

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

4

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 195/2003.....

R.A/C.P No.....

E.P/M.A No.....

1. Orders Sheet. OA-195/2003.....Pg....1.....to....3.....
2. Judgment/Order dtd. 30/04/2004.....Pg....1.....to....2.....*disposed*
3. Judgment & Order dtd.....Received from H.C/Supreme Court
4. O.A.....195/2003.....Pg....1.....to....49.....
5. E.P/M.P.....Pg.....to.....
6. R.A/C.P.....Pg.....to.....
7. W.S. *Submitted by the Respondents*.....Pg....1.....to....26.....
182
8. Rejoinder *Submitted by the Applicant*.....Pg....1.....to....5.....
9. Reply.....Pg.....to.....
10. Any other Papers.....Pg.....to.....
11. Memo of Appearance.....
12. Additional Affidavit.....
13. Written Arguments.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

FORM NO.4
(SEE RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWALATI BENCH

ORDERSHEET

Original Application : 195/03

Misc Petition No. : _____

Contempt Petition No : _____

Review Application No: _____

Applicants:- S.C. Bhattacharjee

Respondents:- A.C.I. Team

Advocate for the Applicants:- M. Chanda, B. N. Chakraborty

Advocate for the Respondents:- S. Nath
Case.

Notes of the Registry	Date	Order of the Tribunal
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This application is in the
form but not in the
Con-
filed
for
vid
Da

26.9.2003

Heard Mr. M. Chanda, learned
counsel for the applicant.

Issue notice to show cause as
to why the application shall not be
admitted.

List on 7.11.2003 for admission.

199159328
22.8.03
Dr. Registrar

mb

Vice-Chairman

Steps taken along with
envelops.

NS
12/9/03

7.11.03

No Bench today.
Adj. on 5.12.03.

fl. camp order dated
26/9/03

NS
26/9/03

18/0
6

Notice is prepared and sent
to despatch Section for
to two respondents.
NS 6/10/03 D/No-2078 to 2080
Dt. = 6/10/03.

19.12.2003

Heard Mr. G.N. Chakrabarty, learned counsel for the applicant and also Mr. A. Deb Roy, learned Sr. C.G.S.C. for the Respondents.

Pl. campdy forward
dated 19.12.03.

NS
19/12/03

As per Hon'ble court
order dt-26/9/03 the
notices all ready sent
to the respondent vide
D/NO-2078 to 2080
dt. 6/10/03.

Case
24/12/03.

The application is admitted.
call for the records. Issue notice
to the respondents.

List on 27.1.2004 for order
rs.

ICV Pradeep
Member(A)

mb

16.2.2004

Written statement has been filed.
List the case for hearing on 8.3.2004.
In the meantime applicant may file
rejoinder, if any.

ICV Pradeep
Member

bb

8.3.2004

On the plea made by Mr.M.Chanda,
learned counsel for the applicant, the
case is adjourned and posted on 23.3.
2004 for hearing.

Member (A)

bb

23.3.2004

Prayer has been made on behalf of
Mr. A. Deb Roy, learned Sr. C.G.S.C.
for the respondents for adjournment
of the case. The case is adjourned
accordingly. List on 8.4.2004 for
hearing.

ICV Pradeep
Member (A)

mb

8.4.2004

On the plea of the counsel for the
applicant the case is adjourned. List on
30.4.2004 for hearing.

ICV Pradeep
Member (A)

mb

7.1.04

W.S. Submitted
by the Respondent Nos.
1 & 2.

Pro.

17.2.04

Rejoinder submitted
by the applicant.

Pro.

The case is ready
for hearing.

Pro
17.4.04

The O.A. is disposed of in terms of the order. No costs.

ay 13/5

10/1/2020
Member (A)

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~R.A.~~No. 1111 195 of 2003.

DATE OF DECISION 30.4.2004.

...Sri J.C.Bhattacharjee.....APPLICANT(S).

...Mr. M. Chanda, G.N.Chakraborty & S.Nath.....ADVOCATE FOR THE
APPLICANT(S).

-VERSUS-

...Union.of.India.&.Others.....RESPONDENT(S)

...Mr.A.Deb.Roy..Sr.C.G.S.C.....ADVOCATE FOR THE
RESPONDENT(S).

THE HON'BLE MR. K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

THE HON'BLE

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble Member (A).

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6

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.195 of 2003.

Date of Order : This, the 30th Day of April, 2004.

THE HON'BLE SHRI K.V.PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri J.C.Bhattacharjee

No.1 Construction Coy, Assam Rifles
Happy Valley
Shillong - 793 007.

. . . . Applicant.

By Advocates Mr.M.Chanda, G.N.Chakraborty & S.Nath.

- Versus -

1. The Union of India

Represented by the Secretary
to the Government of India
Ministry of Home Affairs, North Block
New Delhi - 110 001.

2. The Director General

Assam Rifles
Shillong - 793 011.

. . . . Respondents.

By Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R (ORAL)

K.V.PRAHLADAN, MEMBER(A):

The applicant is working as Head Assistant at No.1, Construction Coy A.R.Happy Valley, Shillong and he is a non combatant field staff under the Assam Rifles. This application has been filed claiming free ration/ration allowance/leave ration allowance etc. at par with the counterpart i.e. combatant staff of the Assam Rifles. The applicant approached this Tribunal earlier also by O.A.74 of 2002. This Tribunal by its judgment dated 11.10.2002 directed the applicant to make a claim for ration allowance. In another O.A.136/99 filed by the Stenographers Grade-I of Director General, Assam Rifles was disposed of on 20.2.2001 where this Tribunal held that "they may be entitled for some admissible allowance, like ration allowance etc. like that of the combatants."

2. The respondents filed their written statement contesting the claim of the applicant. In the written statement the respondents stated that the terms of the conditions of combatant and non combatant staff are not

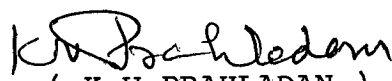
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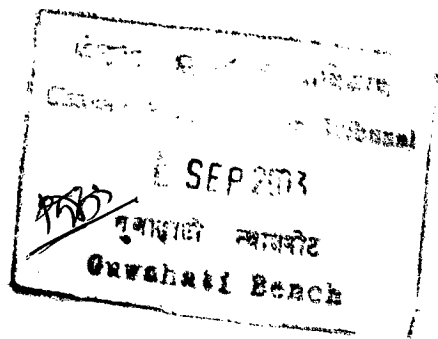
comparable and hence they cannot be equated. As such there is no question of payment of ration allowance to the applicant. The respondents further stated that non combatant civilian employees were asked to submit option for combatisation under the scheme formulated by Ministry of Home, Affairs vide letter dated 19.9.89. However, no non-combatant opted. Mr. Chanda, learned counsel for the applicant on the other hand submitted that no terms and conditions of service were formulated for option.

3. Heard Mr. M. Chanda, learned counsel for the applicant and Mr. A. Deb Roy, learned Sr. C.G.S.C. for the respondents at length. The pay, allowances and other facilities are provided by the Government on the basis of service conditions and duties performed by the Government servant. Normally there is no question of any discrimination between combatant and non combatant staff so far allowance and facilities are concerned. The non combatant staff working in the field areas are also face much hardship. The respondents may consider whether such a disparity in provision of certain facilities between the combatants and non combatants is desirable.

4. Considering the facts and circumstances of the case the respondents may consider the case of the applicant and other non combatants by taking fresh option for combatisation. The applicant may make a representation to the respondents on payment of ration allowance. The respondents on receipt of such a representation, are directed to take a decision and reply within a period of four months from the date of receipt of such a representation.

The O.A. is accordingly disposed of. No order as to costs.


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O. A. NO. 195 / 2003

J. C. Bhattacharjee

... Applicant

-Versus-

Union of India & Others

... Respondents

Lists of dates and synopsis of the case

Date

Synopsis of particulars in the application

Applicant was initially appointed as Lower Division Assistant on regular basis under the Director General of Assam Rifles. Thereafter he was promoted to the cadre of U.D.A. and subsequently further promoted to the post of Head Assistant, which is equivalent to the rank and cadre of Naib Subedar in the combatant staff of D.G.A.R.

10.10.1997- The Government of India, Ministry of Home Affairs vide letter dated 10.10.1997 revised the pay scale of Naib Subedar and Subedar Clerk without considering their counter part such as Head Assistant and Senior Accountants and Upper Division Assistant.

- 14.06.1996- This Hon'ble Tribunal passed its Judgment in O.A.No.245/1995 declaring that the non-combatant employees of the SSB are also entitled the benefits of free ration/Ration Allowances. (Annexure-3)
- 28.07.1999- DGAR, Headquarter vide letter-dated 28.07.1999 enhanced the retiring age on superannuation of the Combatant staff.
- 08.06.1999- Headquarter, DGAR vide letter-dated 8.06.1999 declared that 15 days casual leave is applicable for both the combatant and non-combatant staffs.
- 02.02.2001- This Hon'ble Tribunal while deciding O.A.No. 136/1999 observed that non-combatant employees may be entitled for some admissible allowances like ration allowances. (Annexure-4)
- 08.02.2001- Government of India, Ministry of Home Affairs issued Office Memorandum granting ration allowances to the non-executive personnel of the SSB. (Annexure-1)
- 30.08.2001- Government of India issued office order granting Ration Money Allowance to the non-executive personal of the SSB. (Annexure-2)
- 11.10.2002- This Hon'ble Tribunal while passing its Judgment in O.A.No.74/2002 directed the applicant to submit representation to the competent authority for payment of free ration /ration allowances. (Annexure-5)
- 24.03.2003- The applicant submitted representation to the DGAR, Shillong claiming the benefit of allowances and facilities, namely; free ration/ ration allowances, free clothing, leave allowances, 60 days earned leave etc. (Annexure-6)
- 27.03.2003- The above mentioned representation dated 24.03.2003 was forwarded to the DGAR, Shillong by the Commandant. (Annexure-7)

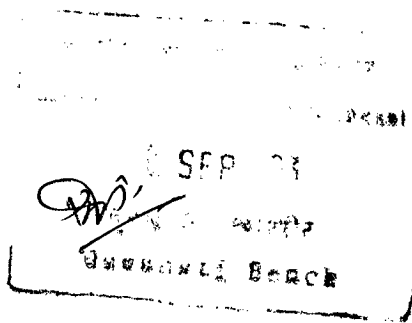
28.05.2003- The DGAR, Shillong rejected the claim of the applicant for free ration/ration allowances and other allowances. (Annexure-8)

RELIEF (S) SOUGHT FOR

The applicant humbly prays that Your Lordships be pleased to grant the following relief(s):

Under the facts and circumstances stated above, the applicant humbly prays that your Lordships be pleased to issue notice to the respondents to show cause as to why the relieves sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs:

1. That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to free ration/ration allowance, free clothing, leave ration allowance, 60 days earned leave etc at par with the counterpart i.e. combatant staff of the Assam Rifles.
2. That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. P/A-II/5th CPC/APS/03/242 dated 28.5.2003 issued by the Respondents.
3. Costs of the application.
4. Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.



IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

Filed by the applicant
through advocate
Sri G. N. Chakravarty
26-08-2003, for
Memo no. 11

Title of the case : O. A. No. 195 /2002

Sri J. C. Bhattacharjee: Applicant

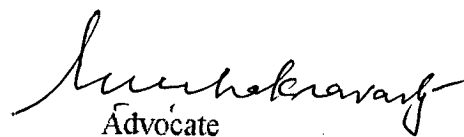
- Versus -

Union of India & Others: Respondents

INDEX

SL. No.	Annexure	Particulars	Page No.
01.	-	Application	1-25
02.	-	Verification	26
03.	1	Memorandum dated 8.2.2001	27
04.	2	Order dated ³⁰ 8.8.2001	28-
05.	3	Judgment and order dated 14.6.1996	29-33
06.	4	Judgment and order dated 20.2.2001	34-39
07.	5	Judgment and order dated 11.10.2002	40-46
08.	6	Representation dated 24.3.2003	47-
09.	7	Forwarding letter dated 27.3.2003	48-
10.	8	Impugned order dated 28.5.2003	49-

Filed by


Advocate

Date

Jagadish Ch. Bhattacharjee

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

(An Application under Section 19 of the Administrative Tribunals Act, 1985)

O. A. No. 195 /2002

BETWEEN

1. Sri J.C. Bhattacharjee
No.1 Construction Coy, Assam Rifles,
Happy Valley
Shillong-793007

...Applicant

-AND-

1. The Union of India,
Represented by the Secretary to the
Government of India,
Ministry of Home Affairs, North Block,
New Delhi-110001.
2. The Director General,
Assam Rifles,
Shillong-793011

.....Respondents.

DETAILS OF THE APPLICATION

1. Particulars of order against which this application is made.

This application is made not against any particular order or orders but against the impugned letter dated 28.05.2003 and also praying for a direction upon the respondents to grant Free Ration Allowance, Free Clothing, 60 days Earned Leave and Leave Allowance to

Jagadish Ch. Bhattacharjee

the applicant at par with the combatant staff of Assam Rifles.

2. Jurisdiction of the Tribunal.

The applicant declares that the subject matter of this application is well within the jurisdiction of this Hon'ble Tribunal.

3. Limitation.

The applicant further declares that this application is filed within the limitation prescribed under section-21 of the Administrative Tribunals Act, 1985.

4. Facts of the case.

4.1 That the applicant is a citizen of India and as such he is entitled to all the rights, protections and privileges as guaranteed under the Constitution of India.

4.2 That the applicant was initially appointed as Lower Division Assistant (for short L.D.A.) on regular basis under the Directorate General of Assam Rifles. Thereafter he was promoted to the cadre of U.D.A. in Assam Rifles and subsequently further promoted as Head Assistant in the pay scale of Rs. 4500-7000 which is equivalent to the rank and cadre of Naib Subedar in the combatant staff of D.G.A.R.

Jagadish Ch. Bhattacharya

4.3 That your applicant is a non-combatant employee presently working in the capacity of Head Assistant under the DGAR. It is relevant to mention here that the applicant all along since joining his service posted in different places in ranges/unit offices/fields offices in N.E.Region and whenever units moves from one place to another place. The applicant being a non-combatant employee also required to move along with the troops of the Unit. In other words, applicant is a field staff and throughout his service career he is required to move with the combatant staff of Assam Rifles in the difficult field areas/Hill areas/border areas/risking his life with the armed forces/Troops of Assam Rifles.

4.4 That your applicant presently posted as Head Assistant at No.1, Construction Coy, A.R. Happy Valley, Shillong 793007. It is submitted that your applicant posted in the different places during his entire service career in N.E.Region. The details of the transfer and posting of the applicant during the service career is furnished hereunder :

1. 21 AR Jairampur, Arunachal Pradesh
2. 11 AR, Along, Arunachal Pradesh
3. 6 AR, Seling, Mizoram
4. 3 AR, Kohima/Marom, Nagaland/Manipur
5. 5 AR, Lokra, Assam
6. 18 Ar, Lunglei, Mizoram
7. 9 AR, Kimin, Arunachal Pradesh
8. 14 AR, Phek, Nagaland

Agadesh Ch: Bhollacharje

9. 16 AR, Diphu/Dimapur, Assam/Nagaland
10. ICC AR, Shillong, Meghalaya.

