

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 282 of 2020

Date of Decision: 28.07.2023

Shri. Arun Kumar Tiwari

Vs.

Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. M. Chanda, Adv.
Mr. M.L. Nongpiur, Adv.

For the Respondent(s) : Mr. R. Debnath, CGC (For R 1-6)
None for R 7 & 8.

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

JUDGMENT AND ORDER

1. The issue in the present writ petition concerns the inter se seniority of the petitioner *vis-à-vis* the respondents No. 7 and 8, in the cadre of Warrant Officer (Personal Assistant) following their re-

mustering in the said cadre w.e.f. 19.02.2008. While the two private respondents were re-mustered from the cadre of Havildar/Clerk, the petitioner was re-mustered from the cadre of Rifleman/Operator Radio and Line (ORL), which was a cadre lower in hierarchy than that of the Havildar cadre. As such, at that point of time, the two private respondents were assigned higher seniority than the petitioner in the cadre of Warrant Officer (PA), which was as per Paragraph – 5 of the Assam Rifles Record Office Instruction (ROI) No. 04/2002.

2. The basis of the claim of the writ petitioner to seniority over the private respondents was on his being retrospectively upgraded to the cadre of Havildar (ORL) w.e.f. 09.11.2002, vide order dated 29.05.2017, which was passed in compliance to the common judgment and order of this Court dated 10.03.2017, in a batch of writ petitions being WP(C) No. 322 of 2015, WP(C) No. 49 of 2016, WP(C) No. 295 of 2015 and WP(C) No. 321 of 2015. It is the case of the petitioner therefore, that while the petitioner has been treated to be a Havildar on and from 09.11.2002, the two private respondents were appointed to the said cadre only on 28.11.2005 and 09.01.2006 respectively, and as such, he should be placed at a higher position than the private respondents.

3. Mr. M. Chanda, learned counsel for the petitioner submits that the petitioner to assert his vested right had filed representations dated

05.10.2017, 08.10.2018 and 21.10.2019, seeking to be placed above the private respondents in the gradation list of Warrant Officer (PA), but the prayer was rejected by the authorities, by the impugned letters dated 28.02.2019, 18.06.2019, 10.10.2019 and 21.11.2019, which he contends is in violation of ROI 4/2002, Para – 5. It is further submitted that, the claim for due seniority had been rejected by the respondents, even though his superior/controlling authorities had recommended the same. In this regard, the learned counsel has referred to DO letters dated 08.10.2018, 18.10.2018, 25.10.2018 and 08.05.2019 (Annexures – 8, 8A, 8B and 14 respectively), to support this contention. As such he submits, from the clear facts that have been placed, the petitioner has been deprived of his rightful seniority, inasmuch as, the situation cannot be that the private respondents who were not yet borne in service in that grade, be considered senior. In support of his arguments, the learned counsel has placed reliance on the judgment dated 19.11.2019, of the Hon'ble Supreme Court passed in Civil Appeal No. 8833-8835 of 2019 (***K. Meghachandra Singh & Ors. vs. Ningam Siro & Ors.***) and other two connected matters.

4. Mr. R. Debnath, learned CGC for the respondents has submitted that the case of the petitioner was examined on the representations so made, and that the respondents had already granted

financial benefits of such upgradation of Havildar (ORL) w.e.f. 09.11.2002 to 07.03.2008, to him, but however, the representation was rejected as the claim for retrospective seniority was devoid of merit. In this context, the learned counsel has referred to the SOP, with regard to Re-musteration of Personnel from one category to another, which outlines the procedure regarding Re-mustering of Personnel from one category to another, and has placed reliance on ROI No. 1/92 on the point of seniority. Para – 6 of the said ROI No. 1/92, he submits stipulates that, seniority for all purposes in the re-mustered trade will be reckoned from the date of re-musteration only, and not from the date of enrollment. The petitioner, he contends does not have any vested right for his seniority to be reckoned from the date of re-musteration as Havildar (ORL), and further he had also been granted all the financial benefits as entitled on re-musteration. In support of his arguments, learned counsel has placed reliance on the case of ***Shiba Shankar Mohapatra & Ors. vs. State of Orissa & Ors.*** reported in (2010) 12 SCC 471, which speaks about delay and laches in challenging inter se seniority and also the determination thereof, in the absence of statutory rules.

