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## IN THE HIGH COURT OF MANIPUR AT IMPHAL

### W.P.C No. 366 of 2017

#### 1. HAV/DT, M/371028 H

Ashok Kumar Choubey aged about 52 years S/o, Shri Ramji Choubey now posted at 7<sup>th</sup> Dental Unit Assam Rifle, Tungsang, Nagaland C/O, 99 A.P.O.

#### 2. HAV/DT, M/370951 N

Pralay Kumar Some aged about 54 years S/o, (L) Rabindra Narayan now posted at 2<sup>nd</sup> Dental Unit Assam Rifle, Jorhat, Assam 25 sector C/O, 99 A.P.O.

#### 3. HAV/DT, M/371185 P

Niranjan Paul aged about 49 years S/o, Birendra Nath Paul now posted at 15<sup>th</sup> Dental Unit Assam Rifle, Palel, Manipur 26 sector C/O, 99 A.P.O.

#### 4. HAV/DT, M/370791 Y

Sanjay Singh aged about 49 years S/o, (L) Bulendra Singh now posted at Assam Rifle Composite Hospital Shokhuni Dimapur, Nagaland C/O, 99 A.P.O.

#### 5. HAV/DT, M/371181 Y

Sandeep Kumar aged about 36 years S/o, Balwant Singh now posted at 10<sup>th</sup> Dental Unit Assam Rifle, Shillong 1 Sector C/O, 99 A.P.O.

#### 6. HAV/DT, M/371295 F

Amit Kumar aged about 36 years S/o, Sita Ram now posted at 11<sup>th</sup> Dental Unit Assam Rifle, Lokra 25 Sector C/O, 99 A.P.O.

#### 7. HAV/DT, M/371337 L

Pankaj Mitra aged about 37 years S/o, Lt. Hironmay Mitra now posted at 3<sup>rd</sup> Dental Unit Assam Rifle Unit Kohima, Nagaland C/O, 99 A.P.O.

## 8. HAV/DT, M/371310 N

Subraj Singh Rajput aged about 40 years S/o, Jeet pal Singh now posted at 4<sup>th</sup> Dental Unit Aizwal, Mizoram 23 Sector C/O, 99 A.P.O.

## 9. HAV/DT, M/370638 H

Khadanand Sharma aged about 56 years S/o, Narayan Prasad Sharma now posted at 6<sup>th</sup> Dental Unit Assam Rifle, Lekhapani, Assam 25 Sector C/O, 99 A.P.O.

## 10. HAV/DT, M/371336 H

Md. Badrul Rahaman aged about 37 years S/o, Dulal Seikh now posted at 12<sup>th</sup> Dental Unit Assam Rifle, Keithelmanbi, Manipur, 9 Sector, unit code- 93829 C/O, 99 A.P.O.

## 11. HAV/DT, M/371041 M

Diwan Chand aged about 50 years S/o, Nikka Ram now posted at 8<sup>th</sup> Dental Unit Assam Rifle, Dimapur, Nagaland, Assam Rifle Training Centre C/O, 99 A.P.O.

## 12. HAV/DT, M/370652 P

Shri Karan Singh, aged about 53 years, S/O, Shri Johari now, posted at 14<sup>th</sup> Dental Unit Assam Rifle, Churachandpur, Manipur 27<sup>th</sup> Sector C/O, 99 A.P.O.

**... Petitioners**

**- Versus -**

1. The Union of India represented by Secretary to the Minister of Home Affairs, Government of India, North Block, New Delhi.
2. The Secretary of Finance (Department and Expenditure) Government of India North Block, Loknayak Vaban, New Delhi-1.
3. The Director General, Assam Rifle, Laitkhor, Shillong Pin-793010.

**... Respondents**

**B E F O R E**  
**HON'BLE MR. JUSTICE MV MURALIDARAN**

For the petitioners        :: Mr A. Mohendro, Advocate.  
For the respondents.    :: S. Samarjeet, CGC.  
Date of hearing and  
Date of judgment &  
Order.                        :: 31.01.2020.

**JUDGMENT & ORDER**  
(ORAL)

[1]            This writ petition has been filed by the petitioner seeking a writ of mandamus directing the respondents 1 to 3 to upgrade and re-designate the petitioners to the rank of Assistant Sub Inspector/Warrant Officer/Dental Technician as entry level rank as per the Central Police Organisation Rules, as already implemented for Dental Technician in other similarly situated Central Para Military Forces/Central Police Organisation/Central Government Organisations. The petitioners have also sought directions on the respondents 1 to 3 to provide promotional posts for the petitioners to a higher rank, status and financial benefits at par and as already implemented and enjoyed by the Dental Technician in other similarly situated Forces after upgrading and re-designating them.

