



HIGH COURT OF TRIPURA
AGARTALA
WP(C) No.287 of 2025

Surasen Tripura, son of Gajendra Tripura, resident of village-
Manya Kumar Para, PO-Raima, PS-Raishya Bari, District-
Dhalai, Tripura, Pin-799104.

----- Petitioner(s)

Versus

- 1. The State of Tripura**, represented by the Commissioner & Secretary to the Home Department, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division- Sadar, District-West Tripura.
- 2. The Secretary, General Administration (P&T) Department**, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.
- 3. The Deputy Secretary, General Administration (P&T), Department**, Government of Tripura, New Secretariat Complex, Gurkhabasti, Agartala, PO-Kunjaban, PS-New Capital Complex, Sub-Division-Sadar, District-West Tripura.
- 4. The Director General of Police**, Government of Tripura, Police Headquarters, Akhaura Road, Agartala, District-West Tripura.
- 5. The Inspector General of Police (L&O)**, Tripura, Police Headquarters, Akhaura Road, Agartala, District-West Tripura.
- 6. Tripura Public Service Commission (TPSC)**, represented by its Secretary, Akhaura Road, PO-Agartala, PS-West Agartala, Sub-Division-Sadar, District-West Tripura, Pin—799001.

----- Official Respondent(s)

- 7. Sri Swapan Debbarma**, TPS Grade-II, Deputy Superintendent of Police (DIB) South, posted at the Office of the Superintendent of Police, South Tripura District, PO & PS-Belonia, District-South Tripura, Pin-799155.
- 8. Sri Ashesh Debbarma**, TPS Grade-II, Assistant Commandant (DAR West), posted at the Office of the DAR West Office, PO & PS-A.D. Nagar, District-West Tripura, Pin-799003.

----- Private Respondent(s)

For Petitioner(s) : Mr. Purusuttam Roy Barman, Sr. Adv,
Mr. Koomar Chakraborty, Adv.

For Respondent(s) : Mr. Karnajit De, Addl. G.A.

Date of hearing : 10.09.2026
Date of delivery of Judgment & Order : **24.09.2026**
Whether fit for reporting : YES

HON'BLE MR. JUSTICE BISWAJIT PALIT

Judgment & Order

Heard Learned Senior Counsel Mr. Purusuttam Roy Barman assisted by Learned Counsel, Mr. Koomar Chakraborty appearing on behalf of the petitioner and also, heard Learned Addl. G.A., Mr. Karnajit De appearing on behalf of the State-respondents.

2. This writ petition is filed by the petitioner seeking the following reliefs:

(i) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a writ of Certiorari and/or in the nature thereof, shall not be issued, for directing the Respondents, to transmit the records, lying with them, for rendering substantive and conscionable justice to the Petitioner, and for quashing/setting aside the impugned Promotion Orders dated 09.12.2021 & 25.07.2023 (Annexures-11 & 12 respectively supra) insofar as they relate to the promotion of the Private Respondents and the concerned juniors of the Petitioner;

(ii) Issue Rule, calling upon the Respondents and each one of them, to show cause as to why a Writ of Mandamus and/or in the nature thereof, shall not be issued, mandating/directing them, to promote the Petitioner to the next higher post of TPS Grade-II (Group-A, Gazetted), with retrospective effect from the date when the Private Respondents and the concerned juniors were promoted thereto (i.e., w.e.f. 09.12.2021), maintaining his seniority position above them, alongwith all consequential benefits including arrears thereof;

(iii) Call for the records, appertaining to this Writ Petition;

(iv) After hearing the parties, be pleased to make the Rule absolute in terms of (i) & (ii) above;

(v) Costs of and incidental to this proceeding

(vi) Any other Relief(s) as to this Hon'ble High Court may deem fit and proper;

AND

For this gracious act of kindness the humble Petitioner abovenamed SHALL AS IN DUTY BOUND EVER PRAY.

3. At the time of hearing, learned Senior Counsel Mr. Purusuttam Roy Barman drawn the attention of the Court that the present petitioner has challenged the impugned notifications dated 09.12.2021 and 25.07.2023 [Annexure-11 and 12] on the ground that by the said notifications, promotions were given to the private respondents who were junior to the petitioner. It was further submitted that the petitioner is presently serving in the substantive post of Inspector of Police under Home Department, Government of Tripura and being posted at the Office of Superintendent of Police, South Tripura, Belonia, a departmental proceeding was drawn up against him vide memorandum dated 16.04.2020 [Annexure-1]. It was further submitted that Articles of Charge were framed against him and in the departmental proceeding by a final punishment order dated 03.09.2021, the respondent-Authority found the petitioner guilty and inflicted major penalty of "withholding one time-scale increment of pay without cumulative effect" [Annexure-2]. Being dissatisfied with the said order, the petitioner preferred an appeal on 07.09.2021 before the Appellate Authority i.e. the Director General of Police, but the authority by order dated 09.10.2001 rejected the appeal preferred by the petitioner [Annexure-3]. Thereafter, the petitioner filed one writ petition bearing number WP(C) No.9 of

2022 before this High Court, and this High Court by judgment dated 03.11.2022 dismissed the writ petition [Annexure-4].

