

THE MEGHALAYA HIGH COURT

WP(C) No.188/2012

Mr.Radhakrishnan Nair,
Seconds-in-Commandant (2IC)
H.Q. Inspector General Assam Rifles (South)
[H.Q. I.G.A.R. (S)]
C/o 99 APO, PIN-932555. :::: Petitioner

-Vs-

1. Union of India,
represented by the Secretary to the Govt. of India,
Ministry of Home Affairs, North Block, New Delhi-110001.
2. The Director (Personnel),
Ministry of Home Affairs, North Block, New Delhi-110001.
3. Director General Assam Rifles,
Mahanideshalaya (The Directorate General,
Assam Rifles, Shillong, Meghalaya PIN-793011.
4. The Inspector General, Assam Rifles (South)
[H.Q. I.G.A.R. (S)], C/o 99 APO, PIN-932555.
5. Mr. Diwan Singh,
Commandant H.Q. 22 Sector, Assam Rifles,
C/o 99 APO, PIN-932422.
6. Mr. C.K. Gurung,
Commandant H.Q. 5 Sector, Assam Rifles,
C/o 99 APO, PIN-934825.
7. Mr. A.K. Rana,
Commandant Inspector General Assam Rifles (South),
C/o 99 APO, PIN-932555.
8. Mr. N.K. Gurung,
Seconds-in-Command (2IC),
13th Battalion, Assam Rifles,
C/o 99 APO, PIN-932013.
9. Mr. Om Prakash,
Seconds-in-Command (2IC),
17th Battalion, Assam Rifles,
C/o APO, PIN-932017.

10. Mr. Subrata Deb,
Seconds-in-Command (2IC),
19th Battalion, Assam Rifles,
C/o 99 APO, PIN-932019.
11. Mr. Ganesh Kumar,
Seconds-in-Command (2IC),
the Assam Rifles Training Centre & School,
Dimapur, C/o 99 APO PIN-900300.
12. Mr. Rikhi Ram Sharma,
Seconds-in-Command (2IC),
22nd Battalion, UN MSN-11,
C/o 99 APO, PIN-932022.
13. Mr. Prasad Thapa,
Seconds-in-Command (2IC),
38th Battalion, Assam Rifles,
C/o 99 APO, PIN-932038.
14. Mr. C.G. Baby,
Seconds-in-Command (2IC),
26th Battalion, Assam Rifles,
C/o 99 APO, PIN-932026.
15. Mr. D.S. Negi,
Seconds-in-Command (2IC),
32nd Battalion, Assam Rifles,
C/o 99 APO, PIN-932032.
16. Mr. M.S. Sillen,
Seconds-in-Command (2IC),
40th Battalion, Assam Rifles,
C/o 99 APO, PIN-932040.

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. HG Baruah, Adv
For the Respondents	:	Mr. SC Shyam, Sr. Adv. Mr. B Deb, Adv. None appears for the respdt.No.5-16.
Date of hearing	:	18.03.2014
Date of Judgment & Order	:	27.03.2014

27.03.2014

JUDGMENT AND ORDER

The main relief sought for in the present writ petition filed by the petitioner, Second-in-Command, Assam Rifles are that:- (i) The petitioner on regaining SHAPE-I will retain his original seniority and accordingly, praying for a direction to the respondent authorities to prepare afresh Gradation or Seniority List of the Seconds-in-Command; (ii) for a direction to the respondent authorities to promote the petitioner to the post of Commandant w.e.f. the date his juniors had been promoted to the post of Commandants i.e. w.e.f. 01.04.2012; (iii) for quashing the impugned Seniority List or Gradation List of the Seconds-in-Command dated 05.11.2011, in which the name of the petitioner had been shown below the Assistant Commandants of 1997 batch and also the impugned Seniority List of the Seconds-in-Command dated 01.05.2012, in which the name of the petitioner had been shown below the Assistant Commandants of 1997 batch and (iv) quashing the impugned Message No. A 1736 dated 30th day of April, 2012 and the impugned Message No. A 1450 dated 4th day of July 2012 and other relief.

2. Heard Mr. HG Baruah, learned counsel for the petitioner and Mr. SC Shyam, learned senior counsel assisted by Mr. B Deb, learned counsel appearing for the respondents No.1-4. None appears for the respondents No.5-16 without showing any cause inspite of proper service of notice of the present writ petition to them.