**[2]** The case of the petitioners is that at present they are working as Dental Technician in the rank of Havildar in Assam Rifle at different locations by possessing all requisite educational qualification to be Dental Technician in Assam Rifle or other Central Para Military Forces in India. According to the petitioners, they were initially recruited in the post of Nursing Assistants and having completed the Dental Technician course from Armed Forces Medical College, Pune, Lucknow, Kolkata, they were remustered as Dental Technician in Assam Rifle in the rank of Havildar having no promotional post. The qualification required for applying the post of Dental Technician is having qualification to be a Dental Mechanic in terms of Section 12 of the Dentist Act, 1948 registration as Dental Technician with two years Diploma from any recognised Institute and having passed Matriculation with Science.

**[3]** On 15.7.2016, the first petitioner submitted a representation to the Headquarter DGAR (Record Branch) through proper channel requesting for grant of JCO rank to Para Dental cadre of Assam Rifles. On 02.09.2016, the first petitioner submitted an application praying for giving the initial rank of Warrant Officer/Naib Subedar for Dental Technician in Assam Rifles like BSF and all CPMF's and the same was forwarded to the competent

authority by the Assistant Commandant SO3(A) for action. Since no action was taken, on [29.9.2016](#), the first petitioner submitted another representation requesting for grant of JCO rank and the same was also recommended by the Deputy Commandant (SDS).

**[4]** On [18.10.2016](#), the Deputy Commandant has given statement of case to the effect that some of the petitioners have completed 25 years of service without any promotion avenues having working as a Dental Technician in the rank of Havildars. On the other hand in the other CAPFs, the personnel having same qualifications have been given ASI rank which is equivalent to the rank of Warrant Officer in Assam Rifles and hence, it was proposed that the petitioners should be given Warrant Officer rank as there will be no financial implication in giving the same rank for the reason that the petitioners are already getting the VII Pay Commission. The said recommendation, however, was rejected stating that there is no provision exists in Assam Rifles for JCO rank for Dental Technician working in Assam Rifles.

**[5]** According to the petitioners, they should be placed like other personnel of similar organisation and since qualified Dental Mechanics of these of other organisations have already been

extended the entry level rank of Dental Technician as ASI equivalent to the rank of Warrant Officer in Assam Rifles, there is no justified reason in not extending the said benefit to the petitioners. Since the petitioners have been victimised, they have filed the present petition seeking the reliefs aforesaid.

**[6]** Resisting the petition, the respondents filed affidavit-in-opposition stating that the petitioners have been enrolled in the Force as Rifleman/Nursing Assistant and later voluntarily remustered to Havildar/Dental Technician by signing an undertaking that they are willing for remusteration to Havildar/Dental Hygienist. It is stated that the rank, pay and allowances have been given to the petitioners as applicable to all Assam Rifles as per the guidelines and the rank structure applicable as per Recruitment Rules. The rank structure has been approved by the Competent Authority and Recruitment Rules framed accordingly. Therefore, there is no discrimination being done in the case of the petitioners.

**[7]** It is also stated that the petitioners were enrolled in Assam Rifles with educational qualification of matriculate only and after enrolment, they were provided additional qualification at different Military Institutions on Government expense from time to

time to make them eligible to perform their trade work. The petitioners were also paid full pay and allowances during the period of acquiring additional qualification whereas their counterpart in other CAPFs are enrolled with higher qualification of matriculation and two years Diploma in Industrial Training which they acquire at own cost and expense of additional two years after matriculation. Since the petitioners are interpreting to their convenience and misleading the Court, the writ petition is liable to be dismissed.

**[8]** The learned counsel for the petitioners submitted that the petitioners were serving in Assam Rifles without any promotional avenues, whereas a new recruit in other similar organisation like Central Police Organisation/Central Paramilitary Forces as Dental Technician possessing the same qualification have an entry level rank of ASI with further promotional avenues. He would submit that the respondents have violated Articles 14, 16 and 21 of the Constitution of India by treating equals as unequal in an arbitrary and whimsical manner and therefore, they should be upgraded to the rank of Assistant Sub Inspector/Warrant Officer/Dental Technician as entry level.

**[9]** Per contra, the learned Government counsel contended that since the petitioners enrolled in the Assam Rifle as

Rifleman/Nursing Assistant and later voluntarily remustered to Havildar/Dental Technician by signing the undertaking that they are willing for remusteration to Havildar/Dental Hygienist, the discrimination alleged by the petitioners is unsustainable. He would submit that all the Central Police Forces personnel are not covered under a single act and set of Recruitment Rules.

