

**HIGH COURT OF TRIPURA
AGARTALA**

W.A. No.116/2022

1. The State of Tripura, represented by the Secretary & Commissioner, Department of Finance, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, P.O.-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.
2. The Secretary and Commissioner, Department of Finance, Government of Tripura, having his office at New Secretariat Complex Gorkhabasti, Agartala, P.O.-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.
3. The Commissioner and Secretary, Department of Home, Government of Tripura, having his office at New Secretariat Complex Gorkhabasti, Agartala, P.O.-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.
4. The Under Secretary, Home Department, Government of Tripura, having his office at New Secretariat Complex Gorkhabasti, Agartala, P.O.-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.
5. The Director General of Police, Government of Tripura, having his office at Police Head Quarters, P.O.-Agartala, PS-West Agartala, Sub-Division-Agartala, West Tripura.
6. The Assistant Inspector General of Police (Esstt.), Government of Tripura, having his office at Police Head Quarters, P.O.-Agartala, PS-West Agartala, Sub-Division-Agartala, West Tripura.

.....Appellant(s).

V E R S U S

1. Sri Tejaram Khareshya, son of Late Jagadish Prasad Khareshya, Regt. No. 92020738, resident of HQR, 2nd Battalion TSR, Village-R.K. Nagar, P.O.-Khas Noagaon, PS-Bodhjungnagar, District-West Tripura, PIN-799008.

.....Respondent(s).

2. Sri Dulal Chandra Das, son of Amulya Chandra Das, Regd. No.92020776, resident of HQR, 2nd Battalion, TSR, Village-R.K. Nagar, P.O.-Khas Noagaon, PS-Bodhjungnagar, District-West Tripura, PIN-799008.

.....Proforma Respondent(s).

For Appellant(s)	: Mr. Mangal Debbartma, Addl. G.A.
For Respondent(s)	: Mr. Somik Deb, Sr. Advocate, Mr. Abir Baran, Advocate.

**HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE ARINDAM LODH**

Date of hearing and judgment: **25th April, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard learned counsel for the parties.

2. The appellant-State is aggrieved by the judgment dated 16.09.2021 passed in WP(C) No.330 of 2019 by the learned Single Judge whereby the writ petition was disposed of with the following directions:

"(i) The pay of the petitioner shall be stepped up to the level of his junior Dulal Chandra Das at different stages where such pay anomaly has arisen. Such stepping up would have consequential effect. In other words, on the basis of such consequential effect his subsequent pay also shall be revised accordingly.

(ii) The petitioner shall, however, not receive any arrears for the past period except for one year prior to filing of the petition."

3. The petitioner had prayed for stepping up of his pay at the level of his junior in order to remove pay anomaly which was rejected by the

impugned communication dated 27.08.2018. The comparative position of the petitioner and proforma respondent in their service career from the date of birth in their cadre on same post are encapsulated in the form of a table, part of the counter affidavit of the respondents/appellants herein and incorporated in the impugned judgment as well are profitably extracted hereunder as it would obviate the necessity of repeating the relevant facts relating to the petitioner and the proforma respondent. It is extracted hereunder:

Rfn GD Tejaram Khareshya [now Nb/Sub(Clrk)].	Rfn GD Dulal Ch Das (now Hav.GD).
Appointed as Rfn(GD) on 31.07.1992, pay scale pre-revised Rs.850-2130/- with DNI on 01.07.1993.	Appointed as Rfn(GD) on 31.07.1992, pay scale pre-revised Rs.850-2130/- with DNI on 01.07.1993.
Pay re-fixed at modified scale Rs.950/- w.e.f 01.11.1992, pre-revised scale Rs.970-2400/- with DNI on 01.07.1993.	Pay re-fixed at modified scale Rs.950/- w.e.f 01.11.1992, pre-revised scale Rs.970-2400/- with DNI on 01.07.1993.
Pay as on 01.07.1993 Rs.985/-	Pay as on 01.07.1993 Rs.985/-
Pay as on 01.07.1994 Rs.1020/-	Pay as on 01.07.1994 Rs.1020/-
Pay as on 01.07.1995 Rs.1050/-	Pay as on 01.07.1995 Rs.1050/-
Pay as on 01.07.1996 Rs.1090/-	Pay as on 01.07.1996 Rs.1090/-
Pay fixed under ROP, 1999 As pay on 01.07.1996 Rs.1090.0 DA 148% = Rs.1613.20 I/R 10% + 100 = Rs. 205.00 FB 30% = Rs. 327.00 Total = Rs.3235.20 Say Rs.3290/- in pre-revised scale Rs.3200-6030/- with DNI on 01.07.1997	Pay fixed under ROP, 1999 As pay on 01.07.1996 Rs.1090.0 DA 148% = Rs.1613.20 I/R 10% + 100 = Rs. 205.00 FB 30% = Rs. 327.00 Total = Rs.3235.20 Say Rs.3290/- in pre-revised scale Rs.3200-6030/- with DNI on 01.07.1997

