

Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 519 of 2018

Date of Decision : 30.01.2023

A. Basumatari & Ors.

Vs.

Union of India & Ors.

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. H.L. Shangreiso, Sr. Adv. with
Ms. A. Kharshiing, Adv.

For the Respondent(s) : Dr. N. Mozika, DSG with
Mr. B. Shangrit, Adv.

i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press Yes/No

JUDGMENT AND ORDER

1. By way of this instant writ petition, the petitioners 221 in number, are before this Court, praying for directions to order the

respondents to grant and release ration money allowance to the writ petitioners from their date of entitlement. Orders dated 7th September, 1998 and 24th February, 2009, issued by the Ministry of Home Affairs, whereby, the grant of ration money allowance has been allowed only to combatised non-gazetted Central Para Military Forces, upto the rank of Battalion Commander, have been impugned.

2. The brief facts are that, the writ petitioners are serving in the Assam Rifles in various capacities and have been posted in operational areas, in the state of Manipur, Tripura, Nagaland and some districts of Arunachal Pradesh, alongside combatised personnel. The grievance of the writ petitioners is that, though they are posted in these hazardous areas, they have not been extended the benefit of ration money allowance, which is however granted to the combatised personnel posted in the same station.

3. Mr. H.L. Shangreiso, learned Senior counsel assisted by Ms. A. Kharshiing, learned counsel for the petitioners submits that, ration money allowance as per the report of the 5th Central Pay Commission dated 30th January, 1997, is an additional allowance, attached to discharge of arduous duties in hardship areas, which is unconnected with the normal service conditions of personnel. The Ministry of Home Affairs, he submits, vide a resolution dated 30th September, 1997, decided to extend the same to personnel working alongside with army personnel in these areas,

however, leaving the review and scale of rations to be decided by the Ministry of Home Affairs. Learned Senior counsel submits that, however, the respondent No. 1(the Ministry of Home Affairs), by the impugned orders dated 7th September, 1998 and 1st September, 2009, did not extend this benefit to the non-combatised personnel, such as the petitioners. It is contended by the learned Senior counsel that, these decisions run contrary to the resolution dated 30th September, 1997, wherein the recommendation of the 5th Central Pay Commission had been accepted.

4. The learned Senior counsel contends that, the granting of ration money allowance only to uniformed combatised personnel, and depriving the civilian personnel posted in the same hardship areas, wherein they discharge similar duties as the uniformed nurses, teachers, etc., and put their lives at risk, is an irrational and unreasonable classification. It is further submitted that, the recommendations of the Assam Rifles for the 6th Pay Commission, had at Para – 43 under the caption ‘Ration Allowance to Civilian Staff’, had recommended the grant of free ration to be made applicable to the civil staff of the Assam Rifles. Other similar services, he submits, such as the Special Service Bureau, are granted the benefit of ration money allowance. In this context, the decision of the Hon’ble Supreme Court, in the case of *Union of India vs. Ram Gopal Agarwal & Ors.* reported in (1998) 2 SCC 589, has been cited by the learned Senior

counsel, who submits that the ratio laid down by the Supreme Court, affirming the extent to which non-combatised CRPF personnel were granted ration money allowance is still holding the field and, in this regard, this judgment is squarely applicable to the case of the writ petitioners.

5. The learned Senior counsel has also placed a letter dated 30th May, 2022, brought on record by way of an additional affidavit to show that the respondents (Assam Rifles), have a provision, whereby free rations on a scale applicable to combatants are allowed to Defence Civilians working in Field Areas and Modified Field Areas. In closing his arguments, the learned Senior counsel submits that, the refusal to grant ration money allowance to the writ petitioners by the respondents is highly discriminatory and arbitrary, and it is further submitted that, the relief sought by the writ petitioners is not hit by the principles of delay and laches, by placing reliance on the case of *Union of India vs. Tarsem Singh* reported in (2008) 8 SCC 648, wherein, it has been held that, in cases of continuing wrong, a writ petition can be entertained despite delay.

