

**HIGH COURT OF TRIPURA
AGARTALA**

WA 80 OF 2022

Sri Gopal Banik,

S/o Sri Sankar Lal Banik, R.O Vill-Kunjaban Colony,
P.O. Abhoynagar, P.S. New Capital Complex,
Dist-West Tripura, Pin-799005,

---- Appellant.

Versus

1.The State of Tripura,

Represented by its Principal Secretary,
Power Department, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
Pin 799006.

2.Tripura State Electricity Corporation Limited,

Represented by its Chairman, Vidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District-West Tripura, 799007.

3.The Managing Director,

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

4. The Deputy General Manager (Corporate),

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

5. The Principal Secretary,

Finance Department, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, 799006.

---Respondents.

WITH

WA 81 OF 2022

Sri Debasish Majumder,

S/o Lt. Manoranjan Majumder, R. O Belonia, P.O. & P.S.Belonia,
District-South Tripura, Pin-799155, Age-58 years.

---- Appellant.

Versus

1.The State of Tripura,

Represented by its Principal Secretary,
Power Department, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
Pin 799006.

2.Tripura State Electricity Corporation Limited,

Represented by its Chairman, Vidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District-West Tripura, 799007.

3.The Managing Director,

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

4. The Deputy General Manager (Corporate),

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

5. The Principal Secretary,

Finance Department, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, 799006.

---Respondents.

WITH
WA 82 OF 2022

Sri Bhanulal Debnath,

S/o Lt. Haridas Debnath, R. O Vill-Nutan Nagar, Airport Road,
P.O. Nutan Nagar, P.S. Airport, Dist-West Tripura,
Pin-799009, Age-61 years.

---- Appellant.

Versus

1.The State of Tripura,

Represented by its Principal Secretary,
Power Department, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
Pin 799006.

2.Tripura State Electricity Corporation Limited,

Represented by its Chairman, Vidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District-West Tripura, 799007.

3.The Managing Director,

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

4. The Deputy General Manager (Corporate),

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

5. The Principal Secretary,

Finance Department, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, 799006.

---Respondents.

WITH
WA 83 OF 2022

Sri Sanjeeb Das Gupta,

S/o Lt. Chittaranjan Das Gupta, R.O. Netaji Road,
Dharma Nagar, P.O. & P.S. Dharma Nagar,
Dist-North Tripura, Pin-799250, Age-54 years.

---- Appellant.

Versus

1.The State of Tripura,

Represented by its Principal Secretary,
Power Department, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
Pin 799006.

2.Tripura State Electricity Corporation Limited,

Represented by its Chairman, Vidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District-West Tripura, 799007.

3.The Managing Director,

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

4. The Deputy General Manager (Corporate),

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

5. The Principal Secretary,

Finance Department, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, 799006.

---Respondents.

WITH
WA 84 OF 2022

Sri Shyamal Kanti Roy,

S/o Lt. Sudhyanya Kr. Roy, R. O Joynagar Road No.1,
P.O. Agartala, P.S. West Agartala, Dist-West Tripura,
Pin-799001, Age-58 years.

---- Appellant.

Versus

1.The State of Tripura,

Represented by its Principal Secretary,
Power Department, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
Pin 799006.

2.Tripura State Electricity Corporation Limited,

Represented by its Chairman, Vidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District-West Tripura, 799007.

3.The Managing Director,

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

4. The Deputy General Manager (Corporate),

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

5. The Principal Secretary,

Finance Department, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, 799006.

---Respondents.

WITH
WA 85 OF 2022

Sri Apu Paul,

S/o Lt. Nagendra Chandra Paul, R.O Joynagar,
Akhaura Road, P.O. Agartala, P.S. West Agartala,
Dist-West Tripura, Pin-799001, Age-53 years.

---- Appellant.

Versus

1.The State of Tripura,

Represented by its Principal Secretary,
Power Department, Govt. of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura,
Pin 799006.

2.Tripura State Electricity Corporation Limited,

Represented by its Chairman, Vidyut Bhawan, North Banamalipur,
P.O. Agartala, P.S. East Agartala, District-West Tripura, 799007.

