

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE SMT. JUSTICE P.V.ASHA

FRIDAY, THE 5TH DAY OF JUNE 2015/15TH JYAISHTA, 1937

WP(C).No. 23361 of 2013 (U)

PETITIONER :

SASI KUMAR A.V.
S/O. SANKARAN, CHERIYA PARAMBATH HOUSE
PARAPPANANGADI P.O.
MALAPPURAM DISTRICT. (DISCHARGED HAV/OPERATOR RADIO AND
LINES FROM ASSAM RIFLES) .

BY ADVS.SRI.JOHN K.GEORGE
SRI.P.P.BIJU
SRI.K.S.PRAVEEN

RESPONDENTS :

1. THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS, NORTH BLOCK
NEW DELHI-110 001.

2. THE DIRECTOR GENERAL
ASSAM RIFLES, MAHANIDESHALAYA
(THE DIRECTORATE GENERAL OF ASSAM RIFLES), SHILLONG
MEGHALAYA-793 011.

R1-R2 BY ADV. SRI.P.PARAMESWARAN NAIR,ASG OF INDIA
R1-R2 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON
05-06-2015, ALONG WITH WPC. 24695/2013, WPC. 24735/2013, WPC.
26353/2013, WPC. 30020/2013, WPC. 30022/2013, THE COURT ON THE SAME
DAY DELIVERED THE FOLLOWING:

RKC

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APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF THE JUDGMENT IN WA NO.50(SH)/2010 DTD.22.9.2011 OF
GUAHATI HIGH COURT.

P2 : COPY OF THE REQUEST DTD.7.9.13 SUBMITTED BY THE PETITIONER TO
THE 2ND RESPONDENT.

RESPONDENTS' EXHIBITS: NIL

RKC

TRUE COPY

PA TO JUDGE

P.V.ASHA, J.,

.....
**W.P.(C) Nos.23361, 24695, 24735,
26353, 30020 & 30022 of 2013**
.....

Dated this the 5th day of June, 2015

JUDGMENT

Since a common issue arises for consideration, all these cases are heard together and disposed of by this common judgment. The brief facts of the case are as follows:

2. Petitioners in all these cases, are retired personnel from Assam Rifles, which is a Central Paramilitary Force. They worked during various periods between 1984 and 2013 and were discharged from service on voluntary retirement. All of them are seeking parity in pay scale as in the case of their counterparts in other paramilitary forces, thus seeking the benefit of Ext.P1 judgment as well as the judgment of the Supreme Court in ***Union of India Vs. Dineshan K.K.*** [2008 (1) SCC 586].

3. The Assam Rifles is one of the paramilitary forces

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under the Ministry of Home Affairs and one of the Central Police Organisations like BSF, CRPF etc. The petitioners herein commenced their services as Operator Radio and Lines/Rifleman (ORL/Rfn), in the technical wing of Assam Rifles. On implementation of 4th pay commission the technical personnel of paramilitary forces were categorised as Class-III, Class-II and Class-I in the rank of Naik, Havildar and ASI respectively in the scale of pay starting at ₹950/-, ₹975/- and ₹1325/- respectively. But the technical wing of Assam Rifles continued with Class-III in the rank of Rifleman/ORL (Rfn), Class-II in the rank of Naik and Class-I in the rank of Havildar in the scale of pay starting at ₹825/-, ₹950/- and ₹975/- respectively. On implementation of 5th pay commission, the rank and pay scale of the technical staff in other paramilitary forces were re-structured and revised as Class-III in the rank of Havildar, Class-II in the rank of ASI and Class-I in the rank of SI in the scale of pay of ₹3200/-, ₹4000/- and ₹5500 respectively. But those in

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Assam Rifles continued with Class-III to I in the rank of Rifleman, Havildar and SI respectively, with pay scale starting with ₹3050/-, ₹3200 & ₹5500/-. The technical personnel of Assam Rifles were clamoring for restructuring of their rank and revising their scale of pay on par with their counterparts in BSF, CRPF, etc.