Challenging the said judgment and order dated 03.11.2022, the petitioner preferred an intra court appeal which was numbered as WA No.211 of 2022, and the Division Bench, after hearing both the sides by order dated 20.12.2022, disposed of the said appeal by setting aside the judgment of the Learned Single Judge, and the matter was remanded back to the Appellate Authority to decide the case in accordance with law and for passing a speaking order [Annexure-5]. But according to Learned Senior Counsel, in terms of the order dated 20.12.2022 in connection with WA No.211 of 2022 [Annexure-5 supra], the Director General of Police, Government of Tripura, passed an order on 07.08.2023 [Annexure-6] thereby rejecting the representation preferred by the petitioner and upheld the impugned order of penalty dated 03.09.2021 [Annexure 2] passed by the Disciplinary Authority.

Again, the petitioner challenging the order dated 03.09.2021 and the Appellate order dated 07.08.2023 [Annexure-2 and 6] filed one writ petition which was numbered as WP(C) No.548 of 2023, and this High Court by judgment dated 06.09.2024 allowed the writ petition, quashing/setting aside the penalty order dated 03.09.2021 and directed to provide all benefits to the petitioner as if no penalty was imposed upon the petitioner [Annexure-7]. Thereafter, the petitioner by letter dated

09.09.2024 [Annexure-8] forwarded a copy of judgment passed by this Court for compliance.

At the time of hearing, Learned Senior Counsel further submitted that as the learned Single Judge by the said judgment and order dated 06.09.2024 in WP(C) No.548 of 2023 asked the respondents to provide all the benefits to the petitioner as if no penalty was imposed, so he was also entitled to get promotion. But instead of compliance of the said judgment and order dated 06.09.2024 in WP(C) No.548 of 2023 [Annexure-7], the State-respondents again preferred intra court appeal which was numbered as WA No.2 of 2025 and by order dated 21.01.2025 [Annexure-9], the Division Bench of this High Court dismissed the writ appeal filed by the State-respondents. Even after dismissal of the said appeal, the respondents did not comply with the same.

After that, the petitioner filed a contempt petition bearing Cont. Cas(C) No.21 of 2025 before this High Court. In the said contempt proceeding, the respondents appeared and submitted that in compliance of the order dated 21.05.2025 passed in WP(C) No.548 of 2023 by this High Court, all the benefits will be given to the petitioner. So, contempt petition was closed with assurance that the relevant benefits would be released in favor of the petitioner within a period of 03 (three) months [Annexure-10]. Thereafter the respondents released the financial benefits in favour of the petitioner, but the benefit of promotion was not extended to the petitioner.

4. It was further submitted by Learned Senior counsel for the petitioner that in the year 2021, DPC was convened for making promotions to the post of TPS Grade-II (Group-A, Gazetted). The petitioner, at that point of time, although possessed all the requisite qualification/criteria as per Rule 14 of the Tripura Police Service Rule, 1967, but however, due to the pendency of the DP he was not recommended for promotion. Instead, some of the private respondents who were much junior to the petitioner were recommended for promotion to the next higher post of TPS Grade-II superseding the petitioner and in the said notification dated 09.12.2021 [Annexure-11], the names of the concerned private respondents were from serial No.24 to 55. Thereafter, again by notification dated 25.07.2023 [Annexure-12], other private respondents Nos.8 to 15 were also given promotion, superseding the petitioner. According to Learned Senior counsel, as per notification dated 25.07.2023 [Annexure-12], the present petitioner does not have any grievance against the promotees at serial Nos.1 to 7, as they are senior to him and they were promoted pursuant to grant of age relaxation in terms of Rule 34 of Tripura Police Service Rules, 1976 by a judgment dated 09.01.2023 passed by this High Court in WP(C) No.670 of 2021. It was further submitted that the private respondents who were promoted vide the promotion order dated 09.12.2021 and 25.07.2023 [Annexures-11 and 12], were juniors to the

petitioner, which appears from the draft seniority list later on made it final.