3. **Factual Background:-**

The petitioner was initially enrolled in Assam Rifles on 30.05.1979, and he was commissioned as Assistant Commandant w.e.f. 08.02.1995. In the year 2000, the petitioner was posted in the 25th Battalion, Assam Rifles, Ukhrul, Manipur to fight/combat against the militants/armed

hostiles etc. and while operating in the insurgency affected area of Ukhrul, Manipur, because of the extreme hazardous operating field, the petitioner came under low medical category. The Directorate General, Assam Rifles by a Message No. A 1422 dated 01.04.2002, promoted the petitioner (in the medical category P-2 permanent) to the post of Deputy Commandant along with his batch mates but by another Message No. A 1465 dated 23.04.2002, denied the said promotion till he regains medical category SHAPE-I. Promotion to the post of Deputy Commandant along with his batch mates as early as April, 2002 was denied to the petitioner because of low medical category. After a gap of 3(three) years, by a Message No. A 1402 dated 11.04.2005, the petitioner was promoted to the rank of Deputy Commandant in the said existing low medical category, P-2 permanent w.e.f. 01.04.2005.

4. The petitioner who was promoted to the rank of Deputy Commandant along with his batch mates on 01.04.2002 was not actually allowed to hold the rank of Deputy Commandant because of low medical category but only on 01.04.2005, the petitioner was promoted to the post of Deputy Commandant. It is an admitted fact of both the parties that the petitioner was commissioned as Assistant Commandant on 08.02.1995. The Commandant 32nd Battalion, Assam Rifles, under whom the petitioner was working as Deputy Commandant, under his letter dated 15.02.2008, requested the Directorate General, Assam Rifles to make necessary amendment of the seniority list so as to give seniority to the petitioner along with his batch mates, who were promoted to the rank of Deputy Commandant w.e.f. 01.04.2002 as the petitioner was promoted to the post of Deputy Commandant along with his batch mates on 01.04.2002 but denied due to low medical category and again, he had been promoted on 01.04.2005. The Commandant 32nd Battalion, Assam Rifles in his said letter

dated 15.02.2008 also mentioned that the petitioner had given his seniority wrongly below the officers commissioned as Assistant Commandants w.e.f. 22.01.1997 and the seniority position of the petitioner should be along with the batch mates of 1995 inasmuch as, the petitioner was commissioned as Assistant Commandant on 08.02.1995.

5. In response to the said letter of the Commandant 32nd Battalion, Assam Rifles dated 15.02.2008, the Directorate General, Assam Rifles vide Message No. A 2640 dated 25.02.2008, accepted the requests of the Commandant 32nd Battalion, Assam Rifles and informed him that the records of the Directorate had been amended and asked the Commandant 32nd Battalion, Assam Rifles to amend his record. For easy reference, the said letter of the Commandant 32nd Battalion, Assam Rifles dated 15.02.2008 and the said Message No. A 2640 dated 25.02.2008 of the Directorate General, Assam Rifles are quoted below:-

“32 Assam Rifles
PIN-932032
C/o 99 APO

A/1120/2008/1286

15th Feb 2008.

*Mahanideshalaya Assam Rifles,
Directorate General Assam Rifles
(A Branch), Shillong-793001.*

SENIORITY LIST: AR CADRE OFFICERS

1. Ref your Dte letter No.A/IV-A/198-97/2008 dated 30 Jan 2008.

2. On Scrutiny of gradation list in respect of AR Cadre Officer, it is observed that AR-202 by Comdt. Radha Krishnan Nair of this Unit was commissioned as Asst.Comdt. on 08 Feb 1995. The Officer was promoted to Dy. Comdt. alongwith his batch mates on 01 Apr 2002, but denied due to LMC. Again he has been promoted on 01 Apr 2005. But Officer has been given seniority below the officers who commissioned as Asst.Comdt. w.e.f. 22 Jan 1997.

3. As per Ministry of Home Affairs letter No.I.19013/1/2002/MS dated 09 Sep 2002, the seniority of the officer should have been 01 Apr 2002.

4. You are requested to issue necessary amendment at your end and given the seniority of AR-202 by Comdt. Radha Krishnan Nair along with his batch mates, who were promoted to the rank of Dy. Comdt. w.e.f. 01 Apr 2002.

5. An early action on the subject is requested.

Sd/-
(Sahil Kochhar)
Maj
Adjt
for Comdt.

