

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.595/2023

Sri Lenin Debbarma, son of Sri Upendra Debbarma, resident of village-Manik Bhandar, P.O.-Manik Bhandar, P.S.-Kamalpur, District-Dhalai, aged about 43 years.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Commissioner & Secretary, Home Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

2. The Commissioner & Secretary, Home Department, Government of Tripura, having his office at New secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

3. The Commissioner & Secretary, Finance Department, Government of Tripura, having his office at New Secretariat Complex, Gurkhabasti, Agartala, P.O.-Kunjaban, P.S.-New Capital Complex, Sub-Division-Sadar, District-West Tripura.

4. The Director General of Police, Government of Tripura, having his office at Police Head Quarters, Fire Brigade Chowmuhan, P.O.-Agartala, District-West Tripura, Pin-799001.

5. The Commandant, 1st Battalion Tripura State Rifles, having his office at V.B. Gram, Gokulnagar, District-Sipahijala, Tripura.

.....Respondent(s).

For Petitioner(s)	: Mr. Somik Deb, Sr. Advocate, Mr. Pranabindu Chakraborty, Advocate.
For Respondent(s)	: Mr. Rajib Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment : **05th July, 2024.**

Whether fit for reporting : **NO.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Pranabindu Chakraborty, learned counsel appearing for the petitioner and Mr. Rajib Saha, learned counsel appearing for the respondents-State.

2. Petitioner has sought quashing of the impugned order dated 05.06.2023 (Annexure-1) so far as it relates to him and for directing the respondents to refund the amount deducted from his salary and allowances and further to restrain them from acting in any manner, in furtherance of the impugned order dated 05.06.2023.

3. Petitioner has put forth the following chronology of dates and events in order to substantiate his plea:

(a) Initially, the petitioner was appointed to the post of Riflemen GD on 03.11.1998, in the pay scale of Rs.3200-6030. Thereafter, the petitioner was discharging his functions with utmost sincerity, dedication and devotion, without any dereliction thereof. The said appointment of the petitioner was made under the Tripura State Civil Services (Revised Pay) Rules, 1999, which came into force with retrospective effect from 01.01.1996.

(b) Consequent upon promulgation of the said Revised Pay Rules, the petitioner had exercised his option on 01.01.2006, and his basic pay as on that date was fixed at Rs.3,830/-.

(c) Under the said Revised Pay Rules, 1999, consequent upon exercise of such option, the pay of the petitioner was fixed at Rs.6,670/-, in the pay scale of Rs.5,310-24,000/- along with Grade Pay of Rs.1,700/-. Thus, in totality, the pay of the petitioner stood at Rs.8370/- (6670 + 1700).

(d) Previously, the petitioner was inflicted with a punishment of *dies non* for two days. At that juncture, even though the said punishment of *dies non* was inflicted on to the petitioner, the pay admissible to the petitioner for those two days was not withheld, and the petitioner was duly paid off his

pay and allowances. Accordingly, the petitioner was also granted the annual increment.

(e) As on 01.07.2007, the pay of the petitioner was fixed at Rs.9350/-.

Similarly, as on 01.07.2008, the pay of the petitioner was fixed at Rs.9,280/- (7580 + 1700).

Similarly, as on 01.07.2010, the pay of the petitioner was fixed at Rs.10,160/-.

(f) Thereafter, on 18.10.2010, the petitioner was promoted to the rank of Havildar (GD) in substantive capacity, however, the said promotion did not fetch any financial upgradation to him.

(g) After the said promotion, on and from 01.07.2006, the pay and allowances were paid to the petitioner and at no point of time, neither the pay of the petitioner was reduced, nor was he subjected to any recovery. Thus, it is evidently clear that with effect from 2006 till date, the pay of the petitioner has been fixed and that he was never subjected to any recovery.

(h) Later, the petitioner was promoted to the higher post of Naib Subedar (GD) with effect from 24.03.2023 and his pay was fixed at Rs.43,900/- at Pay Level 10 & Cell 09 in Pay Matrix, 2018 under the Tripura State Civil Services (Revised Pay) (1st Amendment) Rules, 2018, with date of next increment on 01.04.2024.

4. When the matter rested thus, the Commandant, 1st Battalion, Tripura State Rifles has passed an order bearing reference No.F.27/TSR-I/Pay-fix/Estt/2020/3908 dated 05.06.2023, whereby reference has been made to the previous fixations of the pay & allowances of the petitioner at various stages,

and thereafter, it has been directed that the pay of the petitioner should be re-fixed, and that the overdrawn payment, if any, may be recovered.