4. There has been a series of correspondence between the Director General of Assam Rifles and the Ministry of Home Affairs in respect of the disparity faced by those in Assam Rifles. Finally in February 1998, the Ministry of Home Affairs, had recommended re-designation of Radio Mechanic and Head Constable in Assam Rifles as Warrant Officer with replacement pay scale of ₹4000-6000, in order to bring them on par with their counterparts in other Central Police Forces. Based on that recommendation, the Ministry of Home Affairs, by its letter dated 3.3.1998, informed the Assam Rifles that they could re-designate the Head Constable (Radio Mechanic) as Warrant Officer provided

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their pre-revised and revised pay scales were identical to the pay scales of their counterparts in CRPF and BSF. But the re-designation could not be carried out, since there was "disparity" between the pay scales of a Radio Mechanic in Assam Rifles and their counterparts in CRPF and BSF. In the meanwhile, as per order dated 10.10.1997, passed by the Ministry of Home Affairs, it was notified that the President was pleased to rationalise the rank structure and pay scales of non-gazetted cadre of the Central Police Organisations and as a result of this exercise certain ranks were to be merged. The rank structure was communicated in the order along with the revised pay scales and replacement pay scales. Copy of this order was sent to all the paramilitary forces, including Assam Rifles. Thereafter by office memorandum dated 22.1.1998 of the Government of India, Ministry of Home Affairs, it was clarified that order dated 10.10.1997 was equally applicable to all advertised categories. The letter also contained directions as to re-

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designation of the three posts including Head Constable (RM) as ASI in Central Paramilitary Forces. The respective replacement pay scales were also ordered. Nevertheless the re-structuring or re-designation did not materialise in Assam Rifles and the disparity continued. The Director General of Assam Rifles therefore submitted a report on 24.4.2001 to the Government, regarding the progress on pay anomaly cases, in which it was stated that the technical personnel were placed in the rank of Havildar in Assam Rifles whereas their counterparts in other Central Paramilitary Forces were in the rank of ASIs. Ministry of Home Affairs, had ordered to submit proposal in directing to cadre comparison with BSF where the rank of ASI is available in other technical and also along with financial implication. The proposal along with financial implication was submitted to MHA and the case was lying with MOF for approval. However, as there was no positive action, one of the Radio Mechanics issued a notice of demand to the

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Ministry of Home Affairs and the Director General of Assam Rifles, inter alia, praying for giving effect to Office Order dated 10.10.1997 and Office Memorandum dated 22.1.1998. Thereupon, the Ministry of Home Affairs, by its order dated 26.12.2001, informed the Director General of Assam Rifles that his proposal had been examined in consultation with Ministry of Finance and it was found that there was no point for comparison of grades and scales of pay for such posts across various Central Paramilitary Forces. It was further stated that the proposed upgradation may disturb relativities of various trades and grades within Assam Rifles and there was no functional justification for upgrading these posts. At this stage, that Radio Mechanic approached the High Court at Gauhati in W.P(C) No.497 of 2001.

5. In the counter affidavit filed therein, it was stated that Assam Rifles personnel were in receipt of pay and allowances on army analogy with various groups in terms of

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Groups 'A', 'B', 'C', 'D' and 'E' to conform to their functional qualitative requirements of these groups which had varying pay scales. It was further stated that on the recommendation of the 4th Pay Commission with effect from 1.1.1986, the Force had been granted pay and allowance entirely on the lines of Central Paramilitary Forces, while no change in the rank structure was carried out and this difference in rank structure resulted in an apparent disparity in their service conditions and certain category of personnel who were placed in the erstwhile higher groups including Radio Mechanics category have also been deprived of pay scales either on a par with their counterparts in the army or in the Central Police Organisation. Further statement was that, on receipt of MHA Letter No. 27011/1103/97-PF.1/56 dated 22nd January, 1998, Assam Rifles Directorate by Letter No. A/Pers/5th CPC/Vol. III/98 dated 18.2.1998 took up the matter with HA to re-designate Havildar/RM-Grades I and II of Assam Rifles as Warrant Officer and for

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replacement of pay scale of ₹ 4000-100-6000 to bring them on a par with their counterparts in other Central Police Organisations. Attention of MHA was also drawn regarding placement of Havildar/RM Grades-I and II in the lower scale of pay consequent to implementation of Fourth Pay Commission. In reply to the Assam Rifles Directorate letter, MHA had ruled out vide their Letter No. 27011/103/97-P.F.1 dated 3.3.1998 that Assam Rifles can re-designate Head Constable (RM) as Warrant Officer, if pre-revised and revised pay scale of Havildar (RM) in Assam Rifles are identical to the pay scale of Head Constable (RM) in BSF and CRPF. But there was disparity in pay scales of RM in Assam Rifles and that of BSF and CRPF. The Havildar (RM) of Assam Rifles were drawing pay scales of ₹975-1660 with effect from 1.1.1986 and replacement scale as given in the 5th Central Pay Commission is ₹3200-4900 per month whereas in CRPF and BSF the Havildar (RM) were drawing pay scale of ₹1200-30-1560-40-2040 per month whose