NR 14/25

DE SHG SER NO 250641

RR DTG 251800

FROM DGAR

TO 32 AR

INFO 9 SECTOR

BT

UNCLAS A 2640

SENIORITY LIST AR CADRE OFFRS [.] REF YOUR LETTER NO.A/1120/2008/1277 DT 14 FEB 2008 AND A/1120/2008/1286 DT 15 FEB 2008 [.] RECORD OF THIS DTE HAS BEEN AMENDED [.] AMEND YOUR COPY ACCORDINGLY.

BT

CFN A 2640

SD AKR

TOR 2250/25/SHG/POL/MP
25KTM1"

6. Because of the failure to correct the seniority position of the petitioner for placing him along with his batch mates of 1995 inspite of the said Message of the Directorate General, Assam Rifles dated 25.02.2008 (Annexure-V to the writ petition) the petitioner was not promoted along with his batch mates to the rank of Second-in-Command. In the month of October, 2009, the petitioner was upgraded to medical category SHAPE-I. The Directorate General, Assam Rifles by a Message No. A 1734 dated 13.05.2010, promoted the petitioner to the post of Second-in-Command in the normal DPC w.e.f. 01.04.2010 subject to remaining in medical category SHAPE-I. The Instructions for medical examination and classification of personnel serving in the CPMF issued by the Ministry of Home Affairs vide Ministry's U.O. No.145024/3/2004-Pers-II dated 31.07.2007, had been followed by the respondent authorities (Annexure-XXII to the writ petition) in the promotion of the officers. Para 4.13 "the mandatory for the purpose of promotion" clearly provides that the officers, who had been promoted subject to attaining SHAPE-I medical category shall retain his seniority position as and when the officers regain SHAPE-I medical category. Para 4.13 read as follows:-

"4.13 Mandatory for the purpose of promotion:

Medical Category SHAPE-I will be an essential condition for promotion of all combatised personnel in all groups/ranks/cadres in the CPMFs. In case of those, whose illness is of permanent nature and who are not SHAPE-I, they will be considered for promotion by DPC but will be declared unfit for promotion, even if, they are otherwise fit for promotion. In case of those personnel, whose illness is of temporary nature after considering their cases for promotion alongwith others, if they are otherwise fit, the DPC will grade them as 'fit for promotion' subject to attaining SHAPE-I medical category. As and when they regain the SHAPE-I medical category, they will be promoted as per recommendations of DPC. But they will not be entitled to back wages. However, they will retain their seniority."

7. In the Seniority List of the Seconds-in-Commands, Assam Rifles dated 01.05.2012 (Annexure-XV to the writ petition), the name of the petitioner had been shown below the Assistant Commandants commissioned in the year 1997. It is further case of the petitioner that as the petitioner had regained SHAPE-I medical category, he shall retain his seniority along with his batch mates of the year 1995 and his name in the Seniority List should be above the respondent No.8 Mr. N.K. Gurung (1997 batch) and below Somaranjan MK (1995 batch). The relevant portion of the impugned Seniority List of the Second-in-Commands, Assam Rifles dated 01.05.2012 is quoted below:-

SENIORITY LIST OF SECOND-IN-COMMAND (ASSAM RIFLES)
01 MAY 2012

Sr. No .	AR No.	Name	Educa tional quali fication	Date of birth	Asst. Comdt. w.e.f.	Dy Comdt. w.e.f.	2IC w.e.f.	Com dt. W.e.f .	Promoti on exam passed	Date of confirma tion	Fmn/Unit
1.	199	Somaranjan MK	SSLC	26-04-56	08-02-95	01-04-02	09-10-06	-	XYZ	20-09-90	20 AR
2.	207	N K Gurung	BA	11-01-62	22-01-97	01-04-04	01-04-08	-	XYZ	01-01-96	13 AR
3.	208	Om Prakash	HSLC	03-03-53	22-01-97	01-04-04	01-04-08	-	XYZ	01-10-96	17 AR
4.	209	Subrata Deb	BA B.Ed	25-04-54	22-01-97	01-04-04	01-04-08	-	XYZ	14-01-92	CPFCS (19 AR)
5.	272	Ganesh Kumar	BA	20-05-58	22-01-97	01-04-04	01-04-08	-	XYZ	14-10-92	ARTC & S
6.	210	Rikhi Ram Sharma	HSLC	10-03-61	17-04-98	01-04-05	01-04-09	-	XYZ	01-07-91	22 AR UN Msn-II
7.	211	Prasad Thapa	HSLC	10-11-58	17-04-98	01-04-05	01-04-09	-	XYZ	11-10-94	38 AR
8.	212	C G Baby	PU	21-11-57	17-04-98	01-04-05	01-04-09	-	XYZ	28-07-94	26 AR
9.	213	D S Negi	MA	04-08-59	17-04-98	01-04-05	01-04-09	-	XYZ	14-03-96	32 AR
10.	203	M S Sillen	Matric	05-11-56	22-01-97	01-04-06	01-04-09	-	XYZ	20-07-94	40 AR
11.	202	R K Nair (writ petitioner)	SSLC	16-11-57	08-02-95	01-04-05	01-04-10	-	XYZ	14-03-96	IGAR (S)
12.	214	Mani Prasad	HSLC	26-09-57	01-10-99	01-04-06	01-04-11	-	XYZ	10-11-94	ARTC & S
13.	215	A K Pandey, SM	XII	14-01-63	01-10-99	01-04-06	01-04-11	-	XYZ	22-11-94	7 AR

