

HIGH COURT OF TRIPURA
AGARTALA

WP(C)No.724 of 2024

G/184375 Havildar (General Duty) Anil Kumar
18- Assam Rifles C/o.- 99APO, PIN- 932018.

....Petitioner(s)

Versus

- 1.The Union of India,Represented by the Secretary, Government of India, Ministry of Home Affairs, New Delhi.
- 2.The Director General of Assam Rifles, Shillong- 793011, Meghalaya.
- 3.The Commandant, 18 Assam Rifles, C/o.- 99 APO, PIN - 932018.

....Respondent(s)

For Petitioner(s) : Mr. Dulal Ch. Saha, Advocate.

For Respondent(s) : Mr. B.Majumder, Dy. S.G.I.

Date of hearing and : **18.03.2026**
Delivery of Judgment/
Order

Whether fit for reporting :

Yes	No.
	✓

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HON'BLE MR. JUSTICE S. DATTA PURKAYASTHA

Judgment and Order (Oral)

Heard Ld. Counsel of both sides.

[2] The petitioner, when working as a Rifleman (GD), went on deputation from his parent Department, Assam Rifles to Subsidiary Intelligence Bureau (for short-Intelligence Bureau), Mumbai for a period from December, 2015 to December, 2018. While he was on such deputation, only after 2 months, a promotion order was issued by Assam Rifles authority vide notification dated 02.02.2016 promoting him to the post of Hav.(GD) w.e.f. 01.02.2016. The Assam Rifles authority also communicated the said fact of promotion of the petitioner to Intelligence Bureau vide their letter dated 01.03.2016 with a request to carry out the promotion of the petitioner w.e.f. 01.02.2016.

[3] On receiving such request, the Intelligence Bureau vide their letter dated 22.03.2016 asked the Assam Rifles authority to send a copy of his promotion order to them for effectuating said promotion

and subsequently, said Intelligence Bureau also issued a memorandum dated 28.04.2016 notifying such promotion of the petitioner w.e.f. 01.02.2016 and simultaneously, they also quoted the relevant provision contained in DOP&T OM No.6/B/2009-Estt.(Pay II) dated 17.06.2010 (extracted below), and asked for his written willingness to continue on deputation or otherwise, by virtue of his promotion to the rank of Hav.(GD) and in case of willingness to continue on deputation, he would work as SA/G in Intelligence Bureau (which according to Ld. Counsel of the Respondents is the equivalent rank of Rifleman, GD) till the time he completes his normal/ extended tenure of deputation:

“2. The provision contained in DOP&T OM No.6/B/2009-Estt.(Pay II) dated 17.06.2010 is as under:

If during the period of deputation, on account of proforma promotion in the parent cadre the official concerned becomes entitled to a higher Pay Scale/Pay Band & Grade Pay in the parent cadre vis-à-vis that of the ex-cadre post, the official shall complete his/her normal/extended tenure of deputation already sanctioned with the approval of the competent authority. The pay shall be regulated as under:

If the Grade pay of the officer in the parent cadre becomes higher than that of the deputation post after getting proforma promotion, he may be allowed the pay in the pay band + Grade Pay of the post to which he is promoted till the time he completes the normal/extended period of deputation (if he gets proforma promotion in the extended period) already sanctioned, if he so opts. No extension in the period of deputation shall be allowed to him after completing the sanctioned period of deputation.

3. The above cited rule position may please be brought to the notice of Shri Anil Kumar. His written willingness to continue on deputation or otherwise by virtue of his promotion to the rank of Hav(GD) may please be sent to us early. In case of willingness to continue on deputation, he will work as SA/G in IB till the time he completes his normal/extended tenure of deputation.”

[4] As it appears from the said communication, the basic intention of the said Intelligence Bureau was to communicate to the petitioner that as per said Office Memorandum dated 17.06.2010 [Annexure-R/12] he would be getting the pay scale of his promotional post but he should have to discharge his duty in the lower grade. Perhaps the Intelligence Bureau was alert to the fact that in future the petitioner might raise a grievance that despite being promoted to a higher post, he was being compelled to work in the lower post on his humiliation and therefore, as a matter of caution they perhaps sought for such an option in advance. The reason for drawing such impression by the Court will be more discernable from another communication of Intelligence Bureau as will be mentioned in later paragraph

[5] The petitioner, thereafter, submitted his willingness to work in the post of SA/G in Intelligence Bureau till completion of his tenure of his deputation.

