

B_E_F_O_R_E
HON'BLE MR. JUSTICE T. AMARNATH GOUD

For Petitioner(s)	:	Mr. Somik Deb, Sr. Advocate. Mr. Abir Baran, Advocate.
For Respondent(s)	:	Mr. M. Debbarma, Addl. G.A.
Date of hearing	:	05.07.2022
Date of delivery of judgment and order	:	12.07.2022
Whether fit for reporting	:	YES

JUDGMENT & ORDER

Heard Mr. Somik Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel appearing for the petitioners. Also heard Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents.

[2] In **WP(C) No. 483 of 2020** the petitioner was initially appointed as Rfn. (GD) on 28.04.2001 and thereafter, as Havildar (GD) on 06.09.2003 again, appointed directly as Hivildar (Clerk) on 10.02.2004 on transfer promoted to NB (Clerk) on 19.10.2009 and further promoted to Subedar (Accountant) on 02.06.2014. In **WP(C) No.484 of 2020** the petitioner was initially appointed as Enrolled Flower on 21.12.1990 and thereafter as Rfn. (GD) on 20.07.1992. Again as Havildar (Clerk) on 12.12.1997 and on transfer promoted to Subedar (Accountant) on 03.09.2010. In **WP(C) No.485 of 2020** the petitioner was initially appointed as Rfn.(GD) on 01.07.1986 thereafter, as Havildar (Clerk) on 22.12.1997 on transfer promoted to Subedar (Actt.) on 30.03.2010 further promoted to Subedar (H/C) on 02.07.2013. In **WP(C) No.486 of 2020** the petitioner was initially appointed as Rfn.(GD) on 28.07.1992 thereafter, as Havildar (Clerk) on 18.11.1997 on transfer promoted to NB Sub (Clerk) on 15.08.2013 again promoted to the post of Subedar (Actt.) on 30.03.2010. In **WP(C) No.487 of 2020** the petitioner was initially appointed as Rfn.(GD) on 10.07.1991 thereafter, as Havildar (Clerk) on 20.12.1997 on transfer promoted to NB Sub (Clerk) on 14.08.2003 again promoted to the

post of Subedar (Actt.) on 30.03.2010 lastly promoted Subedar (H/C) on 02.07.2013. In **WP(C) No.488 of 2020** the petitioner was initially appointed as Rfn.(GD) on 17.07.1991 thereafter, as Naik (Operator) on 03.07.1996 again as Havildar (Clerk) on 22.12.1997 on transfer promoted to NB Sub (Clerk) on 15.08.2003 again promoted to the post of Subedar (Actt.) on 30.03.2010. In **WP(C) No.489 of 2020** the petitioner was initially appointed as Rfn.(GD) on 22.07.1992 and promoted to Lance Naik (GD) on 28.03.2010 promoted to Havildar (Clerk) on 28.03.2001 on transfer promoted to NB Sub (Clerk) on 24.08.2010 again promoted to the post of Subedar (Actt.) on 02.06.2014. In **WP(C) No.490 of 2020** the petitioner was initially appointed as Rfn.(GD) on 12.08.1996 thereafter, as Havildar (Clerk) on 11.06.2001 on transfer promoted to NB Sub (Clerk) on 03.01.2007 again promoted to the post of Subedar (Actt.) on 30.03.2010 and thereafter, to the promoted to the post of Sub (H/C) on 14.08.2013.

[3] As per the petition of the petitioners in WP(C) No. 485 of 2020, WP(C) No. 486 of 2020, WP(C) No. 487 of 2020, WP(C) No. 488 of 2020 and WP(C) No. 489 of 2020, the petitioners were promoted on or before 01.01.2006 and in WP(C) No. 483 of 2020, WP(C) No. 484 of 2020 and WP(C) No. 490 of 2020 the petitioners were promoted on or before 01.01.2006.

[4] All these petitions are consolidated for disposal by a common judgment inasmuch as the controversy is structured on facts which resemble. The case of the petitioners is that the petitioners were promoted to the post of Subedar (Accountant) and Subedar (Head Clerk), under the department of TSR. The Deputy Secretary, Finance Department, Government of Tripura, for fixation of pay of the government employees on promotion to a higher post or grade, the petitioners have been deprived from getting their legitimate pay fixation benefits on their promotion to the posts as stated above.