8. Headquarters Inspector General of Assam Rifles (South) under his letter being No.1539/A/Offr/2012/750 dated 03.08.2012, requested the Directorate General, Assam Rifles for correcting the seniority position of the petitioner as the petitioner had regained SHAPE-I since October, 2009 and also to consider the petitioner for promotion to the next rank as his seniority had been approved by the H.Q. DGAR (Branch) vide letter dated 25.02.2008 with his batch mates (1995) (Annexure-V to the writ petition. Copy of the said letter dated 03.08.2012 is available at Annexure-XXV to the additional affidavit of the petitioner and reads as follows:-

*“Headquarters
Inspector
General
Assam Rifles
(South)
Pin – 932 555
c/o 99 APO*

1539/A/Offr/2012/750 03 Aug 2012

*Mahanideshlaya Assam Rifles
Directorate General Assam Rifles
(MS Branch)
Shillong – 11*

**SENIORITY LIST : ASSAM RIFLES OFFRS
FOR THE YEAR 2012**

1. *Ref:-*

(a) HQ IGAR(S) letter No. 1539/offr/2012/542 dated 27 Jun 2012

(b) DGAR letter No. I.12030/1/2011 – MS dated 04 Jul 2012

2. Dated quoted in para 1 of your letter does not tally with our letter mentioned in para 1 (a) above. As per Para 4.13 of MHA letter I.45024/3/2004-Pers-II dated 31 Jul 2007 clarified that, offrs who were placed under LMC will get back their seniority after being upgraded to SHAPE I.

3. *Mecial category of 2IC Radhakrishnan Nair is **SHAPE I** since Oct 2009, and his seniority has been approved by HQ DGAR (A branch) vide their sig No. A 2640 dated 25 Feb 09 and MS Branch letter No I.19030/1/2008-MS/02 dated 27 Apr 2011.*

4. *In view of above you are requested to reconcile the facts at your end and rectify the status of the offr concern for his promotion to next rk.*

Sd/-
(GP Keshav)
Maj
SO 1 A
For IGAR"

The President of India in exercise of the powers conferred by proviso to Article 309 of the Constitution of India makes the rules called "Assam Rifles Group 'A' Combatised Posts Recruitment (Amendment) Rules, 2003" and under that Rules, for promotion from amongst the Second-in-Commands of Assam Rifles to the Commandants, there shall be minimum qualifying service of 2(two) years as Second-in-Command and total 15(fifteen) years Group-A service provided they are following acceptable medical category SHAPE-I or relaxation given by the Government to certain categories from time to time. The said Recruitment Rules was notified by Notification No.G.S.R. 896(E) New Delhi dated 20.11.2003 and reads as follows:-

"MINISTRY OF HOME AFFAIRS

NOTIFICATION

New Delhi, the 20th November, 2003

G.S.R.. 896 (E) – *In exercise of the powers conferred by the proviso 309 of the Constitution, the President hereby makes the following rules, further to amend the Assam Rifles Group 'A' Combatised Posts Recruitment Rules, 2003.*

1. (1) *These Rules may be called the Assam Rifles Group 'A' Combatised Posts Recruitment (Amendment) Rules, 2003.*

(2) *They shall come into force on the date of their publication in the Official Gazette.*
2. *In the schedule to the Assam Rifles Group 'A' Combatised Posts Recruitment Rules, 2001:-*