3.The Managing Director,

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

4. The Deputy General Manager (Corporate),

Tripura State Electricity Corporation Limited, Corporate Office,
Vidyut Bhawan, North Banamalipur, P.O. Agartala,
P.S. East Agartala, District-West Tripura, 799007.

5. The Principal Secretary,

Finance Department, Government of Tripura, P.O. Kunjaban,
P.S. New Capital Complex, District-West Tripura, 799006.

---Respondents.

For the Appellant(s) : Mr. A. Bhaumik, Advocate.

For the Respondent(s) : Mr. B.N. Majumder, Sr. Advocate.
Mr. N. Majumder, Advocate.

Date of hearing &
delivery of Judgment and order : **04.01.2024**

Whether fit for reporting : **Yes**

BEFORE
HON'BLE MR JUSTICE ARINDAM LODH
HON'BLE MR JUSTICE S. DATTA PURKAYASTHA

Judgment & Order (Oral)

(Arindam Lodh, J)

This batch of intra-court appeals have been preferred by the appellants challenging the legality and validity of the common judgment and order dated 28.02.2022, passed by a learned Single Judge of this court in connection with case No. WP(C) No.540 of 2021 along with other writ petitions.

2. Since common question of facts and law is involved in all the writ appeals, with the consent of learned counsels appearing for the parties, these are heard together and disposed of by this common judgment.

3. For the sake of convenience, WA No.80 of 2022 is taken up as lead case and the reliefs as prayed for by the appellant in the said appeal are as follows:

- (i) *Admit this Appeal;*
- (ii) *Issue Notice upon the Respondents;*
- (iii) *Call for the Records;*
- (iv) *And after hearing the parties be pleased to allow the present Writ Appeal against the Judgment and order dated 28.02.2022 passed in WP(C) No.540/2021 and other batch*

matters and be pleased to issue appropriate direction upon the Respondents.

AND/OR

Pass any other order/orders as deemed fit and proper.

4. Briefly stated, all the appellants i.e. the original writ petitioners [here-in-after referred to as the petitioners] of the above batch of writ appeals were appointed as Junior Engineer, Grade-II on fixed pay basis under the Power Department in between the years 1990 to 1992. They were given the regular pay scale in the year 1992. Thereafter, the respondents, i.e. the State Government had taken a policy decision to extend the benefit of CAS-I to the petitioners after completion of 4 years of service. It is an admitted position that none of the petitioners had been appointed through due process of selection i.e. through Tripura Public Service Commission [for short, TPSC] which was one of the requirements of the appointment to the post of Junior Engineer. The petitioners were Diploma holders. They were continuing their services on ex-cadre basis till the year 2007. On 29th October, 2007, the Govt. of Tripura (Power Department) had issued a notification whereby and whereunder it was decided that ex-cadre Junior Engineers under the Department of Power would be en-cadred in the respective grades of Tripura Power Engineering Service [TPES, for short] according to respective qualification, by relaxation of Rule 35 of TPES Rules, 1987 as amended in 2007 after observance of due codal formalities including formal concurrence of TPSC subject to the following conditions:

- i) The concerned Junior Engineers will be placed en-bloc junior to the Junior Engineers already holding cadre posts in Group-V (A) and Group-V(B) of the TPES cadre.
- ii) They may be encadred with retrospective effect not earlier than 30.12.2003.

- iii) Their seniority position would be made as per normal rules of the seniority.
- iv) Their past services would be counted for the purpose of finalization of their pension.
- v) Their pay will be fixed as per rules.
- vi) Reservation Rules should be followed.

5. Principal controversy arises in this batch of writ appeals is that the date from which they will be extended the benefit of 2nd ACP. According to the petitioners, the 2nd ACP should be provided to them with effect from the date of granting regular scale of pay to the petitioners; however, according to the respondents, the petitioners are entitled to get the benefit of 2nd ACP with effect from the date of their encadrement in the services under the Power Department i.e. w.e.f. 30.12.2003.

