IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 597 of 2018

1. JC-370400H Nb/Sub/Pharmacist Asu Singh Rathore aged about 57 years S/o (L) Rawat Singh Rathore of 15 Assam Rifles C/o 99 APO, Manipur.

2. JC-370492 Sub Maj/Pharmacist Shashikant Ram aged about 54 years S/o Gorakh Nath Ram of Assam Rifles Training Centre & School.

3. JC-370033 Ex Sub/Pharmacist Grirdhari Singh aged about 64 years S/o (L) Panney Singh of Assam Rifles Training Centre & School.

4. M/370383 Warrant Officer/Pharmacist Jitendra Nath Kalita aged about 59 years S/o (L) Srat Chandra Kalita of 24 Assam Rifles C/o 99APO.

5. M/370529W Warrant Officer/Pharmacist Kishan Lal aged about 58 years S/o (L) Jagat Ram of 29 Assam Rifles, C/o 99 APO.

6. M/370489A Warrant Officer/Pharmacist Arvind Kumar Singh aged about 55 years S/o (L) Rameshwar Singh of 22 Assam Rifles C/o 99 APO.

……. Petitioners

– Versus –

1. The Union of India, represented by Secretary to Ministry of Home Affairs, Government of India, North Block, New Delhi-1.

2. The Director General Assam Rifles, Laitkor, Shillong-Pin No. 793010.

…. Respondents

With

WP(C) No. 598 of 2018

1. M/372458 WO/Pharmacist, AK Tikendrajit Singh aged about 42 years, S/o AK. Nobo Singh of 39 Assam Rifles Pin 932039 C/o-99 APO.