[5] Vide order dated 01.08.2014, the pay of the petitioners were incorrectly fixed at Rs.12,040/- as per Rule-12(i) of the ROP Rules, 2009. As a result thereof, the petitioners suffered pecuniary loss of Rs.5,320/- in the basic pay, with effect from 02.06.2014 to 30.06.2014 & Rs. 4010/- in the basic pay per month, with effect from 01.07.2014. Vide an order dated 02.06.2015, the pay of the petitioners were incorrectly re-fixed at Rs.14,750/- as a result thereof, the petitioners suffered pecuniary loss of Rs.3,910/- per month, in the basic pay, with effect from 02.06.2014 to 30.06.2014, and Rs.3,040/- in the basic pay per month, with effect from 01.07.2015. The petitioners sent a demand notice, thereby urging before the respondents to re-fix their pay, in conformity with the prescriptions, contained in Rule-12(i) of the ROP Rules, 2009.

[6] Mr. Somik Deb, learned senior counsel assisted by Mr. Abir Baran, learned counsel appearing for the petitioners has submitted that initially on 28.04.2001, the petitioners were appointed to the post of Rifleman, under the Tripura State Rifles (TSR, for short) and subsequently, on transfer or promotion they were promoted to the Subedar (Accountant) TSR and similar to this post. In exercise of the powers conferred under the Proviso to Article-309 of the Constitution of India, for regulating the pay and related benefits of the employees of the State of Tripura, the government of Tripura had framed the Tripura State Civil Services (Revised Pay) Rules, 2009 [ROP Rules of 2009, for short]. Rule-12(i) of the ROP Rules, 2009 is of paramount significance and hence, the same may be reproduced thereinbelow:

“12. Fixation on promotion on or after 01.01.2006: In the case of promotion from one grade to another in the revised pay structure the fixation will be done as follows:

(i) One increment to 2¹/₂ % of the sum of the pay in the pay band and the existing grade pay will be computed and rounded off to the next multiple of 10. This will be added to the existing pay in the pay band. The grade pay corresponding to the promotion post will thereafter be granted in addition to this pay in the pay band. In cases where promotion involves

change in the pay band also, the same methodology will be allowed. However, if the pay in the pay band after addition the increment is less than the minimum of the higher pay band to which promotion is taking place, pay in the pay band will be stepped up to such minimum.

Thereafter, by the 4th Amendment Rules, 2010, the ROP Rules of 2009 was amended, whereby the said 2^{1/2} % , prescribed under Rule-12(i) thereof, was enhanced to 3%”.

[7] He has further stated that as per ROP Rules, 2009 promotion to the post of Subedar (Accountant) involves a change in the pay band i.e. from PB-2 Rs.5,310-24,000/- along with Grade Pay of Rs.2,400/- to higher PB-3 Rs.9,570-30,000/- along with GP of Rs.3,500/- and PB-2 Rs.5,700-24,000/- along with GP of Rs.4,200/- to PB-3 Rs.10,230 to 34,800/- along with GP of Rs.4,800/- as per 12th Amendment Rules, 2015 of the ROP Rules, 2009.

[8] As per Table-13 of the 6th Amendment Rules, 2012, minimum basic pay of Rs.17,360/- (BP 13860+GP 3,500) of PB-3 of Rs.9570-30,000+ GP Rs. 3500 applicable for the post of Subedar of TSR Battalion is the corresponding pre-revised initial basic pay of Rs.7450/- (Pay scale Rs.7450-13,000). In 12th Amendment, 2015, the pay band scale of PB-3 has been revised to Rs.10,230-34,800/- plus GP of Rs.4,800/- and its minimum revised basic pay is Rs.18,660/- (BP 13,860+GP 4,800/-).

[9] Mr. Deb, learned senior counsel has further contended that the basic pay drawn in the feeder/lower post, just prior to the promotion to the post of Subedar (Accountant) was less than the minimum revised pay of higher PB-3, to which the petitioners were promoted. Moreover, the sum of computed pay of feeder/lower post along with grade pay of higher post to which they were promoted (Computation methodology refers to Rule-12(i) of the ROP Rules, 2009) was also less than the minimum revised basic pay of the post to which they were promoted.

