

Serial No. 01
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 49 of 2017 with
WP(C) No. 127 of 2017

Date of Decision: 24.03.2023

Shri. Binil Kumar & Ors.	Vs.	Union of India & Ors.
Shri. Satyal Pal & Ors.	Vs.	Union of India & Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

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

COMMON JUDGMENT AND ORDER

1. The petitioners in both these cases have come before this Court with an application under Article 226 of the Constitution of India seeking a writ of Certiorari and/or Mandamus or any appropriate writ for enforcement of their fundamental rights guaranteed under Article 14 and 16 of the Constitution.

2. The two set of cases being almost identical and similar involving personnel working as Havildar Store Keeper Technical(EME) and Havildar Store Keeper Technical(Signals) in different units under the Assam Rifles

and seeking identical reliefs in their prayer, this Court deems it fit and expedient to take up the two and to pass a common judgment and order.

3. The grievance of the petitioners is the non-implementation of rank and pay structure including promotional avenues at par with BSF for different technical trade including trade for Havildar SKT [Store Keeper Technical (EME)] and Havildar SKT [Store Keeper Technical (Signals)] along with their counterparts working in different Central Para Military Forces (CPMFs) under the Ministry of Home Affairs, Government of India.

4. It is also the prayer of the petitioners that they be granted the rank and status of Warrant Officer in the scale of pay of ₹ 4000-6000/- w.e.f. the date of appointment, that is, from the date of remuneration as Rifleman SKT (EME) and Rifleman SKT (Signals) respectively, with all consequential benefits at par with other Central Police Organisations/Central Para Military Forces.

5. In this connection, the petitioners have referred to the recommendation and direction contained in MHA letter No. A/Pers/5th – CPC/Vol-III/98/123 dated 07.07.1998 which was communicated by DGAR letter dated 28.07.1998, wherein some of the salient features of the 5th Central Pay Commission as regard Assam Rifles was mentioned, granting of Warrant Officer rank to technical trade in equivalence with BSF, Havildar Store Keeper Technical listed at para 2 (i) (ad) being one of them.

6. Mr. M. Chanda, learned counsel for the petitioners has submitted that the petitioners are personnel of the Assam Rifles, initially appointed as Rifleman (GD) on different dates on or before the year 1985. The Assam Rifles then selected the petitioners for remustration in the cadre of Havildar SKT (EME) and after being found suitable, they were sent for a training course as Store Keeper Technical (EME) at the College of Material Management at Jabalpur, Madhya Pradesh. All the petitioners have successfully completed the 8 months' course. However, after completion of the said course, they were placed in the cadre of Rifleman SKT (EME) instead of Havildar SKT (EME).

7. In exactly the same manner, those personnel who were remustered as Rifleman SKT(Signals) were also sent for the 8 months' training course at the College of Material Management at Jabalpur, Madhya Pradesh. All the petitioners have successfully completed the 8 months' course. However, after completion of the said course, they were placed in the cadre of Rifleman SKT (Signals) instead of Havildar SKT (Signals).

8. The learned counsel has also submitted that personnel having similar recruitment qualifications, that is, matriculation with 8 months' diploma course on SKT(MT) in BSF and other Central Para Military Forces have been recruited in the entry grade of Havildar SKT(MT), whereas in Assam Rifles, one of the Central Para Military Force, the same personnel were deliberately or wrongly placed in the lower rank of Rifleman

SKT(EME) or SKT (Signals) as the case may be, with the promotional post of Havildar SKT(EME)/SKT(Signals) on completion of eight years of residency in the post of Rifleman SKT(EME)/SKT(Signals).

9. The learned counsel further submits that for better understanding of the issue in question, reference to the Office Memorandum (OM) dated 22nd January 1998 issued by the Ministry of Home Affairs is relevant. In that OM, it is inter alia directed that the Head Constable (HC) Radio Mechanic (RM) Grade I and Grade II and HC (Draughtsman) who were given the replacement scale of ₹ 4000-6000/- by the Central Pay Commission, the same were re-designated as Assistant Sub-Inspectors (ASI). The respondents have contended that the petitioners not being in the same category as Radio Mechanics and Draughtsman and their qualification and training being different, hence, they cannot claim parity, cannot be accepted as it is seen that subsequently, personnel of other trades such as those belonging to Cipher and Pharmacist as well as those in the Clerical cadre were also given the same benefit of upgradation of rank and payscale at the entry level of Warrant Officer/Assistant Sub-Inspector by virtue of a number of judicial directions issued by this Court as well as the Apex Court.

