

HIGH COURT OF TRIPURA
_A_G_A_R_T_A_L_A_
WP(C) No.953 of 2021

Sri Abu Kalam Choudhury

.....Petitioner.

_V_E_R_S_U_S_

The State of Tripura and 5 Others.

.....Respondents

For Petitioner(s)	:	Mr. K. Chakraborty, Advocate.
For Respondent(s)	:	Mr. D. Sarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE (ACTING)
_O_R_D_E_R_

27/03/2023

Heard Mr. K. Chakraborty, learned counsel appearing for the petitioner. Also heard Mr. D. Sarma, learned Addl. G.A. appearing for the respondents.

[2] The petitioner has prayed for the following reliefs:

- i. Issue rule, calling upon the respondents and each one of them, to show cause as to why a writ of mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to revoke/rescind the impugned letters dated 27.12.2018 & 31.01.2019, the impugned memorandum dated 26.08.2019 & the impugned memo dated 22.06.2020 (Annexure-8, 9, 16 & 18 respectively supra).
- ii. Issue rule, calling upon the respondents and each one of them, to show cause as to why a writ of mandamus and/or in the nature thereof, shall not be issued, mandating/directing them to fix the pay of the petitioner at Rs.9,920/-, with effect from the date of his promotion to the post of Upper Division Clerk (i.e. w.e.f. 30.12.2013), along with arrears of financial benefits, as per the 6th Amendment to the ROP Rules, 2009 and to re-fix the pay of the petitioner at Rs.10,620/- with effect from the said date of 30.12.2013, along with arrears of financial benefits, with effect from 01.04.2015, i.e. after the promulgation of the 12th Amendment to the ROP Rules, 2009, in parity with Sri Kriti Bhushan Chakma & said Sri Atul Debbarma, for the period stretching from 30.12.2013 to 31.08.2019 [i.e. with effect from the date of promotion to the post of UDC, up to the date of effect as recorded in the impugned Memorandum dated 26.08.2019 (Annexure-16 supra).
- iii. Call for the records, appertaining to this writ petition.
- iv. After hearing the parties, be pleased to make the rule absolute in terms of (i) & (ii) above.
- v. Costs of and incidental to this proceeding."

[3] The case of the petitioner is that on 21.04.2008, the petitioner was initially appointed to the post of LDC on fixed pay basis. On 02.12.2013, the petitioner was granted regular pay scale, under Pay Band-2, Rs.5,310-24,000/-, with Grade Pay of Rs.1,800/-. On 30.12.2013, the petitioner was promoted to the post of UDC, in the pay scale of Rs.5,310-24,000/-, with Grade Pay of Rs.2,100/- (Pay Band-2), but his pay was wrongly fixed at Rs.8,480/-, instead of Rs.9,920/-. On 03.02.2014, 10.04.2018, 29.01.2019 & 08.02.2019, the petitioner submitted representations.

[4] On 27.12.2018 & 31.01.2019, the said representations were rejected. In terms of the impugned memorandum dated 26.08.2019, the pay of the petitioner was notionally fixed at Rs.9,920/- (Rs.7,820/- + Grade Pay of Rs.2,100/-), w.e.f. the date of his promotion to the post of UDC (i.e. 09.10.2014) and the financial benefits were released in his favour only w.e.f. 01.09.2019. The petitioner has been deprived of his financial benefits, w.e.f. 30.12.2013 to 31.08.2019 (i.e. w.e.f. the date of his promotion to the post of UDC, up to the date of effect as recorded in the impugned memorandum dated 26.08.2019.

[5] Hence, the present petition has been filed by the petitioner before this Court for redress.

[6] Mr. K. Chakraborty, learned counsel appearing for the petitioner has submitted that the petitioner was initially appointed as LDC vide order dated 21.04.2008 issued by the District Magistrate and Collector, North Tripura, Kailashahar under the Rural Development Department, Government of Tripura on fixed pay basis with monthly pay of Rs.2,245/-. Pursuant to the said order of appointment, the petitioner joined to the post of LDC on 07.05.2008, in the office of the District Magistrate and Collector and at present, the petitioner is discharging his duties and responsibilities in the post of Accountant, in the office of the Block Development Officer.