- (a) against serial number 4 relating to the post of Commandant:-
- (i) In column 5, for the entry, the following entry shall be substituted, namely:-
“Not applicable for Army deputationist selection post for Departmental Promotee.
- (ii) In column 12, for item (a) and the entry thereto, the following shall be substituted namely:-
“(a) By promotion from amongst the Second-in-Commands of Assam Rifles who have minimum eligible service of 2 years as Second-in-Command and total 15 years Group – ‘A’ service provided they are following acceptable medical category SHAPE-1 or relaxation given by the Government to certain categories from time to time.
- (b) against serial number 10 relating to the post of Second-in-Command:-
- (i) in column 5, for the entry, the following entry shall be substituted namely:-
“Not applicable for Army deputationist, Selection post for Departmental Promotees”
- (ii) in column 12, for item (a) and the entry thereto, the following shall be substituted namely:-
(a) Have a minimum service of 2 years as Deputy Commandant on regular basis and total (sic) year service in Group A and
- (c) against serial number 16 relating to the post of Deputy Commandant:-
- (i) in column 5, for the entry, the following entry shall be substituted namely:
“Not applicable for Army deputationist Selection post for Departmental Promotees.
- (ii) in column 12, for item (a) and the entry thereto, the following shall be substituted namely:
“Having a minimum service of 6 years as Assistant Commandant on regular basis and total 6 years service in Group – A and”

[F.No. 1.11011/LOAR/MS/2003]
 DURGA SHANKER MISHRA, Director (Personnel)

The principal Rules i.e., the Assam Rifles Group –A Combatised Posts Recruitment Rules, 2001 were notified vide G.S.R. 34 dated the 10th January, 2001.”

9. The Department of Personnel and Training Establishment (RR), Ministry of Personnel Public Grievances and Pensions (Department of Personnel and Training), Govt. of India had agreed to the proposal for relaxation of some days of the qualifying service of the petitioner and 8(eight) others (i.e. respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung, respondent No.7 Mr. A.K. Rana and respondent No.8 Mr.N.K. Gurung) as Seconds-in-Command on 01.01.2012 for considering their promotions to the post of Commandants of Assam Rifles for the vacancy year 2012-13. For easy reference, the relevant portion of the decision of the Department of Personnel & Training Establishment (RR) for relaxation of the qualifying service of the petitioner and 8(eight) others (i.e. respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung, respondent No.7 Mr. A.K. Rana and respondent No.8 Mr.N.K. Gurung) is quoted below:-

***“Department of Personnel & Training
Establishment (RR)***

Dy.No. 20720/CR/12

Reference notes at pre-page.

2. *MHA has sent proposal for relaxation of eligibility service in the grade of Commandants (PB-4 GP Rs. 8700) in Assam Rifles. The proposal was examined earlier at p.7/N & p.9/N. MHA was requested to give a copy of decision where 7 newly created posts of Commandant which are to be filled by promotion of officer's rank of Second-in Commandants tenable by Assam Rifles Cadre Officers as per Peace Establishment at F/E.*

3. *It is submitted that as per RRs. 2001, out of 50 posts of Commandants, 39 posts are tenable by Army offices on deputation and remaining 11 posts are tenable by Assam Rifles Cadre Officers to be filled by promotion of 2IC having eligibility service of 2 years in the grade and a total of 15-years Grade 'A' Service. The 7 posts of Commandant have been created in 2003 for Peace Establishment and are being filled up by MHA from the Assam Rifles Cadre Officers.*

4. MHA has sought relaxation of eligibility service of 22 days in Gr. 'A' posts in respect of Shri Diwan Singh and 7 others 2IC and 92 days in the present rank in respect of Shri. R.K.Nayar, 2IC.

5. As the relaxation in eligibility service sought is less than 6 months we may agree to the proposal for relaxation of requisite eligibility service as on 1.1.2012 in respect of Shri Diwan Singh and 8 others 2IC of Assam Rifles for considering promotion to the post of Commandants, Assam Rifles for the vacancy year 2012-13.

Submitted please.

