
(2014) 11 MEG CK 0008

In the Meghalaya High Court

Case No : Writ Petition (Civil) No. 61 of 2013

Yogindrappa Amarad

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 20-11-2014

Acts Referred:

Citation : (2014) 11 MEG CK 0008

Hon'ble Judges : Sudip Ranjan Sen, J

Bench : Single Bench

Judgement

Sudip Ranjan Sen, J.—The brief fact of the case in a nutshell is that:

"Petitioners are working as Havilder/Cipher/Nb Sub (Ciph)/Sub (Ciph) in different units, formation headquarters and minor units of Assam Rifles, which is a Central Para Military Force under the Ministry of Home Affairs. They are aggrieved with impugned letter dated 28.11.2011 (Annexure-12) whereby it has been arbitrary informed that remusteration is a method of appointment and it would counted as upgradation for the purpose of MACPS and also against impugned letter dated 21.01.2013 (Annexure - 15) whereby the respondents have taken a decision to recover the alleged excess payment granted to the petitioners due to grant of ACP/MACP.

Petitioners were remustered/transferred from the cadre of Rifleman (ORL) to the cadre of Cipher through departmental selection in terms Policy Instruction No. 4/86 dated 28.10.1986 on different days. Be it stated that remusteration of the petitioners to the Cipher is transfer to new cadre by way of selection and not a promotion.

Respondents did not grant financial upgradation to the petitioners under ACP scheme dated 09.08.1999 taking the remusteration to Cipher cadre as promotion. Similarly situated one Sentimon Mathew approached the learned Central Administrative Tribunal, Ernakulam Bench through O.A No. 596/2005, which was allowed by the learned Tribunal on 25.06.2007 holding that

remusteration to the Cipher category has to be treated as direct recruit and the applicant will be eligible for first financial upgradation under ACP Scheme on completion of 12 years of service in the grade. Respondents being aggrieved approached the Hon"ble High Court of Kerala through W.P(C) No. 32624 of 2008 (S) challenging the order dated 25.06.2007 in OA No. 596/2005. The Hon"ble High Court of Kerala dismissed the said writ petition on 04.12.2008 and upheld the order 25.06.2007 in OA No. 596/2005.

Respondent accepted and implemented the judgment and order dated 04.12.2008 and granted first financial upgradation to the petitioners under the ACP Scheme taking that remusteration is not a promotion.

Govt. of India, D.O.P&T introduced MACP Scheme on 19.05.2009. The respondents granted 2nd financial upgradation to the petitioners under the MACP Scheme in terms of the order dated 25.06.2007 in O.A. No. 596/2005.

Respondent No. has issued the impugned letter dated 28.11.2011 to the Pay and Accounts Office, Assam Rifles stating that the MHA has clarified "Remusteration is a method of appointment in RRs and it would be counted as upgradation for the purpose of MACPS". On the basis of the clarification given by the Ministry of Home Affairs, the respondent No. 2 cancelled the earlier decision of grant of ACP/MACP benefits to the petitioners on the basis of guidelines from CAT Ernakulam bench without providing any show cause, notice in violation of principle of natural justice.

The Assistant Controller of Accounts, PAO, Assam Rifles vide his impugned letter dated 21.01.2013 informed that on the basis of D.O. P&T's clarification that remusteration would be counted as upgradation for the purpose of MACPs, all the past cases of ACP/MACP granted irregularly may be reviewed and excess payment made in any case due to irregular sanction/pay fixation recovered from the concerned Govt. servants so as to avoid any complicity in future.

The respondents have initiated process of reduction of pay of the petitioners without any prior notice, show cause or warning which is not permissible under the law. Moreover, when the remusteration to Cipher category from Rifleman (ORL) has been held by the Id. CAT, Ernakulam Bench as fresh appointment and the Hon"ble High Court of Kerala has upheld the decision of the Id. Tribunal, Ernakulam, which has attained finality, the impugned letters dated 28.11.2011 and 21.01.2013 are bad in law, arbitrary, illegal and barred by law of estoppels. As such as the impugned letters are liable to be set aside and quashed.

Hence this writ petition".

