

Serial No. 01

Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 198 of 2019

Date of Decision: 17.02.2023

Shri. Ajay Kumar & 191 Ors. Vs. Union of India & 3 Ors.

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

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

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

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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

1. This is an application under Article 226 of the Constitution of India filed by the 192 petitioners herein seeking direction of this Court to extend the beneficial provisions of the scope of the Judgment and Order dated 23.08.2012 passed by this Court in W.P. (C) No. 277 (SH) of 2010 and also to place the petitioners above their juniors in the seniority list of clerical cadres of Warrant Officer.

2. The basis of this litigation is that the petitioners are employees of Assam Rifles under the Government of India, Ministry of Home Affairs and are working as Havildar (Clerk) which is a cadre post in the clerical grade of Assam Rifles. Though the petitioners were enrolled under the provisions of the Assam Rifles Act, 1941, however the pay and allowances and other service benefits are regulated under the Civil Services Rules which was made applicable after the recommendation of the 4th Central Pay Commission wherein the Assam Rifles was made part of the Central Police Organisations, which includes the CRPF, BSF, ITBP, CISF etc., since 01.01.1986.

3. That after implementing the pay scale of the Central Police Organisations (CPOs), the entry post in Assam Rifles was retained in the rank of Lance Naik with the scale pay of ₹ 825-15-900-EB-20-1200 which is contrary to the recommendation of the 4th CPC and Government Orders thereon. This anomalous situation continued even after the 5th CPC recommendations w.e.f. 01.01.1996.

4. In order to remove this disparity, the President was pleased to rationalize the rank and pay structure of non-gazetted cadre of the Central Police Organisations which was done so vide Memo No. 27012/1/97-PC Cell/PF. I dated 10.10.1997.

Sl. No.	Rank Structure	Rationalised pre-revised pay scales	Replacement pay scales
1	Constables/Security Assistant	Rs. 950-1400	Rs. 3050-80-4590

2	Head Constables	Rs. 975-1660	Rs. 3200-85-4900
3	Asst. Sub-Inspector	Rs. 1320-2040	Rs. 4000-100-6000
4	Sub-Inspector/ACIO-II	Rs. 1640-2900	Rs. 5500-175-9000
5	Inspector/ACIO-I	Rs. 2000-3200	Rs. 6500-200-10500
6	Subedar Major	Rs. 2000-3500	Rs. 6500-200-10500 + Rs. 200/-

5. The Office Memorandum dated 10.10.1997 referred to above, have not been implemented by the Assam Rifles. The Assam Rifles on the pretext of implementing the said Order dated 10.10.1997, has however, vide its letter No. A/I-A/5th/Pay/97-98/93 dated 27.02.1998 re-designated the existing post of Havildar Clerk to that of Warrant Officer Clerk (equivalent to the post of Assistant Sub-Inspector) with the pay scale of ₹ 4000-6000 with effect from 10.10.1997 but not from 01.01.1996 as was directed by the Government of India. This was also done only as a one-time measure for the existing Havildar Clerks only. Though the petitioners were enrolled in the post of Havildar Clerk having similar recruitment qualification for the clerical cadre of other CPOs, where Assistant Sub-Inspector is the entry level post in the pay scale of ₹1320-2040, the petitioners were entitled for grant of entry grade of Warrant Officer rank but such benefit was not given to them.

6. That aggrieved by the discriminatory actions of the respondent authority, about 1339 employees of the Assam Rifles filed a writ petition before this Court being numbered as W.P.(C) No. 277 (SH) of 2010 and this

Court vide order dated 23.08.2012 has allowed prayer of the petitioners therein, the operative portion being found at para 14 of the same which reads as follows:

“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. 1.1.1996 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 20.9.1997 communicated through MH letter bearing No.2701-02/1/97 PC 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.”