Learned Senior Counsel further submitted that no latches could be attributable to the petitioner in filing the writ petition, since earlier the petitioner could not have clamoured for promotion or retrospective promotion due to existence of final punishment order [Annexure-2]. The long pending legal battle culminated in favor of the petitioner by the order dated 21.01.2025 [Annexure-9] passed in W.A. No.2 of 2025, whereby the judgment dated 06.09.2024 in WP(C) No.548 of 2023[Annexure-7], passed by Learned Single Judge of this High Court was interfered with and pursuant to the direction of this High Court, the respondents were directed to release all the benefits as if no penalty was imposed upon the petitioner, which also included promotion. But however, by the office communication dated 27.02.2025, the respondents have decided to release only the withheld financial benefits of increment and outstanding pay and allowances. So, by the writ petition, the petitioner has challenged the promotion orders dated 09.12.2021, 25.07.2023, [Annexure-11 and 12], and urged before this Court to issue necessary directions upon the respondents to consider the promotion of the petitioner giving retrospective effect.

5. The State-respondents have contested the case by filing counter affidavit against the writ petition. In para Nos.5, 6, 7

and 8 of the counter affidavit, the State-respondents have asserted as under:

"5. That, with regard to the statements made in paragraph 1.2 of the Writ Petition, I say that, a meeting of the Selection Committee was held on 30-10-2021 for promotion of eligible Inspectors of Police and Subedar of TSR Bns. to the post of TPS Gr - II on ad-hoc basis as one time measure. At the time of aforesaid promotion, the case of the petitioner was not considered as a punishment was imposed on Shri Tripura vide order No.3445-47/F.40/IGP(L/O)/PHQ/2021 dated 03-09-2021 and the currency of punishment was going on. The said currency of punishment was completed on 02-09-2022 only. It is pertinent to mention here that the Director General of Police issued an Integrity Certificate/Vigilance Clearance Report dated 25.08.2021 for consideration of promotion of Inspectors of Police to the rank of TPS Gr-II. In the said clearance report the Petitioner and four other persons were excluded. Accordingly, the promotion to the petitioner was not allowed by the DPC as the punishment was imposed upon the petitioner.

Copy of Integrity/vigilance certificate dated 25-08-2021 issued by the DGP, Tripura is annexed hereto and marked as Annexure R/1.

Copy of the relevant DPC minutes dated 30-10-2021 is annexed hereto and marked as Annexure R/2.

6. That, with regard to the statements made in paragraph 2.15 and 2.16 of the petition, I say that, again on 17-07-2023, a meeting of the Selection Committee was held to consider the case of promotion of Inspector of Police to the TPS Gr II on ad-hoc basis as one time measure. But at that time it is reported by the PHQ, Tripura by a letter No.3092(1)/F.18/TPS Gr-II/GOs/PHQ/18 (V-I) dated 22-05-2023 that an inquiry is under process as per guidelines of the Sexual Harassment of Women at work place (Prevention, prohibition and redressal) Act, 2013. Also, the petitioner was exempted in the Integrity Certificate/ Vigilance Clearance Report issued by DGP. Accordingly, the DPC did not recommend the name of the Petitioner as inquiry was under process as per guidelines of the aforesaid Act and an ST post was kept vacant for the Petitioner. Thus, the contention of the petitioner that the other private respondents appearing at Sl. No.8 to 15 were promoted to the post of TPS Gr II superseding the petitioner is not correct. The fact is that the petitioner was not promoted since an inquiry under the Sexual Harassment of Women at work place (Prevention, prohibition and redressal) Act, 2013 is under process.

Copy of letter No.3092(1)/F.18/TPS Gr-II/GOs/PHQ/18 (V-I) dated 22-05-2023 is annexed hereto and marked as Annexure R/3.

Copy of the Integrity/vigilance certificate issued by the I/C DGP, Tripura dated 22-05-2023 is annexed hereto and marked as Annexure R/4.

Copy of the DPC minutes dated 17-07-2023 is annexed hereto and marked as Annexure R/5.

7. That, with regard to paragraph 2.11 to 2.13 and 2.22 to 2.24 of the writ petition, I say that, based on the order dated 06.09.2024 of the Hon'ble High Court of Tripura, the final punishment order issued by Disciplinary Authority against the petitioner effect withholding one time scale increment of pay without cumulative was withdrawn by Memo. No.1420-25(5)/G.II (1109)-Police/10 dated 27/02/2025.

Copy of the Memo. No.1420-25(5)/ G.II (1109)-Police/10 dated 27/02/2025 is annexed hereto and marked as Annexure R/6.