2. M/371125 WO/Pharmacist K. Karthikeyan of 21 Assam Rifles, C/o-99 APO.

3. M/371123 WO/Pharmacist Sarvanan TR of 13 Assam Rifles, C/o-99 APO.

4. M/371358 WO/Pharmacist Kamal Kant of Assam Rifles Composite Hospital, Shokhuvi, C/o-99 APO.

5. M/371455 WO/Pharmacist Santosh Kumar of 32 Assam Rifles, C/o-99 APO.

6. M/371416 WO/Pharmacist Pankaj Seth of ARTC & School, C/o-99 APO.

7. M/371124 WO/Pharmacist Ekramuddin Khan of 8 Assam Rifles, C/o-99 APO.

8. M/371122 WO/Pharmacist Kanchan Kumar Nandi of 7 Assam Rifles, C/o-99 APO.

9. M/371092 WO/Pharmacist Mopada Srinivasu of 27 Assam Rifles, C/o-99 APO.

10. M/371133 WO/Pharmacist Pravat Kumar Ghanti of 23 Assam Rifles, C/o-99 APO.

11. M/371128 WO/Pharmacist Manas Sinha of 36 Assam Rifles, C/o-99 APO.

12. M/371091 WO/Pharmacist S Nageswara Rao of 43 Assam Rifles, C/o-99 APO.

13. M/371134 WO/Pharmacist Sukanta Das of 26 Assam Rifles, C/o-99 APO.

14. M/371137 WO/Pharmacist A A Ubaid of 2 Assam Rifles, C/o-99 APO.

15. M/371139 WO/Pharmacist Debasish Manna of 5 Assam Rifles, C/o-99 APO.

16. M/371088 WO/Pharmacist Nalini Kanta Barik of 20 Assam Rifles, C/o 99 APO.

17. M/371129 WO/Pharmacist Radha Ballav Manna of Assam Rifles Composite Hospital, Shokhuvi. C/o 99 APO.

18. M/371360 WO/Pharmacist Gurpreet Singh of NDRF.

19. M/371423 WO/Pharmacist Sanjib Kumar Rout of HQ DGAR (Medical Branch)

20. M/371463 WO/ Pharmacist Kangkan Kumar Nath of 5 Assam Rifles, C/o 99 APO.

21. M/371459 WO/Pharmacist Kamal Chandra Bezbaruah of 35 Assam Rifles, C/o 99 APO.

22. M/371361 WO/Pharmacist Pawan Deep Singh Sidhu of AR Multi Speciality Hospital.

23. M/371440 WO/Pharmacist Balaram Giri of 46 Assam Rifles C/o 99 APO.

24. M/371441 WO/Pharmacist Abujam Nabachandra Singh of 17 Assam Rifles, C/o 99 APO.

25. M/371456 WO/Pharmacist Sajoy TD of 4 Assam Rifles, C/o 99 APO.

26. M/371457 WO/ Pharmacist Shabu DS of 35 Assam Rifles, C/o 99 APO.

27. M/371460 WO/Pharmacist Sandipan Biswas of 1 Assam Rifles, C/o 99 APO.

28. M/371461 WO/ Pharmacist Laishram Hollendr Singh of 9 Assam Rifles, C/o 99 APO.

29. M/371462 WO/ Pharmacist Sanjay Pradhan of AR Multi Speciality Hospital

30. M/371469 WO/Pharmacist Mam Raj Singh Aswal of 9 Assam Rifles, C/o 99 APO.

31. M/370960 WO/Pharmacist Sashi Kanta Moharana of 31 Assam Rifles, C/o 99 APO.

32. M/371141 WO/Pharmacist Manoz Mongia of 40 Assam Rifles, C/o 99 APO.

33. M/371127 WO/Pharmacist Jitendra Kumar of 3 Assam Rifles, C/o 99 APO.

34. M/371126 WO/Pharmacist Madan Kumar of 38 Assam Rifles, C/o 99 APO.

35. M/371131 WO/Pharmacist BK Pradhan of 28 Assam Rifles

36. M/371136 WO/Pharmacist Nabin Samanta of 34 Assam Rifles

37. M/371132 WO/Pharmacist Abhay Kumar of ARSU.

38. M/371093 WO/Pharmacist Rajiv Kumar of Ex-Serviceman.

39. M/371120 WO/Pharmacist Sajal Roy Ex-Serviceman

40. M/371100 WO/Pharmacist Shri Krishan Ex-Serviceman.

....Petitioners

-Versus-

1. The Union of India, represented by Secretary to Ministry of Home Affairs, Government of India, North Block, New Delhi-1

2. The Director General Assam Rifles, Laitkor, Shillong-Pin No. 793010.

.....Respondents

With

WP(C) No. 149 of 2017

1. M/5005191 Warrant Officer/Ph. V. A. Naidu, S/O V. Narasimham currently posted at 45th Assam Rifles, Mantri Pukhri, P.O.-Mantripukhri, P.S.-Lamphel, Imphal West, Unit Code 932045 C/O 99 APO.

2. M/371098 WO/Ph Amir Singh, currently posted at 11 Assam Rifles, Unit Code 932011 C/On behalf of the 99 APO.

3. M/371441 WO/Ph A.N. Singh, currently posted at 17 Assam Rifles, Unit Code 932017 C/o 99 APO.

4. M/371360 WO/Ph Gurpreet Singh, currently posted at Unit Hospital 7 Bn NDRF, Bebewala Road Bathinda Punjab,Pin 151001.

5. M/5005190 WO/Ph Elangbam Susilo Singh, currently posted DGAR (Medical Branch), Shillong C/o 99 APO.

6. M/5017587 WO/Ph S. Ranabirjit Singh, currently posted at 44 Assam Rifles, Unit Code 932044 C/o 99 APO.

7. M/371423 WO/Ph Sanjiv Kumar Rout, currently posted DGAR (Medical Branch), Shillong C/On behalf of the 99 APO.

8. M/371461 WO/Ph L.H. Singh, currently posted at 19 Assam Rifles, Unit Code 932019 C/o 99 APO.

9. M/371459 WO/Ph K. C Bezbaruah, currently posted at Assam Rifle Composite Hospital, Sukuvi.

10. M/5005189 WO/Ph D. Das, currently posted at 36 Assam Rimes, Unit Code 932036 C/o 99 APO.

11. M/371462 WO/Ph S. Pradhan, currently posted at Assam Rifles Hospital Laikor, Shillong.

12. M/5017413 WO/Ph Utpal Deka, currently posted at 16 Assam Rifles, Unit Code 932016 C/o 99 APO.

13. M/371457 WO/Ph Sabu DS, currently posted at 35 Assam Rifles, Unit Code 932035 C/o 99 APO.

14. M/371463 WO/Ph K. K. Nath, currently posted at 6 Assam Rifles, Unit Code 932006 C/o 99 APO.

15. M/5017419 WO/Ph F. Hussain. currently posted at 18 Assam Rifles, Unit Code 932018 C/o 99 APO.

16. M/371460 WO/Ph S. Biswas, currently posted at 1 Assam Rifles, Unit Code 932001 C/o 99 APO.

17. M/371456 WO/Ph Sajoy T.D. currently posted at 4 Assam Rillcs, Unit Code 932004 C/o 99 APO.

18. M/371361 WO/Ph Prabandip Singh currently posted at 30 Assam Rifles Unit Code 932030 C/o 99 APO.

19. M/371440 WO/Ph Balaram Giri, currently posted at 46 Assam Rifles, Unit Code 932046 C/o 99 APO.

20. M/371469 WO/Ph M. Ashwal, currently posted at 22 Assam Rifles, Unit Code 932022 C/o 99 APO.

....Petitioners

-Versus-

1. The Union of India, represented by Secretary to Ministry of Home Affairs, Government of India, North Block, New Delhi-1

2. The Director General Assam Rifles, Laitkor, Shillong-Pin No. 793010.

.....Respondents

BEFORE
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the petitioners	:	Mr. A. Mohendro, Advocate.
For the respondents	:	Mr. S. Samarjeet, CGC
Date of hearing	:	27.11.2019
Date of Judgment & Order	**:**	**23.01.2020**

JUDGMENT & ORDER
(CAV)

Writ petition Nos.597 and 598 of 2018 have been filed by the petitioners to issue a writ of mandamus directing the respondents to grant Naib Subedar (Nb/Sub) as per parity of grade and rank (Sub Inspector) with other counterparts in CRPF and ITBP which was allowed and upheld by the Hon'ble Supreme Court in the following pay and allowances with effect from their date of joining:

(a) 4th CPC-1400-40-1800-50-2300 (from 17.10.1989 to 31.12.1995)
(b) 5th CPC-5000-9000 (01.01.1996 to 09.10.1997)
5500-9000 (10.10.1997 to 28.03.2004)

and extend the financial benefits to the petitioners.

