

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 32 of 2018

Date of Decision: 25.05.2023

Shri. Ramesh Chander & 10 Ors. Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s)	:	Mr. M. Chanda, Adv.
For the Respondent(s)	:	Dr. N. Mozika, DSGI. with Ms. K. Gurung, Adv.

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

JUDGMENT AND ORDER

1. The petitioners who are employees under the Government of India, Ministry of Home Affairs are personnel of the Assam Rifles which is a Central Para Military Force (CPMF) and now posted as Warrant Officer (Draughtsman) have approached this Court with this instant petition seeking exercise of the power under Article 226 of the Constitution of India.

2. Heard Mr. M. Chanda, learned counsel for the petitioners who has submitted that the petitioners No. 1, 2, 5, 6, 9, 10 & 11 respectively, joined service in the Assam Rifles as Riflemen/GD, their initial date of appointment being as under: -

Sl. No	Petitioner No.	Name of Petitioner	Date of appointment	Cadre
1	1	Shri Ramesh Chander	02.05.1989	Rifleman/GD
2	2	Shri Rama Sankar Singh	01.06.1997	Rifleman/GD
3	5	Shri Anil BR.	26.10.1996	Rifleman/GD
4	6	Shri Santhosh Kumar V.	26.10.1996	Rifleman/GD
5	9	Shri Satish	21.09.2001	Rifleman/GD
6	10	Shri Ashok Kumar	25.09.2001	Rifleman/GD
7	11	Shri Dhananjay Kumar Vishwakarma	25.09.2001	Rifleman/GD

3. The following petitioners were initially appointed as Havildar Draughtsman on the date indicated against their names:-

Sl. No	Petitioner No.	Name of Petitioner	Date of appointment	Cadre
1	3	Shri Roy P.A	19.11.1988	Havildar/Draughtsman
2	4	Shri K. Gopakumar	01.12.1989	Havildar/Draughtsman

3	7	Shri Jinojith AP	25.03.1998	Havildar/Draughtsman
4	8	Shri Jayachandran K.	25.03.1998	Havildar/Draughtsman

4. On the issue of pay scale and rank status, similarly situated Draughtsman including the writ petitioners, have approached the Hon'ble Gauhati High Court, Shillong Bench (as this Court then was), whereby this Court vide judgment and order dated 10.08.2012 passed in WP(C) No. 19(SH) of 2010 and judgment and order dated 09.04.2013 passed in WP(C) No. 268(SH) of 2012 has directed the Union of India to re-designate the post occupied by the writ petitioners as Warrant Officer/Assistant Sub-Inspector with a replacement scale of ₹ 4000-6000/-. Accordingly, the post of all the writ petitioners was re-designated as Warrant Officer and placed in the relevant pre-revised scale of ₹ 4000-6000/- from the date of their respective initial appointment.

5. The learned counsel has further submitted that since then the petitioners herein have not been promoted and are stagnated in the same post of Havildar Draughtsman/Warrant Officer for more than 20 years or so without a single promotion during that period.

6. The learned counsel has also pointed out that in the meantime, the Government of India in the Ministry of Home Affairs, vide

communication No. II.13015/3/96/PF.IV dated 26.08.2003 (Annexure-3 to this petition), under the subject 'Restructuring of Peace Establishment of Assam Rifles', has conveyed to the Director General, Assam Rifles, Shillong the creation of 917 posts for Support and Supervisory Infrastructure, including the sanction of 13 posts of Naib Subedar Draughtsman, 1 post of Subedar Draughtsman and 1 post of Subedar Major Draughtsman. However, against these posts, the petitioners herein, since they belonged to the cadre of Draughtsman, the authorities have not taken any steps to consider promotion of the petitioners herein to the said post, initially as Naib Subedar and consequently, for higher promotion therefrom.

7. The learned counsel has again submitted that the respondents in their Affidavit-in-opposition, particularly at para 4 of the same has admitted that the Government has sanctioned 13 posts of Naib Subedar Draughtsman, 1 post of Subedar Draughtsman and 1 post of Subedar Major Draughtsman. However, it is also the stand of the respondents that the Ministry of Home Affairs and Department of Personnel and Training was intimated as to the requirement of framing of the relevant Recruitment Rules in this regard, for which till date, no response has been received from the Ministry.