6. On the background of aforesaid controversy, we have heard Mr. A. Bhaumik, learned counsel appearing for the petitioners and Mr. N. Majumder, learned counsel appearing for the respondents-TSECL led by Mr. B. N. Majumder, learned standing counsel for the Power Department.

7. Mr. Bhaumik, learned counsel appearing for the petitioners has submitted that the claim of the petitioners is quite reasonable as because they were provided the benefit of the regular pay scale in the year 1992 when the petitioners were granted the pay scale of Junior Engineer Grade I/Junior Engineer Grade V-A and as such, they are entitled to get the benefit of 2nd ACP after completion of 17 years of service in the year 2013 counting from 1992 i.e. with effect from the date of granting their regular scale of pay as Junior Engineer Grade V-A.

8. In support of his contention, Mr. Bhaumik, learned counsel has relied upon Rule 10(1) of ROP Rules, 2009 which stipulates that an employee under the Government of Tripura shall be provided with CAS-I after completion of first 10(ten) years of service, 2nd ACP after completion of next 7(seven) years i.e. 17 years and the 3rd MACP after completion of total 25 years.

9. Learned counsel for the petitioners has given much emphasis on the words 'regular scale' embodied in Sub-rule (1) of Rule 10 of ROP Rules, 2009. Emphasizing on it, Mr. Bhaumik, learned counsel for the petitioners has tried to persuade this Court that the ACP has to be granted to an employee of the Government from the date of granting regular pay scale to such employee or employees and since the petitioners of the original writ petitions had been given the benefit of regular pay scale in the year 1992, they are entitled to get the benefit of 2nd ACP after completion of 17 years of service. The alternative submission of Mr. Bhaumik, learned counsel is that if the respondents do not grant the benefit of 2nd ACP treating the service of the petitioners from the year 1992, but, at least from the year 1996 when they were given the benefit of CAS-I and in that case, the petitioners shall be entitled to get the benefit of 2nd ACP in the year 2013.

10. Per contra, Mr. Majumder, learned counsel appearing for the respondents has submitted that the services of the petitioners were not through regular process of employment rather, their appointments were irregular since they entered into the service without going through the due selection process by the TPSC. They were continuing their services as ex-cadre, though regular pay scales were provided to them in the year 1992.

However, the Govt. of Tripura in its own wisdom had taken a policy decision to en-cadre the petitioners by relaxation of Rule 35 of TPES Rules, 1987 as amended in the year 2007 and issued a notification notifying the conditions of encadrement as stated supra. So, according to learned counsel appearing for the respondents, the petitioners are entitled to get the benefit of 2nd ACP w.e.f. the date of their encadrement in their respective grades.

11. We have considered the rival submissions of learned counsel appearing for the parties. Admittedly, the petitioners had not entered into the service through normal process of employment i.e. through competitive examinations and their initial entry into service was on fixed pay basis though the Government had provided them regular pay scale in the year 1992, but, they remained as ex-cadre. Only in the year 2007 in view of the notification dated 29th October, 2007 issued by the Govt. of Tripura, they were borne in the cadre of Junior Engineer under the Department of Power in their respective grades of TPES.

12. We have given a conscious thought to the submission of learned counsel appearing for the petitioners that as per Rule 10(1) of ROP Rules, 2009, the benefit of CAS, ACP or MACP has to be provided from the date an employee or employees are granted regular pay scale. We are unable to accept the submission of learned counsel appearing for the petitioners as because if we accept such submission, then, it will amount to give a narrow interpretation to the words 'regular scale'. In the opinion of this Court, the expression "regular scale of pay" means and connotes the regular pay scale granted to the employee/employees for holding regular sanctioned cadre posts. The scheme of providing CAS-I, ACP and MACP in the ROP Rules

framed by the Govt. is made to fulfill the object of extending financial benefits to those employees who are deprived of opportunity of promotion despite serving 10 years, 17 years or 25 years and remained in the same post. Benefit of CAS-I, ACP and MACP are granted to regular employees holding substantive posts having regular scales of pay without promotion for certain years in terms of the relevant Rules framed by the State Government. However, pay scale can be provided to the employees who do not hold substantive posts, but, at the instance of the employer/State Government considering the nature of duties and responsibilities they perform following the doctrine of equal pay for equal work.

