

HIGH COURT OF TRIPURA

A G A R T A L A

WP(C) No.332 of 2019

Sri Subhas Chandra Barman @ Sri Subhas roy Chowdhury, son of Sri Amulya Roy Chowdhury, Regt. No.98050515, resident of HQR, 2nd Battalion, TSR, village – R.K. Nagar, PO- Khas Noagaon, PS- Bodhjungnagar, District- West Tripura.

.....Petitioner(s)

Versus

1. The State of Tripura, represented by the Secretary & Commissioner, Department of Finance, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.
2. The Secretary & Commissioner, Department of Finance, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.
3. The Commissioner & Secretary, Department of Home, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.
4. The Under Secretary, Home Department, Government of Tripura, having his office at New Secretariat Complex, Gorkhabasti, Agartala, PO- Kunjaban, PS- New Capital Complex, Sub-Division- Sadar, District- West Tripura.
5. The Director General of Police, Government of Tripura, having his office at Police Head Quarters, PO- Agartala, PS- West Agartala, Sub-Division- Agartala, West Tripura.
6. The Assistant Inspector General of Police (Esstt.), Government of Tripura, having his office at Police Head Quarters, PO- Agartala, PS- West Agartala, Sub-Division- Agartala, West Tripura.

.....Official Respondent(s)

7. Sri Rabiya Debbarma, son of Subindra Debbarma, Regt. No.98050529, resident of HQR, 2nd Battalion, TSR, village – R.K. Nagar, PO- Khas Noagaon, PS- Bodhjungnagar, District- West Tripura, Pin-799008.

.....Pro-forma Respondent(s)

B E F O R E

HON'BLE THE CHIEF JUSTICE MR. AKIL KURESHI

For Petitioner(s) : Mr. Somik Deb, Sr. Advocate,
Mrs. Riya Chakraborty, Advocate,

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

Date of Judgment & Order : 24th September, 2021.

Whether fit for reporting : NO.

JUDGMENT & ORDER (ORAL)

The petitioner has challenged a communication dated 20th August, 2018 as at Annexure-11 to the petition and further prayed that his pay may be upgraded at par with the respondent No.7 who happens to be his junior.

[2] Brief facts are that the petitioner joined the duty in Tripura State Rifles as a Rifleman (GD) on 02.11.1998. As against this, respondent No.7 who is admittedly his junior, joined the service in the same cadre on 24.12.1998. Thereafter, the career graphs of the petitioner and respondent No.7 took slightly different turns. Reference to these relevant events would

be made later. For the time being to notice the grievance of the petitioner, he was drawing less pay than the respondent No.7 for the period between November, 2001 till 01.07.2010 and thereafter again during the period between 10.02.2014 till 01.07.2016. The petitioner made a representation to the department on 07.07.2018 seeking removal of the anomaly in the pay. This representation came to be rejected by impugned order dated 20.08.2018 on the ground that the case of the petitioner does not fall within the rules pertaining to stepping up of pay. Thereupon, the petitioner has approached this Court.

[3] The respondents have appeared and filed reply in which the entire history of the pay fixations of the petitioner and respondent No.7 has been given and which reads as under :

