

**IN THE HIGH COURT OF MEGHALAYA AT
SHILLONG
: ORDER :**

MC (WA) No.52 of 2017

Union of India and others ... Applicants

-Versus-

Havildar/Cipher Digamber Datt and Ors. ... Respondents

MC (WA) No.54 of 2017

Union of India and others ... Applicants

-Versus-

Hav/Cipher Prakash Chand Sharma and Ors. ... Respondents

Date of Order : 27.11.2017

PRESENT

HON'BLE SHRI JUSTICE DINESH MAHESHWARI, CHIEF JUSTICE

HON'BLE SHRI JUSTICE S.R. SEN

Shri N Mozika, for the applicants/appellants
Shri S Thapa, for the respondents

BY THE COURT: (per Hon'ble the Chief Justice) (ORAL)

The applicants/appellants – Union of India represented by the Secretary to the Government of India in the Ministry of Home Affairs; the Director General of Assam Rifles; and the other Officers related with Assam Rifles – seek to maintain intra-court appeals against the common order dated 23.03.2017, as passed in WP(C) Nos. 403 of 2014 and 311 of 2016 and as modified on 19.04.2017, whereby the learned Single Judge of this Court had accepted the claim of the writ petitioners (the respondents herein) for appropriate rank and pay scales as per the Fifth Central Pay Commission and the Office Memorandum dated 22.01.1998 and for other consequential reliefs; and has directed as under:-

“In the light of aforesaid discussion, the writ petitions are allowed. The respondents are directed to give appropriate rank and pay scales to the petitioners as per the Fifth Central Pay Commission and Officer Memorandum dated 22nd January, 1998 and Assured Career Progression Scheme (ACP) as applicable to the respective petitioners including financial up-gradation under modified Assured Career Progression Scheme of the Government of India, if any, within a period of three months.”

As per the office report, these appeals, filed on 04.10.2017 and 05.10.2017 respectively, are barred by limitation by a period of 158 days; however, the applicants/appellants would calculate that the appeals are barred by limitation by 137 and 138 days respectively. Be that as it may, the applicants have filed respective applications seeking condonation of delay, inter alia, with the following submissions¹:-

“3. That the applicants state that after the receipt of the certified copy, the matter was processed at the level of the Directorate General, Assam Rifles and forwarded to the Ministry of Home Affairs for approval on 13.06.2017. Thereafter on 21.07.2017 legal opinion was sought from the Ministry of Law. The Ministry of Law in their legal opinion dated 26.07.2017 has opined that the issue regarding grant of rank structure as Warrant Officer (Ciph) in place of Hav (Ciph) to the petitioners of Ciph category as per OM dated 22.01.1998 putting Cipher personnel at par with Radio Mechanics needs to be reviewed and accordingly rendered their legal opinion that an appeal should be preferred against the judgment and order dated 23.03.2017 passed by the learned Single Judge.

4. That thereafter the Law Branch, DGAR on 31.07.2017 sought the comments and the grounds of appeal from the concerned branch. The comments and the grounds of appeal were received from the concerned branch on 28.08.2017.

5. That the applicants state that thereafter 30.08.2017 Law Branch, DGAR forwarded the comments and grounds of filing appeal to the learned counsel (Central Government Counsel) and requested the learned counsel to prepare a draft of writ appeal. The learned Counsel then prepared draft of writ appeal along with application for condonation of delay and application for stay of the impugned judgment and order on 03.10.2017 and forwarded the same to Law Branch, DGAR. Thereafter the Law Branch, DGAR forwarded the draft writ appeal to the concerned branch for verification and vetting of correctness of factual aspects in the writ appeal. The Law Branch, DGAR then forwarded the Memorandum of Appeal to the learned Counsel on 04.10.2017.

6. Thereafter the connected writ appeal along with the application for stay of the impugned judgment and order and the application for condonation of delay were filed before this Hon’ble Court on 05.10.2017.

¹ Reproduced from MC (WA) No. 54 of 2017

7. That the applicants state that the judgment and order was passed on 23.03.2017 and was subsequently modified vide order dated 19.04.2017 and as such the writ appeal should have been filed on or before 19.05.2017. However, in the process as stated above a delay of 138 days has been caused which is not intentional but due to circumstances beyond the control of the applicants.

8. That the applicants state that there is no discernible delay or negligence on the part of the applicants in taking appropriate steps in this respect, considering the fact that the Union of India and Directorate General of Assam Rifles are impersonal machinery acting through its officers/servants and the decision is taken and approval obtained through the administrative hierarchy.”