10. To further elucidate on this matter, the learned counsel has led this Court to the judgment and order dated 23.03.2017 passed by this Court in the case of Shri Digamber Datt & Ors v. Union of India & Ors in WP(C)

No. 403 of 2014 and also the case of Shri Prakash Chandra Sharma & Ors v. Union of India & Ors in WP(C) No. 311 of 2016, wherein this Court vide its common judgment and order dated 23.03.2017 passed in WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016, has allowed the prayer of the petitioners therein and has directed that the Havildar(Cipher) be granted the benefit of rank, status and pay of Warrant Officer. This matter travelled upto the Supreme Court and the Special Leave Petition (Civil) Dairy No. 11494/2018, Union of India & Ors v. No. 35693F, Havildar/Cipher Digamber Datt & Ors was dismissed vide order dated 04.07.2018 bringing finality to the order of the learned Single Judge. The respondent Authority, Directorate General Assam Rifles, Shillong has issued Order dated 08.02.2019 to implement the direction of this Court and accordingly, those Havildar (Cipher) who has approached the Court have their post upgraded to the rank of Warrant Officer (Cipher) in the pre-revised payscale of ₹ 4000-6000/- w.e.f. 10.10.1997 or from the date of passing of Tech Trade Test Cipher Cl-II whichever is later.

11. The learned counsel has also referred to a number of related judgments where similar benefits have already been extended/granted to all other similarly situated employees serving in the cadre of Rifleman/Havildar in different trades under the Assam Rifles, being Rifleman(Draughtsman), Havildar(Draughtsman), Havildar(Pharmacist), Havildar(Cipher), Havildar(Clerk), by virtue of Order dated 10.08.2012

passed by the Hon'ble Gauhati High Court in the case of Shri. Rupender Singh v. Union of India & Ors: WP(C) No. 19 (SH) of 2010, Order dated 24.09.2014 passed by this Court in the case of Abhay Kumar Hav Pharmacist & Ors v. Union of India & Ors: WP(C) No. 230 of 2013, Order dated 22.09.2011 passed by the Hon'ble Gauhati High Court in the case of Rifleman ORL Savendra Singh Chauhan v. Union of India & Ors: W.A. No. 50 (SH) of 2010 and Order dated 23.08.2012 passed by the Hon'ble Gauhati High Court in the case of R.K. Nair & Ors v. Union of India & Ors: W.P.(C) No. 277(SH) of 2010 and has submitted that the petitioners who were remustered in the year 1998 as Rifleman SKT(EME) and subsequently, promoted to the rank of Havildar SKT(EME) after seven or eight years are equally entitled to similar benefit of rank, status and pay in the cadre of Warrant Officer by way of re-designation with replacement scale of ₹4000-6000/- as entry grade with all consequential benefits.

12. Similarly, the petitioners who are now Havildar SKT(Signals) have averred that they were initially enrolled as Riflesman(ORL) and subsequently, after completing the 8 months' training course, they were supposed to be remustered as Havildar SKT(Signals), but instead they were placed as direct entry as Rifleman SKT(Signals) and only after rendering a further 9/10 years of service, they were promoted to the rank of Havildar. As such, they are equally entitled to the same benefits of rank and payscale of Warrant Officer/Assistant Sub-Inspector with payscale of ₹ 4000-6000/-

as entry grade.

13. As was done in the case of Digamber Datt, the Authority Assam Rifles has issued similar Orders as regard the upgradation and re-designation of Rifleman(Draughtsman) and Havildar(Draughtsman) to Warrant Officer(Draughtsman) being Order dated 29.03.2016 and Order dated 04.11.2015 as far as upgradation and re-designation of Havildar(Pharmacist) to Warrant Officer(Pharmacist).