No.98050515 Nb/Sub(Clerk) Subhas Chandra Barman alias Subhas Roy Chowdhury (Petitioner)	No.98010529 Nb/Sub(MTO) Rabia Debbarma (Proforma Respondent No.7)
<p>1. Date of appointment as Rfn(GD) on 02.11.1998.</p> <p>2. Appointed to the post of Havildar (Clerk) on 10.02.2004 by way of transfer without promotional benefit as per Recruitment Rules.</p> <p>3. Pay was stepped-up with the pay of his junior colleague NK(Operator) Pankaj Malakar of 2nd Bn TSR w.e.f. 02.11.2008.</p> <p>4. Further promoted to the post of Nb/Subedar (Clerk) on 19.10.2009.</p>	<p>1. Date of appointment as Rfn(GD) on 24.12.1998.</p> <p>2. Promoted to the post of L/Naik (Auto. Technician) on 28.11.2001.</p> <p>3. Promoted to the post of Naik (Auto. Technician) on 11.03.2004.</p> <p>4. Promoted to the post of Havildar (Auto. Tech.) on 15.11.2007.</p> <p>5. Further promoted to the post of Nb/Subedar (MTO) on 10.02.2014.</p>
He was initially appointed as Rifleman(GD) on 02.11.1998 and his pay was fixed at Rs.950/- in the pre-revised scale of pay Rs.950-2180/- under TSCS (Revised Pay) Rules, 1988 with DNI on 01.11.1999.	He was initially appointed as Rifleman(GD) on 24.12.1998 and his pay was fixed at Rs.950/- in the pre-revised scale of pay Rs.950-2180/- under TSCS (Revised Pay) Rules, 1988 with DNI on 01.12.1999.
Thereafter, under the TSCS (Revised Pay) Rules, 1999, his pay was revised at Rs.3,200/- w.e.f. 02.11.1998 in the pre-revised scale of pay Rs.3200-90-4280-100-5480-110-6030/- with DNI on 01.11.1999.	Thereafter, under the TSCS (Revised Pay) Rules, 1999, his pay was revised at Rs.3,200/- w.e.f. 24.12.1998 in the pre-revised scale of pay Rs.3200-90-4280-100-5480-110-6030/- with DNI on 01.12.1999.

Pay raised as on 01.11.1999- Rs.3,290/-	Pay raised as on 01.12.1999- Rs.3,290/-
Pay raised as on 01.11.2000- Rs.3,380/-	Pay raised as on 01.12.2000- Rs.3,380/-
Pay raised as on 01.11.2001- Rs.3,470/-	He was promoted to the post of L/Naik(A/T) on 28.11.2001 and as per option exercised by him, his pay was fixed at Rs.3,380/- w.e.f. 28.11.2001 to 30.11.2001 and thereafter at Rs.3,650/- (3380 + 90 + 90 + 90) w.e.f. 01.12.2001 under FR-22(I)(a)(1) in the pre-revised scale of Rs.3200-6030/- with DNI on 01.12.2002.
Pay raised as on 01.11.2002- Rs.3,560/-	Pay raised as on 01.12.2002- Rs.3,740/-
Pay raised as on 01.11.2003- Rs.3,650/-	Pay raised as on 01.12.2003- Rs.3,830/-
He was appointed to the post of Havildar (Clerk) on 10.02.2004 by way of transfer form Rfn(GD) in the higher pay scale of Rs.3300-7100/- without promotional benefit for transfer post as per Recruitment Rules. Accordingly, his pay was fixed in the next above stage of corresponding scale at Rs.3,700/- w.e.f. 10.02.2004 under FR.22(I)(a)(2) with DNI on 01.02.2005.	He was promoted to the post of Naik(A/T) on 11.03.2004 and his pay was fixed at Rs.4,010/- (3830 + 90 + 90) w.e.f. 11.03.2004 under FR-22(I)(a)(1) in the pre-revised scale of Rs.3200-6030/- with DNI on 01.03.2005.
Pay raised as on 01.02.2005- Rs.3,800/-	Pay raised as on 01.03.2005- Rs.4,100/-
Under the TSCS(RP)(12 th Amendment) Rules, 2015, his pay was revised in the pre-revised scale of PB-2, Rs.5700-24000/- with GP Rs.2,200/- as under:- Pay as on 01.01.2006 : Rs.3,800/- Total : Rs.3,800/- Factor 1.86 : Rs.7,070/- Grade Pay : Rs.2,200/- Revised Pay as on : Rs.9,270/- 01.01.2006 DNI 01.07.2006	Under the TSCS(RP)(12 th Amendment) Rules, 2015, his pay was revised in the pre-revised scale of PB-2, Rs.5700-24000/- with GP Rs.2,100/- as under:- Pay as on 01.01.2006 : Rs.4,100/- Spl. Pay as Naik : Rs.120/- Total : Rs.4,220/- Factor 1.86 : Rs.7,850/- Grade Pay : Rs.2,100/- Revised Pay as on : Rs.9,950/- 01.01.2006 DNI 01.07.2006
Pay raised as on 01.07.2006- Rs.9,550/-	Pay raised as on 01.07.2006- Rs.10,250/-
Pay raised as on 01.07.2007- Rs.9,840/-	Pay raised as on 01.07.2007- Rs.10,560/- (8460 + 2100) with DNI on 01.07.2008.
-	He was further promoted as Hav(A/T) on 15.11.2007 and his pay was fixed at Rs.10,980/- (8460+320+2200) w.e.f. 15.11.2007 under FR-22(I)(a)(1) in the pre-revised scale of pay PB-2, Rs.5700-24000/- and GP Rs.2,200/- with DNI on 01.07.2008.

