

GAHC030003902022



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

Case No. : WP(C)/95/2022

C/191 Rosangliana and 9 Ors.
Aizawl2: C/10 Zohmingliana

3: C/46 Vanlaluata

4: C/1 Lalnghinglov

VERSUS

The State of Mizoram r/b the Secretary, Home Deptt., Aizawl and 4 Ors.
Aizawl

2:The State of Mizoram r/b the Secretary
DP and AR
Aizawl

3:Director General of Police
Mizoram
Aizawl

4:Deputy Secretary to the Govt. of Mizoram
Home Deptt.

5:Assistant Inspector General of Police-I
Mizora

Advocate for the Petitioner : Mr Lalremtlunga

Advocate for the Respondent : Ms. Mary Lalruatkimi Khiangte, Addl. AG/GA, Mizoram for R1-R3

**BEFORE
HONOURABLE MRS. JUSTICE MARLI VANKUNG**

JUDGEMENT

Date : 05-07-2024

Heard Mr. Lalremtluanga, learned counsel for the petitioners along with Mrs. Mary L. Khiangte, learned Government Advocate for the State respondents.

2. The instant writ petition filed under Article 226 of the Constitution is for the issuance of the appropriate writ against the respondents and for setting aside the impugned orders dated 27.08 2004, 10.09.2004 and 18.11.2021, on the grounds that the past services of the petitioners, who were initially appointed as Constables in the Mizoram Armed Police during the period 1991 to 1997, were not considered at the time of consideration of their seniority, but that, their services were counted only from or after their transfer to Mizoram Unarmed Police in the year 2004. The case of the petitioner is that the respondents cannot ignore the past services of the petitioners while calculating their seniority and hence this writ petition.

3. Brief facts of the case is that the petitioners were appointed to the post of Constable Mizoram Armed Police, Indian Reserved Police between 1991 to 1996, where the concerned Commandant, Mizoram Armed Police, 1st, 2nd Battalion and the respondent No. 5 was the Competent Appointing Authority to issue the appointment orders. All the petitioners were then confirmed under their respective Battalion and thereafter, they were transferred and posted to Lengpui Airport Security on different dates. The transfer and posting order mentioned that the unit was released from the unit of MAP (Armed Police), Aizawl, and were said to join their new place of posting at Lengpui Airport Security on unit transfer with immediate effect. Thereafter, on 27th August, 2004 the impugned letter was issued by the Deputy Secretary to the

Government of Mizoram, Home Department, which stated that the Government approved the conversion of 22 numbers of MAP (Armed) persons posted at Lengpui Airport into Unarmed (MRP) personnel w.e.f the date of joining with the following conditions that:-

“They will not claim their seniority in the MAP. Their seniority will be counted from the date of joining in the unarmed Branch and inter-se-seniority amongst themselves while in the Armed Branch will be maintained.”

Thereafter, another impugned Order dated 10th September, 2004 was issued by the Assistant Inspector General of Police, Mizoram, Police Headquarters, Aizawl, which stated that, on the approval of the Mizoram Home Department, the following Constables (MAP) posted at Lengpui Airport are converted into Constable (MRP) and on the following conditions:-

“They will not claim their seniority in the MAP. Their seniority will be counted from the date of joining in the Un-armed Branch and inter-se-seniority amongst themselves while in the Armed Branch will be maintained.”

4. Mr. Lalremtluanga, learned counsel for the petitioners submitted that the two impugned Orders dated 27th August, 2004 & 10th September, 2004 are liable to be set aside and quashed since the petitioners were appointed against vacant post of constable MAP between the years 1991 to 1997 and they were duly confirmed before their transfer to Lengpui Airport in the year, 2000.

5. After their transfer, the two impugned orders/notifications dated 27th August, 2004 and 10th September, 2004 were issued, however the said two notifications were not given to the petitioners and they got to know of the orders/notifications only in October 2001. Aggrieved, they submitted their representation to the state respondents on 01.12.2020 which was unattended and was therefore followed by filing of the

WP(C) No. 51/2021, which was disposed with a direction to the respondent to consider and representation of the petitioners within 6 (six) months. The respondents then issued the impugned order dated 18/11/2021 rejecting the representation of the petitioners. Aggrieved, the petitioners have filed the present writ petition.