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replacement scale in the 5th Central Pay Commission is ₹4000-100-6000. It is also pertinent to clarify here that the qualification of Head Constable (RM) in other Central Police Organisations and that of Assam Rifles Havildar (RM) is almost on a par. In order to bring parity with other Central Police Organisations, the Directorate of Assam Rifles proposed to grant Warrant Officers rank (equivalent to Assistant Sub-Inspector) to technical categories including Radio Mechanics vide Assam Rifles Directorate Letter No. A/Pers/45th CPC/Vol III/98/77 dated 6.4.1998. Thereupon the MHA had informed that the case for introduction of Warrant Officers rank to technical categories was pending consideration of the Ministry of Finance.

6. The Gauhati High Court found that there was disparity and directed that the permission granted by the Union of India in its Letter dated 3.3.1998, to redesignate the rank of Havildar (R/M) as Warrant Officer as recommended by the Ministry of Home Affairs shall be

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carried out and the pay scale as admissible to their counterparts in the Central Reserve Police Force (CRPF) and the Border Security Force (BSF) shall be granted from the same date.

7. Union of India took up the matter before the Honourable Supreme Court of India. The Apex Court in ***Union of India Vs. Dineshan K.K.*** (*Supra*), after analysing the pleadings on either side, observed in paragraphs 24 & 25 of the judgment as follows:

"24. xxxx

*(i) all the paramilitary forces, including Assam Rifles are on a par with each other and
(ii) there was apparent "disparity" in the pay scales of the personnel of Assam Rifles with their counterparts in other Central paramilitary forces. In order to rectify this disparity, Director General, Assam Rifles, Petitioner 2 herein, vide his letter dated 18-2-1998 had, in fact, taken up the grievance of the respondent with the Ministry of Home Affairs, inter alia, recommending redesignation of Havildar (RM) Grades I and II of Assam Rifles as warrant*

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officer and for replacement of pay scale of Rs 4000-100-6000 to bring them on a par with their counterparts in other Central Police Organisations.

25. However, the Ministry of Home Affairs vide Letter dated 3-3-1998 while accepting the said proposal had recommended redesignation of Havildar/RM as warrant officer but subject to the condition that the prerevised and revised pay scales of Havildar/RM in other paramilitary forces were identical to the pay scales of Head Constable (RM) in CRPF and BSF. Manifestly, in the instant case, the differentiation in the pay scales of the two paramilitary forces is sought to be achieved not on the ground of dissimilarity of academic qualification or the nature of duties and responsibilities but only on the ground that there was "initial anomaly" in the Fourth Central Pay Commission Report. The counter-affidavit does not even attempt to explain how the case of Havildar/RM in Assam Rifles is different from that of Radio Mechanics in other Central paramilitary forces."

Thereafter, the Apex Court found that there was no reason to deny parity to the personnel of Assam Rifles and held as follows:

"27. Thus, the short question requiring our consideration is whether having admitted in their affidavit referred to hereinabove, the "apparent disparity" and "anomaly" in the pay scales of Radio Mechanics, the administrative authorities, the petitioners herein, could be permitted to perpetuate apparent discriminatory differentiation in the pay scales because of the disparity in prerevised and revised scales of the personnel of Assam Rifles prior to the recommendations of the Fourth Pay Commission, irrespective of the identity of their powers, duties and responsibilities with other paramilitary forces. In our considered opinion, in view of the total absence of any plea on the part of the Union of India that Radio Mechanics in other paramilitary forces were performing different or more onerous duties as compared to the Radio Mechanics in Assam Rifles, the impugned decision of the Government was clearly irrational and arbitrary and thus, violative of Article 14 of the Constitution."

