

Serial No. 03
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 89 of 2019

Date of Decision: 30.01.2023

Shri. Ashim Deb Roy & 6 Ors.

Vs.

Union of India & Anr.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M. Chanda, Adv.
Mr. M.L. Nongpiur, Adv.

For the Respondent(s) : Mr. N. Syngkon, Adv.

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

JUDGMENT AND ORDER

1. This writ petition is directed against the impugned orders dated 08.02.2019, 08.03.2019 and 15.02.2019, issued by the respondent No. 2, declaring the placement/re-designation of the writ petitioners as Warrant

Officer as promotion, which has been alleged to be in violation of instructions contained in the Office Memorandum dated 22.01.1998, issued by the Ministry of Home Affairs, as well as in total violation of the orders of this Court dated 23.03.2017, passed in WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016. It is alleged that, in the process of implementation of the judgment and order dated 23.03.2017, the declaration of the re-designation of the writ petitioners as Warrant Officer, a promotion, the same has resulted in a substantial reduction of the basic pay of every individual petitioner on account of 1st ACP under O.M. dated 09.08.1999, as well as, 2nd MACP under O.M. dated 19.05.2009, on completion of the prescribed qualified period.

2. The grievance as portrayed centres around the action of the respondents, which is stated to be deliberate and wrongful, in treating the placement of the writ petitioners as Warrant Officer as a promotion, when the order dated 23.03.2017, passed by this Court had directed them to grant appropriate Rank, Structure and Pay Scale as per the 5th Central Pay Commission in terms of O.M. dated 22.01.1998, including financial upgradation under the ACP Scheme. This action it is contended, has caused severe loss and prejudice to the writ petitioners.

3. Mr. M. Chanda, learned counsel for the petitioners submits that the petitioners never prayed for grant of promotion, to the cadre of

Warrant Officer (ASI), nor did this Court by order dated 23.03.2017, passed in WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016, direct for the same. He submits that by the judgment dated 23.03.2017, this Court had given two directions, firstly, to give appropriate Rank and Pay Scales to the petitioners, as per the 5th Central Pay Commission and Office Memorandum dated 22.01.1998, and for including financial upgradation under the Modified Assured Career Progression Scheme of the Government of India within a period of three months. Learned counsel submits that these two directions carry two different meanings, inasmuch as, the word Financial Upgradation refers to the MACP scheme only and not to Rank and Pay Scale, and that the other direction is prefixed by the word Give, which he submits is not a direction for upgradation of Rank and Pay, but to give appropriate Rank and Pay.

4. The learned counsel strongly contends that the respondents have deliberately misconstrued and misinterpreted, the two distinctly different directions, by combining them both to suit their convenience. He further submits that the judgment dated 23.03.2017, issued directions, with regard to the grant of MACP and not ACP, with an added condition that, if any individual petitioner did not get the benefit of MACP, the same be granted, if any. He submits that in terms of the O.M. dated 22.01.1998, the respondents have wrongly interpreted the order dated 23.03.2017, and

by no stretch of the imagination can it be said that, this Court had directed for grant of promotion of the petitioners, to the rank of Warrant Officer and that, it is, but a mere re-designation. It has also been submitted by the learned counsel that, in the implementation for grant of Rank, Status and Pay, in terms of the 5th Central Pay Commission, with regard to other trades, such as Draftsmen in WP(C) No. 268 of 2012 and WP(C) No. 19 of 2010, the word Promotion was never used, but the word Re-designation was used. Learned counsel submits that similar is the case of Riflemen ORL to Havildar ORL, wherein the word Upgradation and Re-designation have been used, without using the word Promotion. Other instances have also been illustrated, on this same vein, with regard to other trades.

5. It has also been urged before this Court, that the Rank, Status and Pay of Warrant Officer (ASI) has been granted at the entry grade to other similar situated employees of the Assam Rifles, whereas, the similar order of placement in the case of the writ petitioners has been declared promotion instead of re-designation. It is also submitted that the placement in the cadre of Warrant Officer, must be by way of re-designation, with a commensurate prescribed replacement pay scale, and as such, it cannot be termed a promotion, as per O.M. dated 22.01.1998. Learned counsel has referred to various orders rendered by this High

Court, to impress upon the point that the grant of Rank, Status and Pay Scale of Warrant Officer which were granted, were in terms with the recommendation of the 5th Central Pay Commission and in terms of the O.M. dated 22.01.1998, whereas, instead of affording equal treatment, the petitioners have been declared as promoted, which has caused them irreparable financial loss.

