

THE HIGH COURT OF TRIPURA
AGARTALA

WP(C) No. 76 of 2017	WP(C) No. 83 of 2017
WP(C) No. 79 of 2017	WP(C) No. 87 of 2017
WP(C) No. 80 of 2017	WP(C) No. 95 of 2017
WP(C) No. 81 of 2017	WP(C) No. 96 of 2017
WP(C) No. 82 of 2017	WP(C) No. 97 of 2017

WP(C) No. 76 of 2017

Sri Khokan Debnath,
son of Shri Amulya Kumar Debnath,
resident of Village Ambagan, P.O. & P.S. Bishalgarh, District: Sepahijala, Tripura,
Pin:799102

.....**Petitioner**

- V E R S U S -

- 1. The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department,
Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub-Division: Agartala, District: West Tripura
- 2. The Secretary,**
Finance Department, Government of Tripura, having his office at Secretariat
Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala,
District: West Tripura
- 3. The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala,
Sub-Division: Agartala, District: West Tripura
- 4. The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar,
Agartala, Sub- Division: Agartala, District: West Tripura
- 5. The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....**Respondents**

WP(C) No. 79 of 2017

Sri Bhabatosh Bhowmik,
son of Sir Arun Bhowmik,
resident of Village Shyama Prasad Colony, P.O. Anandanagar, P.O. Srinagar, Sub-
Division: Sadar, District: West Tripura, Pin: 799004

.....**Petitioner**

- V E R S U S -

- 1. The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department,
Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub-Division: Agartala, Dstrict: West Tripura
- 2. The Secretary,**

Finance Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala, Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar, Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 80 of 2017

Sri Indrajit Saha,
son of late Matilal Saha,
resident of Village Kakraban, Basantanagar (College Tilla), P.O. & P.S. Kakraban,
District: Gomati, Tripura, Pin:799105

.....Petitioner

- V E R S U S -

1. **The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Agartala, District: West Tripura
2. **The Secretary,**
Finance Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura
3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala, Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar, Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 81 of 2017

Sri Dinesh Majumder,
son of Shri Ananta Majumder,
resident of Village & P.O. Lowgang, P.S. Santibazar, District: South Tripura,
Tripura, Pin:799144

.....Petitioner

- V E R S U S -

1. **The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Agartala, District: West Tripura
2. **The Secretary,**

Finance Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala, Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar, Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 82 of 2017

Sri Partha Sarathi Sarkar,
son of Shri Binode Sarkar,
resident of Village& P.O. No. 1 Fulkumari, P.S. R. K. Pur, District: Gomati, Tripura,
Pin:799013

.....Petitioner

- V E R S U S -

1. **The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub-Division: Agartala, Dstrict: West Tripura
2. **The Secretary,**
Finance Department, Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura
3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala, Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar, Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 83 of 2017

Sri Kishore Chandra Barik,
son of Shri Kalpataru Barik,
resident of Village Andola, P.O. & P.S. Naikanidihi, District: Bhadrak, Odisha,
Pin:756164, presently holding the post of Wireless Operator (ASI), in the Tripura Police Communication Organization, Home Department, Government of Tripura and posted at Teliamura Police Communication Station, Teliamura, Khowai

.....Petitioner

- V E R S U S -

1. **The State of Tripura,**
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2. **The Secretary,**
Finance Department, Government of Tripura having his office at Secretariat
Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala,
District: West Tripura
3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala,
Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar,
Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 87 of 2017

Sri Gopes Sarkar,
son of Sri Krishna Kanta Sarkar,
C/o. Dr. Monoranjana Sarkar, resident of Village Chhanban (near Housing Board
Complex), P.O. & P.S. R. K. Pur, District: Gomati, Tripura, Pin:799120

.....Petitioner

- V E R S U S -

1. **The State of Tripura,**
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Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub-Division: Agartala, District: West Tripura
2. **The Secretary,**
Finance Department, Government of Tripura having his office at Secretariat
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Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar,
Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 95 of 2017

Sri Kalachand Chakma,
son of Shri Debendra Chakma,
resident of Village Rabi Das Para, P.O. Dasda, P.S. Kanchanpur, District: North
Tripura, Pin:799271

.....Petitioner

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1. **The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department,
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2. **The Secretary,**
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3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala,
Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar,
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5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 96 of 2017