2. Mr. M. Chanda, learned counsel appearing for and on behalf of the petitioners argued that the ACP as well as the MACPS are to be considered from the date of re-musteration and it cannot be considered as a promotion. The learned counsel also further argued that in the WP(C) No. (SH) 256 of 2012 the learned Single Judge of this court has decided the matter in his judgment dated 10.04.2013 and

discussed the principles elaborately and the said judgment was also upheld by the Division Bench of this court. Therefore, the same principles should be applied in this case.

3. Mr. S.C. Shyam, learned Sr. counsel appearing for and on behalf of the respondents agreed that the judgment passed by the learned Single Judge in WP(C) No. (SH) 256 of 2012 covers this case as the same question and the principles are involved in these two instant cases.

4. After hearing the submissions advanced by the learned counsel for the parties and after going through the judgment passed by the learned Single Judge dated 10.04.2013 in WP(C) No. (SH) 256 of 2012 specially Para 6, 7 and 8 of the said judgment which is reproduced herein below:

"6. Now the questions fall for consideration are:

(i) Whether re-musteration to Cipher Trade i.e. Havildar/Cipher is a promotion from the lower post like Rifleman/ORL and

(ii) Whether re-musteration to the Havildar/Cipher which is the lowest rank in the trade of Cipher will be taken as a financial up-gradation for the purpose of ACP Scheme.

7. The above two questions are clearly answered by the manner of re-musteration of the petitioner to the Cipher Trade i.e. Havildar/Cipher. There was no promotion to the lowest post in the process for re-musteration of the trade to the Havildar/Cipher. Over and above, the posts of Rifleman/ORL/Naik are not the feeder posts for the post of Rifleman/Cipher. The Rifleman/ORL, who had rendered three years of services are eligible to appear exam for the purpose of changing their trade to Cipher Trade. Therefore, the changing of trade to Cipher Trade i.e. Havildar/Cipher is not a direct recruitment from the fresh.

8. The questions as to:

(i) whether changing of trade through re-musteration to Cipher Trade i.e. Havildar/Cipher is a promotion or not and

(ii) whether changing of trade to the process of re-musteration to the Havildar/Cipher is a financial up-gradation under the ACP Scheme had already been considered and discussed by the Central Administrative Tribunal (for short "CAT") in Ernakulam Bench (Annexure-A4 to the writ petition) in Sentimon Mathew vs.

(i) Union of India represented by the Secretary, Ministry of Home Affairs, North Block, New Delhi (ii) The Secretary, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, North Block, New Delhi and (iii) The Director General of Assam Rifles, Mabanideshalaya Assam Rifles, Shillong II, Assam State and make a clear cut findings that changing of trade to Cipher Trade i.e. Havildar/Cipher through re-musteration is not a promotion and also for the financial up-gradation, length of regular service is to be counted from the date of appointment to the post of Havildar/Cipher through re-musteration.

Accordingly, 1st financial up-gradation is to be made on completion of 12 years by counting from the date of musteration to the trade i.e. Havildar/Cipher".

5. The operative part of the judgment at Para 21 also speaks that:

"For the foregoing reasons, the respondents are directed to grant the 2nd financial up-gradation under the MACPS on the completion of 20 years in service as Havildar/Cipher with effect from 20.11.2011 and the first financial up-gradation should be from 20.11.2003 with consequential benefits and the impugned order dated 07.10.2009 is modified to the extent that the 1st financial up-gradation should be with effect from 20.11.2003. It is further directed that the respondents should complete the whole exercise within a period of three months from the date of receipt of a certified copy of this judgment and order".

6. Since from the argument advanced by the learned counsels at the Bar, it is an undisputed fact that the principles and issues involved in this instant case in hand is similar in nature as in WP(C) No. (SH) 256 of 2012, which was upheld by the Division Bench of this High Court as informed by the learned counsel for the petitioner. I am of the view that the same principle will have to be followed in this instant case too. Hence, the respondents are directed to grant the 1st and 2nd financial up-gradation for the ACP as well as the MACPS with effect from the respective date of the eligibility of the petitioners.

7. Consequently, the impugned orders dated 28.11.2011 as well as 21.01.2013 are hereby set aside and quashed and the matter stands disposed of.