2. Similarly, W.P.No.149 of 2017 has been filed by the petitioners to issue a writ of mandamus directing the respondents to comply the letter No.1.1571/75 of 2016/Law/2016/987 dated

30.9.2016 issued by the Additional Law Officer for IG Assam Rifles and to implement the approved recommendation of the Fast Track Committee for grant of financial up-gradation under MACP scheme and in regard to the entry Grade Pay of Pharmacist in Assam Rifles and for providing upgradation of the petitioners to the rank of Nb/Sub with Grade Pay of Rs.4,200 to the petitioners with effect from 01.01.2006 as already implemented in other similar situated Central Paramilitary Forces/Central Police Organisation/Central Government Organisations.

3. Since the issue involved in these petitions is one and the same, all the three petitions were taken up together and disposed of by this common order.

4. Brief facts are as follows:

The petitioners in W.P.(C) No.597 of 2018 are all Diploma holders in Pharmacist and the first petitioner is serving as Naib/Subedar (Nb/Sub); petitioner No.2 as Maj Sub; petitioner No.3 is retired as Sub and petitioner Nos.4 to 6 as Warrant Officer (WO) in the Assam Rifles, which is equivalent to Sub Inspector (SI) and Assistant Sub-Inspector (ASI) respectively in the other Central Police Organisation (CPO). The petitioners in W.P.(C) No.598 of 2018 are all

Diploma holders in Pharmacist and petitioner Nos.1 to 37 are serving as Warrant Officer in Assam Rifles which is equivalent to ASI in the other CPO and petitioner Nos.38 to 40 are retired Warrant Officer Pharmacists.

4.1. The Government of India has declared that the CRPF, BSF, ITBP, Sashastra Seema Bal (SSB), Assam Rifles and CISF as Paramilitary Forces and later on designated as Central Armed Police Forces (CAPF). SWP.No.186 of 1998 filed praying for giving parity of rank, grade and pay in the CRPF (Pharmacist) with their counterparts in the Indo Tibetian Border Police of giving the rank of SI equivalent to Nb/Sub. By the judgment dated 19.4.2001, the writ petition came to be allowed and the petitioners therein who are members of CRPF are held entitled to the same scale of pay and rank as has been given to their counterparts in ITBP.

4.2. The judgment dated 19.4.2001 was challenged by the Union of India. By the judgment dated 12.8.2015 in LPASW No.228 of 2002, the Court passed an order thereby giving the rank CRPF (Pharmacist) as SI and pay scale of Rs. 5500-175-9000 as initial rank on account of equal pay for equal work as being granted to the counterparts Pharmacists in ITBP. Challenging the judgment dated

12.8.2015, the Union of India has preferred SLP before the Hon'ble Supreme Court. By the order dated 16.1.2018, SLP No.15552-15553 of 2016 came to be dismissed and directed the judgment of the High Court be implemented by the Union of India within a period of three months.

4.3. Thereafter, the Directorate General (Medical Branch) CRPF issued an order dated 19.4.2018 thereby implementing the order of the Court regarding grant of pre-revised pay scale of Rs.1400-2300 (revised Rs.5500-9000) and the rank of SI/Pharmacist on the pattern and analogy which is being given to the similarly situated Pharmacist in ITBP. On implementation of SI/Pharmacist as entry grade, the SI/Pharmacist, CRPF will be drawing their pay and allowances with effect from their date of joining as under:

(a) 4th CPC-1400-40-1800-50-2300 (from 17.10.1989 to 31.12.1995)

(b) 5th CPC-5000-9000 (01.01.1996 to 09.10.1997)

5500-9000 (10.10.1997 to 28.03.2004)

4.4. The petitioners are registered with the Pharmacist Council constituted under the Pharmacy Act. The petitioners i.e. Warrant Officer (Pharmacist) in the Assam Rifles as well as Pharmacist of CRPF and ITBP perform similar and identical duties.

There is no basis to treat the petitioners separately, nor was any object to be achieved by granting lower pay scale and rank to their counterparts in the CRPF and ITBP. As such the petitioners should be granted the same pay scale of Rs.5500-175-9000 and rank of Naib Subedar, which is equivalent rank of Sub-Inspector as initial rank on account of equal pay for equal work as being granted to counterparts Pharmacists in CRPF and ITBP. Hence, the petitioners have filed the present petitions seeking the relief aforesaid.