[7] After completion of five years of service, vide order dated 02.12.2013 issued by the D.M. & Collector, West Tripura, Agartala, the

petitioner was granted with regular pay scale, under Pay Band-2, Rs.5,310-24,000/- with Grade Pay of Rs.1,800/- w.e.f. 07.05.2013. At a later stage, the DM & Collector issued an order dated 30.12.2013, promoting the petitioner to the post of UDC in the pay scale of Rs.5,310-24,000/- with Grade Pay of Rs.2,100/- (Pay Band-2) and his promotional post of UDC was accepted w.e.f. 30.12.2023.

[8] He has further contended that subsequently, the DM & Collector by issuing an order dated 14.09.2021 promoted the petitioner to the post of Accountant in the pay scale of Rs.5,700-24,000/- with Grade Pay of Rs.4,200/- (Pay Band-2). Posterior to the joining of the petitioner to the said post of UDC, the petitioner noticed that w.e.f. the said date of joining i.e. 30.12.2013, his pay was fixed at Rs.6,380/- along with Grade Pay of Rs.2,100/- totaling to Rs.8,480/- whereas, on being promoted to the said post of UDC, the petitioner was entitled to the pay of Rs.7,820/- along with Grade Pay of Rs.2,100/- totaling to Rs.9,920/- as per the Tripura State Civil Services (Revised Pay) Rules, 2009 [ROP Rules, 2009 for short] and the Tripura State Civil Services (Revised Pay 6th Amendment) Rules, 2012.

[9] Thereafter, the petitioner has prayed for fixation of his pay to the tune of Rs.7,820/- along with Grade Pay of Rs.2,100/- totaling to Rs.9,920/- with effect from the date of his promotion to the post of UDC. The petitioner has several representations to the respondents and legal notice too in this regard. In response to these, the respondents issued letters dated 27.12.2018 and 31.01.2019 respectively thereby rejecting the said prayer of the petitioner.

[10] Mr. Chakraborty, learned counsel appearing for the petitioner has pointed out that much prior to the negation of the said prayer of the petitioner, one Sri Kriti Bhushan Chakma, whose pay was wrongly fixed on being promoted to the post of UDC, was re-fixed in the PB-2, Rs.5,310-24,000/- with GP of Rs.2,100/- at Rs.9,920/- along with all financial benefits in accordance with 12th amendment to the ROP Rules, 2009 w.e.f. 01.04.2015. He has further contended that the said pay fixation, the Accounts Officer, Office of the Accountant General (A&E), Tripura, Agartala issued a letter dated 09.05.2017

recording that the said pay fixation made in favour of Sri Kriti Bhushan Chakma at Rs.9,920/- has been found to be correct. Thereafter, vide letter dated 11.07.2017, issued by the Senior Deputy magistrate, West Tripura, Agartala the said proposal of pay fixation was forwarded to the Under Secretary, Revenue Department, Govt. of Tripura.

[11] Pursuant thereto, the pay of said Kriti Bhushan Chakma was re-fixed at Rs.9,920/- w.e.f. 28.11.2014 i.e. from the date when he was promoted to the post of UDC, along with financial benefits and thereafter, again re-fixed at Rs.10,620/- in accordance with 12th Amendment to the ROP Rules, 2009 with financial benefits w.e.f. 01.04.2015.

[12] It has been further averred that the for fixation of pay at Rs.9,920/- on being promoted to the post of UDC, from the feeder post of LDC, one Atul Debbarma, serving in the Home Department, Government of Tripura, had filed a writ petition before this Court and subsequently, that petition was disposed of directing the respondents to consider the representation of the petitioner. After passing of such order, the SP (Procurement), Tripura, Agartala issued an office order dated 02.01.2019 thereby re-fixing the pay of said Atul Debbarma at Rs.9,920/- as per 6th Amendment of ROP Rules, 2009 from the date he was promoted to the post of UDC. From this instance of said Kriti Bhushan Chakma and Atul Debbarma, it is crystal clear that an incumbent, on being promoted to the higher post of UDC from the feeder post of LDC is entitled to the pay of Rs.9,920/- w.e.f. the date of such promotion.