[10] Due to some inconsistent guidelines along with some examples, contained in the memorandum bearing reference No. F.6(1)-

FIN(PC)/2008 dated 21.06.2013, issued by the Deputy Secretary, Finance Department, Government of Tripura, for fixation of pay of a government employee on promotion to a higher post or grade, the petitioners have been deprived from getting their legitimate pay fixation benefits on their promotion to their respective posts. For the purpose of reference, the relevant portion of the memorandum dated 21.06.2013, may be extracted hereinbelow:

Government of Tripura
Department of Finance

F.6(1)-FIN(PC)/2008

Agartala, 21st June, 2013

MEMORANDUM

Subject: Fixation of pay under the sixth amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009- Clarification thereto. Consequent upon the sixth amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009 vide Notification No.F.6(1)-FIN(PC)/2012(P-1) dated 19.12.2012, queries have arisen from certain quarters in respect of fixation of initial pay at the time of direct recruits appointed on or after 01.01.2006 and in respect of fixation of pay at the time of promotion of employees. The points raised and clarifications thereto are stated below:

Sl. No.	Point raised	Clarification
1.	What will be the initial pay in the pay band of a government employee appointed directly on or before 01.01.2006 in the revised pay structure the Sixth Amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009?	The figure shown in the column pay in the pay Band against each Grade Pay in respect of PB-1, PB-2, PB-3 and PB-4 as appended as PART-F at page-2 of the sixth amendment Rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009 will be the initial pay in the pay band Example: Mr. 'A' was appointed directly to a particular post in the pay structure of PB-4 (Rs.13,575-37,000/-) + GP Rs. 3,700 on 01.01.2012. His initial pay I the pay band will be Rs.14,510+GP Rs.3,700/-) on and from 01.01.2012 (date of appointment) in the above mentioned pay structure as per sixth amendment rules, 2012 to the Tripura State Civil Services (Revised Pay) Rules, 2009.
2.	How will the pay of government employee be fixed at the time of promotion to the higher post in the different pay bands?	The pay of a government employee at the time of promotion to the higher post in the different pay bands will be fixed as per Rule-12 of the Tripura State Civil Services (Revised Pay) Rules, 2009 read with fourth amendment Rules, 2010 to the Tripura State Civil Services (Revised Pay) Rules, 2009. Example: Mr. 'B' with basic pay of Rs.17,820/-(Band pay Rs.14,720+GP Rs.3,100) in the pay structure of PB-3 (Rs.9,570-30,000/-) +GP Rs. 3,100 was appointed to a higher post on promotion in the pay structure of PB-4 (Rs.13,570-37,000) +GP Rs.4,500/- on 11.04.2011. His pay will be fixed on promotion to the higher post

		<p>as follows:</p> <p>(i) If option exercised by him to get his pay fixed in the higher post directly on the date of promotion i.e. on 11.04.2011</p> <p>-Pay to be fixed on promotion on 11.04.2011: Rs.19,760/- (Rs.14,720/-+3% of Rs.17,820/- i.e. Rs.540/- + 4,500).</p> <p>-Pay as on 01.07.2011 Rs.19,760/-</p> <p>(ii) If option exercised by him to get his pay fixed in the higher post on the date of accrual of next increment of the lower post i.e. on 01.07.2011.</p> <p>-Pay to be fixed on promotion on 11.04.2011 Rs.19,220/- (Rs.14,720 +4,500/-)</p> <p>-Pay to be re-fixed on 01.07.2011:</p> <p>Rs.20,310/- (Rs.14,720/-+3% of Rs.17,820/- i.e. Rs.540/- + 3% of Rs.17,820/- + Rs.540/- i.e. Rs.550/-+4,500/-).</p>
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[11] He has further contended that the guidelines along with some examples, contained in the said memorandum dated 21.06.2013 for fixation of pay on promotion, is inconsistent with Rule-12(i) of the ROP Rules of 2009. It is stated that the said guidelines is valid for a State Government employee, whose basic pay in the feeder/lower post, just before his promotion, to a higher post of grade with higher Pay B, and exceeds the minimum basic pay of higher post or grade to which promotion took place. In the guidelines, an example has been placed for fixation of pay of a State Government employee, whose basic pay, so arrived at after computation of pay, in accordance with Rule-12(i) of ROP Rules, 2009 is less than the minimum basic pay of higher post or grade to which promotion took place.

[12] From the date of their promotion to the posts as stated supra, the petitioners were drawing their basic pay as per the 6th Amendment Rules, 2012. The sum of pay along with GP of the promotion post, computed as per Rule-12(i) of the ROP Rules, 2009 was less than the minimum basic pay of higher posts to which they were promoted. But, vide the order dated 01.08.2014, the pay of the petitioners were incorrectly

fixed. As a result, the petitioners are suffering pecuniary loss in the basic pay.

