

**HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.772 of 2023**

1. Sri Partha Pratim Das

S/O: Late Kusum Kr. Das,
R/O: Ramnagar Road No.-1, Near 3rd crossing, PO: Ramnagar,
PS: West Agartala, District- West Tripura, Pin-799002.

2. Sri Sutanu Das,

S/O: Late Satyendra Mohan Das,
R/O: LN Bari Road, Besides Sphulinga Club, Banamalipur,
P.O: Agartala, PS: East Agartala, Dist: West Tripura, Pin-799001

3. Sri Samir Sarkar,

S/O: Late Satyaranjan Sarkar,
R/O: Down Town Apartment, First Floor, IC Block -A,
78, Purbayan Road, Kathgola, Panihati,
North 24 Paragana, West Bengal-700110.

4. Sri Anjan Banik,

S/O: Late Satyendra Ch. Banik,
R/O: Maharanipur, Kalibari Road No.2, P.O- Chakmaghat,
P.S – Teliamura, District – Khowai, Pin – 799205.

----- Petitioners

Versus

1. The State of Tripura,

Represented by its Secretary, PWD (R & B),
Government of Tripura, New Secretariat Complex,
PO- Secretariat, PS- NCC,
District-West Tripura, Pin-799010.

2. The Chief Engineer, PWD (R & B),

Government of Tripura, Agartala, Government of Tripura,
PO-Secretariat, PS-New Capital Complex,
District-West Tripura, Pin- 799010.

3. The Principal Secretary, Finance Department

Government of Tripura, New Secretariat Complex,
P.O- Secretariat, P.S- New Capital Complex,
District-West Tripura, Pin- 799010.

----- Respondents

For Petitioner(s)	:	Mr. A. Bhaumik, Adv.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G. A.
Date of hearing	:	10.01.2025
Date of delivery of Judgment & Order	:	20.01.2025
Whether fit for reporting	:	YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

The present petitioners have filed this writ petition seeking the following reliefs:

i) Issue notice upon the Respondents.

ii) Call for the records.

iii) Issue rule calling upon the Respondents to show cause as to why the Petitioners shall not be granted the benefit of ACP-II from the date of completion of 17 years of service upon upgradation to the Post of Junior engineer (Electrical) (Grade-I) along with all arrears of financial benefit.

AND

Issue rule calling upon the Respondents to show cause as to why the Petitioners shall not be granted the benefit of MACP-III from the date of completion of another 8 years of service upon grant of ACP-II benefit in terms of the prayer above alongwith all arrears of financial benefit.

AND

Issue rule calling upon the Respondents to show cause as to why appropriate direction shall not be issued for fixation of pay of the Petitioners upon grant of ACP-II and MACP-III benefits and further issue appropriate Writ to grant the Petitioners arrears of such financial benefit.

iv) And after hearing the parties, be pleased to make the rule absolute.

AND/OR

Pass any other Order/Orders as deemed fit and proper.

AND

For this act of kindness your humble petitioners as in duty bound shall ever remain grateful.

2. Heard Learned Counsel Mr. A. Bhaumik appearing for the petitioners and also heard Learned Addl. G.A., Mr. M. Debbarma appearing for the State-respondents.

3. The facts of this writ petition are, in short, is that the petitioners were appointed as Junior Engineer (Electrical) (Grade-II) vide office order dated 03.04.1989 under the PWD (R & B),

Government of Tripura on the recommendation of Tripura Public Service Commission in the pay scale of Rs.1450-3710 plus admissible allowances. Thereafter, the petitioners rendered their service to the utmost satisfaction of their authorities.