7. The judgment and order dated 23.08.2012 (supra) was then challenged by the Assam Rifles authority before a Division Bench of this Court which then disposed of the same being W.A. (SH) No. 40 of 2012 vide order dated 30.04.2013 whereby the order of the learned Single Bench was modified to the extent that the financial benefit directed to be given to the petitioners would be w.e.f. January 2010 notionally.

8. Again, being aggrieved by the said order dated 30.04.2013 the respondents in W.A. (SH) No. 40 of 2012 then approached the Hon'ble Supreme Court in S.L.P. (C) No. 29908 of 2013 and the same was disposed of vide order dated 17.11.2015. The Hon'ble Supreme Court while deciding the matter had restored the judgment and order dated 23.08.2012 passed by the

Single Bench with a slight modification to the same that the words “or any other date as the authority deem it fit and proper” appearing at para 14 of the said judgment be deleted.

9. In compliance with this Court’s order dated 23.08.2012 in WP(C) No. 277 (SH) of 2010, the Directorate General Assam Rifles vide Memo A/Pers/II-04/Clk/2016/774 dated 28.06.2016 on being approved by the Ministry of Home Affairs vide their communication number U.O. 27013/2/2016.PF.IV dated 22.06.2016 has conveyed sanction of the competent authority to bring effect to the aforesaid judgment.

10. However, while putting into action the said sanction order dated 22.06.2016, about 1232 of the original writ petitioners were accorded the benefits thereof, while some of the original writ petitioners who admittedly were enrolled in the clerical cadre after 29.10.2002 were denied such benefits.

11. The said personnel who were denied such benefits then approached this Court by instituting contempt proceedings being numbered as Cont. Cas (C) No. 21 of 2016 arising out of WP(C) No. 277 (SH) of 2010. On 13.11.2018 when the matter was listed for consideration before this Court, the contemnors therein has informed the Court that the judgment referred to would be implemented vis-à-vis the contempt petitioners within six weeks. As a result, the contempt proceeding was closed.

12. Consequently, the Directorate General Assam Rifles vide order No.

Rec (Adm-I)/WO Clk/2019/319 dated 12.04.2019 has ordered implementation of the related order dated 23.08.2012 passed by this Court in WP(C) No. 277 (SH) of 2010 to the remaining 89 original petitioners who are now also covered by the administrative order No. A/Pers/1104/Clk/2016/774 dated 28.06.2016.

13. It is the petitioners' case that as a consequence of the implementation of the said judgment and order dated 23.08.2012, the benefit of parity in rank and pay structure being accorded to those petitioners who have approached this Court in W.P.(C) No. 277(SH) of 2010, a situation has arisen whereby the petitioners herein were then superseded by their juniors, more particularly those who were enrolled after 29.10.2002.

14. Mr. P. Nongbri, learned counsel for the petitioners has submitted that in the process of implementation of the judgment and order dated 23.08.2012, the respondent authorities have extended the benefits to all similarly situated incumbents including some of the petitioners in the said W.P.(C) No. 277(SH) of 2010 who were enrolled after 29.10.2002. This has caused an anomalous situation inasmuch as the petitioners herein have been superseded by their juniors who are now placed higher than them in the rolls and are also receiving higher pay scale. In fact, some of the said juniors were enrolled in the year 2005, 2006 and 2008 and as such, the assertion of the respondent authorities that the said judgment is confined only to those who joined service before

29.10.2002 is not correct.

15. Admitting that the petitioners are governed by the Recruitment Rules of 2002, yet it is contended that the reference to the same is irrelevant as it is obvious that on the implementation of the said judgment dated 23.08.2012, an anomalous situation has been created in the clerical cadre inasmuch as the petitioners herein have been superseded by their junior colleagues who were enrolled in the year 2005, 2006 and 2008.

16. The learned counsel has further submitted that even if the assertion of the respondents that the a mistake was committed by the respondent authorities while implementing the said judgment dated 23.08.2012 vis-à-vis the 89 petitioners who were benefited by virtue of the order dated 12.10.2018 of this Court in Contempt Petition No. 21 of 2016, the petitioners were made to suffer for no fault of theirs when their rank and pay structure have been substantially lowered as compared to their junior colleagues.

