

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) NO.371 OF 2014

1. Shri Harisadhan Adhikari,
Assistant Engineer,

2. Shri Subhas Chandra Datta,
Assistant Engineer,

3. Shri Paramanik Jamatia,
Assistant Engineer,

4. Shri Swapan Bikash Kar,
Assistant Engineer,

5. Shri Pranay Kumar Das,
Assistant Engineer,

6. Shri Ratan Chowdhury,
Assistant Engineer,

7. Shri Biswajit Debbarma,
Assistant Engineer,

8. Shri Kamal Kumar Nath,
Assistant Engineer,

9. Shri Subhra Nandi,
Assistant Engineer,

10. Shri Sanjay Paul,
Assistant Engineer,

11. Shri Pannalal Chakraborty,
Assistant Engineer,

12. Shri Nidhir Chandra Ghosh,
Assistant Engineer,

13. Anjan Kumar Das,
Assistant Engineer,

14. Shri Pranab Saha,
Assistant Engineer,

15. Shri Indrajit Paul,
Assistant Engineer,

16. Shri Jayanta Kumar Purakayastha,
Assistant Engineer,

17. Shri Sujit Debnath,
Assistant Engineer,

18. Shri Biswajit Datta,
Assistant Engineer,

19. Shri Nilikanta Chakma,
Assistant Engineer,

20. Shri Khokan Chandra Das,
Assistant Engineer,

21. Shri Anup Kumar Das,
Assistant Engineer,

22. Shri Rajib Majumder,
Assistant Engineer,

23. Shri Manoranjan Debbarma,
Assistant Engineer,

24. Shri Shyamal Kumar Das,
Assistant Engineer,

25. Shri Sudhan Debbarma,
Assistant Engineer,

26. Shri Shambhu Debbarma,
Assistant Engineer,

27. Smti Tandra Debbarma,
Assistant Engineer,

28. Shri Saumit Das,
Assistant Engineer,

29. Smti Sumana Gan Choudhuri,
Assistant Engineer,

30. Shri Dilip Das,
Assistant Engineer,

31. Shri Suranjan Das,
Assistant Engineer,

32. Shri Sukhen Sarkar,
Assistant Engineer,

33. Shri Subir Das,
Assistant Engineer,

34. Shri Dhanu Majumder,
Assistant Engineer,

35. Shri Surjya Kumar Debbarma,
Assistant Engineer,

36. Shri Dilip Kumar Roy,
Assistant Engineer,

37. Smti Mausumi Purkayastha,
Assistant Engineer,

38. Shri Apan Bhowmik,
Assistant Engineer,

39. Shri Sujit Kumar Das,
Assistant Engineer.

All employed in Public Works Department,
Government of Tripura.

..... *Petitioners*

- *Vs* -

1. The State of Tripura,
Represented by the
Additional Chief Secretary to the
Government of Tripura,
In-charge, PWD,
New Capital Complex,
P.O. Kunjaban,
Agartala, West Tripura.

2. The Secretary to the
Government of Tripura,
Finance Department,
New Capital Complex,
P.O. Kunjaban,
Agartala, West Tripura.

3. The Engineer-in-Chief,
Public Works Department,
Government of Tripura,
New Capital Complex,
P.O. Kunjaban,
Agartala, West Tripura.

..... *Respondents*

BEFORE
THE HON'BLE MR. JUSTICE S.C. DAS

For the petitioners : Mr. D.K. Biswas, Advocate

For the respondents : Mr. S. Chakraborty, Addl. G.A.

Date of hearing : **29.04.2015.**

Date of delivery
of Judgment & order : **29.05.2015.**

Whether Fit for Reporting :

Yes	No
	✓

JUDGMENT & ORDER

By filing this writ petition, the petitioners prayed for issuing a writ of mandamus directing the respondents to allow them second ACP benefit in the pre-revised scale of ₹11,000-18,000/- *i.e.* Scale No.17 of Revision of Pay Rules, 2009(for short, ROP Rules, 2009) corresponding to revisional pay of ₹13,575-37,000/- in Pay Band-4 as per pay Scale No.17 of Part-D of the ROP Rules, 2009.

2. Heard learned counsel, Mr. D.K. Biswas for the petitioners and learned Addl. G.A., Mr. S. Chakraborty for the State respondents.

3. All the thirty nine petitioners entered in the service as Junior Engineers under the Public Works Department of the Government of Tripura and now they are working as Assistant Engineers on their promotion from the post of Junior Engineer.

It is the case of the petitioners that as per Rule 10(1) of the ROP Rules, 2009 the petitioners were entitled to the benefit of first Assured Career Progression Scheme (for short, ACP) on their completion of ten years of service under regular scale and thereafter second ACP after seven years of service (total seventeen years of service) and third ACP after eight years of service (total twenty five years of service) in their service career. During first ten years of service they got one promotion from the post of Junior Engineer to Assistant Engineer and so they already got scale upgradation by dint of promotion and therefore were not entitled to first ACP since one ACP is exhausted or consumed by dint of promotion. On their completion of total seventeen years of service they claimed for second ACP as per Rule 10(1) of ROP Rules, 2009 but the Finance Department issuing a clarification dated 14.09.2009 refused to grant second ACP to the petitioners and hence the petitioners filed the writ petition seeking direction to the respondents to grant them second ACP in terms of Rule 10(1) of ROP Rules, 2009.

