

GAHC010248172014



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

Case No. : WP(C)/2738/2014

BISHAN SINGH PINGAL and 13 ORS
S/O LT. KISHAN SINGH PINGAL, J.E. CIVIL, HQP UDAYAK GREF, DOOM
DOOMA, DIST- TINSUKIA, ASSAM

2: DEVI CHARAN SHARMA
S/O LT. GAJRAJ SHARMA
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

3: SUNIL KUMAR MISHRA
S/O DHARM DEO MISHRA
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

4: RAMASHANKAR RAI
S/OLT. MONA SHANKAR RAI
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

5: RAJESH S
S/O SHRI SUBRAMANIYAN
J.E. EandM
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA

ASSAM

6: PRADEEP KUMAR CHATURVEDI
S/O SHRI SURENDRA NATH CHAUBEY
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

7: ASHOK KUMAR
S/O SHRI RAM KISHOR VISHWAKARMA
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

8: CHANDRA KANT PRASAD
S/O SHRI RAMADHAR SAH
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

9: A SANJAY GANDHI
S/O SHRI S ANNASAMY
J.E.EandM
518 SS and TC GREF
DINGJAN
DIST- TINSUKIA
ASSAM

10: K BALU
S/O SHRI KANDASAMY
J.E.EandM
EBW GREF
TEZPUR
DIST- SONITPUR
ASSAM

11: RAMESH CHANDRA
S/O LT. BHARAT SINGH
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA

ASSAM

12: BRIJ BHUWAN RAM
S/O LT. RAM DEV RAM
J.E.CIVIL
HQP UDAYAK GREF
DOOM DOOMA
DIST- TINSUKIA
ASSAM

13: RAJENDRA PRASAD
S/O LT. HARI BALLABH PANT
J.E.CIVIL
339 SPL/63 RCC GREF
DARANGA
DIST- BASKA
ASSAM

14: BHS ISHWARA RAJU
S/O SHRI SURIYA NARAYANA RAJU
J.E.CIVIL
HQ 47 BRTF GREF
VIP ROAD
LANKESHWAR
DIST- KAMRUP
ASSA

VERSUS

THE UNION OF INDIA and 6 ORS
REPRESENTED BY ITS CABINET SECRETARY, GOVT. OF INDIA, NEW
DELHI-01

2:SECRETARY
DEPARTMENT OF PERSONNEL AND TRAINING DOPT
GOVT. OF INDIA
NEW DELHI-01

3:SECRETARY
MINISTRY OF DEFENCE
SENA BHAWAN
DHQ P.O. NEW DELHI-11

4:SECRETARY
MINISTRY OF ROAD TRANSPORT and HIGHWAYS
TRANSPORT BHAWAN
NEW DELHI

5:SECRETARY
BORDER ROADS DEVELOPMENT BOARD
B WING
4TH FLOOR
SENA BHAWAN
DHQ P.O. NEW DELHI-110011

6:THE DIRECTOR GENERAL BORDER ROADS
SEEMA SADAK BHAWAN
NARAINA
NEW DELHI-10

7:SECRETARY
DEPARTMENT OF EXPENDITURE
MINISTRY OF FINANCE
NEW DELHI-0

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocates for the petitioners : Shri I. H. Saikia, Advocate.

Advocates for the respondents : Shri B. Chakravarty, CGC.

Date of hearing : **14.05.2024**

Date of Judgment : **14.05.2024**

JUDGMENT & ORDER

14 numbers of petitioners have joined together in this petition filed under Article 226 of the Constitution of India with the primary grievance of implementation of the 5th CPC recommendation of the year 1996 which was also endorsed by the Department of Personnel and Training vide OM dated 25.05.1998.

