
(1999) 05 GAU CK 0053
In the Gauhati High Court
Case No : Civil Rule No. 304 of 1994

Nimai Ch. Das

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 11-05-1999

Acts Referred:

Constitution of India, 1950 — Article 309, 311, 311(2)
Tripura State Civil Services (Revised Pay) Rules, 1988 — Rule 3, 5, 5(1), 5(2), 5(3)

Citation : (1999) 2 GLT 237

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.M. Lodh, for the Appellant; P. Debroy, for the Respondent

Judgement

D. Biswas, J.—This writ petition has been filed by the writ Petitioner praying for fixation of pay in the scale of Rs. 1450-3710/- meant for the post of Surveyor as per provisions of ROP Rules 1988 and for issue of appropriate writ quashing the office order dated 5.6.1993 etc.

2. The Petitioner was initially appointed as Forester under the Forest Department, Government of Tripura. He was promoted to the post of Surveyor by office order dated 14.5.1986 (Annexure-1) in the scale of Rs. 560-25-710-20-860-40-1300/-. The revised scale was brought into force with effect from 1.1.1986 by the Tripura State Civil Services (Revised Pay) Rules, 1988. By the graded scale No. 9 the post of Surveyor has been redesignated as senior Surveyor, Surveyor and Junior Surveyor having scale of pay of Rs. 1700-3980/-, Rs. 1450-3710/- and Rs. 1300-3220/- respectively. The Petitioner later on came to know that he has been re-designated as Junior Surveyor and his pay has been fixed in the scale of Rs. 1300-3220/- meant for Junior Surveyors. Representations were submitted by him to correct his designation and to fix his pay in the scale of Rs. 1450-3710/- prescribed for Surveyors. The Respondents-authority vide letter dated 5.6.93 (Annexure-3) regretted to concede to his prayers. It is further alleged that the proforma Respondent Nos. 3, 4 and 5 were

initially appointed as Amins in 1976 and 1979 in the same Department. They were treated as Junior Surveyors on their option to the said posts with effect from 1.1.86 when R.O.P. Rules of 1988 came into force. All the 3 Respondents were again treated as Surveyors from the year 1989. The said Respondents have not only been given higher scale but also now under consideration for promotion to the next higher grade as Senior Surveyors. Thus, it is pleaded, that the Respondent-State by the aforesaid action has violated the lawful right of the writ Petitioner for equal treatment. Describing the action as arbitrary and discriminatory, the instant writ petition has been filed seeking the reliefs indicated at the very outset of the judgment.

3. The Petitioner also submitted a Misc. petition (Misc. Case (C.R.) No. 476 of 1996) for orders restraining the Respondents 1 and 2 from promoting the proforma Respondents. This Court vide order dated 3.9.1996 made it clear that if the proforma Respondents 3, 4 and 5 are promoted to the post of Senior Surveyors during the pendency of the writ petition, such promotion shall be subject to the decision of this writ petition.

4. The Respondents-State in their affidavit-in-opposition controverted the averments made in the writ petition. According to them the matter has been examined by the Finance Department and the claim of the writ Petitioner for fixation of his pay in the scale of Rs. 1450-3710/- was found untenable on the ground that the incumbent has been given the lowest grade of the Graded Scale No. 9 i.e. Rs. 1300-3220/- as it is the corresponding revised scale of Rs. 560-1300/- which the Petitioner was getting prior to revision of pay. According to the Respondents-State, redesignation of the post of Surveyor held by the Petitioner as Junior Surveyor has been made in accordance with the provisions of the R.O.P. Rules, 1988 and, therefore, there is no reduction of the Petitioner in the rank as alleged.

5. In his brief rejoinder, the Petitioner submits that after his promotion to the post of Surveyor, any decision taken by the Govt. to re-designate him as Junior Surveyor is violative of the provisions of Article 311 of the Constitution. It is further reiterated that three separate scales have been prescribed in the R.O.P. Rules, 1988 separately for the post of Senior Surveyor, Surveyor and Junior Surveyor. Therefore, there is no scope for redesignating an incumbent holding the post of Surveyor as Junior Surveyor and thereby depriving him from the corresponding revised scale. It would further appear from the additional affidavit that the Petitioner has also refused to accept re-designation of his post as Junior Surveyor in response to an offer made by the Divisional Forest Officer vide letter dated 15.7.1996 (Anenxure-5).

6. Mr. A.M. Lodh, Learned Senior Counsel, made his submission mainly on two counts. According to him re-designation of a Surveyor as Junior Surveyor amounts to reduction in rank and refixation of the scale of such a Surveyor in the scale of pay recommended for junior surveyor is the proof of such reduction. His next point of argument is that the proforma Respondents No. 3, 4 and 5 were

junior to the Petitioner in the post of Surveyors before revision of pay and the said Respondents have not only been treated as Surveyors, but also are being considered for promotion to the next higher grade.