Pay as on 01.07.1997 Rs.3380/-	Pay as on 01.07.1997 Rs.3380/-
Pay as on 01.07.1998 Rs.3470/-	Pay as on 01.07.1998 Rs.3470/-
Pay as on 01.07.1999 Rs.3560/-	Pay as on 01.07.1999 Rs.3560/-
Pay as on 01.07.2000 Rs.3650/-	Pay as on 01.07.2000 Rs.3650/-
Pay as on 01.07.1997 Rs.3740/-	Pay as on 01.07.1997 Rs.3740/-
Appointed to NK(Opr) on 23.08.2001 and no financial benefits as per RR	-
Pay as on 01.07.2002 Rs.3830/-	Promoted to LNK(GD) on 01.03.2002 and pay fixed at Rs.4010/- w.e.f. 01.07.2002 (exercising option) in existing pay scale with DNI on 01.07.2003.
Allowed CAS-1 pay fixed at Rs.3,920/- w.e.f. 31.07.2003 in existing pay scale under ROP 1999 with DNI on 01.07.2003.	-
Pay as on 01.07.2003 Rs.4010/-	Pay as on 01.07.2003 Rs.4100/-
Again appointed to Hav(Clerk) on 10.02.2004, pay fixed at Rs.4200/- w.e.f. 01.07.2004 (Exercising option), pre-revised Rs.3300-7100/- under FR 22(1)(a)(2) with DNI on 01.07.2005.	Pay as on 01.07.2004 Rs.4910/-
Pay as on 01.07.2003 Rs.4300/-	Promoted to NK(GD) on 12.01.2005 and pay fixed at Rs.4380/- w.e.f. 01.07.2005 in existing pay scale with DNI on 01.07.2006.
ROP(12 th amendment 2015) pay fixed in PB-2, Rs.5700-24000/- with GP Rs.2200/- as pay on 01.01.2006 = Rs.4300.00 Bunching benefit = Rs.100.00	ROP(12 th amendment 2015) pay fixed in PB-2, Rs.5700-24000/- with GP Rs.2200/- as pay on 01.01.2006 = Rs.4300.00 Bunching benefit = Rs. 100.00

Total = Rs.4400.00 Factor of 1.86 = Rs.8190.00 GP = Rs.2200.00 Total = Rs.10390.00 With DNI on 01.07.2006	Spl Pay holding post to NK = Rs. 120.00 Total = Rs. 4700.00 Factor of 1.86 = Rs. 8750.00 GP = Rs. 2100.00 Total = Rs.10850.00 With DNI on 01.07.2006
Pay as on 01.07.2006 Rs.10710/-	Pay as on 01.07.2006 Rs.11180/-
Pay as on 01.07.2007 Rs.11040/-	Pay as on 01.07.2007 Rs.11520/-
	Promoted to Hav(GD) on 27.09.2007, pay fixed at Rs.11970/- (9420 + 350+2200) w.e.f 27.09.2007 in existing PB with GP Rs.2200/- pay scale with DNI on 01.07.2008.
Pay as on 01.07.2008 Rs.11380/-	Pay as on 01.07.2008 Rs.12330/-
Pay as on 01.07.2009 Rs.11730/-	Pay as on 01.07.2009 Rs.12700/-
Promoted to Nb/Sub(Clerk), pay fixed at Rs.14090/- (9530 + 360 + 4200) w.e.f 19.10.2009 (Exercising option), in PB with GP Rs.4200/- with DNI on 01.07.2010.	-
Pay as on 01.07.2010 Rs.14520/-	Pay as on 01.07.2010 Rs.13090/-
Pay as on 01.07.2011 Rs.14960/-	Pay as on 01.07.2011 Rs.13490/-
Pay as on 01.07.2012 Rs.15410/-	Pay as on 01.07.2012 Rs.13900/-
Pay as on 01.07.2013 Rs.15880/-	Pay as on 01.07.2013 Rs.14320/-
Pay as on 01.07.2014 Rs.16360/-	Pay as on 01.07.2014 Rs.14750/-
Pay as on 01.07.2015 Rs.16850/-	Pay as on 01.07.2015 Rs.15200/-
Pay as on 01.07.2016 Rs.17360/- with DNI 01.07.2017	Pay as on 01.07.2016 Rs.15660/- with DNI 01.07.2017

