

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WA. No.193 of 2021

The Union of India & Another

.....Appellants

_V_E_R_S_U_S_

No.35874X Warrant Officer/RM, Sri Vipin Singh

.....Respondent

For Appellant(s) : Mr. B. Majumder, CGC.

For Respondent(s) : Mr. C. S. Sinha, Advocate.

Whether fit for reporting : **NO**

HON'BLE MR. JUSTICE T. AMARNATH GOUD

HON'BLE MR. JUSTICE ARINDAM LODH

_F_I_N_A_L_O_R_D_E_R_

27/09/2023

[T. Amarnath Goud (J)]

Heard Mr. B. Majumder, learned CGC appearing for the appellants also heard Mr. C. S. Sinha, learned counsel appearing for the respondent.

[2] The present appeal has been filed under Rule-2 (2) of the Chapter-V-A of the High Court Rules, read with Order-41 of the Code of Civil Procedure against the impugned judgment and order dated 28.09.2020 rendering in case No. WP(C) No.551 of 2017 passed by this Court, whereby and whereunder the writ petition filed by the respondent, the petitioner in the writ petition has been allowed, holding that he respondent, the petitioner in the writ petition is entitled to get the benefit of up gradation to the rank of Warrant Officer/RM. w.e.f. 24.10.2004 along with pay and allowances.

[3] The respondent (petitioner in WP) was enrolled into the Assam Rifles and he passed ORL Class - course on 27-08-1999 and his post of Riflemen / ORL was re-mustered from 24-10-2004. The respondent (Petitioner in the WP) sought for decision to grant him to the post of ASI / Warrant Officer / RM from 24-10-2004, but he was promoted to the post of warrant officer effecting from 01-01-2012 against of it he made representation to the department which yielded no result at all. The Appellants (respondent in the WP) contested it by filling Counter Affidavit stating inter alia that the respondent (petitioner in the WP) was not entitled such benefit and prayed for dismissal of the said Writ Petition. After hearing at length of the said case,

the Hon'ble Single Judge has allowed the said Writ Petition by a Judgment dated 28-09-2020. Being aggrieved thereby, the appellants have preferred this Writ Appeal.

[4] Mr. B. Majumder, learned CGC appearing for the appellants has submitted that the learned Single Judge ought to have considered that the Assam Rifles is not categorized as CAPF which includes the BSF, CRPF, CISF, ITBP & SSB and the common nomenclature issued vide Govt. of India, Ministry of Home Affairs, OM dated 22-03-2011 (Annexure - R/5 to the Additional CA, at page - 90) has excluded the Assam Rifles from the ambit of the said nomenclature, rather than, Assam Rifles is categorized as CPMFS which includes Rashtriya Rifles, Special Frontier Force and Assam Rifles vide Army Head quarter letter No.- A/500 C 9/SD 5 dated 09-01-1991 (Annexure Additional CA, at Page -89). R/4 to the additional CA.

[5] The learned Single Judge ought to have understood that for grant of the post of Assistant Sub-Inspector / Warrant Officer at entry level as per parity of grade and rank (Assistant Sub-Inspector / Warrant Officer) with their counter parts in CRPF and ITBP is erroneous to draw parity between the Assam Rifles and other CAPFS, wherein, the Assam Rifles is categorized as Central Para Military Force (CPMF) and CRPF, CISF, ITBP, SSB and BSF are categorized as Central Armed Police Force (CAPFS) which can be easily distinguished by the following instructions as per Ministry of Home Affairs OM dated 08-03-2017.

[6] The learned Single Judge ought to have understood that the Recruitments Rules of the Assam Rifles and other Central Armed Police Forces are different as well as the pay scales is also different. There is no discrimination being done in this category and the above statutory recruitment rules have been approved by the parliament. The Ld. Single Judge cannot by its decision chance the opinion of expert bodies and as such the Judgment is liable to be quashed and set aside. It has been further submitted that the law pertaining to placement of post in pay scale is within the domain of the Govt. of India, Ministry of Home Affairs, after inter ministerial consultation to determine as to in what scale of pay, a post has to be placed.

[7] The learned Single Judge ought to have understood that the Hon'ble Apex Court in the State of UP and others -versus- Ministerial Karmachari Sangha reported in **AIR 1997 SC 4280** held that even if persons holding the same post are performing similar work, but if the mode of recruitment, qualification, promotion etc.

are different, it would be sufficient for fixing different pay scale. Where the mode of recruitment, qualification, promotion etc. is totally different in the two categories of posts, there cannot be any application of the principle of equal pay for equal work.

[8] Further, the job of pay fixation is purely an executive function and it is the prerogative of the employer and under the grab of judicial review, the Court cannot fix pay scales of government employees invoking the principle of equal pay for equal work as held by the Hon'ble Apex Court in SC Chandra and others -versus- the State of Jharkhand and others, reported (2007) 8 SCC 279, relying upon earlier decision of the Hon'ble Apex Court in Indian Drugs and Pharmaceuticals Ltd. - VERSUS- Workmen Indian Drugs and Pharmaceuticals Ltd. reported (2007) 1 SCC 408, State of Haryana and another -VERSUS- Haryana Civil Secretariat Personal Staff Association (2002) 6 SCC 72 and the Union of India and Others v. Pradip Kumar Dey.

