

Serial No. 1
Supplementary
List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 147 of 2017

Date of Hearing : 20.11.2018

Date of Decision: 21.12.2018

Shri. Balbir Singh Yadav

Vs.

Union of India & Ors.

Coram:

Hon'ble Mr. Justice S.R. Sen, Judge

Appearance:

For the Petitioner(s)

:

Mr. S. Saraogi, Adv.

For the Respondent(s)

:

Mr. R. Debnath, CGC.

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|-----|---|--------|
| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

1. Heard Mr. S. Saraogi, learned counsel appearing on behalf of the petitioner as well as Mr. R. Debnath, learned CGC appearing on behalf of the Union of India.

2. The brief fact of the petitioner's case in a nutshell is that:

"Petitioner was initially enrolled into the Assam rifles as recruit (Writer) (Clerical Cadre) on 01.05.1987 and sheet roll A.R.F 003. The petitioner was allotted Force No. of Clerical Cadre as No C/361573. After completion of basic training the petitioner was attested as Lnk (Writer) (Clerk Cadre) along with others on 10.02.1988. After attestation as Lnk (Writer) the petitioner was detailed for duties as Clerk in Duty Company of Assam Rifles Training Centre and School (ARTC&S) and Company Clerk.

Since there was need of Clerks/Writers in ARTC&S for official work approximately 100-200 Lnk/Writers were recruited from amongst the colleagues of the petitioner in ARTC&S. The petitioner and others were asked to appear for the said examination without a training course. ARTC&S was not conducting the mandatory 6 months Lnk (Writer) course (Technical Trade Course) and as such the petitioner and the others were asked to appear for

the said examination without any training/course. The consequence being that the petitioner was unsuccessful in the written/typing examination.

Thereafter, the petitioner was ordered to undergo basic training of Rifleman (General Duty) as he was unsuccessful in the written exam and his trade was re-mustered from Lnk (Writer) to Rifleman (General Duty). The petitioner had served and performed his duties in the capacity of Recruit/Lnk Writer vide TCRO II No 88/770/89 dated 06.07.1989 for more than 20 months service. The petitioner was drawing pay and allowances of Recruit/Lnk (Writer) which is higher than from Rfn/GD from May 1987 till Feb 1991 vide AFF 1115 and Part II Order No 45/222/1992 dated 01.06.1992. Subsequently, the petitioner was further posted to his present unit i.e. 31 Assam Rifles as Rifleman (General Duty) on 22.05.1989 and allotted fresh Regimental number G/3101266 W and presently has been serving in the rank of Havildar (General Duty) as on date to the entire satisfaction of his superiors.

The rank structure and pay scale of Clerical Cadre of Assam Rifles personnel have been upgraded by judgment and order dated 23.08.2012 passed by the Hon'ble Gauhati high Court, Shillong Bench in WP(C)No. (SH) 277 (SH) 2010 as upheld by the Hon'ble Supreme Court Judgment order dated 17.11.2015 and MHA UO No 27013/2/2016.P.F.IV dated 21.06.2016, HQ DGAR Order No. Rec (Adm-IV) WO Clk/2/348/185 dated 13 July 2016 and order No A/Pers/II-04/Clk/2016/774 dated 28 June 2016.

The petitioner was also covered under the aforesaid orders whereby the personnel serving as Lnk/Writer (Clerk Grade) who were in service as on 01 Jan 1986 and who were enrolled as such up to 28 October 2002 were given the scale of pay of Rs 1320-2040 (Revised Rs 4000-6000). After re-musteration the petitioner have been serving as official staff in his unit since last 28 years with outstanding performance in all fields but as per court order the personnel who enrolled at the same time with the petitioner and who are less qualified in comparison with the petitioner are drawing pay and allowances/ status much higher than the petitioner.

The actions of the respondent in not extending the benefits of the judgment and order dated 23.08.2012 passed by the Hon'ble Gauhati High Court, Shillong Bench in WP(C) No.(SH) 277 (SH) 2010 as upheld by the Hon'ble Supreme Court Judgment order dated 17 Nov 2015 and MHA UO No 27013/2/2016. P.F.IV dated 21.06.2016, HQ DGAR Order No. Rec (Adm-IV) WO Clk/2/348/185 dated

13.07.2106 and order No.A/Pers/II-04/Clk/2016/774 dated 28.06.2016 to the petitioner is highly illegal, arbitrary and discriminatory and hence the instant writ petition”.

3. Learned counsel appearing on behalf of the petitioner submits that the instant writ petition is covered by the judgment passed by the Division Bench of this High Court in W.A. No. (SH) 40 of 2012.

4. On the other hand, learned CGC appearing on behalf of the Union of India submits that here the case is little different as such, it is not covered by the judgment relied upon by the learned counsel for the petitioner.

5. After hearing the submissions advanced by the learned counsel for the parties and after perusal of the facts and circumstances of the case before me, I am of the opinion that the present petition is covered by the judgment passed by the Division Bench of this High Court in W.A. No. (SH) 40 of 2012. If it is so, then further passing of an elaborate judgment is not necessary.