[13] Mr. Deb, learned senior counsel has further averred that during the pendency of the writ petition, under the guise of making certain clarification, regarding fixation of pay of Government employees, promoted to higher posts with higher pay structure on or after 01.01.2006, the Deputy Secretary, Finance Department, Government of Tripura issued a memorandum dated 26.08.2019 *add infra*:

“.....In light of the above, the undersigned is directed to inform that if the pay of a government employee who has been drawing revised pay in the lower post in terms of TSCS (Revised Pay) Rules, 2009 and who has subsequently been appointed to a higher post on promotion during the period under TSCS (Revised Pay) Rules, 2009, happens to be lower than the Entry pay as mentioned at Part-E read with Part-D of Schedule-I of TSCS (Revised Pay) Rules, 2009 then, the revised pay due to promotion shall not be less than the said Entry pay of the promotion post. However, this instruction shall not affect those cases where the fixation of pay due to promotion is higher than the entry pay of the promotion post. this shall also not be applicable to cases where a government employee is already drawing higher pay of the promotion, if any, due to entitlement of Assured Career Progression Scheme.

The under signed is further directed to inform that the above benefit of revised pay shall be allowed notionally, even for the purpose of revision of pay in respect of TSCS (Revised Pay) Rules, 2017 and its amendment. Actual financial benefit of higher pay scale may be allowed to eligible cases from 1st September, 2019. Cases where the government employee had proceeded on retirement shall not be reopened. For any posts that are not covered under the provisions of TSCS (Revised Pay) Rules, 2009, cases for relief in-terms of the instant memorandum may not be considered.....”

[14] He has submitted that in exercise of powers conferred by the Proviso to Article-309 of the Constitution of India, vide notification dated 05.05.2009, the State of Tripura had promulgated the ROP Rules, 2009. Rule-12(i) of the said ROP Rules, 2009 statutorily prescribes that in the case of promotion, from one grade to another, in the revised pay structure, the fixation would be done with one increment equal to 2^{1/2} % of the sum of the pay in the pay band, and the existing grade pay would be computed

and rounded off to the next multiple of 10 and this would be added to the existing pay in the pay band and the corresponding grade pay to the promotion post would thereafter be granted in addition to this pay in the pay band, and in the cases, where promotion involves change in the pay band, the same methodology would be followed, but if the pay in the pay band after addition, the increment is less than the minimum of the higher pay band, to which promotion is taking place, pay in the pay band would be stepped up to such minimum. The 4th Amendment Rules, 2010 of the ROP Rules, 2009 the said 2^{1/2} % prescribed under Rule-12(i) thereof, was enhanced to 3%.

[15] It has been further submitted that the ROP Rules, 2009 and the subsequent amendments thereof, are instances of statutory laws, enacted by the government of Tripura under the Proviso to Article-309 of the Constitution of India, which has *ipso jure* created a vested right, in favour of the petitioners and hence, by mere issuance of a letter in the style & fashion of the memorandum i.e. the memorandum dated 26.08.2019, the said vested right of the petitioners cannot be impaired. It is the trite law that the right to receive the correct salary & allowances under the relevant statutory rules is a vested right and such vested right cannot be impaired by an administrative instruction/circular letter.

[16] It is trite law that under the substantive part of Article-309 of the Constitution of India both the Parliament as well as the State Legislature has the legislative competence, to make laws regulating the recruitment, and conditions of service of persons, appointed to public services and posts in connection with the affairs of the Union/State, subject however, in case of Parliament, such law, made under the substantive part of Article-309 of the Constitution of India is not in abrogation with a law, made under entry-70 of List-I of the 7th Schedule of the Constitution of India.

[17] He has further argued that Article-309 of the Constitution of India, both the Central Government and the State Government has the legislative competence, to make Rules regulating the recruitment, and the conditions of service of persons appointed, to the services and posts of the State. In absence of a legislation, by the State Legislature, under the Substantive part of Article-309 of the Constitution of India, the legislative recruitment and the conditions of service of persons appointed, to the services and posts of the State, is supreme and not in any manner subservient to any other provision of the Constitution of India. It is settled law made under the Proviso to Article-309 of the Constitution of India has primacy even over a law, made by the Central Government, under Article-73 of the Constitution of India, or a law, made by the State Government, under Article-162 of the Constitution of India.

[18] By virtue of the ROP Rules, 2009, a right has vested in favour of the petitioners to receive the actual financial benefits, from the date its accrual, in their favour and such vested rights of the petitioners cannot be impaired even with the aid of a law, made by the State Government, under Article-162 of the Constitution of India, much less the impugned memorandum dated 26.08.2019, whereby, the same negates the actual financial benefits to the petitioners from the date of accrual thereof till 31.08.2019. An administrative instruction/circular letter and its nomenclature as a memorandum would not give it the flavor of a law, made by the State Government under the Proviso to Article-309 of the Constitution of India.