Sd/-
(Rajiv R. Singh)
US (RR – II)
28/3/12

Sd/-
Sd/-“

10. Despite the said approval to the proposal for relaxation of some days of the petitioner's service in completing the qualifying service of 2 (two) years as Second-in-Command as on 01.01.2012 and also the orders mentioned above for correcting the Seniority List for placing the petitioner with his batch mates i.e. 1995, the case of the petitioner was not considered for promotion to the post of Commandants, Assam Rifles for the vacancy year 2012-13; but his juniors were considered and promoted to the rank of Commandants by the impugned Message dated 30.04.2012 issued by the Directorate General, Assam Rifles (Annexure-XIII to the writ petition). By the said impugned Message dated 30.04.2012, the respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung and respondent, No.7 Mr. A.K. Rana and respondent No.8 Mr. N.K. Gurung were promoted to the rank of Commandants, Assam Rifles. Accordingly, the petitioner filed this present writ petition challenging the impugned Message dated 30.04.2012.

11. The respondents No.1-4 filed joint affidavit. Justifications for not considering the case of the petitioner when his juniors i.e. respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung, respondent No.7 Mr.

A.K. Rana and Mr. N.K. Gurung were promoted to the post of Commandants are mentioned in Para 11 of the affidavit-in-opposition which read as follows:-

*“11. That with regards to the statements made in para 10, it is respectfully submitted that respondent Numbers 5, 6 & 7 had rendered 03 years 09 months service in the rank of 2IC whereas the petitioner (R K Nair) had completed 01 year 09 months as on 01 Jan 2012 for which the petitioner stands junior to the respondent Numbers 5, 6 and 7 in the name of rank seniority. Hence, after regaining medical category SHAPE-I, petitioner’s seniority list was fixed by the authority as per correct order. In this connection, a case was taken by the DGAR regarding fixation of seniority as fixed by the DGAR by stating that **“it would be seen from the above, that the seniority of 2IC R K Nair has been fixed correctly which is as per recommendation of the DPC. The officer is approved for promotion to the rank of Commandants as per his seniority and will get promotion as per seniority as and when vacancy created with the vacancy year 2012-13.”** That is why the respondents No.5, 6 & 7 have been promoted to the rank of Commandant as they were senior to the petitioner in the name of rank seniority as such contention of the petitioner does not merit any consideration.”*

12. On perusal of the stand taken by the respondents No.1-4 in their joint affidavit, it appears that the respondents No.1-4 had completely lost sight of (i) approval of the concerned Ministry for relaxing some days of the petitioner’s service in completing the qualifying service of 2 (two) years as Second-in-Command as on 01.01.2012 and also by the same decision of the concerned Ministry the qualifying service of the respondent No.5 Mr. Diwan Singh had been relaxed for consideration for promotion to the post of Commandant, Assam Rifles for the vacancy year 2012-13 (ii) the earlier decision of the Directorate General, Assam Rifles for correcting the seniority position of the petitioner so that the petitioner could regain his seniority with his batch mates of 1995 as soon as he regained medical category SHAPE-I and also (iii) the said “4.13 mandatory for the purpose of promotion”. The respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung,

respondent No.7 Mr. A.K. Rana and respondent No.8 Mr. N.K. Gurung are the commissioned Officers of 1997 batch i.e. 22.01.1997.

13. The petitioner is the commissioned officer of the year 1995 i.e. 08.02.1995 and the petitioner had admittedly regained SHAPE-I. Under the mandatory for the purpose of promotion i.e. para 4.13, which had been quoted above, he shall retain his seniority. Respondents No.1-4 in their affidavit are not denying that the mandatory for the purpose of promotion i.e. para 4.13 of the Ministry's U.O. No.I.45024/3/2004-Pers-II dated 31.07.2007 are binding to the Assam Rifles. The Apex Court in a catena of cases held that on the inaction of the Government or the authority, employee cannot suffer. One of the cases is **Amrik Singh & Ors vs. Union of India & Ors: (1980) 3 SCC 393.**

14. It is fairly settled law that the same yardstick should apply to all the employees in the selection process for promotion. The Apex Court in **Union Public Service Commission vs. Hiranyalal Dev & Ors: (1988) 2 SCC** held that:-

"9. In place of the order quoted hereinabove we substitute an order in the following terms viz:

The Selection Committee shall reconsider the impugned select list prepared in 1983 as if it was deciding the matter on the date of the selection on the footing that the adverse remarks made against respondent No.11 which were subsequently set aside did not exist in the records and consider the question as to whether he would have been appointed or Respondent No. 11 Shri Sardar Pradeep Kar would have been appointed on the basis of the categorization to which each of them was entitled having regard to the C.C. Rolls (ignoring the adverse remarks against Respondent No. 1 which were subsequently quashed) and pass appropriate orders in the light of the decision taken on this point. If the Respondent No. 1's claim is accepted upon reconsideration in the light of the aforesaid exercise, the order of appointment should provide for his appointment with effect from the date on which he would have been appointed if he was selected when the original selection was made in 1983 and he should be given all the benefits. The Selection Committee

shall complete its exercise within two months from the date of this order. There will be no order regarding costs."

