

Serial No.01 & 2
Supple List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 37 of 2016 with
WP(C) No. 187 of 2016

Date of Decision: 16.08.2023

Paras Nath Gupta & 128 Ors Vs. Union of India & Ors.

JC 362256 NB/Clk Nirmal Singh Vs. Union of India & Ors.
Guleria & 34 Ors.

Coram:

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance: in WP(C) No. 37 of 2016

For the Petitioner(s) : Mr. H. L. Shangreiso, Sr. Adv. with
Ms. E. Wanniang, Adv.
Ms. P. Biswakarma. Adv.

For the Respondent(s) : Mr. R. Debnath, CGC.

Appearance: in WP(C) No. 187 of 2016

For the Petitioner(s) : Mr. H. L. Shangreiso, Sr. Adv. with
Ms. E. Wanniang, Adv.
Ms. P. Biswakarma. Adv.

For the Respondent(s) : Mr. R. Debnath, CGC.

i)	Whether approved for reporting in Law journals etc:	Yes/No
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ii) Whether approved for publication
in press:

Yes/No

JUDGMENT AND ORDER

1. On the prayer of both the parties, this set of two writ petitions, i.e., the WP(C) No. 37 of 2016 and WP(C) No. 187 of 2016 are taken up together for hearing as the matters involve similar issues arising out of similar facts, and is filed by similarly situated persons. Both the writ petitions are disposed of by a common judgment and order.

2. Heard Mr. H. L. Shangreiso, learned Senior counsel for the petitioner assisted by Ms. E. Wanniang, learned counsel. Also heard Mr. R. Debnath, learned CGC for the respondent.

3. By this writ petition under Article 226 of the Constitution of India, the petitioners pray for a direction to the respondents for bringing parity in respect of rank structure and pay scale of the similarly situated Assam Rifles personnel at par with the other Central Paramilitary Forces (in short CPMFs)/ Central Police Forces, CPOs) by introducing the rank of Assistant Sub-Inspector (Warrant Officer) at the entry grade w.e.f 01-01-1986 in the scale of pay of Rs. 1320-2040 (revised Rs.4000/- to Rs. 6000/- w.e.f 01-01-1996) with all consequential service benefits as per Ministry of Finance, Department

of Expenditure, Resolution No. 50(1)/IC/97 dated 20-09-1997 communicated through MHA letter bearing No.27012/1/97-PC Cell/PF.I. The petitioners also pray for grant of all consequential service benefits and promotion upto the rank of Second-In-Command (Assistant Director) at par with the other CPMFs/CPOs. It is averred that the issue raised by the writ petitioners is squarely covered by the judgment and order dated 23-08-2012 of the Guwahati High Court delivered in WP(C) No. 277 (SH) of 2010, which was subsequently affirmed by the Division Bench and the Apex Court.

4. In response to the claim of the writ petitioners, the respondent, Union of India, filed three affidavits on different dates. The first affidavit dated 28-07-2016 brought into records the compliance of the judgment and order dated 23-08-2012 passed by the Guwahati High Court in WP(C) No. 277 (SH) of 2010 and subsequent sanction made by the department in compliance with the said judgment. The second affidavit dated 01-12-2016 has been filed in the form of an affidavit-in-opposition wherein a para-wise reply has been made refuting the various averments made in the writ petition. The third affidavit, the most recent one, has been filed on 07-07-2023 has been filed in the form of an additional affidavit bringing into the records the fact of extension of grant of rank or warrant officer and arrear of pay to the

eligible employees. However, a stand has been taken therein that the petitioners, who had retired prior to the notification implementing the 5th Central Pay Commission came into force, either on retirement or voluntary retirement, are not entitled to the benefits under the 5th Pay Commission. The names of some of the incumbents who retired prior to 01-10-1997 have also been mentioned therein. The petitioner has also filed a rejoinder-affidavit on 02-05-2017 against the affidavit-in-opposition dated 01-12-2016 filed by the respondents.

5. Mr. H. L. Shangreiso, learned Senior counsel for the petitioner submits that the writ petitioners and some of the deceased employees of the widow writ petitioners were appointed as clerk in different units, formation headquarters and minor units of Assam Rifles, which is a Central Paramilitary Forces (in short CPMFs)/ Central Police Forces, CPOs) under the Ministry of Home Affairs and at present they are holding the post of Havildar Clerks, Naib Subedar Clerks and Subedar Clerks and Subedar Major Clerks etc. which are cadre posts in the clerical staffs of the Assam Rifles. In pursuance of the recommendation of the 4th Pay Commission, The Assam Rifles was duly placed at par with the other CPOs like BSF, CRPF, ITBP, CISF etc. The recommendation of the 4th Pay Commission was accepted by

the Government of India vide notification No. GSR 1105 (E) dated 22-09-1986 issued by the Ministry of Home Affairs.