**[10]** The learned Government counsel next submitted that with regard to non-availability of promotional avenue to the petitioners even after 25 years of service in a particular trade is concerned, they have been adequately compensated by granting MACP at the end of 10, 20 and 30 years. Hence, the contention of the petitioners qua non-availability of the promotional rank in the hierarchy does not deprive the petitioners from getting higher pay and allowances on completion of 10, 20 and 30 years of service. Therefore, the action of the respondents is not arbitrary and thus, prayed for dismissal of the writ petition.

**[11]** I have considered the submissions made by the learned counsel on either side and also perused the materials available on record.



[12] The grievance of the petitioners is that having completed 25 years of service in Assam Rifles and after getting promoted to the rank of Havildar/Dental Technician, they are holding the same rank till date without any promotion and hence praying for grant of JCO rank to Para Dental cadre of Assam Rifles.

[13] Qua the prayer made by the petitioners, they are fighting from the year 2016 onwards by sending representations to their higher officials. In fact, the representation of the first petitioner dated 29.9.2016 has been recommended by the Deputy Commandant (SDS) by endorsing as under:

- “(a) As dental technical staff is diploma holders and if it is there in other CAPF’s, they should get promoted to next higher rank.*
- (b) Some of the dental staff is completing more than 25 Years of service with no promotion which will create frustrative environment. Hence It is recommended that they should get promoted to the next equivalent to ASI rank in other CAPF’s.*
- (c) The problem is genuine and needs immediate attention,”*

[14] Drawing attention of this Court to the State of Case dated 18.10.2016 made by the Deputy Commandant (SDS), the learned counsel for the petitioners submitted that in spite of strong recommendation made to boost up the morale of the Para Medical

Dental Staff in Assam Rifles, nothing has been done and the petitioners have been made to suffer without any promotional avenue.

[15] On a perusal of the Statement of Case for allotment of fund dated 18.10.2016 referred to by the petitioners, this Court finds that the Deputy Commandant has given a detailed justification, which is reproduced herein under:

*“DETAILED JUSTIFICATION*

*3. The paradental staff (DT, DH, DORA) of Assam Rifles are getting diploma courses in various Army Institutes i.e, CMDC Kolkata (EC), CMDC (Lucknow) CC and AFMC (Pune).*

*4. The paradental staff of other CAPF's are recruited and get ASI as their initial rank which is equivalent to WO of Assam Rifles. If AR paradental staff have the same qualification as that of other CAPF's paradental staff, they should also get benefit of promotion equivalent to ASI rank in other CAPF's. Many of AR paradental staff are completing more than 25 years of service without any promotional avenues which is very disheartening and discouraging. It also nullify the enthusiasm to work hard to get promoted to higher rank.”*

[16] The said recommendation of the Deputy Commandant, however, was not considered by the higher officials stating that no provision exists in Assam Rifles for JCO rank for Dental Technician working in Assam Rifles. At this juncture, it is to

be noted that when the respondent authorities refused to give same rank and pay parity with other CPMF's working with the same qualifications, some of the Havildar/Registered Pharmacists in Assam Rifles have filed W.P.(C) No.820 of 2013 before this Court. By an order dated 20.8.2014, a Division Bench of this Court directed the respondents therein to consider the case of Havildar/Pharmacists for upgradation of pay and post on the analogy of CAPF's, when the technical qualification of Pharmacists is the same as that of other CAPF's where similarly situated officer in other CAPF's were already recruited in the entry level in the rank of Warrant Officer while in the case of Assam Rifles, it was in the lower rank of Havildar.

**[17]** The learned counsel for the petitioners submitted that the direction of this Court in W.P.(C) No.820 of 2013 has been implemented and the rank of Havildar/Pharmacists have already been upgraded to the post of Warrant Officer and hence on similar analogy and Settled Rule of Equity, the petitioners being Havildar/Dental Technician should be given the rank of ASI/WO/DT as per the Central Police Organisation Rule and promote them to the higher rank as per Rules. Nothing has been produced by the respondents to contend that as against the order in W.P.(C)

No.820 of 2013 appeal has been preferred. The grievance of the petitioners in citing said case appears to be bona fide and there is no quarrel that the direction in W.P.(C) No.820 of 2013 has been implemented.

