IN THE HIGH COURT OF MANIPUR
AT IMPHAL

WP(C) No. 741 of 2019

Shri Soraisam Manimacha Singh, No. 5350005VFA, aged about 58 years, S/o (Late) S. Ibobi Singh, resident of Chingamakha Maisnam Leikai, P.O. & P.S. Singjamei, District Imphal West, Manipur-795008.

…….Petitioner

-Versus-

1. The Union of India, represented by its Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi-01;

2. The Director General of Assam Rifles, Ministry of Home Affairs, Laitkhor, Shillong-793010;

3. The Controller of Accounts, Pay & Account Office (Assam Rifles) Shillong, Old DGAR Complex, Laitmukhra, Pin Code-793011.

… *Respondents*

BEFORE
HON'BLE THE CHIEF JUSTICE MR. RAMALINGAM SUDHAKAR
HON'BLE MR. JUSTICE M.V. MURALIDARAN

For the Petitioner	::	Mr. A. Mohendro, Advocate.
For the Respondents	::	Mr. S. Suresh, ASG.
Date of Hearing & Judgment &Order	::	**23.01.2020**

JUDGMENT AND ORDER
(ORAL)

(R.S., C.J.)

Heard Mr. A. Mohendro, learned counsel for the petitioner and Mr. S. Suresh, learned ASG for the respondents.

[2] We find no error in the order of the Tribunal. At the outset we would like to point out that the Tribunal was incorrect in stating that the issue in that case was akin to comparing an apple with another apple. On the contrary it is a case of an orange trying to compare itself with an apple.

[3] The brief facts of the case of petitioner is that he was initially appointed as Veterinary Field Assistant vide letter dated 02.02.1987 by the Director General of Assam Rifles in the pay scale of Rs. 975-1540/- per month. Thereafter, on the implementation of 5th Pay Commission (ROP 1997), the pay scale of the petitioner was revised to Rs. 3200-85-4950 per month under Part "A" of First Schedule 5th CPC (ROP) 1997. Thereafter, the petitioner was placed in the pay scale of Rs. 4000-6000 per month on the basis of Ministry of Home Affairs' letter No. II.27014/16/99-PF.IV dated 28.10.2003. Upto this point, there appears no problem. On 14th March, 2012 first financial upgradation was granted and Assured Career Progression (ACP)

Scheme to the effect from 9th August, 1999 in the scale of pay of Rs. 5000-175-9000 per month. This first financial upgradation was objected to by the pay and accounts office (Assam Rifles) vide their letter No. PAO/AR/NPS-Pay Bill/Misc./2012-13/164 dated 03.01.2013. It is pointed out by the Pay and Accounts that the petitioner was entitled to get ACP from S-7 (4000-100-6000) to S-8 (4000-125-7000) w.e.f. 09.08.1999 and that the grant of higher scale of pay Rs. 5500-175-9000 amounts to jumping two levels i.e. from S-7 to S-10. Against the above proceedings of Pay and Accounts (Assam Rifles) dated 03.01.2013, the petitioner applicant submitted a representation dated 22.11.2013. He also approached the Tribunal and the Tribunal by order dated 30.03.2015 directed the authorities to dispose of the petitioner's representation. The representation dated 22.11.2013 was disposed of on merits rejecting it in the proceedings No. 1.4015/Rec/Adm-IV(Civ)/SMS/2015/715 dated 22.05.2015. While rejecting the representation the authority cancelled the financial upgradation of the petitioner applicant to Rs. 5500-175-9000. The petitioner aggrieved by it approached the Tribunal. The Tribunal rejected the application by the impugned proceedings and hence the writ petition has been filed.

[4] The contention before the Tribunal and before this Court is that the Assam Rifles is like any other Central paramilitary forces and that the cadre of the Veterinary Field Assistant in Assam Rifles is the same as the Veterinary Field Officer in other paramilitary forces like SSB (Shastra Suraksha Bal). Therefore, when a Veterinary Field Assistant of SSB paramilitary cadre can get a higher pay scale of Rs. 5500-175-9000 the petitioner is also entitled to the same. It was rightly granted as the Assam Rifles and SSB which are falling under the Ministry of Home Affairs. Hence, the original financial upgradation as correct.

