

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WA No. 44 of 2021

Md. Yakup Ali,

...Appellant

-Versus-

1. Md. Abdul Rajak,

... Respondent

2. State of Manipur, through the Commissioner/Secretary/
Principal Secretary (Home), Govt. of Manipur, Manipur
Secretariat Building, Babupara, PO & PS Imphal, Imphal
West, Manipur 795001.

3. The Commandant General, Home Guards, Government of
Manipur, Manipur Police Head Quarter, Babupara, P.O. &
P.S. Imphal, Imphal West District, Manipur – 795001.

4. The Commandant, Home Guards (VA), Government of
Manipur, Lamphelpat, P.O. & P.S. Lamphel, District Imphal
West, 795004

...Proforma Respondents

with

W.A. No. 50 of 2021

Md. Wahid Ali,

...Appellant

Vs.

1. Md. Yakup Ali,

...Private respondent

2. The State of Manipur, through the Commissioner/Secretary/
Principal Secretary (Home), Government of Manipur, Manipur
Secretariat, P.O. & P.S. Imphal – 795001.

3. The Commandant General, Home Guards, Govt. of Manipur, Manipur Police Headquarters, Babupara, P.O. Imphal – 795001.
4. The Commandant, Home Guard (VA), Govt. of Manipur, Lamphelpat, Imphal – 795004.

...Official Respondents

BEFORE

**HON'BLE THE CHIEF JUSTICE MR. SANJAY KUMAR
HON'BLE MR. JUSTICE MV MURALIDARAN**

For the appellant in W.A. No. 44 of 2021/ respondent No. 1 in W.A. No. 50 of 2021	:	Mr. H.S. Paonam, Sr. Advocate
For the appellant in W.A. No. 50 of 2021	:	Mr. Kh. Tarunkumar, Advocate
For the State respondents	:	Mr. Niranjan Sanasam, G.A
For respondent No. 1 in W.A. No. 44 of 2021	:	Mr. BP Sahu, Sr. Advocate.
Date of reserving Judgment	:	22.02.2022
Date of Judgment & Order	:	02.03.2022

JUDGMENT & ORDER (CAV)

Sanjay Kumar (C.J.):

[1] By common Judgment & Order dated 16.08.2021, a learned Judge of this Court disposed of three writ petitions, viz., W.P. (C) No. 17 of 2019, W.P. (C) No. 240 of 2019 and W.P. (C) No. 608 of 2019. Thereby, the learned Judge set aside the orders of promotion dated 06.01.2019 and 17.07.2019 of Md. Wahid Ali and Md. Yakup Ali respectively and remitted the matter to the authorities for consideration afresh within a time frame.

Aggrieved thereby, Md. Yakup Ali, respondent No. 4 in W.P. (C) No. 608 of 2019, filed W.A. No. 44 of 2021, while Md. Wahid Ali, respondent No. 4 in W.P. (C) No. 17 of 2019, filed W.A. No. 50 of 2021.

These matters pertain to the Manipur Home Guards, a uniformed service. The sorry state of affairs prevailing in this service in relation to promotions led to this litigation. The bone of contention presently is the promotional post of Battalion Commander.

[2] W.P. (C) No. 17 of 2019 was filed by Md. Yakup Ali (wrongly shown as Md. Yakub Ali in the judgment under appeal), a Division Commander in the Manipur Home Guards. His grievance was that Md. Wahid Ali, respondent No. 4 therein, a Company Commander, who had only been assigned Division Commander duty on acting/temporary basis, was promoted to the rank of Battalion Commander and posted as such at Bn-V, Bishnupur, by order dated 06.01.2019 (wrongly shown as 06.01.2018 therein). Assailing the said promotion, Md. Yakup Ali filed the writ petition. By interim order dated 17.01.2019, the order dated 06.01.2019 was suspended.

W.P. (C) No. 240 of 2019 was filed by Md. Tolen, a Division Commander of Manipur Home Guards, on similar lines, challenging the promotion of Md. Wahid Ali as a Battalion Commander. By interim order dated 18.03.2019, the impugned order dated 06.01.2019 was suspended.