**[18]** The petitioners are similarly situated persons of similar organisation and since qualified Dental Mechanics of other Central Police Organisation have already been extended the entry level rank of Dental Technician as ASI equivalent to the rank of Warrant Officer in Assam Rifles, there is no reason in denying the same benefit in the case of the petitioners.

**[19]** The learned counsel for the petitioners submitted that there is no promotional avenue for petitioners even after working for nearly 25 years as Dental Technician in the rank of Havildar, whereas a new recruit in other similar organisation like Central Police Organisation/Central Paramilitary Forces as Dental Technician possessing the same qualification as that of the petitioners have an entry level rank of ASI with further promotional avenues and thus, the respondents have arbitrarily violated Articles 14, 16 and 21 of the Constitution of India by treating equals as unequal in an arbitrary manner.

**[20]** This Court finds some force in the arguments of the learned counsel for the petitioners. As stated supra, in the case of Havildar/Pharmacists, earlier this Court intervened and directed to upgrade them to the post of Warrant Officers and the same analogy has to be adopted in the case of the petitioners herein in order to maintain the Rule of Equity.

**[21]** Placing reliance upon the order of this Court in W.P.(C) No.947 of 2017, dated 10.10.2019, the learned counsel for the petitioners submitted that when the petitioners in W.P.(C) No.947 of 2017 were denied for remusteration to the post of Nb/Sub (E&M) and (B&R), JE as initial rank, this Court intervened and directed the respondents authorities to remuster the post of the petitioners therein to the rank of Nb/Sub (E&M) and Nb/Sub (B&R), JE as initial rank. The learned counsel further submitted that the petitioners herein are similarly situated persons of technicians and therefore, they should be given upgradation to the rank of ASI/WO/DT as entry level rank. As against the order In W.P.(C) No.947 of 2017, the respondents have not preferred any appeal and the said order attained Finality.

**[22]** The petitioners have also drawn the attention of this Court to the order of the Meghalaya High Court passed in W.P.(C) No.327 of 2014, dated 6.8.2018. In the said case, the petitioner was enrolled in Assam Rifles as Riflemen (GD) and he attended Diploma course in Civil Engineering conducted at College of Military Engineering (CME), Pune while serving with Construction and Maintenance Company, Assam Rifles Laitkor, Shillong. The request of the petitioner for his remusteration was denied by the authority and hence he preferred the writ petition. After considering the submissions of both sides, the Meghalaya High Court held as under:

*“1. The admitted position as emerged from the records as well as from the pleadings of the respective parties is, that the petitioner was enrolled in Assam Rifles as Riflemen (GD) on 30.11.1991. He attended Diploma Course in Civil Engineering conducted at College of Military Engineering (CME) Pune from 05.05.2003 to 30.04.2005, while serving with Constr. & Main. Coy, Assam Rifles Laitkor, Shillong. Vide order No.1.21022/06/Engr/2007/Adm-II dated 19.01.2007 he was posted to 26th Assam Rifles in lieu of an Engr JCO (B&R) with a clarification that his services will be gainfully utilized in supervision works and for making estimates. The petitioner has been performing his duties as Engineer Bridge and Road since 29.01.2007.*

*2. The petitioner seems to have represented for his remusteration from Rfn/GD (B&R) to Nb.Sub (B&R) same has been denied on the*

ground that in terms of Recruitment Rules, 2000, method for recruitment of Naib Subedar is 10% by direct recruitment. In short, it is the stand of the respondents that remusteration is not permissible vis-a-vis posts of Naib Subedar, which are to be filled up 100% by direct recruitment.

3. The contention of the learned counsel for the petitioner is that in the year 2014, a signal has been sent suggesting that the Diploma qualified NCO/OR not authorized to sign MBS till remustered. In addition thereto also referred to the order dated 19.01.2007 issued by the office of Directorate General Assam Rifles, Shillong in terms whereof, number of Diploma qualified personnel which include the petitioner were posted in various units with a condition that the Diploma qualified persons will be gainfully utilized to supervise the works and to make estimates, however, as these persons have not been remustered into Engr. Trade, the Engr. JCO posted at Sector HQ will verify and sign all the technical documents put up by these Diploma qualified persons. It is the contention that there is scope for remustering in view of its reference in the order dated 29.01.2017 as well as in the signal dated 14.05.2014.

4. It is further contention of the learned counsel for the petitioner that remusteration in effect is a direct recruitment. Therefore, the respondents cannot take a stand adverse to the interest of the petitioner under the guise of the Recruitment Rules of 2000.