8. In this regard, the order dated 20.05.2020 passed by this Court

in this case was referred to, in which this Court has remarked that even after 17 years, it is unfortunate that the Draft Recruitment Rules have not been finalized and accordingly, it was directed that the same be finalized within a period of 8(eight) weeks. But yet again, the same has not materialized, till a few weeks ago, when the respondents have claimed that the relevant Recruitment Rules have been finalized and have accordingly produced in Court copy of the “Assam Rifles Warrant Officer(Draughtsman) Group ‘C’ combatised post Recruitment Rules, 2022”. However, these rules are not at all relevant to the case of the petitioners, submits the learned counsel as nothing has been specified as regard the promotional avenues to the post of Naib Subedar, Subedar and Subedar Major, etc.

9. Stressing on the fact that promotion is an incident of service and that it is the legitimate expectation of the petitioners to be promoted, the learned counsel has submitted that it is well settled that in the matter of consideration of promotion, a year wise panel of eligible personnel must be prepared by a Departmental Promotion Committee (DPC) and clear vacancies ought to be filled up accordingly which was not done so in the case of the petitioners herein.

10. Finally, the learned counsel has submitted that the present writ petitioners are legally entitled to be promoted retrospectively with all

consequential benefits including seniority in the grade of Naib Subedar (Draughtsman), Subedar (Draughtsman) and Subedar Major (Draughtsman).

11. The learned counsel for the petitioners has cited a number of judgments compiled in two volumes, to which only the relevant authority will be cited in due course.

12. Dr. N. Mozika, learned DSGI while resisting the contention made by the petitioners have submitted that the petitioners were initially appointed in Assam Rifles in trades other than Engineers such General Duty, Carpenter and Sapper. They were later remustered in the trade of Draughtsman and were promoted to the rank of Havildar. Again, by virtue of the order dated 09.04.2013 passed by this Court in WP(C) No. 268(SH)/2012, they were re-designated as Warrant Officer w.e.f. 10.10.1997 in terms of the Office Memorandum No. 27011/103/97-PF.1/56 issued by the Ministry of Home Affairs, Government of India.

13. The learned DSGI has however admitted that as per the Restructured Peace Establishment, 2003 for Assam Rifles, 13 posts of Naib Subedar Draughtsman, 1 post of Subedar Draughtsman and 1 post of Subedar Major Draughtsman were sanctioned, but the petitioners could not be promoted to the next higher rank in absence of the relevant Recruitment Rules which was not yet framed by the Ministry of Home

Affairs. In the absence of such Recruitment Rules, the petitioners have been granted pay scale of Naib Subedar, Subedar and Subedar Major as applicable to them under the Assured Career Progression (ACP) Scheme and the Modified Assured Career Progression (MACP) Scheme and as such, there is no stagnation in service as they have not been deprived of any career progression.

14. It is further submitted that since the entry grade has to be at the level of Warrant Officer, the authority concerned has felt it necessary to frame the Recruitment Rules for direct recruitment in the cadre of Warrant Officer (Draughtsman). Accordingly, the “Assam Rifles Warrant Officer (Draughtsman) Group ‘C’ combatised post Recruitment Rules, 2022” were framed as on 26.07.2022. It is again admitted that the Recruitment Rules for promotion from the post of Warrant Officer to the next higher post of Naib Subedar, etc. has not yet been framed.

15. The final limb of argument advanced by the learned DSGI is that since no Recruitment Rules have been framed, which rules would govern the mode and manner of recruitment of the petitioners in the cadre to consider for promotion not being a matter of right of the employees, therefore, the petitioners herein have no right to demand for promotion more so retrospectively.

16. In support of the respondents’ case, the case of Union of India v

Chandrika Thakur: Writ Appeal No 11/2019 was cited wherein a Division Bench of this Court vide order dated 01.04.2021 in a similarly situated case involving the issue of consideration of retrospective promotion as per the recruitment rules passed in the year 2006 has observed as under:

“Admittedly and as observed hereinbefore, the relevant rules, being the Assam Rifles Subedar Major Store Keeper Technical (Engineers), Group ‘B’ (Combatised) Recruitment Rules, 2015, came into effect on and from 5th December, 2015. In such a fact situation, we are unable to comprehend as to how the learned Single Judge could have issued a direction for giving the writ petitioner benefits as per the rules w.e.f. 2006, when, in fact, the rules came into effect on and from 5th December, 2015, only.”

“.....since there were no rules in existence in the year, 2006. In spite of non-existence of any applicable rule, the learned Single Judge has proceeded to issue such a direction as reproduced hereinabove.”