2. The facts projected are that the petitioners are Junior Engineers in the Border Roads Organizations (BRO). Initially, there were 3 different posts namely,

Overseer, Superintendent Gr-II and Superintendent Gr-III meant for diploma holders. However, by the 5th CPC recommendation of the year 1996, the aforesaid three posts were merged into one cadre of Junior Engineer. The Commission further recommended for Cadre Review so as to brighten the chance of promotion of Junior Engineers to the next higher post of Assistant Engineer. It is the case of the petitioners that while for other similarly placed organizations, the Rules were amended, no such amendments were brought in for the Rules governing the BRO Personnel.

3. I have heard Shri I. H. Saikia, learned counsel for the petitioners whereas the respondents are represented by Shri B. Chakravarty, the learned CGC.

4. Shri Saikia, the learned counsel for the petitioners has submitted that the omission on the part of the respondent authorities in not making suitable amendments in the Rules is apparently discriminatory and arbitrary inasmuch as similarly situated persons in other organizations were granted such benefits by amendment of the concerned Rules in terms of the recommendation of the 5th CPC. Attention of this Court has also been drawn to the Office Memorandum of the DoPT dated 25.05.1998 as per which, the recommendations were directed to be implemented. It is submitted that due to non-implementation of the 5th CPC recommendation, the petitioners are stagnating and the same is against the interest of public service.

5. Shri Saikia, the learned counsel has also placed before this Court an order dated 18.02.2020 of this Court passed in WP(C) No. 1537/2015 in which relief was granted to the extent of arrears of pay to the similarly situated person. The learned counsel has also informed that the aforesaid order was unsuccessfully

appealed by the Department before the Division Bench in WA 104/2020 and also before the Hon'ble Supreme Court in SLP 9702/2022.

6. *Per contra*, Shri Chakraborty, the learned CGC, by referring to the affidavit-in-opposition filed on 24.11.2015 has submitted that the projection made on behalf of the petitioners is not wholly correct. It is submitted that the merger was given effect from 01.01.2006, whereafter all personnel were given proper pay band fitment, upgradation in pay and other benefits. He clarifies that the fitment has been done from 01.01.1996 and the actual benefits were given from 01.01.2006. As regards the submission that there is no avenue for promotion, the learned CGC has drawn the attention of this Court to the ***Border Roads Engineering Service Group-B Rules, 1977*** and the notification dated 31.07.2012 issued there under whereby the Ministry of Road Transport and Highways, Border Roads Development Board, General Reserve Engineering Force (BRO), Assistant Engineer (Civil) and Assistant Engineer (Electrical & Medical), Group "B" Posts Recruitment Rules, 2012 were notified. It is submitted that under the said Rules, there is a provision for promotion of Junior Engineers to the cadre of Assistant Engineer and therefore the contention of the petitioners are not correct. As regards the recommendation for increasing the cadre strength by making suitable cadre review, the learned CGC has referred to the averments made in paragraph 28 of the affidavit-in-opposition wherein it has been stated that such exercise for cadre review was undertaken.

7. As regards the order dated 18.02.2020 passed in WP(C) No. 1537/2015 is concerned, the learned CGC has submitted that the contention of the petitioner in that case was wholly different and therefore the petitioners in this case are not entitled to seek a similar direction.

8. Shri Saikia, the learned counsel for the petitioners has however fairly submitted that the cadre review exercise has, in the meantime being finalized and the cadre strength has been increased. However, the payment of arrears have not been done.

9. To appreciate and examine the rival contentions, it would be convenient if the relief prayed for in this writ petition is perused which is extracted herein below:

“ In the premises aforementioned it is therefore prayed that this Hon'ble Court will be pleased to

(1) Admit this petition

(2) Call for the records of the case

(3) Issue Rule Nisi calling upon the Respondents to show cause as to why a direction will not be issued to the concerned authorities.

(4) to bring equity and parity in the relevant Border Roads Recruitment Rules by bringing in necessary amendments to promote JEs to AEs and further from AEs to EEs in proportion and criteria as stated in 6th CPC Recommendations and which were implemented by DOPT orders and has been followed in similar departments like CPWD.

(5) to promote the JEs retrospectively from the dates from where promotional chances were ordered in the 6th CPC recommendations and implemented by DOPT OMS.

