

(2014) 06 TP CK 0031
In the Tripura High Court
Case No : WP(C) No. 462 of 2006

**Haradhan Chakraborty Vs Tripura Co-Operative Agriculture and Rural
Development Bank Ltd.**

Date of Decision : 05-06-2014

Acts Referred:

Citation : (2014) 06 TP CK 0031

Hon'ble Judges : S.C. Das, J

Bench : Single Bench

Advocate : C.S. Sinha and Mr. D.C. Saha, Advocate for the Appellant; T. Datta Majumder, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

S.C. Das, J.—Heard learned counsel, Mr. C.S. Sinha for the petitioner and learned counsel, Mr. T. Datta Majumder for the respondents.

2. A simple question is involved in this writ petition. The petitioner was appointed as a Class-IV staff in the post of Peon under the respondents on 29.05.1973(Annexure-1 to the writ petition). He was promoted to the post of Gestetner Operator on 30.05.2000 in the scale of pay of Rs. 3,300-7,100/-. On such promotion his pay was fixed as per FR 22(1)(a)(2) of the Fundamental Rules. The petitioner contended that his pay has been wrongly fixed under FR 22(1)(a)(2) of the Fundamental Rules and that he is entitled to get the benefit of fixation as per FR 22(1)(A)(1) of the Fundamental Rules.

3. Respondents contended that the petitioner was serving as a Class-IV staff in the post of Peon since long and after his continuous service of prescribed period he was given the benefit of movement to the higher scale and pursuant thereto he reached the higher pay scale which was equivalent to the scale of pay admissible to Gestetner Operator. Since he reached the pay scale admissible to Gestetner Operator, his pay was fixed in the same pay scale on his promotion giving him the benefit of one increment as per FR 22(1)(a)(2). There was nothing wrong in the fixation of pay and the petitioner since even after his

promotion was a Class-IV staff, he was not entitled to the benefit of fixation under FR 22(1)(A)(1).

4. Learned counsel, Mr. Sinha appearing for the petitioner has submitted that from the year 1973 the petitioner rendered unblemished service to the respondents in the post of Peon and he was given the benefit of movement to higher pay scale as per service rules admissible time to time. On his promotion to the post of Gestetner Operator, he was not given the benefit of fixation as per FR 22(1)(a)(1), and according to learned counsel Mr. Sinha, the petitioner was entitled to the benefit of fixation as per FR 22(1)(a)(1). It is also submitted by learned counsel, Mr. Sinha that as per Government of India's decision, the petitioner was entitled to the fixation as per FR 22(1)(a)(1) for the reason that in the entire service period there was no scope of any promotion in a particular post, the petitioner was working as a class-IV employee. He referred to Government of India's decision No. G.I., M.F., O.M. No. 10(1)/E.III/88, dated 13.09.1991.

5. Learned counsel, Mr. Datta Majumder appearing for the respondents has candidly submitted that the petitioner after his continuous legitimate service in the post of peon already reached the highest scale after movements time to time and the scale he already reached at the time of promotion was equivalent to the scale of pay meant for a Gestetner Operator. He was not entrusted higher responsibility by means of that promotion. After promotion his pay was fixed as per FR 22(1)(a)(2) and he was given the benefit of an extra increment. Since there was no involvement of any greater responsibility in the post, he was rightly given the benefit of promotion in the particular pay scale meant for the post according to rules. In support of his contention he has referred the decisions of the Apex Court in the case of Union of India and Others Vs. Ashoke Kumar Banerjee, and the case of State of Haryana and Another Vs. Partap Singh and Others,

6. There is no dispute that the petitioner was already in the pay scale of Rs. 3,300-7,100/- on the date of his promotion to the post of Gestetner Operator, i.e. on 30.05.2000. The respondents fixed the pay of the petitioner applying FR 22(1)(a)(2) by Memo. dated 22.07.2000(Annexure-3 to the writ petition). Since he was already in the pay scale of Gestetner Operator, his pay was fixed referring to the provisions of FR 22(1)(a)(2). There is nothing to show that the petitioner was to discharge greater responsibility in the post of Gestetner Operator. Under the circumstances, fixation of pay of the petitioner under FR 22(1)(a)(2) cannot be said to have a wrong fixation.

7. The Supreme Court in the case of Ashoke Kumar Banerjee(supra) dealt with a like situation and the Court in paras 8 and 9 of the judgment observed thus:

8. In our view, the respondent having received the same benefit in advance, while working as Junior Engineer and while not actually functioning as an Assistant Engineer, is not entitled to the same benefit of fresh fitment in the

scale of Rs. 2000-3500 when he is promoted on 1-8-1991 as Assistant Engineer. This is because as on 1-8-1991, he is not being fitted into the "time scale of the higher post" as stated in the FR. That situation was already over when the OM was applied to him on his completion of 15 years. For the applicability of the FR 22(1)(a)(i) it is not merely sufficient that the officer gets a promotion from one post to another involving higher duties and responsibilities but another condition must also be satisfied, namely, that he must be moving from a lower scale attached to the lower post to a higher scale attached to a higher post. If, as in this case, the benefit of the higher scale has already been given to him by virtue of the OM there is no possibility of applying this part of the FR which says.

his initial pay in the time scale of higher post shall be fixed at the stage next above the notional pay arrived at by increasing his pay in respect of the lower post held by him regularly by an increment at the stage at which such pay has accrued or rupees twenty-five only, whichever is more.

9. Further, the respondent is a junior officer in the category of Junior Engineers and he has already got the benefit of the FR on completion of 15 years. If he is to be given a second benefit on the basis of the same FR, then he would be getting more than his seniors, who might have got promoted earlier and might have got benefit of the FR 22(1)(a)(i) only once. Such an anomaly was not obviously intended by the FR.

Referring to Ashoke Kumar Banerjee(supra) in a subsequent decision, i.e. in Pratap Singh(supra) the Supreme Court reiterated the same principle.

8. Since the petitioner was already in the same pay scale which was meant for Gestetner Operator and the post was not involving greater responsibilities, in my considered opinion, fixation of the petitioner's pay as per FR 22(1)(A)(2) was justified and I find, therefore, no merit in the writ petition.

9. The submission of learned counsel, Mr. Sinha in respect of the Government of India's decision referred hereinbefore, the petitioner may make suitable representation to the authority for giving him the benefit as submitted by learned counsel, Mr. Sinha.

10. With the above observation, the writ petition stands disposed of. Parties to bear their own costs.