14. The learned counsel has also submitted that the case of the petitioners is covered by the decision of a Division Bench of this Court (of which I am part of) being order dated 20.04.2022 in MC (WA) No. 15 of 2019 arising out of WA. No. 10 of 2022 in the case of Union of India & Ors v. M/5016452 RFN/Ora Mahesh Kumar & Ors, wherein this Court has maintained that as regard the challenge by the appellant/Union of India, particularly, the Assam Rifles to a number of similar, if not identical judgments and orders of a Single Bench of this Court, the issue agitated being the application of appropriate rank and payscale of personnel in different cadres of Technical Trades within the Assam Rifles, the Court holding that since the benefit have been extended to such personnel, similarly, placed personnel cannot be denied the same benefits. The Court has further relied on an earlier judgment dated 08.05.2014 on the same issue in WP(C) No. 56(SH) 2013, which order was upheld on appeal in WA No. 66 of 2014 vide order dated 01.03.2016 and had allowed the prayer of

the petitioners therein, which decision was followed by the Division Bench of this Court on the basis that the same has attained finality and can no longer be agitated further. It is therefore, contended that the said decision will also cover the case of the petitioners herein.

15. Dr. N. Mozika, learned DSGI while controverting the argument and contention of the petitioners have submitted that at the outset, it may be mentioned that Assam Rifles is under the Ministry of Home Affairs and the organizational structure, command and control are more akin to the Army rather than to other Police Organisation such as, CRPF, BSF, CISF and SSB and as such, no parallel or parity can be drawn between Assam Rifles and other Central Police Organisations (CPOs).

16. Coming to the case in hand, it is submitted that the petitioners herein were enrolled into Assam Rifles as Rifleman (General Duty) and subsequently, they were voluntarily remustered to the post of Rifleman/Store Keeper Technical (EME)/SKT (Signals) and were allowed to attend a course of Store Keeper (Military Transport) at College of Material Management, Jabalpur. It was only on completion of the course that they were then remustered to Rifleman/ SKT(EME)/SKT(Signals).

17. The learned DSGI has stressed on the point that under the Recruitment Rules, 2000, the post of Havildar, SKT(EME)/SKT(Signals) is a promotional post to be filled up from the feeder cadre of Rifleman SKT(EME)/SKT(Signals) on completion of 8 years of service. There is no

rank of Warrant Officer SKT(EME)/SKT(Signals) in the hierarchy of SKT(EME)/SKT(Signals) and mere remusteration of category of trade or passing of a course does not entitle the petitioners for further promotion to the next higher rank.

18. It is also the submission of the learned DSGI that the petitioners were extended benefits of financial upgradation under the erstwhile ACP Scheme on completion of 12 and 24 years of service and thereafter, on implementation of the MACP Scheme, on completion of 10, 20 and 30 years of service respectively. The petitioners having been given the due rank and payscale as applicable to their qualifications and the prevailing recruitment rules have been duly compensated by way of financial upgradation and as such, there is no cause or justification for seeking parity in rank and payscale with their counterparts in other Central Police Organisations.

19. The learned DSGI has also sought to impress this Court that the petitioners are not similarly situated with those personnel who have been benefited by virtue of the Court's Orders and subsequent Government Orders and Notifications in that regard, the distinguishing feature being the difference in educational qualification, the nature of the trade involved as well as the relevant provisions in the recruitment rules governing the respective services.

20. It is reiterated that the cases relied upon by the petitioners are not

applicable to the case of the petitioners herein. The case in W.P.(C) No. 19 of 2010 and W.P.(C) No. 820 of 2013, applies to the post of Draughtsman and Pharmacist respectively, wherein in the Judgment and Order dated 10.08.2012, reference to the OM No. 27011/103/97-PF.I/56 dated 22.01.1998 issued in continuation to the OM dated 10.10.1997 and resolution dated 30.09.1997 clearly states that the rank of Head Constable(Radio Mechanic) and Head Constable(Draughtsman) are to be given the rank of Warrant Officer/ASI, as to the rest, the Head Constable/Havildar in any Central Para Military Forces are to retain their present rank.

