

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WA No.89 of 2022

Union of India through the Secretary(Ministry of Home Affairs)
Government of India, North Block, New Delhi-1 & Anr.

Appellants

Vs.

Rfn/GD No.5003880F, Lourembam Bobo Singh, aged about 36 years,
S/o L. Kanhai Singh, 27th Assam Rifles, Pin-932027, C/o 99 APO & 9
Ors.

Respondents

With

WA No.4 of 2025

Union of India through the Secretary(Ministry of Home Affairs)
Government of India, North Block, New Delhi-1 & Anr.

Appellants

Vs.

Rfn/GD No.2049P, Kailash Chandra Shakya, aged about 46 years, S/o
(L) Narayan Prasad Shakya, 6th Assam Rifles, Pin 932006, C/o 99 APO
& **5 Ors.**

Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**

**ORDER
(Oral)**

02.04.2025

D. Krishnakumar, C.J. :

[1] Mr. KH. Samarjit, learned DSGI, assisted by Mr. Nondambam,
learned counsel appears for the appellants and Mr. KH Lupenjit, learned counsel
appears for the respondents.

[2] The instant appeals have been filed against the orders of the writ court dated 10.10.2019 and 29.03.2023 passed in WP(C)No.947 of 2017 and WP(C)No.953 of 2019.

[3] Mr. KH. Samarjit, learned DSGI appearing for the appellants submits that the respondents/writ petitioners have filed instant writ petition praying for a writ of Mandamus to consider for Remusteration/Up-Grade/Re-designation of post of petitioners to the rank of Nb/Sub(E&M) and Nb/Sub(B&R), JE as initial rank the petitioners 1,2,3,6,7,8,9&10 therein with effect from the date of completion of Diploma Course and the petitioners Nos. 4&5 w.e.f. 19.01.2007 and pay all the service benefits, and subsequent post of Subedar and Subedar Major.`

[4] According to the appellants, the respondents initially joined as Riflemen in Assam Rifles and they have been provided an opportunity to undergo Diploma course in Electrical and Mechanical Engineering to be held in the College of Military Engineering, Pune and Mizoram State Polytechnic, Lunglei. It was declared that the Diploma in Electrical and Mechanical Engineering(DEM) course is a remusteration course for Engineering trade. Accordingly, the petitioners had undergone Diploma Course and had completed the Diploma Course in Electrical and Mechanical Engineering and Diploma in Civil Engineering from College of Military Engineering, Pune and Mizoram State Polytechnic, Lunglei and therefore, the petitioners were eligible for remustering as per Qualification Regulation for Soldier, 1958 as amended from time to time.

[5] The respondents therein have filed counter affidavit by denying the said averment of the petitioners by stating that the petitioners were not entitled for remusteration for the aforesaid course. According to them, as per rules, the

appointment shall be made only through direct recruitment and this aspect was also placed before the learned Single Judge and further submitted that the writ court has considered the decisions rendered in Meghalaya High Court in WP(C)No.327 of 2014 dated 06.08.2018 and in the aforesaid writ petition, the High Court of Meghalaya has passed order by directing the respondents to take all necessary steps at their respective levels for according consideration to the case of the petitioner for remusteration from Rfn/GD(B&R) to Nb.Sub(B&R) and to pass appropriate orders. Pursuant to the aforesaid direction passed by the Meghalaya High Court in WP(C) No.327 of 2014, the Director General of Assam Rifles has passed speaking order dated 28.01.2019 by rejecting the claim of the petitioner therein and challenging the said order, writ petition being WP(C)No.191 of 2019 was filed before the High Court of Meghalaya and the same was disposed of by directing the respondent authorities to reconsider the claims of the petitioner. Subsequently, on 05.08.2020, a speaking order has been passed by the Directorate General Assam Rifles and the said order dated 05.08.2020 was under challenge in WP(C)No.461 of 2020 and by an order dated 06.02.2024, again it was remanded back to the respondent authorities to reconsider the matter afresh and again the department has rejected the claim of the petitioner by passing a speaking order on 11.07.2024. Again, the said order is under challenge in WP(C)No.464 of 2024 and the same is pending before the High Court of Meghalaya.

[6] According to the learned counsel appearing for the appellants, the order of Single Judge is liable to be set aside when the issue has not been decided on merits and the same pending before the High Court of Meghalaya.

Therefore, he seeks for setting aside of the order of the learned Single Judge and to pass appropriate order.

