

(2014) 09 MEG CK 0035
In the Meghalaya High Court
Case No : WP (C) Nos. 230 and 231 of 2013

Abhay Kumar and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-09-2014

Acts Referred:

Border Security Force Act, 1968 — Section 4
Central Industrial Security Force Act, 1968 — Section 3
Central Reserve Police Force Act, 1949 — Section 3, 4
Constitution of India, 1950 — Article 226, 39
National Security Guard Act, 1986 — Section 4

Citation : (2014) 5 GLT 77

Hon'ble Judges : T. Nandakumar Singh, J

Bench : Single Bench

Advocate : M. Chanda, S. Nath, S. Choudhary, P. Nongbri and N. Mozika, Advocates for the Appellant; R. Deb Nath and P. Roy, Advocates for the Respondent

Judgement

T. Nandakumar Singh, J.—These two writ petitions involving a similar question of fact and law, praying similar relief for directions to the respondents to place the writ petitioners, who are all working as Havildar Pharmacists in the Assam Rifles, in the pay scale of Rs. 4500-125-7000/- p.m. w.e.f. 10.11.1997 with all consequential benefits including arrear monetary benefits were jointly heard for being disposed of by a common judgment and orders. Heard Mr. M. Chanda, learned counsel appearing for the petitioners as well as Mr. R. Deb Nath, learned CGC appearing for the respondents.

2. The concise facts leading to the filing of the present writ petitions are noted. The writ petitioners had completed their education upto matric and thereafter pursued 2(two) years diploma course in pharmacy from a recognized institution and after successful completion of the diploma course, got registered with Pharmacy Council of India. The Pharmacy Council of India is a statutory body constituted under the Pharmacy Act, 1948 to regulate the practice of profession

of pharmacy. The Pharmacy Council of India framed the Educational Regulations, 1981, under which the minimum qualification for admission to diploma in pharmacy was matriculation and the duration course of diploma was 2(two) years and 1750 hours of practical training. The Education Regulation, 1981, was replaced by the Education Regulation, 1991, w.e.f. 11-7-1992 under which the minimum qualification for admission to diploma in pharmacy was intermediate examinations (10+2) in Science. The course duration of diploma was 2(two) years and 500 hours of practical training. All the pharmacists who have completed their diploma in pharmacy from a recognized institution under the Education Regulation, 1981, or Education Regulation, 1991, and registered with Pharmacy Council of India are entitled to practice as registered pharmacists.

3. The Assam Rifles issued an Advertisement No. 12016/1/ADM/1997/ADV published in the Employment News dated 25.7.1987 inviting applications for recruitment to the post of Havildar Pharmacist in the Assam Rifles in the pay scale of Rs. 975-25-1150-EB-30-1660/- p.m. (pay scale under the 4th Central Pay Commission). The essential qualifications for the post of Havildar Pharmacist in Assam Rifles mentioned in the said advertisement were (i) Matriculation with Mathematics and Science, (ii) Diploma (2 years) in Pharmacy from a recognize institution and (iii) registration with State Pharmacy Council under Pharmacy Act, 1948. The relevant portions of the said advertisement are quoted hereunder:

"DIRECTORATE GENERAL ASSAM RIFLES Shillong-793011

1. 12016/1/Adm 1/97/ADV-Applicationsare invited from the male Indian Nationals for the post of Havildar Pharmacist for recruitment in Assam Rifles. Further promotion will be regulated as per seniority of the rank.

2. Scale of Pay-Rs. 975-25-1150-EB-30-1660/p.m.plus DA and other allowances as admissible to Assam Rifles personnel. In addition, free ration, accommodation and medical facilities are admissible.

3. Qualification - Minimum Matric with Mathematics and Science. Diploma (2 years) course in Pharmacy from a recognized Institution and Registration with State Pharmacy Council under Pharmacy Act, 1948.

4. Age-The age limit for enrolment in Assam Rifles is 18 to 25 years. However, the age limit shall be relaxed by 5 years in case of SC/ST and 3 years in case of OBC candidates.