21. In the light of what has been submitted and contended by the parties, this Court has carefully considered the matter. However, before dealing with the main issue, it may not be out of place to try to understand the background of the dispute between the parties.

22. The respondents have stated that the Assam Rifles was declared as a Force, raised and maintained under the authority of the Central Government vide SRO-117 dated 28.03.1960 and SRO-118 dated 06.12.1962 as amended by SRO-325 dated 31.08.1977. Again, vide notification dated 22.09.1986, the Force was brought under the purview of the Central Police Organisations (CPOs). Therefore, there can be no comparison with the Army as regards to payscale and allowance and rank structure.

23. In the Assam Rifles, apart from the formal army or military force, there are also present technical trades which are considered non-combated. In the organizational structure of the Assam Rifles, for the non-combated personnel, there are about 18(eighteen) Technical Trades, like Radio Mechanic, Draughtsman, Operator Radio Linesman, Clerks, Pharmacist, Cipher etc. The trade of Store Keeper Technical (EME) and Store Keeper Technical (Signals) also being amongst such trades.

24. It has been said that these 18 trades are not similar, inasmuch as, they refer to different functions with different qualification requirement, for example, some posts are technical in nature, like Radio Mechanics or Pharmacist who have to possess specialized training and qualifications, whereas, those who are holding clerical posts are not required to have technical qualification.

25. It is the case of the respondent that the genesis of the controversy dates back to the time when the Order No. 27012/1/97 PC Cell/PE.1 dated 10.10.1997 (Annexure-14 of the writ petition) was issued, wherein the rank structure and payscale of non-gazetted cadre of Central Police Organisations (CPOs) were rationalised with the merger of the post of L/NK and NK to those of Constables and Head Constables. This has also affected the Assam Rifles, now being recognized as a Central Police Organisation/Central Para Military Force. Though this contention may be true, however from the records, it seen that there has been subsequent

clarification to differentiate three cadres of the technical trades, namely Head Constable (Radio Mechanic) Grade I and II and Head Constable (Draughtsman) whereby, vide another Office Memorandum dated 22.01.1998, it was ordered that these posts be re-designated as Assistant Sub-Inspector with the payscale of ₹ 4000-6000/- perhaps because the posts required added qualifications vis-a- vis the other trades.

26. However, the Assam Rifles authorities having failed to implement the order dated 22.01.1998, the Gauhati High Court (out of which this Court was carved out), in the case of Dineshan K.K v. Union of India & Ors, W.P(C) No. 497 of 2001 vide Order dated 11.02.2005, has in effect directed that the post of Havildar(Radio Mechanic) be re-designated as Warrant Officer in the Assam Rifles with the pre-revised payscale of ₹ 4000-6000/-. The said Order being eventually upheld by the Hon'ble Supreme Court in the case of Union of India v. Dineshan K.K. (2008) 1 SCC 586, the authorities have accordingly issued necessary notification in this regard to upgrade the post of Havildar(Radio Mechanic) to that of Warrant Officer.

27. Following the decision in the case of Dineshan K.K., personnel of other trades, viz; Rifleman (Draughtsman) and Havildar (Draughtsman) also approached this Court in the case of Shri. Rupender Singh & Ors v. Union of India & Ors, W.P(C) No 19 (SH) of 2010, wherein vide Order dated 10.08.2012, the Gauhati High Court has directed that the post of

Rifleman (Draughtsman) and Havildar (Draughtsman) be re-designated as Warrant Officer/Assistant Sub-Inspector in Assam Rifles following the restructuring of the rank and payscale found in the Order dated 10.10.1997 and OM dated 22.01.1998. This direction was also upheld by the higher courts, after which the Assam Rifles issued Order dated 29.03.2016 to bring this into effect.

28. Thereafter, the floodgate was opened leading to personnel belonging to the other technical trades seeking similar benefits which benefits were directed to be given by way of judicial pronouncement.

29. In this regard, personnel belonging to the Havildar (Pharmacist) trade have also approached this Court and following the Judgment and Order dated 20.08.2014 in W.P(C) No. 820/2013, Order dated 04.11.2015 was issued by the Assam Rifles to implement this Order and accordingly, the Havildar(Pharmacist) are upgraded and re-designated as Warrant Officer(Pharmacist).

30. In the same manner, those who are Havildar(Cipher), Subedar(Cipher) and Nb. Subedar(Cipher) seeking the same relief, that is, upgradation and re-designation as Warrant Officer(Cipher) have come before this Court by way of W.P(C) No. 403 of 2014, Shri Digamber Datt & Ors. v. Union of India & Ors and W.P(C) No. 311 of 2016, Shri Prakash Chandra Sharma & Ors v. Union of India & Ors, respectively and this Court vide a common Judgment and Order dated 23.03.2017 have allowed the

prayer made therein and have directed the authorities to give appropriate rank and payscale to the petitioners therein as per Office Memorandum dated 22.01.1998. In compliance thereof, the Assam Rifles has issued Order dated 08.02.2019 vide No. 19012/01/285/Prom.Ciph/(Court Case)/Adm-1/2019/325 whereby the petitioners therein were upgraded to the rank of Warrant Officer (Cipher) w.e.f. 10.10.1997.

31. Yet again, personnel belonging to the clerical cadre seeking similar reliefs have come before this Court (The Shillong Bench of the Gauhati High Court as it then was) by way of W.P(C) No. 277(SH) of 2010 and this Court vide Judgment and Order dated 23.08.2012 has also directed that the prayer of the petitioners therein having been duly considered, that is, for bringing parity in respect of pay, rank and status of Assam Rifles Clerical Cadre at par with other Central Police Organisations, the rank of Assistant Sub-Inspector(Warrant Officer) be introduced at the entry grade w.e.f. 01.01.1986 in the scale of pay of ₹ 1320-2040 (revised ₹ 4000-6000 w.e.f. 01.01.1996).

32. It is the contention of the respondents that the petitioners herein belonging to a trade different from the other trades in the category of technical trades existing within the Assam Rifles, they cannot claim parity with those who are in the trade of Draughtsman or Cipher or ORL (Operator Radio Line) or even Pharmacists which require specialized qualifications and training. Citing an example, it is said that a Pharmacist

must possess the educational qualification of 10+2 plus two years diploma while for a Store Keeper Technical, the basic qualification for enrollment is only matriculation. Hence, no parity can be demanded since the petitioners herein are not similarly situated employees with those from the abovementioned categories.

33. The petitioners in reply have pointed out that similar objection was raised by the present respondents in the case of Digambar Datt (supra) wherein, the petitioners in that case are also Havildar (Cipher) with matriculation as their qualification. But as pointed out, this Court have overruled such objections and has directed that the petitioners therein be given the appropriate rank and payscale as per the 5th Central Pay Commission Recommendation and the Office Memorandum dated 22.01.1998. This ground of objection cannot be entertained in this instant petition as the same has been settled as aforementioned.

34. The last limb of argument advanced by the petitioner is that the case of the petitioners being duly covered by the many judicial pronouncement on a subject matter as has been indicated hereinabove, the matter having been finally settled, such position cannot be unsettled. The Judgment and Order dated 20.04.2022 passed by a Division Bench of this Court in MC(WA) No. 15 of 2019 with WA No. 10 of 2022, Union of India & Ors. v. RFN/Ora Mahesh Kumar would thus squarely cover the case of the petitioners herein.

35. In the said case of Mahesh Kumar (supra), this Court dealing with an appeal pertaining to similar issues raised in this petition has observed and held at para 3, 10, 18, 19 & 21 as follows:-

“3. A batch of writ petitions, which involved similar issues pertaining to the appropriate pay scales for certain categories of employees in Assam Rifles, was taken up together. The writ court referred to the pleadings from the earliest of the several matters before it and, in particular, to the legal contention asserted that a judicial decision in a matter of general nature should govern all similarly placed persons and similarly placed persons cannot be treated differently only because one of them may have approached the Court and obtained an order and the others may not have.