4. The Finance Department, Government of Tripura issued one addendum on 30.03.1989 wherein it was provided that the Junior Engineer, Grade-II upon completion of their 4(four) years of service in the pay scale of Junior Engineer (Grade-II) will move to the pay scale of Junior Engineer (Grade-I) along with the designation of Junior Engineer (Grade-I). As such, in view of the said addendum dated 30.03.1989, the present petitioners on completion of their 4(four) years of service as Junior Engineer (Electrical) (Grade-II) were designated as Junior Engineer(Grade-I) and accordingly the pay scale of Junior Engineer(Grade-I) i.e. Rs.2100-4530 was extended to the petitioners vide office order dated 31.05.1993 w.e.f. 04.04.1993, 04.04.1993, 12.04.1993 and 04.04.1993 respectively and since then the petitioners were designated as Junior Engineer(Grade-I)(Electrical) and were serving in the said pay scale of Rs.2100-4530 as revised from time to time.

5. According to the petitioners, on up-gradation to the pay scale of Rs.2100-4530, the petitioners were treated as CAS-I consumed by them. But after extension of the pay scale of the Junior Engineer (Electrical) (Grade-I) which was considered as CAS-I consumed by the petitioners, the petitioners did not get any promotion in their entire service life and as such, the petitioners were entitled to the benefit of ACP-II from the date of completion of 17(seventeen) years of their

service from the date of extension of the upgraded scale of Junior Engineer (Grade-I) and thereafter on completion of another 8(eight) years of service, the petitioners were entitled to the benefit of MACP-III. But the petitioners were not extended with the benefit of ACP-II followed by MACP-III.

6. It was further asserted that if 17(seventeen) years of continuous service is counted from the date of up-gradation scale then the petitioners would be entitled to the benefit of ACP-II w.e.f. 04.04.2010, 04.04.2010, 12.04.2010 and 04.04.2010 respectively but the said benefit of ACP-II was also denied to the petitioners by the State-respondents and the petitioners would also be entitled to the benefit of MACP-III from the date of completion of their another 8(eight) years of service upon grant of ACP-II as the petitioners completed their 8(eight) years of service without any promotion but said benefit of MACP-III was also denied to the petitioners. In the mean time, the petitioner Nos.2 and 3 have already retired from their service on 31.01.2023 and 28.02.2022 respectively without any benefit of ACP-II and MACP-III and also without any single promotion in their service career.

7. It was further stated that similar issue arose with Junior Engineer (Grade-II) (Electrical) appointed under the Power Department, Government of Tripura and the said Junior Engineers were given the benefit of auto up-gradation on completion of 4(four) years of continuous service and extended with the benefit of pay scale of Junior Engineer (Grade-I). However, said Junior Engineers were also denied the benefit of ACP-II followed by MACP-III and

accordingly, the Junior Engineers of the Power Department approached to this High Court by filing writ petition bearing No.WP(C) No.488 of 2019 and other connected matters and vide judgment dated 03.03.2021 passed in WP(C) No.488 of 2019, this High Court observed that the said employees would be entitled to the benefit of ACP-II from the date of completion of their 17 years of continuous service from the date of auto up-gradation to the pay scale of Junior Engineer (Grade-I) and also would get the benefit of MACP-III on completion of their another 8 years of service from the date of extension of ACP-II benefit.

8. The petitioners further stated that since the petitioners were appointed under the PWD Department so they are governed by the Tripura Engineering Service Rules, 1987 and the Engineers appointed under the Power Department are also governed by the Tripura Power Engineering Service Rules, 1987 and both the service rules i.e. the Tripura Engineering Service Rules, 1987 and the Tripura Power Engineering Service Rules, 1987 are "*Pari materia* statutes" and therefore the judgment and order passed by this High Court as mentioned above would also apply in the case of the present petitioners.

9. It was also submitted that highlighting the grievances the petitioners made a representation before the Respondent No.2 through proper channel which was forwarded by the Executive Engineer, Internal Electrification Division to the Superintending Engineer vide forwarding letter dated 25.07.2023 but no response was taken by the State-respondents.

10. Thereafter, the present petitioners through their engaged counsel served the legal notice upon the respondents on 14.11.2023 praying for grant of ACP-II and MACP-III benefit from the respective dates but the same was also not considered by the State-respondents. Hence the present petitioners have filed this writ petition seeking the reliefs as stated earlier.