15. Mr. Justice S. Ratnavel Pandian (as then he was) in **Katar Singh vs. State of Punjab: (1994) 3 SCC 569(C.B.)** observed that:-

"35. When laws ends, Tyranny begins:

Legislation begins where Evil begins.

The function of the Judiciary begins when the function of the Legislature ends.

because the law is, what the judges say it is since the power to interpret the law vests in the judges.

36. Law is made not to be broken but to be obeyed and the respect for law is not retained by demonstration of strength but by better appreciation of the reasons, better understanding of its reality and implicit obedience. It goes without saying that the achievements of law in the past are considerable, its protection in the present is imperative and its potential for the future is immense. It is very unfortunate that on account of lack of respect, lack of understanding, lack of effectiveness, lack of vision and lack of proper application in the present day affairs, law sometimes falls in crisis."

The Apex Court (Constitution Bench) in **Katar Singh's** case (*Supra*), clearly held that the law is what judges say since the power to interpret the law vests in the judges. Law is made not to be broken but to be obeyed. The founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution of India except self imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found. The Apex Court through Justice K. Ramaswamy (as then he was) in **Air India Statutory Corporation & Ors vs. United Labour Union & Ors: (1997) 9 SCC 377** held that:-

"59. The founding Fathers placed no limitation or fetters on the power of the High Court under Article 226 of the Constitution of India except self imposed limitations. The arm of the Court is long enough to reach injustice wherever it is found.

.....

60. The public law remedy given by Article 226 of the Constitution is to issue not only the prerogative writs provided therein but also any order or direction to enforce any of the fundamental rights and "for any other purpose."

16. It is well settled law that where a power is required to be exercised by a certain authority in a certain way, it should be exercised in that manner or not at all, and all other modes of performance are necessarily forbidden. It is all the more necessary to observe this rule where power is of a drastic nature and its exercise in a mode other than the one provided will be violative of the fundamental principles of natural justice. (Ref:-***Hukam Chand Shyam Lal vs. Union of India and Ors: AIR 1976 SC 789***).

17. It is well settled that when a statutory authority is required to do a thing in a particular manner, the same must be done in that manner or not at all. The State and other authorities while acting under an Act are only creature of statute. They must act within the four corners thereof. (Ref:-***Bhavnagar University vs. Palitana Sugar Mill (P) Ltd. & Ors: (2003) 2 SCC 111***).

18. The Constitution Bench in ***S.G. Jaisinghani vs. Union of India & Ors: AIR 1967 SC 1427*** held that the absence of arbitrary power is the first essential of the rule of law upon which our whole judicial system is based. In a system governed by rule of law, discretion, when conferred upon executive authorities, must be continued within clearly defined limits. The rule of law from this point of view means that decisions should be made by the application of known principles and rules and, in general, such decisions should be predictable and the citizen should know where he is.

19. The right to be considered for promotion is a fundamental right under Article 16 of the Constitution of India. (**Ref:- (i) *Delhi Jal Board vs.***

Mahinder Singh: (2000) 7 SCC 210 & (ii) Badrinath vs. Government of Tamil Nadu: (2000) 8 SCC 395.

20. In the month of April, 2011, the petitioner was detailed for “Defence Services Staff College Course” at Wellington as his bench mark was ‘very good’ for the last five preceding years and on 15.08.2011, he was awarded with “Presidential Police Medal for Meritorious Service”. The Apex Court in *Badrinath’s* case (*Supra*) had set aside the assessment of the DPC as the concerned DPC had taken into consideration certain inadmissible materials and had not given due weight to some very good work done by the officer concerned. The Apex Court further held that the Court can issue writ of mandamus at the same time to the State or Public authority and the Court can mould the relief to meet peculiar and complicated requirements. Para 88 of the SCC in *Badrinath’s* case (*Supra*) reads as follows:-