17. On the ratio of the case cited above, the learned DSGI has submitted that same being squarely applicable to the case of the petitioners herein, even if, the petitioners are entitled to promotion, the same can be allowed to them prospectively, that too after the Recruitment Rules in this respect have been framed.

18. On the basis of what has been submitted by the learned counsels for the rival parties, the admitted facts as related hereinabove need not be reiterated. Suffice it to say that the status of the petitioners as Warrant Officers (Draughtsman) in the service of the Assam Rifles is not in question. That the next promotional posts in the hierarchy are that of Naib

Subedar, Subedar and Subedar Major respectively.

19. The issue which arises now is whether the petitioners have acquired the vested right to be promoted to the next higher post retrospectively, their initial promotion not having been considered or affected at the time when the said 13 posts of Naib Subedar was created in the year 2003.

20. In the context of the case of the petitioners, it may be proper to examine the concept and principle of promotion. Promotion is one of the methods of recruitment, apart from direct recruitment, deputation, absorption, etc. It is also a method of recruitment from a feeder post to a higher post or grade with a higher pay scale. It is therefore a legitimate expectation for every employee in a department or service to be promoted in due course during their career.

21. Promotion can either be by seniority or by merit or in accordance with the provisions of the Relevant Rules governing the particular service. However, there are also other criteria to be fulfilled before one is eligible for promotion to the next higher post. These eligibility criteria are mostly enunciated in the Relevant Recruitment or Service Rules.

22. There are relevant notifications which prescribed that a post is to be filled by promotion where the Recruitment Rules so provide. In

making promotions, it should be ensured that suitability of the candidates for promotion is considered in an objective and impartial manner. For this purpose, Departmental Promotion Committees (DPCs) should be formed whenever a case arises for making promotion, etc.

23. The fact situation in the case of the petitioners is that since the time they were re-designated to the rank of Warrant Officer w.e.f. 10.10.1997, though the relevant order of the Court was made in the year 2013, they have remained in the same post without any promotion being considered to them. The answer to this as given by the respondent authorities is that the rules to this effect have not been able to be made out in this regard.

24. At the hearing, however, the learned DCSI has produced a copy of the “Assam Rifles Warrant Officer (Draughtsman) Group ‘C’ Combatized Post Recruitment Rules, 2022”, but has candidly admitted that no specific rules as far as promotion of Warrant Officer (Draughtsman) to the next higher posts of Naib Subedar, Subedar and Subedar Major has been brought out, much less published.

25. It is an accepted proposition of law that promotion is an incident of service. However, it is also well settled that there is no vested right to promotion, but there is a right to be considered for promotion and that too in accordance with the relevant rules which existed at the time of

occurrence of the vacancies. In the case of the petitioners herein, admittedly, when there are vacancies available, it is a legitimate expectation for the petitioners to be considered for promotion.

26. On the contention of the learned DSGI that the petitioners have since been granted relief and benefits as per the ACP/MACP Scheme, therefore, they cannot claim promotion at this stage, the accepted position on this aspect is that an employee being benefited by the ACP/MACP Scheme, that, however, would not be considered as a regular promotion.

In the case of *Director, Directorate of Enforcement & Anr. v. K. Sudheesh Kumar & Ors: (2022) 3 SCC 649*, at para 9 of the same, the Hon'ble Supreme Court has observed that:

“9. It is specifically observed and held by this Court in the aforesaid decision in *M.V. Mohanan Nair*, (2020) 5 SCC 421 that MACP has nothing to do with the next promotional post and what the employee would be entitled to would be the immediate next higher grade pay in the hierarchy of the recommended revised pay bands and grade pay as given in the CCS (Revised Pay) Rules, 2008. As per Clause 8.1 of the MACP Scheme “consequently upon the implementation of sixth CPC’s recommendations, grade pay of PB-2 and PB-3 would be Rs 5400. It specifically provides that the grade pay of Rs 5400 in PB-2 and Rs 5400 in PB-3 shall be treated as separate grade pays for the purpose of grant of upgradations under the MACP Scheme”. Therefore, Respondents 1 & 2 as PB-2 shall be entitled to the next grade pay of Rs 5400 as per Clause 8.1 and as per Section 1, Part A of the First Schedule of the CCS (Revised Pay) Rules, 2008. The High Court has allowed the grade pay of Rs 6600 by considering the next promotion post of Assistant Director i.e. Deputy Director which carries a grade pay of Rs 6600. However, the

aforesaid interpretation would be contrary to the MACP Scheme.”

