

(2006) 05 GAU CK 0106
In the Gauhati High Court
Case No : C.R. No. 515 of 1995

Sekhar Dutta Choudhury

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 19-05-2006

Acts Referred:

Constitution of India, 1950 — Article 14

Tripura State Civil Services (Revised Pay) (Amendment) Rules, 1999 — Rule 10

Citation : (2006) 3 GLT 384

Hon'ble Judges : A.B. Pal, J

Bench : Single Bench

Advocate : B. Das and D. Chakraborty, for the Appellant; U.B. Saha and D.C. Nath, for the Respondent

Judgement

A.B. Pal, J.—The Petitioner Shri Sekhar Dutta Choudhury has been working as Supervisor under the Directorate of Welfare for Scheduled Tribe. He has filed the present writ petition in a representative character for himself and other Supervisors, who have been working under the Directorate of Welfare for Scheduled Tribe and the Directorate of Welfare for Scheduled Caste and other Backward Communities. In the above Directories, 2 (two) other category of posts of Surveyor and Inspector also exist. The three category of posts of Supervisor, Surveyor and Inspector were in the same pay scale of Rs. 560-1300/- before the revision of pay of 1988 which came into force w.e.f. 01.01.1986. In the revision of pay, 1988 the post of Inspector was given the modified un-revised pay scale of Rs. 650-1595/- and revised pay scale of Rs. 1450-3710/- with provision to move to the next higher pay scale of Rs. 1700-3980/- on completion of 10 years of service as per provision contained in Note-3 under Part-B (Schedule-III) of the Tripura State Civil Services (Revised Pay) Rules, 1988 (for short "ROP of 1988"). For the other two category of posts of Surveyor and Supervisor, the modified scale was Rs. 600-1440/- which was revised to Rs. 1300-3220/- with the provision that the holder of the post should be entitled to the graded scale of pay as provided in Part-C of the ROP of 1988. In that Part, the post of Surveyor has

been given Scale No. 9, which would show that the said post has been re-designated as Junior Surveyor retaining the same revised pay scale of Rs. 1300-3220/-. The next higher grade is Surveyor in the pay scale of Rs. 1450-3710/- to which a Junior Surveyor would move after 10 years in the case of no promotion is given. The next higher grade is Senior Surveyor in the pay scale of Rs. 1700-3980/- to which a Surveyor would move after 18 years of service if no earlier promotion occurs. Thus, all the Surveyors before ROP of 1988 became Junior Surveyor with same revised scale of pay of Rs. 1300-3220/- with avenue of upward movement to Surveyor and Senior Surveyor in the higher pay scale of Rs. 1450-3710/- and Rs. 1700-3980/- after 10 and 18 years of service. For the post of Supervisor, a downward graded scale has been provided. The Supervisors in the revised pay scale of Rs. 1300-3220/- has no avenue for upward movement after 10 and 18 years of service. On the contrary, two lower grades of Assistant Supervisor in the pay scale of Rs. 970-2400/- and Junior Supervisor in the pay scale of Rs. 1020-2620/- were contemplated providing that a person entering into service as Assistant Supervisor in the pay scale of Rs. 970-2400/- would move to the grade of Junior Supervisor in the pay scale of Rs. 1020-2620/- after 10 years and the next higher grade of Supervisor in the pay scale of Rs. 1300-3220/- after 18 years of service if during these period no promotion is given to the incumbent. For those, who entered into the service as Supervisor before the ROP of 1988 and got the revised pay scale of Rs. 1300-3220/- has been provided with no benefit of upward movement by career advancement. It is the grievance of the Petitioner that when all other posts included Part-B or Part-C enjoy the benefit of upward movement by career progression method such benefit has been denied to the Petitioners for no rhyme or reason, which is an act of arbitrariness violating thereby the equality clause of Article 14 of the Constitution. It is the prayer of the Petitioner to direct the State-Respondents to make necessary provisions by way of amendment of the ROP of 1988 for movement of the Petitioner from the pay scale of Rs. 1300-3220/- to 1450-3710/- after 10 years and then to Rs. 1700-3980/- after 8 years more as has been done for Surveyors. Though the ROP of 1988 was published on 16th September, 1988, the Petitioner filed the writ petition only on 27.10.1995 after a period of 7 years. This delay, however, has been sought to be explained in para-13 of the writ petition stating that the representation of the Supervisors to remove anomaly in their pay scale was under consideration of the Pay Anomaly Committee for a considerable period and only when the said committee did not favourably any respond to their grievances, the present writ petition was filed after a considerable lapse of time.