6. He further submits that when the Assam Rifles was brought under the CPOs retaining the rank of Lance Naik with scale of Rs. 825-15-900-EB-20-1200 as entry post in Assam Rifles was contrary to the fundamental intention of the Government of India and thus illegal, unjust and discriminatory, particularly when the entry cadre in Assam Rifles is tested with the entry post for other CPOs like BSF, CRPF etc. was Assistant Sub-Inspector with scale of pay Rs. 1320-30-1560-EB-40-2040.

7. He contends that in view of the order dated 10-10-1997, the post of Lance Naik and Naik of the Clerical Cadre of the Assam Rifles were liable to be merged with the post of Assistant Sub-Inspector in the scale of Rs.4000-6000 to bring parity in the rank structure and pay of clerical cadre with other CPOs for simple reason, *inter alia*, that for the recruitment qualification to the entry grade is 10+2 i.e. Higher Secondary School for the clerical cadre post in Assam Rifles which is also similar to the Assistant Sub-Inspector in all other CPOs.

8. He, however, submits that under the pretext of implementing of notification 10-10-1997, the respondent No.2 has mechanically re-designated the post of existing Havildar Clerk as Warrant Officer

Clerk which is equivalent to the post of Assistant Sub-Inspector with the pay scale of Rs. 4000-6000/-, but the benefit of such re-designation has not been granted to the petitioner though, they are all eligible and entitled for the same.

9. Mr. H. L. Shangreiso, learned Senior Counsel for the petitioner relies on a Judgment dated 23-08-2012 passed by the Guwahati High Court in *WP(C) No. 277 (SH) of 2010, Radha Krishna Nair K.M & 1338 others versus. Union of India*, and submits that the issue raised by the present writ petitioners in the instant writ petition has been already decided and it is squarely covered by the said case. The Judgment of the Guwahati High Court was upheld by a Division Bench of this High Court vide Judgment and order dated 30-04-2013 passed in a writ appeal No. (SH) 40 of 2012 and subsequently by the Hon'ble Apex Court vide Judgment and order dated 17-11-2015 passed in Civil Appeal No. 13445 of 2015 and other connected Special Leave Petition with certain minor modification.

10. Learned Senior counsel for the petitioner strongly relies on the para 3 of the affidavit dated 28-07-2016 filed on behalf of the respondents herein bringing into the records the compliance of Judgment and order dated 23-08-2012 passed by the Guwahati High Court in *WP(C) No. 277 (SH) 2010* and the sanction of the Director

General of the Assam Rifles with the approval of Ministry of Home Affairs dated 28-06-2016 bringing parity in respect of rank structure of Assistant Sub-Inspector (Warrant rank, Assam Rifles) at the entry grade w.e.f 01-01-1986 in the scale of pay of Rs. 1320-2040 (revised rate of Rs.4000-6000 w.e.f 01-01-1996) to all personnel of the clerk cadre who were in service as on 01-01-1986 and who were enrolled thereafter upto 28-10-2002. He points out that it has been stated that the said order dated 28-06-2016 also applies and covers the case of the petitioner in the instant writ petition. He, however, submits that in spite of this development, the petitioner herein have not been conferred with any benefit till date.

11. Mr. R. Debnath, learned CGC appearing for the respondent submits that some of the petitioners who have retired prior to the coming of the Order No. 27012/1/97 OC Cell/PE.I dated 10-10-1997 into force, would not be eligible for the extension of benefits under the 5th Central Pay Commission. He also resists the claim of the writ petitioner for promotion upto the rank of Second in Command (Assistant Director) and submits that all the CPOs have their respective sets of recruitment rules indicating the pattern and procedure of promotion in the ranks, which are different from each other. He, however, does not dispute the contention that the relief

claimed in the writ petition is covered by the judgment and order dated 23-08-2012 passed by the Guwahati High Court in WP(C) No. 277 (SH) of 2010. Referring to the order or sanction dated 28-06-2016, he submits that the petitioners have already been granted relief and there remains nothing to be decided in the writ petition and the matter has become infructuous. However, Mr. R. Debnath, learned CGC has not brought anything into the record to show that the benefits of the parity in rank structure and pay scale have indeed been extended to the petitioners.

12. Mr. H. L. Shangreiso, learned Senior Counsel for the petitioners, in his reply, fairly submits that the petitioners are not pressing their claims for promotion upto the rank of Second-in-Command (Assistant Director) at this stage. He contends that none of the petitioners have received any benefits of parity in rank structure and payscale at par with the other CPOs even after introduction of the rank of Assistant Sub-Inspector (Warrant Officer) at the entry grade w.e.f. 01-01-1986 in pursuance of issuance of sanction vide order dated 28-06-2016 till date. He, therefore, submits that necessary directions are required to be passed in the matter. He further submits that the entitlement of the benefits to be conferred on the writ

petitioners would definitely be on the basis of their individual eligibility.