6. Dr. N. Mozika, learned DSG assisted by Mr. B. Shangrit, learned counsel for the respondents has at the outset submitted that, the claim at this stage, is highly belated and is liable to be rejected. He submits that, the writ petitioners are seeking to set aside and quash the Office Memorandum dated 24.02.2009, after a period of more than 9 years, and

that too after getting benefits of pay and allowances under the 6th Central Pay Commission w.e.f. 01.01.2006 and 7th Central Pay Commission w.e.f. 01.01.2016. Learned DSG submits that the matter has been considered by the 5th and 6th Central Pay Commission, which is an expert body, and it allowed the benefit of ration money allowance only to combatised personnel of the Central Para Military Forces. He submits that there is no further government order, such as the one dated 24.02.1989, thereafter, to allow ration money allowance to civilians/non-combatised working in operational areas, as by order dated 07.09.1998, ration money allowance was allowed only to combatised personnel. The learned DSG submits that on the implementation of the report of the 6th CPC, Office Memorandum dated 24.02.2009, was issued stating that, ration money allowance shall continue to be paid to only those categories of Central Para Military Forces personnel, who are presently in receipt of the allowance as conveyed by order dated 07.09.1998.

7. Learned DSG submits that, though the Assam Rifles had recommended to the 6th CPC, to allow ration money allowance to the civilian staff of the Assam Rifles, on the ground that they are performing their assigned duties side by side with their combatant staff counter parts in the Field Areas of NE region, and that, the duties performed was similar, the same was not accepted by the 6th CPC, nor by the government. He

reiterates his submissions, that after 24.02.1989, there is no government order allowing ration money allowance to civilian staff.

8. The learned DSG then submits that similar prayers for benefits by other civilian staff of the Assam Rifles had been turned down by the High Court, in the case of *Samir Chandra Kar vs. Union of India*, reported in *2017 SCC OnLine Megh 319*, wherein it has been held that, classification between combatised and non-combatised personnel, is a valid classification because of their separate job responsibilities. On the application of the decision rendered in *UOI vs. Ram Gopal Agarwal(supra)*, the learned DSG submits that, in this decision which was passed with regard to the CRPF, the Supreme Court noticing a clear distinction, in the terms and conditions of service, nature of work and service tenure between combatised and non-combatised personnel, had held that, the two groups of CRPF personnel were unequal and that, treating unequals as equals would be discriminatory, and as such, the principle of 'Equal Pay for Equal Work' would have no application.

9. In countering the statements made in the additional affidavit filed by the petitioners, the learned DSG submits that, the document dated 30th May, 2022, produced by the petitioners, was applicable only to the Defence Civilians, who are under the Ministry of Defence, whereas, the petitioners are governed by the Central Civil Services (CCS) Rules and

come under the Ministry of Home Affairs, and as such, no comparison can be drawn between the Assam Rifles civilian employees and defence civilians. It is also submitted that, though civilian employees are working in sensitive areas, they are not exposed to risks faced by combatants who are covered by the Assam Rifles Acts and Rules, which are not applicable to the civilian employees. He finally submits that, there being a clear distinction, which is a reasonable classification, there is no question of the writ petitioners being discriminated against, or that there is any arbitrariness on the part of the respondents.

10. I have heard the learned counsels for the parties and have considered their submissions and examined the materials on record. The only point in contention in the instant writ application, is to whether the petitioners who are civilian personnel, are being illegally and arbitrarily deprived of the ration money allowance which is being afforded to other combatised personnel while serving in operational areas. It has been urged as noted above by the petitioners, that the nature of duties discharged by them is similar to the duties discharged by the combatised personnel in all respects and as such they are entitled to similar benefits.

11. The Court at this stage is therefore to examine as to whether the denial of ration money allowance to the petitioners is a result of a reasonable classification or otherwise. In this context, it is necessary to

examine the sequence of events and orders apart from relevant judgments, to discern as to whether the denial is founded on valid grounds. It is noticed from the materials, that the only document that specifically accorded this benefit to non-combatants of ration money allowance to non-gazetted ministerial and hospital staff, was a letter dated 24.02.1989 issued by the Ministry of Home Affairs. However, it is also noticed that the said benefit was only extended to the CRPF, and there is no other order with regard to other CPMFs. Though by a resolution dated 30.09.1997 the Ministry of Finance, had conditionally accepted the grant of such ration money allowance, the same was however, subject to the directions of the Ministry of Home Affairs, as to the scale of rations permissible to entitled personnel, working in difficult areas/hazardous conditions alongside army personnel (Annexure-2 to the writ petition). The Ministry of Home Affairs thereafter by the first impugned order dated 07.09.1998, allowed the ration money allowance based on the army scale of rations, only to combatised non-gazetted CPMF personnel up to the rank of Battalion Commander. Subsequently pursuant to the recommendations of the 6th Central Pay Commission, the respondent No. 1 similarly in continuation of the order dated 07.09.1998, granted ration money allowance only to combatised CPMF personnel vide the second impugned order dated 24.02.2009.