2. The State-Respondent in their counter-affidavit contended inter alia that though the posts of Inspector, Supervisor and Surveyor were in the same scale of pay of Rs. 325-665/- in 1975 revision, the post of Supervisor had two grades, the pay scale being Rs. 330-580/- for Grade-II and Rs. 325-665/- for Grade-I. In the revision of 1982, the pay scale of Inspector and surveyor was revised to Rs. 550-1245/- for Grade-II and Rs. 560-1300/- for Grade-I. In the ROP of 1988, the

Inspector was given the modified un-revised pay scale of Rs. 650-1595/- while that of Surveyor and Supervisor was Rs. 600-1440.00. The corresponding revised scale of pay under ROP of 1988 was Rs. 1450-3710/- for Inspector and Rs. 1300-3220/- for Surveyor and Supervisor. Both the posts of Surveyor and Supervisor have been taken into the Part-C of the said ROP of 1988 and when Scale No. 9 has been given to the Surveyors, Scale No. 27 has been given to the Supervisors. The revised scale of pay being Rs. 1300-3220/- for both Surveyor and Supervisor, it is contended that there cannot be said to be any discrimination between the two. It has been admitted that the post of Surveyor has been re-designated as Junior Surveyor retaining the same scale of pay of Rs. 1300-3220/- creating two more grades for upward movement in the pay scale of Rs. 1450-3710/- for movement to the post of Surveyor after 10 years and Rs. 1700-3980/- for movement to the next higher grade of Senior Surveyor after 8 years move. Admittedly, for Surveyors no such re-designation and avenue for upward movement by creating higher grades has been provided in the said Rules. However, the post of Assistant Supervisor in the pay scale of Rs. 970-2400/- and Junior Supervisor in the pay scale of Rs. 1020-2600/- have been created in order to provide that every entry shall be to the post of Assistant Supervisor, who would move to the next higher grade of Junior Supervisor after 10 years of service and Supervisor after 8 more years of service, if no promotion takes place during these period of 18 years. It is the contention of the State-Respondents that as the incumbents in the post of Supervisors has been given the graded pay scale of Rs. 1300-3220/- which is the higher scale of pay of that grade, the Petitioner cannot have any legitimate grievance to make for adjudication by this Court.

3. I have heard Mr. B. Das, learned senior counsel, assisted by Mr. D. Chakraborty, learned Counsel for the Petitioner and Mr. U.B. Saha, learned senior government Advocate, assisted by Mr. D.C. Nath, learned Counsel for the Respondents.

4. It is no longer *res integra* that periodical revision of pay scale of the employees of the Government after assessment or evaluation of each job is entirely in the domain of the executive whose wisdom and expertise with the help of recommendations of pay commission call for no substitution by the wisdom of the court. Thus, if the State executive in consideration of the pay commission's recommendations decide that certain posts should enjoy better scale of pay than others, though they were in the same scale of pay earlier, the same cannot be a reason for interference by the court. Such a difference in the scale of pay as has been shown in the present case cannot per se be held to be discriminatory. What is, however, the important area of anxiety and concern of this Court is where a uniform methodology for career progression evolved and applied for all category of employees in the ROP of 1988, can it be denied to few others and whether such denial amounts to violation of the equality clause of Article 14 of the Constitution. The controversy regarding validity, such denial calls for careful judicial scrutiny.

5. The rival contentions set out above would show that the post of Inspector and Surveyor were in the pay scale of Rs. 560-1300/- before the pay revision of 1988. The post of Inspector received a better deal in consideration of the Respondent resulting in the modified pay scale of Rs. 650-1595/-, which was revised to Rs. 1450-3710/-. The post having been taken into Part-B of the ROP of 1988 and the controversy remaining confined between the post of Surveyor and Supervisor, no detail discussion with reference to the pay scale of the post of Inspector is considered necessary. It is seen that the post of Surveyor enjoyed the pre-revised pay scale of Rs. 560-1300/- while the Supervisor had the pre-revised pay scale of Rs. 550-1245/- for Grade-II and Rs. 560-1300/- for Grade-I. Thus, only a Grade-I Supervisor was equivalent to a Surveyor. In the ROP of 1988, the two grades of Supervisor have been clubbed into one designating them as Supervisor with the modified pay scale of Rs. 600-1440/-, which was revised to Rs. 1300-3220/- same as the revised pay scale of Surveyor. Up to this stage there is no grievance or controversy but, when the post of Surveyor was given Scale-9 in Part-C and the post of Supervisor was given scale No. 27 of that Part in the same revised pay scale of Rs. 1300-3220/- with two method of gradation, one upward for the Surveyor and the other downward for the Supervisor, the controversy did arise questioning the validity of such discriminatory approaches falling within the ambit of Article 14 of the Constitution. The following Table showing the upward and downward graded scale of pay for the post of Surveyor and Supervisor highlights the genesis of the grievances:

For both surveyor and Supervisor un-revised pay scale of Rs. 560-1300/- was modified to un-revised Rs. 600-1440/-. Then same revised scale of Rs. 1300-3200/- was given to both. Thereafter, for career progression, Surveyor has been re-designated as Jr. Surveyor with same revised scale of Rs. 1300-3220/- with upward movement to Surveyor at Rs. 1450-3710/- and Senior Surveyor at 1700-3980/- after 10 years and 8 years from the post of Jr. Surveyor has been provided.

For Supervisor with same pay scale of Rs. 1300-3220/- has no re-designation and no higher graded pay scale to move from Rs. 1300-3220/- after 10 and 8 years was provided. On the contrary, two downward graded scales for Asst. Supervisor and Jr. Supervisor were provided. No doubt, a new entrant at Asst. Supervisor would move to Jr. Supervisor and Supervisor after 10 and 8 years. But for those who were directly appointed as Supervisors before 1988 were left without any benefit of career progression after 10 or 18 years of service in the same post. It cannot, therefore, be said that any graded pay scales for the post of Supervisor for upward movement after 10 and 18 years were provided in graded pay scale 27 of the ROP of 1988.

6. It would appear from above that in Scale-27, a person entering into service as Assistant Supervisor in the pay scale of Rs. 970-2400/- would move to the higher grade of Junior Supervisor in the pay scale of Rs. 1020-2620/- after 10 years of service and to the next higher grade of Supervisor in the pay scale of Rs.

1300-3220/- after another 8 years of service if he was not given any promotion during the period of 10 or 18 years of service as the case may be. It can thus be said that these graded scale for upward movement was made available only for an Assistant Supervisor not for a person whose initial entry into the service was in the grade of Supervisor. It is not in dispute that the ROP of 1988 had evolved a mechanism for career advancement for those employees who were not promoted but remained in the same grade or post for a period of 10 years or 18 years as the case may be. All posts beyond the cadre services had been included in Part-B or Part-C of the said Rules. While Part-B provided for upward movement from scale to scale after 10 or 18 years of service, Part C provided for upward movement from grade-scale to grade-scale after 10 or 18 years of service. In part-B of Schedule-III, Note -3 provides that except in case of an employee who holds a post for which graded scales are prescribed or holds a post for which selection grade or senior grade scales are provided or holds a post of a Teacher in a Higher Secondary School or a Middle and High Stage level school or a Primary School, pay of an existing employee who was first appointed to a post specified in that part shall be fixed in the revised scale in the manner provided in Clause (b) if the employee concerned has not got any promotion for 10 years since his first appointment to the post. The said provision is gainfully quoted below:

Note-3 : Fixation of pay of certain categories of existing employees:

(a) Except in case of an employee:

(i) Who holds a post for which graded scales are prescribed, or

(ii) Who holds a post for which a Selection grade or senior grade post is also provided, or

(iii) Who holds a post of a Teacher in a Higher Secondary School or a Middle and High Stage level school or a Primary School, pay of an existing employee who was first appointed to a post specified in this part of the Schedule which carries any of the existing pay scales of Rs. 430-850, Rs. 470-1025, Rs. 550-1245, Rs. 560-1300 and Rs. 600-1440 shall be fixed in the revised scale in the manner indicated in (b) below, if the employee concerned has not got any promotion for 10 years since his first appointment to the post.

7. Thus, according to the above provision, the benefit of movement from scale to higher scale under Part-B would not be available to an employee who held a post for whom upward movement from grade scale to higher grade scales were prescribed. The question is whether for the post of Supervisor, which the Petitioner held from very entry, any higher grade-scale of pay for upward movement in Part-C, Scale 27 of the said Rules were provided. The answer must be in the negative. No doubt, for the first time the said Rules contemplated a new gradation from the post of Assistant Supervisor and for new entrant to that post graded pay scale for upward movement to Junior Supervisor and Supervisor were provided. But for an employee directly appointed as Supervisor before the

