

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.224/2021

The State of Tripura and others

----Appellant(s)

Versus

Sri Tapas Majumder and others

-----Respondent(s)

For Appellant(s) : Mr. S. Saha, Advocate.

For Respondent(s) : None.

**HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI
HON'BLE MR. JUSTICE S.G. CHATTOPADHYAY**

Order

31/08/2021
(Akil Kureshi, C.J.)

This appeal is filed by the State Government to challenge the judgment of the learned Single Judge dated 03.05.2021 in WP(C) No.191 of 2020. The issue pertains to the grant of 3rd ACP to the State employee. According to the Government, in the past the employee had already availed of three pay upgradations and, therefore, additional benefit of ACP was not available. The learned Single Judge allowed the petition and directed granting of the 3rd ACP upon completion of 25 years of service. In the process, the learned Judge relied on a judgment of Division Bench of this Court in case of *The State of Tripura vrs. Sri Bipul Ranjan Dey and others* in W.A. No.191 of 2020 in which identical issue was involved. Since the issue is squarely

covered by the said decision in case of ***Bipul Ranjan Dey*** (supra), we dismiss this appeal reproducing the relevant portion of the said judgment of the Division Bench:

“6. It is well settled that the subordinate legislation such as, statutory rules need not always cover every aspect of the subject. Often times these rules leave what is described as play in the joint where the executive can always issue circulars and directions to cover areas where the rules are silent. In that context, a clarificatory circular may have one of the two purposes to achieve. It may be in the nature of a clarification, making explicit what is otherwise implicit within the rules or may provide for filling a gap which is otherwise left in the rules. In either case, exercise of executive powers would be perfectly valid and legitimate. However, when such a clarification runs head on counter to the plain language used in statutory rules and the reasonable interpretation thereof, the circular would not have an effect of giving a different colour or meaning to the rules. In this context, we may notice the statutory provisions applicable.

7. The ROP, 1999 contained a Career Advancement Scheme (Modified) which was later on substituted by the Assured Career Progression Scheme provided in Rule 10 of ROP, 2009. Relevant portion of Rule 10 of ROP, 2009 reads as under: “10. Introduction of a new scheme titled Assured Career Progression (ACP) Scheme with effect from 1st January, 2006 replacement of existing CAS introduced under TSCS (Revised Pay) Rules, 1999.

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8. Under sub-rule (1) of Rule 10 thus all Government employees in Pay Bands 1 to 3 would be entitled to a maximum of three financial upgradations, after 10, 17 and 25 years of service provided he or she has not got up to three numbers of benefits of scale upgradations including promotion already. In other words, the thrust of sub-rule (1) of Rule 10 is to grant the benefit of three number of scale upgradations which may also be embedded in promotion.

9. Sub-rule (2) of Rule 10 further clarifies this position when it provides that while determining eligibility of the Government employees under the said ACP scheme, it would be considered how many times the concerned employee got the benefit of scale upgradation including promotion after his direct entry into the service of the State Government. Each case of promotion and scale upgradation availed by him after his direct entry in the cadre will be treated as consumption of one ACP.

10. A combined reading of sub-rules (1) and (2) of Rule 10 of ROP, 2009 would convince us that what is of relevance and importance for grant or denial of the benefit of ACP to an employee is a question whether he has already availed of a particular stage of scale upgradation or got the benefit of promotion. If answer to this question is in the affirmative, the employee cannot stake the claim for yet another scale upgradation under the said ACP. This is significant since in case of the petitioners they have admittedly received only one promotion since their direct entry on a post in Government service. It is wholly fortuitous that under the relevant rules between the scale attached to the promotional post and the feeder cadre there were two intermediary scales.

Resultantly, when the petitioners were promoted to the post of Naib-subedar, in plain terms they received one promotion. In the process if they have jumped over the intermediary pay scales, the same would be of no consequence so far as their claim for the benefit of ACP under Rule 10 is concerned. What the sub-rules (1) and (2) of Rule 10 require in order to deny such benefit to the Government employee would be that he or she has availed of multiple scale upgradations. Under subrule (2) the legislature has specifically used the words “it should be considered how many times the concerned employee got the benefit of scale upgradation including promotion.....” Thus, the emphasis on the number of times either the promotion or scale upgradation has been made available to the employee and not how many scale upgradations incidentally happened under one single promotion.”

Appeal is dismissed.

Pending application(s), if any, also stands disposed of.

(S.G. CHATTOPADHYAY), J

(AKIL KURESHI), CJ

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