5. The case of the petitioners in W.P.(C) No.149 of 2017 is that the Junior Engineer whose qualification is 10th pass with three years Diploma of Civil Engineer are being recruited in the rank of Nb/Sub (Naik Subedar) in the Assam Rifles, whereas in the case of Pharmacist even their qualification is 12th (Science) pass with Diploma plus 3 months training and also who have 10 + 2 + 4 year Degree in Pharmacy was given only the rank of Warrant Officer that also after prolong Court litigation and some of the Havildars/Pharmacists were given Warrant Officer. It is also the case of the petitioners that DGAR offering the rank of Nb/Sub to Nurses who have lesser basic education qualification as compared to Pharmacist serving in the Assam Rifles. Thus, having better basic qualification and longer duration of

professional course the scale for the Pharmacist is lower than the other categories in Assam Rifles. Hence, the petitioners have approached this Court with the relief aforesaid.

6. Respondents filed affidavit-in-opposition stating that W.P.(C) No.820 of 2013 has been filed by one Amir Singh seeking to grant the rank of ASI (Warrant Officer) and to increase the entry Grade Pay of Pharmacist in Assam Rifles as in other CAPFs to that of ASI (WO) in Assam Rifles and also up-gradation from the current rank to Naib Subedar with Grade Pay of Rs.4200/-. By the judgment dated 20.8.2014, the said writ petition came to be disposed of. In compliance of the judgment, a proposal to amend the Recruitment Rules for up-gradation of pay scale and rank structure was submitted to the Ministry of Home Affairs for approval. As per the directions of the Ministry of Home Affairs, an order dated 20.2.2015 was issued to the petitioners therein. Contempt Petition No. 53 of 2015 has been Fled to punish the contemnors for willful and deliberate disobedience of the judgment dated 20.8.2014. On 19.10.2015, the Ministry of Home Affairs was requested to re-examine the matter in terms of the interim order passed in Contempt Petition No. 53 of 2015. By an order dated

17.11.2015, the Ministry of Home Affairs agreed to implement the High Court's order dated 20.8.2014 passed in W.P.(C) No.820 of 2013 and subsequently, an administrative order dated 18.10.2015 re-designating the petitioners therein from Havildar/Pharmacist to Warrant Officer was issued by the Directorate.

7. It is stated that in compliance with the High Court's order dated 2.9.2016 in W.P.(C) No.956 of 2016 another 15 petitioners were re-designated to the post of Warrant Officer (Pharmacist) vide Directorate order dated 23.1.2017. Out of 64 Pharmacists, 35 individuals having education qualification of 10 + 2 with 2 years Diploma in Pharmacy have been upgraded to the rank of Warrant Officer in pre-revised pay scale of Rs.4500 - 7000 with effect from 1.1.1996. Thereafter, the department submitted a proposal to the Ministry of Home Affairs to upgrade and re-designate the remaining 29 Pharmacists having qualification of 10 + 2 as well as matriculate to the rank of Warrant Officer. By an order dated 28.9.2017, the Ministry agreed to re-designate the remaining 29 Pharmacists and an administrative order to that effect was also issued.

8. It is stated that the entry level rank of Pharmacists in the other CRPF and BSF is Assistant Sub-Inspector and is equivalent to the rank of Warrant Officer in Assam Rifles having a minimum educational qualification of 10 + 2 with two years Diploma/Degree in Pharmacy in the pay band of Rs.5200-20200 with Grade Pay of Rs.2800/-. The Pharmacists in Assam Rifles, despite having lower educational qualification than their counterparts in other CRPFS have been granted the benefits of upgraded rank of Warrant Officer (ASI). It is clear from the Recruitment Rules that the Pharmacists category in both the Forces are appointed in the rank of ASI (Warrant Officer in Assam Rifles) and the rank of Sub Inspector (Naib Subedar in Assam Rifles) is a promotional rank, which is subject to acquiring requisite qualification, meeting of medical and disciplinary criteria, seniority and availability of vacancies. Mere passing of upgradation courses does not entitle a person eligible for promotion.

9. It is further stated that the Pharmacists of Assam Rifles are governed by different sets of Recruitment Rules and enjoys various privileges including lower qualification for enrolment and superannuation age of 60 years, whereas Pharmacists of BSF and that of other CPOs have higher qualification as per their respective

Recruitment Rules and their superannuation age is 57 years. Therefore, the Pharmacists of Assam Rifles are not similarly placed as that of other CPOs.

10. According to the respondents, the instant writ petitions are misleading the facts and therefore, the same are not sustainable and also the same are hit by law of estoppel, as the benefits claimed by the petitioners in the present writ petitions have already been granted to them. In the instant writ petitions, the petitioners sought to re-designate the post of Warrant Officer/Pharmacist to the rank of Naib Subedar/Pharmacist (equivalent to Sub Inspector in other CAPF) as initial rank from the date of their enrolment in Assam Rifles on the basic of pay scale of Rs.4500 - 125 - 7000 being merged with the pay scale of Rs.5500 - 175 - 9000. The entry level post of Pharmacist in the other CAPF is in the rank of Assistant Sub Inspector, which is equivalent to the rank of Warrant Officer in the Assam Rifles and the same has already been granted to the petitioners.