6. Judgment and order dated 30.04.2013 passed by the Division Bench of this High Court in W.A. No. (SH) 40 of 2012 is reproduced herein below for ready reference:

“W.A. No. (SH) 40 of 2012

The Union of India

:: Appellants

Versus

JC-C/361315Y Nb Sub (Clk)

Radha Krishnan Nair K.M and 1338 others

:: Respondents

BEFORE

THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

THE HON'BLE MR JUSTICE SR SEN

For the appellants : *Mr SC Shyam, CGC*

For the respondents : *Mr M Chanda*

Date of hearing : *30.4.2013*

Date of judgment and order : *30.4.2013*

JUDGMENT AND ORDER (ORAL)

T Nandakumar Singh, J

Heard Mr SC Shyam, learned CGC appearing for the appellants and also Mr M Chanda, learned counsel appearing for the respondents/writ petitioners.

2. *This writ appeal is directed against the judgment and order of the learned Single Judge dated 23.08.2012 passed in WP(C) No.277 (SH) of 2010, wherein and where under the learned Single Judge had directed the respondent No.2 Director General of Assam Rifles to take up the matter again with the respondent No.1 i.e. the Secretary to the Govt. of India, Ministry of Home Affairs to bring parity in respect of rank structure and pay of the Assam Rifles clerical cadre at par with other CPOs by introducing rank of Assistant Sub-Inspector (Warrant Officer) at the entry grade w.e.f. 1.1.1986 in the scale of pay of Rs. 1320-2040 (revised Rs.4000-6000) w.e.f. 1.1.1996 or any other date as the authority deem it fit and proper with all consequential service benefits in the light of the Government of India, Ministry of Finance resolution dated 20.9.1997. We have given our anxious consideration of the judgment and order passed by the learned Single Judge dated 23.08.2012 and are of the considered view that the learned Single Judge had finally allowed the writ petition filed by the respondents by passing the order dated 23.08.2012 taking into consideration of the decision of the Apex Court in Union of India vs Dineshan KK (Supra). The learned counsel appearing for the parties of also submitting that the issue in the present writ appeal has also been considered and disposed of by this Meghalaya High Court as well as the erstwhile Gauhati High Court.*

3. *Mr Chanda, learned counsel appearing for the respondents also placed before us a copy of Judgment and order of the erstwhile Gauhati High Court (Division Bench) in Writ Appeal No.50 (SH) 2010 wherein and where under the erstwhile Gauhati High Court also granted relief similar to the one granted by the learned Single Judge vide Judgment and order dated 23.08.2012 to the writ petitioners of WP(C) No.277(SH)2010. A copy of the said judgment and order dated 22.9.2011 passed in Writ Appeal No.50 (SH) 2010 is also placed in the file of the present writ appeal.*

4. *However it is the submission of Mr SC Shaym, the learned counsel appearing for the appellants (respondents in the writ petition) that in those other cases there was no decision regarding the arrear financial benefits. The present appellants are aggrieved by para 14 of the judgment and order of the learned Single Judge dated 23.08.2012 passed in WP(C) No. 277 (SH) 2010 wherein the learned Single Judge had directed to extend the financial benefits to the writ petitioners*

(respondents in the present writ appeal) w.e.f. 1.1.1996 or any other date as the authority deem it fit and proper. It is admitted by both the parties that the respondents/writ petitioners 1339 in numbers had approached this Court by filing the writ petition No. 277 (SH) 2010 with considerable delay seeking the financial benefits w.e.f. 1.1.1986. In support of his submission Mr. SC Shyam, learned counsel appearing for the appellants (respondents in the writ petition) had drawn the attention of this Court to a catena of decisions of the Apex Court. In order to strike a balance between the parties we are of the considered view that para 14 of the judgment and order of the learned Single Judge dated 23.08.2012 passed in WP(C) No. 277 (SH) 2010 is required to be modified slightly only to the extent of the date for giving financial benefits. Accordingly, para 14 of the judgment and order dated 23.08.2012 is modified only to the extent that the arrear financial benefits to be given to the petitioners in pursuance the judgment and order of this Court dated 23.08.2012 shall be w.e.f. the date of filing the writ petition i.e. from January, 2010. However, it is made clear that there should be notional financial benefits.

5. *This writ appeal is disposed of with the above modification but affirming the other decisions of the learned Single Judge in the judgment and order dated 23.08.2012 passed in WP(C) No. 277 (SH) 2010. The whole exercise for implementing the judgment and order of this Court should be completed within a period of six months from the date of receipt of the certified copy of the judgment and order of this Court”.*

7. Accordingly, the petition is allowed. Respondent to do the needful on the basis of the judgment passed by the Division Bench of this High Court referred above.

8. With this observation and direction, writ petition stands disposed of.

(S.R. Sen)
Judge

Meghalaya
21.12.2018
“D. Nary, PS”