Sri Sudip Majumder,
son of Shri Milan Behari Majumder,
resident of Vilalge Sonapur, P.O. Barpathari, P.S. P. R. Bari, District: South
Tripura, Pin:799155

.....Petitioner

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1. **The State of Tripura,**
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Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub-Division: Agartala, District: West Tripura
2. **The Secretary,**
Finance Department, Government of Tripura having his office at Secretariat
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District: West Tripura
3. **The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala,
Sub-Division: Agartala, District: West Tripura
4. **The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar,
Agartala, Sub- Division: Agartala, District: West Tripura
5. **The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

WP(C) No. 97 of 2017

Sri Tarun Marak,
son of Shri Santosh Marak,
resident of Village Jamirchhera, P.O. & P.S. Manughat, District: Dhalai Tripura,
Pin:799275

.....Petitioner

- V E R S U S -

- 1. The State of Tripura,**
represented by the Commissioner & Secretary to the Home Department,
Government of Tripura having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub-Division: Agartala, District: West Tripura
- 2. The Secretary,**
Finance Department, Government of Tripura having his office at Secretariat
Complex, P.O. Kunjaban, P.S. New Capital Complex, Sub- Division: Agartala,
District: West Tripura
- 3. The Director General of Police,**
having his office at Police Headquarter, Fire Service Chowmohani, P.O. Agartala,
Sub-Division: Agartala, District: West Tripura
- 4. The Superintendent of Police (Communication),**
Government of Tripura, having his office at A. D. Nagar, P.O. & P.S. A. D. Nagar,
Agartala, Sub- Division: Agartala, District: West Tripura
- 5. The Under Secretary, Home Department,**
Government of Tripura, having his office at Secretariat Complex, P.O. Kunjaban,
P.S. New Capital Complex, Sub- Division: Agartala, District: West Tripura

.....Respondents

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

For the petitioners	: Mr. Somik Deb, Advocate
For the respondents	: Mr. S. Chakraborty, Addl. G.A.
Date of hearing & delivery of judgment and order	: 31.08.2017
Whether fit for reporting	: YES

Judgment and Order (Oral)

Heard Mr. Somik Deb, learned counsel appearing for the
petitioners and Mr. S. Chakraborty, learned Addl. G.A. appearing for the
respondents.

[2] All these writ petitions being WP(C) No. 76 of 2017 [Sri Khokan Debnath v State of Tripura & Ors], WP(C). No. 79 of 2017 [Sri Bhabatosh Bhowmik v. State of Tripura & Ors.], WP(C). No. 80 of 2017 [Sri Indrajit Saha v. State of Tripura & Ors.], WP(C). No. 81 of 2017 [Sri Dinesh Majumder v. State of Tripura & Ors.], WP(C). No. 82 of 2017 [Sri Partha Sarathi Sarkar v. State of Tripura & Ors.], WP(C). No. 83 of 2017 [Sri Kishore Chandra Barik v. State of Tripura & Ors.], WP(C). No. 87 of 2017 [Sri Gopesh Sarkar v. State of Tripura & Ors.], WP(C). No. 95 of 2017 [Sri Kalachand Chakma v. State of Tripura & Ors.], WP(C). No. 96 of 2017 [Sri Sudip Majumder v. State of Tripura & Ors.] and WP(C). No. 97 of 2017 [Sri Tarun Marak v. State of Tripura & Ors.] are consolidated for disposal by a common judgment as an identical controversy wades through these writ petitions.

[3] While the petitioners were working as Havildars in the Tripura State Rifles (TSR, in short) they were attracted by the advertisement (**Annexure- P/1** to the writ petition) whereby applications were invited from the eligible persons having requisite educational and other qualifications for appointment to the post of Wireless Operator (ASI), Operational/Crypto (Group-C, Technical, Non-Gazetted) in the Tripura Police Communication Organization in the scale of pay of Rs. 4,000-7,890/- by the method of direct recruitment.

[4] It is apparent from the said advertisement that there were 70 posts (UR-19, ST-39 and SC-12) and (Ex-Servicemen UR-1, ST-1). It

was provided in the said advertisement that 5 years experience in the similar trade would be required for purpose of participating in the said selection test. There is no dispute that the petitioners were not only found eligible but after the 2 tier tests, they were selected for the said post of Wireless Operator (ASI), Operational/Crypto under the Tripura Police Communication Organization.