The respondent have filed objections to these applications while pointing out, inter alia, that the applicants had been seeking enlargement of time before the learned Single Judge for implementation of the impugned orders dated 23.03.2017 and have concealed such facts in these applications seeking condonation of delay. It is also contended that by the own showing of the applicants, the matters had been processed in a lackadaisical manner which shows want of due diligence on their part.

It is not a matter of dispute that the applicants/appellants had moved the applications before the learned Single Judge, seeking enlargement of time for implementation of the order impugned while suggesting that the matter had been forwarded to the Ministry concerned and the approval was awaited. The applications for enlargement of time were granted by the common order dated 19.06.2017 as passed in MC [WP(C)] Nos.105 and 107 of 2017 wherein, the learned Single Judge noted and observed as under:-

“Mr. N. Mozika, learned counsel for the applicants further submits that the applicants/respondents in the writ petition have initiated steps for giving appropriate rank and pay scales to the petitioners including financial upgradation under modified Assured Career Progression Scheme of the Government of India and the Directorate General of Assam Rifles has already prepared a proposal to extend the appropriate rank and pay scales to the petitioners including financial upgradation under modified Assured Career Progression Scheme and forwarded the same to the Ministry of Home Affairs for approval as the approval involves financial implications. The approval is awaited.

Learned counsel for the applicants submits that 3(three) months period was granted to applicants expiring on 23.06.2017 and the same may be extended for another period of 3(three) months.

Mr. S. Thapa, learned counsel for respondents submits that he has no objection, if another period of 3(three) months as prayed is granted for compliance of the Judgment dated 23.03.2017.

In view of the facts and circumstances of the case and submissions made by learned counsel for both the parties, time is granted and compliance of the Judgment dated 23.03.2017 is extended for another period of 3(three) months w.e.f. 23.06.2017.

Both the applications stand disposed of accordingly.”

The fact that such applications for enlargement of time were moved before the Single Judge has not even been indicated in the applications for condonation of delay as filed in these matters. Obviously, the appellant had not been frank and forthright while making a prayer for condonation of delay in filing the appeals. This apart, the submissions as made in the applications, even if taken on their face value, are either of cursory nature or indicate a sluggish approach without regard to the law of limitation; and it is difficult to find any cause, what to say of sufficient cause, for condoning the delay of over 100 days in filing the appeals. We are constrained to observe that the period of limitation provided by law has to be kept in view while processing any matter in any department; and the officers concerned cannot ignore the law of limitation with impunity. Even when the Courts do lean towards condoning the delay in appropriate cases, it cannot be assumed by the Government departments that condonation of delay could always be asked for as a matter of right.

In the totality of circumstances of these cases, we find little justification in condoning the excessive delay in filing these appeals.

Even though the applicants/appellants have failed to make out a case for condonation of delay, yet in the interest of justice, we have gone through the record of the case to examine if there be any meritorious issue worth consideration. After having examined the record, we are satisfied that even on merits, the proposed appeals remain totally bereft of

substance and no case for interference with the order passed by the learned Single Judge is made out.

The sum and substance of the matter is that the respondents herein, working as Havildar/Cipher, Sub/Cipher and Nb.Sub/Cipher under the Director General of Assam Rifles preferred the writ petitions aforesaid on the grievance that they were being denied the benefits in rank structure and pay scales as per the guidelines of Fifth Pay Commission and Office Memorandum dated 22.01.1998 as issued by the Ministry of Home Affairs. The petitioners, inter alia, referred to the fact that in the case of one of the similarly situated incumbent i.e., Havildar/Cipher Dusmanta Kumar Rout, the then jurisdictional High Court had allowed the writ petition [WP(C) No.200(SH) of 2008] seeking the same reliefs; and the writ appeal filed in the matter [WA No.51(SH) of 2011] was also dismissed by the Division Bench. The writ petitioners contended that they were being denied the same benefit although the decision in the case of Dusmanta Kumar Rout had attained finality. The learned Single Judge of this Court found justified the submissions of the writ petitioners; and particularly with reference to the decision in the case of *Dusmanta Kumar Rout* (supra), observed as under:-

20. It is settled legal position that the law pertaining to placement of posts in pay scales is within the domain of the executive to determine as to in what scale of pay a post has to be placed and since it is a matter of expert opinion, courts intervention has to be minimal and that it is not open for the courts to play the role of an expert. However, where it is apparently manifest that two posts are identical, it would be a denial of Article 14 of the Constitution to those who are placed in the lower pay scale. In that event, it would be within the domain of a writ court to issue appropriate directions.