[5] The respondents herein and the respondents before the Tribunal are one and the same. They took a very specific stand that in so far as SSB is concerned there is a designated promotion post of Deputy Field Officer which carries a higher pay scale whereas in the case of the petitioner Veterinary Field Assistant it is a stand alone/Isolated post with no defined promotional post and is not a Feeder Post. There can be no comparison between the two. Therefore, the erroneous financial upgradation was corrected and petitioner was granted the next higher standard/common pay scale as indicated in Annexure-2 of Assured Career Progression Scheme, 9th August, 1999 i.e., from

S-7 to S-8. (Ref. to Notification dt. 30/9/1997) Annexure-II part A of the Schedule. The specific stand recorded in the impugned order at para 6 and 7 is as follows :-

> *"6. That, it is submitted that the Veterinary Field Assistant of the Assam Rifles is an isolated post and the said post is categorized as one of the common category post of Veterinarian/Veterinary Staff along with (a) Entry grade for all posts requiring a degree of B.V.Sc. and Animal Husbandry with registration in the Veterinary Council of India as the minimum qualification, (b) Assistant Veterinarian/ Biological Assistant/ Zoological Assistant possessing B.Sc. Degree in Biological Sciences, (c) Stockman/ Compounder/ Stock Assistant/ Animal Husbandry Asst/ Dresser with Matriculate with 2 years certificate course + 1 year experience, (d) Para Veterinary Attendant including Animal Attendant/Bull Attendant/Cattle Attendant/ Gyce/ Camel Attendant/Shepherds with minimum qualification of 8th pass + 2 years experience of handling animals.*
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> *7. That in view of the Para No.55:296 of Central Pay Commission Report, the clarification made vide Office Memorandum of the Govt. of India, Department of Personal and Training No.35034/1/97-Est (D) Vol IV dated 10th February 2000 and verified by the Assistant Controller of Accounts, Pay & accounts Office, (Assam Rifles),*

Ministry of Home Affairs, I am entitled to the benefit of ACPs I grant at the pay scale of Rs. 1,400-2300/- to the scale of pay of Rs. 4000-100-6000/- and as such my pay scale was rightly upgraded to the scale of Rs. 5500-175-9000/-

In the light of the above facts and circumstances stated above, it is therefore requested that you may be kind enough to consider my humble representation and revoke the letter No.PAO/AR/NPS-Pay Bill/Misc/2012-13/164 dated 03 January 2013 issued by the Assistant Controller of Accounts, Pay & Accounts Office, (Assam rifles), Ministry of Home Affairs and grant the scale of pay of Rs. 5500-175-9000/- in the interest of justice.

[6] Condition for grant of benefits under the ACP Scheme under Annexure-A-I paras 7 and 8 read as follows :-

*"7. Financial upgradation under the Scheme shall be given to the next higher grade in accordance with the existing hierarchy m a cadre/category of posts without creating true new posts for the purpose. However, in case of isolated posts, in the absence of defined hierarchical grades, financial upgradation shall be given by the Ministries/Departments concerned in the immediately next higher (**standard/common**) pay-scales as indicated in Annexure-II which is in keeping with Part-A of the First Schedule annexed to the Notification dated September 30, 1997 of the Ministry of Finance (Department of Expenditure). For instance, incumbents of isolated posts in the pay-scale S-4, as*

indicated in Annexure-ll, will be eligible for the proposed two financial upgradations only to the pay-scales S-5 and S-6. Financial upgradation on a dynamic basis (i.e. without having to create posts in the relevant scales of pay) has been recommended by the Fifth Central Pay Commission only for the incumbents of isolated posts which have no avenues of promotion at all. Since financial upgradations under the Scheme shall be personal to the incumbent of the isolated post, the same shall be filled at its original level (pay-scale) when vacated. Posts which are part of a well-defined cadre shall not qualify for the ACP Scheme on 'dynamic' basis. The ACP benefits in their case shall be granted conforming to the existing hierarchical structure only;

