

Serial No.01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 18/2019 with
MC (WA) No. 36/2019

Date of order: 05.09.2022

The Union of India & ors. Vs. Balbir Singh Yadav

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Mr. N. Syngkon, Adv with
Ms. L. Phanjom, Adv

For the Respondent : Mr. M.L. Nongpiur, Adv with
Mr. S. Syiem, Adv

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

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal is directed against an order of December 21, 2018 by which the respondent's writ petition was allowed and certain benefits conferred on the respondent that the appellant asserts that the respondent was not entitled to.

2. It appears that persons occupying clerical posts in the Assam Rifles were paid less than similarly positioned persons in the other Central Armed Police Forces. As a result, persons occupying clerical posts in Assam Rifles petitioned to this Court for the anomaly to be

removed. By a judgment and order of the Gauhati High Court (from which this Court was carved out in 2013) the petition was allowed on August 23, 2012. The operative part of the order dated August 23, 2012 provided as follows:

“14. In the result, this writ petition stands disposed of with the direction to the respondent No.2, the 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 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 communicated through MHA letter bearing No.2701-02/1/97 PC Cell/Pef-1 dated 10.10.1997. The whole exercise would be completed within a period of 6 (six) months from the date of receipt of a certified copy of this judgment and order.”

3. There is no dispute that the judgment was upheld in appeal by an order of April 30, 2013. Special leave petitions carried from the appellate order were taken up by the Supreme Court and the resultant appeals dismissed by an order of November 17, 2015. Thus, clerical staff in Assam Rifles became entitled to the same pay and benefits as persons in clerical posts in the other Central Armed Police Forces.

4. The writ petitioner in the present case sought to use the order granting additional benefits to persons occupying clerical posts in Assam

Rifles only by virtue of the fact that the writ petitioner was initially inducted into Assam Rifles in or about 1987 as a clerk in the Duty Company of Assam Rifles Training Centre and School.

5. However, it is the admitted position, as will appear from paragraphs 3 and 4 of the writ petition, that the writ petitioner was unsuccessful in the examination conducted at the end of the initial training period and, as a consequence, the writ petitioner was re-mustered in the general cadre. It is necessary to notice what has been pleaded in such regard at paragraphs 3 and 4 of the writ petition:

“3. ... The consequence being that the petitioner was unsuccessful in the said written/typing examination.

“4. That the petitioner states that thereafter, the petitioner was ordered to undergo basic training of Riflemen (General Duty) on this very ground that he was unsuccessful in the written exam and his trade was re-mustered from Lnk (Writer) to Rifleman (General Duty)...”

6. There is, no doubt, that a grievance is expressed in the petition that the writ petitioner was virtually demoted to the post of Rifleman (General Duty). However, the perceived demotion appears to have been in the light of the writ petitioner failing to pass the examination for retaining his position in the clerical cadre. At any rate, the perceived demotion was in or about the year 1988. The writ petitioner accepted the alleged demotion, continued to discharge the duties of the post that was

assigned to him and obtained the benefits and perquisites of the post, including several promotions over a period of more than 20 years.

7. Upon the persons in the clerical posts in Assam Rifles obtaining substantial benefit by virtue of the order of the Gauhati High Court of 2012 as affirmed in appeal and ultimately upheld by the Supreme Court in 2015, the writ petitioner carried a petition to this Court complaining that several other persons who had served for short durations in the clerical posts had been given the benefit of the order pertaining to clerks but the writ petitioner had been singled out to be denied the same.

8. Indeed, paragraph 8 of the writ petition specifically referred to a list published by Assam Rifles on July 13, 2016 and the writ petitioner pointed out that the employer had included the names of “Clerks Cadre Personnel who have put the service even 03 to 10 months.” The writ petitioner asserted that the personnel named in the relevant list at Serial Nos. 1 to 5, 11, 73, 86, 224 and 254 were such persons who had served in the clerical cadre for a short duration. Though it remained unsaid in the writ petition, the clear insinuation was that such other personnel had been similarly reduced to general or the like cadre after a short duration, just like the writ petitioner, but by virtue of the fact that they were initially appointed in the clerical cadre, the other personnel indicated in the relevant paragraph of the writ petition had been conferred the additional

benefit that was accorded to all clerks in Assam Rifles following the decision of the Gauhati High Court of August 23, 2012.

9. The writ petitioner's assertion that the several persons in the list as indicated at paragraph 8 of the writ petition were similarly placed as the writ petitioner was robustly denied in the affidavit filed by Assam Rifles. At paragraph 15 of the affidavit filed by Assam Rifles, it was clearly asserted as follows:

“15. ... So far as the case of persons mentioned at serial No 1 to 5, 11, 73, 86, 224 and 254 of DGAR order *ibid* is concerned, it is humbly submitted that they have served in the force as clerks whereas the petitioner has not served as Clerk in the Force.”

10. Once it was the admitted position, as evident from the petition itself, that though the writ petitioner may have been recruited in the clerical post but the writ petitioner was thereafter re-mustered in the general cadre for the writ petitioner failing to pass the requisite examination to retain his clerical post, the writ petitioner was disentitled from claiming any benefit that came with the clerical post. Merely because the writ petitioner occupied the clerical post for a few months or even a year before he was assigned to the general cadre would not entitle the writ petitioner to any of the benefits that persons in clerical posts in Assam Rifles gained as a virtue of the said judgment of August 23, 2012. There could have been no other view of the matter.

11. It, however, appears that the writ court, in the confused manner in which it recorded the facts made an error in the appreciation of the facts and, as a consequence, arrived at the wrong conclusion to confer an undeserving benefit on the writ petitioner. The same would be apparent from the second page of the order impugned and what is effectively the third sub-paragraph under paragraph 2 of the order.

12. In the light of the writ petitioner's unequivocal acknowledgement that the writ petitioner was re-mustered in the general cadre as a Rifleman and continued to serve Assam Rifles in such post and in promoted posts in the general cadre, the writ petitioner could not have claimed any benefit granted to members in the clerical service since the writ petitioner ceased to be in a clerical position after being re-mustered in the general cadre following the writ petitioner's failure to pass the examination to be retained in the clerical post.

13. Since the writ petitioner has severed all connections to the clerical post in Assam Rifles in or about the year 1989 and the writ petitioner continued to serve in the general cadre and gained due promotion by or about the time his writ petition was instituted, the writ petitioner could not have sought any benefit in terms of the order dated August 23, 2012. The writ court fell into error in treating the writ petitioner on the same footing as others in the Assam Rifles who were recruited in the clerical

posts and continued to serve in the clerical posts without being subsequently re-mustered or reassigned to any lower cadre for their failure to meet the minimum requirements of retaining the clerical post.

14. Accordingly, the judgment and order impugned dated December 21, 2018 stand set aside. As a consequence, WP(C) No. 147 of 2017 instituted by the writ petitioner is dismissed in its entirety.

15. WA No. 18 of 2019 succeeds.

16. MC (WA) No.36 of 2019 stands disposed of.

17. There will be no order as to costs.

(W. Diengdoh)
Judge



(Sanjib Banerjee)
Chief Justice

HIGH COURT OF MEGHALAYA

Meghalaya

05.09.2022

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