[19] The impugned memorandum dated 26.08.2019 has been would reveal that the letter has made an inroad on to the former and hence, the said impugned memorandum dated 26.08.2019 insorfar as it negates the financial benefits to the petitioners, from the date of accrual thereof till 31.08.2019 is grossly unsustainable warranting interference. It is evidently

clear that in the instant case, there has been gross defiance of settled principles of law and the statutory prescriptions, contained in the ROP Rules, 2009 and the subsequent amendments thereof, hence, the said impugned memorandum dated 26.08.2019 insofar as it negates the financial benefits to the petitioners, from the date of accrual thereof till 31.08.2019, is in gross violation of the Constitutional rights of the petitioners.

[20] In support of his contention, he has placed reliance upon a decision of the Apex Court in *General Manager, Uttaranchal Jal Sansthan v. Laxmi Devi and Others*, reported in (2009) 7 SCC 205, wherein, the Apex Court has held thus:

“31. Reliance has been placed on a purported circular issued by Uttaranchal Public Works Department dated 21st Mach, 2002, assuming that the same can be taken into consideration, is in our opinion wholly irrelevant. Apart from the fact that such a contention had not been raised by the respondents before the High Court, we fail to understand how a mere circular letter which has no force of law shall prevail over the statutory Rules. The respondents themselves have relied upon the decision of this Court in DDA v. Joginder S. Monga, wherein, it was held that executive instructions cannot run contrary to the statutory provisions”.

[21] Mr. M. Debbarma, learned Addl. G.A. appearing for the respondents has submitted that all the petitioners' rate of increment will be lesser because of the fact that rate of increment has been calculated 2¹/₂ % as the petitioners were got promotion on or before 30th June, 2010. But employees who got promotion on or after 1st July, 2010 rate of increment will be calculated 3% as per Rule-12 of the ROP Rules, 2009.

[22] As per Rule 7(1) (C) [12th Amendment], 2015 the re-fixation of pay shall be notionally regulated up to 31.03.2015 as per provision laid down in ROP Rules, 2009 and financial benefits to be accrued on re-fixation of pay in the modified revised pay structure shall be payable w.e.f. 01.04.2015 and re-fixation of pay for all the petitioners were done

following this amended rules and also allowed notionally on subsequent promotion as per the said memo dated 26th August 2019.

[23] Mr. Debbarma, learned Addl. G.A. has submitted that as per TSCS (Revised Pay) 12th Amendment, Rules 2015 the promotion to the post of Subedar (Account) involves a change in the pay band i.e. from PB-2 Rs. 5,700-24,000 along with Grade Pay of Rs.4,200/- to the higher PB-3 Rs. 10,230-34,800/- along with Grade Pay of Rs.4,800/-. Moreover, pay of the petitioner on promotion to the higher post of Subedar (Accountant) has already re-fixed at the entry pay of the promotion post notionally w.e.f. 02.06.2014 with actual financial benefit w.e.f. 01.09.2019 in terms of the clarification issued by the Finance Department, Government of Tripura.

[24] He has further submitted that the Finance Department issued clarification regarding fixation of pay of the government employees promoted to higher posts with higher pay structure on or after 01.01.2006 vide memo dated 26.08.2019 and also as per claim of the petitioners their pay have already been re-fixed at the entry pay of the promotion post in higher pay structure w.e.f. 02.06.2014. Some departments had brought to the notice of the Finance Department that some of their employees who were promoted to higher post during the period under ROP, 2009 have been receiving less pay than the initial pay of the promotion post due to application of formula for fixation of pay on promotion as given under ROP, 2009. There is no provision in ROP, 2009 to settle such discrepancy.

[25] The State Government took an initiative to settle the issue. For this purpose office memorandum dated 28th September, 2018 issued by the Department of Expenditure, Ministry of Finance, Government of India was consulted vide that office memorandum, it was observed that the benefit of fixation of pay to the level of initial pay of the promotion post (Entry Pay) was allowed to the Central Government employees whose pay after promotion was less than entry pay of the promotion post. This

method was found good to settle the issue. Thereafter, opinion of the law department was sought. Law department also considered the proposal of the finance department and observed that ROP, 2009 has been repealed from 1st April, 2017 because from that date ROP, 2017 has come into effect. As such, at present ROP, 2009 has no effect.