7. In the context of the argument made by Mr. Lodh, it is first considered necessary to answer the question whether redesignation of the writ Petitioner as Junior Surveyor is a reduction in rank within the meaning of Article 311(2) of the Constitution. For this purpose, it is necessary to refer to the relevant provisions incorporated in the R.O.R Rules of 1988. The provisions relevant for this case are reproduced below:

3. In these rules, unless the context otherwise requires-

(1) (a) "Basic Pay" means the pay as defined in Fundamental Rule 9(21)(a)(i).

(b) "Existing Scale" in relation to a Government servant means the "present scale" applicable to the post held by the Government servant or, as the case may be, personal scale applicable to such Government servant, as on the 1st day of January, 1986 whether in a substantive or officiating capacity.

Explanation:....

(c) "Present Scale" in relation to any post specified in Column 2 of Schedule III means the scale of pay, whether fixed or otherwise, specified against that post in Column 3 thereof.

Provided that where a modified present scale is specified in Column 5 of Schedule III against the post specified in Column 2 thereof, such modified present scale shall be the "present scale".

Provided further that where a redesignation is specified in Column 4 of Schedule III against the post in Column 2 thereof the modified present scale shall be in relation to such redesignation post.

Note: The "Present Scale" and the modified present scale are shown in Column 3 and 5 of Schedule III in brief. For example, the present scale of Rs. 470-20-550-25- 1025/- is specified as Rs. 470-1025/-. The details of the scale are shown in Column 1 of Part A of Schedule I.

3.(2)(d) "Modified Present Scale" in-relation to any post specified in column 2 of Schedule-III means a scale which is higher than the present scale in relation to that post and is specified in column 5 against that post.

Provided that where a re-designation is also specified in column 4 of Schedule-III against the post in column 2 thereof, the modified present scale shall be in relation to such redesignation post.

5. (1) Save as otherwise provided in these Rules, a Government servant shall draw pay in the revised scale applicable to the post/service to which he is appointed.

Provided that a Government servant may elect to continue to draw pay in the existing scale until the date on which he earns his next or any subsequent increment in the existing scale or until he vacates his post or ceases to draw pay in that scale.

(2) Notwithstanding the provision contained in Sub-rules (1), where a "redesignation" is specified in Column 4 of Schedule III against a post specified in column 2 thereof, the Government servant shall be deemed to have been appointed to the redesignated post.

(3)

Note 1: For the purpose of Sub-rule (2) a Government servant holding a post specified in column 2 of Schedule III which has been redesignated shall intimate his acceptance of the redesignation in respect of the post.

Note 2: Where a Government servant does not accept the redesignation of the present post to which he is appointed, he shall draw revised pay in the "corresponding revised scale" and shall not be entitled to the benefits provided in these rules for the redesignated post.

6.(1)

(2) The acceptance of the redesignation of a post under Note 1 below Rule 5 shall be intimated in writing in the Form appended to Part-B of Schedule II so as to reach the authority mentioned in Sub-rule (3) within the period specified in Sub-rule (1).

(3)

(4)(a) If the intimation regarding option is not received within the time mentioned in sub-rule (1), the Government servant shall be deemed to have elected to be governed by the revised scale of pay on and from the first day of January, 1986.

(b) If the intimation regarding the acceptance of the re-designation is not received within the time mentioned in Sub-rule (1), the Government servant shall be deemed to have elected to be governed by the "corresponding revised scale."

(5) The option once exercised and/or the acceptance of the re-designation once intimated shall be final.

Note 1:....

Note 2:....

Explanation:....

8. The above provisions in the Rules of 1988 have been made by the State Government in exercise of powers conferred under Article 309 of the