12. The matter was then agitated by one Samir Chandra Kar and 118 others, before the Gauhati High Court by way of WP(C) No. 5881 of 2010, assailing the order dated 24.02.2009, which is the same order impugned herein. WP(C) No. 5881 of 2010 came to be dismissed by order dated 20.11.2018 passed by a Single Bench of the said Court wherein, in the said judgment reference was made, to other similar matters where the same petitioner, by way of WP(C) No. 365 of 2014, had come before this Court for grant of risk/hardship allowance to non-combatant employees of the Assam Rifles. The said writ petition, was dismissed along with two other similar petitions being WP(C) No. 84 of 2015 and WP(C) No. 120 of 2014, vide order dated 15.10.2017. These matters were then carried on appeal before the Division Bench of this Court by way of WA No. 2 of 2018, which was also dismissed on 13.06.2018.

13. The ratio of the earlier decided cases clearly held that there was no parity between non-combatant and combatant personnel on account of their nature of service, duties and also the fact that they were governed by separate Rules. In the judgment dated 15.10.2017, reference has also been made to the judgment of *Union of India vs. Ram Gopal Agarwala* (supra), especially para-10 which is for the sake of convenience is reproduced hereinbelow to substantiate the findings arrived at:-

*“10. We have heard learned counsel for the parties and we find that there is clear distinction in the terms and conditions of service, the nature of work and even tenure of service inter se between combatised and non-combatised personnels. The combatised personnel retire at the age of 53 while the non-combatised personnel retire at the age of 55. The nature of work, so far as combatised personnel are concerned, is arduous in nature in the operational and sensitive areas. In fact even the non-combatised personnel while working in the operational areas and such sensitive, places are granted the ration allowances. It is only when they are working in `static areas there is no provision for this allowance. Even terms and conditions, service conditions are totally different. The combatised personnels are governed by **Central Reserve Police Force Act and Rules** which is an army rule more stringent in nature while non- staff is governed by the civilian law, namely, C.C.S. Rules made by the Government of India under **Article 309** of the Constitution. The question of discrimination in the matter of allowances has to be listed differently even inter se between those falling under class of "equal pay for equal work". In cases where some perform overtime duties, night duties, duties in hazardous places viz, mountain, terrain at heights or at sensitive border areas an additional allowance is made applicable to the nature of work they perform. Similarly, when option is given it is with clear intention of there being plus and minus points in the two categories. That by itself differentiates inter se between the two. Once not opting to enjoy the benefit, as in the present case, to continue in service of one category upto larger length of service (55 years) and not to involve in the hazardous nature of duties with stringent service conditions cannot come forward to claim the benefit of the other category also on the ground of discrimination. In fact, treating unequal to be equal itself would be discriminatory, Thus, we conclude it is neither a case of "equal pay for equal work" nor a case of discrimination or violation of Articles 14 and 16 of the Constitution of India.”*

14. The case of the petitioners therefore being covered by the earlier pronouncements of this Court, as also the judgment of the Gauhati High Court, which has great persuasive value, inasmuch as, as the same order is under challenge herein, i.e. the order dated 24.02.2009, and taking into consideration the clear distinction in the conditions of service, the principle of 'Equal Pay for Equal Work' would clearly have no application in the instant case, and the non-grant of ration money allowance to the petitioners who are non-combatants, cannot be said to be unreasonable or arbitrary. Further, with regard to the document dated 30th May, 2022, the submissions of the learned DSG are accepted, inasmuch as, the same would not be applicable to the case of the petitioners who are governed by Central Civil Services (CCS) Rules and are under the Ministry of Home Affairs, whereas the Defence Civilians which the document applies to, are under the Ministry of Defence.

15. In view of the facts and circumstances of the case, there is no merit in the instant petition and the same is dismissed.

16. No order as to costs.

JUDGE

Meghalaya
30.01.2023
"V. Lyndem-PS"