[26] He has submitted that there is no vested right upon the petitioners under ROP, 2009 because neither there is a provision of arrear due to promotion in ROP, 2009 and also ROP, 2009 has been repealed w.e.f. 01.04.2017. Even, ROP, 2009 does not ensure that the petitioners would be entitled to entry pay of the promotional post.

[27] In view of above submission as advanced by the learned counsel appearing for the parties, this Court thinks it necessary to consider the ROP, 1999 which contained a Career Advancement Scheme (Modified) which was later on substituted by the Assured Career Progression Scheme provided in Rule-10 of ROP, 2009. Relevant portion of Rule-10 of ROP, 2009 reads as under:

“10. Introduction of a new scheme titled Assured Career Progression (ACP) Scheme with effect from 1st January, 2006 replacement of existing CAS introduced under TSCS (Revised Pay) Rules, 1999.-

(1) Under the new scheme (A.C.P.), all Government employees in PB-1, PB-2 & PB-3 shall be entitled to get a maximum of three financial upgradations, 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 benefits of scale upgradations including promotions already. In case of PB-4, the employees borne under Grade Pay Rs.3700/- (against pre-revised 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 upgradations respectively under the scheme provided the concerned employee had not got scale upgradations

including promotion up to 3, 2 & 1 respectively already.

(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.

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(5) The scheme envisages grant of only financial benefits (through financial upgradation) to the Govt. servant concerned on a person basis and shall, therefore, neither amount to functional/regular promotion nor would require creation of new posts for the purpose.

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(7) Only the benefit of fixation of pay will be available at the time of financial upgradation under this scheme. For this, an increase of one increment in the existing pay in his/her Pay Band (i.e. 2.5% of Band Pay plus Grade Pay) along with next available Grade Pay shall be admissible as benefit of financial upgradation under this scheme. However, in cases where financial upgradation and promotion fall in the same Grade Pay, in that case if any employee has already got the benefit of financial upgradation under ACP, he will not get any further financial benefit of increment etc. for his promotion in the same Grade Pay. He will, however, thereafter be entitled to the higher designation and all the financial responsibilities and facilities available for the higher post.

(8) Besides providing one increment @ 2.5% and the next available Grade Pay under the ACP, the concerned employee will continue to remain in his existing Pay Band. However, in the event of his crossing the maximum of the Pay Band as a result of this upgradation, she/he will move to the next higher Pay Band but without any change in the earlier Grade Pay.

Provided, those Government employees who had got the benefit of CAS under TSCS (Revised Pay) Rules, 1999 between period 1.1.1999 to 31.12.2005 moving to the promotion scale without having benefit of FR 22(I)(a)(1) but got/will get functional promotion in the same pre-revised pay scale or to the revised pay structure corresponding to the same pre-revised pay scale after coming over to the revised pay scale, will be entitled to get the benefit of one increment under revised pay structure at the time of functional promotion in the same pay scale.”

[28] Learned counsel for the respondents has submitted that the present memorandum is not effect to and will not come in the way of the petitioners and also the same is not applicable.

[29] On appreciation of the submissions as advanced by the learned counsel for the parties and having verified the records produced in the proceeding.

[30] The rules of 2017 which came into force subsequent to 2009 and the cutoff date for the purpose of considering the case of the petitioners' for monitory benefits. Hence, the 2017 rules cannot have the retrospective effect and thus, the case of the petitioners needs to be considered accordingly.

[31] ROP Rules, 2009 and the subsequent amendments thereof, are the instances of statutory laws, enacted by the government of Tripura under the Proviso to Article-309 of the Constitution of India, which has *ipso jure* created a vested right, in favour of the petitioners and hence, by mere issuance of a letter in the style & fashion of the memorandum i.e. the memorandum dated 26.08.2019, the said vested right of the petitioners cannot be impaired. An administrative instruction/circular letter and its nomenclature as a memorandum, would not give it the flavor of a law, made by the State Government under the Proviso to Article-309 of the Constitution of India and the said administration instructions cannot have an overriding affect on the statute.

[32] This Court is of the opinion that the present batch of writ petitions may be allowed directing the respondents to consider the case of the petitioners without reference to the impugned memorandum dated 26.08.2019 whereby the same negates the actual financial benefits to the petitioners, from the date of accrual thereof till 31.08.2019 and also treating the promotion of the petitioners' after 2010. Thus, the same stands allowed and accordingly, they are entitled for all consequently benefits in respect of their incentives.

[33] In the result, the present writ petitions stand allowed and thus disposed of.

JUDGE

A.Ghosh