6. The learned counsel has also referred to the order of this Court dated 09.04.2013, passed in WP(C) No. 268(SH) of 2012, wherein, it was directed that, the petitioners (Havildar, Draftsman) be re-designated as Warrant Officer/Assistant Sub-Inspector, with a replacement pay scale of Rs.4000/- to Rs.6000/- w.e.f., date of respective initial appointment. As such, he prays, as the instant case is similarly situated, the impugned implementation order dated 08.02.2019, the consequential impugned order dated 15.02.2019 and implementation order dated 08.03.2019, be set aside and quashed.

7. Mr. N. Syngkon, learned counsel for the respondents has at the outset traced the multitude of cases, which he submits has a bearing on the instant case. He submits that in compliance to order dated 13.05.2013, passed in WP(C) No. 412 of 2010, filed by the same petitioner herein, the grant of 1st ACP from the date of remusteration of Cipher personnel had been finalized, pursuant to which orders for grant of ACP/MACP were

issued by the respondents granting pay scale from Rs. (3200-4900)/- to Rs. (5500-9000)/-. He submits that thereafter, two writ petitions being WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016, were disposed of by a common judgment and order dated 23.03.2017, for upgradation of rank and structure and the same on being referred to the Ministry of Home Affairs was approved by letter dated 30.11.2018. It is further submitted that, in consonance with the said letter, the respondents issued letter dated 21.12.2018, whereby the impugned orders for upgradation as Warrant Officer (Cipher), w.e.f. 10.10.1997, or from the date of passing Cipher Class-II and ACP/MACP orders were issued. He also submits that, prior to the implementation of the upgradation, the case for granting ACP/MACP to the Cipher persons stood changed as the introduction of Warrant Officer (Cipher) was taken as one set of financial upgradation in the revision of their pay fixation, which has resulted in the decrease of their existing basic pay. Learned counsel submits that in this situation, some of the Cipher personnel submitted their unwillingness to accept the rank of Warrant Officer (Cipher) granted to them as promotion, as the pay re-fixation on the subsequent grant of MACP, was not financially beneficial to them.

8. Learned counsel submits that in compliance with the judgment dated 23.03.2017, passed in WP(C) No. 403 of 2014 and WP(C) No. 311

of 2016, the rank of Warrant Officer had been introduced in the Cipher category w.e.f. 10.10.1997, in between Havildar and Naib Subedar, and that with introduction of this new rank, all affected Cipher personnel were promoted/upgraded as Warrant Officer (Cipher) w.e.f. 10.10.1997. He further submits that, the upgradation from Havildar (Cipher) to Warrant Officer (Cipher) rank involves higher rank and pay scale, and hence, the same has been termed as 1st financial upgradation for the purpose of ACP/MACP schemes. All the eligible Cipher personnel, he submits, have been further granted 2nd and 3rd financial upgradations under the ACP/MACP schemes as applicable from the date of remusteration in the Cipher category, instead of date of enrollment. Learned counsel to illustrate this point, has cited the example of the petitioner No. 3, and submits that after treating the promotion from Havildar (Cipher) to Warrant Officer (Cipher) as 1st financial upgradation, the petitioner No. 3 was granted 2nd financial upgradation w.e.f. 01.09.2008, and was promoted to the rank of Subedar (Cipher) on 01.01.2014, which was counted as a 3rd financial upgradation under the MACP scheme.

9. It is in this context, he submits that, the introduction of Warrant Officer rank in between Havildar and Naib Subedar has caused financial loss to some of the Cipher personnel, who were earlier granted the benefits of the 1st financial upgradation under the ACP scheme in the pay

of Naib Subedar (Cipher) and therefore, as the upgradation to the rank of Warrant Officer (Cipher) has been termed as 1st financial upgradation for ACP scheme purpose, a substantial amount of recovery on pay and allowances has to be realised from such persons, due to the grant of Warrant Officer (Cipher) rank, in terms of the orders of this Court dated 23.03.2017, which however, have been kept in abeyance as per the orders of this Court, in the present writ petition and other connected matters.

10. Learned counsel submits that, the petitioners are not entitled to the benefits as prayed, which if granted, will cause a financial drain of tax payers money, and remarks that some personnel who had received ACP earlier in the pay of Naib Subedar, had refused promotion to the post of Warrant Officer, as it was not beneficial to them. He submits that the petitioners herein, also had the same choice, but as they chose not to exercise the same, and having accepted promotion, will be entitled only to benefits attached to the said post, and cannot claim the benefit of promotion to the post of Warrant Officer, and at the same time, enjoy the benefits of ACP provided for the pay of Naib Subedar. This he asserts, is based on the logic that, the very purpose of ACP/MACP schemes was meant for a stagnant post, but once, the petitioners were promoted to a higher rank and pay scale, they are not entitled for such benefits under the ACP scheme.