[5] It is to be noted that the petitioners had prior to applying for the said post, taken permission from the competent authority in the TSR for participating in the said selection. This aspect of the matter has also not been controverted by the respondents. Thereafter, by the memorandum dated 17.06.2009, the petitioners were offered for the post of Wireless Operator (ASI), Operational/Crypto in the Tripura Police Communication Organization in the scale of pay of Rs. 4,000-7,890/- (pre-revised).

[6] The petitioners for purpose of joining in the said post obtained no objection certificate from the competent authority and that fact is also not in controversy. Finally, by the orders dated 06.07.2009 and 28.07.2009, the petitioners were appointed as the Wireless Operator (ASI), Operational/Crypto under the terms and conditions as laid down in the offer of appointment.

[7] The previous employer also issued the release order (**Annexure-P/6** to the writ petition) wherein it has been clearly stated that the technical resignations tendered by the Havildar Grade-II are accepted and they are allowed to join their new assignment for the post

of Wireless Operator (ASI) under the Tripura Police Communication Organization and accordingly, their names were struck off from the strength of the TSR.

[8] Since there is no controversy over these aspects of the matter, this Court has avoided given minutes detail. But the controversy has its genesis in the communication dated 16.09.2015 (**Annexure-P/8** to the writ petition).^J

[9] By the said communication dated 16.09.2015, the Home Department informed the Director General of Police, Tripura that the Finance Department has given a view in respect of counting of past services of some of the petitioners, which reads as follows: *“The Finance Department concurs the proposal of the Department for counting of past service rendered by Sri Tapas Sarkar (w.e.f. 03.10.2000 to 21.09.2009) and Sri Prasanta Saha (w.e.f. 29.09.2000 to 30.09.2009) in BSF for purpose of pensionary benefits only.”* Similar orders have been passed by the Finance Department in respect of the other petitioners.

[10] In terms of the said communication dated 16.09.2015 and similar other communications dated 03.10.2015, 18.10.2016, 29.09.2016 and 30.09.2009, the pay of the petitioners were re-fixed. By the order No. 51 dated 11.01.2017 a deduction of the excess amount has also been directed as consequence thereof.

^J Reference to the annexures are being made from the writ petition being WP(C) No. 76 of 2017.

[11] For purpose of reference, the entire text of the said order dated 11.01.2017 is reproduced hereunder:

Government of Tripura
Office of the Superintendent of Police (COMN)
Tripura, Agartala

D.O. No. 51 Dated 11.01.2017

Subject : Fixation/re-fixation of pay

In pursuance of Govt. of Tripura Home Department No. F.1(14)-PD/2004 dated 16th September 2015 communicated vide PHQ No. 39,333/F.40/PC/PHQ/SP (Com)/NGO's/14, dated 3rd October 2015, subsequent vide PHQ No. 43971/F.40/PC/PHQ/Commn/NGO's/15 dated 18.10.2016. Vide D. O. No. 971 dated 29.09.2009 communicated vide order No. 12357-59/F.1/SP (Com)/RSV/2008 dated 30.09.2009 is hereby cancelled. Pay of the following Police Common personnel have been fixed initially under TSCS (Revised Pay) 2009 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5,700-24,000/- with GP- Rs. 2400/-. The overpayment made if any, will be deducted from the salary bill.

Pay fixation/re-fixation have been done in the following manner:

Sl. No.	Name & Rank	Existing pay in pay band and GP w.e.f.	Pay fixed in the pay Band, Grade pay with date and DNI	Remarks
1.	W/Opr (ASI) Sri Kishore Ch. Barik D.O.A. 03.08.2009 as W/Opr (ASI)	Rs. 4000/- as on 03.08.2009 (4000-7890/-)	Rs. 4000x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs. 2400/- with DNI -01.07.10. Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014 Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017	
2.	W/Opr (ASI) Sri Khokan Debnath D.O.A. 03.08.2009 as W/Opr (ASI)	Rs. 4000/- as on 03.08.2009 (4000-7890/-)	Rs. 4000 x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs.	