8. That, with regard to paragraph 2.14 to 2.21 of the writ petition, I say that, promotion to the post of TPS Grade-II from Inspector is dealt by GA(P&T) department. However, the petitioner was not considered due to pendency of Departmental Proceeding. In addition, another Departmental Proceeding was initiated against the petitioner by a Memorandum No.2589/F.1(49)-Esstt/DP/S.T/SD/2024 dated 24/01/2024 related to sexual harassment which is under process

Copy of the Memo. No.2589/F.1(49)-Esstt/DP/S.T/SD/2024 dated 24/01/2024 alongwith copy of enquiry report dated-28.05.2025 is annexed hereto and marked as Annexure R/7.

9. That, the rest would be submitted orally at the time of hearing.

10. That, the statements made in paragraph 01 to 03 of the affidavit are true to my knowledge and that stated in paragraph 04 to 08 are the information as gathered from the relevant records maintained by the respondents, which I believe to be true and nothing has been concealed or suppressed by me and the rest are my humble submission before this Hon'ble Court."

6. The other private-respondents, Ashesh Debbarma and Swapan Debbarma, by filing their counter affidavit, adopted the affidavit submitted by the State-respondents.

7. At the time of hearing, Learned Addl. G.A., Mr. Karnajit De appearing on behalf of the State-respondents fairly submitted that the Departmental Proceeding was drawn up against the petitioner and he approached to the High Court and this High Court granted relief in his favor and accordingly all the financial benefits were given, but promotion could not be extended to the petitioner due to pendency of the writ petition. Thereafter,

another departmental proceeding has been drawn up against him, which is still pending for adjudication. So Learned Addl. G.A. submitted as there is no merit in the writ petition filed by the petitioner, the same is liable to be dismissed.

8. Heard the parties at length. Perused the writ petition and the connected documents filed by the petitioner as well as the counter affidavit and the annexed documents by the respondents.

9. It is the third round litigation filed by the petitioner. It is on record that initially challenging the order of punishment, he filed writ petition bearing No. WP(C) 9 of 2022 which was dismissed by Judgment dated 03.11.2022. After that, an appeal was preferred vide WA No.211 of 2022 by the petitioner, and by order dated 20.12.2022, the judgment dated 03.11.2022 passed in connection with WP(C) 9 of 2022 by the Learned Single Judge was set aside, and the order in appeal dated 09.10.2021 was also set aside, and the matter was remanded back to the appellate authority to decide the matter in accordance with law afresh and to pass a speaking order. Thereafter, the Appellate Authority by order dated 07.08.2023 passed a fresh order upholding the final punishment order passed by the Disciplinary Authority.

Again, the petitioner filed another writ petition bearing No.WP(C) 548 of 2023, and by Judgment and Order dated 06.09.2024, a coordinate bench of this High Court allowed the writ petition with the following observations:

"9. In view of this clear evidence adduced by the SDPO during the proceeding, the disciplinary authority has committed serious error of facts, calling for

interference by this Court. Accordingly, the findings of the disciplinary authority as well as appellate authority are interfered with.

10. Resultantly, the impugned order of penalty of "withholding one time scale increment of pay without cumulative effect" vide order dated 03.09.2021 is set aside and quashed. The petitioner shall be entitled to all benefits as if no penalty was imposed upon him."

So, if the language of the aforesaid judgment and order is properly interpreted, in that case, it transpires that Learned Single Judge intended to mean that all benefits should be extended to the petitioner as if no penalty was imposed upon him.

Thereafter, the petitioner filed one representation for compliance of the aforesaid judgment and order [Annexure-8].

In the meantime, the State preferred another appeal bearing WA No.2 of 2025 before this High Court and by order dated 21.01.2025, the same was disposed of with the following observation:

"7. This Court believes that such disputes over facts, especially those related to the evidence and the officer's role, cannot be properly examined in a writ petition filed under Article 226 of the Constitution of India. The purpose of Article 226 is mainly to protect fundamental rights and address legal violations, not to resolve complicated factual disputes that require detailed investigation and examination of evidence. In view of the same, this Court is of the opinion that disputed questions of fact leading to the evidentiary value cannot be gone into in a petition filed under Article 226 of the Constitution. Accordingly, this present writ petition stands dismissed.

8. As a sequel, any stay, if granted, stands vacated. Pending application(s), if any, also stand closed."

But as the same was not complied with properly, so the petitioner filed one contempt case bearing No. Cont. Cas(C) 21 of 2025, and the coordinate bench of this High Court disposed of the contempt petition by order dated 28.02.2025 with the following observation:

"Mr. Roy Barman, learned senior counsel for the petitioner has submitted that one part of the said judgment and order has been complied with, but the direction passed by this Court to provide all financial benefits to the petitioner has not been complied with.