11. It is stated that the wilful misconception of the petitioners is evident from the fact that the pay scale of Rs.1400-40-1800-EB-50-2300 was upgraded to the pay scale of Rs.4500-125-7000 and later rationalised to the scale of Rs.5500-175-9000. The petitioners have

never drawn the scale of Rs.1400-2300. The petitioners prayer if accepted, it will create disparity amongst the entry level ranks of Pharmacist in various CAPFS. Therefore, the claim of the petitioners is bereft of merit and liable to be dismissed.

12. As far as W.P.(C) No.149 of 2017 is concerned, the respondents filed counter stating that there are differences in the requisite educational qualification, duties and responsibilities and work load between the post of Havildar/Pharmacist in Assam Rifles and Naib Subedar and there is no justification to compare the petitioners with them. The educational qualification required for entry in Assam Rifles as Pharmacist is 10 + 2 plus 2 years Diploma in Pharmacy in the prerevised pay scale of Rs.4500-7000/- and Grade Pay of Rs.2800/-. In addition, they are granted the Grade Pay of Rs.4200/- on completion of 2 years as non-functional up-gradation. Therefore, there is no discrimination being done to this category. The averments made by the petitioners are misleading and lacks substance. Hence, the writ petition is liable to be dismissed.

13. The learned counsel for the petitioners submitted that the petitioners are seeking equal pay for equal work which was already being granted to the Pharmacists of ITBP and now extended to CRPF

following the judgment of the Hon'ble Supreme Court dated 16.1.2018 arising out of the judgment dated 12.8.2015 in L.P.A.No.228 of 2012.

14. The learned counsel would submit that the qualification of Pharmacists of Assam Rifles is wrong and is causing insult to the petitioners which should be stopped. The Junior Engineer whose qualification is 10th pass with three years Diploma of Civil Engineer are being recruited in the rank of Nb/Sub as initial rank in the Assam Rifles, but whereas in the case of Pharmacist even their qualification is 12th pass with Diploma plus 3 months training and also who have 10+2+4 year Degree in Pharmacy were given only the rank of Warrant Officer that also after the Court's direction.

15. The learned counsel further submitted that the writ petitions have been. filed praying for grant of rank of Naib Subedar as was being granted by Union of India to the Pharmacists in ITBP and the same has been allowed to the Pharmacists of CRPF by the Hon'ble Supreme Court on account of equal pay for equal work which has been implemented in CRPF retrospectively with effect from 1989. Further, non-granting the same pay scale to the Pharmacists of Assam Rifles would amount to discrimination and violation of Article 14 and 16 of the Constitution of India.

16. The learned counsel next contended that the pay scale of 4500-125-7000 was rationalized to 5500-175-9000 by the Government of India. To deny the same to the petitioners, the respondents by themselves are thrusting a rider on their own accord that to get the pay scale of 4500-125-7000 fixed in the rationalised pay scale of 5500-175-9000, the petitioners have to first draw 1400-2300, which seems very strange and reveals a malafide intention of the respondents.

17. The learned counsel added that 5th CPC in Part-B at Serial No.XVIII had recommended a common and Special Pay Scale of 4500-125-7000 for pharmacists including them in common category employee. This pay scale was then rationalised to 5500-175-9000 and thus, the previous pay scale of 1400-2300 of 4th CPC has nothing to do with the rationalisation. The statement of the respondents themselves envisages that they are internally aware of the applicability of the pay scale of 5500-175-9000 to the Pharmacists but egoistically denying superficially.

18. Per contra, the learned counsel for the respondents submitted that the petitioners were enrolled into the Assam Rifles with lesser qualification in comparison with the Pharmacists of other

CRPFS and the same was already perused by this Court in a writ petition filed by a group of Havildar/Pharmacist of Assam Rifles. He would submit that the initial recruitment qualification of Pharmacists of Assam Rifles was Matric whereas the said qualification of other CRPFS was 10+2 examination. As such the petitioners are not similarly situated person as claimed by them.

19. The learned counsel further submitted that after the disposal of W.P.(C) No.820 of 2013, the Recruitment Rules of Pharmacist of the Assam Rifles was amended and that the Recruitment Rules was applicable from the date of publication of Gazette notification dated 1.6.2016. Since the petitioners do not possess similar qualification, they cannot rely upon the earlier order of the High Court of Jammu and Kashmir. In fact, the order of the High Court of Jammu and Kashmir was issued based on no difference in qualifications of their counterparts, whereas it is an admitted fact that the qualification Pharmacist of Assam Rifles is not similarly and equivalent to Pharmacist of CRPF.