			<p>2400/- with DNI -01.07.10.</p> <p>Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014 Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017</p>	
3.	<p>W/Opr (ASI) Sri Bhabatosh Bhowmik D.O.A. 03.08.2009 as W/Opr (ASI)</p>	<p>Rs. 4000/- as on 03.08.2009 (4000-7890/-)</p>	<p>Rs. 4000 x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs. 2400/- with DNI -01.07.10.</p> <p>Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014 Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017</p>	
4.	<p>W/Opr (ASI) Sri Partha Sarathi Sarkar D.O.A. 01.08.2009 as W/Opr (ASI)</p>	<p>Rs. 4000/- as on 01.08.2009 (4000-7890/-)</p>	<p>Rs. 4000 x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs. 2400/- with DNI -01.07.10.</p> <p>Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014 Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017</p>	
5.	<p>W/Opr (ASI) Sri Dinesh Majumder D.O.A. 05.09.2009 as W/Opr (ASI)</p>	<p>Rs. 4000/- as on 05.09.2009 (4000-7890/-)</p>	<p>Rs. 4000 x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs. 2400/- with DNI -01.07.10.</p> <p>Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014</p>	

			Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017	
6.	W/Opr (ASI) Sri Indrajit Saha D.O.A. 05.08.2009 as W/Opr (ASI)	Rs. 4000/- as on 05.08.2009 (4000-7890/-)	Rs. 4000 x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs. 2400/- with DNI -01.07.10. Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014 Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017	
7.	W/Opr (ASI) Sri Gopesh Sarkar D.O.A. 03.08.2009 as W/Opr (ASI)	Rs. 4000/- as on 03.08.2009 (4000-7890/-)	Rs. 4000 x 1.86 =Rs. 7440/- and GP Rs. 2400/- total Rs. 9840/- w.e.f 03.08.2009, under TSCS Revised (ROP) rule-9 (Twelfth amendment) Rules 2015 in PB-2, Rs. 5700-24,000/- and GP-Rs. 2400/- with DNI -01.07.10. Rs. 10140/- w.e.f. 01.07.2010 Rs. 10450/- w.e.f. 01.07.2011 Rs. 10770/- w.e.f. 01.07.2012 Rs. 11100/- w.e.f. 01.07.2013 Rs. 11440/- w.e.f. 01.07.2014 Rs. 11790/- w.e.f. 01.07.2015 Accordingly his pay raised at Rs. 12150/- (Pb-Rs. 9750/- and GP-Rs. 2400/- w.e.f. 01.07.2016 with DNI 01.07.2017	

[12] The petitioners by these batch of writ petitions have challenged the said orders dated 16.09.2015 (**Annexure-P/8** to the writ petition) and 11.01.2017 (**Annexure- P/9** to the writ petition) and have urged this Court for commanding the respondents to restore the benefit of pay protection earlier granted to the petitioners and the pay, fixed on grant of such protection.

[13] Mr. Somik Deb, learned counsel appearing for the petitioners has submitted that since the post of Wireless Operator (ASI), Operational/Crypto in the Tripura Police Communication Organization is in the higher pay scale, they had applied for the said post. But by the orders dated 16.09.2015 and 11.01.2017, the respondents have acted in contravention of the rules.

[14] Mr. Deb, learned counsel appearing for the petitioners has quite emphatically argued that FR-22(I) (a) (1) is required to be read extensively for the present controversy. The relevant part of the FR-22(I) (a) (1) is extracted hereunder:

“FR-22(I) The initial pay of a Government servant who is appointed to a post on a time-scale of pay is regulated as follows:

(a) (1) Where a Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to the fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attaching to the post held by him, his initially pay in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only whichever is more.

Save in cases of appointment on deputation on an ex-cadre post, or to a post on ad-hoc basis or on direct recruitment basis, the Government servant shall have the option, to be exercised within one month from the date of promotion or appointment, as the case may be, to have the pay fixed under this rule from the date of such promotion or appointment or to have the pay fixed initially at the stage of the time-scale of the new post above the pay in the lower grade or post from which he is promoted on regular basis, which may be re-fixed in accordance with this rule on the date of accrual of next increment in the scale of the pay of the lower grade or post. In cases where an ad-hoc promotion is followed by regular appointment without break, the option is admissible as from

the date of initial appointment/promotion, to be exercised within one month from the date of such regular appointment.

Provided that a Government servant is, immediately before his promotion or appointment on regular basis to a higher post, drawing pay at the maximum of the time-scale of the lower post, his initial pay in the time-scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post held by him on regular basis by an amount equal to the last increment in the time-scale of the lower post or [rupees on hundred, whichever is more].”