In reply to that, Mr. Debbarma, learned counsel for the respondent-contemnors has placed an office communication dated 28.02.2025 wherein the Superintendent of Police (South), Belonia, South Tripura District was requested to release of financial benefits to Sri Surasen Tripura, Inspector of Police(UB) as per order dated 21.05.2025 of this Court under intimation to PHQ.

In view of the said communication, Mr. Roy Barman, learned senior counsel has submitted that the said communication may be kept on record and all financial benefits may be provided to the petitioner.

Mr. Debbarma, learned counsel has submitted that all financial benefits shall be provided to the petitioner within a period of 3(three) months.

In the light of above, the instant writ petition stands disposed. The office communication dated 28.02.2025 is kept on record for future reference."

From the aforesaid order, it appears that at the time of hearing Learned Addl. G.A. submitted before the Court that all the financial benefits shall be provided to the petitioner within a period of 3 (three) months.

Thereafter the respondents-authority, by one office memo dated 27.02.2025, withdrawn the DP drawn up against the petitioner, but thereafter by two separate orders dated 09.12.2021, [Annexure-11], and 25.07.2023, [Annexure-12], some of the officials were given promotion who, according to the petitioner, were junior to him.

10. At the time of hearing, Learned Addl. G.A. tried to draw the attention of the Court that the Learned Single Judge, by the judgment and order dated 06.09.2024 in connection with WP(C) 548 of 2023 ordered for extending financial benefits to the petitioner, which has been duly complied with by the respondent-

authority. However, it was further submitted that by this time another Departmental Proceeding was drawn up against him, and accordingly, a memorandum has been issued on 24.01.2024, [Annexure-R/7], and due to pendency of the proceeding, it is not possible on the part of the respondent-authority to provide promotion to him. Furthermore, Learned Addl. G.A. also submitted that since another Departmental Proceeding is pending against him, so as a matter of right the petitioner cannot claim any promotion, and more so there was no scope for the petitioner to claim for promotion in view of the pendency of fresh Departmental Proceeding against him. Rather Learned Addl. G.A. submitted that in pursuance of the judgment all the benefits have been extended to the petitioner by the respondent-authority.

11. To counter the submission made by Learned Addl. G.A., Learned Senior Counsel, Mr. Purusuttam Roy Barman submitted that the memorandum has been issued on 24.01.2024 but till today the same has not been completed and for that the promotion cannot be denied to the petitioner because the respondent-authority with an ulterior motive has drawn up fresh proceeding against him so that the petitioner can be deprived of his promotional right. In support of his contention, Learned Senior Counsel relied upon one citation of Hon'ble the Supreme Court reported in **(1991) 4 SCC 109 [Union of India and others vs. K. V. Jankiraman and others]** wherein in para Nos.8, 23, 16, 24, 25, 26, Hon'ble the Apex Court observed as under:

"8. The common questions involved in all these matters relate to what in service jurisprudence has come to be known as "sealed cover procedure". Concisely stated, the questions are: (1) What is the date from which it can be said that disciplinary/criminal proceedings are pending against an employee? (2) What is the course to be adopted when the employee is held guilty in such proceedings if the guilt merits punishment other than that of dismissal? (3) To what benefits an employee who is completely or partially exonerated is entitled to and from which date? The "sealed cover procedure" is adopted when an employee is due for promotion, increment etc. but disciplinary/criminal proceedings are pending against him at the relevant time and hence, the findings of his entitlement to the benefit are kept in a sealed cover to be opened after the proceedings in question are over. Hence, the relevance and importance of the questions.

23. There is no doubt that when an employee is completely exonerated and is not visited with the penalty even of censure indicating thereby that he was not blameworthy in the least, he should not be deprived of any benefits including the salary of the promotional post. It was urged on behalf of the appellant-authorities in all these cases that a person is not entitled to the salary of the post unless he assumes charge of the same. They relied on F.R. 17(1) of the Fundamental Rules and Supplementary Rules which reads as follows:

"F.R. 17. (1) Subject to any exceptions specifically made in these rules and to the provision of sub-rule (2), an officer shall begin to draw the pay and allowances attached to his tenure of a post with effect from the date when he assumes the duties of that post, and shall cease to draw them as soon as he ceases to discharge those duties:

Provided that an officer who is absent from duty without any authority shall not be entitled to any pay and allowances during the period of such absence."