6. The learned counsel for the petitioners submits the impugned orders/notifications are liable to be set aside in view of the OM issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training dated 27th March, 2001, wherein it was stated that "If a person has been holding the same equivalent grade or on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from the date he has been holding the post on deputation or the date on which he has been appointed on regular basis to same or equivalent grade in his parent department "whichever is earlier". The OM corrected the words where "*whichever is later*" was used in the O.M dated May 29, 1986 to "whichever is earlier" w.e.f. 14th December, 1999 in light of the Supreme Court Judgment dated 14.12.1999 in the case of *Shri. S.I. Rooplal & Others Vs. Lt. Governor through Chief Secretary, Delhi JT 1999 (9) SC 597* where it was held that the term "whichever is earlier" is to be used.

7. The learned counsel for the petitioner further submitted that an O.M was also issued by the Government of Mizoram, Department of Personnel & Administrative Reforms (General Service Wing) dated 13th December, 2019 wherein it was clearly stated at sub para 6 of para 7 that:-

"7.6) Seniority of persons who are transferred and absorbed directly without being on deputation: In case of persons who are transferred and absorbed directly without being on deputation i.e. where the recruitment rules provide for recruitment through absorption, his seniority in the grade in which he/she is absorbed will also be counted from the date of absorption. If he/she has, however,

been holding already (on the date of absorption) the same or equivalent grade on regular basis in his/her parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he/she will be given seniority from:

a) the date he/she has been holding the post on deputation, (or)

b) the date from which he/she has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is earlier.”

8. The learned counsel submits that in view of the above mentioned OMs dated 13th December, 2019 and dated 27th March, 2001, the case of the petitioners should also be considered for counting the length of service in counting their seniority from the date of the appointment which was between 1991 to 1997. That since the petitioners have been transferred to Lengpui Airport in the year 2000 on Unit transfer, on conversion their services from Armed Police (MAP) to Unarmed Police (MRP) and the State respondents have erred in counting their services for seniority only from the date of their transfer to Lengpui Airport and not counted the length of service in counting their seniority from the date of the appointment which was between 1991 to 1997.

9. The learned counsel submits that the initial temporary services of the petitioners were all confirmed before their transfer. That the petitioners had neither submitted an application for transfer to Lengpui Airport nor did they submit any willingness for their transfer and posting to Lengpui Airport Security in 2000.

For the above reasons, the impugned Orders dated 27th August, 2004 & 10th September, 2004 are liable to be set aside and the petitioners' seniority should be counted from the date of the appointment between 1991 to 1997.

10. Mrs. Mary L. Khiangte, learned Government Advocate, on the other hand submits that it is an admitted fact that the petitioners were appointed between 1991 to 1997 and confirmed in service in MAP in 2000 after which they were transferred to

Lengpui Security on Unit transfer. However, the services of the petitioners were converted from Armed forces to Unarmed forces only in 2004 and on their conversion they were transferred to a separate cadre. The learned Government Advocate submits that the Armed forces, MAP which was their original appointment was controlled by the Commandant of MAP, while after the conversion of their service into Unarmed MRP, they were under the control of the SP. Both the services are two separate cadres. She submits that the instant case of the petitioners is not the transfer and absorption but conversion of service since they had joined a separate cadre i.e from MAP (Armed) to MRP (Unarmed). The learned Government Advocate submits that the OM dated 27th March, 2001 and OM dated 13th December, 2019 do not talk about conversion but about transfer/deputation and therefore, the OM on which the learned counsel for the petitioner has based his case is not applicable to the instant petitioners. The learned Government Advocate thus, submitted that the State respondents had rightly held that the petitioners cannot claim their seniority in the MAP since they had joined the Unarmed Branch (MRP) which is a different cadre.

11. The learned Government Advocate further referred to the additional affidavit of the state respondents, which showed that all the petitioners had given their willingness for the conversion of their services from Armed forces to Unarmed forces in the documents annexed as Annexure II (A to K). The learned Government advocate submits that the signing their willingness is not denied by the petitioners and the learned counsel for the petitioners had simply stated that they were not aware of the consequences however, the petitioners were clearly informed of the condition that on their conversion to Unarmed Police Force (MRP) their services in the Armed Branch will not be counted for counting of their seniority. That in their letter of willingness the impugned Notification dated 01.09.2004 was also cited and therefore, they were aware that their seniority will not be counted from their appointment to the Armed forces. She further mentions that the Assistant Inspector General of police in his letter dated 1st September, 2004 addressed to the SP of Mizoram, Superintendent of Police,

Security, Mizoram had stated that the written willingness of the petitioners may be obtained from those who are willing and submit to the PHQ on or before 05.09.2004. That those who fail to submit their willingness within the specific period without reasonable ground will be considered as unwilling. The learned Government Advocate points out that the instant petitioners have all submitted their willingness and had duly signed their willingness to convert from Armed Branch (MAP) to Unarmed branch (MRP) as per the PHQ Order dated 01.09.2004.