Constitution. There cannot be any dispute that the above provisions are the laws of the state. In this writ petition, the Petitioner has not challenged the vires of any of the aforesaid provisions. Therefore, this Court has to evaluate the validity of the claim of the writ Petitioner with reference to the Rules in force. From the provisions incorporated in Rule 3, it would appear that where a redesignation has been specified in Column 4 of Schedule-III, the modified present scale shall be attributed to such re-designated post. The Rules quoted above provide for option to retain the existing scale under the proviso to Sub-rule (1) of Rule 5 or to opt for re-designated post as provided in Note-1 to Sub-rule (3) of Rule 5. Sub-rule (2) provides that notwithstanding anything contained in Sub-rule (1) of Rule 5, in case of a re-designation of a post, the government servant shall be deemed to have been appointed to the re-designated post. This deeming provision was obviously intended to be brought into force with effect from 1.1.1986. Although Note-1 to Sub-rule (3) of Rule 5 provides for intimation of acceptance of the redesignated post, Note-2 to the aforesaid sub-rule makes it clear that where a Government servant does not accept the redesignation of the post, he shall draw revised pay in the corresponding revised scale and shall not be entitled to the benefits provided for the re-designated post. In the instant case, the writ Petitioner has neither elected to continue with the old scale nor intimated his acceptance of the redesignated post. This eventuality has been covered by the provisions incorporated in Rule 6. Sub-rule (1) of Rule 6 requires a Government employee to exercise option within 60 days. Sub-rule (4)(a) makes it clear that if the intimation regarding option is not received within the time mentioned in Sub-rule (1) i.e. 60 days from the date of publication of the R.O.P. Rules, the Government servant shall be deemed to have elected to be governed by the revised scale of pay on and from the 1st day of January, 1986. Sub-rule (4)(b) further provides that if the intimation regarding the acceptance of redesignation is not received within the time prescribed, the Government servant shall be deemed to have elected to be governed by the corresponding revised scale. The Petitioner, before revision of the pay scale, was drawing pay in the scale of Rs. 560-1300. The corresponding revised scale prescribed in the R.O.P. Rules in Part-C (Schedule-III) at item No. 9 is Rs. 1300-3220/-. The Petitioner not having exercised any option in terms of Rule 5 and 6 shall be deemed to have accepted the corresponding revised scale as per provisions of Rule 6(4)(a) and (b). From this point of view, fixation of the pay of the Petitioner in the scale of Rs. 1300-3220/- cannot be said to be in deviation of the provisions of the R.O.P. Rules. Whether redesignation was accepted or not, fixation of the scale of the Petitioner, who was drawing pay in the scale of Rs. 560-1300/-, in the corresponding revised scale of Rs. 1300-3220/- is in compliance with the provisions of the R.O.P. Rules.

9. Mr. Lodh further argued that redesignation of the post of Surveyor as Junior Surveyor is a reduction in rank and violative of the provisions of Article 311. The Pay Commission recommended scales of pay for various posts in the Forest Department in Item No. 15 of Part-B (Schedule-III). The Entry-8 which deals with

the post of Surveyor is quoted below:

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Si. No. Name of the post Present Scale Re-designation of the post, if any
Modified Present scale, if any Revised Remarks

1 2 3 4 5 6 7

8 Senior Survey Supervisor 650-1595 Senior Surveyor

Soil Analyst 650-1595 Senior Soil Analyser

Draftsman 650-1440

Vide Graded Scale 9

Survey Supervisor 560-1330 Surveyor

Surveyor 560-1300 Junior Surveyor

10. The Grade 9 scale available in Part-C (Schedule-III) reads as follows:

Sl. No. Name of the Post Present Scale Re-designation of the post, if any Modified
Present scale, if any Revised Remarks

1 2 3 4 5 6 7

9 Draftsman/Surveyor/Research Asst. Chemist/Water Analyst Soil Analyst and
similar other posts 650-1595 600-1440 430-850 550-1245 560-1300 Senior
Draftsman Draftsman Junior Draftsman (Similar for other posts) 750-1750
650-1595 600-1440 1700-3980 1450-3710 1300-3220

Note: Redesignation of various existing posts has been shown in the
departmental list in Part B of Schedule III.

11. It would appear that the post of Surveyor has been redesignated as Junior Surveyor and the scale prescribed is Rs. 1300- 3220/-. The redesignation has been made by the Government incorporating the above provisions in the R.O.P. Rules made in exercise of powers under Article 309. This has been done for administrative convenience. This action of the State Government cannot be termed as violative of the provisions of Article 311(2) for the simple reason that there is no reduction in the pay scale, right to pension or gratuity and that it has not been done as a disciplinary measure. In the considered opinion of this Court, this redesignation without any loss in emoluments cannot be coloured as an action violative of the provision of Article 311(2) of the Constitution.

12. The Learned Counsel for the writ Petitioner further argued that Respondents No. 3, 4 and 5 were junior in the service to the writ Petitioner, but they have not only been given the status of Surveyor, the State is also contemplating to promote them to next higher grade. But I have carefully examined the

averments made in para-5A, B and C. Although not specifically denied by the State in their counter affidavit, it cannot be conclusively decided, on the basis of the averments made in the writ petition, that the private Respondents were junior to the Petitioner in the cadre of Surveyors. However, the Petitioner will definitely have a better case if the private Respondents were junior to him in the cadre of Surveyor, as alleged and have been treated as Surveyor and also being considered for promotion to the next higher grade. This will definitely amount to discrimination which has to be taken care of.

13. In the result, the writ petition is disposed of with the direction that the Respondent No. 2 shall examine within a period of two months as to whether the private Respondents who were junior to the writ Petitioner in service in the cadre of Surveyors and, if so, to place the Petitioner at par with them if they have been given the status of Surveyor with benefit of fixation in the revised scale of Rs. 1450-3710/- giving him his due position in the seniority list for all purposes including promotion to the next higher grade. If any of the private Respondents, in the meantime, have been promoted to the next higher grade, such promotion, being subject to the decision of this writ petition as per order dated 3.9.96 shall be rescinded or readjusted to accommodate the writ Petitioner.

No order as to costs.