11. The State-respondents have contested the case by filing the counter affidavit denying the assertions of the petitioners in their writ petition and also took the plea that by way of up-gradation, the present petitioners have consumed all the benefits. As such, the petitioners are not entitled to get any benefit in this case. It was further submitted by the State-respondents that under ACP scheme mentioned in Tripura State Civil Service (Revised Pay) Rules, 2009, [in short 'TSCS(RP)'], the benefits given to an employees in case of promotion and benefits given in case of scale upgradation are different. Further, the concept of promotion and that of scale upgradation are not equated in the ROP rules and pay scale available on promotion and pay scale payable upon the scale upgradation have been consciously made different in the rules. As per Rule 10(7) of TSCS(RP) rules, 2009, the benefit of next available Grade Pay shall be the admissible benefit of financial upgradation. So, Rule 10(7) does not speak that scale upgradation would mean the scale of the promotion post. It simply speaks about the next available Grade Pay which is reflected in Part-D of the Rules. Hence, the petitioners have clouded their understanding considering that they are entitled to higher pay of the promotion post due to ACP.

Further, as Rule 10(1) of TSCS (RP) Rules, 2009 limits the number of scale upgradations to a maximum of 03 (three) in respect of employees in PB-3 subject to condition that the concerned employee had not already consumed 03(three) numbers of benefits of scale upgradations including promotion already. Rule 10(2) also says that each case of promotion or scale upgradation may be treated as consumption of one ACP. If Rule 10(2) is studied with reference to Rule 10(7), it would be clear that ACP suggests that each case of consuming next available Grade Pay due to a single promotion relative to Grade Pay of the initial post at the time of joining of employee, is also a criteria for determining the remaining number of entitlements of ACP. So, "promotion" and "scale upgradation" has been consciously kept separate in the ROP Rules, thereby meaning that each case of consumption of next Grade Pay availed with respect to Grade Pay of the initial post at the time of his joining, shall also be treated as one ACP. There is, however, no bar in consuming more than one upgradations by way of promotion. In such case, the number of scales consumed shall also be counted as ACP.

In the instant case, petitioners joined in the pay scale of Rs.1450-3710/- [which has been revised to Grade Pay-Rs.4200/-, PB-2 under TSCS (RP) Rules, 2009]. By way of scale upgradation, they were allowed the pay scale of Rs.2100-4530/- (which has been revised to Grade pay-Rs.4800/-, PB-3 under ROP Rules, 2009). In between Grade Pay of Rs.4200/- and Rs.4800/-, there were two more Grade Pay i.e., Rs.4,400/- and Rs.4,600/-. Had the petitioners not received the movement to Grade Pay of Rs.4800/- directly, they

would have received the next available Grade Pay of Rs.4400/- as ACP-I and Rs.4600/- as ACP-II and followed by Rs.4800/- as ACP-III. But, due to direct movement to Grade Pay of Rs.4800/-, the petitioners have consumed both the Grade Pay of Rs.4400/- and Rs.4600/-. The ACP scheme does not say that more than one Grade Pay cannot be consumed due to promotion but each such consumption of scale upgradation has to be counted for calculation the balance of financial upgradations. So, it can be said that the Petitioners have already consumed 03(three) scale upgradation.

It is further added here that in the instant case, it can be said that by way of scale upgradation, an employee moves to the next higher pay scale but by way of promotion an employee can jump multiple pay scales to reach the pay scale of the promotion post without touching the intermediate pay scale. That does not mean that the employee has not consumed the intermediate pay scales because without climbing the ladders of intermediate pay scales the higher pay scales cannot be achieved.

Therefore, the consumption of the pay scale of Grade Pay of Rs.4400/- and Rs.4600/- while moving from Grade Pay of Rs.4200/- to Rs.4800/- shall be treated as consumption of 03(three) scale upgradations. Hence, the petitioners are not entitled to get the benefit of 2nd Financial upgradation (ACP-2) on completion of 17 years continuous and satisfactory service in the post of TES, Grade V(A) in the light of TSCS (RP) Rules, 2009. And, for the same reason as stated above the petitioners are not entitled to get the benefit of 3rd Financial upgradation (MACP-3) on completion of 25 years of

continuous and satisfactory service in the post of TES, Grade V(A) in the light of TSCS (RP) Rules, 2017 which came into force w.e.f. 01/04/2017 & was published on 11/07/2017 vide Finance Department's Notification No.F.7(2)-FIN(PC)/2017.