17. In support of the case of the petitioners, the learned counsel has relied upon the case of *State of Uttar Pradesh & Ors v. Arvind Kumar Srivastava & Ors: (2015) 1 SCC 347*, para 22 and also the case of *Life Insurance Corporation of India & Ors v. Jagmohan Sharma & Ors: (1998) 9 SCC 219*.

18. Mr. R. Debnath, learned CGC appearing on behalf of the respondent Union of India has submitted that at the outset, this petition is not maintainable as the petitioners were enrolled as per the Recruitment Rules 2002 published

vide GSR No. 472 wherein the entry level rank is that of Havildar (Clerk). This is following the Notification issued by the Central Government dated 29.10.2002 apparently to bring uniformity in ministerial cadres in all Central Police Organisations (CPOs). The post of Havildar(Clerk) in Assam Rifles is equivalent to the post of Head Constable (Ministerial) in BSF and CRPF respectively.

19. The learned CGC has however conceded that it was through oversight and inadvertence that the names of the 89 petitioners in the original array of parties in WP(C) No. 277 (SH) of 2010 could not be detected in course of proceedings to enable an application for appropriate prayer to be moved before the Court for necessary orders in this regard. Be that as it may, the fact that as far as the 89 petitioners are concerned, this Court has settled the matter vide order dated 13.11.2018 in Cont. Case (C) No. 21 of 2016 and as such to the extent indicated the issue has become final with the issue of the relevant order passed by the Director General Assam Rifles being No. Rec (Adm-I)/WO Clk/ 2019/319 dated 12.04.2019.

20. The learned CGC has further submitted that this Court while granting relief to the petitioners in the Cont. Case (C) No. 21 of 2016 vide order dated 12.10.2018 and final order dated 13.11.2018, the same cannot be taken as a precedent by the petitioners herein as the condition of recruitment of the petitioners under the said Recruitment Rules of 2002 has been maintained in

the rank of Havildar (Clerk) at the entry level and for this Court to change the said entry level to that of Warrant Officer (Clerk), which is a promotional post as per the said Recruitment Rules of 2002, the same will upset the settled position.

21. In this instant case, the learned CGC has submitted that if the relief sought for by the petitioners herein is granted, it would be in violation of the Assam Rifles Recruitment Rules, 2002 wherein another anomalous situation would arise inasmuch as granting rank of warrant officer to the petitioners of Assam Rifles enrolled after 29.10.2002 would upset the equilibrium of the Assam Rifles vis-à-vis the other CPOs/CAPFs which may result in a flood of litigation by the aggrieved parties.

22. In support of his case, the learned CGC has cited the following judgments:

- i. ***Union of India & Anr. v. Arulmozhi Iniarasu & Ors.: (2011) 7 SCC 397***, para 14, 17 and 26;
- ii. ***Maharaj Krishan Bhatt & Anr. v. State of Jammu and Kashmir & Ors.: (2008) 9 SCC 24***, para 21;
- iii. ***Director of Horticulture, Odisha v. Pravat Kumar Dash & Ors.: (2019) 8 SCC 294***, para 18;
- iv. ***Khoday Distilleries Ltd. & Ors. v. Mahadeswara S.S.K. Ltd.: (2012) 12 SCC 291***, para 7;

23. This Court has duly considered the submission and contention raised by the learned counsels for the rival parties. The main consideration in this lis is whether the petitioners herein were affected by the import of the judgment and order dated 23.08.2012 in WP(C) No. 277 (SH) of 2010 vis-à-vis their colleagues who were allegedly junior to them in the cadre, but who were benefitted by the decision in the said judgment and order dated 23.08.2012.

24. On what has been recorded above, the facts and circumstances may not be reiterated but would be pointed out and repeated only as and when required and necessary.

