

GAHC010138872019



**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/7190/2019**

GO-4005W KRISHNA KUMAR SHARMA  
S/O- SRI UDAY NARAYAN SHARMA, PRESENTLY SERVING AS EXECUTIVE  
ENGINEER (CIVIL) AT 42 BRTF (GREF), PROJECT VARTAK, PIN- 930042, C/O  
99 APO.

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY THE JOINT SECRETARY (BR-WING), MINISTRY OF DEFENCE  
(EARLIER DESIGNATED AS SECRETARY (BRDB)), ROOM NO. 418, B WING  
4TH FLOOR, SENA BHAWAN, NEW DELHI- 110011.

2:DIRECTOR GENERAL  
BORDER ROAD ORGANIZATION  
SEEMA SADAK BHAWAN  
RING ROAD  
DELHI CANT.  
NEW DELHI- 110010.

3:ADDITIONAL DIRECTOR GENERAL (EAST)  
BORDER ROADS ORGANIZATION  
CARE HQ 47 BRTF  
LANKESWAR  
JALUKBARI  
GUWAHATI  
C/O- 99 APO  
PIN- 900885.

4:THE CHIEF ENGINEER  
HQ CE(P) VARTAK  
PIN- 931716  
C/O 99 APO.

5:UNION PUBLIC SERVICE COMMISSION  
REP. BY ITS SECRETARY  
DHOLPUR HOUSE  
SHAHJAHAN ROAD  
NEW DELHI- 110069.

6:SECRETARY (PERSONNEL)  
MINISTRY OF PERSONNEL  
PG AND PENSIONS  
DEPTT. OF PERSONNEL AND TRAINING  
NORTH BLOCK  
NEW DELHI- 110001

**Advocate for the Petitioner** : MRS. R BORAH

**Advocate for the Respondent** : ASSTT. S.G.I.

Linked Case : WP(C)/7195/2019

GO-3976P VINAY SINGH  
S/O- SRI SATYAPAL SINGH  
PRESENTLY SERVING AS EXECUTIVE ENGINEER (CIVIL) AT 758 BRTF  
(GREF)  
HQ PROJECT SWASTIK  
PIN- 931717  
C/O- 99 APO

VERSUS

THE UNION OF INDIA AND 5 ORS  
REP. BY JOINT SECRETARY (BR WING)MIN OF DEFENCE (EARLIER  
DESIGNATED AS SECRETARY (BRDB))  
ROOM NO. 418  
'B' WING  
4TH FLOOR  
SENA BHAWAN  
NEW DELHI- 110011

2:DIRECTOR GENERAL  
BORDER ROADS ORGANISATION  
SEEMA SADAK BHAWAN

RING ROAD  
DELHI CANTT  
NEW DELHI- 110010  
3:ADDITIONAL DIRECTOR GENERAL (EAST)  
BORDER ROADS ORGANISATION CARE HQ 47BRTF  
LANKESWAR  
JALUKBARI  
GUWAHATI  
C/O- 99 APO  
PIN- 900885  
4:THE CHIEF ENGINEER  
HQ CE (P) SWASTIK  
PIN- 931717  
C/O- 99 APO  
5:UNION PUBLIC SERVICE COMMISSION  
REP. BY ITS SECRETARY  
DHOLPUR HOUSE  
SHAHJAHAN ROAD  
NEW DELHI- 110069  
6:SECRETARY (PERSONNEL)  
MIN OF PERSONNEL  
PG AND PENSIONS  
DEPTT OF PERSONNEL AND TRAINING  
NORTH BLOCK  
NEW DELHI- 110001

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Advocate for : MRS. R BORAH  
Advocate for : ASSTT. S.G.I. appearing for THE UNION OF INDIA AND 5 ORS

Linked Case : WP(C)/7217/2019

GO-4369H AMIT YADAV  
S/O. SRI RAM LARATEY SINGH  
PRESENTLY SERVING AS ASSTT. EXECUTIVE ENGINEER (CIVIL) AT 117  
RCC  
763 BRTF (GREF)  
PROJECT VARTAK PIN-930117  
C/O. 99 APO.

VERSUS

THE UNION OF INDIA AND 5 ORS.  
REP. BY JOINT SECRETARY (BR-WING)  
MAINISTRY OF DEFENCE (EARLIER DISIGNATED AS SECRETARY (BRDB)  
ROOM NO.418

B WING 4TH FLOOR SENA BHAWAN  
NEW DELHI-110011.

2:DIRECTOR GENERAL

BORDER ROADS ORGANIZATION  
SEEMA SADAK BHAWAN  
RING ROAD  
DELHI CANTT. NEW DELHI-110010.  
3:ADDL. DIRECTOR GENERAL (EAST)

BORDER ROADS ORGANISATION  
CARE HQ 47 BRTF LANKESWAR  
JALUKBARI  
GUWAHATI  
C/O. 99 APO  
PIN-900885.

4:THE CHIEF ENGINEER  
HQ CE (P) VARTAK  
PIN-931716  
C/O. 99 APO.  
5:UNION PUBLIC SERVICE COMMISSION

REP. BY ITS SECRETARY  
DHOLPUR HOUSE  
SHAHJAHAN ROAD  
NEW DELHI-110069.  
6:SECRETARY (PERSONNEL)

MINISTRY OF PERSONNEL  
P G AND PENSIONS  
DEPTT. OF PERSONNEL AND TRAINING (DOPT)  
NORTH BLOCK  
NEW DELHI-110001.

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Advocate for : MRS. R BORAH  
Advocate for : ASSTT.S.G.I. appearing for THE UNION OF INDIA AND 5 ORS.