Pay raised as on 01.07.2008- Rs.10,140/-	Pay raised as on 01.07.2008- Rs.11,310/-
Under TSCS(RP) (Eight Amendment) Rules, 2013, his pay was stepped-up with the pay of his junior colleague namely Naik(Opr) Pankaj Malakar of 2 nd Bn TSR at Rs.10,510/- (8310+2200) w.e.f. 02.11.2008 in the pre-revised scale of pay PB-2, Rs.5700-24000/- and GP Rs.2,200/- with DNI on 01.07.2009.	-
Pay raised as on 01.07.2009- Rs.10,830/- (8630+2200) with DNI on 01.07.2010	Pay raised as on 01.07.2009- Rs.11,650/-
He was promoted to the post of Nb/Sub(Clerk) on 19.10.2009 and his pay was re-fixed notionally at the entry pay of Rs.13,500/- (9300+4200) w.e.f. 19.10.2009 in the pre-revised scale PB-2, Rs.5700-24000/- and Grade Pay of Rs.4,200/- with DNI on 01.07.2010 as per FD's Memo.No.F.6(1)-FIN(PC)/2008 dated 26.08.2019	-
Pay raised as on 01.07.2010- Rs.13,910/-	Pay raised as on 01.07.2010- Rs.12,000/-
Pay raised as on 01.07.2011- Rs.14,330/-	Pay raised as on 01.07.2011- Rs.12,360/-
Pay raised as on 01.07.2012- Rs.14,760/-	Pay raised as on 01.07.2012- Rs.12,730/-
Pay raised as on 01.07.2013- Rs.15,210/-	Pay raised as on 01.07.2013- Rs.13,120/- (10920+2200) with DNI on 01.07.2014
Pay raised as on 01.07.2014- Rs.15,670/-	He was promoted to the post of Nb/Sub(MTO) on 10.02.2014 and as per option exercised by him, his pay was fixed at Rs.15,120/- (10920+4200) w.e.f. 10.02.2014 to 30.06.2014 and thereafter at Rs.15,930/- (10920+400+410+4200) w.e.f. 01.07.2014 under FR-22(I)(a)(1) in the pre-revised scale PB-2, Rs.5700-24000/- and Grade Pay of Rs.4,200/- with DNI on 01.07.2015.
Pay raised as on 01.07.2015- Rs.16,140/-	Pay raised as on 01.07.2015- Rs.16,410/-
Pay raised as on 01.07.2016- Rs.16,630/- (12430+4200) with DNI on 01.07.2017	Pay raised as on 01.07.2016- Rs.16,910/- (12710+4200) with DNI on 01.07.2017
Under the TSCS(RP) Rules, 2017, his pay was revised at Rs.38,520/- w.e.f. 01.04.2017 in the Pay Matrix'2017 at Level-10 and Cell-09 with DNI on 01.07.2017.	Under the TSCS(RP) Rules, 2017, his pay was revised at Rs.38,520/- w.e.f. 01.04.2017 in the Pay Matrix'2017 at Level-10 and Cell-09 with DNI on 01.07.2017.
Pay raised as on 01.07.2017- Rs.39,680/-	Pay raised as on 01.07.2017- Rs.39,680/-
Pay raised as on 01.07.2018- Rs.40,880/-	Pay raised as on 01.07.2018- Rs.40,880/-
Under the TSCS(RP) (1 st Amendment) Rules, 2018, his pay was further revised at Rs.48,000/- w.e.f. 01.10.2018 in the New Pay Matrix'2018 at Level-10 and Cell-12 with DNI on 01.07.2019.	Under the TSCS(RP) (1 st Amendment) Rules, 2018, his pay was further revised at Rs.48,000/- w.e.f. 01.10.2018 in the New Pay Matrix'2018 at Level-10 and Cell-12 with DNI on 01.07.2019.
Pay raised as on 01.07.2019- Rs.49,400/- with DNI on 01.07.2020	Pay raised as on 01.07.2019- Rs.49,400/- with DNI on 01.07.2020