25. Shorn of unnecessary details, what is evident is that a group of about 1339 employees of the Assam Rifles had approached this Court in the year 2010 by way of the said WP(C) No. 277 (SH) of 2010 seeking parity of rank and pay structure in the Assam Rifles as was available in other CPOs or CAPFs. This Court vide order dated 23.08.2012 had allowed the prayer made and has directed the competent authority to take steps in such regard. The matter having travelled right up to the Apex Court of this country, the order of the learned Single Judge was upheld.

26. By the relevant notification, the Assam Rifles has put into effect the dictum of the Court and has granted parity of rank and pay structure by indicating that the entry grade in the ministerial/clerical cadre of the Assam Rifles will be that of Warrant Officer (Clerk) at par with the rank of Assistant

Sub-Inspector in the other CPOs. However, initially, the Assam Rifles authorities have granted relief to all the petitioners in the said WP(C) No. 277 (SH) of 2010 but, has left out about 89 of them on the pretext that the relevant notification has conveyed benefit to only those personnel who have joined service before 28.10.2002, when the Recruitment Rules, 2002 came into effect on 29.10.2002 and those 89 petitioners having been enrolled beyond 29.10.2002, they are therefore not entitled to be the beneficiaries of the said order dated 23.08.2012.

27. Again, as pointed out above, the 87 petitioners filed a contempt petition before this Court which was allowed vide order dated 13.11.2018. This, has necessitated the issuance of a separate order being Rec (Adm-I)/WO Clk/2019/319 dated 12.04.2019 wherein the 87 personnel who were enrolled after 29.10.2002 are now designated as Warrant Officer (Clerk) (Equivalent to Assistant Sub-Inspector in other CAPFs) from the date of enrolment.

28. Apparently, as pointed out by the petitioners herein, though they have been appointed after 29.10.2002 in the entry grade of Havildar (Clerk) and the next promotional post is that of Warrant Officer (Clerk), it is obvious that they have been superseded by their junior colleagues, who, even in spite of being borne in the cadre of Havildar (Clerk), by virtue of the said judgment and order dated 23.08.2012 and the relevant notification dated 12.04.2019 and also admittedly being enrolled in the year 2005, 2006 and 2008, these juniors have

now been placed above the petitioners in as far as rank is concerned and also drawing a higher pay scale than the petitioners herein.

29. This factual position has not been denied by the respondent authority. The direct admission and realization of this anomalous situation and the assurance to correct the same has been clearly pleaded by the respondent as could be seen from paragraph 19 of the affidavit-in-opposition filed by the respondents, relevant extract of which is reproduced hereinbelow :

“19....Therefore, the answering respondents submit that all the present writ petitioners would be protected their seniority for grant of higher promotions and as and when the present writ petitioners be promoted to rank of warrant officer (Clerk) they would be placed above to Warrant Officer (who were their juniors as Hav (Clerk). And for grant of higher promotion in the rank of Nb/Sub (Clerk) actual seniority of the then Hav/Clerk would be maintained. The answering respondents further submit that an official letter in this regard would be issued, in due time...”

30. Even without discussing the impact of the authorities cited by the parties in connection with this case, the admission of the respondents as pointed out above would only prove that the petitioners have been superseded by the 89 juniors and that the anomaly created as a result thereto would be rectified in due time.

31. This being the case, this Court is of the considered opinion that the respondent authority is to correct and rectify the anomalous situation of the petitioners vis-à-vis their junior colleagues by issuing necessary orders in this respect.

32. The case of the petitioners stands vindicated and the prayer made in this petition is therefore legitimate. The same is hereby allowed.

33. Consequently, the respondents are directed to issue necessary orders as regard the case of the petitioners and to ensure that their standing in the rolls as well as the pay structure is commensurate with their seniority. This exercise is to be completed within a period of six weeks preferably.

34. Petition disposed of. No costs.

Judge

Meghalaya
17.02.2023
"Tiprilynti-PS"

