IN THE HIGH COURT OF TRIPURA
A G A R T A L A

W.P. (C) No.338 of 2011 &
W.P. (C) No.339 of 2011

In W.P. (C) No.338 of 2011

Petitioner:

Shri Sibendra Sarkar,
(Retd. Accountant, Scheduled Caste Welfare Directorate), son of late Kangali Sarkar, North Badharghat (Bapujipara), P.O. A.D. Nagar, Agartala, District – West Tripura, PIN-799003

By Advocate :

Mr. S.C. Das, Advocate.

– V e r s u s –

Respondent :

1. **The Union of India,**
   to be represented by the Accountant General (A & E), Tripura, Kunjaban, P.O. Kunjaban, Agartala, West Tripura, PIN – 799006

2. **The Accountant General (A & E),**
   Tripura, Kunjaban, P.O. Kunjaban, Agartala, West Tripura, PIN- 799006

3. **The Principal Secretary,**
   to the Government of Tripura, Finance Department, Civil Secretariat, New Capital Complex, Kunjaban, P.O. Kunjaban, West Tripura, Agartala, PIN- 799006

4. **The Principal Secretary,**
   to the Government of Tripura, Tribal Welfare Department, Civil Secretariat, New Capital Complex, Kunjaban, P.O. Kunjaban, West Tripura, Agartala, PIN- 799006

5. **The Director,**
   Tribal Welfare Department, Government of Tripura, Pandit Nehru

Complex, Kunjaban, P.O. Kunjaban, Agartala, West Tripura, PIN- 799006

6 **The Treasury Officer,**
Agartala, Treasury No.1, P.O. Agartala, West Tripura, PIN – 799001

By Advocate :

Mr. A. Roy Barman, C.G.C.
Mr. J. Majumder, Advocate

In W.P. (C) No.339 of 2011

Petitioner :

Smt. Mamata Debbarma (Chowdhury),
wife of late Bidyut Kumar Chowdhury, village- Ratannagar, P.O. Krishna Kishore Nagar, P.S. Bishalgarh, West Tripura, PIN - 799102

By Advocate :

Mr. S.C. Das, Advocate

– V e r s u s –

Respondent :

1. **The Union of India,**

2. **The Accountant General (A & E),**
Tripura, Kunjaban, P.O. Kunjaban, Agartala, West Tripura, PIN- 799006

3. **The Principal Secretary,**
to the Government of Tripura, Finance Department, Civil Secretariat, New Capital Complex, Kunjaban, P.O. Kunjaban, West Tripura, Agartala, PIN- 799006

4. **The Principal Secretary,**
to the Government of Tripura, Tribal Welfare Department, Civil Secretariat, New Capital Complex, Kunjaban, P.O. Kunjaban, West Tripura, Agartala, PIN- 799006

5. **The Director,**
Tribal Welfare Department, Government of Tripura, Pandit Nehru Complex, Kunjaban, P.O. Kunjaban, Agartala, West Tripura, PIN- 799006

6. **The Treasury Officer,**
Agartala, Treasury No.1, P.O. Agartala, West Tripura, PIN – 799001

By Advocate :

Mr. A. Roy Barman, C.G.C.
Mr. J. Majumder, Advocate

BEFORE
THE HON'BLE MR. JUSTICE S. TALAPATRA

Date of hearing	:	14.07.2015
Date of delivery of Judgment & Order	:	**28.07.2015**

Whether fit for reporting :

Yes	No
√	

JUDGMENT & ORDER

Despite some inconsequential variation in the fact, these writ petitions are taken up together for disposal by a common judgment as an identical question of law as to whether the stepping up as allowed to the writ petitioners can be recalled in terms of the Finance Department Memorandum No.F.19(1)-FIN(G)/83 dated 23.08.1986, Annexure-5 to the writ petitions, is the sheet-anchor.

[2] The facts are mostly admitted. In the grade of U.D. Clerks, the juniors of the petitioners namely, Sri Chittaranjan Das and Smt. Srabani Das started getting higher pay with effect from 07.08.1987 on which day the juniors were promoted to the post of U.D. Clerk. From Annexure-22 to the writ petitions which is a elaborate note of the Accounts Officer, Tribal Welfare Department it is unambiguously clear that those juniors were given two yearly increments for non-participation in the continuous strike from 19.03.1975 to 31.03.1975. As the petitioners had participated in the said continuous strike they were not allowed such advance increment. As a result, on 07.08.1987 the petitioners and their juniors were getting the pay in the manner as recorded hereunder:

Name of the petitioners and their juniors in the grade of UDC	Date of appointment in the grade of UDC	Pay on 07.08.1987 on which day the juniors were appointed to UDC
Lt. Bidyut Chowdhury [the original petitioner in W.P.(C) 338 of 2011]	14.03.1980	Rs.775/-
Sri Sibendra Sarkar [the petitioner in W.P.(C) 339 of 2011]	16.07.1981	Rs.775/-
Smt. Sarbani Das	07.08.1987	Rs.825/-
Sri Chittaranjan Das	07.08.1987	Rs.825/-

[3] It is also undisputed that Smt. Srabani Das and Sri Chittaranjan Das, juniors of the petitioners were granted two yearly increments at Rs.10/- in advance when they were in the grade of L.D.C., borne in the scale of Rs.240-440/- with effect from 23.03.1975 for non-participation in the said continuous strike. Even though the petitioners were seniors in the LDC, they did not receive such benefit as they participated in the continuous strike. As a result, when the juniors were promoted to the post of UDC much later they were getting the higher pay as reflected in the table above. To remove that disparity in the pay, the respondents stepped up the pay of the petitioners vis-à-vis the said juniors under FR 27 purportedly in terms of the memorandum No.F.19(1)-FIN(G)/83 dated 23.08.1986, Annexure-5 to the writ petitions. For reference, the said memorandum is reproduced hereunder:

MEMORANDUM

"Cases are being referred to the Finance Department for stepping up of pay where a senior Government servant who was promoted to a higher post prior to 01.01.1982 i.e. the date from which the State Government pay scales were revised draws less pay in the revised scale than his junior who was promoted subsequently to a higher identical post after 01.01.82.

2. The Governor has been pleased to decide that in order to remove the aforesaid anomaly the Government of India decision contained in the ministry of Finance Memorandum No.F.1(35)-E-111(A)/74 dated 18.07.1974 shall stand adopted by the State Govt. with effect from 1st January, 1982. Accordingly the pay of a Government servant in the revised scale in the higher post should be stepped up to a figure equal to the pay fixed for the junior Government servant in the identical higher post on his promotion on or after 01.01.1982. The stepping up should be done with effect from the date of promotion of the junior officer and should be subject to the following conditions:

(a) Both the senior and the junior officer should belong to the same cadre and the posts to which they have been promoted should be identical in the same cadre.

(b) The unrevised and the revised scales of pay of the lower and the higher posts to which they were entitled to draw pay should be identical; and

(c) The anomaly should be directly as result of the application of the provisions of F.R. 22C in the revised scale of pay. For example, if even in the lower post the junior Government servant was drawing more pay in the unrevised sale than the senior by virtue of fixation of pay under the normal rules or any advance

> **increment granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior Government servant.**
>
> **3. The orders revising the pay of the senior officer in accordance with the provisos of this decision should be issued under FR-27 and the next increment of the senior officer will be drawn on completion of the required qualifying service with effect from the date of such refixation of pay."**

[4] By another office memorandum under No.F.19(1)-FIN(G)/83 dated 07.10.1988, the Finance Department clarified that the memorandum dated 23.08.1987 shall continue to operate the field. Further by another memorandum No.F.19(1)-FIN(G)/83 dated 09.12.1988, Annexure -7 to the writ petitions, it has been clarified that without the concurrence of the Finance Department such stepping up can be done by the administrative department. But where the cases of stepping up are to be made under rules/orders other than the memorandum dated 23.08.1986, the prior concurrence of the Finance Department would be required. Both the petitioners pay thus made equal to the pay of their junior namely, Sri Chittaranjan Das. The petitioners were thus getting their pay till their retirement. The petitioner in writ petition W.P.(C) 338 of 2011 retired as Head Clerk whereas the petitioner in W.P.(C) No.339 of 2011 retired as the Accountant. After retirement, when their service papers were sent for regular pension to the office of the Accountant General (A & E), Tripura, from the office of the Accountant General (A & E) one senior Accounts Officer informed the Joint Director, Directorate of Welfare for Scheduled Tribe, where the petitioners were working that the stepping up of pay as done to the petitioners is not tenable since the entry scale of Sri Chittaranjan Das and his date of joining was not identical with other official to whom stepping up of pay has been done. According to the office of the Accountant General(A & E), the purported anomaly resulted in the pay for longer length of service of Sri Chittaranjan Das and as such no stepping up of pay is permissible under FR 27. For purpose of reference, the said letter is extracted hereunder:

> **With reference to subject cited above I am to state that the pay regulation in respect of both employees of Tribal Welfare Department, Government of Tripura may kindly be reviewed. Their pay have been stepped up with Shri Chitta Ranjan Das, Retd. UDC who is junior to them. The details of service in respect of above mentioned Government servants have been described as under:**
>
> > **(1) Shri Chitta Ranjan Das, Retd. UDC joined in Government service as Peon on 29.01.1954 and promoted as L.D. Clerk on 01.03.1973 and UDC on 07.08.1987.**
> >
> > **(2) Shri Bidyut Kr. Choudhury, Retd. Head Clerk joined in service as Peon on 07.09.1970 and promoted as L.D. Clerk on 18.02.1971 and UDC on 14.03.1980.**
> >
> > **(3) Shri Sibendra Sarkar, Retd. Accountant joined in service on L.D. Clerk as on 29.01.1973 and promoted as UDC on 16.07.1981.**
>
> **The pay of Shri Bidyut Kr. Choudhury and Shri Sibendra Sarkar has been stepped up with Shri Chitta Ranjan Das, UDC on 07.08.1987 saying that Shri Chitta Ranjan Das is junior to them. In fact due to larger period of service, pay of Shri Chitta Ranjan Das was more and in this case step up of pay as was done by the Tribal Welfare Department is not corrected as per provision of FRs. Accordingly the matter was referred to the Tribal Welfare Department vide this office letter No.Pen-2/PR 239 and**

> **128/2004-05/596-98 dated 16.05.2005 (copy enclosed).**
> **In this connection reply furnished to this office vide letter No.7208-10/F.I-477/TW/Estt/Vol. II/92 dated 01.07.2005 (copy enclosed) by the Joint Director, Government of Tripura, Agartala may please be referred to.**
>
> **As narrated above, the Service Book of Shri Bidyut Kumar Choudhury, Retd. Head Clerk and Shri Sibendra Sarkar, Retd. Accountant and copies of orders for stepping up of pay of those officials vide No.F.I-454(L)/TW/Estt/(A)/17581-90 dated 26.05.1989 and F.I-454(L)/TW/Estt/(A)/28707-717 dated 30.09.1989 are enclosed herewith for kind perusal.**
>
> **It may be mentioned here that considering the hardship of the pensioner, pension and commutation in both the cases have been released on the basis of pay as arrived at on their date of retirement without taking into account the benefit of stepping up of pay pending DCRG.**
>
> **In view of the above, it is requested to examine the case of the stepping up of pay and furnish the Government decision in this regard early so as to enable this office to finalise the pension case.**

[5] The said Joint Director reverted the correspondence by stating that such stepping up has been granted in view of the office memorandum dated 23.08.1988 as the petitioners being the senior was getting less amount of pay in the grade of UDC. He requested to re-examine the matter. The said letter dated 01.07.2005 is available at Annexure-14 of the writ petitions. The senior Accounts Officer by another letter dated 03.03.2008 having reference to the letter dated 30.03.2007 has reiterated that the petitioners cannot be given stepping up of pay. Later on, by the letter No.Pen-2/PR 28/2004/05 addressed to the Secretary, Government of Tripura, Finance Department, Annexure-16 to the writ petitions, from the Office of the Accountant General (A & E) it has been pointed out that Chittaranjan Das joined in the Government service as peon on 29.01.1954 and promoted as LDC on 01.03.1973 and as UDC on 07.08.1987 whereas Bidyut Kumar Chowdhury, since deceased represented by his wife, the substituted petitioner in W.P.(C) No.339 of 2011 joined in the service as peon on 07.09.1970 and promoted as LDC on 18.02.1971 and as UDC on 14.03.1980 and Sri Sibendra Sarkar entered in the service as LDC on 29.01.1973 and promoted as UDC on 16.07.1981. According to the Accountant General (A & E) due to the longer period of service, Chittaranjan Das received more pay and as such, by application of FR 27 there cannot be any stepping up. On the basis of such determination, the pension and other retiral benefits were determined by the Accountant General (A & E) with a direction to recover a sum of Rs.1,31,620/- as overdrawn by Bidyut Kr. Chowdhury, the original petitioner in W.P.(C) 339 of 2011 and a sum of Rs.1,52,909/- from Sri Sibendra Sarkar, the petitioner in W.P.(C) No.338 of 2011, as would be evident form Annexure-17 to the writ petitioners. The petitioners raised their serious objection by a notice dated 15.06.2011, Annexure-19 to the writ petition being W.P.(C) No.339 of 2011, demanding that the last pay certificate, Annexure-10 to the writ petitions, be recalled and their pension and other retiral benefits be decided on the last pay they had drawn as consequence of the stepping up. In reply to the said notice, from the office of the Accountant General (A & E), Tripura by the communication dated 15.06.2011, Annexure-19 to the writ petition being W.P.(C) No.339 of 2011, it was apprised that the Finance Department agreed with their observation and the last pay had been refixed without giving effect of stepping up. The due-drawn statement in respect of the petitioners was as well prepared. It is true that the Finance Department by their communication dated 29.12.2006, Annexure-20 to the writ petition being W.P.(C) No.339 of 2011, had agreed that the stepping up was not in order as per prevailing rules/order. Hence, the observation made by the office of the Accountant General (A & E) was correct. Even by a separate communication dated 29.06.2011, Annenxure-21 to the writ petition being W.P.(C) No.339 of 2011, made to the Advocate of the petitioners who served the notice on their behalf, the State-respondents resonated the voice of the Accountant General (A & E) in the following manner:

> **As per observation of the AG, Tripura communicated vide letter No.Pen-2/PR-163/2004-05/596-98 dt. 25.05.2005 (Annexure-6 to the Demand-notice) it appears that the stepping up of pay as was done by the Tribal Welfare Department vide No.22420-516/F.1-72(E)/TW/ESTT/83 dt. 26.12.1983 is not correct since entry scale of Shri Chitta Ranjan Das, Retd. UDC and date of joining was not identical with other official to whom stepping up of pay has been done, the anomaly arose due to larger length of service by Shri Chitta Ranjan Das under which no stepping up of pay is admissible under F.R. 27 Govt. of India decision there under. It has also been informed by the AG, Tripura vide memo. No. Pen-2/PR-28/2004 -05/3755-56 dt. 03.03.2008 (Annexure-8 of the demand notice) that the pension case in respect of Shri Bidyut Kr. Choudhury, Retd.**

> **Head Clerk and pension case in respect of Shri Sibendra Sarkar, Retd. Acctt. have been finalized with holding GPO for wrong fixation of pay. Pay of both the pensioners have been stepped up wrongly with Chitta Ranjan Das, Retd. UDC. In view of the decision of the Finance Department which intimated that in both the cases there will be no stepping up of pay. However, as regards their pension case of Shri Sashi Kanti Deb Roy, Retd. Head Clerk it may be stated that if the Department formally lodge complain against the case the same may be reviewed/re-checked at this end.**

[6] It has been also mentioned that the fixation of pensions /DCRGs etc. are subject to the review or finalisation of the office of the Accountant General (A & E). Thus, the petitioners have challenged the decision of the respondents by filing this writ petitions.

[7] The respondents No.1 and 2 by filing a counter affidavit separately just reiterated what they had stated in reply to the notice of the petitioners. The respondents No. 3 to 6 by filing a separate counter affidavit have supported the decision of the Accountant General (A & E), Tripura contending that Chittaranjan Das had entered in the service as Peon on 29.01.1954 and was promoted as LDC on 01.03.1973 and UDC on 07.08.1987 whereas Bidyut Kumar Choudhury entered in the service as Peon on 07.09.1970 and promoted as LDC on 18.02.1971 and promoted as UDC on 14.03.1980. Their reply in W.P.(C) 339 of 2011 has stated that Sibendra Sarkar had entered in the service as LDC on 29.01.1973 and was promoted as UDC on 16.07.1981. Thus, the stepping up was not in order as the said stepping was not covered by the provisions of FR 27 in view of the memorandum dated 23.08.1986.

[8] In reply to the counter affidavits, both the petitioners filed the rejoinder to reveal the background of the stepping up. With their rejoinder both the petitioners have placed the Note No.25 of the Accounts Officer of the Tribal Welfare Department. Based on the said note, the stepping up was granted to the petitioners. According to the said note, the anomalous situation in pay between the senior and the junior officers emerged for release of two advance increments to the junior officers for non-participation in the continuous strike.

[9] Mr. S.C. Das, learned counsel appearing for the petitioners has submitted that the respondents introduced a version which does not get any support from the records. It would be apparent from the records that only for the said advance increments released in favour of the junior officers, such anomaly arose. Mr. Das, learned counsel has submitted that the stepping up was correctly done. By way of review what the Accountant General (A & E), Tripura has done suffers from non-appreciation of the records else there would have been reference to the base-note, on which the stepping up was allowed in favour of the petitioners.

[10] Mr. J. Majumder, learned counsel appearing for the respondents No.3 to 6 has produced the service records of the petitioners and Sri Chittaranjan Das in terms of the order dated 23.06.2015. From the records, it is apparent that the pay of Chittaranjan Das was fixed at Rs.825/- w.e.f. 07.08.1987. It is true that Chittaranjan Das entered in the service of the respondents on 29.01.1954 as Peon. He was promoted as the LDC on 01.03.1973 in the scale of pay of Rs.125-3-140-4-156/- and on 01.03.1974 his pay was Rs.128/- in the scale of pay of Rs.125-156/- and the total emolument was Rs.302/- inclusive of the DA, interim reliefs and 5% of the basic as provided by the Tripura Government Service (Revised Pay) Rules, 1975. As such the statement that the juniors were getting higher pay scale in the LDC cannot be sustained. On 01.03.1973 the existing emoluments of Sibendra Sarkar was also Rs.128/-. As per the IPS, a total emolument of his was Rs.291.50/-. Similarly, the existing pay of Bidyut Kumar Chowdhury on 01.03.1973 was Rs.131/- and the total emolument was Rs.304.50/-. It is further evident in terms of the IPS that for the Tripura Government Services (Revised Pay) Rules, 1975 Chittaranjan was receiving the lesser existing pay on 01.03.1974. Thus, the contention of the respondents does not find any support from the records. It further appears that for release of two advance increments for non-participation in the continuous strike, at one point of time, the junior officers started getting higher pay in the grade of LDC. When the junior officers were promoted to the post of UDC, they carried higher pay and the petitioners continued to suffer the pay disparity. For removal of that disparity, the stepping up was proposed and that was accepted by the competent authority and the petitioners were drawing equal pay to the junior officers throughout their service in the grade of UDC.

[11] Two pertinent questions that arise for consideration of the Court in the circumstances are:

> **(i) Whether the Finance Department Memorandum dated 23.08.1986 would cover such situation for granting stepping up under FR 27? And**
>
> **(ii) Whether the special pay as granted to the junior officers in the grade of LDC would disentitled the petitioners from getting at least equal pay in the grade of UDC?**

[12] From a bare reading of the memorandum dated 23.08.1986, it appears that in order to remove the anomaly it has been decided that the pay of the Government servants in the revised scale in the higher post should be stepped up to a figure, equal to the pay of the junior Government servants in the identical higher post on his promotion on or after 01.01.1982. The stepping up was proposed to be done with effect from the date of promotion of the junior officers and should be subject to that (a) both the senior and junior officers should belong to the same cadre and the post to which they have been promoted should be identical in the same cadre, (b) the unrevised and the revised pay scale of pay of the lower and higher post to which they were entitled to draw pay should be identical and (c) the anomaly should be directly as a result of the application of the provisions of FR 22 (C) in the revised scale of pay. One example has been cited for clarifying the matter that if even in the lower post, the junior Government servant was drawing more pay in the unrevised scale than the senior by virtue of fixation of pay under the normal rules or for any advance increments granted to him, the provisions contained in this decision need not be invoked to step up the pay of the senior government servants. By virtue of this clarification, it has to be observed by the court that the memorandum dated 23.08.1986 should not have been applied for stepping up of the petitioners as the junior officers were given two advance increments for their non-participation in the continuous strike.

[13] Admittedly, the petitioners have been promoted to the grade of UDC much earlier. In **Union of India and others vs. P. Jagdish and others,** reported in **(1997) 3 SCC 176**, the apex court while examining the principles of stepping up has observed as under:

> **"Under the provisions of fundamental Rules to remove the anomaly of a Government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than another Government servant junior to him in the lower grade promoted or appointed subsequently to the higher post, the principle of stepping up of the pay is applied. <u>In such cases the pay of the senior officer in the higher post is required to be stepped up to a figure equal to the pay as fixed for the junior officer in that higher post. The stepping up is required to be done with effect from the date of promotion or appointment of the junior officer</u>. On refixation of the pay of the senior officer by applying the principle of stepping up the next increment of the said officer would be drawn on completion of the requisite qualifying**