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**11.01.2024**

Heard Mr. D. Borah, learned counsel for the writ petitioners in all these writ

petitions. Also heard Mr. S. K. Medhi, learned Central Government Counsel appearing for the Union of India and its officials i.e. respondent Nos.1, 2, 3, 4 and 6. Dr. Ankit Todi, learned counsel is present on behalf of the Union Public Service Commission (UPSC) i.e. respondent No.5 in all these writ petitions.

2. Since the question of law as well as the nature of grievance raised in these three writ petitions are common, hence, all the three writ petitions are being taken up for disposal by this common order.

3. The writ petitioners in WP(C) No.7190/2019 and WP(C) No.7195/2019, while serving in some other departments, had participated in the recruitment process conducted on the basis of an advertisement notice dated 11.07.2009 issued for the purpose of filling up 83 posts of Assistant Executive Engineer (Civil) in the GREF of BRO through a selection process based on interview. Both these petitioners got selected and were appointed as Assistant Executive Engineer (Civil). Likewise, the writ petitioner in WP(C) No.7217/2019 had participated in a separate recruitment process initiated on the basis of advertisement notice dated 10.03.2012, which was conducted by the Union Public Service Commission (UPSC). Having succeeded in the competitive examination held for the purpose the said writ petitioner was also appointed as Assistant Executive Engineer (Civil) in the GREF of BRO. Since the writ petitioners were working in public sector undertakings/Semi-Government organisations prior to joining the BRO, hence, all the three writ petitioners had submitted applications seeking "pay protection" as per the Government of India, Department of Personnel and Training O.M. dated 12/1/88-Estt (Pay-I) dated 07.08.1989. The O.M. dated 07.08.1989 envisages "pay protection" so as to give benefit of protection of pay to those incumbents who have been earlier drawing higher pay and

allowances in the public sector undertakings, Universities, semi Government organisations, autonomous bodies etc.

4. The O.M. dated 07.08.1989 was thereafter, modified/clarified by issuing another O.M. dated 10.07.1998 wherein, the benefit of "pay protection" was provided only in respect of those candidates whose selection is through "interview" and not through an "open competitive examination". According to the writ petitioners in WP(C) No.7190/2019 and WP(C) No.7195/2019, their recruitments were based on "interview process" but it was only for the purpose of short listing the candidates, the authorities had conducted a screening test. Therefore, it cannot be said that these two petitioners were recruited on the basis of an "open competitive examination". As such, they were outside the purview of O.M. dated 10.07.1998. There is, however, no dispute about the fact that the writ petitioner in WP(C) No.7217/2019 was recruited on the basis of an "open competitive examination" conducted by the UPSC on the basis of the advertisement notice dated 10.03.2012 and therefore, he would come within the purview of O.M. dated 10.07.1998.

5. By the impugned order dated 22.02.2019, the prayer for "pay protection" made by the writ petitioners were turned down by the authorities, *inter-alia* on the ground that they had entered service in the GREF of BRO through "open competitive examination" and therefore, were not be entitled to "pay protection" as per O.M. dated 10.07.1998. Aggrieved thereby, the writ petitions had been filed *inter-alia* contending that, as noted above, the petitioners in WP(C) No.7190/2019 and WP(C) No.7195/2019 do not come within the ambit of the O.M. dated 10.07.1998 and therefore, the respondents could not have turned down their request for "pay protection". In so far as the third writ

petitioner is concerned, it is the case of the petitioner that there is no intelligible differentia so as to treat the two categories of employees entering GREF of BRO for the purpose of discriminating them in implementation of the "pay protection" scheme inasmuch as regardless of whether a candidate enters service through "interview process" or through "open competitive examination", having regard to their qualification, experience and other service conditions, there is no reasonable basis to classify them into two categories.

6. It appears that during the pendency of these writ petitions, the Government of India, Ministry of Personnel, Public Grievance and Pension (Department of Personnel and Training) had issued another O.M. dated 13.08.2020 further modifying the O.M. dated 10.07.1998, thus dispensing with the criteria of "mode of selection" for the purpose of extending the benefit of "pay protection". From a reading of paragraph 4 of the O.M. dated 13.08.2020, it is apparent that "mode of selection" for direct recruits appointed in Central Government establishments would no longer be a basis for considering their applications for pay protection. If that be so, it is evident that the rejection of the prayer made by the petitioners seeking pay protection would now call for a re-look by the competent authorities in the light of the O.M. dated 13.08.2020. The learned counsel for the parties have also agreed to the said proposition.

7. As such, without expressing any opinion on the merit of the claim made in the writ petitions and as agreed to by the learned counsel for both the sides, these writ petitions are being disposed of by granting six weeks time to the respective petitioners, to make appropriate application before the competent authority seeking an order of "pay protection", in the light of the O.M. dated

13.08.2020. If such a representation is made by the petitioners by enclosing a certified copy of this order, within the timeframe as provided herein above, the same be looked into objectively and having regard to the mandate of the O.M. dated 13.08.2020 as well as the decided case-laws, if any, on the above subject, the prayer of the petitioners be considered and disposed of with a speaking order within a further period of 90 days from the date of submission of such representation. Whatever be the outcome of the process, the same be communicated to the petitioners individually, in writing. If the petitioners or any one of them continues to feel aggrieved even thereafter, it will be open for them/him to approach this Court again by filing a fresh writ petition.

In view of the above directions, it is hereby clarified that the impugned order dated 22.02.2019 shall not come in the way of the authorities to consider the representation of the petitioners, afresh and on merit, in the light of the O.M. dated 13.08.2020 .

With the above observation, the three writ petitions stand disposed of.

**JUDGE**

**Comparing Assistant**