[13] Mr. Chakraborty, learned counsel has submitted that the petitioner was promoted to the post of UDC on 30.12.2013 i.e. after promulgation of the 6th Amendment of the ROP Rules, 2009 and his pay was fixed at Rs.6,380/- along with GP of Rs.2,100/- i.e. Rs.8,480/-. It is thus crystal clear that he petitioner was getting a lower pay than that of the direct recruits placed in the PB-2 who were getting a higher pay of Rs.7,820/- along with GP of Rs.2,100/- totaling to Rs.9,920/-. From letter dated 26.08.2019 issued by the Deputy Secretary, Finance Department, Govt. Tripura, wherein, it has been

decided that “....3 The matter has been examined in Finance Department and after careful examination, it has been clarified that the pay of those Government employees who have been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules, 2009 and subsequently gets promoted to higher post during the period under TSCS (Revised Pay) Rules, 2009 shall not receive pay lower than the entry pay as indicated in Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009....

....4. In the light of the above, the undersigned is directed to inform you that if the pay of a Government employee who has been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules, 2009 and who has subsequently been appointed to a higher post on promotion during the period under TSCS (Revised Pay) Rules, 2009, happens to be lower than the entry pay as mentioned at Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009 then the revised pay due to promotion shall not be less than the said entry pay of the promotion post....

....5. The undersigned is further directed to inform you that the above benefit of revised pay shall be allowed notionally, even for the purpose of revision of pay in respect of TSCS (Revised Pay) Rules, 2017 and its amendment. Actual financial benefits of higher pay scale may be allowed to eligible cases from 1st September, 2019.... ”

[14] The petitioner was drawing the revised pay in the lower post i.e. LDC and on being promoted to the higher post of UDC in terms of the said impugned memorandum dated 26.08.2019 (Annexure-16) the pay of the petitioner was notionally fixed at Rs.9,920/- w.e.f. the date of his promotion to the post of UDC i.e. 30.12.2013 and the financial benefits therefore were released in his favour only w.e.f. 19.09.2019. The petitioner has submitted representation for arrears of the said financial benefits before the Senior Deputy Magistrate, Office of the District Magistrate, West Tripura vide a letter dated 14.01.2020 the said prayer was forwarded to the Joint Secretary, Rural Development Department, Government of Tripura.

[15] Vide letters dated 11.07.2017 and 09.05.2017 and the memorandum dated 16.11.2016 and the office order dated 02.01.2019 Sri kriti Bhushan Chakma and Atul Debbarma were not only provided with the pay of Rs.9,920/- and the amended pay of Rs.10,620/- w.e.f. their respective dates of promotion to the post of UDC, but were also accorded with arrears of such financial benefits. In such view of the matter, it is submitted that the petitioner, being subsequently promoted to the post of UDC on 30.12.2013 is equally entitled to the arrears of the said financial benefits.

[16] Without any foundational basis, only to deprive the petitioner and other similarly situated persons from their legitimate entitlements by the impugned memorandum dated 26.08.2019 it was decided to restrict the financial benefits by giving its effect from 01.09.2019, which is wholly unsustainable. It is settled legal principle that a promotee cannot draw a lesser pay than a direct recruit. Applying the said principle to the case in hand, it is submitted that the petitioner was entitled to the pay of Rs.9,920/- w.e.f. the date of his promotion and had the pay of the petitioner was duly fixed in the said relevant point of time the petitioner would have received higher financial benefits. It is submitted that just due to the delayed decision of the respondents as made vide the impugned memorandum dated 26.08.2019, the petitioner cannot be deprived of the actual benefits of such fixation.

[17] It has been further submitted that where a service related claim is based on a continuing wrong, relief merits to be granted, even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. It is submitted that the non-grant of the arrears of actual financial benefits, in favour of the petitioner, is not intercepted by accrual of any third party rights, and therefore, the said benefit cannot be denied to the petitioner, on the ground of delay and laches.