“88. We may, however, point out that it is not as if there are no exceptions to this general principle. The occasions where the Court issued a writ of certiorari and quashed an Order and had also issued a mandamus at the same time to the State or public authority could be very rare but we might emphasise that the power of this Court to mould the relief in the interests of justice in extraordinary cases cannot be doubted. In ***Comptroller & Auditor General of India v. K.S. Jagannathan; (1986) 2 SCC 679 : 1986 SCC (L&S) 345*** such a power on the part of this Court was accepted by a three-Judge Bench. Madon, J. referred to the observations of Subba Rao, J. (as he then was) in ***Dwarka Nath v. ITO; AIR 1966 SC 81 : (1965) 3 SCR 536*** wherein the learned Judge explained that our Constitution designedly used wide language in Article 226 to enable the Courts to “reach justice wherever found necessary” and “to mould the reliefs to meet peculiar and complicated requirements of this country.” Justice Madon also referred to ***Rochester Corpn. v. R; 1858 EB & E 1024 : 27 LJ QB 434, R. v. Revising Barrister for the Borough of Hanley; (1912) 3 KB 518 : 81 LJ KB 1152, Padfield v. Minister of Agriculture Fisheries and Food; 1968 AC 997 : (1968) 1 All ER 694 : (1968) 2 WLR 924 (HL)*** and to a passage from ***Halsbury’s Laws of England, 4th Edn. Vol. 1, p. 59.*** Finally Madon, J. observed: (SCC pp. 692-93, para 20)

“20. There is thus doubt that the High Courts in India exercising their jurisdiction under Article 226 have the

power to issue a writ of mandamus or a writ in the nature of mandamus or to pass orders and give necessary directions where the Government or a public authority has failed to exercise or has wrongly exercised the discretion conferred upon exercised such discretion mala fide or on irrelevant considerations or by ignoring the relevant consideration and materials or in such a manner as implementing which such discretion has been conferred. In all such cases and in any other fit and proper case a High Court can, in the exercise of the nature of mandamus or pass orders and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the Government or a public authority, and in a proper case in order to prevent injustice resulting to the parties concerned, the court may itself pass an order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion.”

(emphasis supplied)

*We emphasis the words underlined in the above passage to the effect that the court may in some rare situations itself pass on order or give directions which the Government or the public authority should have passed or given had it properly and lawfully exercised its discretion. The same view was expressed by another three-Judge Bench in **B.C. Chaturvedi v. Union of India; (1995) 6 SCC 749 : 1996 SSC (L&S) 80 : (1996) 32 ATC 44** even regarding disciplinary cases. “*

21. For the foregoing discussions, this Court is of the considered view that the petitioner should have been considered with his juniors i.e. respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung, respondent No.7 Mr. A.K. Rana and respondent No.8 Mr. N.K. Gurung for promotion to the post of commandants, Assam Rifles in the vacancy year 2012-13 and also this Court in the given case is to mould the relief sought for in this present writ petition to meet peculiar and complicated requirements. Accordingly, the present writ petition is allowed with the following directions:-

(i) Respondents No.1-4 are directed to hold the review DPC for considering the case of the petitioner for promotion to the post of Commandant, Assam Rifles for the vacancy year 2012-13 (i.e. 01.04.2012 – 31.03.2013) inasmuch as, his juniors respondent No.5 Mr. Diwan Singh, respondent No.6 Mr. C.K. Gurung, respondent No.7 Mr. A.K. Rana and respondent No.8

had been considered for promotion to the post of Commandants, Assam Rifles for the vacancy year 2012-13 and promoted them to the post of Commandants under the impugned Message dated 30.04.2012;

(ii) Till the completion of the review DPC in compliance with the direction No.(i) above, respondents No.5, 6 & 7 shall continue as Commandants;

(iii) In case the petitioner can also be recommended by the DPC or/ review DPC for promotion to the post of commandant w.e.f. the date his juniors had been promoted to the post of commandants i.e. 01.04.2012 without demoting the respondents No.5, 6 & 7 from the post of Commandant to Second-in-Command, the status of the respondents No.5, 6 & 7 or their promotions to the post of Commandants may not be disturbed.

(iv) For enabling to hold review DPC indicated above or DPC, the impugned Messages dated 30.04.2012 and dated 04.07.2012 are hereby set aside and quashed.

(v) The whole exercise shall be completed within a period of 3 (three) months from the date of receipt of a certified copy of this judgment and order.

22. The writ petition is allowed to the extent indicated above.

JUDGE

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