8. Thus the Apex Court upheld the judgment of the Gauhati High Court.

9. The petitioners herein entered service as ORL in the

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rank of Rifleman and they were further promoted to the rank of Havildar. They are seeking the benefit of Ext.P1 judgment, which is rendered following the judgment of the Apex Court in ***Union of India Vs. Dineshan K.K.*** (*supra*). The petitioner in Ext.P1 judgment of the Gauhati High Court were also ORL/Rifleman in identical circumstance. By Ext.P1 judgment the respondents were directed to give appropriate rank and pay scale to the petitioner therein as per the recommendation of 5th Pay Commission and O.M. dated 22.1.1998. While ORL is in Class-III, Radio Mechanic comes under Class-II of the technical wing of the Assam Rifles. After elaborate consideration of the issue, the High Court of Gauhati found apparent disparity in denying the scale of pay to those in Assam Rifles. It is seen that the respondents had taken up the matter before the Supreme Court in SLP (CC) No.6241/2012 and the SLP was dismissed on 2.7.2012. Thereupon the respondents have implemented the judgment Ext.P1. The Director General of Assam Rifles

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has issued order No.1.19012/02/0089/ Prom-
ORL/2013/Adm-I/415 dated 26.12.2012, (produced as
Ext.R1(t) in W.P.(C) No.30022 of 2013 along with the
counter affidavit of the respondents), re-
designating/upgrading the rank of petitioner therein to the
rank of Havildar(ORL) with effect from 16.6.2001 in the pre-
revised pay scale of ₹3200-4900. The petitioner in Ext.P1-
Savendra Sing Chauhan- was a Rifles Man (Rfn/ORL) as in
the case of the petitioners.

10. All the petitioners have submitted representations
before the 2nd respondent seeking the benefit of Ext.P1
judgment, and to redesignate them as Havildars with
revised pay and to grant them all consequential benefits.

11. The respondents have filed a detailed counter
affidavit explaining the rank structure, pay scale, etc. which
prevailed in Assam Rifles as well as in the Paramilitary
Forces. They have admitted that judgment Ext.P1 is already
implemented.

12. I heard the learned Counsel appearing for the petitioners and the learned Assistant Solicitor General of India appearing for the respondents.

13. The relief sought in these writ petitions is seriously opposed by the learned Assistant Solicitor General of India on the ground that the petitioners have already retired from service and hence the benefit of the judgment cannot be extended to them. According to him the judgment has been implemented with respect to the parties to the judgment alone, who were in service at the relevant time and the petitioners who are not in service cannot be treated as similar to those who approached the Gauhati High Court.

14. It is well settled by a catena of decisions of the Apex Court and this Court that the benefit of the judgment in which a common issue is decided, shall be made applicable to all those who are similarly situated, without compelling them to approach court seeking extension of the benefit of the judgment (for eg: ***Somukuttan Nair Vs.***

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State of Kerala & others [1997(1) KLT 601] & ***Union of India Vs. Dineshan K.K.*** [2008 (1) SCC 586]. The attitude of the respondents in compelling the persons like the petitioners to approach the Court, when the issue is one relating to the rank and scale of pay with regard to the personnels in a paramilitary force that too which has been implemented by them cannot be said to be reasonable. As a model employer, the respondents ought to have issued orders extending the benefit of the judgment to persons like petitioners, upgrading/re-designating their rank and granting them revised scale of pay and by disbursing all consequential benefits flowing on such upgradation .

15. Now the objection raised is on the ground that the petitioners are not in service at present. But the judgment Ext.P1 is seen implemented with effect from 16.1.2001, at a time when all the petitioners were in service. There cannot be any valid objection for granting the benefit with effect from that date, when all the petitioners were in service.

Therefore, the objection raised by the learned Assistant Solicitor General of India that the benefit of the judgment cannot be extended to them on that ground is not tenable.

Therefore, they are entitled to the benefit of the judgment and hence to be redesignated with replacement scale of pay in the scale of ₹3200-85-4900. As all of them have retired from service, they are entitled to get their retirement benefits re-fixed on the basis of the pay fixed on such upgradation along with arrears of pensionary benefits. Seeking the benefit of the judgment the petitioners have already approached the 2nd respondent. In the light of the declarations, the 2nd respondent shall consider the representations of each of the petitioners and grant them all benefits on the basis of the upgradation/restructuring and replacement of the scale of pay of the post from which they retired, by re-fixation of their pay and pensionary benefits. They shall be granted the arrears of pensionary benefits, on the basis of such re-fixation of pay and pension, along with

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all other monetary benefits, within a period of 4 months
from the date of receipt of a copy of the judgment.

Sd/-

**P.V.ASHA,
JUDGE.**

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