

PETITIONER:
GOPIKA RANJAN CHOUDHARY

Vs.

RESPONDENT:
UNION OF INDIA AND ORS.

DATE OF JUDGMENT 25/10/1989

BENCH:
SAWANT, P.B.
BENCH:
SAWANT, P.B.
MISRA RANGNATH
RAMASWAMY, K.

CITATION:
1990 AIR 1212 1989 SCR Supl. (1) 727
1989 SCC Supl. (2) 616 JT 1989 (4) 173
1989 SCALE (2) 898

ACT:

Assam Rifles Act, 1920: Assam Rifles Force--Ministerial Staff-Higher pay scale for staff at headquarters against their counterparts in Units/Battalions--Whether discriminatory.

HEADNOTE:

Consequent to the re-structuring of the Assam Rifles Force in 1962 a separate Unit known as Central Record and Pay Accounts Office (C.R. and P.A.O.) was created at the Headquarters of the force. Pursuant to the recommendation of the Third Central Pay Commission the staff at the Headquarters were given higher pay scales than those attached to the Battalions/Units.

The Petitioners sought parity in emoluments with their counterparts working at the Headquarters by filing a petition before the Central Administrative Tribunal contending that; (i) the C.R. and P.A.O. Unit situated at the Headquarters was not a part of the Headquarters establishment but was a separate Unit; and (ii) there is no difference either in the nature of work and duties of the two or in their qualifications and that the services of the staff at the Units/Battalions are transferrable to the Headquarters. The Tribunal rejected the claim of the petitioner holding that the C.R. and P.A.O. is a different unit and not a part of the establishment of the Headquarters and its staff are enjoying the scale of pay allowed to the staff of the Headquarters since its inception. Hence this appeal.

Allowing the appeal, this Court,

HELD: 1. There is a contradiction between the finding recorded by the Tribunal that the C.R. and P.A.O. at the Headquarters is quite a "distinct" establishment from the range Headquarters/Battalions, and the justification made by it of the higher emoluments of the staff at the Headquarters on the ground that they are enjoying the same as allowed to the other staff of the Headquarters since its inception.

[731C-D]

1.1. If the C.R. and P.A.O. at the Headquarters is a different

unit and not a part of the Headquarters, then the staff attached to the office at the Headquarters is not entitled to emoluments higher than those drawn by the staff of the Units/Battalions. [731D]

2. The payment of higher emoluments to the said staff merely on the ground that the establishment is at the place where the Headquarters is situated, is discriminatory as against the staff at the Units/ Battalions since it is no way different from the other Units. [731E]

[Matter remanded to the Tribunal for recording a finding on (i) whether the qualifications for appointment at the two establishments viz. C.R. and P.A.O. at the Headquarters and the Units are different, (ii) whether the nature of the duties and responsibilities of the Ministerial staff at the Headquarters is of a higher order than that of those at the Units/Battalions, and (iii) whether transfer of the staff from the Units/ Battalions to the Headquarters was done arbitrarily and without applying any test. [732B-C]

JUDGMENT:

CIVIL APPELLATE JURISDICTION. Civil Appeal No. 3288 of 1988.

From the Judgment and Order dated 11.8. 1986 of the Central Administrative Tribunal at Gauhati in G.C. No. 102/86 (C.R. No. 905 of 1983).

Mr. Soli J. Sorabjee, K. Madhav Reddy, Mrs. Kitty Kumaramangalam, Kailash Vasdev and Ms. Vijayalaxmi for the Appellant.

B. Dutta, Additional Solicitor General (N.P.), V.C. Mahajan, P.P. Singh and Ms. Sushma Suri, for the Respondents,

The Judgment of the Court was delivered by

SAWANT, J. This appeal is directed against the order dated August 11, 1986, passed by the Central Administrative Tribunal, Gauhati Bench rejecting the claim for parity in emoluments between the Upper Division Assistants and Lower Division Assistants (hereinafter referred to as UDAs and LDAs) in the branch establishments on the one hand and their counterparts working at the Headquarters on the other.

2. The admitted facts are that the Assam Rifles, a para-military force was created by the then Assam Govt. under the Assam Rifles

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Act, 1920, for its protection. It was taken over by the Government of India, Ministry of External Affairs under its direct control in October 1947. It appears further that the Government of India appointed, an Inspector General as the Head for conducting mainly the administrative work of the Force. The Force which was controlled by the North Eastern Frontier Agency (NEFA) had 25 Battalions/Units and each Battalion consisting of about 1400 personnel which also included some civilians. In 1962, on account of the then exigencies, the Force underwent re-structuring of its organisation as a result of which a separate Unit known as Central Record and Pay Accounts Office (C.R. and P.A.O.) was created at the Headquarters. Each Battalion/Unit had to send its detailed note on the pay and service record to this office.

3. The Third Central Pay Commission (1973) recommended unified pay scales to the combatant staff of the Force on parity with the Army staff. However, as regards the ministerial staff of the Force (such as the UDAs and LDAs with whom we are concerned in the present case), the Commission recom-

mended two different scales of pay, one for those attached to the Head Quarters and the other to the Battalions/Units, and the same came into force by an order of the Ministry of Home Affairs issued in March 1975. The pay scales of the staff at the Headquarters were higher than those of the staff attached to the Battalions/Units.

4. The appellant in his capacity as the General Secretary of the Union of Assam Rifles, Non-Gazetted Employees, North East Region made representation against this on the allegation of discrimination. The only response of the Headquarters to this representation was a reply that a unified cadre for all ministerial employees had been proposed to the Ministry of Home Affairs for better pay and promotions. The appellant, therefore, filed a writ petition before the Assam High Court which was later transferred to the Central Administrative Tribunal.

5. The case of the appellant before the Tribunal was that there was no difference in the nature of the work, the duties and responsibilities of the UDAs and LDAs working in the Battalions/Units and of those working at the Headquarters. There was also no difference in the qualifications required for appointment in the two establishments. The service of the staff from the Battalions/Units were transferrable to the Headquarters, and in fact some UDAs and LDAs were transferred from Battalions/Units to the Headquarters. What was more noteworthy was that many who were transferred from the

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Units/Battalions to the Headquarters were so transferred without either applying the criterion of seniority or subjecting the staff to any selection process. The result was that those who were juniors and less experienced and/or less qualified were transferred to the Headquarters arbitrarily and had been receiving higher emoluments than the more deserving ones either on account of their seniority, qualifications or merit. It was also the contention of the appellant that the Central Record and Pay Accounts Office situated at the Headquarters was not a part of the Headquarters-establishment but was a separate Unit having merely its office at the place where the Headquarters were situated. Hence even the practice of paying higher emoluments to the staff of the Headquarters could not be invoked in the present case.

6. The contention of the respondent namely, the Union of India, was that the Central Record and Pay Accounts Office was a part of the Headquarters establishment and hence the higher emoluments paid to the staff at the Headquarters compared to their counter-part in the Units/Battalions were justified. It was also their contention that for appointment to the post of UDAs and LDAs at the C.R. and P.A.O., a higher qualification was required, and their duties and the responsibilities were different and of a higher order than those of their counter-part at the Units/Battalions. It was further submitted on their behalf that there was no arbitrary transfer of the UDAs and LDAs from the Units/Battalions to the Headquarters, and they were transferred on the basis of merits.

7. It appears from the Judgment of the Tribunal, however, that the Tribunal considered only the question as to whether the Central Record and Pay Accounts Office was a part of the establishment of the Headquarters or was independent of it, and contrary to the contention of the respondent--Union of India, came to the conclusion that it was independent of the establishment of the Force at the Headquarters. Having thus come to the conclusion, the Tribunal

proceeded to hold that the Central Records Officer and Unit Pay & Accounts Officer (hereinafter referred to as CRO and UPAO) at the Headquarters "being entrusted with the duties of higher responsibility and of controlling nature" the grant of the higher scale of pay to the ministerial staff thereof was justified. The Tribunal further observed that "as a matter of fact these staff are enjoying the scale of pay allowed to staff of the Headquarters since its inception in 1962". The Tribunal gave this additional reason to justify higher emoluments paid to the UDAs and LDAs at the Headquarters.

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8. It is obvious from the decision of the Tribunal that in the first instance the Tribunal did not go into the question as to whether the staff appointed at the Headquarters required higher qualifications. Secondly, it did not consider the grievance of the appellant whether the staff was transferred from the Units/Battalions to the Headquarters arbitrarily and without either considering their seniority or subjecting them to a selection process. Thirdly, the Tribunal has nowhere discussed as to in what respect the duties and responsibilities of the staff at the Headquarters are different and higher in nature than those of the staff at the Units/Battalions. There is only a statement made in that behalf in paragraph 17 of the judgment without assigning any reason for it. What is further, there is a contradiction between the finding recorded by the Tribunal that the CRO and UPAO at the Headquarters is quite "distinct" establishment from the range Headquarters/Battalions, and the justification made by it of the higher emoluments of the staff at the Headquarters on the ground that they are enjoying the same as allowed to the other staff of the Headquarters since its inception in 1962. The Tribunal has thus obviously missed the substance of the grievance of the appellant namely, that if as is alleged by the appellant and contrary to the contention of the Union of India, the CRO and UPAO at the Headquarters is a different unit and not a part of the Headquarters, then the staff attached to the office at the Headquarters is not entitled to emoluments higher than those drawn by the staff of the Units/Battalions. The payment of higher emoluments to the said staff merely on the ground that the establishment is at the place where the Headquarters is situate, is discriminatory as against the staff at the Units/Battalions since it is in no way different from the other Units. This is apart from the grievance of the appellant that there is no difference either in the nature of work and duties of the two or in their qualifications and that the services of the staff at the Units/Battalions are transferrable to the Headquarters.

9. There is, however, some substance in the submission advanced by the learned counsel for the respondents that before the Tribunal no sufficient material was placed by the appellant to show, firstly; that the nature of work, and the duties and the responsibilities of the two were the same and the qualifications for appointment at the two establishments were also similar. It was also not shown to the Tribunal that those who were transferred from the Units/Battalions to the Headquarters were transferred arbitrarily without either taking into consideration their seniority or subjecting them to the process of selection. The Tribunal will have therefore, to apply its mind to these aspects and record its finding as to whether although the CRO and

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UPAO is not a part of the establishment of the Headquarters, the higher emoluments would be justified on account of the

said other factors.

10. While therefore, the finding given by the Tribunal that CR and PAO at the Headquarters is a different unit and not a part of the establishment of the Headquarters is not disturbed by us, we remand the matter to the Tribunal for recording a finding on (i) whether the qualifications for appointment at the two establishments viz; CRO and UPAO at the Headquarters and at the Units are different, (ii) whether the nature of the duties and responsibilities of the UDAs and LDAs at the Headquarters is of a higher order than that of those at the Units/ Battalions and (iii) whether the transfer of the staff from the Units/ Battalions to the Headquarters was done arbitrarily and without applying any test. The Tribunal will give a proper opportunity to both the sides to place the relevant material on the aforesaid points before it and give its findings on the aforesaid aspects and will also decide whether on that account the difference in the emoluments of the two is justified.

11. The appeal is allowed accordingly. The Tribunal is directed to dispose of the matter according to law in the light of what is stated hereinabove. The parties to bear their own costs.

T.N.A
allowed.
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Appeal