> **service with effect from the date of the refixation of pay. <u>This principle becomes applicable when the junior officer and the senior officer belong to the same category and the post from which they have been promoted and in the promoted cadre the junior officer on being promoted later than the senior officer gets a higher pay</u>. His being the principle of stepping up contained in the Fundamental Rules and admittedly the respondents being seniors to several other Senior Clerks and the respondents having been promoted earlier than many of their juniors who were promoted later to the post of Head Clerks, the principle of stepping up should be made applicable to the respondents with effect from the date their juniors in the erstwhile cadre of Senior Clerks get promoted to the cadre of Head Clerks and their pay was fixed at a higher slab than that of the respondent. <u>The stepping up should be done in such a way that the anomaly in juniors getting higher salary than the senior in the promoted category of Head Clerk would be removed and the pay of the seniors like the respondents would be stepped up to a figure equal to the pay as fixed for their junior officer in the higher post of Head Clerk</u>. In fact the Tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarifications. <u>This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of consequential benefit of the difference of salary would not be correct for the reason that the respondents had not worked in the posts to which 35% special pay was attached in the lower cadre</u>."**
>
> **[Emphasis supplied]**

Under the provisions of fundamental rules, to remove the anomaly of a government servant promoted or appointed to a higher post earlier drawing a lower rate of pay in that post than that another government servant, junior to him, in that grade having promoted and appointed subsequently to the higher post, the principle of stepping up is applicable. In such cases, the pay of the senior officers in the higher post is required to be stepped to a figure equal to the pay as fixed for the junior officers in that higher post even if the junior officer enjoyed the special pay in the grade below and his higher pay has been fixed for the pay he was drawing in the grade below. The stepping up is required with the pay of the junior officers on the principle of equal pay for equal work. On refixation of the pay of the senior officer by applying the principles of stepping up, the next increment of the said officer would be drawn on completion of the requisite qualifying service with effect from the date of the refixation of pay. This principle becomes applicable when the junior officer and the senior officer belong to the same category of the post from which they have been promoted and in the promoted post, the junior officer on being promoted later than the senior officer, gets the higher pay. This being the principle of stepping up in the fundamental rules and admittedly the petitioners are senior both in the cadre of LDC and UDC and they got their promotion much earlier than the junior officers, but had been receiving the less pay, the principle of stepping up should be made applicable to figure out the equal pay from the date when their junior officers got promoted to the cadre of UDC and their pay was fixed at a higher rate, than that of the petitioners. The stepping up should be made in such a way that the said anomaly is removed and the pay of the senior officers/ seniors are stepped up to a figure equal to the pay as fixed for their junior officers in the higher post of UD Clerk. In **Union of India and others vs. P. Jagdish and others,** it has been further observed that:

> **<u>"In fact the tribunal by the impugned order has directed to apply the principle of stepping up and we see no infirmity with the same direction subject to the aforesaid clarification. This principle of stepping up which we have upheld would prevent violation of equal pay for equal work but grant of </u>consequential<u> benefit of difference of salary would not be correct for the reason that the respondent had not work in the post to which 35% (sic) Rs.35 as special pay was attached in the lower cadre</u>.'**

In these writ petitions, no relief has been sought for release of two increments in favour of the petitioners.

[14] In **Union of India and others vs. P. Jagdish**, the anomaly occurred in the pay of the senior and the junior in the promotion post for the reason that the juniors were entitled to special pay for their longer service in the grade below. As consequence of that, their pay was higher. But even then, the apex court had enunciated the law that that by itself would not create a bar for stepping up of the pay of the seniors to the equal to that of the juniors. In the considered opinion of this Court that the office of the Accountant General (A & E), Tripura has miserably failed to attend to the relevant records and arrived at a decision de hors the records. Notwithstanding that, the stepping up should not have been made in view of the memorandum dated 23.08.1986. But the petitioners cannot be deprived of the stepping up to the pay equal to that which the said junior officers received on 07.08.1987, the day of their promotion to the grade of UDC and hence, the impugned decision of the Accountant General (A & E) Tripura, the respondent No.2 is interfered with. Hence, the petitioners are

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entitled to have their pension and other retiral benefits on the last pay which they had drawn as consequence of the stepping up.

[15] In view of the observation made hereinabove, it is further directed that the Pension Payment Order (P.P.O) as prepared by the respondent No.2 shall stands quashed. The respondent No.2 shall prepare the fresh Pension Payment Order (P.P.O) and pass all necessary consequential orders by releasing all retiral benefits or the difference of the retiral benefits within a period of three months from today. It is further made clear that the amount that has not been released in order to adjust the amount stated to have been drawn in excess as consequence of cancellation of the stepping up shall also be released within the said period. It is obvious that the order of recovery has become inconsequential and for averting any confusion, the same is quashed.

[16] In the result, the writ petitions are allowed. However, there shall be no order as to costs.

JUDGE

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