13. Considered the arguments advance by the learned counsels appearing for the respective parties. Also perused the pleadings of the parties. In the present case, the petitioners have been holding the post of Havildar clerks, Naib Subedar Clerks, Subedar Clerks and Major Subedar Clerks which are cadre posts in the clerk cadre in the Assam Rifles having recruitment qualifications (10+2). Persons similarly qualified and situated in other CPOs viz., CRPF, BSF, ITBP etc., are having entry grade rank of Assistant Sub-Inspector. Government order issued vide Memo No. 27012/1/97 PC Cell/PE.I dated 10-10-1997 provides for rationalization of rank structure and pay in all CPOs including Assam Rifles. Since, there is no dispute to the fact that the issue involved in the present writ petition is squarely covered by the judgment and order dated 23-08-2017 passed by the Guwahati High Court in WP(C) No. 277 (SH) of 2010, the other details are not required to be gone into. At this stage, it would be gainful to refer to para 14 of the said judgment, which is reproduced hereinbelow:-

“14. In the result, this writ petition stands disposed of with the direction to the respondent No.2, the Director General of Assam Rifles to take up the matter again with the respondent No.1, i.e, the Secretary to the Govt. of

India, Ministry of Home Affairs to bring parity in respect of rank structure and pay of the Assam Rifles clerical cadre at par with other CPOs by introducing rank of Assistant Sub-Inspector (Warrant Officer) at the entry grade w.e.f. 1.1.1986 in the scale of pay of Rs1320-2040 (revised Rs. 4000-6000)w.e.f 1996 or any other date as the authority deem it fit and proper with all consequential service benefits in the light of the Government of India, Ministry of Finance resolution dated 20.09.1997 communicated through MHA letter bearing No. 2701-02/1/97 Cell/Pef-1 dated 10.10.1997. The whole exercise would be completed within a period of 6 (six) months from the date of receipt of a certified copy of this judgment and order.”

The Judgment of the Guwahati High Court has been upheld thereafter in writ appeal No. (SH) 40 of 2012 vide order dated 30-04-2013 and subsequently by the Hon’ble Apex Court vide Judgment and order dated 17-11-2015 passed in Civil Appeal No. 13445 of 2015 and other connected Special Leave Petition with certain minor modification.

14. The affidavits dated 28-07-2016 and 07-07-2023 filed by the respondents and sanction order dated 28-06-2016 confirmed implementation of the judgment of the Guwahati High Court. The respondent do not deny that the writ petitioners are entitled to the benefit of rank structure and pay scale at par with other CPOs. There is also no dispute to the fact that the petitioners are not personnel of

the clerical cadre, who were in service as on 01-01-1986 and who were enrolled thereafter upto 28-10-2022. The only dispute raised by the respondent is with regard to the entitlements of some of the petitioners whose name are mentioned in the affidavit dated 07-07-2023 with regard to the extension of benefits under the 5th Pay Commission.

15. Since the petitioner are similarly situated with the writ petitioners in WP(C) No. 277 (SH) of 2010 and there is a clear admission by the respondent that the judgment rendered in the said case has been implemented and a sanction order has been issued thereof by order dated 28-06-2016, there remains no iota of doubt why the petitioners should not be entitled to the same relief.

16. In the light of the discussions above, issuance of some directions are called for in the matter. Accordingly, it is ordered that the respondents, particularly the respondent Nos. 2, 3& 4 shall take immediate necessary steps for extension of benefit due upon the petitioners herein consequent to the issuance of sanction order dated 28-06-2016 with regard to their rank structure and pay scale at par with other CPOs by introducing rank of Assistant Sub-Inspector (Warrant Officer) at the entry grade w.e.f. 01-01-1986 by taking into consideration their respective dates of entry in the clerical cadre of the

Assam Rifles keeping in view the period from 01-01-1986 to 20-10-2022 mentioned in the sanction order. As there is no disclosure of any individual details of the petitioners in the writ petition with regard to their date of entry and continuance in the service, while conferring the benefits, it would be open for the respondents to take into consideration the individual entitlement of the petitioners for conferment of benefit as per the Government order issued vide Memo No. 27012/1/97 PC Cell/PE.I dated 10-10-1997 for extension of benefits of 5th Pay Commission, on the basis of their respective service record. The aforesaid exercise shall be completed within a period of three months from the date of receipt of the certified copy of this order by the respondents with due intimation to the petitioners. Since the prayer for promotion of the petitioners upto the rank of Second-in-Command (Assistant Director) has not been pressed for, no order has been made in this regard.

17. The stand taken in the affidavit-in-opposition dated 01-12-2016 filed by the respondents and rejoinder-affidavit dated 02-05-2017 filed by the petitioner are not taken into consideration as none of the parties have advanced any submission basing on those affidavits. The very fact that this decision has been rendered on the basis of the aforesaid judgment of the Guwahati High Court which has been implemented

by the respondent-authorities, the contention raised in those affidavits are also considered of not much relevance.

18. The writ petitions stand disposed of in the aforesaid terms.

19. There will be no order as to costs.

JUDGE

Meghalaya
16.08.2023
"Biswarup-PS"