Pay fixed under ROP 2017 in new pay matrix As on 01.04.2017 Rs.17360/- Matrix of 2.25 Rs.39060/- Say Rs.39680/- Level – 19 Cell – 10 With DNI 01.07.2017	Pay fixed under ROP 2017 in new pay matrix As on 01.04.2017 Rs.15660/- Matrix of 2.25 Rs.35235/- Say Rs.36140/- Level – 07 Cell – 23 With DNI 01.07.2017
Pay as on 01.07.2017 Rs.40880/- with DNI 01.07.2018.	Pay as on 01.07.2017 Rs.37230/- with DNI 01.07.2018.
Pay as on 01.07.2018 Rs.42110/- with DNI 01.07.2019.	Pay as on 01.07.2018 Rs.38350/- with DNI 01.07.2019.
Pay as on 01.07.2018 Rs.49400/- Level-10, Cell-13 with DNI 01.07.2019.	Pay as on 01.10.2018 Rs.44800/- Level-7, Cell-26 with DNI 01.07.2019.

4. It is not in dispute that both the petitioner and the private respondent were appointed as Riflemen (GD) in Tripura State Rifles (TSR) on 31.07.1992 in the same scale of pay of Rs.850-2,130/-. However, the petitioner was senior to Dulal Chandra Das. The grievance of the petitioner arose w.e.f. 23.08.2001 when petitioner was appointed by way of transfer to the post of Naik (Operator) whereas the private respondent was promoted to the post of Lance Naik (GD) on 01.03.2002. The discrepancy in their pay fixation as is evident from the tabular chart started w.e.f. 01.07.2002 and continued till the writ petitioner was promoted to the post of Naib Subedar (Clerk) w.e.f. 19.10.2009 and his pay was fixed at Rs.14,090/- (9,530 + 360

+ 4,200), i.e. with Grade Pay of Rs.4,200/-. Since 01.07.2010 petitioner has been getting higher pay on account of such promotion.

5. The learned Single Judge upon noticing the relevant facts of the case found a case of pay anomaly between the petitioner and the private respondent even though petitioner was senior in service on the basic post of Riflemen (GD). Learned Single Judge also observed that petitioner was not given any option to accept such transfer to the post of Naik (Operator) whereas the similarly situated junior, i.e. private respondent was promoted to the post of Lance Naik (GD). Learned Single Judge also observed that petitioner held a higher post of Naik (Operator) compared to the private respondent but continued to suffer lesser pay till he was promoted in the year 2009. The opinion of the learned Single Judge and the operative directions contained in the impugned judgment are extracted hereinbelow for proper appreciation:

"[7] In my view, the pay anomaly arises in the present case is required to be removed by a judicial order. As noted, the petitioner who had joined the service as a Riflemen(GD) was appointed to the post of Naik(Operator) on 23rd August 2001. As per the Recruitment Rules, the post could be filled by way of transfer from various cadres including that of the Riflemen. Admittedly, the post of Naik(Operator) carries higher pay scale than that of the Riflemen(GD). It is not the case of the respondents that the petitioner had any option to refuse such

transfer and appointment as Naik(Operator) and that the petitioner voluntarily accepted such transfer so as to improve his chances of promotion. It is not even the case of the department that by being brought over to the post of a Naik(Operator), the petitioner improved his chance of promotion ahead of his contemporaries. In plain terms, therefore, the petitioner was made the Naik(Operator) on account of administrative exigencies and the petitioner had no option but to accept such order. If that be so, the petitioner cannot be made to suffer in terms of his pay fixations. His junior who was not brought over to the post of Naik(Operator), got promotion to a lower post of Lance Naik and in the process, started drawing more pay than the petitioner who was holding a higher post. This is a most anomalous situation. Though occupying a higher post, the senior was drawing less pay than the junior because in case of the junior, appointing him as a Lance Naik was considered a promotion whereas in case of the petitioner, appointing him to a higher post of Naik was considered not a promotion but mere transfer. In the process, petitioner's pay remained the same even after being brought over to a post carrying higher pay scale whereas the junior got the benefit of pay fixation which goes along with regular promotion.

[8] This anomaly manifested itself from time to time from the year 2002 right up to the year 2010. It was only in the year 2010 when the petitioner was promoted to the post of Naib Subedar(Clerk) and Dulal Chandra Das has not got any matching promotion that the petitioner started drawing more pay than his junior. However, for entire span of eight years, consistently the petitioner's junior made him the junior. The

petitioner's pay therefore, at all stages, must be stepped up to match that of his junior with consequential effect. However, this petition is filed in the year 2019. There is a long delay in filing the petition. Only because the pay fixation has recurring effect, petition cannot be thrown out on the ground of delay and laches. However, the petitioner cannot claim benefit of the past without any restrictions.

[9] Under the circumstances, petition is disposed of with following directions :

(i) The pay of the petitioner shall be stepped up to the level of his junior Dulal Chandra Das at different stages where such pay anomaly has arisen. Such stepping up would have consequential effect. In other words, on the basis of such consequential effect his subsequent pay also shall be revised accordingly.

(ii) The petitioner shall, however, not receive any arrears for the past period except for one year prior to filing of the petition.

[10] Directions shall be carried out within 6(six) months. Pending application(s), if any, also stands disposed of."

6. Learned counsel for the parties have argued against and in favour of the impugned judgment relying upon the contents of the pleadings before the Writ Court and also the relevant rules, i.e. Tripura State Rifles (Recruitment) Rules, 1984.

7. It is the contention of the appellants-State that the writ petitioner was not substantively promoted to the post of Naik (Operator) but was posted by way of transfer only, the private respondent had been duly promoted to the post of Lance Naik (GD) as there are different streams in the organization where avenues and channels of promotion are different.

8. On the other hand, Mr. Somik Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel for the writ petitioner, has drawn the attention of this Court to Rule 6 and Rule 42 of the Rules of 1984 to buttress his submission that in the category of riflemen, the hierarchy of posts start from Enrolled Followers to Riflemen, Riflemen to Lance Naik, Lance Naik to Naik and Naik to Havildar respectively which clearly shows that petitioner though was appointed on transfer as a Naik (Operator) and was senior to the private respondent but was drawing a lesser pay compared to the private respondent who was promoted to the post of Lance Naik (GD) w.e.f. 01.03.2002 and got higher pay fixation w.e.f. 01.07.2002. It is submitted by learned senior counsel for the writ petitioner that this anomaly has been sought to be corrected by the learned Single Judge by directing the respondents-State to step up the level of the pay of the petitioner up to that of the junior Dulal Chandra Das, private respondent, at different stages and which would have consequential effect in his subsequent pay revision also. Learned senior counsel for the writ petitioner has also sought to impress

upon us that in light of the ratio rendered by the Apex Court in the case of ***M.R. Gupta vrs. Union of India and others*** reported in (1995) 5 SCC 628 the writ petitioner should have been granted the arrears for a period of 3(three) years prior to the date of the writ petition, i.e. 2019 when the writ petition was filed. The learned Single Judge has granted arrears only for the past period of one year prior to filing of the petition. It is submitted that this Court in appeal may adequately mould the relief to that extent. Learned senior counsel for the writ petitioner has also relied upon the decision of the Apex Court in the case of ***State of Madhya Pradesh and others vrs. Yogendra Shrivastava*** reported in (2010) 12 SCC 538 (paragraph-18).