5. Confronted with the said position, learned CGC would submit that the position has not been clarified. In case, remusteration is equivalent to direct recruitment then, such personnel have to satisfy the conditions as incorporated in the Record Office Instruction No.2/2012 for their remusteration.

6. In the stated given circumstances, petition is disposed of with a direction to the respondents to take all necessary steps at their

*respective level for according consideration to the case of the petitioner for remusteration from Rfn/GD (B&R) to Nb.sub (B&R) and to pass appropriate orders thereon as shall permissible under the law within a period of six weeks from today. The decision whatever taken shall be convey to the petitioner. Right is reserved to the petitioner to re-agitate subject to survival of cause.*

*7. Disposed of as above.*

**[23]** The case on hand is similar to the case dealt with by the Meghalaya High Court, as the present petitioners were joined as Riflemen in Assam Rifles. It is seen that the order passed in W.P.(C) No.327 of 2014 dated 06.08.2018 has not been appealed and the said order also attained finality.

**[24]** In the present case, as stated supra, the petitioners have submitted their representations dated 15.7.2016 to their higher official requesting for grant of JCO rank. The representations of the petitioners were forwarded by the Deputy Commandant with due recommendation that the request is genuine and needs immediate attention. However, without assigning any reason, the concerned authority viz., SOZ (A) rejected request of the petitioners that no provision exists in Assam Rifles for JCO rank for Dental Technician working in Assam Rifles. However, SOZ (A) has



forwarded the recommendation of the Deputy Commandant to his higher official.

**[25]** The petitioners are bonafidely demanding equality of initial rank. The petitioners were voluntarily remustered from Nursing Assistant to the post of Dental Technician as there is requirement of Dental Technician in Assam Rifles and there were vacancies. A policy has been framed to fulfil such post of Dental Technician through remusteration from Nursing Assistant after being qualified for such trade. Since the respondents invited applications from eligible candidates for remusteration to Dental Technician and once remustered from Nursing Assistant to Dental Technician, the candidates are being posted to the Dental Units of Assam Rifles and have been performing duties of Dental Technician and not as Nursing Assistant.

**[26]** It is to be noted that the command and control of Army or any other Department of Assam Rifles cannot bar the petitioners who are also working in Assam Rifles from getting their legitimate rights qua rank structure and pay scale. As stated supra, in the case of petitioners there is clear case of discrimination against them as no rank structure at par with other similarly situated personnel

has not been resorted to. This act of commission and omission in a discriminatory manner is further compounded by failure to provide promotional posts to the petitioners.

**[27]** It is also to be noted that the Recruitment Rules does not empower the respondents to discriminate against the petitioners by providing the rank of Warrant Officer/ASI in the case of Radio Mechanic, Clerks, General Duty, Pharmacists as an entry level rank and which was implemented later on as they were not initially appointed in the said rank during enrolment. As rightly argued by the learned counsel for the petitioners there is no legal justification given by the respondents as to the reason for meting out selective discrimination against the petitioners without any justified reasons. Further, no additional financial burden will be imposed in upgrading and re-designating the posts of the petitioners. This Court finds some force in the said submissions of the learned counsel for the petitioners and thus, the grievance of the petitioners appears to be bonafide.

**[28]** It is not in dispute that the petitioners are technically qualified and good experience holders. When that being the factual aspect, till date no action was taken by the respondents on the

representation of the petitioners as similarly situated technical cadres have already been upgraded. Since the petitioners have been victimized, they have right in approaching this Court seeking to upgrade them to the rank of ASI/WO/DT as entry level rank.

**[29]** The law is well settled that discrimination is anti-thesis to the right to be treated equally in the eyes of law. Thus, the act of the respondent authorities in not treating the petitioners as equal cannot be sustained.

**[30]** It is also settled that stagnation in service for an unduly long period without any avenue for promotion is not in the interest of administration. In the instant case, the petitioners have been denied their rightful claim to be treated equally in the eyes of law in the matter of employment, in spite of several representations being filed and positive recommendations made by the superior officials of the petitioners. Therefore, this Court is of the view that the petitioners should be given the post of ASI/WO/DT as entry level rank as per the Central Police Organisation Rules.

**[30]** In the result,

(a) The writ petition is allowed.

(b) The respondents are directed to upgrade/re-designate the petitioners to the rank of Assistant Sub Inspector/Warrant Officer/Dental Technician as entry level rank as per Central Police Organisation Rules and pay all service benefits applicable to them, if any.

(c) The said exercise is directed to be completed within a period of three months from the date of receipt of a copy of this order.

(d) No costs.

**JUDGE**

***FR/NFR***

*John kom*