ROP of 1988 no avenue for any such upward movement after 10 or 18 years in same post without promotion found place. On the contrary, the post of Surveyor which was in the same pay scale of Rs. 1300-3220/- was re-designated as Junior Supervisor retaining the same scale of pay and thereafter for upward movement to the higher grade of Surveyor and Senior Surveyor in the pay scale of Rs. 1450-1710/- and 1700-3980/- respectively after 10 years or 18 years in the same grade without promotion progression mechanism had been provided in Scale-9 of Part-C. It would thus be seen that by providing new downward gradation starting from the post of Junior Supervisor, then Assistant Supervisor and finally Supervisor at the top of the new gradation in Part-C for career progression after 10 or 18 years in the graded Scale 27 the State-Respondents missed the point that the employees whose very entry was in the post of Supervisor before the new gradation contemplated by the ROP of 1988 were left out of the beneficial career progression scheme which was intended to be uniformly applicable to all posts and grades. Like the Surveyor grade in scale 9 of Part-C where existing Surveyor was re-designated as Junior Surveyor retaining the same scale of pay of Rs. 1300-3220/- providing therewith upward movement to Surveyor and Senior Surveyor in higher pay scale of Rs. 1450-3710/- and Rs. 1700-3980/- respectively after 10 or 18 years of service in the same grade, the Respondent could apply similar mechanism at least for the existing Supervisors so that they could move upward to higher scale of pay, if not higher graded scale, after 10 or 18 years of service in same post or grade without promotion. By not doing so, the incumbents to the post of Supervisor directly recruited to that post remained deprived from the benefit of career progression, which had been almost uniformly given to all the classes of employees.

8. As noticed above, Note-3 of Part-B (Schedule-III) provides that the benefit of that Part regarding career progression would be available for an employee for whom no graded scale was prescribed. As has been seen above, for the employees directly recruited to the post of Supervisor before ROP of 1988, no graded scale had been prescribed and, therefore, the Petitioner and similarly situated others would come within the purview of Part-B. Though against the post of Supervisor Grade-I and Supervisor Grade-II which had been clubbed as Supervisor, there is a remark in the said Rules that the revised pay scale of Supervisor would be as per graded Scale No. 27, in reality such graded pay scales were meant for an employee appointed in the initial grade of Asst. Supervisor after the said ROP of 1988 came into force. Thus, for those who were initially appointed as supervisor, like the Petitioner, long before new gradation was contemplated in ROP of 1988, no higher graded pay scale for upward movement had been provided in Scale No. 27. That being the position, the post of Supervisor should have been brought under the provisions of Part-B of Schedule-III for upward scale movement. Relevant portion of Part-B providing the manner of movement from scale to next higher scales for whom no higher graded scale had been provided in Part-C reads as follows:

Notc-4 : Regulation of pay of employees covered by Note-3 in future:

(a) The revised scales of pay as indicated in (b)(2) of Note-3 shall also be allowed to the following employees on completion of 10 years or 18 years of service, as the case may be, in their respective posts if they do not get any promotion otherwise:

(i) Those who at the time of coming over to the revised scale under these rules did not complete 10 years or 18 years of service, as the case may be; and

(ii) Those who are appointed to a post on or after 1.1.86.

(b) In the cases covered by (a) pay in the higher revised scale (s) shall be fixed under the provision of F.R.22 (a)(i).

The existing scales, revised scales, next higher scales and scales above the next higher scales which shall apply to cases covered by Note-3 are shown below:

Existing Revised Revised Revised scales of the scale scale next scale posts (to specified in higher next above which col. 6 of then the the next first this scale in higher

appointed) part of Col. 2. scale in the Ref. (b) column 3 Schedule. (2)(i) of Ref. (b)(2) Note-3. (ii) of Note-3.

1 2 3 4

(i) 430-850 970-2400 1020-2620 1250-2890 (ii) 470-1025 1020-2620 1250-2890 1300-3220 (iii) 550-1245 1250-2890 1300-3220 1450-3710 (iv) 560-1300 1300-3220 1450-3710 1700-3980 v) 600-1440 1450-3710 1700-3980 NIL (and their corresponding pre-revised scales.)

9. It would appear from the above that the employees in the pay scale of Rs. 1300-3220/-, would be entitled to Rs. 1450-3710/- after 10 years of service and to Rs. 1700-3980/- after 18 years of service if no promotion during that period occurs. The Petitioner and similarly situated Supervisors who were initially recruited to that post in the revised pay scale of Rs. 1300-3220/- would have been entitled, after 10 years, to Rs. 1450-3710/- and after 18 years to Rs. 1700-3980/- as per the provision in Part-B of ROP of 1988 had this not been wrongly tagged with graded scale 27 of Part-C which was in fact meant for those initially recruited as Asst. Supervisor. The policy and philosophy of scale advanced in cases no advancement by promotion occurs is to prevent stagnation and augment efficiency. It is apparent the benefit of that policy of scale advancement which must have been intended for all did not reach the Petitioner for want of suitable provisions in the said Rules either in Part-C or in Part-B. If graded scale 27 has nothing for grade advancement for initially appointed Supervisors, provisions of Part-B should have been pressed into service for their scale advancement.