20. The learned counsel next argued that the contention of the petitioners that the issue pertains to the year 1996 is bereft of merit and liable to be dismissed for the reason that the Assam Rifles is under

the Ministry of Home Affairs and the organisational structure, command and control are more akin to the Army other than the other police organisations such as CRPF, ITBP, BSF, CISF and SSB. As such no parallel or parity can be drawn between the Assam Rifles and other Central Police Organisations. Therefore, the prayer of the writ petitioners to upgrade their rank and/or to create a promotional avenue in higher rank is not warranted and thus prayed for dismissal of the writ petition.

21. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

22. The grievance of the petitioners are two fold viz.,

(a) To direct the respondents to grant Naib Subedar as per parity of grade and rank (Sub-Inspector) with other counterparts in CRPF and ITBP which was allowed and upheld by the Hon'ble Supreme Court in the pay and allowance with effect from their date of joining as (i) 4th CPC-1400-40-1800-50-2300 from 17.10.1989 to 31.12.1995; (ii) 5th CPC-5000-9000

from 01.1.1996 to 9.10.1997; (iii) 5500-9000 from 10.10.1997 to 28.3.2004; and

(b) Implementation of the approved recommendation of the Fast Track Committee for grant of financial upgradation under MACP scheme and in regard to the entry Grade 8ay of Pharmacist in Assam Rifles and for providing upgradation of the petitioners to the rank of Nb/Sub with Grade Pay of, Rs.4200 to the petitioner with effect from 01.1.2006 as already implemented in other similar situated Central Paramilitary Forces/Central Police Organisation/ Central Government Organisations.

23. On the other hand, it is the say of the respondents that after the implementation of the judgment dated 29.8.2014 passed in W.P.(C) No.820 of 2013, Warrant Officer was introduced in the Pharmacist category and the recommendation of the Fast Track Committee was thus implemented. The scale of 1640-6-2600-75-2900 was upgraded to the scale of Rs.5500-175-9000 and not the pay scale of Rs.1350-2200. The petitioners who were enrolled into the Force during 1997 and subsequent to the order passed in W.P.(C)

No.820 of 2013, the pay scale as recommended by the Fast Track Committee has already been granted to the petitioners from the date of their enrolment. Therefore, the contention of the petitioners is liable to be rejected.

24. The petitioners in W.P.(C) Nos.597 and 598 of 2018 are all Diploma holders in Pharmacist and were now serving as Naib Subedar, Warrant Officer respectively and some of them retired from service. Likewise, the petitioners in W.P.(C) No.149 of 2017 were upgraded from Havildar to Warrant Officer/Pharmacist in the Assam Rifles.

25. The post of Pharmacist in India has been included in common category employees by 5th CPC at Part-B and Chapter 3.8 of 6th CPC defines the common category of staff as those categories that are engaged in similar functions spread across various Ministries/Departments/Organisations of Central Government. The categories are not limited to any specific Ministry or Department and therefore, any decision taken for them impacts other than one Ministry/Department/Organisation. Hence, duties and functions of Pharmacist have been recognized and declared as common.

26. It is admitted by both sides that the petitioners are registered with the Pharmacist Council constituted under the Pharmacy Act and their counterparts in CRPF and ITBP are similarly situated as that of the petitioners. It is also admitted that the Warrant Officer/Pharmacist in the Assam Rifles as well as Pharmacist in CRPF and ITBP perform similar and identical duties.

27. According to the petitioners, when Warrant Officer/Pharmacist in the Assam Rifles and the Pharmacist in CRPF and ITBP are performing the same duties, there is no basis to treat the present petitioners separately by granting lower pay scale. As such the petitioners should be granted the same pay scale of 5500-175-9000 and the rank of Naib Subedar as initial rank on account of equal pay for equal work as being granted to their counterparts Pharmacists in CRPF and ITBP. There is some force in the submission made by the petitioners.

28. It is to be noted that the Directorate General (Medical Branch), CRPF issued an order dated 19.4.2018 thereby implementing the order of the Hon'ble Supreme Court dated 16.1.2018 qua grant of pre-revised pay scale of Rs.1400-2300 (revised Rs.5500-9000) and the rank of Sub-Inspector/Pharmacist on the pattern and

analogy which was given to the similarly situated Pharmacist in ITBP. The relevant portion of the order reads thus:

> *"1. Following ASIs/Pharmacist enlisted as combatised w.e.f. 17/10/1989 (date of combatisation, vide letter No.A.IV-5/89-Med dated 17/10/1989) to 28/03/2004 are hereby granted the rank of Sub Inspector/Pharmacist in the pay scale of 1400-40-1800-50-2300 (pre-revised) at par with its counterpart in ITBP and will wear the rank of Sub Inspector and draw the pay accordingly w.e.f. their date of enlistment as a combatised in the force:*
>
> *.....*
>
> *2. On implementation of Sub-Inspector/Pharmacist as their entry grade, all above mentioned Sis/Pharmacist will draw their pay and allowances w.e.f. their date of joining as under:*
>
> *(i) 4th CPC-1400-40-1800-50-2300 (from 17/10/1989 to 31/12/1995)*
> *(ii) 5th CPC-5000-9000 (01/01/1996 to 09/10/1997)*
> *5500-9000 (10/10/1997 to 28/03/2004)"*

29. The respondents contended that the Assam Rifles has implemented the pay scales as per the recommendations of the Fast Track Committee. All the personnel of Pharmacist category are drawing higher grade of Rs.4200/- as non-functional up-gradation on completion of 2 years of service in the entry Grade Pay of Rs.2800/. Therefore, there is no anomaly in the pay scale of the Pharmacist category.