13. A non-cadre post does not become a cadre post simply, on being declared equivalent to a cadre post. The ex-cadre posts are temporary posts of the same rank as cadre posts and created by the State Government. The petitioners were not the part of the cadre of Junior Engineer.

14. In service jurisprudence, promotion is necessarily from the feeder cadre to the higher cadre in the service, since respective cadres form part of the service. Unless one is en-cadred in the feeder cadre, he cannot claim promotion to the next higher cadre. In the instant case, the petitioners were holding ex-cadre posts and were not en-cadred till the decision of the State Government for encadrization of the petitioners vide notification dated 29th October, 2007 giving its effect from 30.12.2003. As such, the petitioners are entitled to be treated as the holders of cadre posts w.e.f. the date of their encadrement as Junior Engineer and would be entitled for promotion since the date of encadrement. That is, their period of service would be computed from the date of their encadrement in the posts of Junior Engineer, which

posts the Government had to create to include the petitioners in the cadre service entitling them for future service benefits including promotion.

15. Furthermore, to re-iterate, since the granting of CAS, ACP or MACP has a direct link with the aspect of promotion, and so, unless and until an employee is not borne into regular cadre in the feeder post, he is not entitled to promotion to the next higher post. Again, if one is not entitled to promotion, he will not be entitled to claim the benefit of CAS, ACP or MACP.

16. In the instant case, admittedly the petitioners had continued their services as ex-cadre till the year 2007. On 29th October, 2007, the Government of Tripura as policy matter decided to en-cadre them en-bloc by way of relaxation of Rule 35 of TPES Rules, 1987 as amended in 2007 with certain conditions that include that they would be treated as en-cadred with retrospective effect not earlier than 30.12.2003 and further, such encadred Junior Engineers would be juniors to the Junior Engineers holding cadre posts in Group-V(A) and Group-V(B) of the TPES cadre. It was also stipulated that their past services would be counted for the purpose of finalization of their pension. Undisputedly, the petitioners had accepted those conditions. In this eventuality, the claim of the petitioners that they should be treated on regular service and entitled to promotion with effect from the date of granting regular pay scale, according to me, is misnomer and being not legally tenable is not acceptable at all.

17. From the notification dated 29th October, 2007 it is clear that Government had taken a decision for encadrement of 140 (one hundred and forty) ex-cadre Junior Engineers under the Department of Power in the

respective grades of TPES. So, when the petitioners were appointed, there were no sanctioned vacant posts of Junior Engineers at all under the Department of Power, Govt. of Tripura. It is also clear from the said notification dated 29th October, 2007 (**Annexure R/1** to the counter affidavit filed on behalf of the respondents no.2, 3 & 4 in WA 80 of 2022) that to encadre the petitioners, Government had to relax Rule 35 of TPES Rules, 1987 as amended in the year 2007. It is also an undisputed fact that the petitioners had accepted the CAS-I after completion of 4 years of service when they were serving the department as ex-cadre. So, naturally the petitioners are entitled to 2nd ACP after completion of 17 years of service from the date of their encadrement i.e. from the date of 30.12.2003.

18. We have perused the impugned common judgment passed by a learned Single Judge (S. Talapatra, J as he then was) in **WP(C) 540 of 2021**, titled as **Sri Gopal Banik Vrs. The State of Tripura & 4 Ors.** whereby and whereunder, after elaborate discussion of the Rules, learned Single Judge relying upon the sound reasonings given in **Shibajyoti Bhattacharjee & Ors. Vrs. State of Tripura & Ors.** [judgment dated 04.01.2017 delivered in **WP(C) No.381/2006**] had observed that the decision of this Court in **Kalyanbrata Bhattacharjee Vrs. the State of Tripura & Ors.** [judgment dated 03.03.2021 delivered in **WP(C) No.488/2019** along with other analogous writ petitions], is not germane to the present context. On careful consideration of the said judgment, we do not endorse the view expressed in the case of **Kalyanbrata Bhattacharjee** (supra).