[9] The learned Single Judge has erroneously held that the doctrine of equal pay for equal work cannot be applied on simple scale. But a board of officer was convened by the department on 13-01-2011 to investigate the issue of parity of rank structure and pay scale of Radio Mechanic of Assam Rifles viz-a-viz their counter parts in other CPMFs in compliance of the Judgment and Order dated 30-10-2010 passed in interlocutory application No-03 of 2008 relating to Dineshan K.K. and the decision rendered by the board of officer is that the direction passed by this Court on 05-02-2005 relating to Dineshan K.K. which in appeal was upheld by the Hon'ble Supreme Court dated 04-01-2008 relating to Dineshan K.K. have been fully implemented by re-designating all Havildar (Radio Mechanic) to Warrant Officer who have passed Technical Trade Test Class-I which is equivalent to diploma in radio mechanic and the same was placed before this Court in the present case by way of filing of additional reply to the rejoinder but, it has not been considered.

[10] The learned Single Judge, in paragraphs No.- 16, 17 & 18 of the Judgment & Order, has held that "from bare reading of the Order dated 21-02-2017, there remains nothing to be clarified. In unambiguous words, the Director General of the Assam Rifles has declared by the said Order that henceforth all ORL personnel will be automatically upgraded to the post of Havildar / ORL w.e.f. passing of ORL Class - III and no separate Orders will be issued from the same". But the learned Single Judge did not appreciate the fact that the Order dated 21-02-2017 was issued

to the person belonging to the category of Operator Radio Line on passing of ORL Class-III and the said Order is not a blanket sanction to upgrade all technical categories to the higher rank. Moreover, the respondent was already been re-mustered from Riflemen/ORL to Riflemen (Radio Mechanic) and the same could not be treated as documentary evidence in the present case.

[11] The learned Single Judge did not consider the fact that the respondent (petitioner in the WP) was paid full pay and allowances during the period of acquiring additional qualification on the government expense, wherein, his counterpart in other CAPFS are enrolled with the higher qualification of matriculation and two years diploma in Industrial Training Institution Certificate in radio and television or general electronics which they acquire at their own cost after passing of matriculation, government stipend is provided to no his counterparts in CAPFS for acquiring additional qualification of ITI which is clearly mentioned in the recruitment rules of BSF, GSR No.- 1069 dated 26-10-2018 (Annexure R/13 & R/14 to the additional CA, at page - 111 to 124). But, the respondent misinterpreted the same to his convenience and thus misled and / or confused this Court and as such, the Judgment is liable to be set aside and / or quashed.

[12] Mr. C. S Sinha, learned counsel appearing for the respondent has submitted that the controversy falls within a short compass. By the order dated 09.03.2012 the respondent has been given the promotion/up-gradation to the rank of warrant officer/radio mechanic from RFN/RM with effect from 01.01.2012. The date of effect of the said promotion or up-gradation is grossly arbitrary and in complete contrast to the order dated 21.02.2017.

[13] There falls an ambiguity that by the order dated 21.02.2017, the Director General of Assam Rifles has declared the policy that henceforth, all ORL personnel will be automatically upgraded to the rank of Havildar /ORL with effect from the date of passing of ORL Class-III and no separate orders will be issued for the same. On the basis of the said order dated 21.07.2017, the respondent has been promoted /upgraded to the post of the warrant officer (radio mechanic) by the order dated 09.03.2012 w.e.f. 01.01.2012. Mr. Sinha, learned counsel has submitted that by not granting the order of promotion or up-gradation from the date when the respondent successfully passed TER radio Mechanic, Class III i.e. 21.12.2004 and was re-mastered to Rifleman (radio mechanic) the appellants had acted arbitrarily.

[14] Moreover, from a bare reading of the order dated 21.02.2017, there remains nothing to be clarified. In unambiguous words, the Director General of Assam Rifle has declared by the said order that henceforth all ORL personnel will be automatically upgraded to the post of Havildar/ORL w.e.f passing of ORL Class-III and no separate orders will be issued for the same. The said order was issued with prior approval of the competent authority for upgrading or re-designating rifleman ORL to Havildar in Assam Rifles in respect of the personnel who are similarly placed and have not been upgraded/re-designated earlier in the pay scale of Rs.3200-4900/- w.e.f 10.10.1997 or from the date of passing ORL Class- III course whichever is later. Both the decisions, as noted, quite perfectly favour the respondent herein. Hence, the objections as raised by the appellants are without any substance and accordingly those are discarded by this court.

[15] In our considered view and in terms of the order dated 21.02.2017, the respondent is entitled to get the benefit of up-gradation to rank of warrant officer/RM w.e.f 24.10.2004, the day when the respondent was declared to have successfully passed TER radio mechanic Class -III course and he was re-mastered to Rifleman radio mechanic. As already noted, re-masteration cannot come in the way of reaping the benefit of the order dated 21.02.2017. As such, it is directed that the appellants shall by modification of the order dated 09.03.2012 give effect of up-gradation/promotion of the respondent from RFN/RM to the rank of warrant officer/RM w.e.f. 24.10.2004 and release all the financial benefits on re-fixation of the pay. The pay and allowances should be given w.e.f 24.10.2004 as the up-gradation stands automatic.

[16] In terms of the above, this present writ appeal stands dismissed. As sequel, miscellaneous application, pending if any, shall stands closed.

JUDGE

JUDGE

A. Ghosh

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