30. The aforesaid submission of the respondents has been denied by the petitioners and submitted that the petitioners have not been enrolled and governed under Recruitment Rules-2000 and they were enrolled in the year 1996 and therefore, Recruitment Rulés-2000 had not even arisen. The correct Recruitment Rules applicable during 1996-1997 for Pharmacists in Assam Rifles were wilfully vitiated to make Recruitment Rules-2000 incorporating the non-existing illegitimate qualification.

31. According to the petitioners, the three years Diploma is an illegitimate qualification which was erroneously incorporated in the Recruitment Rules of Assam Rifles. Since the said issue is not subject matter of dispute, this Court does not want to elaborate upon the same. The plea of the petitioners in the present matter is implementation of equal pay for equal work as allowed to CRPF and this Court is concerned with the said plea only. However, denial of equal pay for equal work is in violation of Article 14 and 16 of the Constitution of India.

32. The petitioners further contended that though certain candidates have been remustered from other trades, yet they have been remustered against the post of Pharmacists and since then they

are discharging the duties of Pharmacists just similar to as other Pharmacists. If the duties and responsibilities are same, then the denial of equal pay for equal work amounts to discrimination and violation of Article 14 and 16 of the Constitution of India. The respondents admitted that 64 Pharmacists of Assam Rifles have already been re~ designated to the rank of Warrant Officers in the pay scale of 4500-125-7000 retrospectively with effect from 1989. This statement, according to the petitioners, is self-explanatory as the respondents have already accepted the equal status of all the Pharmacists.

33. By placing reliance upon the decision in ***Hukam Chand Gupta v. Director General, ICAR and others, reported in (2012) 12 SCC 666 : (2013) AIR (SC) 547***, the learned counsel for the respondents submitted that the principle of equal pay for equal work has no mechanical application in every case and therefore, the petitioners cannot plead for discrimination.

34. In ***Hukam Chand Gupta***, supra, the Hon'ble Supreme Court held:

> *"18. In State of Tripura v. K.K. Roy [(2004) 9 SCC 65 : 2004 SCC (L&S) 651] this Court again observed tha*t:

> *"6. .... It is not disputed that the other States in India/Union of India having regard to the recommendations made in this behalf by the Pay Commission introduced the Scheme of Assured Career Promotion in terms whereof the incumbent of a post if not promoted within a period of 12 years is granted one higher scale of pay and another upon completion of 24 years if in the meanwhile he had not been promoted despite existence of promotional avenues. "*

19. As noticed earlier, the ACP Scheme was introduced in ICAR by making the necessary provision in the statutory service rules. Admittedly, Shri J.I.P. Madan has been given the benefit under the ACP Scheme. Therefore, the decision taken by the respondent was within the purview of the service rules and cannot be said to be arbitrary. That being so, the claim made by the appellant is clearly misconceived.

20. We are also not inclined to accept the submission of the appellant that there can be no distinction in the pay scales between the employees working at headquarters and the employees working at the institutional level. It is a matter of record that the employees working at headquarters are governed by a completely different set of rules. Even the hierarchy of the posts and the channels of promotion are different. Also, merely because any 'two posts at the headquarters and the institutional level have the same nomenclature, would not necessarily require that the pay scales on the two posts should also be the same. In our opinion, the

prescription of two different pa y scales would not violate the principle of equal pay for equal work. Such action would not be arbitrary or violate Articles 14, 16 and 39-D of the Constitution of India. It is for the employer to categorise the posts and to prescribe the duties of each post. There cannot be any straitjacket formula for holding that two posts having the same nomenclature would have to be given the same pay scale. Prescription of pay scales on particular posts is a very complex exercise. It requires assessment of the nature and quality of the duties performed and the responsibilities shouldered by the incumbents on different posts. Even though, the two posts may be referred to by the same name, it would not lead to the necessary inference that the posts are identical in every manner. These are matters to be assessed by expert bodies like the employer or the Pay Commission. Neither the Central Administrative Tribunal nor a writ court would normally venture to substitute its own opinion for the opinions rendered by the experts. The Tribunal or the writ court would lack the necessary expertise to undertake the complex exercise of equation of posts or the pay scales.