19. In view of this, in the opinion of this Court, the petitioners are entitled to 2nd ACP after completion of 17 years of service from 30.12.2003

and neither from the year 1992 nor from 1996. We also have taken into consideration the submission of Mr. Bhaumik, learned counsel for the petitioners in respect of the fact that one Sri Bhulan Saha has been given the benefit of CAS-I counting his service w.e.f. the year 2002 i.e. prior to the date of his encadrement. We are not convinced to this submission of learned counsel appearing for the petitioners for the reason that it might be an isolated instance and it also might be a mistake. If a wrong is committed in a case or even by the department concerned, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a Court in a negative manner.

19.1 Here, we may profitably refer to a decision of the Supreme Court in ***Basawaraj & Anr. Vrs. Special Land Acquisition Officer, (2013) 14 SCC 81***, where it has been held as under :-(SCC. p.85, para 8)

8. It is a settled legal proposition that Article 14 of the Constitution is not meant to perpetuate illegality or fraud, even by extending the wrong decisions made in other cases. The said provision does not envisage negative equality but has only a positive aspect. Thus, if some other similarly situated persons have been granted some relief/benefit inadvertently or by mistake, such an order does not confer any legal right on others to get the same relief as well. If a wrong is committed in an earlier case, it cannot be perpetuated. Equality is a trite, which cannot be claimed in illegality and therefore, cannot be enforced by a citizen or court in a negative manner. If an illegality and irregularity has been committed in favour of an individual or a group of individuals or a wrong order has been passed by a judicial forum, others cannot invoke the jurisdiction of the higher or superior court for repeating or multiplying the same irregularity or illegality or for passing a similarly wrong order. A wrong order/decision in favour of any particular party does not entitle any other party to claim benefits on the basis of the wrong decision. Even otherwise, Article 14 cannot be stretched too far for otherwise it would make functioning of administration impossible. (Vide Chandigarh Admn. v. Jagjit Singh [(1995) 1 SCC 745 : AIR 1995 SC 705] , Anand Buttons Ltd. v. State of Haryana [(2005) 9 SCC 164 : AIR 2005 SC 565] , K.K. Bhalla v. State of M.P. [(2006) 3 SCC 581 : AIR 2006 SC 898] and Fuljit Kaur v. State of Punjab [(2010) 11 SCC 455 : AIR 2010 SC 1937].)

20. We have also taken note of the submission of learned counsel appearing for the petitioners that the Junior Engineers who were Degree holders were given the benefit of CAS-I after completion of 8 years of service from the year 1992 i.e. from the year 2000 prior to their encadrement. According to us, it is the policy decision of the Government how to treat its employees and distinguish, that is, to classify them in the matter of granting pay scale or CAS/ACP/MACP and the Court has very limited scope to interfere with such policy decisions of the Government.

21. However, we do not find any unreasonableness in the classification made by the Government treating differently the Junior Engineers having Degree holders to those of the Junior Engineers who are having Diploma holders.

22. In the light of above discussions, we do not find any reason to interfere with the judgment passed by the learned Single Judge which is under challenge.

23. At the cost of repetition, the petitioners were appointed on regular basis with the creation of new posts w.e.f. 15.11.2007 under a notification issued by the Power Department giving its effect from 30.12.2003, which was/is never under challenge. So, the claim of the petitioners for 3rd financial up-gradation in the form of MACP w.e.f. 01.10.2021 is not sustainable.

24. For the reasons stated and discussed here-in-above, we are of the opinion that the petitioners cannot claim that they had completed 17 years of service on 01.10.2013 for the purpose of granting ACP-II since they were borne in the regular cadre service with effect from 30.12.2003 and neither

from the year 1992 when they were given regular scales of pay nor from 01.01.1996 i.e. the date of granting CAS-I.

25. Accordingly, the present batch of writ appeals stands dismissed and the common judgment and order dated 28.02.2022 in WP(C) No.540 of 2021 along with other connected writ petitions, passed by the learned Single Judge are affirmed and upheld.

JUDGE

JUDGE

SANJAY GHOSH

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