[15] It is apparent on the face of the said provision that the Government servant holding a post, other than a tenure post, in a substantive or temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity, as the case may be, subject to fulfillment of the eligibility conditions as prescribed in the relevant Recruitment Rules, to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, “his initially pay” in the time-scale of the higher post shall be fixed at the stage next above the notional pay arrived at by increasing the present pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees one hundred only whichever is more.

[16] Mr. Deb, learned counsel appearing for the petitioners has also referred to an office memorandum dated 17.06.1965 in respect of the fact of a resignation in the matter of counting of past service for purpose of fixation of pay. The relevant part of the said memorandum has been reproduced in the writ petition [in para 3.4]. The said part is extracted hereunder:

“4. Condonation of resignation for purpose of fixation of pay – the question whether the benefit of past service for purpose of fixation of pay can be given to a Government servant who resigns his post before taking up appointment in the new post in the same or another Department, has been under the consideration of the Government of India. Normally, the benefit of past service is given only in those cases, where such service has not been terminated by resignation/dismissal. The President is, however, pleased to decide that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purposes of fixation of pay in the new post treating the resignation as a ‘technical formality’. The pay in such cases may be fixed under FR-27.”

[17] Thus, Mr. Deb, learned counsel appearing for the petitioners has submitted that resignations as tendered by the petitioners were technical formalities and thus, the pay should be fixed counting the past service without projecting any reservation. FR-27 as referred in the said memorandum provides as follows:

“F.R. 27. Subject to any general or special orders that may be made by the President in this behalf and authority may grant a premature increment to a Government servant on a time-scale of pay, if it has power to create a post in the same cadre on the same scale of pay.”

[18] In furtherance of FR-27, the Ministry of law and Justice, Government of India issued one memorandum bearing No. U.O. 22057/62-Adv. (P) dated 08.08.1962 which reads significantly as under:

“12. Wrong fixation under FR-27 initially pay fixed not to be reduced. Once fixation was done by Competent Authority in exercise of the discretion vested in it under FR-27 that authority was not competent under the law to reduce initial pay originally fixed even when such pay was based on some data which subsequently turned to be incorrect.”

[19] Though not much relevant in the present context, Mr. Deb, learned counsel appearing for the petitioners has referred to the

provisions of FR-26(2) which provides that resignation shall not be entitled for forfeiture of past service if it has been submitted to take up on proper permission, another appointment, whether temporary or permanent, under the Government where service is qualified.

[20] Mr. Deb, learned counsel appearing for the petitioners has therefore contended that the petitioners have observed such conditions and hence, there shall be no forfeiture of past service in the providing benefit under the FR-22 (I) (a) (1) to which they are otherwise is entitled. In view of that, the impugned orders are suffers from manifest illegality.

[21] The respondents, however, have contended that what is not entitled to someone in terms of the contract of the service, he cannot get further benefit by way of interpretation of the rules. In para-18 of the reply filed by the respondents, they have categorically stated that the petitioners were not granted the benefit of pay protection on their joining as Wireless Operator (ASI), Operational/Crypto on direct recruitment. According to the respondents, the initial fixation was made treating them as the promotees, which the petitioners were not.

[22] Mr. S. Chakraborty, learned Addl. G.A. appearing for the respondents has submitted that the benefit of FR-22(I) (a) (1) is only available to the persons who are promoted to the post having higher responsibility, not otherwise. The respondents have also categorically averred in the reply that D.O. No. 971 dated 29.09.2009 was issued

erroneously and the necessary correction has been made to put the matter in order. The part of para-20 is reproduced hereunder:

“20. Actually the petitioner was appointed afresh on direct recruitment method and there is a specific views received from Finance Department (G) as per U.O. No. 927/FIN(G) 15 dated 14.09.2015 communicated by the PHQ No. 39,333/F.40/PC/PHQ/COMN/NOG’S/14 dated 03.10.2015 that past service will be counted for pension purpose only.”

[23] Mr. Chakraborty, learned Addl. G.A appearing for the respondents has further submitted that there is no substance in the writ petition. In reply Mr. Deb, learned counsel appearing for the petitioners has rebutted by stating that the respondents have read the provisions of FR-22(I) (a) (1) wrongly as they have omitted the word ‘appointment’ appearing in the said provision. They have only read the word ‘promotion’. FR-22(I) (a) (1) is applicable in the case of appointment subject to the conditions as provided therein and as well as it might apply to the case of promotion.

