.09.2003	3300-100-4800-110-5900-120-7100	20.09.2010	PB.2 ₹5310-24000/- GP-2400
Uttam Sarkar DOB-21.01.1981	W.P.(C) No.569 of 2015	20.03.2002	3300-100-4800-110-5900-120-7100	20.09.2010	PB.2 ₹5310-24000/- GP-2400

[8] From the table above, it is apparent that the petitioners were appointed as Nayeb Subedar (GD) in the period from 20.09.2010 to 01.03.2011. To be more precise, the petitioners of W.P.(C) No.563 of 2015, W.P.(C) No.568 of 2015 and W.P.(C) No.569 of 2015 were appointed on 20.09.2010 and the remaining petitioners were appointed on 01.03.2011.

[9] Mr. D. Bhattacharji, learned counsel appearing for the petitioners has submitted that one Arun Debbarma, a Nayeb Subedar (GD) having been similarly circumstanced has been getting the pay scale of ₹5310-24000/- with G.P. ₹2400/- having his pay fixed under Clause 2(ii) of the said memorandum dated 21.06.2013 and against him, there is no order of deduction. The petitioners in the Para-7 of their writ petitions have averred that one Arun Debbarma, Nayeb Subedar (GD) working under the Commandant, 11th Battalion, TSR (IR-vii) getting higher salary than the petitioners though the petitioners and Arun Debbarma entered in the service as a Habildar in the same year i.e. in the year 2006. If the salary slip of the petitioners (July, 2015-Annexure-3 to the writ

petitions) and the salary slip of Arun Debbarma of the same month (Anenxure-4 to the writ petitions) are compared, such discrepancy would come forward. The petitioners filed the representation for redress of such anomaly. The petitioners have further stated that Nayeb Subedars who are directly recruited even after the promotion of the petitioners, their pay scale is in the Pay Band-2 ₹5310-24000/- with G.P. ₹2400 with other allowances. The directly recruited Nayeb Subedars (GD) are drawing higher pay than the petitioners per month even though they are junior to the petitioners. In the Para-8 of the writ petition, it has been averred by the petitioners that the respondents made '*a combined seniority list for the post of Nayeb Subedar(GD) for the TSR Battalions*' from where it reveals that Nayeb Subedar Balaram Das, Amit Das and Swapan Dhanuk are junior to the petitioners. The petitioners have urged this Court by stating that on 23.07.2013 by a notification, Sub Rule 6 of Rule 14 of the Tripura State Civil Services (Revised Pay) Rules, 2009 has been amended. By way of that amendment, it has been provided under Rule 6A(iii) of the said Rules of 2009 that in cases where a senior employee draws a lesser pay in the revised pay structure as a result of getting promotion directly to the higher post from the feeder post than his junior who has got promotion to the same post from the same feeder post after availing of ACP on or after 01.01.2006, then the pay in the pay band shall be stepped up

at par with his junior from the date when anomalies in the pay appeared. The petitioners themselves have admitted that such provision does not help them very much. It is a correct statement of law. The grievances of the petitioners are broadly two. There cannot be any disparity in the pay and allowances between the senior promotees and the junior direct recruitees and the petitioners are entitled to have the fixation in terms of the provision of Clause 2(ii) of the said memorandum dated 21.06.2013, Annexure-1 to the writ petition. But by fixing their pay under Clause 2(i) of the said memorandum dated 21.06.2013, the respondents have acted arbitrarily and issued the impugned letter dated 23.01.2015. By the said letter dated 23.01.2015, it has been directed that the petitioners are not entitled to get the pay which they were receiving and they have been receiving excess amount and hence, recovery has been directed in the manner as stated before. It has been therefore, urged by the petitioners to quash the said letter dated 23.01.2015.

[10] In reply to the claims of the petitioners, Mr. T.D. Majumder, learned G.A. has categorically stated that there is insufficiency in the particulars of Arun Debbarma, but if Arun Debbarma having been similarly circumstanced, has been drawing higher pay than the petitioners for his pay being fixed under Clause 2(ii) of the said memorandum dated 21.06.2013,

then a similar action also be taken against Arun Debbarma also. Mr. Majumder, learned G.A. has submitted that the petitioners cannot get the benefit of re-exercise of option as they got the promotion on 01.03.2011. Their pay has to be fixed as per the normal rules, meaning the pay of the petitioners has to be fixed on the day when they were promoted to the post of Nayeb Subedar (GD). The department has correctly fixed the pay of the petitioners. Their pay cannot be fixed under Clause 2(ii) of the memorandum dated 21.06.2013. The respondents have illustrated how the pay has been fixed of the petitioners. In W.P.(C) No.564 of 2015, the pay of Bir Kumar Debbarma in the post of Nayeb Subedar (GD) according to the respondents had been fixed at ₹9,420(₹7020 +₹2400) w.e.f. 01.03.2011 i.e. the day of promotion and thereafter, on the day of his next increment i.e. 01.07.2011 at ₹9,970/-(₹7020+₹270+₹280+₹2400) as per Clause 2(ii) of the memorandum dated 21.06.2013 with due approval. Thereafter, by the order dated 23.01.2015, the respondents have sought to recover a sum of ₹95,360/- as the said amount was drawn in excess. When on scrutiny, the respondents found that the petitioners were not covered by Clause 2(ii) of the memorandum dated 21.06.2013, even though, initially the pay of the petitioners was fixed under Clause 2(ii) of the memorandum dated 21.06.2013, but the respondents have categorically stated that the petitioners are not entitled to re-

fix their pay by exercising option. However, the respondents have admitted that the pay of the petitioners has been fixed in terms of the memorandum dated 21.06.2013. Since the petitioners got promotion after introduction of the Tripura State Civil Services (Revised Pay) Rules, 2009, the petitioners are not entitled to exercise any option regarding their fixation of pay.