10. After saying so, a knotty question comes to the fore from the changed situation arising from another pay revision coming into effect by Tripura State Civil Services (Revised Pay) Rules, 1999 (for short "ROP of 1999"), which were

given effect from 01.01.1996, two months after filing of the present writ petition on 27.10.1995. In the said pay revision, under the Head Scheduled Tribe at page-85, the post of Supervisor in the pay scale of Rs. 1300-3220/- has been given the revised pay scale of Rs. 4200-8650/-. A new career advancement scheme has been put on place at Rule-10. The Petitioner has not amended the writ petition during the long 10 years to put under question the above revised pay scale, which is apparently corresponding to the pay scale of Rs. 1300-3220/-. The changed position, if any, after receipt of the benefit of new career advancement has also not been highlighted to enable this Court to visualize the possible effect of any such advancement under the old scheme after such a long period. The Petitioner has not stated anything about his entitlement to the particular revised scale of pay under the ROP of 1999 consequent upon his movement to the graded pay scale of Rs. 1450-3710/- and then Rs. 1700-3980/- under the ROP of 1988 as claimed by him. It is not clear whether such entitlement would overturn the scale arrangements provided for other posts of the same Directorate after the ROP of 1999 came into force. The pleadings of the parties are silent on this very important issue which must have gained more dimension due to long lapse of time. The ROP of 1988 was given effect from 01.01.1986 and since then more than 20 years have passed. The Petitioner has approached this Court after a period of 7 years from the date of notification of the ROP of 1988, which is also a formidable factor standing in the way of directly granting the reliefs to which he is apparently entitled to. The Petitioner has not clearly stated in his pleadings whether he was directly recruited to the post of Supervisor or climbed to that post from lower rung. The same way, omission has occurred in counter affidavit of the Respondents.

11. It goes without saying that evaluation of a post or class of posts of fixation of appropriate pay scale for them from time to time remains within the exclusive domain of the executive. The court has neither the jurisdiction nor the expertise to embark upon such an exercise to substitute its own. If the Supervisors after evaluation done in the 1988 pay revision were not considered to be placed at par with other posts like Inspector or Surveyor and appropriate revised pay scales were fixed accordingly, the same cannot be the subject matter of judicial scrutiny. But when an advancement scheme is formulated for all employees to prevent stagnation by way of scale advancement or grade advancement in the event no promotion advancement occurs and if an employee or class of employees have been denied the benefit of the scheme for any reason including the language or remarks employed in the rules, the reason-d'etra of the same gets flouted letting in serious discrimination. In such a situation the court has to step in. In the case on hand, as noticed above, apparently discrimination in case of initially recruited Supervisors, if there was any, had taken place by not extending the scale advancement under Part-B or grade advancement under Part-C of Schedule-III of the ROP of 1988. The grade advancement in graded scale 27 of Part-C was available for only those employees who were to be initially recruited to the post of Asst. Supervisor who would move to Junior Supervisor

and Supervisor after 10 and 18 years of service respectively if no promotion occurred. It did not provide grade advancement for those initially appointed as Supervisors. It is seen that in the ROP of 1999 in the Directorate of Scheduled Tribes, the post of Asst. Supervisor or Junior Supervisor have not found place. It seems such posts were never created though contemplated in the ROP of 1988. Thus, the graded scale 27 was only a ruse being meant for none. There might be many other posts like the Supervisors, stagnating in the same post without any scale advancement or grade advancement because of a wrong notion of graded scale for them in Part-C which were not actually meant for such posts. In such a situation, I could pass an order for extending the benefit of scale advancement under Part-B of ROP of 1988 to the Petitioner and other Supervisors. But delay and insufficient materials prevent me from doing so. Though I have no doubt in my mind that initially recruited Supervisors did not receive grade advancement under graded scale 27 of Part-C of that Rules and therefore, they were entitled to scale advancement under Part-B thereof, instead of allowing the writ petition, I would close the same with directions to the State Respondents to find out all such cases where in the name of graded scale of Part-C neither the grade advancement nor the scale advancement did actually take place and then, after careful examination, provide appropriate remedy for them only for the period of preceding the new pay revision which had the effect from 01.01.1996. This exercise shall be completed within a period of 6 (six) months from today. No cost.