W.P. (C) No. 608 of 2019 was filed by Md. Abdul Rajak, another Division Commander of Manipur Home Guards. He stated that he was the senior-most amongst the Division Commanders, standing at Sl. No. 1 of the Seniority List dated 07.03.2018, whereas Md. Yakup Ali, respondent No. 4 therein, stood at Sl. No. 5. The cause for his grievance was that, after Md. Yakup Ali filed W.P. (C) No. 17 of 2019 against Md. Wahid Ali's promotion, order dated 17.07.2019 was issued promoting Md. Yakup Ali to the rank of Battalion Commander and posting him as such at Bn-V, Bishnupur District,

subject to the outcome of W.P. (C) No. 17 of 2019. Md. Abdul Rajak assailed this action on the part of the authorities, as he was senior to Md. Yakup Ali.

[3] Manipur Home Guards is a voluntary uniformed service established in 1966 and it is presently governed by the Manipur Home Guards Act, 1989 (*hereinafter*, 'the Act of 1989'). As per Section 2(b) thereof, 'Home Guard' means a person who is appointed as such, and includes an officer appointed under the Act of 1989. Section 3 deals with constitution of the Home Guards and states that, by way of a notification in the Official Gazette, the State Government shall constitute a volunteer body called the Manipur Home Guards, the members of which shall discharge such functions and duties in relation to protection of persons, security of property, public safety, maintenance of essential services and preservation of public order and tranquility as may be assigned to them. Section 4 provides for appointment of a Commandant General of Home Guards. Section 6 deals with appointment of Home Guards. Section 6(1) authorizes the Commandant to appoint such number of persons as members of the Home Guards as may be determined by the State Government and he may appoint any such member to any office of command in the Home Guards. Section 6(2) states that, notwithstanding anything contained in Section 6(1), the Commandant General may, subject to the approval of the State Government, appoint any such member to any post under his immediate control. Rule 7 of the Manipur Home Guards Rules, 1996 (*for brevity*, 'the Rules of 1996'), provides that the term of office of a member of the Home Guards shall be three years but the person, once appointed, shall be eligible for re-appointment. All the parties to this litigation seem to have been so re-appointed and this rule is of no real significance.

[4] Significantly, neither the Act of 1989 nor the Rules of 1996 provide any norms or procedure to regulate promotions within the service, though a hierarchy is to be established and maintained. Rule 11 of the Rules of 1996 provides the hierarchy. Rule 11(1) states that, in addition to the Commandant General, the Home Guards should have the following regular staff for an area: (i) Commandant; (ii) Deputy Commandant; (iii) Adjudant; and (iv) Quarter Master. Rule 11(2) states that the following Commanders should be appointed from amongst the members: - (i) Division Commander (one each for every three Companies); (ii) Company Commander; (iii) Senior Platoon Commander or Company Second-in-Command; (iv) Platoon Commander; (v) Company Sergeant Major; (vi) Company Q.M. Sergeant; (vii) Platoon Sergeant; and (viii) Section Leader.

[5] Thus, Division Commanders are superior in rank to Company Commanders. These superior posts would ordinarily form the feeder category for promotion to the rank of Battalion Commander, notwithstanding the wide discretion created under Section 6 of the Act of 1989. Unfortunately, taking advantage of the absence of set rules and procedures, the authorities have been resorting to an arbitrary pick-and-choose policy for promoting persons of their choice to higher posts without reference to rank or seniority. In point, the case on hand demonstrates blatant discrimination by them yet again.

The letter dated 07.03.2018 addressed by the Commandant, Home Guards (VA), Manipur, to the Additional Director General of Police (HG), Manipur, sets out the sanctioned strength; the posted strength; and the vacancies in the ranks of Battalion Commander, Division Commander and Company Commander in the Home Guards. Therein, the sanctioned strength of Battalion Commanders was stated to be 5 and as 4 persons were already

posted as such, one vacancy remained. The sanctioned strength of Division Commanders was shown as 8 and all 8 posts were filled up. The sanctioned strength of Company Commanders was 24 and the posted strength was shown as 17 at that time, leaving 7 vacancies. The seniority list of Division Commanders was also furnished therein:

Sl. No (1)	Hg. No. (2)	Rank (3)	Name (4)	Promotion order and date (5)
1.	816	D.C.	Md. Abdul Rajak	No. 1/15/98-Ops-1 (HG)/6495 dt 20/11/2002
2.	291	D.C.	Md. Tolen	No. 1/13/2015-DCG(HG)/12395dt. 02/08/2016
3.	82206	D.C.	Md. Abdul Salam	No. 1/13/2015-DCG(HG)12395d dt./02/08/2016
4.	79179	D.C.	S. Sanatomba Singh	No. 1/13/2015-DCG(HG)/12395 dt. 02/08/2016
5.	18015	D.C.	Md. Yakup Ali	No. 1/13/2015-DCG(HG)112754 dt. /09/08/2016
6.	79122	D.C.	Md. Basir Ahamad	No. 1/13/2015-DCG(HG)/12395dt. 12/08/2016
7.	84071	D.C.	Y. Tejmala Devi	No. 1/13/2015-DCG(HG)/5027dt. 11/05/2017
8.	841566	D.C.	Th. Ingocha Singh	No. 1/13/2015-DCG(HG)/3514dt. 18/05/2018

[6] It is clear from the aforesaid seniority list that Md. Wahid Ali did not even figure amongst the Division Commanders as on 07.03.2018, though he was assigned Division Commander duties on acting/unpaid temporary basis on 19.09.2016 itself. It may also be noted that the seniority of Division Commanders was indicated on the strength of the orders of their actual promotion as such. Md. Abdul Rajak was the first such promotee, under order dated 20.11.2002, while Md. Tolen was promoted on 02.08.2016 and Md. Yakup Ali was promoted later on 09.08.2016.

Surprisingly, the promotion order dated 06.01.2019 in favour of Md. Wahid Ali was issued by the Commandant General with such carelessness and lack of application of mind that the wrong date '06.01.2018'

appears therein at not one but two places. Further, it describes Md. Wahid Ali as a Division Commander, which he obviously was not.

[7] As already noted *supra*, neither the Act of 1989 nor the Rules of 1996 provide for any procedure to be followed while making promotions within the Home Guards service and it appears to have been left completely to the discretion of the Commandant General/Commandant. Rule 7 of the Rules of 1996, which prescribes a term of office of three years does not entitle the authorities to desist from framing guidelines for making promotions and continue to make subjective choices. This Court is informed that a Committee has now been constituted by the State Government to frame appropriate guidelines for effecting promotions within the Home Guards but that exercise is yet to yield fruitful results. We trust that the Government will pursue this exercise in right earnest so that proper guidelines are framed at least now for effecting promotions within this uniformed service which, as is the case with any uniformed service, requires a high degree of discipline and morale. It would not be in the interest of the service to perpetuate arbitrary and discriminatory promotions, without reference to rank and seniority.

[8] In any event, absence of guidelines, by itself, would not clothe the authorities with whimsical and arbitrary power to pick and choose their own blue-eyed boys for higher posts. The discretion vesting in them under Sections 6(1) and 6(2) of the Act of 1989 would have to be exercised judiciously and not subjectively, bereft of rhyme or reason, based purely on nepotistic tendencies. As Lord John Dalberg-Acton put it succinctly more than two centuries ago, power tends to corrupt and absolute power corrupts absolutely! Despotism exercise of such power is manifest in the case on hand. The promotion order dated 06.01.2019 does not even mention as to what inspired the Commandant General to choose Md. Wahid Ali, superseding all his superiors in the rank of

Division Commander. Notably, a similar issue had arisen for consideration in W.P. (C) No. 2005 of 2001 filed by one Md. Rashimuddin, a Company Commander, who was also granted an out-of-turn promotion as a Battalion Commander but the same was cancelled thereafter. Significantly, an affidavit-in-opposition was filed by the Joint Secretary (Home), Government of Manipur, stating that the Commandant had issued the order promoting him as a Battalion Commander without considering the seniority position. As per the Joint Secretary, the post of Division Commander was the feeder post for promotion as a Battalion Commander and he asserted that the Government was of the opinion that giving an out-of-turn promotion to the petitioner therein by superseding eight Division Commanders and sixteen Company Commanders was quite improper and illegal. He accordingly justified the cancellation of the said promotion order. As is the case with Md. Wahid Ali, the petitioner therein was also a Company Commander who had not been promoted as a Division Commander.