[18] In view of above averments made in this petition and after gone through the material evidence on record, this Court is of the view that the Government Order itself caters to situation where pay of the promotee after using the methodology prescribed in the government order is found to be lesser than the minimum of the higher pay band of the promotional post, the same needs to be stepped up to the minimum of the pay scale of the promotional post. The said government order, in my opinion, itself provides for stepping up of pay of the promotees of the minimum of the higher pay band to which post promotion has taken place.

[19] In a case of ***Satyendra Kumar Sharma and Others v. Principal Secretary, Deptt. of Finance and Others***, in writ petition No.410 of 2014 [MANU/UC/0700/2018] the Court has observed thus:

“13. From the perusal of the Government Order dated 17.10.2008, it can be said that promotee is also entitled for step up to the minimum of pay in pay band with grade pay. It is a settled position that a direct recruit gets minimum of the pay scale and Government Order dated 13.02.2009 prescribes the minimum entry pay for direct recruit. In this way, it can safely be construed that if basic pay of promotee remains less than that of direct recruit, then in such eventuality, it should be stepped up upto the level of direct recruit. In other word, a promotee is also entitled to get the minimum entry pay meant for direct recruit, if he is drawing pay less than that of pay meant for direct recruit. Our conclusion gets fortification from the judgments of Hon'ble Supreme Court and Hon'ble Delhi High Court in the case of Somvir Rana and Shashikant (supra). After judgment of Hon'ble Supreme Court, Government of India has already issued Circular granting the minimum entry pay, meant for direct recruit, to the promotees.

14. State cannot create class amongst the class. Our State is a welfare State. It cannot create two minimum entry pay in one pay scale, one for direct recruit and another for promotee that too without any cogent reason, rationale or justification. Even though no direct recruit joins in the present case but by way of Sixth Pay Commission, State Government decided to give revised pay scales to all government employees. It is settled position that by implementing new pay commission, old pay scales are replaced by new ones. It is also settled that every pay scale has one minimum entry pay therefore, Government cannot create two different minimum entry pay for one pay scale and if a person joins on particular pay scale, then he is entitled to get the minimum entry pay of that pay scale irrespective of the fact how he joins the cadre. Therefore, we find no force in the argument of learned Standing Counsel for the State that no direct recruitment took place in the present matter. In our view, different fixation of pay for

promotees and direct recruits would lead to invidious discrimination and violates [Article 14](#) of the Constitution of India. The same pay scale cannot have two different entry pay, one for the promotees and other for direct recruits. The provision for two different entry pay one for promotees and another for direct recruits is clearly violative of the principle of 'equal pay for equal work' enshrined in [Article 39A](#) of the Constitution of India.

17. In view of the above, the writ petition deserves to be allowed. The same is allowed. Impugned order passed by the Pay Anomaly Committee is quashed. Respondents are directed to grant the minimum entry pay to the petitioners meant for the direct recruits and re-fix the pay of petitioners, at the level of minimum entry pay, applicable for direct recruits in Pay Band 3 with Grade Pay Rs. 6600/-, as per Government Order dated 13.02.2009 from the date of their respective promotions. Respondents are further directed to pay the arrears arising out of pay fixation pursuant to the order passed by this Court. The above benefits shall be granted to the petitioners within a period of three months from today.”

[20] In view of the above, observations and submissions made by the learned counsel appearing for the parties, this Court is of the considered opinion that the petitioner has made out a case for interference and accordingly, the prayer as sought for by the petitioner in the present writ petition stands allowed. Consequently, the impugned letters dated 27.12.2018 and 31.01.2019 and the impugned memorandums dated 26.08.2019 and 22.06.2020 stand set aside as the notional fixation is unreasonable. The proceeding under challenge which is for denying the arrears of the petitioner is also set aside. The respondents are directed to pay the arrears of the petitioner within a period of three months from the date of receipt of the copy of this order.

[21] In the result, the present petition stands allowed and thus disposed of.

CHIEF JUSTICE (ACTING)