9. We have given our anxious consideration to the submissions of learned counsel for the parties. We have also gone through the writ records and perused the impugned judgment as well.

10. In our view, the present case reflects pay anomaly vis-à-vis the petitioner and the private respondent dating back to 01.07.2002 when after promotion of the private respondent as Lance Naik (GD), his pay was fixed at Rs.4,010/- whereas the writ petitioner though appointed on transfer to a post of Naik (Operator) and being senior to him in the basic post of Riflemen (GD) got his pay fixed at Rs.3,830/- as on 01.07.2002. This discrepancy continued till writ petitioner was promoted substantively as Naib Subedar

(Clerk) w.e.f. 19.10.2009 and got his pay fixed at Rs.14,090/- with Grade Pay of Rs.4,200/- w.e.f. 01.07.2010 compared to the private respondent whose pay was fixed with effect from the same date at Rs.13,090/-. Therefore, all along from 01.07.2002 till 01.07.2010 writ petitioner despite being senior to the private respondent in the basic cadre post continued to get lesser pay on account of promotion of the private respondent as Lance Naik (GD) w.e.f. 01.03.2002 whereas petitioner continued to hold the post of Naik (Operator) and thereafter Havildar (Clerk) w.e.f. 10.02.2004 but without any benefit of the applicable pay scale. In such a situation which often may happen in an organization vis-à-vis similarly situated person, the rules provide for pay protection to the person who is senior. Such pay protection entails that the person senior would not suffer in matters of pay compared to his junior receiving a higher scale of pay. Petitioner in this case was appointed on transfer to the post of Naik Operator on 01.03.2002 but raised his grievance of pay anomaly in the year 2019 by way of a writ petition. Petitioner has been substantively promoted as Naib Subedar (Clerk) in a higher scale of pay w.e.f. 19.10.2009 and his pay has been fixed w.e.f. 01.07.2010 at Rs.14,520/- which is higher to that of the private respondent as on the same date, i.e. Rs.13,090/-. This discrepancy, therefore, came to an end w.e.f. 01.07.2010. The learned Single Judge after noticing the case of the parties, however, proceeded to issue directions upon the respondents-

State to step up the level of the pay of the petitioner to that of his junior at different stages where such pay anomaly had arisen with consequential effects in subsequent pay revisions as well. This, in our view, would not be proper. The pay anomaly existing w.e.f. 01.07.2002 till 01.07.2010 was required to be corrected by granting pay protection to the petitioner. Any stepping up of the pay of the writ petitioner at the level of the private respondent at different stages without a substantive promotion between those years, i.e. 01.07.2002 to 01.07.2010 would be unwarranted till the writ petitioner got a substantive promotion as per the rules to the next higher post. Evidently, the writ petitioner has been promoted to the higher post w.e.f. 19.10.2009 in a higher pay scale and the pay anomaly has ceased to exist. If the directions of the learned Single Judge are carried by stepping up of the pay of the writ petitioner at every stage with that of the private respondent with consequential effects in pay revision for all times to come, it would have a cascading effect which is not justified in the facts of the present case.

11. In view of what has been held hereinabove, we are of the opinion that the decision in the case of **Yogendra Shrivastava** (supra) does not come to the aid of the writ petitioner.

12. Petitioner shall be paid the benefits of pay protection till such from 01.07.2002 till 01.07.2010, the date on which the discrepancy in pay came to an end.

13. Therefore, we are of the considered view that the impugned judgment needs to be modified to the following extent:

The writ petitioner shall be granted pay protection at par with that of the private respondent for the period w.e.f. 01.07.2002 till the discrepancy in the pay came to an end i.e. w.e.f. 01.07.2010. Consequentially, the monetary benefits of such pay protection shall be released in favour of the writ petitioner within a period of 8(eight) weeks from the date of receipt of the copy of this order.

14. The writ appeal is allowed in the manner and to the extent indicated hereinabove.

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

(ARINDAM LODH), J

(APARESH KUMAR SINGH), CJ

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