[11] In rejoinder, Mr. Bhattacharji, learned counsel appearing for the petitioners has submitted that a plain reading of the memorandum dated 21.06.2013 with its illustrations, it would be apparent that the said memorandum has been issued as consequent upon to the 6th Amendment Rules, 2012 the Tripura State Civil Services (Revised Pay) Rules, 2009 which was published by the notification under No.F.6(1)-FIN(PC)/2012 dated 19.12.2012 and in respect of fixation of initial pay for the direct recruits, appointed on or after 01.01.2006 and in respect of promotees in the same terms. Hence, the contentions of the respondents are without any substance as there is no embargo in providing the benefit to the petitioners under Clause 2(ii) if the petitioners exercised their option for such fixation formula. The respondents ought to have asked for option from the petitioners before their pay was refixed. That apart, Mr. Bhattacharji, learned counsel has pointed out that the interpretation as advanced by the

petitioners is in conformity with the Rule 12 of the Tripura State Civil Services (Revised Pay) Rules, 2009. The petitioners have been promoted to the post of Nayeb Subedar (GD) which is borne in pre-revised scale of ₹3300-7100, revised to Pay Band-2 ₹5310-24000/- with G.P. ₹1800 whereas one Amit Das was directly recruited as the Nayeb Subedar (Compounder) in the Pay Band-2, he has been given, according to Mr. Bhattacharji, learned counsel, the scale of ₹5310-24000 with G.P. ₹4200/-. The petitioners are also entitled to the similar benefit having been borne in the same post of Nayeb Subedar.

[12] Mr. Majumder, learned G.A has further submitted that said Amit Das is borne in the different cadre, namely Nayeb Subedar (Compounder). From the combined final seniority list of Nayeb Subedars (Compounder) of TSR Battalions which was published on 07.01.2015, Annexure-R/1 to the additional counter affidavit, the said fact would emerge. For the Nayeb Subedar (GD) the final combined seniority list was published on 29.12.2014, part of the Annexure-R/1 to the additional counter affidavit. It is, therefore, apparent that in this regard, the petitioners have messed up as they did not check up this aspect as pointed out by Mr. Majumder, learned G.A.

[13] As already observed, this Court is of the view that in terms of the memorandum dated 21.06.2013, the

petitioners are entitled to exercise option whether they would like to get their pay fixed in the post of Nayab Subedar (GD) from the date of their promotion or from the date of their next increment of the feeder post. Unless such opportunity of exercising option is given to the petitioners, the official respondents cannot unilaterally fix the pay of the petitioners in the promotional post. As such, the impugned order dated 23.01.2015 (as reflected in the radio message at Annexure-5 to the writ petition) is wholly unwarranted and accordingly, the same is set aside. However, the respondents after giving the petitioners opportunity to exercise the option in view of the memorandum dated 21.06.2013, the respondents may fix the pay of the petitioners and other consequential action.

[14] This Court finds substantive force in the submission of Mr. Majumder, learned G.A. that the pay scale in the pay band for two different posts cannot be compared. However, if it so happened in the same cadre, between the promotees and the direct recruits [when the direct recruits were appointed on the same day of the promotion or thereafter] the respondents could not have afforded the higher pay under pretext to the direct recruits as that would violate the equality clause as enshrined in Article 14 of the Constitution of India.

[15] In **Kamlakar & Others vs. Union of India & Others**, reported in **(1999) 4 SCC 756**, the apex court has observed unambiguously as under:

"12. We have considered the limited issue. We are of the view that all these appellants should get the same relief as the appellants in the Civil Appeal which arose out of Special Leave Petition No. 16646 of 1995. Once they were all in one cadre, the distinction between direct recruits and promotees disappears at any rate so far as equal treatment in the same cadre for payment of the pay scale given. The birth marks have no relevance in this connection. If any distinction is made on the question of their right to the post of Data Processing Assistants they were holding and to its scale - which were matters common to all of them before the impugned order of the Government of India was passed on 2.7.1990, - then any distinction between Data Processing Assistants who were direct recruits and those who were promotees, is not permissible. We, therefore, reject the respondent's contention. We have examined the record and the common points arising in this case and those in Civil Appeal which arose out of Special Leave Petition 16646 of 1995 and we are unable to find any lawful distinction between the appellants and those in the other appeal which has been allowed."

As such, the revised pay structure for direct recruits which is apparently carrying the higher grade pay cannot be permissible as the birthmark of Nayeb Subedars (promotees) or the Nayeb Subedars (direct recruits) have no relevance. If the direct recruits are getting higher benefit, the petitioners shall also be entitled to the said benefit of pay and allowances as the apex court has clearly enunciated the law that any distinction between the direct recruits and those who are promotees is not permissible.

[16] Having regard to what has been discussed herein before, the respondents shall after obtaining the option from the petitioners in terms of the memorandum dated 21.06.2013 shall fix the pay of the petitioners.

The entire exercise shall be completed within a period of 4 (four) months from the date when the petitioners shall submit a copy of this order.

[17] In the result, the writ petitions are allowed to the extent as indicated above. However, in the circumstances there shall be no order as to costs.

JUDGE

Sujay