11. The learned counsel in his submissions as observed earlier, has also made references to the various orders and Office Memorandum issued by the respondents with regard to the promotion and upgradation of the petitioners, as also the judgment passed by the Gauhati High Court, in WP(C) No. 3580/2018 (*Bhagwan Ram Chauhan*), whereby vide order dated 12.09.2018, it has been directed that, finalisation of pensionary dues, shall be on the basis of correct pay payable to the petitioner and not based upon an incorrect higher pay that was paid to him, during his service tenure. This the learned counsel submits, is to emphasize the point that, final settlement of Cipher personnel who are proceeding on retirement, is being carried out as per the revised pay, and the recovery of overpaid amount, is being effected from the gratuity and leave encashment dues. He however submits that, if the writ petitions are ruled in favour of the petitioners, the pay and pension of the Cipher personnel will be revised accordingly, and remaining pensionary benefits and arrear pay and allowances as admissible will be paid to them.

12. In conclusion, the learned counsel submits that, the writ petitioners who were initially enrolled as Rifleman(Operator Radio Line) had already been given the benefits of higher rank and pay scale of Havildar (Cipher) on their remusteration, which was not counted as 1st financial upgradation by the respondent authority, and more benefits were

granted in rank and pay scale, in the higher rank of Warrant Officer, Naib Subedar (Cipher) and Subedar (Cipher) which were counted as 1st, 2nd and 3rd financial upgradations, in terms of ACP/MACP schemes, and as such, the actions of the respondents in reckoning Warrant Officer as 1st financial benefit, in terms of ACP/MACP schemes, is therefore correct. As such, it is contended, the case of the writ petitioners that, the benefits granted should be counted from Naib Subedar (Cipher) is misplaced and is an attempt to obtain double benefits, which is against public policy. He therefore submits that, the prayer of the writ petitioners to grant benefit of 1st ACP scheme, in the pre revised pay scale of Rs.5500-9000, in the rank of Naib Subedar (Cipher) on completion of 12 years of service, from the date of remusteration, in the cadre of Cipher trade is not tenable, and as such, all the instant writ petitions and other connected petitions being devoid of merit are liable to be dismissed.

13. I have heard learned counsel for the parties. The saga concerning the claim of service benefits and entitlements of the petitioners and other similarly situated personnel, appears to be unending, and a perusal of the materials bear testimony to this fact.

14. In the present writ petition, the basic question involved is to whether, the re-designation of the writ petitioners as Warrant Officer with a replacement pay scale, could be termed as a promotion in the process of

the implementation of the orders of this Court dated 23.03.2017, and whether this action has resulted in the violation of the Government of India Office Memorandum dated 22.01.1998. In this backdrop therefore, it would be necessary to first examine the purport and the substance of the order dated 23.03.2017, passed in WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016. The petitioners, by way of WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016, had earlier approached this Court, praying for grant of appropriate rank, status and pay of Warrant Officer (ASI) in the light of the instructions contained in the Office Memorandum of the Ministry of Home Affairs dated 22.01.1998. The prayer as made out in the said writ petitions, was for directions to grant appropriate rank and pay scale as per the recommendations of the 5th Central Pay Commission and Office Memorandum dated 22.01.1998, and also to include financial upgradation under the ACP, and modified ACP scheme.

15. This Court by order dated 23.03.2017, had then allowed the writ petitions and directed the respondents to give appropriate rank and pay scale to the petitioners, as per the 5th Central Pay Commission, and Office Memorandum dated 22.01.1998, including financial upgradation under ACP and MACP schemes of the Government of India, within a period of three months. This Court, by the judgment dated 23.03.2017, while allowing the writ petitions, and issuing the aforesaid directions had

digested the earlier cases concerning the grant of rank and pay structure, as per recommendations of the 5th Central Pay Commission, apart from other rulings, with regard to parity of pay on the doctrine of 'Equal Work, Equal Pay'.