- 4.5 That the Assam Rifles is a Central Police Organisation under the Government of India, Ministry of Home Affairs and the Central Govt. pay scales and allowances are applicable to the employees of Assam Rifles.
- 4.6 That in order to appreciate the anomaly and disparity in the right perspective, the background of the case are submitted in the succeeding paragraphs.
- 4.7 That the Organisation of Assam Rifles root in the Cachar Levy raised in 1835 under the Assam Administration and was functioning as Armed Constabulary of the State of Assam. Subsequently, the Force was named as Assam Rifles. The Assam Rifles was taken over by the Govt. of India, Ministry of External Affairs and placed under Inspector General of Assam Rifles with effect from 01 Oct 1947. Secretariat cover for this Force was provided by North East Frontier Agency Administration until 1972. With the creation of the Union Territory of Arunachal Pradesh covering the areas under the North Eastern Frontier Administration (for short, NEFA), the Assam Rifles started functioning directly under Ministry of Home Affairs.
- 4.8 That prior to 1973, the pay scales, staffing pattern, recruitment rules, promotion policy etc. for the non-combatant ministerial staff of Assam Rifles, both of

Jagadish Ch: Bhollacharje

combatant and non combatant were similar to those prevalent in the erstwhile NEFA Administration who had the administrative control over the Assam Rifles as an Agency of the Ministry of External Affairs till 1965. In fact, the NEFA Administration at that time had adopted the pay scales of the Govt. of Assam and, therefore, these were called the "Assam type" of pay scales.

4.9 That the Govt. of India while allowing the central pay scales for Assam Rifles Non-combatant employees, had noted the existence of two categories of employees in Assam Rifles, are combatant and non combatant. As a corollary, nomenclature of certain post in the Assam Rifles had to be changed to match with the nomenclature Comparable in the Central Service structure.

4.10 That on implementation of the report of the IIIrd IVth and Vth Central Pay Commissions scale of pay Subedar(Clerk), Senior Accountant Naib/Subedar (Clerk), Head Assistant, Havildar (Clerk) Warrant Officer equivalent to UDA were granted the following corresponding revised scale of pay. The details particulars of the scales of comparable grades are furnished below :

Subedar (Clerk) (Combatant Side)	Senior Accountant(Non Combatant side)
3rd CPC Rs. 460-580	3rd CPC Rs. 550-800

Jagadish Ch: Bhattacharjee

4th CPC Rs. 1640-2900	4th CPC Rs. 1600-2660
5th CPC Rs. 5500-9000	5th CPC Rs. 5000-8000
Note : <u>Again granted scale of Rs. 6500-10500 w.e.f. 1.10.1997</u>	-Nil-
Naib Subedar (Clk)	Head Assistant
3rd CPC Rs. 350-440	3rd CPC Rs. 425-700
4th CPC Rs. 1400-2300	4th CPC Rs. 1400-2300
5th CPC Rs. 4500-7000	5th CPC Rs. 4500-7000
Note : <u>Again revised to Rs. 5500-9000 w.e.f. 1.10.1997</u>	-Nil-
Havildar Clerk	U.D.A.
3rd CPC Rs. 245-325	3rd CPC Rs. 330-560
4th CPC Rs. 975-1660	4th CPC Rs. 1200-2040
5th CPC Rs. 4000-100-6000	5th CPC Rs. 4000-100-6000
Note : <u>Havildar Clk Post is upgraded to the grade of Warrant Officer to bring the pay scale at par with UDA w.e.f. 10.10.97</u>	
Naik Clerk	L.D.A.
3rd CPC Rs. 210-280	3rd CPC Rs. 260-366
4th CPC Rs. 950-1400	4th CPC Rs. 950-1500
5th CPC Rs. 3200-4900	5th CPC Rs. 3050-4590
Note : <u>Post of Naik Clerk, is upgraded to the post of Havildar clerk w.e.f. 10.10.1997</u>	

(a) It is stated that (1) the Post of Hav (Clk) was upgraded to warrant officer (Clerk) Wef 10 Oct '97 to bring the pay scale at par with UDA.

(b) Post of of Naik (Clk) was up-graded to Havildar (Clk) Wef 10 Oct 97 in other words, the post of Naik was merged to Havildar (Clk) also with effect from 10 October 1997,

(c) Approval letter of 4th Pay Commission - Min. of

Jagadish Ch. Bhattacharya

Fin. Deptt. of Exp order No. F.15(1)/IC/86 dated 22.9.81 and No. F.15(1)-IC/ 84 dated 13.9.96 forwarded vide DGAR letter No. A/1-A/299-86/dated 17.11.86.

It would further be evident from the following table that pay scales of Havildar/clk and LDA as well as Warrant Officer (CLK) and UDA were almost identical and there was no disparity after the implementation of the Ivth Central Pay Commission's report. Particulars of the scales are given below :

HAV/CLK	LDA
3200-85-4900	3050-75-3950-4590
WO (CLK)	UDA
4000-100-6000	4000-100-6000

But most surprisingly, when the incumbent holding the post of Warrant Officer (Clk) is promoted to the post of Naib/Sub (Clk), the post which is equivalent to the post of Head Assistant (in the non-combatant side) or when the incumbent holding the post of Subedar Clerk which is equivalent to the post of Senior Accountant disparity starts immediately thereafter. Due to recent revision of pay scale of Naib Subedar Clerk and Subedar Clerk by the Govt. of India, vide Home Ministry's letter dated 10.10.1997. As a result of up gradation of pay scale of Naib Subedar and Subedar w.e.f. 10 October 1997 without considering the case of

gagadish ch. Bhattacharjee

their counterpart such as Head Assistant and Senior Accountants and Upper Division Assistant. In the instant case we are concerned with the disparity of allowances, free ration/rational allowance of Head Assistant, with his counterpart namely, Naib Subedar (Clerk) and Subedar (Clerk).