[24] In this regard, Mr. Deb, learned counsel appearing for the petitioners has referred to a decision of the Apex Court in **Government of India and Others v. B. Anil Kumar and Others** reported in (2010) 6 SCC 419, but this Court is constrained to observe that the said decision does not hold any relevance in this present context.

[25] However, Mr. Deb, learned counsel appearing for the petitioners has relied on a decision of this Court in **Swapan Kumar Bhattacharya v. The State of Tripura and Ors.**, (judgment and order

dated 31.01.2017 delivered in WP(C) No. 219 of 2015) where the similar controversy was raised and it has been observed as under:

“15. From the Recruitment Rules for the post of Supervisor Technical in Tripura Police Radio Organisation, it appears that experience in Wireless/Radio Communication has been made essential qualification for those do not have B.Sc. or B.E.. There is no controversy that the petitioner has served as the Radio Technician since 03.09.1984 till 08.12.1993 and the petitioner being qualified to participate in the selection by Direct Recruitment, he applied for the post. The petitioner was selected and appointed in the post of Supervisor Technical (S.I.) with effect from 09.12.1993. From the memorandum dated 20.11.1993 [the offer of appointment] it appears that, “other conditions of service will be governed by the relevant rules and orders from time to time.” When the petitioner joined the said post on 09.12.1993 the petitioner’s pay was fixed in terms of the W.P.(C) No.219 of 2015 Page 17 of 22 D.O. No. 268 dated 23.02.1994 [Annexure 8 to the writ petition] on applying FR 22(C) at Rs.1870/-. There cannot be any controversy that the petitioner’s service unless regulated by any specific rules in general or in particular, provisions of FR would apply to create right in favour of the petitioner. FR 22(C) had been deleted by the Government of India in exercise of the powers conferred by proviso to Article 309 read with Clause 5 of Article 148 of the Constitution and after consultation with the Comptroller and Auditor General(CAG) and in substitution thereof FR 22(I)(a)(1) has been substituted. Even though the said amendment was carried out by the notification dated 30.08.1989 [Annexure 10 to the writ petition] but the Government of Tripura adopted such substitution much later by bringing Fundamental (Tripura Amendment) Rules, 1999 by giving its retrospective operation from 01.01.1996. The said amendment was notified on 03.10.1999 [Annexure-E to the supplementary affidavit filed by the petitioner]. Hence FR 23(C) was in force in the State of Tripura till 31.12.1995.

16. Now this court would delve whether the provisions of FR 22(C) provides that since the petitioner was serving in the feeder post or in a substantive post under the same employer, he would be entitled to (a) the protection of pay and (b) one advance increment for purpose of fixation of pay. FR 22(C) provides that, notwithstanding anything contained in the fundamental rules, where a government servant holding a post W.P.(C) No.219 of 2015 Page 18 of 22 in a substantive, temporary or officiating capacity is promoted or appointed in a substantive or temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than those attached to the post held by him, his initial pay in the time scale of the higher post shall be fixed at the stage next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage at which such pay has accrued. However, exception has been carved out that the said rule shall not apply where a Government servant holding a Group-

A post in a substantive, temporary or officiating capacity is promoted or appointed in a substantive, temporary or officiating capacity to a higher post which is also a Group-A post. Thus on two occasions FR 22(C), as un-amended, would have applied, namely (i) in the event of promotion to a post carrying duties and responsibilities of greater importance than the post from where the promotion has been made and (ii) in the event of appointment in a substantive, temporary or officiating capacity to another post carrying duties and responsibilities of greater importance than the post which the employee held before such appointment. Here is the case that the petitioner held the substantive post of Radio Technician (ASI) borne in the scale of pay of Rs.430-850/- and he applied for the post of Supervisor Technical through proper channel, as is apparent from the applications dated 31.07.1992 and 24.11.1993. W.P.(C) No.219 of 2015 Page 19 of 22.