[6] The said Intelligence Bureau, again on 15.06.2016, sent another letter to Assam Rifles authority requesting them to send his Pay Fixation Order so that his pay can be fixed from their end. The Assam Rifles authority vide their letter dated 11.07.2016, raised their confusion to the Intelligence Bureau and sought clarification as to whether the individual was permitted to continue deputation in the rank of Rifleman (GD) till normal tenure of deputation as individual applied or promoted to Hav.(GD) as per their earlier letter dated 01.03.2016. In reply to that letter, the Intelligence Bureau vide their communication dated 26.07.2016 informed that consequent upon grant of proforma promotion under NBR in his parent department, the petitioner could not be adjusted in the equivalent rank of Hav.(GD) till the completion of his normal/extended tenure. However, he might be allowed the pay in the Pay Band + G.P of the post to which he is promoted. Therefore, his pay, on promotional post, might be fixed at the end of Assam Rifles authority and a copy of the same might be sent to them with his 'Service Book' at the earliest. The Assam Rifles authority thereafter sent one restricted message dated 16.08.2016 [Annexure-R/6] confirming the fact of promotion of the petitioner to the post of Hav.(GD) w.e.f 01.02.2016 and his assumption of duties as Hav.(GD) w.e.f 03.02.2016. It was further mentioned that pay and allowances had already been fixed under MACPS.

[7] However, after he returned to his parent department, on his joining there on 16.01.2019, a list dated 04.03.2020 was published by Assam Rifles authority showing the fact of promotion of different persons including the present petitioner giving effect of promotion on different dates and in the case of the petitioner, his date of promotion as Hav.(GD) was shown to be w.e.f. 16.01.2019 in place of 01.02.2016.

[8] Thereafter, on 07.09.2021, an internal correspondence was made by a Captain of Assam Rifles on behalf of the Commandant of 18 Assam Rifles to Mahanideshalaya, Assam Rifles, Director General Assam Rifles, Shillong requesting that his promotion to the post of Hav.(GD) be given effect from 01.02.2016 instead of 16.01.2019. Reference to a notification issued by the Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training dated 30.11.2012, was also made in this regard.

[9] But according to the petitioner, no response was received thereafter. The petitioner then sent an Advocate Notice on 29.06.2023 ventilating his grievances regarding the change in the date of his promotion and in turn, the Assam Rifles authority gave a reply

referring to the guidelines contained in para nos. 17.4.1-17.4.2 of Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training Memorandum dated 10.04.1989 (extracted hereunder) and informed that the petitioner had proceeded on deputation on his own volition and expressed his willingness to continue his deputation in the rank of Rifleman (GD) instead of assuming the rank of Hav.(GD) to avoid repatriation to his parent unit and therefore, in view of above provision, the petitioner was not entitled to promotion-cum-seniority w.e.f. 01.02.2016 and therefore, he was granted promotion w.e.f. 16.01.2019:

“17.4.1. If the panel contains the name of a person who has gone on deputation or on foreign service in the public interest including a person who has gone on study leave, provision should be made for his regaining the temporarily lost seniority in the higher grade on his return to the cadre. Therefore, such an officer need not be reconsidered by a fresh DPC, if any, subsequently held, while he continues to be on deputation/foreign service/study leave so long as any officer junior to him in the panel is not required to be so considered by a fresh DPC irrespective of the fact whether he might or might not have got the benefit of proforma promotion under the NBR. The same treatment will be given to an officer included in the panel who could have been promoted within the currency of the panel but for his being away on deputation.

17.4.2. In case the officer is serving on an ex- cadre post on his own volition by applying in response to an advertisement, he should be required to revert to his parent cadre Immediately when due for promotion, falling which his name shall be removed from the panel. On his reverting to the parent cadre after a period of two years he will have no claim for promotion to the higher grade on the basis of that panel. He should be considered in the normal course along with other eligible officers when the next panel is prepared and he should be promoted to the higher grade according to his position in the fresh panel. His seniority, in that event, shall be determined on the basis of the position assigned to him in the fresh panel with reference to which he is promoted to the higher grade. (If the panel contains the name of an officer on study leave, he should be promoted to the higher post on return from the study leave. He should also be given seniority according to his position in the panel and not on the basis of the date of promotion)”

[10] Being aggrieved thereby, the petitioner filed WP(C) No.762 of 2023 and a coordinate Bench of this Court disposed of the matter on 22.01.2024 with a direction to the respondent No.2 to consider the prayer of the petitioner for restoration of proforma promotion w.e.f. 01.02.2016 in place of 16.01.2019 in accordance with law. However, the Court refrained itself from making any observation on the merit of the case.

[11] On receipt of said direction issued by the High Court, the competent authority of Assam Rifles disposed of the matter on 1.5.2024 again by rejecting the claim of the petitioner, on the same ground based on which it was rejected earlier. Therefore, the present

writ petition has been filed by the petitioner again with the following reliefs:

“a. admit this petition;

b. call for the records;

c. issue writ in the nature of Mandamus calling upon the respondents to show cause as to why the promotion of petitioner to the post of Hav.(GD) should not be effected from 01.02.2016 with all consequential service benefits;

d. issue writ in the nature of Certiorary calling upon the respondent to show cause as to why the order in letter dated 04.09.2023 should not be declared bad in law;

e. issue writ in the nature of Certiorary calling upon the respondent to show cause as to why the order in letter dated 04.03.2020 should not be declared bad in law so far as illegal and arbitrary fixation of date of effect of promotion in the post of Hav.(GD) as 16-01-2019 is concerned.

f. issue writ in the nature of mandamus calling upon the respondent to show cause as to why the next promotion of petitioner to next higher post of warrant officer should not be considered, inasmuch as with his service in the post of Hav.(GD) from 01.02.2016 he has acquitted eligibility for promotion to Warrant officer.

g. pass any other relief(s) which Your Lordship may deem fit and proper in this case....”