5. Mr. Somik Deb, learned senior counsel for the petitioner, has referred to the Swamy's Compilation of CCS (CCA) Rules, 42nd Edition. Under the Note to Rule 11, the orders issued by Director General P & T are furnished under the heading "Action for unauthorized absence from duty or overstayal of leave". Paragraph-2 thereof deals with the subject of *dies non* and its effect. It is extracted hereunder:

"(2) When a day can be marked as *dies non* and its effect.- Absence of officials from duty without proper permission or when on duty in office, they have left the office without proper permission or while in the office, they refused to perform the duties assigned to them is subversive of discipline. In cases of such absence from work, the leave sanctioning authority may order that the days on which work is not performed be treated as *dies non*, i.e., they will neither count as service nor be construed as break in service. This will be without prejudice to any other action that the Competent Authorities might take against the persons resorting to such practices. [Rule 62, P. & T. Manual, Vol.III.]"

6. Learned senior counsel for the petitioner submits that at the time of imposition of *dies non* for two days absence, i.e. 03.04.2006 and 04.04.2006, the competent authority did not treat it as a break in service. That is why, the two days *dies non* period did not affect his subsequent pay fixations under ROP Rules, 1999 or ROP Rules, 2009 or even after his promotion to the post of Naib Subedar (GD) w.e.f. 24.03.2023 which led to fixation of his pay at Rs.43,900/- at Pay Level 10 and Cell 09 in Pay Matrix, 2018 under the Tripura State Civil Services (Revised Pay) (1st Amendment) Rules, 2018 with date of next increment as 01.04.2024. However, the Commandant, 1st Bn. Tripura State Rifles, respondent No.5, has by the impugned order directed re-fixation of his pay and recovery of the amount only for the reason that all such pay revision benefits, ACP and pay fixation granted after 2006 did not count the

break in service of two days due to *dies non*. The relevant paragraph of the impugned order dated 05.06.2023 so far as it relates to the petitioner is extracted hereunder:

"02. Proposal for re-fixation of pay in respect of No.98060400 Nb/Sub(GD) Lenin Debbarma {DOA as Rfn(GD) on 03.11.1998, ACP-1 benefit on 05.11.2008 (deferred due to 02 days 'Dies-non'), thereafter he was appointed directly to the post of Hav(GD) on 01.10.2010 through Limited Departmental Competitive Examination (LDCE) by way of transfer without fixation benefit, ACP-2 benefit on 05.11.2015 and subsequently promoted to the post of Naib-Sub(GD) on 24-03-2023 on ad-hoc basis}:-

On scrutiny of the service records as well as relevant IPSs, his pay was revised notionally at Rs.9,230/- (7130+2100) w.e.f. 01.01.2006 in the pre-revised scale of PB-2, Rs.5700-24000/- and Grade Pay of Rs.2,100/- under the TSCS(RP) (Twelfth Amendment) Rules, 2015 with DNI on 01.07.2006, which is found in order.

Now, according to the proposal, he did not complete more than 06(six) months service in the revised pay structure as on 1st July, 2006 due to 02 days 'Dies-non' w.e.f. 03.04.2006 to 04.04.2006. As such, next increment in the revised pay structure is not admissible to him under the provision laid down in the Note-1 below sub-rule 11(1) of TSCS(RP) Rule, 2009 and his pay as on 01.07.2006 will remain unchanged as Rs.9,230/- (7130 + 2100) with DNI on 01.07.2007.

Pay to be raised as on 01.07.2007 - Rs.9,510/-

Pay to be raised as on 01.07.2008 - Rs.9,800/-(7700+2100)

with DNI on 01.07.2009

Under the TSCS(Revised Pay) Rules, 2009, he was eligible for ACP-1 benefit w.e.f. 05.11.2008 (deferred due to 02 days 'Dies-non') after completion of 10(ten) years total length of service from the date of his initial appointment. So, his pay will be re-fixed notionally at Rs.10,200/- (7700+300+2200) w.e.f. 05.11.2008 in the pre-revised scale of PB-2, Rs.5700-24000/- and Grade Pay of Rs.2200/- under the TSCS(Revised Pay) (Twelfth Amendment) Rules, 2015 with DNI on 01.07.2009.

Pay to be raised as on 01.07.2009 - Rs.10,510/-

Pay to be raised as on 01.07.2010 - Rs.10,830/-

Pay to be raised as on 01.07.2011 - Rs.11,160/-

Pay to be raised as on 01.07.2012 - Rs.11,500/-

Pay to be raised as on 01.07.2013 - Rs.11,850/-

Pay to be raised as on 01.07.2014 - Rs.12,210/-

Pay to be raised as on 01.07.2015 - Rs.12,580/-(10380+2200)

with DNI on 01.07.2016

Subsequently, under the TSCS(Revised Pay) Rules, 2009 he was eligible for ACP-2 benefit w.e.f. 05.11.2015 after completion of 17(seventeen) years total length of service from the date of his initial appointment as well as 07 years from his last ACP. So, his pay will be re-fixed at Rs.13,160/- (10380+380+2400) w.e.f. 05.11.2015 in the pre-revised scale of PB-2, Rs.5700-24000/- and Grade Pay of Rs.2400/- under the TSCS(Revised Pay) (Twelfth Amendment) Rules, 2015 with DNI on 01.07.2016.

Pay to be raised as on 01.07.2016 - Rs.13,560/-(11160+2400)

with DNI on 01.07.2017

Under the TSCS(RP) Rules, 2017, his pay will be revised at Rs.30,710/- w.e.f. 01.04.2017 at Level-08 and Cell-12 in the Pay Matrix'2017 with DNI on 01.07.2017.

Pay to be raised as on 01.07.2017 - Rs.31,640/-

Pay to be raised as on 01.07.2018 - Rs.32,590/-

with DNI on 01.07.2019

Further, his pay will be revised at Rs.37,300/- w.e.f. 01.10.2018 at Level-08 and Cell-14 in the New Pay Matrix'2018 under the TSCS(Revised Pay) (1st Amendment) Rules,2018 with DNI on 01.07.2019.

Pay to be raised as on 01.07.2019 - Rs.38,400/-

Pay to be raised as on 01.07.2020 - Rs.39,600/-

Pay to be raised as on 01.07.2021 - Rs.40,800/-

Pay to be raised as on 01.07.2022 - Rs.42,000/-

with DNI on 01.07.2023

Now, he has been promoted to the higher post as Naib-Subedar(GD) w.e.f. 24.03.2023 on ad-hoc basis as a onetime measure as per PHQ's order No.0735-53/F.27(8)/DAP/TSR/RSV/11 dated 24.03.2023. Therefore, his pay will be fixed at Rs.43,900/- w.e.f. 24.03.2023 at the higher Level-10 and Cell-09 in the New Pay Matrix,2018 under the TSCS(Revised Pay) (1st Amendment) Rules, 2018 with DNI on 01.01.2024 subject to final outcome of SLP(C) No.19765-19767 of 2015 pending before the Hon'ble Supreme Court of India.

The concerned Head of Office is also requested to revised his relevant IPSs as required under the TSCS(RP) Rules, 2009 and TSCS(RP) Rules, 2017 as well as its subsequent amendments issued by the State Govt. time to time and overdrawn pay if any need to be recovered from the above individual accordingly."

7. Re-fixation of pay and recovery of overdrawn pay, if any, according to the petitioner would be wholly improper. Such re-fixation of pay due to deferment of pay fixation and increments on account of 2(two) days *dies non* after 18 years is not supported by any valid reason, more so, when the petitioner has not made any misrepresentation or practised fraud. Learned senior counsel for the petitioner has relied upon paragraph-18 of the decision of the Apex Court in the case of *State of Punjab & others vrs. Rafiq Masih (White Washer) & others* reported in (2015) 4 SCC 334. He submits that the same principle has been reiterated in the case of *Thomas Daniel vrs. State of Kerala & others* reported in AIR 2022 SC 2153.

8. Mr. Rajib Saha, learned counsel for the respondents, has referred to paragraph-9 of the counter affidavit which only reiterates the grounds reflected in the impugned order dated 05.06.2023. The same has been extracted hereunder:

"9. That in regard to the statements made in paragraph No.2.5, 2.6 and 2.7 of the writ petition, the answering Respondents beg to state that on 24.03.2023 the petitioner was promoted to the rank of Naib Subedar (GD). Thereafter, his pay fixation proposal was sent to the AIGP (Welfare), PHQ, Tripura vide office letter No.F.27/TSR-1/Pay-fix/Estt/23/2666, dated 17.04.2023. On scrutiny by the AIGP (Welfare), PHQ, Tripura his service book as well as IPSs, it is appears that after revision of his pay under the TSCS (RP)(Twelfth Amendment) Rules, 2015, he did not complete more than 06(six) months service in the revised pay structure as on 1st July, 2006 since his 02(two) days un-authorised absent period has been treated as "Dies-Non". It is fact that erroneously his periodical increment was released on 01.07.2006. The PHQ vide letter No.8007(4)/F.12/PC(TSR)/PHQ/TSR-1/NGO's/2022, dated 27.04.2023 asked this unit to rectify the above irregularities in regulation of his pay and thereafter re-initiate a detailed proposal from the beginning of his service with year wise break-up for re-fixation of pay and also providing him fixation benefit on ad-hoc promotion to the post of Naib Subedar (GD).

Copy of letter No. 8007(4)/F.12/PC(TSR)/PHQ/TSR-1/NGO's/ 2022, dated 27.04.2023 is enclosed herewith and marked as **Annexure-R/2**.

Thereafter, a fresh proposal has been sent to the AIGP (Welfare), PHQ, Tripura vide letter No.F.27/TSR-1/Pay-fix/Estt/23/3363, dated 10.05.2023. Now, the petitioner has been promoted to the higher post as Naib Subedar (GD) w.e.f. 24.03.2023 on ad-hoc basis as an one time measure as per PHQ, Tripura Order No.0735-53/F.27(8)/DAP/TSR/RSV/11, dated 24.03.2023. Therefore, his pay has been fixed at Rs.43,900/- w.e.f. 24.03.2023 at the higher level-10 and cell-09 in the new Pay Matrix'2018 under the TSCS (Revised Pay) (1st Amendment) Rules, 2018 with date of next increment on 01.01.2024.

The AIGP (Welfare), PHQ, Tripura also directed the Head of Office to revise his relevant IPS's as required under the TSCS (RP) Rules, 2009 and TSCS (RP) Rules, 2017 as well as its subsequent amendments issued by the State Govt. from time to time and overdrawn pay, if any be recovered from the petitioner accordingly.

Copy of letter No.F.27/TSR-1/Pay-fix/Estt/23/3363, dated 10.05.2023 is enclosed herewith and marked as **Annexure-R/3**.

Copy of Order No.F.27/TSR-1/Pay-fix/Estt/2020/3908, dated 05.06.2023 is enclosed herewith and marked as **Annexure-R/4**."

9. On consideration of the submissions of learned counsel for the parties, the chronology of facts and events leading to the pay fixation of the petitioner after imposition of 2(two) days *dies non* period for 03.04.2006 and 04.04.2006 have been narrated hereinabove. The counter affidavit of the respondents-State falls short of stating that the two days period of *dies non* was treated as break in service by the competent authority when it was imposed. The instruction issued by the Director General, P & T in respect of *dies non* extracted hereinabove shows that while the sanctioning authority may order the days on which the employee has not performed the work to be treated as *dies*

non, i.e., they will neither count as service nor be construed as break in service. There is no statement in the counter affidavit to the effect that this period was treated as break in service. Moreover, all subsequent pay revisions and pay fixation have been undertaken by the conscious decision of the competent authority from time to time discounting any break in service of two days due to the period, i.e. 03.04.2006 and 04.04.2006 being treated as *dies non*. It is not the case of the respondents that petitioner had either misrepresented or practised fraud in the matter of pay fixation after 2006 all along till when he was even promoted as Naib Subedar (GD) with a pay of Rs.43,900/- at Pay Level 10 and Cell 09 in Pay Matrix, 2018. Promotions to the petitioner as Havildar (GD) on 18.10.2010 and as Naib Subedar (GD) on 24.03.2023 do not seem to have been affected by this period of *dies non*. It, therefore, appears that the entire grounds of re-fixation of his pay and recovery of salary and emoluments paid to him due to past pay fixation are not justified in the eye of law or on facts.

10. Learned senior counsel for the petitioner has rightly placed reliance upon the decision in the case of **Rafiq Masih** (supra) in support of the submission that it would be iniquitous and harsh to recover such amount from the petitioner who has climbed in rank from a Riflemen (GD) to Havildar (GD) and now Naib Subedar (GD) over the past 18 years and that too without any misrepresentation or fraud being practised on his behalf.

11. As such, this Court is of the opinion that the re-fixation of pay of the petitioner at this point of time and recovery of the amounts paid due to such re-fixation dating back from 2006 is not justified in law. Accordingly, the impugned order dated 05.06.2023 (Annexure-1) so far as it relates to the re-

fixation of the pay of the petitioner and recovery is set aside. Amounts recovered, if any, shall be released in favour of the petitioner within a reasonable time.

12. With the aforesaid observations and directions, the writ petition is allowed and disposed of.

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

(APARESH KUMAR SINGH), CJ

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