[4] Learned counsel for the petitioner pointed out that after his initial appointment as a Rifleman (GD) on 02.11.1998 the petitioner was appointed on the post of Havilder (Clerk) on 10.02.2004 which was treated as a transfer though the post of Havilder (Clerk) was two stages higher than the post of Rifleman (GD). On account of this the petitioner suffered two promotional pay fixations. On the other hand, the respondent No.7 was promoted to the post of Lance Naik on 28.11.2001 and he got the benefit of fixation of pay on promotion in terms of FR 22. This led to pay disparity between the petitioner and the respondent No.7 on various occasions. For a brief file, this pay disparity was removed since the petitioner was promoted to the higher post which promotion the respondent No.7 had not yet earned but once respondent No.7 also was promoted, the pay disparity reappeared. He relied on a recent judgment of this Court dated 16.09.2021 in case of ***Tejaram Khareshya versus State of Tripura and others*** in WP(C) No.330 of 2019 in which according to him under similar circumstances, the Court had directed the department to fix the pay of the petitioner by upgrading it to the level of his junior.

[5] However, in my view, the case of ***Tejaram Khareshya (supra)*** is not comparable. In the case of ***Tejaram Khareshya (supra)*** the petitioner and his junior Dulal Chandra Das both started their service in Tripura State Rifles as Rifleman (GD). The petitioner was first appointed to the post of

Naik (Operator) on 23.08.2001 by way of transfer without any financial benefits. Sometime thereafter, Dulal Chandra Das was promoted to the post of Lance Naik (GD) on 01.03.2002. This resulted into benefit of one pay fixation on promotion in favour of Dulal Chandra Das which the petitioner therein lost out since his posting on the higher post was considered only a transfer and not promotion. This resulted into pay anomaly between the petitioner and the private respondent and continued for a long time. It was under such circumstances the Court had directed the department to upgrade the pay of the petitioner to that to the level of his junior.

[6] In the present case, the crucial difference is that both the petitioner and respondent No.7 having entered service as Rifleman (GD) in the year 1998, respondent No.7 was first promoted to the post of Lance Naik on 28.11.2001. Naturally therefore, respondent No.7 started receiving pay in the promotional post which would be higher than that of the petitioner. The petitioner did not raise any grievance or challenge to the promotion of respondent No.7 to his exclusion. It is true that subsequently in the year 2004 the petitioner was posted on a higher post by way of transfer without benefit of pay fixation. This was a subsequent event and had nothing to do with the claim of the petitioner for promotion to the post of Lance Naik when respondent No.7 was promoted nearly three years

earlier. If the petitioner was unhappy about this promotion, he ought to have challenged the same.

[7] The rest of the pay fixations follow the same pattern and the consequent disparity in pay of the petitioner vis-a-vis his junior, stem from this fact. As is well settled, the question of removing anomaly in pay by upgradation of the pay of the senior to the level of his junior can arise only if both the senior and the junior belong to the same cadre and upon promotion to the same next promotional post which is also the same for both, the senior starts drawing less pay than the junior. These vital conditions are not fulfilled in the present case.

[8] Under the circumstances, Petition is dismissed. Pending application(s), if any, also stands disposed of.

(AKIL KURESHI), CJ