The above anomalies resulted due to non consideration of pay scales and allowances of the counterparts working in the non-combatant sides in Ranges/Unit Offices/Field Offices in the same environment with equal duties and responsibilities.

It is pertinent to mention here that the disparity in pay scale started in respect of the applicant with his counterparts after implementation of the Vth Central Pay Commission's report with effect from 1.1.1996 and more particularly due to fact that the pay scales of Naib Subedar was up graded by the Govt. of India with effect from 10 October, 1997 vide letter bearing No. A/Pers/5th -Pay/97/21 dated 7.11.1997 and letter bearing No. A-Pers/5th CPC/Vol.-II /98 dated 24 August, 1998. After extending the benefit of the up-graded pay scale to the Naib Subedar, the applicant in fact now working in a lower pay scale of Rs. 4500-7000 (Head Assistant). Due to rationalisation of rank structure and pay scales with effect from 10 October, 1997 with other CPO, only Lans Naik and Naik have recently been merged with the rank of Havildar (Clerk) and Havildar (Clerk) promoted as Warrant Officer and

Jagadish Ch. Bhattacharya

authorised to draw the pay scale of Rs. 3200-4900 and Rs. 4000-6000 respectively in addition to all other benefits as admissible in all trades in Assam Rifles but on the other hand, the non-combatant staff who are working in the post earlier carrying similar pay scale rank and status in the same insurgency environment neither given any kind of incentive nor given the benefit of allowances and facilities with his counterparts in the combatant cadre.

The decision of the respondents in upgrading the pay scale, other allowances and facilities only to the counterparts of the applicant who were in fact working in a much lower pay scale since III Central Pay Commission is highly discriminatory, arbitrary and unfair and as a result the applicant are meted with hostile discrimination.

It is further submitted in the instant case of the applicant is concerned with Ration Allowances. The applicant being a non-combatant employee is denied parity in pay scale with his counterpart i.e. Clerk in the combatant side in Assam Rifles. But surprisingly the applicant is also denied other allowances including Ration Allowance although working in the field areas along with the combatant staff risking his life in hilly terrain and border areas of the N.E. Region.

4.11 That it is stated that namely Naib Subedar and other combatant staff working in different capacities in

Jagadish Ch. Bhattacharya

field areas are also being granted other allowances and facilities such as the benefit of Ration Allowance, free clothing and leave allowances. But the same has been denied to the applicant who is similarly circumstanced and working in the same environment in the ranges/unit offices/field offices and also in the same insurgency prone areas.

4.12 That the applicant states that it is relevant to mention here that the counterparts of the applicant namely Naib Subedar (Clk) and Subedar clerk are also being granted other allowances and facilities such as benefit of free ration/Ration Allowances, free clothing, leave allowances and 60 days earned leave, when the same is denied to the applicant who is similarly circumstanced and working in the same environment in the ranges/unit offices/ field offices and also in the same insurgency prone areas. It is pertinent to mention here that the non-combatant employees working in field areas in the department of SSB, Government of India under the same Home Ministry have also been granted free ration/ration allowances. As such the applicant, who is working in field offices ought to have been granted free ration/ration allowance/leave allowances as granted to Naib Subedar Clerk/Subedar Clerk and other combatant staff. So far the entitlement of Ration Allowance/Free Ration to the non-combatant employees of SSB working in the field areas under the same Home Ministry came up for

consideration before this Hon'ble Tribunal in a series of cases filed by the non-combatant employees of the SSB and this Hon'ble Bench after detail scrutiny of the entitlement was pleased to declare that the Non-combatant employees also entitled to the benefit of Free Ration/Ration Allowances. Therefore Hon'ble Tribunal be pleased to declare that the present applicant is also entitled to the benefit of Free Ration/Ration Allowances and Leave Allowances equal to the their counterparts. The relevant circulars relating to Ration Allowance and judgments of the Hon'ble Tribunal are enclosed for perusal of the Hon'ble Tribunal.

Copy of Memorandum dated 8.2.2001, Order dated ³⁰ 13.8.2001, granting ration allowances to the non executive personnel of SSB and judgment and order dated 14.6.1996 in O. A. 245 of 1995 are annexed as Annexure-1,2 and 3 respectively.

4.12 That it is stated that the charter of duties in respect of Senior Accountant and Head assistant have been clearly spelt out in Assam Rifles in Routine order. A mere perusal of charger of duties as stated above it would be evident that the applicant is discharging similar duties and responsibilities in the Field Offices, since the functional capacities of the incumbents falls within the ambit of the charter of duties and their performances are guided by the same

set of rules, Nature of works, of both combatant and non-combatant are same.