[12] At the time of hearing, Ld. Counsel Mr. Dulal Ch. Saha submits that the Office Memorandum dated 17.06.2010, as issued by the Ministry of Personnel, Public Grievances and Pensions Department of Personnel and Training, Govt. of India, clearly indicates that on such proforma promotion the petitioner is entitled to get all the financial benefits from the date when he was so promoted and without any basis, now, his such date of promotion cannot be changed, altering it to 16.01.2019.

[13] Ld. Counsel Mr. Dulal Ch. Saha also submits that the petitioner's future prospect in service has been seriously affected by the change in the date of his promotion for no fault of his own, as his juniors have now become senior to him. Ld. Counsel further submits that his client was never asked by Assam Rifles authorities i.e. his parent department for repatriation there, otherwise he would not stay on deputation in Intelligence Bureau and without asking for his repatriation, the department cannot now change his date of promotion to his serious prejudice by relying on said notification dated 10.04.1989.

[14] Ld. Dy. S.G.I, Mr. B. Majumder, on the other hand, submits that on his own volition the petitioner opted to remain on deputation to derive benefit of the same and despite being asked, he

did not opt to return to his parent department. Therefore, as per said notification dated 10.04.1989(quoted supra), he is not entitled to get the benefit of promotion during such deputation. Accordingly, the Assam Rifles authority rightly gave effect of his promotion to the post of Hav.(GD) on his return to the parent department. So far the matter of claim of pay of the petitioner is concerned, Ld. Dy. S.G.I, Mr. Majumder submits that already he is getting pay at par with other Hav.(GD) as he had been granted the benefit of one financial up-gradation under Modified Assured Career Progression Scheme on 01.09.2008. Ld. Dy. S.G.I, therefore, prays for dismissal of this writ petition.

[15] The Court has given due consideration to the submissions of Ld. Counsel of both sides as well as to the relevant documents relied upon by the parties and the relevant rules as referred by them and quoted hereinabove.

[16] As it appears, there is nothing in the record to show that prior to the grant of proforma promotion to the petitioner, he was asked by his parent department for his repatriation there following the said notification dated 10.04.1989 which also clearly envisages that in case the officer is serving on an ex-cadre post on his own volition by applying in response to an advertisement, he should be required to revert back to his parent cadre immediately when due for promotion, falling which his name shall be removed from the panel. Nowhere it is claimed by Assam Rifles authority that, before the process of his promotion was initiated by the department, they asked the petitioner to return to the parent department, prior to the preparation of the panel for such promotion in compliance with the said provision. Rather, they on their own way issued the notification dated 02.02.2016 promoting the petitioner to the post of Hav.(GD) w.e.f. 01.02.2016 and accordingly made correspondence with the Intelligence Bureau to carry out such promotion order.

[17] The relevant rules, as embodied in Notification dated 17.06.2010 (as extracted earlier), clearly protect the pay of the promotee while on deputation. This provision was also communicated to the petitioner by the Intelligence Bureau and certainly, having found that his promotion and pay are now protected, he expressed his willingness to continue on deputation even in a lower post. Now, suddenly, the respondent Assam Rifles authority, in surprise, cannot change the date of his promotion to his prejudice and that too without his any fault. In fact his earlier promotion order was also not quashed or modified by them.

[18] Therefore, the action of the respondent Assam Rifles authority by suddenly changing the date of giving effect of his promotion from 16.01.2019 is found to be totally arbitrary and unreasonable. When they, on their own part, did not discharge their

duties by asking the petitioner to return back to his parent department following the notification of 1989, they cannot make the petitioner sufferer for their own fault.

[19] Considering all these aspects, the writ petition is allowed.

It is directed that respondents shall give effect to the promotion of the petitioner to the post of Hav.(GD) from the date 01.02.2016 in place of 16.01.2019 and necessary fixation of his pay shall be done with effect from said date. Arrears, if any, shall be paid to the petitioner within 3(three) months of the date of receipt of this judgment along with interest at the rate of 7% per annum thereupon accordingly.

Liberty will be there to the respondents to examine whether there remains any further dues to the petitioner in this regard after making necessary adjustment of the amount already paid to him due to grant of MACP under 15 MACP Scheme as averred by them.

With such observation and directions, the writ petition is disposed of.

Interim application(s), if any, shall also stand disposed of accordingly.

JUDGE