16. On the first question, viz., as to when for the purposes of the sealed cover procedure the disciplinary/criminal proceedings can be said to have commenced, the Full Bench of the Tribunal has held that it is only when a charge-memo in a disciplinary proceedings or a charge-sheet in a criminal prosecution is issued to the employee that it can be said that the departmental proceedings/criminal prosecution is initiated against the employee. The sealed cover procedure is to be resorted to only after the charge-memo/charge-sheet is issued. The pendency of preliminary investigation prior to that stage will not be sufficient to enable the authorities to adopt the sealed cover procedure. We are in agreement with the Tribunal on this point. The contention advanced by the learned counsel for the appellant-authorities that when there are serious allegations and it takes time to collect necessary evidence to prepare and issue charge-memo/charge-sheet, it would not be in the interest of the purity of administration to reward the employee with a promotion, increment etc. does not impress us. The

acceptance of this contention would result in injustice to the employees in many cases. As has been the experience so far, the preliminary investigations take an inordinately long time and particularly when they are initiated at the instance of the interested persons, they are kept pending deliberately. Many times they never result in the issue of any charge-memo/charge-sheet. If the allegations are serious and the authorities are keen in investigating them, ordinarily it should not take much time to collect the relevant evidence and finalise the charges. What is further, if the charges are that serious, the authorities have the power to suspend the employee under the relevant rules, and the suspension by itself permits a resort to the sealed cover procedure. The authorities thus are not without a remedy. It was then contended on behalf of the authorities that conclusions Nos. 1 and 4 of the Full Bench of the Tribunal are inconsistent with each other. Those conclusions are as follows: (ATC p. 196, para 39)

“(1) consideration for promotion, selection grade, crossing the efficiency bar or higher scale of pay cannot be withheld merely on the ground of pendency of a disciplinary or criminal proceedings against an official;

(2) ***

(3) ***

(4) the sealed cover procedure can be resorted to only after a charge memo is served on the concerned official or the charge-sheet filed before the criminal court and not before;”

24. It was further contended on their behalf that the normal rule is “no work no pay”. Hence a person cannot be allowed to draw the benefits of a post the duties of which he has not discharged. To allow him to do so is against the elementary rule that a person is to be paid only for the work he has done and not for the work he has not done. As against this, it was pointed out on behalf of the concerned employees, that on many occasions even frivolous proceedings are instituted at the instance of interested persons, sometimes with a specific object of denying the promotion due, and the employee concerned is made to suffer both mental agony and privations which are multiplied when he is also placed under suspension. When, therefore, at the end of such sufferings, he comes out with a clean bill, he has to be restored to all the benefits from which he was kept away unjustly.

25. We are not much impressed by the contentions advanced on behalf of the authorities. The normal rule of “no work no pay” is not applicable to cases such as the present one where the employee although he is willing to work is kept away from work by the authorities for no fault of his. This is not a case where the employee remains away from work for his own reasons, although the work is offered to him. It is for this reason that F.R. 17(1) will also be inapplicable to such cases.

26. We are, therefore, broadly in agreement with the finding of the Tribunal that when an employee is completely exonerated meaning thereby that he is not found blameworthy in the least and is not visited with the penalty even of censure, he has to be given the

benefit of the salary of the higher post along with the other benefits from the date on which he would have normally been promoted but for the disciplinary/criminal proceedings. However, there may be cases where the proceedings, whether disciplinary or criminal, are, for example, delayed at the instance of the employee or the clearance in the disciplinary proceedings or acquittal in the criminal proceedings is with benefit of doubt or on account of non-availability of evidence due to the acts attributable to the employee etc. In such circumstances, the concerned authorities must be vested with the power to decide whether the employee at all deserves any salary for the intervening period and if he does, the extent to which he deserves it. Life being complex, it is not possible to anticipate and enumerate exhaustively all the circumstances under which such consideration may become necessary. To ignore, however, such circumstances when they exist and lay down an inflexible rule that in every case when an employee is exonerated in disciplinary/criminal proceedings he should be entitled to all salary for the intervening period is to undermine discipline in the administration and jeopardise public interests. We are, therefore, unable to agree with the Tribunal that to deny the salary to an employee would in all circumstances be illegal. While, therefore, we do not approve of the said last sentence in the first sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum, viz., "but no arrears of pay shall be payable to him for the period of notional promotion preceding the date of actual promotion", we direct that in place of the said sentence the following sentence be read in the Memorandum:

"However, whether the officer concerned will be entitled to any arrears of pay for the period of notional promotion preceding the date of actual promotion, and if so to what extent, will be decided by the concerned authority by taking into consideration all the facts and circumstances of the disciplinary proceeding/criminal prosecution. Where the authority denies arrears of salary or part of it, it will record its reasons for doing so."