17. Mr. Datta Majumder, learned G.A. has raised an objection that since the petitioner joined after resigning from his previous post, the petitioner cannot be brought under the umbrage of FR22(C). In this regard the clarification as provided by the Government of India, in the Ministry of Finance, by their notification No.F.(9)E III(A)/74 dated 30.10.1974 is relevant for reference. In the said notification, as quoted in Swamy's Compilation of FR & SR, the following has been provided : "Normally, the benefit of past service is given only in those cases where such service has not been terminated by resignation, removal/dismissal. But it has been decided that in cases where Government servants apply for posts in the same or other departments through proper channel and on selection, they are asked to resign the previous posts for administrative reasons, the benefit of past service may, if otherwise admissible under rules, be given for purpose of fixation of pay in the new post treating the resignation as a 'technical formality'.

18. If the above decision is read with the principal part of FR22(C) there would be no confusion to hold that the petitioner was entitled to the benefit of protection of pay and to get fixation of pay in the time scale of the higher post at the next above the pay notionally arrived at by increasing his pay in respect of the lower post by one increment at the stage where such pay had accrued. Thus in the existing pay scale, the pay scale of Rs.1,250-2,890/-, for the post of the Radio Technician (ASI) as on 09.12.1993, the petitioner would have received the pay of Rs.1,760/- in terms of FR22(C) by adding one increment in the scale of pay of Rs.1,250-2,890, the pay of the petitioner had been correctly fixed at Rs.1,870 in the scale of pay of W.P.(C) No.219 of 2015 Page 20 of 22 Rs.1,450-3,710/- on 09.12.1993. Hence there is no infirmity in the fixation of pay as made by the D.O. 268 dated 23.02.1994 [Annexure 8 to the writ petition].

19. Having held so, this court is of the further view that impugned D.O. No. 568/2016 dated 06.06.2016 along with the D.O. No. 568 dated 06.06.2016, whereby the fixation of pay has been done afresh in terms of the D.O. No.568/2016 and the letter dated 06.06.2016 issued by the Superintendent of

Police (Communication) cannot stand the scrutiny and accordingly those are interfered with and set aside. The fixation of pay caused by D.O. No. 268 dated 23.02.1994 [Annexure 8 to the writ petition] is restored as consequence thereof. Hence on 09.12.1993 the petitioner's pay shall be treated as fixed at Rs.1,870/-."

[26] As projected by the petitioners that they are entitled to get the pay protection for having been appointed in the post of the Wireless Operator (ASI), Operational/Crypto under the Tripura Police Communication Organization in view of the provisions of FR-22(I) (a) (1) inasmuch as the word 'appointment' is well qualified vis-a-vis the word 'promotion'. In FR-22(I) (a) (1) as reproduced above, it is apparent that why legislating this part, it has been consciously provided both the words 'appointment' and 'promotion' separately for certain and obvious purpose.

[27] As interpreted by this Court in **Swapan Kumar Bhattacharya** (supra) the word appointment as appearing under FR-22(I) (a) (1) cannot by any stretch of interpretation be stated to be 'promotion' only. There cannot be any application of Eiusdem Generis as the word 'appointment' cannot be treated being of the same kind of promotion.

[28] The Apex Court in **Maharashtra University of Health and Others v. Satchikitsa Prasarak Mandal & Others** [delivered in **Civil Appeal No.2050 of 2010 (arising out of SLP(C) No.15458 of 2007)**] had explained the meaning of Eiusdem Generis as under:

26. The Latin expression "ejusdem generis" which means "of the same kind or nature" is a principle of construction,

meaning thereby when general words in a statutory text are flanked by restricted words, the meaning of the general words are taken to be restricted by implication with the meaning of restricted words. This is a principle which arises "from the linguistic implication by which words having literally a wide meaning (when taken in isolation) are treated as reduced in scope by the verbal context." It may be regarded as an instance of ellipsis, or reliance on implication. This principle is presumed to apply unless there is some contrary indication (See Glanville Williams, 'The Origins and Logical Implications of the Eiusdem Generis Rule' 7 Conv (NS) 119).

27. This ejusdem generis principle is a facet of the principle of Noscitur a sociis. The Latin maxim Noscitur a sociis contemplates that a statutory term is recognised by its associated words. The Latin word 'sociis' means 'society'. Therefore, when general words are juxtaposed with specific words, general words cannot be read in isolation. Their colour and their contents are to be derived from their context [See similar observations of Viscount Simonds in Attorney General v. Prince Ernest Augustus of Hanover, (1957) AC 436 at 461 of the report].

28. But like all other linguistic canons of construction, the ejusdem generis principle applies only when a contrary intention does not appear. In instant case, a contrary intention is clearly indicated inasmuch as the definition of 'teachers' under Section 2(35) of the said Act, as pointed out above, is in two parts. The first part deals with enumerated categories but the second part which begins by the expression "and other" envisages a different category of persons. Here 'and' is disjunctive. So, while construing such a definition the principle of ejusdem generis cannot be applied.

29. In this context, we should do well to remember the caution sounded by Lord Scarman in *Quazi v. Quazi* - [(1979) 3 All-England Reports 897]. At page 916 of the report, the learned Law Lord made this pertinent observation:- "If the legislative purpose of a statute is such that a statutory series should be read ejusdem generis, so be it; the rule is helpful. But, if it is not, the rule is more likely to defeat than to fulfil the purpose of the statute. The rule, like many other rules of statutory interpretation, is a useful servant but a bad master."

30. This Court while construing the principle of ejusdem generis laid down similar principles in the case of *K.K. Kochuni v. State of Madras and Kerala*, [AIR 1960 SC 1080]. A Constitution Bench of this Court in *Kochuni* (supra) speaking through Justice Subba Rao (as His Lordship then was) at paragraph 50 at page 1103 of the report opined:-

"...The rule is that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. But it is clearly laid down by decided cases that the specific words must form a distinct genus or category. It is not an inviolable rule of law, but is only permissible inference in the absence of an indication to the contrary."

[Emphasis supplied]

31. Again this Court in another Constitution Bench decision in the case of *Amar Chandra Chakraborty v. The Collector of Excise, Govt. of Tripura, Agartala and others*, AIR 1972 SC 1863, speaking through Justice Dua, reiterated the same principles in paragraph 9, at page 1868 of the report. On the principle of ejusdem generis, the learned Judge observed as follows:- "...The ejusdem generis rule strives to reconcile the incompatibility between specific and general words. This doctrine applies when (i) the statute contains an enumeration of specific words; (ii) the subjects of the enumeration constitute a class or category; (iii) that class or category is not exhausted by the enumeration; (iv) the general term follows the enumeration; and (v) there is no indication of a different legislative intent."

32. As noted above, in the instant case, there is a statutory indication to the contrary. Therefore, where there is statutory indication to the contrary the definition of teacher under Section 2(35) cannot be read on the basis of ejusdem generis nor can the definition be confined to only approved teachers. If that is done, then a substantial part of the definition under Section 2(35) would become redundant. That is against the very essence of the doctrine of ejusdem generis. The purpose of this doctrine is to reconcile any incompatibility between specific and general words so that all words in a Statute can be given effect and no word becomes superfluous (See *Sutherland: Statutory Construction*, 5th Edition, page 189, Volume 2A).

33. It is also one of the cardinal canons of construction that no Statute can be interpreted in such a way as to render a part of it otiose."

[Emphasis added]

[29] In the present case also the statutory indication is to the contrary and it cannot be read on the basis of the ejusdem generis and hence, the contention as raised by Mr. Chakraborty, learned Addl. G.A. appearing for the respondents cannot be accepted by this Court. In contrast, this Court would held that the word 'appointment' appearing in FR-22(I) (a) (1) cannot be construed by the principle of ejusdem generis as the contrary intention appears in the instant case.

[30] 'Promotion' even though is inclusive in the appointment has been envisaged differently for its mode and hence, they are to be

construed differently in the context. Having observed thus, this Court is of the view that all the petitioners are entitled to get the benefit of their past service and the protection of pay in terms of FR-22(I) (a) (1). Hence, the impugned orders are grossly erroneous and contrary to the statutory provision which would pervade the contract of service for its statutory character.

[31] Accordingly, the impugned orders dated 16.09.2015 and 11.01.2017 are struck down and the respondents are directed to restore the fixation of pay of the petitioners giving the fixation of pay in terms of the above.

[32] Since it is an admitted position that on giving the protection of pay, the petitioners' pay was initially fixed, the said pay shall be restored for the petitioners in terms of FR-22(I) (a) (1). Needless to say that the petitioners shall not be subject to any recovery or deduction whatsoever. This observation is restricted to the fixation of the petitioners' pay in the post of Wireless Operators (ASI) Operational/Crypto in the Tripura Police Communication Organization.

Having observed thus, these writ petitions are allowed to the extent as indicated above. There shall be no order as to costs.

JUDGE

A.Ghosh