The relevant extract of the order dated 23.03.2017, is quoted herein below;

***“30. The respondents have extended the benefit of the Fifth Pay Commission to the same category of person who had moved the Court, however, the petitioners being similarly situated are treated differently. In a decision of Division Bench of Punjab and Haryana High Court in the case of ‘Satbir Singh vs State of Haryana’ 2002 (2) SCT 354 taken a view that when a judgment attains finality, the State is bound to grant relief to its employees who are similarly situated even though they are not party to the litigation. A final decision of the Court must not only be respected but should also be enforced and implemented evenly and without discrimination in respect of all the employees who are entitled to the benefit which has been allowed to the employees who have obtained orders from the Court. The matter is one of principle and should not depend upon who comes to the Court and who does not. In ‘Dr. (Mrs.) Santosh Kumari vs. Union of India and Ors.’ (1995) 1 SCC 269, Hon’ble Supreme Court lamented that a more deserving candidate may not have the means to approach the Court, should he be denied the benefit which has been granted to those persons who dared the department with Court orders.*”**

31. The position which emerges from the present case is that to deny the benefit of the earlier judgment which has attained finality, to the similarly situated employee, is nothing but a blatant discrimination. Such an action smacks of arbitrariness and high-handedness on the part of the employer. To drive each one of the similarly placed person to obtain orders of the Court, would amount to exploitation of the employees having limited resources, time and energy. The Courts would also be burdened with unnecessary litigation. As a matter of fact, it is also the duty of the State to take remedial measures to curtail the litigation and to wipe off or minimize the already over-crowded dockets of the Courts. How to eliminate the arrear and curtail the delays are the questions which are vexing every mind. The State instead of extending its cooperation to bring down the litigation should not encourage its employees to take recourse to multiple legal proceedings on the same point which stands already decided finally. There is also an element of wastage of public money as the State has to defend the cases by employing its legal agency resulting in payment of the substantial amount in the shape of fees. The State should avoid the fruitless exercise and wasteful expenditure. Unnecessary litigation further breeds strained relations between the members of the staff and the State as a employer which has to be avoided at all costs. The State has pervasive obligation to discharge in relation to maintaining its accepted standards of employer-employee relationship. One of the obligations of the State is to be reasonable and fair in granting service benefits to its employees in accordance with the Service Rules and the principles enunciated in the decisions of the Courts. When the decisions to which the State is party become final, a duty is cast upon the State to

grant relief to its employees who are similarly situated and on identical facts. In my view, it is not necessary for the State to require each one of its employees to approach the Court of law for grant of reliefs which State ought to grant to the employees in the normal course of its administration.

32. In the light of aforesaid discussion, the writ petitions are allowed. The respondents are directed to give appropriate rank and pay scales to the petitioners as per the Fifth Central Pay Commission and Office Memorandum dated 22nd January, 1998 including financial up-gradation under modified Assured Career Progression Scheme of the Government of India, if any, within a period of three months.”

16. The Office Memorandum dated 22.01.1998, issued by the Government of India, Ministry of Home Affairs, on which great emphasis has been laid upon, for the sake of convenience is also reproduced hereinbelow:

*“No.27011/103/97-PF.I/56
Government of India/Bharat Sarkar
Ministry of Home Affairs/Grith Mantralaya*

*North Block,
Delhi, the 22nd Jan 98*

Office Memorandum

**Subject : FIXATION OF PAY ON RATIONALISATION OF PAY SCALES
WITH EFFECT FROM 10.10.97 IN THE CADRE PARA
MILITARY FORCES.**

In the context of certain doubts expressed by the Central Para Military Forces in fixation of pay of certain non-gazetted personnel of the Central Para Military Forces with effect from 10.10.97, vide order No.27011/1/97-PCCell/PF.I dated 10.10.97, it is hereby clarified that the orders are equally applicable to all combatised categories. For example, the HC (RF) will be given the replacement pay scale of Rs.3200-4900, as approved by the Government, in the said orders for HCs and will continue to be known as HC (RF).

2. *In the case of HC (RM) Gr. I and Gr. II and HC (Draughtsman), since the pay commission has given the replacement pay scale of Rs.4000-6000/- in respect of these three categories of posts in Central Para Military Forces, these three categories may be re-designated as ASI in the scale of pay of Rs.4000-5000. As regards other categories of HC, in any of Central Para Military Forces, such as HC (RO, Cry) etc., these posts will continue to be known as HC in the relevant scale of pay approved by the Government.*

3. *This issues with the concurrence of Integrated Finance Division of this Ministry vide their Dy.No.305/97-Fin.II dated 22nd January, 1997.*

Sd/-XXX

*(A.Gopinathan)
Desk Officer*

To

1. *DG BSF/CRPF/ITBP/CISF/NSG/Assam Rifles.*
2. *Fin.II/III/PF.II/III/IV/V Desk.*
3. *Guard File."*

17. A careful perusal of the O.M dated 22.01.1998, reflects that the Ministry of Home Affairs, on certain doubts being expressed by Central Para Military Forces in fixation of pay w.e.f. 10.10.1997, had clarified that a Notification dated 10.10.1997, which provided for re-designation and fixation of pay scale in all para-military forces, would be equally applicable to all combatised categories. As such, therefore, this re-designation and grant of replacement pay scale in this case of Rs.4000-6000/- was applicable to all the combatised categories. Para-2 of the O.M.

also made it clear that the post of Head Constable be re-designated as ASI, in the scale of pay of Rs.4000-6000/- as replacement pay scale.

