

**IN THE HIGH COURT OF TRIPURA
A G A R T A L A**

**WP(C)No.937 of 2018
WP(C)No.939 of 2018
WP(C)No.1171 of 2018**

WP(C)No.937 of 2018

1. Sri Raju Ghosh,

son of late Ranjit Ranjan Ghosh,
resident of Dhaleswar-11, Pandab Lane,
P.O. Dhaleswar, P.S. East Agartala,
District : West Tripura

2. Sri Bhanu Debnath,

son of late Bihari Debnath,
resident of Village-Basudeb Para,
P.O. Kulai Bazar, P.S. Ambassa,
District : Dhalai Tripura,
PIN : 799204

3. Sri Kamal Karmakar,

son of late Ramesh Chandra Karmakar,
resident of Pabiacherra Bazar,
P.O. & P.S. Kumarghat,
District : Unakoti Tripura,
PIN : 799264

..... **Petitioner(s)**

- V e r s u s -

1. The State of Tripura,

represented by the Secretary &
Commissioner to the Government of Tripura,
Department of Finance, having his office at
New Secretariat Complex, Gorkhabasti,
Agartala, P.O. Kunjaban, P.S. New Capital
Complex, Sub-Division-Sadar, District : West
Tripura

2. The Commissioner & Secretary,

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

3. The Director General of Police,

Government of Tripura, having his office at
Police Head Quarters, P.O. Agartala, P.S.
West Agartala, Sub-Division-Agartala, West
Tripura

**4. The Assistant Inspector General of
Police(Esstt),**

Government of Tripura, having his office at
Police Head Quarters, P.O. Agartala, P.S.
West Agartala, Sub-Division-Agartala, West
Tripura

..... **Respondent(s)**

For Petitioner(s)	:	Ms. S. Debgupta, Adv.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A
Date of delivery of Judgment & Order	:	31.01.2020
Whether fit for reporting	:	NO

**BEFORE
HON'BLE MR. JUSTICE S. TALAPATRA**

JUDGMENT & ORDER(Oral)

Heard Ms. S. Debgupta, learned counsel appearing for the petitioners as well as Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

2. By means of these writ petitions being WP(C)No.937 of 2018 [Raju Ghosh and 2 Others versus State of Tripura and Others], WP(C)No.939 of 2018 [Biplab Kumar Deb and Another versus State of Tripura and Others] & WP(C)No.1171 of 2018 [Joysingh Molsom versus State of Tripura and Others], the petitioners have challenged the action of the respondents by denying them the 2nd ACP and further, they have prayed to set aside the communication No.22660 dated 02.12.2014 whereby it has been apprised by the respondents that the petitioners' claim has been examined with reference to their respective service book and it has been noticed that the petitioners entered in the pre-revised scale of Rs.7,450-1,300/- as Naib-Subedar and thereafter, they got three scale advancement viz.Rs.5,500-10,700/-, Rs.6,500-12,300/- and Rs.7,450-1,300/- with Grade Pay of Rs.2,600-3,100/- and Rs.3,500/- respectively by way of their promotion to the post of Subedar.

3. The respondents have further apprised that in terms of the Finance Department memorandum No.F.6(1)-FIN(PC)/2008 dated

14.09.2009 and the clarification No.10 therein, the petitioners are not entitled to get any further ACP under Tripura State Civil Services (Revised Pay) Rules, 2009. According to the petitioners, they were appointed in the pre-revised scale of pay of Rs.1,450-3,710/- (pre-revised) as the Naib-Subedar and thereafter the petitioners were promoted to the post of Subedar with effect from 13.01.2004 in the scale of pay of Rs.7,450-13,000/-. The petitioners have contended that the plea as raised by the respondents that since the petitioner was brought to the promotion scale of Rs. 7,400-13,000 (pre-revised) and crossed the scales being Rs.5,500-10,700/- and Rs.6,500-12,300/- they will not be allowed to further ACP inasmuch as they have already consumed three advancement of these scales cannot be accepted. According to the clarification provided by the Finance Department by the office memorandum under No.F.6(1)-FIN(PC)/2008 dated 14.09.2009, the petitioners will not get further ACPs. A specific reference has been made to clarification-10 of the said memorandum which is as under :

It is to be noticed that in a few isolated cases in certain Departments an employee entered in the pay scale of Rs.3300-7100/- got promotion to the scale of Rs.4200-8650/-. Thereafter he got CAS benefit and moved to the scale of Rs.5000-10,300/-.After revision under TSCS(ROP) Rules, 2009, and on completion of 25 years of service without further promotion, if he claims to get the benefit of 3rd ACP for moving to the Grade Pay corresponding to pre-revised pay scale of Rs.5500-10,700/-, whether it is permissible.	<u>The claim of 3rd ACP in the instant case for moving to Grade Pay against pre-revised scale of Rs.5500-10700/- is not admissible on the ground that while entering in the pre-revised pay scale of Rs.5000-10,300/-, he had consumed 3 scale upliftment i.e. Rs.4000-7890/-, Rs.4200-8650/-, Rs.5000-10300/-.</u> Emphasis laid
---	--

4. Ms. S. Debgupta, learned counsel appearing for the petitioners have submitted that this issue has been decided by this court by the judgment dated 17.04.2019 delivered in WP(C)No.962 of 2018 [Sri

Bipul Ranjan De and Others versus State of Tripura & Others] under the similar circumstances where the respondents have raised objection in the similar fashion having referred to the said clarification of the Finance Department. For purpose of reference, the relevant passages are reproduced hereunder:

"8. The above amendment as carried out in Rule 10 has substituted the Clause-(a) of Sub-rule (1) of Rule 10 of the Principal Rules. From the reading of the said provision which may not have the direct bearing in the present controversy, it appears that if the employee did not get the scale up-gradation including the promotion, they will be entitled to get the financial up-gradation on completion of the requisite period of service as provided under Rule 10 of the Principal Rules. Nowhere it has adopted the principle which has been advanced by the Finance Department by way of clarification. Even though, the clarification has been made on a particular point, but the respondents has applied it generally, which according to Mr. Deb, learned counsel appearing for the petitioners, is contrary to the provisions of Rule 10(2) of the principal Rules, 2009. In this regard, Mr. Deb, learned counsel has made reference to a decision of this court in Harisadhan Adhikari versus State of Tripura and Others [judgment and order dated 29.05.2015 delivered in WP(C)No.371 of 2014]. It has been observed in Harisadhan Adhikari (supra) as follows:

"The above clarification issued by the Finance Department of the Government of Tripura cannot override the provisions of Rule 10(2) of the ROP Rules, 2009. Rule 10(2), has a force of law but the clarification as mentioned above in Annexure-II to the counter affidavit has not force of law. The clarification, therefore cannot take away the right of the petitioners which is prescribed by rules. Rule 10(2) clearly prescribes that one ACP or one promotion should be considered as one unit and because of one promotion the petitioners jumped one pay scale they cannot be said that they got the benefit of two scale upgradation and therefore they shall be deprived of the second ACP."

9. Mr. Deb, learned counsel has further contended in the course of submissions that no appeal was preferred against the said decision and it has thus reached its finality.

10. Mr. D. Sharma, learned Addl. G.A. appearing for the respondents has submitted that the Finance Department clarification is quite authoritative and it has not come in conflict with any provision of Rule 10 of the ROP Rules, 2009 as amended from time to time. Thus, it has to be deemed that when the petitioners moved to Rs.5,000-10,300/- they had consumed three pay scales i.e. Rs.4,000-7,890/-, Rs.4,200-8,650/- and Rs.5000-10,300/- and hence, they are not entitled to get any benefit under ACP.

11. On appreciation of the submissions as advanced by the learned counsel for the parties and having verified the records produced in the proceeding, the solitary question that emerges in this writ petition is that whether Rule 10(2) which provides the mode of determining the eligibility of the government employee under ACP has been encroached by the clarificatory note at serial No.10 [as reproduced above] or in other words, whether there can be any "deemed consumption" of financial benefits under ACP. Sub-rule-2 of Rule 10 of the ROP Rules, 2009 it has been

unambiguously provided that each case of promotion or scale up-gradation availed by the employee after his direct entry in the cadre where he is serving or as the case may be in the post/service of a department will be treated as consumption of one ACP. That shall invariably mean that for those employees who entered the cadre service through promotion, the benefit of that promotion along with promotion/scale up-gradation availed by him before entry into cadre service will be counted as consumption of ACP. By the said clarificatory note it has been illustrated that an employee who entered in the service in the pay scale of Rs.3,300-7,100/- and got promotion to the scale of Rs.4,200-8650/- and thereafter he got CAS benefits moving to the scale of Rs.5,000-10,300/-, whether after revision of the scales by ROP Rules, 2009, on completion of 25 years of service without further promotion, the employee can get ACP-3 by moving to the grade corresponding to pre-revised pay scale of Rs.5500-10700/? Such claim of ACP-3 according to the clarification is not admissible on the ground that while entering into the pre-revised pay scale of Rs.5,000-10,300/- he had consumed three scale advancement i.e. Rs.4,000-7,890/-, Rs.4,200-8,650/-, Rs.5,000-10,300/-. This definitely comes in conflict with the mode as prescribed under Rule 10 of the ROP Rules, 2009. By clarification, substantive provision cannot be otiose. Even the respondents did not assert that while fixing the pay of the petitioners in the scale of pay of Rs.5000-10,300/- for the post of Naib-Subedar, they were given the benefit of intermediate scales as referred in their reply. In view of Rule 10(2) of the ROP Rules, 2009 there cannot be any proposition of 'deemed consumption'. That should be actual consumption by carrying forward the benefit for all purposes. The intermediate scales between Rs.3,300-7,100/- and Rs.5,000-10,300/- were not consumed by the petitioners. They did not carry forward any benefit of those pay scales intermediate of Rs.4,000-7,890/- and Rs.4,200-8,650/-. Thus the clarificatory note is read down. By virtue of promotion to the post of Nayeab Subder the petitioners have consumed one unit of financial up-gradation and thus, they are entitled to further benefits in terms of Rule 10 of the ROP Rules, 2009.

12. The respondents are therefore directed to release the benefit of the financial up-gradation to the petitioners, as it appears on record that they have already completed their requisite years of service for such benefit, within a period of 3(three) months from the day when the petitioners shall submit a copy of this order to the respondents."

5. Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has acceded to the position of fact and stated that in another decision vide judgment and order dated 29.05.2015 delivered in WP(C)No.371 of 2014 [Harisadhan Adhikari versus State Tripura & Others] it has been observed by this court that the statutory rule being Rule 10(2) of the ROP Rules, 2009 cannot be abrogated or truncated by the clarification as contained in the said memorandum of the Finance Department.

6. Having appreciated the submissions of the learned counsel for the parties, this court is of the view that the petitioners are entitled to ACP and the Finance Department clarification cannot stand in the way of the petitioners. The promotion to the post of Subedar will be treated as consumption of the one scale advancement or ACP-I. Thereafter, according to Rule-10(2) of the ROP Rules, 1999 as amended and modified time to time, the petitioners are entertained to get their scale advancement. Further benefit in the form of the scale advancement/ACP being ACP-II shall be released to the petitioners within a period of three months from the day when the petitioner shall produce a copy of this order to the competent authority.

In terms of the above, this petition stands allowed and disposed of.

There shall be no order as to costs.

JUDGE