12. The learned Government Advocate further submits that the impugned orders dated 27.08.2004 and 10.09.2004 were issued in 2004 and the petitioners have now approached this Court after a lapse of 18 years and therefore debarred from approaching this Court after a lapse of so many years. The learned Government Advocate relied on the decision of the Apex court in ***New Delhi Municipal Council Vs. Pan Singh & Ors.***, reported in **(2007) 9 SCC 278**, wherein it was held that although there is no period of limitation provided for filing a writ petition under Article 226 of the constitution of India, ordinarily, writ petition should be filed within a reasonable time.

13. The learned Government Advocate further submitted that the doctrine of estoppel have barred the petitioners from approaching this Court and that they cannot unsettle what has already been settled, wherein the Asst. Inspector General of Police (Hqrs) had notified the Final inter-se-seniority list , after inviting objections vide the Notification dated 17th March, 2020 and prejudice will be caused to those persons in Sl. No. 8 to 150 in the said seniority list if the claim of the petitioners was to be allowed. The learned Government Advocate has relied on the decision of the Apex court in ***P.S. Sadasivaswamy Vs. State of Tamil Nadu***, reported in **(1975) 1 SCC 152** wherein the Apex court held that a person aggrieved by the promotion should have approached the court at least within 6 (six) months or at the most within one year of such promotion and did not allow the writ petition for persons who stand by and allow things to happen and then put forth their claim and try to unsettle

settled matters.

The learned Govt. Advocate also submitted that out of the converted 22 nos. Unarmed personals, vide letter dt. 27.08.2004, annexed as Annexure XXI of the Writ Petition, Sl. Nos.1, 4, 5, 13, 14 and 22 are already promoted to a higher rank through a limited departmental examination Sl no. 7 & 8 have died. Sl. No. 19 was repatriated to MAP on his request and Sl. No. 15 was remustered as driver on his request. Thus, the petitioners are not in any way deprived of their right to advance in their career as those of their counterpart batch mates.

14. The learned Government Advocate in support of her submissions has relied on the decision of the Apex court in the case of ***State of Maharashtra Vs. Purshottam & Ors.***, reported in **1996 9 SCC 266**, ii) ***K.P. Sudhakaran & Anr. Vs. State of Kerala & Ors.***, reported in **(2006) 5 SCC 386**

15. I have considered the submissions made by the learned counsels for both the parties and have also perused the documents on record.

It is an admitted fact that the petitioners were initially appointed in the Mizoram Armed Police during the period of 1991 to 1997 and were confirmed in the service, thereafter, they were transferred to Lengpui Airport Security on Unit transfer on different dates during 2000. A letter dated 27th August, 2024 was then issued by the Deputy Secretary to the Government of Mizoram, Home Department, addressed to the Director General of Police, Mizoram, Aizawl, conveying the approval of the Government for conversion of 22 numbers of MAP personnel posted at Lengpui Airport into Unarmed (MRP) personnel w.e.f. the date of joining and on the following condition

"They will not claim their seniority in MAP. Their seniority will be counted from the date of joining in the Unarmed Branch and inter-se-seniority amongst themselves while in the Armed Branch will be maintained." Thereafter, on 10.09.2004, an order was issued by the Superintendent Inspector General of Police-I, Mizoram, Aizawl wherein the Constables (AB) posted at Lengpui Airport are converted into Constable (MRP) with immediate effect on the condition that *"They will not claim their seniority*

in MAP. Their seniority will be counted from the date of joining in the Unarmed Branch and inter-se-seniority amongst themselves while in the Armed Branch will be maintained."

15. It is seen that in a letter dated 01.09.2004 (Annexure-I in the additional affidavit filed by the state respondents), the Superintendent Inspector General of Police-I, Mizoram had also written to the Superintendent of Police Security, Mizoram to take a written willingness from the 22 MAP personnel at Lengpui Airport, that on the conversion from Armed Police (MAP) to Unarmed (MRP) w.e.f. the date of joining *they will not claim their seniority in MAP. Their seniority will be counted from the date of joining in the Unarmed Branch and inter-se-seniority amongst themselves while in the Armed Branch will be maintained. And that the written willingness of the above condition may be obtained from those who are willing and submit to the PHQ on or before 05.09.2004. Those who fail to submit within the specific period without reasonable ground will be considered as unwilling.* Accordingly, the letters indicating the willingness of the instant petitioners dated 03.09.2004 are annexed in the additional affidavit filed by the respondents as Annexure-2 (A to K).