So far Conditions of service are concerned for both combatant and non-combatant are same in the interest of public service. Whenever and wherever the applicant is ordered to go on transfer he require to comply with it and there is no option. So, service conditions are also similar with the counterparts of the applicant.

So far Retirement age is concerned, retiring age on superannuation is 60 year for both combatant and non-combatant and both are guided by the same CCS Pension Rules, 1972. Retiring age in respect of combatant staff has been enhanced by the Headquarter, DGAR vide letter No. 1.31019/Policy/99/Adm-III dated 28.7.1999.

So far seniority are concerned for the applicant and their counter parts, common seniority list are being maintained for the purpose of promotion.

So far Educational Qualifications are concerned in the entry grade for both combatant and non-combatant in the clerical job are also same.

As per Rule, the post of Senior Accountant and Head Assistant can be filled up either by combatant or by a non-combatant staff according to the seniority. Any one can be promoted to the aforesaid posts and as such both and non-combatants can held the same post and

the rank and status in the aforesaid cadre both in the combatant side and non combatant are same.

So far Head of department and Head of Office are concerned for both combatant and non-combatant staff are working under the same Head of department or Head of Offices. Therefore Government servants so far their loyalty is concerned both can be ranked equal in the same platform.

So far Ministry is concerned, Assam Rifles is under the Ministry of Home Affairs and is governed by the same set of Rules as is applicable to CPDs, so both combatant and non combatant are the employees of the same organisation and working in the same table and circumstances.

So far Working Hours/Casual Leave are concerned, 15 days casual leave is applicable for both the combatant and non-combatant as there is no fixed office timings. In this regard copy of Headquarter DGAR Signal No. A 2488 dated 8.6.1999 is enclosed for perusal of the Hon'ble Tribunal.

So far punishment is concerned combatant and non-combatant are guided under CCS (CCA) Rules, but while unit are placing under Army for operational purpose, combatant person are dealt with Army Rule whereas non-combatants are dealt with under CCS (CCA) Rules in the same operational environment.

So far equation of Status and Rank of both combatant and non-combatant are concerned and as per approved PE is as under:

Lower Division Assistant	=	Havilder Clerk
Upper Division Assistant	=	Warrant Officer
Head Assistant	=	Naib Subedar Clerk
Senior Accountant	=	Subedar Clerk

So far Other Relevant Aspects are concerned, besides above, it is further mentioned that personnel of different categories/Trades are being enrolled in Assam Rifles viz. Signal, Radio Mechanic, Medical, Clerks, General Duty, Washer man etc. and candidates for each trade are required to fulfill specific requirement policy letter No. I.12016/11/2001-Adm-11/06 dated 28.1.2001. Similarly, their duties are also clearly spelt out in Assam Rifles Routine Order and other Departmental Rule. Obviously, clerks are also having their specific charter of duties and they are never sent on ROP (Road Opening Patrol), Patrolling, Sentry Duty Quarter Guard duty, Daily Duty JCO, Guard Duty, etc. It is stated that they are never detailed for the duties other than clerical duties. For this reason, if the record of Gallantry Award Recipients of Assam Rifles is consulted, nowhere the name of a clerk will be found since raising of this organisation. Of course for clerical duties, irrespective of combatant and non combatant, they are being sent to company/posts wherever their services are felt necessary. Moreover,

even beyond normal office hours, whenever the services of any staff, irrespective of combatant and non combatant, is required by the authority and is called for, he is liable to turn up and do so.

In the circumstances as stated above the applicant who is posted in the range/unit/field office throughout his service career is at least entitled to other allowances and facilities namely free ration/ration allowance/free clothing and leave allowances at par with his counterpart namely Naib Subedar and other combatant staff having similar rank and status working in the field areas. Denial of benefit of the free ration/ration allowance/free clothing/leave allowance to the applicant is highly discriminatory and the said action of the respondents is violation of Article 14 of the Constitution of India.

4.13 That the non payment of allowances namely, free ration/ration allowances to the non-combatant employees working in the field offices/ranges/units is highly arbitrary, illegal and unfair in as much as the present applicant as well as other non-combatant staff who are working in the field areas along with the troop/combatant staff facing same sort of hardship disadvantages and risking their lives in the hilly terrains in North Eastern Region which are also known as insurgency prone areas, as such, there is no justifiable reason to deny the benefit of free

ration/ration allowance to the applicant when the same is extended by the Government of India, Ministry of Home Affairs to the similarly situated non-combatant employees of the Special Service Bureau.

4.14 That this Hon'ble Tribunal while adjudicating the matter of pay party of the non-combatant employees of Assam Rifles with that of Combatant staff of Assam Rifles in the case of O.A. 136 of 1999 (J.C. Paul Choudhury and Ors. Vs. U.O.I. & Ors) decided on 20.2.2001 held that non combatant stenographers who are also posted in hard and sensitive areas but that by itself, cannot equate them with the combatised personnel, though posted in the sensitive and operational areas for which non-combatant employees may be entitled for some admissible allowances like Ration Allowance etc. like that of the combatants.

In view of the above findings of the Hon'ble Tribunal in O.A. 136/99 (J.C. Paul Chodhury & Ors Vs. U.O.I. I Ors) the legitimate claim of the applicant for payment of free ration/rational allowances cannot be denied.

A copy of the judgment and order dated 20.2.2001 referred to above is annexed as Annexure -4.