21. In expressing the aforesaid opinion, we are fortified by the observations made by this Court in State of Punjab v. Surjit Singh [(2009) 9 SCC 514 : (2009) 2 SCC (L&S) 696] . In that case, upon review of a large number of judicial precedents relating to the principle of "equal pay for equal work", this Court observed as follows:

"19. .... '19..... Undoubtedly, the doctrine of "equal pay for equal work is not an abstract doctrine and is capable of being enforced in a court of law. But equal pay must be for equal work of equal value. The principle of "equal pay for equal work has no mechanical application in every case. Article 14 permits reasonable classification based on qualities or characteristics of persons recruited and grouped together, as against those who were left out. Of course, the qualities or characteristics must have a reasonable relation to the object sought to be achieved. In service matters, merit or experience can be a proper basis for classification for the purposes of pay in order to promote efficiency in administration. A higher pay scale to avoid stagnation or resultant frustration for lack of promotional avenues is also an acceptable reason for pay differentiation. A mere nomenclature designating a person as say a carpenter or a craftsman is not enough to come to the conclusion that he is doing the same work as another carpenter or craftsman in regular service. The quality of work which is produced may be different and even the nature of work assigned may be different. It is not just a comparison of physical activity. The application of the principle of "equal pay for equal work" requires consideration of various dimensions of a given job. The accuracy required and the dexterity that the job may entail may differ from job to job. It cannot be judged by the mere volume of work. There may be qualitative difference as regards reliability and responsibility. Functions may be the same but the responsibilities make a difference. Thus, normally the applicability of this principle must be left to be evaluated and

determined by an expert body. These are not matters where a writ court can lightly interfere. Normally a party claiming equal pay for" equal work should be required to raise a dispute in this regard. In any event, the party who claims equal pay for equal work has to make necessary averments and prove that all things are equal. Thus, before any direction can be issued by a court, the court must first see that there are necessary averments and there is a proof.' [Ed.: As observed in State of Haryana v. Charanjit Singh, (2006) 9 SCC 321, pp. 335-36, para 19.]"

(emphasis supplied)

In our opinion, the aforesaid observations would be a complete answer to all the submissions made by the appellant.

35. During the course of arguments, the learned counsel for the petitioners has placed reliance on the order dated 10.10.2019 passed by this Court in W.P.(C) No.947 of 2017, wherein the petitioners, who are Riflemen in Assam Rifles have prayed to upgrade them to the rank of Nb/Sub (E&M) and Nb/Sub (B&R), JE as initial rank with the effect from the date of completion of Diploma course and subsequently, to the post of Subedar and Subedar Major respectively. Seeking up-gradation, the petitioners therein have given representations and since the same has not been disposed of by the respondents, this Court directed the respondents to remuster the post

of the petitioners to the rank of Nb/Sub (E&M) and Nb/Sub (B&R), JE as initial rank with effect from the date of completion of Diploma course and to pay all the service benefits, and subsequently to the post of Subedar and Subedar Major.

36. Nothing has been produced by the respondents to show that the petitioners are not entitled to the same scale of pay and ranks given to the similarly placed person in CRPF and ITBP. The benefit of rationalisation as envisaged had to apply uniformly to members of CRPF, ITBP, Assam Rifles, NSG and CISF respectively.

37. Since the petitioners sought to re-designate the post of Warrant Officer/Pharmacist to the rank of Naib Subedar/Pharmacist (equivalent to Sub Inspector in other CAPF) as initial rank from the date of their enrolment in Assam Rifles on the basic of pay scale of Rs.4500 125 7000 being merged with the pay scale of Rs.5500-175-9000, the said exercise cannot be done by this Court as it involves some exercise and it is for the respondent authorities to do the said exercise and consider the claim of the petitioners.

38. From the pleadings produced by both sides, it appears that the petitioners who are members of Assam Rifles are prima facie entitled to the same scale of pay and ranks as has been given to their

counterparts in CRPF and ITBP. As stated supra, since the petitioners sought to re-designate the post of Warrant Officer/Pharmacist to the rank of Naib Subedar/Pharmacist (equivalent to Sub Inspector in other CAPF), taking into consideration the nature of prayer now made by the petitioners, this Court directs the respondent authorities to do the said exercise and consider the claim of the petitioners in respect of grant of Naib Subedar as per parity of grade and rank with other counterparts in CRPF and ITBP more particularly in the light of the judgment of the Hon'ble Supreme Court, supra. If the respondent authorities are of the view that the petitioners are entitled to the grade and rank on a par with other counterparts as claimed, the respondents authorities may extend the said benefits to the petitioners.

39. In the result,

(i) The writ petitions are allowed and the matters are remitted to the respondent authorities to grant the claim of the petitioners and pass orders in the light of the decision of the Hon'ble Supreme Court in respect of grant of Naib Subedar (Nb/Sub) as per parity of Grade and rank (Sub Inspector) with other counterparts in CRPF and ITBP with pay and

allowances with effect from their date of joining as indicated in the writ petitions.

(ii) The said exercise is directed to be completed within a period of eight weeks from the date of receipt of a copy of this order.

(iii) No costs.

JUDGE

FR/NFR

Sushil

WAIKHOM TONEN MEITEI Digitally signed by WAIKHOM TONEN MEITEI Date: 2020.01.24 16:50:54 +05'30'