5. Reservation - 15%, 7.5% and 7% vacancies are reserved for SC/ST and OBC respectively."

4. In response to the said advertisement, the petitioners having Matriculation with Mathematics and Science and Diploma (2 years) in Pharmacy from a recognized institution and registered with State Pharmacy Council under the Pharmacy Act, 1948, applied for the said post of Havildar Pharmacist Subsequently, they were selected and appointed as Havildar Pharmacist in the Assam Rifles on 10.11.1997 in the pay scale of Rs. 975-25-1150-EB-30-1660/-

p.m. (pay scale under the 4th Central Pay Commission); and since then, the petitioners have been discharging their duties as Havildar Pharmacists to the best of their ability and sincerity. The Central Civil Services (revised pay) Rules, 1997, was notified by the Govt. of India on the basis of the recommendation of the 5th Central Pay Commission and the said Rules came into force w.e.f. 1.1.1996. Part-B of the First Schedule of the said Rules provides for revised pay scale for certain category post. Sl. No. XVIII in Part-B mentioned Pharmacist as a common category post and provide for revision of pay scale for Pharmacist to Rs. 4500-125-7000/- p.m. The revision of pay scale for common category of post i.e. Pharmacist under Sl. No. XVIII in Part-B of the First Schedule of the said Rules read as follows:

"CCS (RP) RULES, 1997 THE FIRST SCHEDULE [See Rules 3 and 4] PART-A

Revised scales for posts carrying present scales in Groups "A", "B", "C" and "D" except posts for which different revised scales are notified separately.....

5. The respondents by overlooking the special revised pay scale for common category of post of Pharmacist as provided in Sl. XVIII of Part-B of the First Schedule which provide revised pay scale of Rs. 4500-125-7000/- p.m. and also overlooking the Office Memorandum No, 50(1)97-IC-1, dated 7-10-1997 had erroneously, arbitrarily and illegally revised the pay scale of the petitioners to the pay scale of Rs. 3200-85-4900/- p.m. The Assam Rifles is one of the Central Police Forces under the administrative control of Ministry of Home Affairs, Govt. of India. In this regard, the Ministry vide letter F. No. 24021/74/2004-PC, dated 6.8.2004 had clarified that the Assam Rifles is a Central Police Force under the Ministry of Home Affairs along with the Border Security Force (BSF), Central Industrial Security Force (CISF), Central Reserve Police Force (CRPF), Indo-Tibetan Border Police (ITBP), National Security Guard (NSG) and the Sashastra Seema Bal (SSB). The said letter dated 6.8.2004 of the Ministry of Home Affairs, Govt. of India reads as follows:

"F. No. 24021/74/2004-PC Government of India Ministry of Home Affairs New Delhi, the 6th August, 2004

To

The Chief Secretary of all the States/UTs.

Sub:

Clarification about Armed Forces of Union regarding Central Police Forces.

Sir,

There has been query in the past from State Governments regarding clarification about Armed Forces of Union regarding Central Police Forces. In this regard, I am directed to mention that the following Central Forces under the administrative control of the Ministry of Home Affairs have been declared as Armed Forces of the Union.

i) Border Security Force--

Vide Section 4 of the Border Security Force Act, 1968.

ii) Central Industrial Security Force--

Vide Section 3 of the Central Industrial Security Force Act, 1968 (Amended by Act 14 of 1983).

iii) Central Reserve Police Force--

Vide Section 3 of the Central Reserve Police Force Act, 1949.

iv) Indo - Tibetan Border Police-Vide Section 4 of the Indo--

Tibetan Border Police Force Act, 1992.

v) National Security Guard--

Vide Section 4 of the National Security Guard Act, 1986.

In addition. Assam Rifles and SSB are also two Central Forces under Ministry of Home Affairs which perform Border Guarding and Internal Security Duties. New Acts for governing these forces are under process and the Bill will be introduced in Parliament shortly. The status of these force is also equivalent to that of other Central Forces under Ministry of Home Affairs mentioned above. Hence, they may also be allowed similar benefits.

Yours faithfully, Sd/- (R.K. Mitra) Deputy Secretary (PMA)".

6. Pursuant to the CCS (revised pay) Rules, 1997 which provide for special revised pay scale for the common category of the post of Pharmacist of Rs. 4500-125-7000/- p.m., the Assam Rifles had revised the pay scale of the Pharmacists within the Assam Rifles against the Civil Post to the pay scale of Rs. 4500-125-7000/- p.m. vide letter A.Pers/6th CPC/2008, dated 07th October, 2008 of SO-1(A) for DG Assam Rifles. The other Central Police Forces had already implemented the revised pay scale of Rs. 4500-125-7000/- p.m. for the rank of Pharmacist. The Director General, Assam Rifles under his letter dated 22.7.2005, addressed to the Director General of Sashastra Seema Bal (SSB) enquired as to the educational criteria and other qualification for recruitment as Pharmacist in SSB inasmuch as, pursuant to the CCS (revised pay) Rules, 1997, pay scale of the Pharmacist in SSB had been revised to the pay scale of Rs. 4500-126-7000/- p.m. w.e.f. 1.1.1996. In response to the said letter of the Director General, Assam Rifles, Assistant Director (EA-TV) of the Directorate General of SSB, Govt. of India, Ministry of Home Affairs informed the Director General, Assam Rifles under his letter dated 5.9.2005 that the educational qualifications/technical qualifications for the post of Pharmacist in SSB are (i) matriculation or equivalent examination from a recognized Board/University and (ii) Diploma in pharmacy. For easy reference, the said letter of the Assistant Director, (EA-IV) Directorate General, SSB, dated 4.9.2005 is reproduced hereunder:

"No.30/SSB/A-4/2005(2) Government of India, Ministry of Home Affairs, Directorate General, Sashastra Seema Bal, East Block-V, R.K. Puram, New Delhi-110066.

To,

The Director General, Assam Rifle, Shillong-793011.

Sub:

Technical qualification and pay scale of Pharmacist.

Sir,

Please refer to your office letter No. V.16013/Med-5/PMS/Phar/2005 dated 22.07.2005 received in this Hqrs. on 26.08.2005, on the subject cited above.

2. As desired, the required information in respect of Pharmacists in SSB as laid down in SSB (Para-Medical) Staff Recruitment Rules is as under:--

a. Age - 20-30 Yrs. (relaxable for Government Servants upto 35 Yrs. In accordance with the instructions or orders issued by the Central Government.

b. Educational Qualification/Technical Qualification - Matriculation or equivalent examination from a recognized board/University and diploma in Pharmacy or registered Compounder/Pharmacist eligible for registration under Pharmacist Act - 1948.

c. Pay Scale - Rs. 4500-125-7000/- w.e.f. 1.1.1996.

d. Changes in the Scale of pay from Previous scale, if any - Nil

Yours faithfully, Sd/- (Subhash Kumar) Assistant Director (EA-IV)."

7. The respondents had constituted a Board to examine the revised pay scale of the Pharmacist in the Assam Rifles pursuant to the CCS (revised pay) Rules, 1997 and submit its recommendations for revised pay scale of Havildar Pharmacist in the Assam Rifles. The Board deliberated the matter on 10.3.2011 and recommended as follows:

"In lieu of IFAD-931

1. Refer to DGAR Convening Order No. A/Pers/Convening Order/2010 dt. 24 Dec 2010 and HQ DGAR letter No. I.358434/MES/2011/109 dt. 12 Feb 2011.

2. The board of offrs reassembled at this HQ on 10 Mar 2011 and examined following docu in order to submit its recommendation for enhancement of pay of hav Pharmacist in Assam Rifles:--

3. Having gone through the various docu as stated in Para 2 above the board of offrs finds that:--

(a) 5th CPC recommended common pay scale of Rs. 4500-7000 for all central

Govt. employee Pharmacist without specifying any basic qualification except Diploma in Pharmacy.

(b) As per education regulation of 1981 of Pharmacy Council of India, a candidate should be minimum Matric for the Diploma Course which has been repealed by education regulations of 1991 and minimum entry qualification has been raised to Matric + 2 and registered with any state Pharmacy Council. More so a registered pharmacist under education regulation of 1981 and 1991 are considered equal.

(c) In Assam Rifles RR 2000, for Pharmacists, required qualification as Matric with three years diploma. However three years Diploma course in Pharmacy was non-existent and Pharmacy Diploma were being conducted only for two years as laid down by the Pharmacy Council of India. AR continued to recruit pharmacists trade with Matric with two years diploma which is in practice till date.

RECOMMENDATION BY BOARD OF OFFICERS

The board of officers recommends that:--

(a) Hav/Pharm enrolled before 01 Jan 1996 with Matric or 10+2 and with 2 yrs Diploma in Pharmacy. Such pers to be placed in pay scale of Rs. 4500-7000 w.e.f. 01 Jan 1996. Arrears to be paid w.e.f. 01 Jan 1996 to 01 Jan 2006 (As per provisions given in 5th CPC)

(b) Hav/Pharm enrolled after 01 Jan 1996 upto 01 Jan 2006 with 2 yrs Diploma (With any pre Diploma Qualification) in Pharmacy. Such pers to be made Warrant Officer and placed in Pay Scale of Rs. 4500-7000 w.e.f. date of enrollment. Arrears to be paid w.e.f. date of enrollment to 01 Jan 2006 (As per recommendation of 5th CPC)

(c) All Hav/Pharm with valid Diploma and registration and newly enrolled Hav/Pharm with 10+2 with 2 yrs Diploma and registration after 01 Jan 2006. To be made Warrant Officer from the date of enrollment and placed in PB 1 with grade pay 2800 for two yrs and to be made non functional Naib Sub and placed in grade pay 4200 in PB II. Arrears till date to be paid (As per Pharmacy Council of India and Govt. of India, Ministry of Finance letter No. F. No. 1/1/2001-IC dt. 18 Nov 2009).

(d) Assam Rifles RR 2000 for Pharmacist must be repealed immediately and new RR based on Pharmacy Council of India regulation and 6th CPC criteria be implemented.

Signature of Board of Officers:--

Sd/xxx

Presiding Officer: Brig Virendra Singh, VSM Sd/xxx

Members : 1. Comdt S.K. Chopra Sd/xxx

2. Lt. Col. Vikram Dubey Sd/xxx
3. Lt Col Mahendra Singh Sd/xxx
4. Asstt. Comdt. (MO) NP Das Sd/xxx
5. Nc Sub (Clk) J.S. Negi"

8. The board of officers constituted by the Director General Assam Rifles has already recommended under its recommendations dated 10.3.2011 that the Havildar Pharmacist enrolled after 1.1.1996 upto 1.1.2006 with 2 years diploma (with any pre Diploma Qualification) in pharmacy shall be placed in the pay scale of Rs. 4500-125-7000/- p.m. w.e.f. the date of enrollment and arrear to be paid w.e.f. the date of enrollment upto 1.1.2006 (as per recommendation of the 5th CPC). The case of the petitioners who had been appointed to the post of Havildar Pharmacist on 10.11.1997 are to be placed in the pay scale of Rs. 4500-125-7000/- p.m. w.e.f. the date of enrollment i.e. 10.11.1997 and arrear to be paid w.e.f. 10.11.1997. In spite of the recommendations of the board of officers constituted by the Assam Rifles itself and also the counter parts of the petitioners in the other Central Police Force had already been allowed to enjoy the revised pay scale of Rs. 4500-125-7000/- p.m. pursuant to the CCS (revised pay) Rules, 1997, the petitioners had not been allowed to enjoy the said revised pay scale under the 5th Pay Commission. Being aggrieved, the petitioners of the WP(C) No. 231 of 2013, had approached the Central Administrative Tribunal, Guwahati Bench by filing O.A. No. 147 of 2006. Learned Central Administrative Tribunal, Guwahati Bench had allowed the said O.A. No. 147 of 2006 which was filed against the present respondents vide judgment and order dated 29.5.2009, directing the respondents to extend the benefit of the 5th Pay Commission/pay scale of Rs. 4500-125-7000/- p.m. to the diploma holders pharmacists of Assam Rifles organization w.e.f. 1.1.1996 or from the date of their appointment, whichever is later and pay the petitioners their differential arrear within 120 days from the date of receipt of the certified copy of the judgment and order. The relevant portions of the judgment and order of the Central Administrative Tribunal dated 29.05.2009 are quoted hereunder:--

"5. In Part-B of the First Schedule to the Rules of 1997, another table of revised Pay-scale have been appended. Preamble of the said Part-B of the First Schedule to Rules of 1997 reads as under:

The revised scales of pay mentioned in Column 4 of this part of the Notification for the posts mentioned in Column 2 have been approved by the Government. However, it may be noted that in certain cases of the scales of pay mentioned in Column 4, the recommendations of the Pay Commission are subject to fulfillment of specific conditions. These conditions relate inter alia to changes in recruitment rules, restructuring of cadres, redistribution of posts into higher grades, etc. Therefore, in those cases where conditions such as changes in recruitment rules, etc., which are brought out by the Pay Commission as the rationale for the grant of these upgraded scales, it will be necessary for the Ministries to decide upon

such issues and agree to the changes suggested by the Pay Commission before applying these scales to these posts with effect from 1.1.1996. In certain other cases where there are conditions prescribed by the Pay Commission as prerequisite for grant of these scales to certain posts such as cadre restructuring, redistribution of posts, etc, it will be necessary for the Ministries/Department concerned to not only accept these pre-conditions but also to implement them before the scales are applied to those posts. It would, therefore, be seen that it is implicit in the recommendations of the Pay Commission that such scales necessarily have to take prospective effect and the concerned posts will be governed by the normal replacement scales until then.

6. Sl. No. XVIII of the Table appended to Part-B of First Schedule of the Rules of 1997 has provided a Special Pay Scale i.e. Rs. 4500-125-7000/- for Pharmacists possessing entry qualification of Diploma in Pharmacy. This was prescribed on the basis of para 52.90 of the Report of Fifth Pay Commission.

7. Paras 52.85 to 52.92 of the Report of Fifth Pay Commission dealt with the case of Pharmacists which reads as under:--

52.85 General introduction - Pharmacists are concerned with supply of medicines in accordance with prescriptions or, when legally permitted, without a prescription. They also deal with procurement, selection, preservation, storage, preparation, distribution, administration and accounting of drugs and pharmaceuticals. The usual minimum essential educational qualification for direct recruitment against the post of Pharmacists in the scale of Rs. 1,350-2,200 is 10+2, 2 years diploma and 3 months training in Pharmacy along with registration with the Central or State Pharmacy Council. Some organizations recruit them with lower qualifications also. Pharmacists have a two or three grade structure, including the entry level, with promotion up to the scale of Rs. 1,640-2,900 and sometimes up to Rs. 2,000-3,500.

52.86 Distribution of establishment - The total number of Pharmacists is about 3483. They are generally employed in Central Government Hospitals, Dispensaries, Central Drug Laboratory, Medical Stores Organization, etc. Besides, Pharmacists also exist in Botanical Survey of India (BSI), Air Headquarters, Archaeological Survey of India, Directorate General of Employment and Training (M/o Labour), etc., where entry level is lower, i.e. in the scale of Rs. 1,200-1,800 or Rs. 1,200-2,040.

52.87 Demands in memoranda - Pharmacists associations have demanded setting up of a separate Directorate of Pharmacy for greater participation in policy-making as well as adequate career progression, upgradation of their pay scales and granting of additional allowances for non-practice, patient care, non technical duties, risk, literature, etc., to improve their functioning as well as achieving job satisfaction.

52.88 Previous CPCs - The Third CPC observed the Pharmacists also include compounders and dispensers. It divided the category of Pharmacists into two i.e.

fully qualified Pharmacists and unqualified Pharmacists and accordingly suggested different pay scales. The Fourth CPC broadly followed a similar pattern of granting replacement scales for the registered Pharmacists. For improving the promotion prospectus of Pharmacists it recommended that administrative Ministry might examine the desirability of a few posts in the pay scale of Rs. 1,640-2,900. No distinction was made between qualified and unqualified Pharmacists.

52.89 Directorate of Pharmacy - No justification has been furnished on the need for Pharmacists to play a role in policy making relating to health when a Drugs Controller of India, and Pharmacy Council of India exist. This demand, if accepted, will lead to similar demands by other para- medicals to have their own specialized Directorates. We do not recommend setting up of such a Directorate.

52.90 Pay Structure - Upgradation of the pay scale of Registered Pharmacist is sought from Rs. 1,350-2,200 to Rs. 1,400-2,600 at par with diploma holders of other disciplines like Engineering, Nursing, etc, Pharmacy Council of India, recommended in 1976 and 1994, that the pay scale and promotion avenues of Pharmacists should be at par with other technical diploma holders in Engineering and Technology as the post of Pharmacist is also technical. We recommend that Pharmacists, in view of the prescribed entry qualifications should be placed in the scale of Rs. 1,400-2,300 at entry. The grade structure in existence at present should be modified as follows:

Whenever there is a post of Chief Pharmacist

it should be placed in the pay scale of Rs. 2,000-3,500. Posts of Chief Pharmacists may also be created in the hospitals in the pay scale of Rs. 2,000-3,500 based on functional justification. In future no recruitment should be made in this cadre with qualification of less than Diploma. All those incumbents who possess a diploma in Pharmacy and are in lower scales at present may also be brought into the scale of Rs. 1,400-2,300. Incumbents not possessing Diploma in Pharmacy may continue in the replacement pay scale corresponding to their existing scales with ACP only.

52.91 Patient care allowance - Patient care allowance @ of the basic pay per month, has been asked for against the present rate of Rs. 80 p.m. The allowance should be doubled to Rs. 160 p.m., retaining the conditions under which it is granted, i.e., if no night duty or risk allowance is sanctioned by Government.

52.92 General pay scales - For all the remaining matters our recommendations elsewhere in this report will apply.

11. When Govt. of India, in the case of other Central Police Organizations/in other Para-Military Forces of the Central Govt., has already extended the Pay scale of Rs. 4500-125-7000/- for Pharmacists with required Diploma in Pharmacists (which statement of the Applicants. made in the O.A., has not been denied by the Respondents) there were no reason not to extend the said pay

scale to the Applicants. Non extension of the said benefit to the Applicants amounts to discrimination offending the constitutional provisions. If the Applicants are discharging the job of Pharmacists and at the same time discharging combatised job; then that is an additional ground to extend them the same higher benefit of Rs. 4500-125-7000/-.

13. In the written statements the Respondents have disclosed that they made an attempt relating to warrant officers (in order to treat them in technical categories in Assam Rifles) which did not find favour of Ministry of Home Affairs during December 2001 and, by stating so, they intend to state that "upgradation of pay (of Pharmacists) may disturb various other trades/ranks? within Assam Rifles Organisation. While stating so, the Respondents have also disclosed, in Para 21 of their written statement (filed on 06.11.2006) that "in all fairness, the issue (as raised in this case) was being referred to the 6th Pay Commission by the Respondents. This statement itself goes to show that for imaginary apprehensions the benefits of 5th Pay Commission i.e. pay scale of Rs. 4500-125-7000/- was denied/not extended to the Applicants/Diploma holder Pharmacists of Assam Rifles; un-justly. (Neither the Applicants, nor the Respondents have disclosed, at the hearing, as to how the case of the Applicants/ Pharmacists have been dealt with in the report of 6th Pay Commission). That apart, not allowing a rank to be upgraded or declared technical could not have been a reason to refuse the higher pay scale of another rank; even though the same has been extended to similarly placed personnel of other similar Organizations/CPOs/Central Para-military Forces.

14. In the above premises, since Diploma holder Pharmacists of other Central Police Organization/Central Para-military Forces have been extended with the pay scale of Rs. 4500-125-7000/- w.e.f. 01.01.1996; such benefits should be extended to the Diploma holder Pharmacists of Assam Rifle Organization. As a result, this case is allowed by asking the Respondents to extend the benefit of 5th Pay Commission/pay scale of Rs. 4500-125-7000/- to the Diploma holder Pharmacists of Assam Rifle Organization w.e.f. 01.01.1996 (or from the date of their appointment, whichever is later) and pay them their differential arrears within 120 days from the date of receipt of a copy of this order. No costs."

Sd/- M.R. Mohanty Vice-Chairman Sd/- N.D. Dayal Member (A)

9. In the writ petition in WP(C) No. (SH) 1 of 2010 filed by the respondents assailing the said judgment and order of the Tribunal dated 29.5.2009 passed in O.A. No. 147 of 2006 on the ground that the petitioners i.e., the present writ petitioners being the members of the combatant section of the Assam Rifles, the Central Administrative Tribunal have no jurisdiction to entertain the said O.A. No. 147 of 2006 filed by the writ petitioners of WP(C) No. 231 of 2013. The Gauhati High Court passed the judgment and order dated 19.10.2011 for setting aside the said judgment and order of the Central Administrative Tribunal dated 29.5.2009 passed in O.A. No. 147 of 2006 only on the ground that Central Administrative Tribunal has no jurisdiction to entertain the O.A. No. 147 of 2006

filed by the combatant members of the Assam Rifles. The Gauhati High Court in the said judgment and order dated 19.10.2011 passed in WP(C) No (SH) 1 of 2010 did not enter into the merit of the judgment and order dated 29.5.2009 passed in OA No. 147 of 2006, but the same had been set aside only on the ground that the Central Administrative Tribunal has no inherent jurisdiction to try OA No. 147 of 2006 filed by the writ petitioners of the WP(C) No. 231 of 2013. who are the Havildar Pharmacists (combatant).

10. The respondents filed the affidavit-in-opposition in the present writ petition. Their stand in the affidavit-in-opposition is similar with the stand they had taken before the Central Administrative tribunal. On careful perusal of the affidavit-in-opposition filed by the respondents, it appears that there is no plausible reasons and rational for denying the revision of pay scale of Havildar Pharmacists (combatant) of the Assam Rifles pursuant to the CCS (revised pay) Rules, 1997 which provides for Special Revised Pay scale for common category of post of Pharmacist of Rs. 4500-125-7000/- p.m., while the Assam Rifles itself has extended the revised pay scale of Rs. 4500-125-7000/- p.m. to the Pharmacists, within Assam Rifles itself, against Civil Post. The respondents further misunderstood the implications under Education Regulation 1991 and the Education Regulation 1981 to the case of the petitioners. Affidavit-in-opposition of the respondents show that the respondents had lost sight of the educational qualifications/technical qualifications of the Havildar Pharmacists mentioned in the advertisement in the Employment News dated 19-25 July 1997 inviting applications for recruitment to the post of Havildar Pharmacists in Assam Rifles and the petitioners had been appointed to the post of Havildar Pharmacists in Assam Rifles pursuant to the said advertisement. The qualifications as advertised were:--Minimum-Matriculation with Mathematics and Science, Diploma (2 Years) in Pharmacy from a recognized institution and registration with State Pharmacy Council under Pharmacy Act, 1948. The respondents in their affidavit-in-opposition are not denying that the revised pay scale of the Pharmacists of Rs. 4500-125-7000/- p.m. had already been extended to the other Central Police Force under the administrative control of the Ministry of Home Affairs, Govt. of India and the technical and educational qualifications of Pharmacist of the said organizations were also only (i) matriculate, (ii) diploma (2 years) in pharmacy from a recognized institution and (iii) registration with the State Pharmacy Council under Pharmacy Act, 1948. The respondents in their affidavit-in-opposition had neither denied nor admitted that as per Part-B of First Schedule of the CSS (revised pay) Rules, 1997, the revised pay scale of certain common category of posts i.e. Sl. No. XVIII in Part-B Pharmacist as a common category post possessing entry qualification of diploma pharmacy is Rs. 4500-125-7000/- p.m. It is a fact that the board of officers appointed by the Assam Rifles itself mentioned above had already recommended the revision of pay scale of Havildar Pharmacist enrolled after 1.1.1996 to 1.1.2006 with 2 years diploma shall be placed in the pay scale of Rs. 4500-125-7000/- p.m. w.e.f. the date of enrollment and the arrear to be paid w.e.f. the date of enrollment to 1.1.2006.

11. The Apex Court in *State of U.P. and Others Vs. U.P. Sales Tax Officers Grade II Association*, held that the decision of expert body like the pay commission is not ordinarily subject to judicial review obviously because pay fixation is an exercise requiring to go into various aspects of the posts held in various services and nature of duties of the employees. The Apex Court in *K.T. Veerappa and Others Vs. State of Karnataka and Others*, held that Court should interfere with administrative decision pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors. Para 13 of the SCC in *K.T. Verrappa's case (Supra)* reads as follows:--

"13. He next contended that fixation of pay and parity in duties is the function of the executive and financial capacity of the Govt. and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* and *Union of India v. S.B. Vohra*. There is no dispute nor can there be any to the principles as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

12. The Apex Court in *K.T. Veerappa and Others Vs. State of Karnataka and Others*, held that Court should interfere with administrative decision pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factor. Para 13 of SCC (XT Veerappa) is quoted below:

"13. He next contended that fixation of pay and parity on duties is the function of the executive and financial capacity of the Govt. and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* and *Union of India v. S.B. Vohra*. There is no dispute nor can there be any to the principles as settled in *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.* that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

13. The Apex Court in *AIR Air India Statutory Corporation, etc. Vs. United Labour Union and others [overruled]*, held that the founding fathers placed no limitation

or fetters on the power of the High Court under Article 226 of the Constitution except self imposed limitation. The arm of the Court is long enough to reach injustice whenever it is found. In *State of Maharashtra Vs. Digambar*, , the Apex Court held that the power of the High Court to be exercised under Article 226 of the Constitution, if it is discretionary, its exercise must be judicious and reasonable admits of no controversy.

14. In *Surinder Singh and Another Vs. Engineer-in-chief, C.P.W.D. and Others*, the Apex Court held that the Central Government like all other organs of the State has committed to the Directive Principles of State Policy and Article 39 enshrines the principle of equal pay for equal work. The Central Government, the State Government and like otherwise, all the Public Sector Undertakings are expected to function like model and enlightened employer and argument such as that the Principle of equal pay for equal work is an abstract doctrine which could not be enforced in a court of law should ill come from the mouth of the State and State Undertaking. The Government and Public Sector Undertakings should not adopt anti-socialistic stand. In *Dhirendra Chamoli and Another Vs. State of U.P.*, :

"the Apex court held that it is not open to the Government to deny the benefit of equal pay for equal work to casual workers on the ground of the reacceptance of employment with full knowledge of their disadvantage."

15. The apex Court, In *State of Mizoram and Another Vs. Mizoram Engineering Service Association and Another*, , held that there cannot be discrimination at the time of revision of pay on the recommendation of the pay Commission. In that case, the recommendation of the pay commission was accepted by the State Government. Even after such acceptance, the State Government had discriminated in revising the pay scale in respect of Chief Engineer/Addl. Chief Engineer of the State Engineering Department merely because of absence of recruitment rules for the service and also on financial burden. The apex Court held that financial burden cannot be ground for denial of revision of pay scale and also that there cannot be discrimination in revision of the pay scale.

Para 5, 6 and 7 of the SCC in *Mizoram Engineers Assn's case* (supra) are quoted below:

"5. Coming to the argument that the scale of pay of Rs. 5900-6700 was confined to only the then Chief Engineer Mr. Robua and was not to be allowed to future entrants in the service, we find no justification for this. The fact that the revised pay scale was being allowed to Mr. Robula in tune with the recommendations of the Fourth Central Pay Commission, shows that the State Government had duly accepted the recommendations of the Fourth Central Pay Commission. Having done so. it cannot be permitted to discriminate between individuals and not allowed the same to the rest. In this context the learned counsel for the applicant submitted that it is not unusual that sometimes special pay is granted to an individual and the same does not become a precedent for others. As a proposition it may not be disputed. But there has to be special reason for this. In

the facts of the present case, we do not find any justification for confining the higher scale to a particular individual and deny the same to others. There may be special reasons, for instance, special merit, expertise or the like, for giving special pay to a particular individual. In the present case no such reason forthcoming. On the other hand the reason given is that since he was holding the post on 1.1.86. the date from which the Fourth Central Pay Commission recommendations were given effect to. he was being allowed the higher pay scale. This reason rather supports the case of the respondent. It shows an admission on the part of the appellant that the revised pay scales for the post of Chief Engineer as per the recommendations of the Fourth Central Pay Commission was Rs. 5900-6700 and was allowed to a Chief Engineer. The State Government cannot be permitted to discriminate between similarly placed individuals in this behalf between those holding the post at the time of revision of pay scales and future incumbents of the post. The argument has no merit.

6. Great stress was laid on the fact that Engineering Service in the State was not an organized service and therefore, it did not have categorization by way of entrance-level and senior level posts and for that reasons the higher scale of Rs. 5900-6700 which was admissible for senior - level posts could not be given in the Engineering Service as an unorganized service in the State is absence of recruitment rules for the service. Who is responsible for not framing the recruitment rules? Are the members of the Engineering Service responsible for it? The answer is clearly "No". For failure of the State Government to frame recruitment rules and bring Engineering Service within the framework of organized service, the engineers cannot be made to suffer. Apart from the reason of absence of recruitment rules for the Engineering Service, we see hardly any difference in organized and unorganized service so far as Government service is concerned. In Government service such a distinction does not appear to have any relevance. Civil service is not trade unionism. We fail to appreciate what is sought to be conveyed by use of the words "organized service" and "unorganized service". Nothing has been pointed out in this behalf. The argument is wholly misconceived.

7. The learned counsel for the appellant also argued that if the scale of Rs. 5900-6700 is to be allowed to the Chief Engineers, the State Government will have to allow the same scale to other heads of departments in the service of the State Government which will be a heavy burden on the financial resources of the State and for that reason we should restrict the scale for post of Chief Engineer and Additional Chief Engineer to Rs. 4500-5700 Rs. 4100-5300 respectively. In our view this is hardly any ground to interfere with the decision of the High Court. It has been found that the claim of the respondents is fully justified by the facts on records. The Central Government as well as the State Government accepted the recommendations of the Fourth Central Pay Commission and the scales being allowed to the members of the respondent Association are based on those recommendations.

"20. "The Apex Court in K.T. Veerappa and Others Vs. State of Karnataka and Others, held that Court should interfere with administrative decision pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factor. Para 13 of SCC (KT Veerappa) is quoted below:

"13. He next contended that fixation of pay and parity on duties is the function of the executive and financial capacity of the Govt. and the priority given to different types of posts under the prevailing policies of the Government are also relevant factors. In support of this contention, he has placed reliance on State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. and Union of India v. S.B. Vohra. There is no dispute nor can there be any to the principles as settled in State of Haryana v. Haryana Civil Secretariat Personal Staff Assn. that fixation of pay and determination of parity in duties is the function of the executive and the scope of judicial review of administrative decision in this regard is very limited. However, it is also equally well settled that the courts should interfere with administrative decisions pertaining to pay fixation and pay parity when they find such a decision to be unreasonable, unjust and prejudicial to a section of employees and taken in ignorance of material and relevant factors."

16. It is nobody's dispute that the Assam Rifles had adopted the CSS (revised pay) Rules, 1997. For the aforesaid discussions and reasons, this Court is of the considered view that there cannot be discrimination at the time of revision of pay on the recommendations of the Pay Commission. As a result, the respondents are directed to extend the benefit of 5th Pay Commission/Pay Scale of Rs. 4500-125-7000/- p.m. to the petitioners w.e.f. 10.11.1997 i.e. the date of their appointment and pay them their differential arrears within 4(four) months from the date of receipt of certified copy of this order. The writ petitions are allowed to the extent indicated above. Parties are to bear their own costs.