8. The financial upgradation under the ACP Scheme shall be purely personal to the employee and shall have no relevance to his seniority position; As such, there shall be no additional financial upgradation for the senior employee on the ground that the junior employee in the grade has got higher pay-scale under the ACP Scheme;"

[7] The standard/common pay scale in so far as petitioner is as follows :-

"STANDARD/COMMON PAY-SCALES

As per Part-A of the First Schedule Annexed to the Ministry of Finance (Department of Expenditure) Gazette Notification dated September 30, 1997

[REFERENCE PARA 7 OF ANNEXURE I OF THIS OFFICE MEMORANDUM]

S.No.	Revised pay-scales (Rs)	
1.	S-1	2550-55-2660-60-3200
2.	S-2	2610-60-3150-65-3540
3.	S-3	2650-65-3300-70-4000
4.	S-4	2750-70-3800-75-4400
5.	S-5	3050-75-3950-80-4590
6.	S-6	3200-85-4900
7.	S-7	4000-100-6000
8.	S-8	4500-125-7000
9.	S-9	5000-150-8000
10.	S-10	5500-175-9000
11.	S-12	6500-200-10500
12.	S-13	7450-225-11500
13.	S-14	7500-250-12000
14.	S-15	8000-275-13500
15.	S-19	10000-325-15200
16.	S-21	12000-375-16500
17.	S-23	12000-375-18000
18.	S-24	14300-400-18300

[8] As per ACP Scheme 9-8-99 the petitioner is entitled to move from S-7 to S-8 and not from S-7 to S-10 as per the above tabulation. This error has been corrected.

[9] The Tribunal accepted the objection of the respondent and affirmed the view expressed in the impugned proceedings dated 22.05.2015 rejecting the representation. The wrong upgradation granted was cancelled. While holding so, the Tribunal was of the view that the petitioner applicant who was under the cadre of Assam Rifles is was governed by the ACP Scheme 9th August, 1999. Petitioner satisfies all the parameters for financial upgradation as per Annexure-I and Annexure-II. Petitioner therefore cannot compare himself with another person

of the SSB Department even though he may be designated as an Assistant Veterinary Officer of that department. This finding is correct on account of the fact that in SSB there is a specific higher post from Assistant Veterinary Officer to Deputy Field Officer whereas in the case of the petitioner there is no promotional post. It is isolated and stand alone and therefore financial upgradation as specified in Annexure-II on the terms of the ACP Scheme specified at paras 7 and 8 was applied. This is the difference between the orange and the apple. We therefore find no error in the reasoning of the Tribunal.

[10] One another plea taken by Mr. A. Mohendro, learned counsel for the petitioner is that a clarification was issued in respect of Annexure to the ACP Scheme on 10.02.2000 and on that basis the following is highlighted by the learned counsel to plead for higher financial upgradation :-

10.	*For isolated posts, the scale of pay for ACPS as recommended by the Pay Commission may be implemented and not the standard/common pay-scales indicated vide Annexure-II of the Office Memorandum dated August 9, 1999.*	*For isolated posts, the scales of pay for ACPS shall be the same as those applicable for similar posts in the same Ministry/Department/Cadre except where the Pay Commission has recommended specific pay-scales for mobility under ACPS. Such specific cases may be examined by respective Ministries/Departments in consultation with the Department of Personnel and Training. In the case of*

		remaining isolated posts, the pay-scales contained in Annexure-II of the Office Memorandum dated August 9, 1999 (ACPS) shall apply.

[11] The learned counsel relies upon the first portion of the clarification to say that for similar posts or the isolated posts ACPS shall be the same. This is correct if pay commission has not recommended specific pay scales for mobility under ACPS. In this case there is Annexure-II. Further, it is clearly stated that Annexure-II of Office Memorandum dated 9th August, 1999 shall apply in the case of isolated post in general.

[12] The petitioner in this case cannot plead for himself a benefit except under the ACP Scheme dated 9th August, 1999 and the 30th September, 1997 Notification as he falls under the said scheme. The Tribunal was justified in dismissing the application for all the above reasons. We find no merit in the plea of the petitioner.

[13] Accordingly, finding no merit the writ petition is dismissed.

JUDGE **CHIEF JUSTICE**

FR/NFR

Sushil

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