5. None has appeared for the private respondents No. 7 and 8, inspite of service of notice, which has been evidenced by receipts dated

04.05.2023, and 10.05.2023. As they have been served, this matter was heard and is being disposed of in their absence.

6. The only point for consideration is the claim of the petitioner to retrospective seniority over the respondents No. 7 and 8, in view of the fact that, as noted above pursuant to Court orders, he received the benefit of such upgradation of Havildar (ORL) w.e.f. 09.11.2002 to 07.03.2008. This claim however, has to be looked at from the facts and circumstances surrounding the case, and cannot be said to be as straight forward or simple, as to the determination of seniority between a person who is on paper senior to other persons, who were not yet borne in the cadre, as sought to be made out by the petitioner. In this regard, the order dated 05.03.2008, whereby the petitioner including the respondents No. 7 and 8, were re-mustered, needs to be examined. An extract whereof is reproduced hereinbelow.

MAHANIDESHALAYA ASSAM RIFLES
DIRECTORATE GENERAL ASSAM RIFLES : SHILLONG

ORDER

I.12016/9/2008/Adm-II/

Dated: 05 Mar 2008

1. The following pers of Fmns/units as shown against each are hereby approved for remustering into WO (PA) w.e.f. 19 Feb 2008 to the scale of pay Rs. 4000-100-6000/- pm :-

Ser No.	Particulars	Present Unit	Date of Remusteration
(a)	C/362842M Hav/Clk L Sanaton Singh	ARASU	19 Feb 2008
(b)	C/362964W Hav/Clk Pankaj Kumar Singh	ARTC & S	19 Feb 2008
(c)	C/363027L Hav/Clk Satheesh S	HQ DGAR	19 Feb 2008
(d)	C/5010513X Hav/Clk J Justine	15 AR	19 Feb 2008
(e)	C/5010659L Hav/Clk Binti Singh	44 AR	19 Feb 2008
(h)	G/193740N Rfn/GD Anil Kumar KL	19 AR	19 Feb 2008
(g)	G/213832K Rfn/GD Saji PV	2 AR	19 Feb 2008
(f)	G/359021M Rfn/ORL Arun Kumar Tiwari	HQ 23 Sect AR	19 Feb 2008

7. The seniority it can be seen was fixed in order of the cadre, from which the persons had been originally borne in, before being re-mustered as Warrant Officer. Accordingly, the petitioner as well as, two other Riflemen were ranked lower in seniority, than those who were originally belonging to the higher cadre of Havildar/Clerk, such as, the respondents No. 7 and 8.

8. As observed earlier, the basis of the claim of the writ petitioner to seniority over the private respondents was on his being retrospectively upgraded to the cadre of Havildar (ORL) w.e.f. 09.11.2002, vide order dated 29.05.2017, which was passed in compliance to the common judgment and order of this Court dated 10.03.2017, in a batch of writ petitions. In this context therefore, this Court is to examine as to whether, the writ petitioner has acquired any vested right for retrospective reckoning of seniority, even though, financial and other benefits have been accorded to the writ petitioner from the date he was upgraded retrospectively to the post of Havildar/Clerk. It is to be noted that, the date of re-musteration for all the eight persons was given as 19.02.2008. In this regard ROI No. 1/92, which is relevant on the point of seniority at Para – 6, stipulates as follows.

“Seniority

6. Seniority for all purposes in the remustered trade will reckon from the date of remusteration only and not from the date of enrollment.”