Relying upon the same, Learned Senior Counsel submitted that in view of the judgment of the Hon'ble Supreme Court, there is no scope on the part of the respondents to deny the promotion of the petitioner and he is entitled to get promotion from the retrospective date when the respondent-authority depriving him gave promotion to his juniors.

12. On the other hand, Learned Addl. G.A. at the time of hearing also relied upon para No. 29 of the said judgment wherein Hon'ble the Apex Court observed as:

"29. According to us, the Tribunal has erred in holding that when an officer is found guilty in the discharge of his duties, an imposition of penalty is all that is necessary to improve his conduct and to enforce discipline and ensure purity in the administration. In the first instance, the penalty short of dismissal will vary from reduction in rank to censure. We are sure that the Tribunal has not intended that the promotion should be given to the officer from the original date even when the penalty imparted is of reduction in rank. On principle, for the same reasons, the officer cannot be rewarded by promotion as a matter of course even if the penalty is other than that of the reduction in rank. An employee has no right to promotion. He has only a right to be considered for promotion. The promotion to a post and more so, to a selection post, depends upon several circumstances. To qualify for promotion, the least that is expected of an employee is to have an unblemished record. That is the minimum expected to ensure a clean and efficient administration and to protect the public interests. An employee found guilty of a misconduct cannot be placed on par with the other employees and his case has to be treated differently. There is, therefore, no discrimination when in the matter of promotion, he is treated differently. The least that is expected of any administration is that it does not reward an employee with promotion retrospectively from a date when for his conduct before that date he is penalised in praesenti. When an employee is held guilty and penalised and is, therefore, not promoted at least till the date on which he is penalised, he cannot be said to have been subjected to a further penalty on that account. A denial of promotion in such circumstances is not a penalty but a necessary consequence of his conduct. In fact, while considering an employee for promotion his whole record has to be taken into consideration and if a promotion committee takes the penalties imposed upon the employee into consideration and denies him the promotion, such denial is not illegal and unjustified. If, further, the promoting authority can take into consideration the penalty or penalties awarded to an employee in the past while considering his promotion and deny him promotion on that ground, it will be irrational to hold that it cannot take the penalty into consideration when it is imposed at a later date because of the pendency of the proceedings, although it is for conduct prior to the date the authority considers the promotion. For these reasons, we are of the view that the Tribunal is not right in striking down the said portion of the second sub-paragraph after clause (iii) of paragraph 3 of the said Memorandum. We, therefore, set aside the said findings of the Tribunal."

In addition to this contention, Learned Addl. G.A. also relied upon another judgment of Hon'ble the Supreme Court of India reported in **(1995) 3 SCC 273 [titled as State of TN Vs. Thiru K.S. Murugesan and others]** wherein in para No.7, Hon'ble the Apex Court observed as under:

"7. It would thus be clear that when promotion is under consideration, the previous record forms the basis and when the promotion is on merit and ability, the currency of punishment based on previous record stands as an impediment. Unless the period of punishment gets expired by efflux of time, the claim for consideration during the said period cannot be taken up. Otherwise, it would amount to retrospective promotion which is impermissible under the Rules and it would be a premium on misconduct. Under these circumstances, we are of the opinion that the doctrine of double jeopardy has no application and non-consideration is neither violative of Article 21 nor Article 14 read with Article 16 of the Constitution."

Referring the same, Learned Addl. G.A. submitted that in view of the principle of law laid down by the Hon'ble Apex Court and considering the facts and circumstances of the case at hand, there is no scope to give any retrospective promotion to the present petitioner.

13. On perusal of the relevant papers it appears to this Court that after the delivery of Judgment and Order dated 06.09.2024 in WP(C) No.548 of 2023 by a coordinate bench of this High Court, all the embargo stood against the petitioner was extinguished and the same order attained finality by the Order dated 21.01.2025 in W.A. No.2 of 2025 passed by the Division Bench. The respondents although have given financial benefits to the petitioner but failed to consider his promotion to the post of TPS, Grade-II. In the meantime, some of his juniors by memo dated 09.12.2021 and 25.07.2023 as indicated above were given

promotion. So, naturally the petitioner was also entitled to get promotion on and from the date when his juniors were given promotion to the post of TPS Grade-II. But surprisingly by this time the respondent-authority drawn up another Departmental Proceeding against the petitioner on 24.01.2024 and Articles of Charge have been framed against him. Since after the closure of the first Departmental Proceeding another Departmental Proceeding has been drawn up against him by memorandum dated 24.01.2024 [Annexure-R/7], so, it was not possible on the part of the respondent-Department to grant promotion to the petitioner by directing the respondent-Authority to conduct review DPC.