21. I have gone through the judgment in the case of Shri Dusmanta Kumar Rout vs Union of India & Ors. (supra). In that case also the petitioner, who belong to Havildar/Cipher category and aggrieved by the rank structure and pay as per guidelines of Fifty Pay Commission and Office Memorandum dated 22nd January, 1998, filed a writ petition being WP(C) No. 200(SH)/2008 and sought direction to the respondents to implement

the benefits/recommendations of the Fifth Pay Commission to him. Similar is the challenge by the petitioners in the present writ petition.

22. This Court vide order dated 30th March, 2009 after considering and noting the rival contentions of the parties and taking into consideration the judgment dated 11th February, 2005 rendered by Agartala Bench in W.P.(C) No. 497 of 2001, disposed of the writ petition filed by Hav./Cipher Dasmanta Kumar Rout with direction to the respondents to offer benefit of rank structure and pay per recommendation of the Fifth Pay Commission and Office Memorandum dated 22nd January, 1998 including the benefit of ACP per policy of the Government of India, 1997.

23. The respondents also filed an application seeking review of the judgment dated 30th March, 2009 which was dismissed vide order dated 20th September, 2011. The judgment thus attained finality and the benefit thereof has already been given by the respondents to the petitioner, Dasmanta Kumar Rout.”

The learned Single Judge found entirely unjustified the approach of the respondents in denying the benefit of earlier decision to the similarly situated employees like the writ petitioners and observed as under:-

32. The position which emerges from the present case is that to deny the benefit of the earlier judgment which has attained finality, to the similarly situated employee, is nothing but a blatant discrimination. Such an action smacks of arbitrariness and high-handedness on the part of the employer. To drive each one of the similarly placed person to obtain orders of the Court, would amount to exploitation of the employees having limited resources, time and energy. The Courts would also be burdened with unnecessary litigation. As a matter of fact, it is also the duty of the State to take remedial measures to curtail the litigation and to wipe off or minimize the already over-crowded dockets of the Courts. How to eliminate the arrear and curtail the delays are the questions which are vexing every mind. The State instead of extending its cooperation to bring down the litigation should not encourage its employees to take recourse to multiple legal proceedings on the same point which stands already decided finally. There is also an element of wastage of public money as the State has to defend the cases by employing its legal agency resulting in payment of the substantial amount in the shape of fees. The State should avoid the fruitless exercise and wasteful expenditure. Unnecessary litigation further breeds strained relations between the members of the staff and the State as a employer which has to be avoided at all costs. The State has pervasive obligation to discharge in relation to maintaining its accepted standards of employer-employee relationship. One of the obligations of the State is to be reasonable and fair in granting service benefits to its employees in accordance with the Service Rules and the principles enunciated in the decisions of the Courts. When the decisions to which the State is party become final, a duty is cast upon the State to grant relief to its employees who are similarly situated and on identical facts. In my view, it is not necessary for the State to require each one of its employees to approach the Court of law for grant of reliefs which State ought to grant to the employees in the normal course of its administration.”

It is sought to be contended on behalf of the applicants/appellants that the writ petitioners form an entirely different category of employees

and they cannot claim any parity with the other incumbents working as Radio Mechanics or Draughtsman etc. who form different categories with separate charter of duties, rank structure and functions. However, upon our queries, learned counsel for applicants/appellants could not deny the fact that even if any distinction is suggested about other employees, the case of *Dusmanta Kumar Rout*(supra) had been of a similarly circumstanced incumbent as the respondents. In our view, for the indisputable position that the case of similarly circumstanced incumbent has already been adjudicated by the High Court and the said incumbent has been allowed the claimed benefits, denial of the same to the writ petitioners could only be that of blatant discrimination and cannot be countenanced. The impugned order passed by the learned Single Judge is based on the fundamental principles of parity amongst similarly circumstanced persons; and we are unable to find any error or infirmity therein. Therefore, even on merits, we find no case for interference.

In view of the above, we find no reason to entertain these appeals.

Accordingly, the applications for condonation of delay stand rejected and the appeals stand dismissed.

JUDGE

CHIEF JUSTICE

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Item No.1