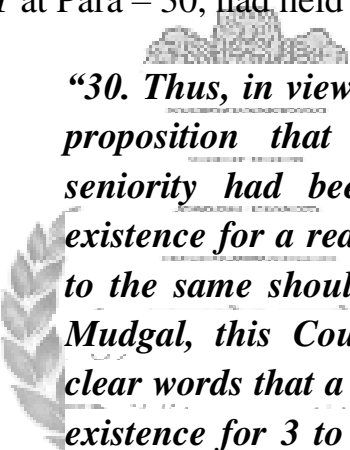
9. ROI No. 1/92, therefore having provided the basis for determination of seniority and the respondents No. 7 and 8, being placed higher in the list, it cannot be the case that, this ROI will not apply to a situation where all the employees are re-mustered on the same date, and

that it only applies to cases, where the date of re-musteration to the said rank were made on different dates, as sought to be made out by the petitioner to assert that the date of enrollment, in this case retrospective, should be the defining factor.

10. Further, it is observed that the judgment and order dated 10.03.2017, relied upon by the writ petitioner, which was passed in WP(C) No. 322 of 2015, WP(C) No. 49 of 2016, WP(C) No. 295 of 2015 and WP(C) No. 321 of 2015, does not allude to grant of respective seniority, but only to fixation of pay and pension including calculation of arrears and revision of pension, as per the 5th, 6th and 7th CPC as applicable. This appears in the pleadings of the writ petitioner itself at Para – 6, wherein this portion has been quoted. The petitioner, as per the said order has in the considered view of this Court been given all benefits as admissible, that is, monetary benefits of such upgradation of Havildar (ORL) w.e.f. 09.11.2002 to 07.03.2008, and as such, can no longer derive any other benefit from the said judgment and order dated 10.03.2017.

11. The seniority of the petitioner as discussed, was fixed at the time of his re-musteration as Warrant Officer (PA) on 05.03.2008, the same therefore cannot be altered now after a lapse of over a decade, as it will unsettle a settled position. It has to be kept in mind that, the grant of

any relief as prayed by the petitioner for review of seniority on grounds of upgradation of his previous rank/post retrospectively, will surely result in upsetting the seniority position, inasmuch as, the petitioner after his re-musteration as Warrant Officer (PA) had remained junior to the private respondents No. 7 and 8, for more than 12 years, for which review is sought for now. The Supreme Court in the case of *Shiba Shankar Mohapatra & Ors. vs. State of Orissa & Ors.* reported in (2010) 12 SCC 471 at Para – 30, had held as follows.



“30. Thus, in view of the above, the settled legal proposition that emerges is that once the seniority had been fixed and it remains in existence for a reasonable period, any challenge to the same should not be entertained. In K.R. Mudgal, this Court has laid down, in crystal clear words that a seniority list which remains in existence for 3 to 4 years unchallenged, should not be disturbed. Thus, 3-4 years is a reasonable period for challenging the seniority and in case someone agitates the issue of seniority beyond this period, he has to explain the delay and laches in approaching the adjudicatory forum, by furnishing satisfactory explanation.”

12. The judgment placed by the learned counsel for the petitioner *K. Meghachandra Singh & Ors. vs. Ningam Siro & Ors. (supra)*, is of no assistance to the case of the petitioner, as the same is on a different footing altogether. The other grounds set up by the petitioner such as,

recommendations for re-fixation of his seniority and the airing of his grievances before the higher authorities has also been suitably replied and in the opinion of this Court, had been rightly rejected by the department, inasmuch as, any tinkering with the seniority list after a lapse of so many years, would surely result in turmoil and upheaval in the organizational structure of the concerned ranks, wherein similar upgradation exercises have been undertaken.

13. For the aforementioned reasons, the writ petition fails and is accordingly dismissed, however, with no order as to costs.



Judge

Meghalaya
28.07.2023
"D.Thabak-PS"