4.15 That your applicant begs to state that he had earlier approached this Hon'ble Tribunal through O.A. No. 74 of 2002 along with other non-combatant workers, claiming

parity in pay at par with his counterpart working in the combatant side. The said Original Applicant was decided on 11.10.2002 by this Hon'ble Tribunal while rejecting the claim for parity of pay of the applicant, the Hon'ble Tribunal directed the applicants to submit a representation for payment of free ration/ration allowances before the competent authority of the respondents and the respondents were further directed to consider the same if any such representation is submitted by the applicant of O.A. No. 74/2002.

A copy of the judgment and order dated 11.10.2002 is annexed as Annexure-5.

4.16 That your applicant in terms of the aforesaid judgment dated 11.10.2002 submitted a detail representation on 24.3.2003 addressed to DGAR, Shillong claiming inter alia to extent the benefit of allowances and facilities, namely, free ration/ration allowances, free clothing, leave allowance, 60 days Earned Leave etc. as granted to his counterpart namely Naib Subedar/Subedar Clerk of the combatant side. However, the said representation was forwarded by the Commandant, 1 Construction Coy, Assam Rifles, Happy Valley, Shillong to the Director General of Assam Rifles, Shillong vide letter No. A/IV-45/2002/315 dated 27.3.2003. However, the Directorate General of Assam Rifles vide letter bearing No. A/A-II/5th CPC/APS/03/242 dated 28.5.2003 informed the applicant that his representation is devoid of merit and only

combatant of the force are eligible for drawing ration/ration allowances and hence the claim of the applicant for such benefit, working in the unit office is rejected on the ground that the representation is devoid of merit. It is relevant to mention here that no reason is assigned in the impugned letter dated 28.5.2003 for rejection of the claim for extending the benefit of free ration/ration allowance and other allowances and on that score alone the impugned order dated 28.5.2003 is liable to be set aside and quashed and the Hon'ble Tribunal further be pleased to direct the respondents to grant the free ration/ration allowances to the applicant.

Copies of the representation dated 24.3.2003 and forwarding letter dated 27.3.2003 and the impugned order dated 28.5.2003 are annexed as Annexure-6,7 and 8 respectively.

4.17 That it is stated that the impugned order dated 28.5.2003 has been passed mechanically without applicant of mind and also not disclosed the reasons for denial of such benefit of free ration/ration allowance and other facilities and allowances to the applicant, who is similarly situated like other staff of combatant side and also working in the same atmosphere with similar difficulties and hardships. As such, there is no justification for rejection of the claim of the applicant for grant of free ration/ration allowances as well as other facilities and allowances

indicated above. Therefore, the impugned order dated 28.5.2003 is liable to be set aside and quashed.

4.18 That it is stated that this is a fit case for the Hon'ble Tribunal to interfere with to protect the rights and interests of the applicant and the Hon'ble Tribunal be pleased to pass an appropriate order directing the Respondents to grant the benefit of free ration/ration allowance, free clothing, leave ration allowance, 60 days earned leave etc. and other facilities at par with their counterparts who are similarly situated i.e. the combatant staff of Assam Rifles.

4.19 That this application is made bonafide and for the cause of justice.

5. Grounds for relief(s) with legal provisions.

5.1 For that the applicant although a non-combatant employee of Assam Rifles but posted all along in the Ranges/Units/Field offices of the Assam Rifles along with the combatant staff/troops and require to move whenever unit offices/range offices/field offices or troops require to move from one station to another.

5.2 For that the applicant including along with other non-combatant staff posted in the Range/Unit/Field Offices, most of which located in the border areas hilly terrains and interior or remote localities insurgency

prone areas of the border states of N.E. region and the non-combatant employees similarly risking their lives along with the combatant staff/troops, as such, the applicant is also entitled to free ration/ration allowance, free clothing, leave ration allowance, 60 days earned leave etc. like that of combatant staff.

5.3 For that Headquarter non-combatant staff of the DGAR are static having separate set of pay scales in the corresponding grades whereas the non-combatant employees of the Range Units/Field offices are transferable from one unit to another unit along with the movement of troops/unit offices located in the hilly terrain and border areas of the N.E. Region.

5.4 For that the duties and responsibilities of the applicant as well as of Naib Subedar, counterpart of the applicant are similar only with the exception that the combatant staff require to attend P.T. duties.

So far Retirement age is concerned, retiring age on superannuation is 60 year for both combatant and non-combatant and both are guided by the same CCS Pension Rules, 1972. Retiring age in respect of combatant staff has been enhanced by the Headquarter, DGAR vide letter No. 1.31019/Policy/99/Adm-III dated 28.7.1999.

So far seniority are concerned for the applicant and their counter parts, common seniority list are being maintained for the purpose of promotion.

So far Educational Qualifications are concerned in the entry grade for both combatant and non-combatant in the clerical job are also same.

So far Head of department and Head of Office are concerned for both combatant and non-combatant staff are working under the same Head of department or Head of Offices. Therefore Government servants so far their loyalty is concerned both can be ranked equal in the same platform.

So far Ministry is concerned, Assam Rifles is under the Ministry of Home Affairs and is governed by the same set of Rules as is applicable to CPDs, so both combatant and non combatant are the employees of the same organisation and working in the same table and circumstances.