14. Learned Senior Counsel also in support of his contention relied upon another citation of this High Court reported in **(2021) 2 TLR 682 [titled as Swapan Das vs. State of Tripura and others]** wherein in para No.14 this High Court made the following observation:

"14. Quite apart from these serious technical errors committed by the disciplinary authority and appellate authority, even on merits, I find that the petitioner was handed down punishment when it was not justified. Mere wrong mention of the relation in the LTC advance form without any intention to gain illegal benefit would not amount to misconduct. On the face of it the penalty may appear to be a minor penalty, in reality it would result into great loss and prejudice to the petitioner. This is so because as was recorded in order dated 7th January 2020, passed by this Court in WP(C) No.879/2019, the petitioner's promotion was withheld on account of ongoing departmental inquiry and thereafter imposition of punishment. This apparently minor punishment would thus result into depriving promotion to the petitioner for a long period of time. This period got enlarged on account of extremely slow reactions by the administration in the course of the departmental inquiry and pendency of appeal. We may recall, after the petitioner gave his explanation, on 7th September 2010, the departmental

charge sheet was issued to him only on 18th January 2011. The inquiry officer completed the inquiry after nearly three years. I fail to understand why such a simple inquiry took three years to complete. The inquiry officer submitted his report on 22nd March 2014. A copy of the inquiry officer's report was supplied to the petitioner nearly a year later on 16th February 2015. The petitioner filed his reply on 13th March 2015. The disciplinary authority took one more year to take his final decision on 28th March 2016. The petitioner filed appeal against the order of penalty shortly thereafter. This appeal was decided more than four years later by an order dated 22nd December 2020, that too by an incompetent authority. The entire chain of events shows a rather lax attitude on part of the administration in dealing with the case which has caused great loss and prejudice to the petitioner. On all these grounds, therefore, impugned order of punishment dated 28th March 2016 is set aside with all consequential effect. This would include restoration of the petitioner's increments from due dates and also opening the sealed cover if the department has followed sealed cover procedure for promotion and acting on the recommendations of the DPC and if no such sealed cover procedure is followed, by drawing a review DPC for consideration for promotion which was denied to the petitioner on account of pendency of the departmental proceedings when his juniors were promoted on 4th October 2012. If the petitioner is found fit for promotion, he shall be granted promotion with retrospective effect from the date his junior was promoted. This exercise shall be completed within a period of 4(four) months from today.

The petition is allowed and disposed of accordingly. Pending application(s), if any, also stands disposed of."

From the aforesaid observation, it also appears that the High Court not only considered the case of the petitioner of that case rather directed the respondents-authority to give retrospective promotion i.e. from the date when his junior was promotion.

15. Here in the case at hand, since the initial final order and the appellate order have been quashed by this High Court, so, it can be concluded that no penalty was imposed upon him but in the meantime another Departmental Proceeding has been drawn up against the petitioner on 24.01.2024 and Articles of Charges have been framed against him and the Departmental proceeding

is pending for disposal. In course of hearing Learned Addl. G.A. could not give any specific time as to when the said Departmental Proceeding would be completed. So, in such a situation, at this stage being a Court of equity, there is no scope to direct the respondent-Authority to conduct review DPC and to promote the petitioner to the post of TPS, Grade-II and as such, the present petitioner is not entitled to get any relief in this petition.

Furthermore, under Article 226 of the Constitution of India, there is very limited scope on the part of the writ Court to issue any mandamus to cancel/set aside the final order of the Disciplinary Authority as well as the Appellate Authority. Since the subsequent Departmental Proceeding is pending against the petitioner so till disposal of the said Departmental Proceeding there is no scope to pass any order for promotion in favour of the petitioner.

16. In the result, the writ petition filed by the petitioner at this stage bears no merit and accordingly, the same stands dismissed/rejected. However, since another Departmental Proceeding has been initiated against the petitioner by order dated 24.01.2024, so, it is ordered that the respondents-authority shall complete the subsequent Departmental Proceeding within a period of 6 (six) months from the date of delivery of this Judgment/order failing which the same shall be treated as abated. After the outcome of the Departmental Proceeding, the petitioner

shall be at liberty to submit representation to the respondents-Authority raising his grievances.

- 17.** With this observation, this petition stands disposed of.
Pending applications(s), if any, also stands disposed of.

JUDGE