(6) Order to restore the seniority of the petitioners in their respective engineering posts as per DOPT OM on seniority fixation.

(7) To restore promotion benefits to GREF's 3 years Diploma entrant engineers as granted to CPWD, MES subordinate engineers.

(8) And upon cause or causes being shown by the respondents and upon hearing both the parties be pleased to make the Rule absolute.

-AND/OR-

Be pleased to pass any such order/orders as this Hon'ble Court may deem fit and appropriate in the matter.”

10. The primary relief is to bring an equity and parity in the relevant recruitment rules in the aspect of promotion from Junior Engineers to Assistant Engineers and further promotion. The petitioners have further prayed for giving their promotions retrospective effects and also restoration of seniority. There is no specific prayer for release/payment of arrears of pay in terms of the recommendation of the 5th CPC. Be that as it may, the aspect of amendment of the rules governing the parties is an aspect which is wholly within the domain of the employer and this Court cannot issue a mandamus for amending such Rules. That apart, this Court has noticed that in fact the Rules were amended vide notification dated 31.07.2012 which appears that for the post of Assistant Engineers, there is a promotional avenue from the rank of Junior Engineer. This Court has also taken into consideration the submission made on behalf of the respondents that the merger was given effect from 01.01.2006 and in terms of the 5th CPC recommendation and that DoPT Office Memorandum dated 25.05.1998, all Junior Engineers in the DRO were given proper pay band fitment, upgradation and actual benefits from 01.01.2006 and the notional benefits from 01.01.1996. In this connection, the relevant averments made in the affidavit-in-opposition is extracted herein below:-

3. The Sixth Central Pay Commission in paragraph 7.39.22 stated as follows:

"Higher pay scale has been demanded for the post of Overseer (Civil) in Border Roads Organisation on the ground that the minimum qualification for the post is Diploma in Engineering. The post carries minimum direct recruitment qualification of Diploma in Engineering. These minimum qualifications had been prescribed in 1996. Fifth CPC, in their report submitted in 1997, had recommended the scale of Rs 5000-8000 for all posts carrying minimum direct recruitment qualifications of Diploma in Engineering. This recommendation was accepted. The post should consequently have been extended the scale of Rs 5000-8000 w.e.f. 1.1.1996. This was, however, not done. The Commission, accordingly, recommends that the post of Overseer may be upgraded and

merged with their promotional post of Superintendent BR Grade II (present scale Rs 4500-7000) and the combined cadre extended the scale of Rs 5000-8000

Since the Commission has recommended merger of the scales of Rs.5000-8000, Rs 5500-9000 and Rs 6500-10500, the post will be placed in the revised Pay Band PB-2 of Rs 8700-34800 alongwith a grade pay of Rs 4200. Commission also advises the Government to implement this retrospectively from 1.1.1996, at least for the purposes of fixation of pay."

11. As regards the grievance of the petitioners relating to cadre review, as observed above, such cadre review has already been done in the meantime and the cadre strength has been increased and therefore there cannot be any existing grievance on that aspect.

12. In view of the aforesaid discussion and the facts and circumstances, this Court is of the view that no relief can be granted to the petitioners in this case.

13. This brings this Court to the aspect of the directions contained in the order dated 18.02.2020 passed by this Court in WP(C) No. 1537/2015 (GS-173517H-Sri C. Chandra Kumar Vs The Union of India & Ors.). This Court has noticed that the subject of adjudication in that case was different from the issues raised and the relief prayed for in this case. At the same time, this Court cannot totally overlook the aspect that the incumbent in that case was also a Junior Engineer of the same Organization and was identically placed. In view of that while dismissing this writ petition, the petitioners are granted liberty to file individual representations for grant of the monetary benefits for the period in question which was granted to the petitioner in WP(C) No. 1537/2015. In the event such representations are submitted, the same are to be considered and disposed of by speaking orders within a period of 3 (three) months from the date of receipt of the same.

14. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant