



Serial No. 02
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.2/2018

Date of Order: 13.06.2018

Samir Chandra Kar & ors Vs. Union of India & ors

Coram:

Hon’ble Mr. Justice Mohammad Yaqoob Mir, Chief Justice
Hon’ble Mr. Justice S.R. Sen, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. HL Shangreiso, Adv
For the Respondent(s) : Mr. N Mozika, Adv

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

Per Mohammad Yaqoob Mir, ‘CJ’

1. The instant writ appeal is directed against the judgment dated 15.09.2017, in terms whereof, three petitions WP (C) No.365/2014, WP (C) No.84/2015 and WP (C) No.120/2014 have been dismissed.
2. The grievance of the appellants is against non-sanction of grant of risk/hardship based allowances to non-combatant employees of the respondents (Assam Rifles).
3. Vide Office Memorandum No.11-27012/56/2008-PF.1 dated 16.04.2009 issued by the Government of India, Ministry of Finance (Police Finance Wing) grant of risk/hardship based allowance as per the recommendations of Sixth Pay Commission to CPMF combatised personnel up to the rank of Commandant has been sanctioned. Clause 4 of the Office Memorandum provides that said CPMF personnel had the option to receive their existing package of compensatory allowances and detachment allowances or risk/hardship allowances whichever is beneficial to them.



4. The appellants admittedly being non-combatant (civilian employees) filed writ petition No.155/2013 praying therein that the said Office Memorandum dated 16.04.2009 may be directed to be amended or otherwise quashed so that the appellants are also allowed to draw higher rate of existing package of compensatory allowance, detachment allowance and risk/hardship allowance as applicable to their combatant counter parts.

5. The said writ petition stands disposed of vide judgment dated 08.04.2014 with a direction to the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi to dispose of the representations filed by the petitioners therein while doing so, the decision of the Apex Court in **Union of India & ors v. B. Prasad, B.S.O. & ors: (1997) 4 SCC 189** be kept in view. In compliance whereof, the representations of the petitioners were considered which culminating in issue of a speaking order dated 14.08.2014. Lt.Col. (Administration) for DG Assam Rifles while rejecting the representations, declined grant of risk/hardship allowance observing therein that the matter has been examined by the Ministry of Home Affairs in consultation with Ministry of Finance and Ministry of Law and Justice and vide their letter No.II-27012/CF No.103441/16/2011-PF-I dated 12.08.2014, the claim of the petitioners was found to be devoid of merit.

6. Again aggrieved whereof, the appellants filed three petitions seeking setting aside of the said orders dated 12.08.2014 and 14.08.2014. The learned Single Judge vide detailed judgment impugned has found the petitions to be devoid of merit as such, dismissed all the three petitions. Hence, the present appeal.

7. Grant or otherwise of risk/hardship allowance in favour of the appellants (non-combatants) is the centre of controversy.

8. Special Compensatory (Remote Locality) Allowance (SCA) was granted to the Central Government employees including the appellants serving in counter-insurgency/difficult areas of State of Nagaland vide



Office Memorandum No.20014/9/85-E.IV dated 23.09.1986. As per the recommendations of 4th Pay Commission vide Order No.11011/1/84-EP.IV dated 02.02.1989, Special (Duty) Allowance (SDA) was granted to all the Assam Rifles personnel (both combatant and non-combatant) posted in North Eastern Region w.e.f. 07.11.1988.

9. In the year 2008, the Ministry of Finance vide No.1/1/2008-IC dated 29.08.2008 in principle granted approval to risk/hardship allowance for the officers of Central Para-Military Forces to the rank of Commandant and below, and other ranks in the battalions deployed in difficult areas/counter-insurgency areas.

10. In continuation vide Ministry letter No.27011/44/88-PF.I dated 19.09.1989, option was given to the non-combatant ranks/cadres for being converted to combatised ranks/cadres in Assam Rifles. The appellants did not exercise the option.

11. In the year 2009, vide impugned Office Memorandum dated 16.04.2009, risk/hardship allowance (HRA) was sanctioned exclusively in favour of the combatant personnel of Assam Rifles up to the rank of Commandant w.e.f. 01.03.2009.

12. The Assam Rifles has 24 battalions, the strength of one battalion is 1250 personnel. The appellants admittedly are the part and parcel of the battalion. In the year 1989, two compensatory allowances i.e. Special Compensatory (Remote Locality) Allowance and Special (Duty) Allowance for Assam Rifles personnel (both combatant and non-combatant) w.e.f. 07.11.1988 serving in difficult areas/counter-insurgency areas of North Eastern Region was granted. But now, according to them, they are discriminated on account of being non-combatant, therefore, are denied the benefit of risk/hardship allowance.

13. While considering the representations of non-combatant employees, the Ministry of Home Affairs in consultation with the Ministry of Finance and Ministry of Law and Justice, have found the claim of the appellants without any merit.



14. Lt.Col. in the detailed order dated 14.08.2014 while referring to the letter of Ministry dated 12.08.2014, has given clear reasoning for declining risk/hardship allowance to the non-combatant employees of Assam Rifles precisely on the following grounds:-

(I) Terms and service conditions of the appellants are very limited comparable with the service conditions of the Combatant staff. Job responsibilities are not at par with combatant employees. The combatants are to perform operational duty like patrolling, ambush, raid etc. whereas, non-combatants (civilians) in Assam Rifles are not so susceptible.

(II) The combatants have to carry out military operations and whenever required are called upon to do so round the clock. They are covered by the Assam Rifles Act and Rules. Whereas, the civilians (non-combatant) are covered by CCS (CCA) Rules.

(III) The appellants being civilians are not expected to be available for 24 hours duty. Neither they are prone to risk as the combatants are. The non-combatants remain posted within the Headquarters, which is well fortified and guarded. Therefore, they are secured and comfortable as compared to the combatants. The non-combatants (civilians) posted in Headquarters therefore, are comfortable whereas, the combatants have to stay and operate from the Company Operating Bases, which are totally isolated from the Headquarters. That being so, non-combatants are not facing similar risk/hardship as combatants are facing.

15. In the year 1989 vide No.27011/44/88-EP.I, the Government of India, Ministry of Home Affairs, informed the Director General of Assam Rifles about the sanction of the President to the combatisation by conversion of civilian posts in Assam Rifles (Headquarters and Units) under the Assam Rifles Act, 1941 and Assam Rifles Rules, 1985, subject to the terms and conditions as incorporated therein which include para 2 to the effect that the existing incumbents of the posts will be given option to opt for combatisation within three months. Those who will not opt for combatisation will continue in the civilian posts



until superannuation under the existing conditions of service which will be deemed to continue as per rule. Some civilian employees had given option and as a result, whereof, their case were forwarded to the Ministry of Home Affairs. The Ministry of Home Affairs vide No.14012/140/AII/06/AR-PF.IV dated 27.11.2008 conveyed to the Director General of Assam Rifles approval of the competent authority for converting those non-combatised ranks/cadres to combatised cadres in Assam Rifles. In the said letter, designation of existing civilian posts as mentioned include Assistant Matron, Staff Nurse, Teacher, Stenographer ANM etc., who had given their options. That is how they are getting the benefits as being combatant. The appellants admittedly had not given their options, therefore, they cannot claim parity with those non-combatants (civilians) employees, who had exercised their options. Therefore, their prayer for treating them at par with the said Nurses and other staff as mentioned in the said letter dated 27.11.2008 is not allowable.

16. It is also to be made clear that the Ministry of Home Affairs has issued the clarifications of approval of risk/hardship allowance wherein, it has been mentioned that SDA is a part of compensatory allowance, the personnel who are receiving Special (Duty) Allowance are not eligible for Risk/Hardship Allowance. Further, it has been made clear by the Ministry of Home Affairs vide No.II-27012/16/2011-PF.I dated 23.08.2012 that the President has sanctioned addition of para 4 to the Office Memorandum dated 16.04.2009 to the following effect:

“The existing package of compensatory allowance in NE Region will also include Special Duty Allowance (SDA) as a part of existing package of compensatory allowance and hence, SDA and risk/hardship allowance cannot be paid simultaneously”.

17. The said position had been challenged before the High Court successfully by aggrieved combatants. Finally, the Supreme Court while disposing of the case title **“Union of India & ors v. Sh. Sarvendra Singh Chauhan & ors in Civil Appeal Nos.10589-10590 of 2017 arising out of SLP (C) Nos.23204-23205 of 2013”** held that the benefits of Special (Duty) Allowance and Risk/Hardship Allowance are



not together payable. The Risk/Hardship Allowance is an alternative to the existing package of compensatory allowances which includes Special (Duty) Allowance.

18. The non-combatants (civilians) employees of Assam Rifles are getting the earlier existing package of compensatory allowances which includes Special (Duty) Allowance. Therefore, by no means, they shall be entitled to risk/hardship allowance as has been sanctioned in favour of combatants for valid reasons as given in detail in the speaking order dated 14.08.2014. The risk/hardship allowance being an alternative to the exiting package of compensatory allowances which includes Special (Duty) Allowance cannot be claimed by the non-combatants (civilians) of Assam Rifles because the job profile is totally different as clearly referred to hereinabove and also specifically referred in the orders impugned dated 12.08.2014 and 14.08.2014. The learned Single Judge has rightly relied on the judgment title “**Union of India & ors v. Ram Gopal Agarwal & ors: (1998) 2 SCC 589**”, para 10 is advantageous to be quoted here:-

“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 personnel. 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 personnel are governed by the Central Reserve Police Force Act and Rules which is an army rule more stringent in nature while non-combatised staff is governed by the civilian law, namely, CCS 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. Ones not opting to enjoy the benefit, as in the present case, to continue in service of one category up to 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.”

19. In view of the law as laid down by the Hon’ble Apex Court, there is no scope for accepting the contentions of the appellants.

20. The learned Single Judge has rightly opined that the judgment rendered by the Hon’ble Apex Court in the case of “**Union of India & ors v. B. Prasad, B.S.O. & ors: (1997) 4 SCC 189**” is not applicable to the case of the appellants.

21. In the final analysis for the reasons, facts and law, the learned Single Judge has appreciated the case in its right perspective. The appeal being without merit is dismissed, no order as to costs.

(S.R. Sen)
Judge

(Mohammad Yaqoob Mir)
Chief Justice

Meghalaya
13.06.2018
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