10. It transpires that the personnel belonging to some of these 15 technical branches in Assam Rifles instituted WP (C) No. 56 (SH)/2013, which was allowed by a judgment and order of May 8, 2014. It is necessary to notice paragraph 7 of the relevant judgment of the writ court. The writ court observed that in the light of a judgment and order of September 22, 2011 passed by a Division Bench of the Gauhati High Court in WA No. 50 (SH) of 2010, the issue raised was squarely covered and Assam Rifles was obliged to extend the same benefits to the writ petitioners in terms of the order dated September 22, 2011.

18. It is possible that what the appellants assert is justified: that the personnel in the 15 other technical branches of Assam Rifles at the relevant point of time entered in the post of Rifleman and were not promoted and, as such, could not have claimed the benefits conferred specifically to three of the technical branches. It is equally possible that the writ petitioners covered by the order of May 8, 2014 were not similarly placed as the writ petitioners covered by the previous Division Bench order of the Gauhati High Court passed on September 22, 2011.

19. However, for reasons that do not require to be looked into at this stage, the issues have attained finality by virtue of the appeal from the order dated May 8, 2014 being dismissed on March 1, 2016 and such appellate order not being assailed. In view of the principle of issue estoppel, it is no longer open to the Assam Rifles to urge to the contrary; at least not at this

level. This Court is bound by its previous order of March 1, 2016 and the matter cannot be permitted to be agitated for being adjudicated afresh. The finality of an order does not depend on its correctness; the principle of finality is based on the larger public policy of giving quietus to a decision that could have been questioned but was not, or that was questioned but the challenge failed. The reasons for not assailing the decision or the reasons why the challenge failed are irrelevant, only the result is material.

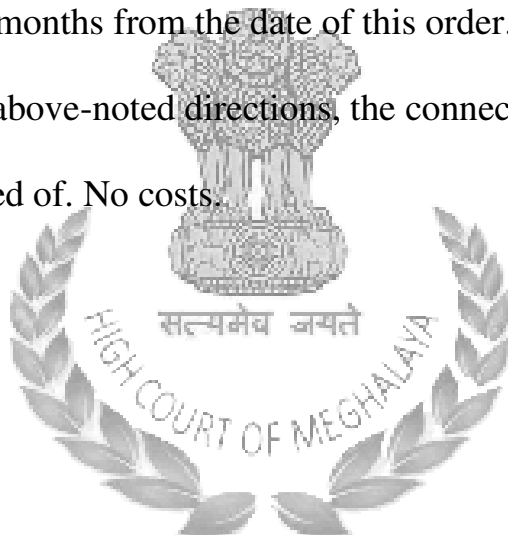
21. For the reasons aforesaid, the judgments and orders impugned dated August 14, 2018, August 30, 2018, September 14, 2018, and October 8, 2018 do not call for any interference as the basis therefor is in tune with the expected decorum and judicial propriety upon noticing that the issues had been previously decided and such decision had attained finality.”

36. In the light of the above, there being no denial of the fact that the cadre of Store Keeper Technical (EME)/SKT(Signals) also forms part of the 18 Technical trades of the Assam Rifles and as demonstrated, most of the trades, for example, Draughtsman, Cipher, Pharmacists, Operator Radio Line, Radio Mechanic and Clerical Cadre have their rank and payscale upgraded and re-structured by a series of judicial directions, it stands to reason that the personnel belonging to Store Keeper Technical (EME)/SKT(Signals) are also entitled to receive the same benefits being similarly situated.

37. On the strength of the order in the case of Mahesh Kumar (supra), this Court is bound to follow precedent and cannot deviate or come to any other different findings, but to hold that the case of the petitioners is squarely covered by the aforesaid judgment.

38. This being the case, the respondent authorities are directed to issue appropriate orders and directions to bring parity in respect of payscale and rank structure of Rifleman SKT(EME)/SKT(Signals) as well as Havildar SKT (EME)/SKT(Signals) in the Assam Rifles at par with other Central Police Organisations by introducing the rank of Warrant Officer/Assistant Sub-Inspector at the entry grade from the date of remuneration as Rifleman SKT(EME)/SKT(Signals) on having completed the training course aforementioned. This exercise is to be carried out within a period of 4(four) months from the date of this order.

39. With the above-noted directions, the connected writ petitions are accordingly disposed of. No costs.



Judge

Meghalaya
24.03.2023
"D. Nary, PS"