18. This Court, by the order dated 23.03.2017, on the basis of the O.M. then, had accordingly directed the respondents to give appropriate rank and pay scale to the petitioners, as per recommendations of the 5th Central Pay Commission, and Office Memorandum dated 22.01.1998. It is pertinent to note herein, that the post of Assistant Sub-Inspector (ASI) in the scale pay of Rs.4000-6000/- is equivalent to the post of Warrant Officer, at the entry grade, as is evident, from order dated 21.06.2016 (Annexure – 4 to the writ petition), issued by the Ministry of Home Affairs, wherein the respondent Assam Rifles, was requested to implement judgment and order dated 23.08.2012, passed in WP(C) No. 277(SH) of 2010, which had directed for introduction of the rank of ASI (Warrant Officer), at the entry grade.

19. The respondents implemented the order passed by this Court on 23.08.2012, in WP(C) No. 277(SH) of 2010, in the case of other similarly situated personnel, by introducing the rank of ASI (Warrant Officer), at the entry grade, and the same was never treated as promotion. However, what emerges in the case of the petitioners herein, is that, the respondents while implementing the judgment and order dated 23.03.2017, passed in

WP(C) No. 403 of 2014 and WP(C) No. 311 of 2016, while introducing the rank of Warrant Officer, which is a re-designation, declared the same to be a promotion by way of upgradation. This in the considered view of this Court, is not in consonance with the directions contained in the order dated 23.03.2017, which had specifically directed for grant of appropriate rank and pay scale to the petitioners, and the same tantamount to unequal treatment being meted out to the petitioners from other similarly situated personnel, which is also not in line with the Office Memorandum dated 22.01.1998.

20. It is also noticed that, in the order dated 23.03.2017, as submitted by the petitioners, two distinct directions have been issued that is, firstly, to give appropriate rank and pay scales to the petitioners as per the 5th Central Pay Commission, and Office Memorandum dated 22.01.1998, and secondly, for financial upgradation under the Modified Assured Career Progression Scheme of the Government of India, if any, within a period of three months. The directions clearly imply that, the respondents were to **give** appropriate rank and pay and it does not imply that, the same be **upgradation** of rank and pay. Similarly, the judgment dated 23.03.2017, had only limited the direction to financial upgradation under the MACP scheme, and not with regard to ACP. What follows therefore, is that, the respondents were to give appropriate rank and pay scale, which

would necessarily be to grant the benefits of being re-designated as ASI (Warrant Officer). As observed in the preceding paragraph, there is no direction for grant of promotion to the petitioners to the rank of Warrant Officer, rather it is but, re-designation of the post, as such, the terming of the same as a promotion is contrary to the directions of this Court, contained in order dated 23.03.2017, and also the Office Memorandum dated 22.01.1998.

21. In this view of the matter, the impugned orders dated 08.02.2019 (Annexure – 8), 15.02.2019 (Annexure – 9) and 08.03.2019 (Annexure – 15) are liable to be interfered with, inasmuch as, in order dated 08.02.2019, and consequential order dated 15.02.2019, the order for financial upgradation under ACPs issued were superseded and in the case of the writ petitioner No. 1, it was shown that he was promoted to the post of Warrant Officer (Cipher), w.e.f. 23.01.1999, and therefore not entitled to 2nd ACP. Consequential effects of the incorrect implementation of the order dated 23.03.2017, also resulted in reduction of the basic pay of the writ petitioners, which also needs correction. In the totality of the circumstances therefore, the impugned orders are hereby set aside and quashed, and the respondents are directed to re-visit the matter of implementation of the judgment and order dated 23.03.2017, for grant of appropriate rank and pay structure to the writ petitioners, and to issue

fresh orders thereon, taking into account, the observations made in this order.

22. For the foregoing reasons, this writ petition is allowed and is accordingly disposed of.

23. No order as to costs.

Judge

Meghalaya
30.01.2023
"D.Thabab-PS"