16. From the above facts this Court finds that when the petitioners were first transferred to Lengpui Security on Unit transfer during the year 2000 and this transfer cannot be said to be on conversion of their services since it was only in the year 2004, that the impugned letter dated 27.08.2024, and impugned order dated 10.09.2004 were issued for the conversion of 22 numbers of MAP personnel posted at Lengpui Airport into Unarmed (MRP) personnel w.e.f. the date of joining. It is also seen that the willingness of the petitioners were obtained before the conversion in terms of the letter dated 01.09.2004 sent to the Superintendent of Police, Security by the Assistant Inspector General of Police-I. It is seen that in the letter of willingness signed by the petitioners the order dated 01.09.2004 was also mentioned and referred to. Thus, this court finds it hard to believe that the petitioners were not aware of the consequences of their signing their willingness to convert from Armed branch (MAP) to UB (MAP)

since it is unlikely that all the said petitioners who had signed their willingness could not know the nature of their signatures made at the documents annexed as Annexure-2 (A to K).

17. This Court has also perused the document dated 17th March, 2020 annexed as Annexure-3 by the respondents, wherein a final seniority list of Constables (Unarmed Police) was prepared as on 17th March, 2020 and this final seniority list has not been challenged by the petitioners who have again denied knowledge of the final seniority list which was issued on 17th March, 2020. This court finds that if the seniority of the petitioner was to be taken from the date of their joining from service as Armed Police then the seniority list issued on 17th March, 2020 could also be affected and the persons who are likely to be affected have not been made a party in the instant writ petition.

18. On perusal of the impugned Order dated 18th November, 2021 which states, in one of the grounds for rejecting the representation of the petitioners dated 01.12.2020, that the willingness of 22 Armed Police Constables transferred to Lengpui Airport Security in the year 2000 was also obtained and that the Mizoram Armed Police (MAP/IR) and the Mizoram Police (MRI) are different cadres and their conditions of service are governed by separate provisions of Rules under the Mizoram Police Manual, 2005. Armed Police Branch (AB) and Mizoram Police (UP) have their own strength of service or apart of a service sanctioned as a separate unit which conforms the cadre described by fundamental Rules 9(4). It is noted that the fact that the learned counsel for the petitioners has not disputed that the Mizoram Armed Police (MAP/IR) and the Mizoram Police (MRP) are different cadres and that the conditions of their service are governed by separate provisions of Rules under Mizoram Police Manual, 2005.

19. Thus, it is seen that the Mizoram Armed Police and the Mizoram Police Unarmed

Police are belonging to different cadres and therefore, the services rendered by the petitioners as Armed constables (MAP) cannot be taken for counting their seniority in a different Cadre i.e Unarmed Police (MRP) . In this regard the Apex Court in ***State of Maharashtra v. Purshottam, (Supra)*** “*In the service jurisprudence the expression ‘cadre’ means the unit of strength of a service or a part of it as determined by the employer. And it is too well settled that services rendered by an employee in one cadre cannot be taken into account for determining the seniority in another cadre unless by any rules of seniority this privilege is conferred*

20. This court also finds that the OM issued by the Government of Mizoram, Department of Personnel & Administrative Reforms (General Service Wing) dated 13th December, 2019 at para 7(c) deals with seniority of persons who are transferred and absorbed directly without being on deputation i.e. where the Recruitment Rules provide for recruitment through absorption. This Court, therefore finds that the instant OM dated 13th December, 2019 is not applicable in the instant case where the services of the petitioners were converted from Armed Police to Unarmed Mizoram Police. It is also seen that the OM issued by the Government of India, Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training dated 27th March, 2001, deal with the subject Seniority of persons absorbed after being on deputation. The instant case of the petitioners being different, the OM is found not applicable.

21. In view of the above findings this court is of the considered view that the instant petitioners were sent to Lengpui on transfer in the year 2000 and not on the conversion of their services. Later on, in 2004, their services were converted and not absorbed, from Armed constable (MAP) to Unarmed Police (MRP), which are different Cadres and therefore, cannot claim seniority from their past services as Armed Police (MAP) and thus this Court finds that there are no grounds for setting aside the impugned Orders dated 27.08.2004, 10.09.2004 and 18.11.2021 and accordingly, the Writ Petition(C) No.95 of 2022 stands dismissed and disposed of.

No cost imposed.

JUDGE

Comparing Assistant