So, finally the State-respondents prayed for dismissal of the writ petition.

12. In course of hearing of argument, Learned Counsel for the petitioners in support of his submission in addition to the judgment referred in the writ petition also relied upon some more other judgments of this High Court passed in connection with case **No.WP(C) No.371 of 2014 dated 29.05.2015, W.A. No.191 of 2020 dated 12.01.2021, WP(C) No.194 of 2020 dated 03.05.2021, W.A. No.221 of 2021 dated 13.09.2021.** Relying upon those judgments of the High Court, Learned Counsel for the petitioners submitted that the case of the present petitioners is squarely covered by the principles of the said judgments. So, in view of the said citations, the present petitioners are also entitled to the same benefit in this case given in those cases.

13. In the case at hand, all the petitioners were moved to the post of Junior Engineer (Grade-I) from Junior Engineer(Grade-II) after completion of their 4(four) years of service with scale up-gradation in the year 1993 with the benefit of promotional scale along with revised pay scale of pay applicable at the relevant point of time as per ROP rules. Thereafter, the petitioner had completed 17 years of service without promotion and after that, they also completed 25 years of service without any promotion. As such, as per ROP rules of the State,

the petitioners would be entitled to the 2nd and 3rd ACP as they had served under the respondents for 25 years without any break-up but the 2nd and 3rd ACP were denied by the State-respondents on the pretext that the Finance Department, State of Tripura vide a memorandum dated F.6(1)-FIN(PC)/2008 dated 14.09.2009 had issued a clarificatory note which reads as under:

"7. Respondents stand is the clarification of the Finance Department issued vide Memorandum dated 14.09.2009 (Annexure-II of the counter affidavit) and both side referred Sl. No.10 of the said Memorandum, wherein the clarification has been given as under:

Sl. No.	Point on which clarification sought	Clarification
10.	It is noticed that in a few isolated cases in certain Departments an employee entered in the pay scale of Rs.3300-7100/- got promotion to the scale of Rs.4200-8650/-. Thereafter he got CAS benefit and moved to the scale of Rs.5000-10,300/-. After revision under TSCS(RP) Rules, 2009, and on completion of 25 years of service without further promotion, if he claims to get the benefit of 3 rd ACP for moving to the Grade Pay corresponding to pre-revised pay scale of Rs.5500-10,700/-, whether it is permissible.	The claim of 3 rd ACP in the instant case for moving to the Grade Pay against pre-revised scale of Rs.5500-10700/- is not admissible on the ground that while entering in the pre-revised pay scale of Rs.5000-10,300/-, he has consumed 3 scale upliftment i.e. Rs.4000-7890/-, Rs.4200-8650/-, Rs.5000-10300/-.

14. The State-respondents also took the plea that the petitioners availing so many intermediary pay scales had received the benefit of scale upgradation, which disentitled them to get the benefit of second and third ACP. In course of hearing of argument, Learned Counsel for the petitioners also relied upon Sub-rule-2 of Rule-10 of ROP Rules, which reads as under:

"10(2). While determining eligibility of the Government employees under this ACT, it should be considered how many times the concerned employee got the benefit of scale upgradation including promotion after his direct entry into the service in the State Govt. or, as the case

may be, after his direct entry into the cadre service of the State Govt. in which he is presently serving. Each case of promotion or scale upgradation availed by him after his direct entry into cadre where he is presently serving or, as the case may be, in the post/service of a Department will be treated as consumption of one ACT. This will mean that for those employees who entered the cadre service through promotion, the benefit of this promotion along with promotion/scale upgradation availed by him before entry into the cadre service will also be counted as consumption of ACP."

