HIGH COURT OF TRIPURA
AGARTALA

W.P.(C) No.223 of 2018

Sri Sudhangshu Bhattacharjee,
son of late Dhirendra Chandra Bhattacharjee, resident of Old Agartala, P.O. Old Agartala, P.S. Bodhjungnagar, Agartala, West Tripura, PIN-799008

-----Petitioner

Versus

1. **The State of Tripura,**
to be represented by the Principal Secretary, Department of Revenue, Government of Tripura, Secretariat Complex, P.O. Secretariat Complex, P.S. New Capital Complex, Agartala, West Tripura, PIN-799010

2. **The Secretary,**
Department of Finance, Government of Tripura, Secretariat Complex, P.O. Secretariat Complex, P.S. New Capital Complex, Agartala, West Tripura, PIN-799010

3. **The District Magistrate & Collector,**
Government of Tripura, West Tripura, Agartala

4. **The Sub-Divisional Magistrate,**
Office of the SDM, Jirania, Government of Tripura, West Tripura

----Respondents

For Petitioner (s)	:	Mr. S. Bhattacharjee, Adv.
For Respondent (s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing and delivery of Judgment & Order	:	**04.02.2020**
Whether fit for reporting	:	Yes: ; No: √

HON'BLE MR. JUSTICE S. TALAPATRA

JUDGMENT & ORDER [ORAL]

Heard Mr. S. Bhattacharjee, learned counsel appearing for the petitioner as well as Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

[2] The controversy as projected in this writ petition falls within a short compass. The admitted fact is that the petitioner was appointed to the post of Mate w.e.f. 01.10.1992 by virtue of the order under No.F.1(1)/DM/W/ESTT/6508-25/89 dated 22.12.1992 [Annexure-1 to the writ petition]. Thereafter, the petitioner was promoted to the post of LDC by the order under No.DM(D)/ESTT/7(3)/5527-34 dated 01.07.1998 [Annexure-2 to the writ petition]. The petitioner was allowed ACP-2 w.e.f. 01.10.2009 by granting the benefit of Grade Pay of Rs.2000/- in terms of Rule 10 of the Tripura State Civil Services [Revised Pay] Rules, 2009. But the said benefit as provided by the order dated 02.02.2010 [Annexure-4 to the writ petition] was recalled by the order under No.F.1(9)-DM/W/ACCTTS/2009/5729-32 dated 27.12.2010 [Annexure-6 to the writ petition]. The said order dated 27.12.2010 has also been challenged by the petitioner.

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[3] Mr. Bhattacharjee, learned counsel appearing for the petitioner has submitted that even the office of the Accountant General [A&E], Tripura has found that the petitioner was entitled to CAS-1 on 04.07.2005 instead of 04.07.2008. Mr. Bhattacharjee, learned counsel has, therefore, submitted that the step taken by the respondents for recovery of the amount from the petitioner in consequence of the order of cancellation of ACP-2 is also under challenge.

[4] The respondents by filing the reply have stated that the petitioner is not entitled to get the said benefit as per rules and there is no wrong in cancelling the said benefit by the order dated 02.02.2010. Mr. Debbarma, learned Addl. G.A. appearing for the respondents has submitted that the petitioner was substantively appointed on 01.10.1992 and in terms of Rule 10, laying down the Career Advancement Scheme [CAS] he was supposed to be get the scale advancement, under CAS w.e.f. 01.10.2003 on completing of 10 years of service without promotion. In terms of the Rule 10(a) of the ROP Rules, 1999 the petitioner was not entitled to get the scale advancement as he was promoted to the post of LDC on 01.07.1998. It has been clearly illustrated in the proviso below Rule 10(e) that if an LDC is promoted to UDC before 10 years of service he will not get advancement at the end of 10 years of service under the scheme. However, he will be eligible to get one advancement at the end of 7 years of service in the post of UDC, in case he does not get further promotion by that time. Therefore, the petitioner was entitled to the first scale advancement we.f. 01.10.2009. For this purpose, this court would like to refer the provisions of the ROP Rules 10(1) which provides inter alias as under:

> **"10 (1) Under the new scheme (A.C.P), all Government employees in the PB-1, PB-2 & PB-3 shall be entitled to get a maximum of three financial up gradations, the first after 10 years of service under regular scale , 2nd after another 7 years of service (total 17 years) and 3rd after further 8 years of service(total 25 years) in their service career provided the concerned employee had not got up to three numbers of benefits of scale up gradations including promotions already. In case of PB-4, the employees borne under Grade Pay Rs.3700/- (against prerevised scale of Rs.7800-15,100/-), under Grade Pay Rs. 4500/- (against pre-revised scale of Rs.10,000-15,100/) and Grade Pay Rs. 4800/- (against pre-revised scale of Rs.10,650-15,850/-) would be entitled to get 3, 2 and 1 financial up gradations respectively under the**

scheme provided the concerned employee had not got scale upgradation including promotion up to 3,2 & 1 respectively already."

It has been provided that while determining eligibility of the Government employees under 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 under 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 in the cadre service through promotion, the benefit of the promotion along with promotion/scale upgradation availed by him before entry into the cadre service will also be counted as consumption of ACP.

[5] The first scale advancement of the petitioner was due on 01.10.2009. The respondents, by correcting earlier mistake, have given the petitioner ACP-2 w.e.f. 01.10.2009. But, as stated already, the petitioner was wrongly given ACP-2 w.e.f. 01.10.2009. The order by which the said up-gradation was directed has been cancelled by the order dated 27.12.2012 [Annexure-6 to the writ petition]. Considering the fact that the petitioner cannot be made responsible in any way for that wrongful scale up-gradation and the petitioner's status as

Group-C employee, the excess amount that has been consumed by the petitioner shall not be recovered from the petitioner. If the said amount has been recovered from the petitioner, the respondents shall refund the said amount to the petitioner.

The requisite order be passed and the pension payment order also be corrected, if required, within a period of 6 months from today.

The writ petition stands allowed and disposed of to the extent as indicated above.

The service book of the petitioner as produced by Mr. Debbarma, learned Addl. G.A. is returned after inspection.

There shall be no order as to costs.

JUDGE

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Sujay