27. This proposition was asserted yet again in a recent case, wherein vide order dated 25.04.2023, the Hon’ble Supreme Court in the case of ***Amresh Kumar Sinha & Ors. v. The State of Bihar & Ors: SLP (C) Nos. 8219-8226 of 2019***, at para 13, has held as follows:

“13. At the cost of repetition, it must be borne in mind that the object of ACP is to avoid stagnation where no promotional avenues are available. The grant of ACP is not technically a grant of promotion but increase in the pay scale to the next higher grade retaining the employee on the post held by him. This is only to accord monetary benefit without disturbing any seniority or actually effectuating promotion to any higher post to avoid stagnation on a particular post or pay scale for a very long period.”

28. The only hindrance to the petitioner to assert their right to be considered for promotion is the absence of the relevant Recruitment Rules, specifically indicating the mode and manner of promotion in the cadre.

29. In this regard, the learned counsel for the petitioners has cited the case of ***State of Mizoram & Anr. v. Mizoram Engineering Service Association & Anr: (2004) 6 SCC 218***, wherein extract of para 6 would reveal the observation of the Hon’ble Supreme Court when it is remarked that:

“6. ...Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service

responsible for it? The answer is clearly “No”. For the failure of the State Government to frame recruitment rules and bring Engineering Service within the frame work of organised service, the engineers cannot be made to suffer....”

30. In the case of *P.N. Premachandran v. State of Kerela & Ors:* (2004) 1 SCC 245, the Hon’ble Supreme Court dealing with a case of grant of promotion, wherein the private respondents therein were temporarily promoted as Assistant Directors (Soil Survey) since there was a delay in convening the DPC and later, after the DPC was convened, the said respondents were shown promoted retrospectively, on their promotion being challenged before the Hon’ble Supreme Court, the appeal was rejected. At para 7 of the said judgment, it was observed as follows:

“7. It is not in dispute that the posts were to be filled up by promotion. We fail to understand how the appellant, keeping in view the facts and circumstances of this case, could question the retrospective promotion granted to the private respondents herein. It is not disputed that in view of the administrative lapse, the Departmental Promotion Committee did not hold a sitting from 1964 to 1980. The respondents cannot suffer owing to such administrative lapse on the part of the State of Kerala for no fault on their part. It is also not disputed, that in ordinary course they were entitled to be promoted to the post of Assistant Director, in the event, a Departmental Promotion Committee had been constituted in due time. In that view of the matter, it must be held that the State of Kerala took a conscious decision to the effect that those who have been acting in a higher post for a long time, although on a temporary basis, but were qualified at the time when they were so promoted and found to be

eligible by the Departmental Promotion Committee at a later date, should be promoted with retrospective effect.”

31. The above would only reinforce the fact that promotion can be considered retrospectively, however, only if there are relevant rules prevailing then. In the absence of any rules for promotion, there is no basis on which the incumbent could be promoted retrospectively. The case of P.N. Premachandran (*supra*) cited by the petitioners in support of their contention may not be applicable to their situation.

32. However, since it is the fault of the authorities concerned for not bringing out any relevant Recruitment Rules to facilitate the promotion of the petitioners when the said 13 posts of Naib Subedar and other posts were sanctioned, thereby convening of a DPC could not be affected, for the fault of the authorities, the petitioners should not be made to suffer.

33. In this regard, para 12 of the case of ***Food Corporation of India & Ors. v. Parashotam Das Bansal & Ors: (2008) 5 SCC 100***, cited by the learned counsel for the petitioners would be applicable to the case of the petitioners. The same reads as follows:

“12. When employees are denied an opportunity of promotion for long years (in this case 30 years) on the ground that they fell within a category of employees excluded from promotional prospect, the superior court will have the jurisdiction to issue necessary direction.”

34. The petitioners herein having been denied to be considered for promotion for about 20 years or so, their grievances have to be addressed accordingly. On the authority of the case of Food Corporation of India (supra), this Court coming to the conclusion that the petitioners have made out a case to be considered for promotion, accordingly, the competent authority is hereby directed to bring out the relevant Recruitment Rules, indicating the mode and manner wherewith the petitioners may be promoted to the next higher post. The exercise is directed to be completed preferably within a period of 3(three) months from the date of receipt of a certified copy of this judgment and order.

35. Keeping in mind the fact that the petitioners have been deprived of their right to be considered for promotion for a considerable length of time, the authorities may look into this aspect while bringing out the relevant rules.

36. With the above, this petition is hereby disposed of. No costs.

Judge

Meghalaya
25.05.2023
"D. Nary, PS"