15. I have also perused the said rule. On bare perusal of Rule 10(2) of ROP rules, it is clear that consideration should be given as to how many times the concerned employee of a cadre got the benefit of scale upgradation including promotion after their direct entry into service and each case of promotion or scale upgradation availed by them shall be considered as one unit which means the scale upgradation with promotion has direct nexus with the granting of ACPs.

16. This High Court in **WP(C) No.371 of 2014** [titled as **Harisadhan Adhikari & Others v. The State of Tripura**] at the time of delivery of the said judgment interpreted the 'clarificatory note' issued by the Finance Department, Government of Tripura dated 14.09.2009 as follow:

"The above clarification issued by the Finance Department of the Government of Tripura cannot override the provisions of Rule 10(2) of the ROP Rules, 2009. Rule 10(2) has a force of law but the clarification as mentioned above in Annexure-II to the counter affidavit has no force of law. The clarification, therefore cannot take away the right of the petitioners which is prescribed by rules. Rule 10(2) clearly prescribes that one ACP or one promotion should be considered as one unit and because of one promotion the petitioners jumped one pay scale they cannot be said that they got the benefit of two scale upgradation and therefore they shall be deprived of the second ACP."

17. More so, a division bench of this High Court dealing with a similar issue in **W.A. No.191 of 2020** [titled as **The State of**

Tripura & others v. Sri Bipul Ranjan De and Others] further clarified the law in this regard as follows:

"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.

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 sub-rule (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 upgradation incidentally happened under one single promotion."

18. More so, in another judgment dated 13.09.2021 the Division Bench of this High Court dealing with a similar issue titled as **The State of Tripura & others v. Sri Akhil Dutta & others** relying upon the judgment of this High Court dated 12.01.2021 in case of **The State of Tripura v. Sri Bipul Ranjan De and others (supra)** also dismissed the appeal preferred by the State-respondents.

19. Here in the case at hand, on perusal of the relevant papers, it appears that the present petitioners, after the extension of pay scale of Junior Engineer (Electrical) (Grade-I) which is considered to be CAS-I consumed by the petitioners, they did not get any promotion in their entire service life. Even inspite of completion of their 17 years of service from the date of extension of the upgraded scale of Junior Engineer (Grade-I) and thereafter on completion of further 8 years of service, they were not extended the benefit of ACP-II and MACP-III as per ROP rules of 2009 in view of the clarificatory note 14.09.2009 of the Finance Department, Government of Tripura. Thus the clarificatory note as observed by this Court in the judgment as quoted above cannot come in the way of second and third MACP to the

petitioners as they were not promoted at any point of time and their scale upgradation in the intermediary scale cannot be said to be scale upgradation on promotion. The increased pay scale under revised pay structure cannot be equated to the scale upgradation on promotion in terms of the scheme of Rule 10(2) of ROP rules, 1999 and 2009.

More so, this Court already held that the clarificatory note dated 14.09.2009 of the Finance Department, Government of Tripura has no force in the eye of law.

20. Thus, in view of the settled proposition, I find no reason to treat the petitioner in different manner then those of the petitioners in the case of **Harisadhan Adhikari(supra)** and **Bipul Ranjan De(supra)** and **Akhil Dutta(supra)**. As such, I direct the State-respondents to grant the benefit of second ACP followed by MACP-III to the present petitioners for the reason that they have not promoted during their service period to the higher post within the period when they completed 17 years and 25 years of service.

21. It is further made clear that the respondents cannot take the plea of clarificatory note dated 14.09.2009 to deny the benefit of second ACP followed by MACP-III to the present petitioners. Accordingly, the relief claimed by the petitioners as stated hereinabove as mentioned in the writ petition stands allowed. The benefit of ACPs, as sought for hereinabove shall be paid to the petitioners within a period of 4(four) months from the date of receipt of copy of the judgment.

It is also further clarified that the State-respondents shall extend all other ancillary benefits including pensionary benefits as may be applicable to the petitioners, but without any arrears.

With the above observations, this writ petition stands disposed of.

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

JUDGE