[7] The learned counsel appearing for the respondents vehemently argued the matters by relying upon the order passed by the respondent department on 05.01.2024 which was passed in order to implement Hon'ble High Court of Manipur common judgment and order dated 23 January 2020 passed in WP(C)No.597 of 2018, WP(C)No.598 of 2018, WP(C)No.149 of 2017, judgement & order dated 18 February 2020 passed in WP(C)No.1033 of 2019 and judgment and order dated 16 September 2021 passed in WP(C)No.816 of 2017 filed by Pharmacist Trade Personnel of Assam Rifles. Therefore, he seeks that the order of the Single Judge is not liable to be set aside.

[8] We have heard the arguments of the learned counsel appearing for the parties and perused the materials on record.

[9] Mr. KH. Samarjit, learned DSGI appearing for the appellants would submit that the writ Court has passed an order by directing the appellants to consider the representations dated 21.11.2015 and 28.11.2015 addressed to the Directorate General of Assam Rifles requesting for remusteration from Rfn/GD (E&M) to Nb/Sub (E&M) with a recommendation from their Commanders and the same were also forwarded by their respective Commanders along with recommended application form for remusteration for approval. The said representations were also forwarded to the Directorate General Assam Rifles, Shillong along with the recommendation made by the authority concerned. He would further submit that the learned Single Judge without direction to the authority concerned to consider the representations of the petitioners/respondents

herein has passed final order by directing the appellants herein to remusteration of post of the writ petitioners/respondents here to the Rank of Nb/Sub(E&M) and Nb/Sub (B&R), JE as initial Rank the respondents/ writ petitioners 1,2,3,6,7,8,9 & 10 w.e.f. the date of completion of Diploma Course and the respondents/writ petitioners 4 & 5 w.e.f. 19.01.2007 and pay all the service benefits, and subsequent post of Subedar and Subedar Major. According to the learned counsel appearing for the appellants, the writ petition came to be allowed without passing order in the light of the High Court of Meghalaya wherein there is a direction to consider the claim of the petitioner by the authority concerned and the writ petition in WP(C)No.464 of 2024 is still pending before the High Court of Meghalaya.

[10] The learned counsel appearing for the appellants further draws the attention of this Court by relying upon the Recruitment Rules where it says that by Selection on merit and also by Direct Recruitment is the mode of recruitment to the aforesaid post and there is no provision for remusteration available under the Rules. The learned DSGI also states that though the learned counsel appearing for the respondents herein has relied upon order passed by the department in order dated 05.01.2024. According to the appellant, challenging the order of writ petition, he has filed an appeal before this Court along with the condone delay application and the said application came to be dismissed and also filed an appeal before the Supreme Court and hence, the said order has not been decided on merit. Therefore, the said order cannot be relied upon since there is no order been passed by the appellate Court on merit. In this circumstances, Mr. KH. Samarjit, learned DSGI, appearing for the appellant stated that the order cannot be relied

upon by the respondents in support of their cases for consideration for remusteration.

[11] We have carefully perused the prayer sought for in the writ petition and the appellant department has also issued advertisement for direct recruitment. Without challenging the said advertisement, the respondents herein filed writ petition seeking for mandamus in the aforesaid prayer. We are of the view that the learned Single Judge has not properly considered the matter and pass such an order by allowing the writ petition for granting relief for Remusteration of post to the petitioners/respondents to the rank of Nb/Sub(E&M) and Nb/Sub(B&R), JE as initial rank.

[12] Considering the submissions made by the learned counsel appearing for the parties, since the respondents herein have also placed an order dated 05.01.2024 wherein similar relief has been granted and on this aspect, this Court cannot go in the same but it is for the authority concerned to consider and take appropriate decision if any such relief is granted to the similarly situated persons. Since there is no provision under the Rules for upgradation, we have not expressed any opinion on that as the issue is still pending.

[13] In view of the above, this Court is inclined to pass the following orders:

(a) Writ appeals are disposed of.

(b) The impugned order passed by the writ court is modified.

(c) The appellants are directed to consider the respondents' representations dated 21.11.2015 and 28.11.2015 and pass

appropriate order in accordance with rules, preferably within a period of 12(twelve) weeks from the date of receipt of a copy of this order.

(d) Needless to say that if the respondents herein desire to furnish additional papers, the same shall be done within a period of four weeks.

JUDGE

CHIEF JUSTICE

John Kom