[9] The above affidavit-in-opposition makes it clear that at that point of time, seniority and the feeder category were both given precedence by the authorities. Having committed themselves to such a stand before this Court by way of a sworn affidavit, it is not open to them to backtrack and seek to justify the unmerited promotion of Md. Wahid Ali, a Company Commander, who was only given an acting/unpaid temporary charge as a Division Commander, to the higher rank of Battalion Commander, by overlooking his superiors and seniors in the category of Division Commander.

[10] While so, this Court is informed that, as on date, four vacancies are available in the rank of Battalion Commander. A copy of the letter dated 13.09.2021 addressed to the Special Secretary (Home), Government of Manipur, by the Additional Director General of Police (Home Guards), Manipur,

is placed on record. Therein, the Additional Director General of Police referred to the direction of the learned Judge in the judgment under appeal to the effect that the Commissioner/Secretary/Principal Secretary (Home), Government of Manipur, should take a conscious decision for filling up the posts of Battalion Commander in accordance with law and by considering all eligible candidates, including the petitioners in the three writ petitions. He then went on to state that the posts of Battalion Commander at Imphal West; Thoubal; Bn. HQ-1 Lamphel; and Bishnupur; were vacant. He annexed the seniority list prepared by the Commandant, Home Guards, under the letter dated 07.03.2018, and requested the Home Department to approve the filling up of the subject posts, based on the said seniority list.

Mr. Niranjana Sanasam, learned Government Advocate, would inform this Court that Md. Abdul Rajak, Md. Tolen and Md. Yakup Ali were all within the zone of consideration, as on the date of the letter, for appointment to the available vacant posts of Battalion Commander.

[11] Coming to W.A. No. 50 of 2021, Mr. Kh. Tarunkumar, learned counsel, appearing for Md. Wahid Ali, would contend that the W.P. (C) No. 17 of 2019 filed by Md. Yakup Ali was liable to be rejected on the ground that he failed to approach the Court with clean hands. This Court is however of the opinion that such technicalities cannot be pressed into service to justify and perpetuate the wholly illegal promotion of Md. Wahid Ali at the cost of his superiors and seniors in the rank of Division Commander. Further, the very same promotion order dated 06.01.2019 of Md. Wahid Ali was subjected to challenge in W.P(C). No. 240 of 2019, but no appeal has been filed in relation to that writ petition. Technicalities, if any, are therefore of no consequence.

Further, though Mr. Kh. Tarunkumar, learned counsel, would endeavour to justify his client's promotion order dated 06.01.2019 by relying on

Section 6(2) of the Act of 1989, there is no evidence of the State Government's approval having been obtained, which is a condition precedent. Though the learned counsel would contend that the Chief Minister's approval would suffice for this purpose, no material has been produced in proof of such approval either. In any event, it is not open to the authorities to blow hot and cold to suit their own convenience and they cannot be permitted to resile from the stand taken earlier before this Court. The case law cited by the learned counsel is therefore eschewed from consideration.

In consequence, W.A. No. 50 of 2021 filed by Md. Wahid Ali is bereft of merit and is accordingly dismissed.

W.A. No. 44 of 2021 filed by Md. Yakup Ali is disposed of, taking note of the letter dated 13.09.2021, and directing the respondent authorities to undertake the exercise of filling up the four vacant posts in the rank of Battalion Commander in keeping with the seniority of Division Commanders, as communicated under the letter dated 07.03.2018, and in terms of the stand taken by them in the earlier writ petition, viz., W.P. (C) No. 2005 of 2001. This exercise shall be completed within one month from the date of receipt of a copy of this order.

In the circumstances, there shall be no order as to costs.

A copy of the order shall be supplied online or through whatsapp to the learned counsel for the parties.

JUDGE

CHIEF JUSTICE

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Sandeep