4. The respondents contended that Finance Department of the Government of Tripura vide Memorandum dated 14.09.2009(*Annexure-II* to the counter affidavit) issued clarification giving several instances in respect of implementation of ACP and in Sl. No.10 has clarified the position which makes it clear that the petitioners in view of their promotion from Junior Engineer to Assistant Engineer already consumed two scale upgradation and

therefore they were not entitled to second ACP on their completion of seventeen years of service.

It is contended by the respondents that the petitioners were in the pay scale of ₹7,450-13,000/- in Pay Band-3 and when they were promoted they got the pre-revised scale of ₹10,000-15,100/- in Pay Band-4 and there is another scale in the middle *i.e.* Scale No.14 and since after promotion they jumped to Scale No.15 from Scale No.13, they have enjoyed two scale up-gradation and therefore not entitled to second ACP.

5. Part-D of the ROP Rules, 2009 has been annexed by the petitioners as *Annexure-3* and the respondents as *Annexure-I*. It prescribes twenty one Pay Scales. Pay Scale Nos.13 to 17 are relevant here for decision of this writ petition which is reproduced as under:

PART-D

Correspondence between the existing scales and the revised scales

Existing Pay Structure			Revised pay Structure		
Pre-Revised Pay Scale No.	Posts/Services	Existing Pay Scales(Rs.)	Name of Pay Band	Pay Band Scale	Grade Pay
(1)	(2)	(3)	(4)	(5)	(6)
13	All	7450-225-	PB-3	Rs.9750-	Rs.3500

	posts/Services carrying existing scales shown in column(3)	11500-250-13000		30000	
14	-do-	7800-275-10000-300-15100	PB-4	Rs.13575-37000	Rs.3700
15	-do-	10000-300-15100	PB-4	Rs.13575-37000	Rs.4500
16	-do-	10650-325-15850	PB-4	Rs.13575-37000	Rs.4800
17	-do-	11000-350-18000	PB-4	Rs.13575-37000	Rs.5000

6. It is an admitted position that the petitioners were appointed as Junior Engineer in the pre-revised scale of ₹7450-13,000/- *i.e.* Scale No.13. On their promotion from the post of Junior Engineer to Assistant Engineer they were given Scale No.15 *i.e.* pre-revised scale of ₹10,000-15,100/-. According to the petitioners, as per Rule 10(1) of the ROP Rules, 2009 they got only one promotion and thereby consumed the benefit of one ACP. When they completed seventeen years of service they are entitled to second ACP *i.e.* Scale No.17 *i.e.* pre-revised scale of ₹11,000-18,000/-.

6.1. It is the claim of the petitioners that Sub-Rule (2) of Rule 10 makes it clear that one promotion would mean the consumption of one ACP whereas the respondents contended that since after

promotion the petitioners jumped pay Scale No.14 and got the benefit of Scale No.15, they have already enjoyed two scale upgradation and therefore not entitled to second ACP.

6.2. Sub-rule (2) of Rule 10 is very relevant here to consider the rival contention. Rule 10(2) reads as follows:

"10(2) While determining eligibility of the Government employees under this ACP, 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 ACP. 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."

6.3. The above provision of the Rules makes it abundantly clear that consideration should be given as to how many times the concerned employee got the benefit of scale upgradation including promotion after their direct entry in the service and each case of promotion or scale upgradation availed by him shall be considered as one unit.

6.4. Scale Nos.13, 15 and 17 are meant for the Tripura Engineering Service. Scale Nos.14 and 16 are not for Tripura Engineers Service and so when a member of Tripura Engineering Service gets a promotion he cannot be given Scale Nos.14 and 16.

6.5. Let us give here an example. The petitioners while got promotion from the post of Junior Engineer to Assistant Engineer during the period of first ten years of service they consumed one ACP and therefore were not entitled to the first ACP. Suppose, during the next seven years, *i.e.* total seventeen years, they get second promotion in usual course they would be definitely entitled to pay Scale No.17 and they cannot be placed in pay Scale No.16. In case, they get promotion they would not be entitled to second ACP. Therefore, the intermediate pay scales prescribed in Part-D of the ROP Rules is of no consequence for consideration while considering the grant of ACP to the petitioners.

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:

<i>Sl. No.</i>	<i>Point on which clarification sought</i>	<i>Clarification</i>
<i>10</i>	<i>It is noticed that in a few isolated cases in certain Departments an employee entered in the pay scale of</i>	<i>The claim of 3rd ACP in the instant case for moving to Grade</i>

	<i>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 3rd ACP for moving to the Grade Pay corresponding to pre-revised pay scale of Rs.5500-10,700/-, whether it is permissible.</i>	<i>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/-.</i>
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7.1. 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.

8. The respondents in para 13 of their counter affidavit contended that as per the clarification the ROP Rules was supposed to be amended but there is nothing before us that Sub-Rule(2) of Rule 10 has been amended and since the rule stands good and

valid, the petitioners are entitled to the benefits as prescribes by rules.

9. In view of the discussions made above the writ petition is allowed. Respondents are directed to grant second ACP to the petitioners on their completion of total seventeen years of service and they shall be given the pay Scale No.17 *i.e.* pre-revised scale of ₹11,000-18,000/- in Pay Band-4, *i.e.* the revised scale of ₹13,575-37,000/-.

10. With the above observations and direction the writ petition stands disposed of.

JUDGE