So far Working Hours/Casual Leave are concerned, 15 days casual leave is applicable for both the combatant and non-combatant as there is no fixed office timings. In this regard copy of Headquarter DGAR Signal No. A 2488 dated 8.6.1999 is enclosed for perusal of the Hon'ble Tribunal.

So far punishment is concerned combatant and non-combatant are guided under CCS (CCA) Rules, but while unit are placing under Army for operational purpose, combatant person are dealt with Army Rule whereas non-

combatants are dealt with under CCS (CCA) Rules in the same operational environment.

- 5.5 For that the benefit of free/ration allowance also extended by the Govt. of India, Ministry of Home Affairs, New Delhi to all the non-combatant employees who are working in the Field areas in the department of S.S.B. As such denial of similar benefit to the applicant who are working under Assam Rifles in the same Ministry of Home Affairs is highly discriminatory and the violation of Article 16 of the constitution of India.
- 5.6 For that the Hon'ble Supreme Court in the case of B.S. Prasad Rao Vs. Union of India held that the non-combatant employees who are working in the border areas, Hilly terrain of N.E. Region risking their lives along with armed forces at least entitled to the benefit of Field allowances at par with the armed forces, as such the present applicant is also entitled to the benefit of free ration/ration allowances as well as other allowances and facilities at par with the combatant staff of the Assam Rifles.
- 5.7 For that the present applicant is entitled to free ration/ration allowances as well as other allowances as well as other allowances and facilities in view of the decision rendered by this Hon'ble Tribunal more particularly in O.A. 136/99 as well as 74/2002.

Jagadish Ch. Bhattacharya

5.8 For that the impugned order dated 28.5.2003 is a non speaking order passed by the authority without application of mind and the said impugned order did not disclose the reasons for rejection of the legitimate claim of the applicant for declaration of entitlement of the applicant for free ration/ration allowance, free clothing, leave ration allowance, 60 days earned leave at par with the combatant staff of Assam Rifles.

6. Details of remedies exhausted.

That the applicant states that they have no other alternative and other efficacious remedy than to file this application. The applicant represented the matter before the competent authority but the same has been rejected by the Respondents.

7. Matters not previously filed or pending with any other Court.

The applicant further declares that he had not previously filed any application, Writ Petition or Suit regarding the matter in respect of which this application has been made before any court or any other authority or any other Bench of the Tribunal nor any such application, Writ Petition or Suit is pending before any of them.

Jagdish Ch. Bhattacharya

8. Relief(s) sought for :

Under the facts and circumstances stated above, the applicant humbly prays that your Lordships be pleased to issue notice to the respondents to show cause as to why the reliefs sought for by the applicant shall not be granted, call for the records of the case and on perusal of the records and after hearing the parties on the cause or causes that may be shown, be pleased to grant the following reliefs :

- 8.1 That the Hon'ble Tribunal be pleased to declare that the applicant is entitled to free ration/ration allowance, free clothing, leave ration allowance, 60 days earned leave etc at par with the counterpart i.e. combatant staff of the Assam Rifles.
- 8.2 That the Hon'ble Tribunal be pleased to set aside and quash the impugned order No. P/A-II/5th CPC/APS/03/242 dated 28.5.2003 issued by the Respondents.
- 8.3 Costs of the application.
- 8.4. Any other relief or reliefs to which the applicant is entitled to, as the Hon'ble Tribunal may deem fit and proper.

9. Interim order prayed for.

During pendency of this application, the applicant prays for the following relief :-

Jagadish Ch: Bhattacharya

9.1 That the Hon'ble Tribunal be pleased to make an observation that the pendency of the application shall not be a bar for the respondents to extend the relief prayed for by the applicant in his application and the applicant further prays for expeditious disposal of this application.

10. _____

This application is filed through Advocates.

11. Particulars of the I.P.O.

i) I.P.O. No.	:	9G 159328
ii) Date of issue	:	22-08-2003
iii) Issued from	:	G.P.O., Guwahati.
iv) Payable at	:	G.P.O., Guwahati.

12. List of enclosures.

As stated in the index.

Jagadish Ch. Bhattacharya

VERIFICATION

I, Sri J. C. Bhattacharjee, S/o Late Jatindra Kumar Bhattacharjee, aged about 51 years, working as Head Assistant, in the Office of the No. 1 Construction Company, Assam Rifles, Shillong, do hereby verify that the statements made in Paragraph 1 to 4 and 6 to 12 are true to my knowledge and those made in Paragraph 5 are true to my legal advice and I have not suppressed any material fact.

And I sign this verification on this the ^{23rd} day of August, 2003.

Jagadish Ch. Bhattacharjee

SIGNATURE

MINISTRY OF INDIA
MINISTRY OF HOME AFFAIRS
OFFICE OF THE DIRECTOR, SSB
EAST BLOCK - V, R.K. PURAM
NEW DELHI - 110066.

DATED THE, 08/02/2001

MEMORANDUM

Subject:- Grant of Ration Money allowance to the Non-Executive personnel including ministerial personnel of SSB.

Cabinet Secretariat vide their order No.A-49011/2/2000-DO-I(Vol.II)-99 dated 30/01/2001 have sanctioned Ration Money Allowance to the non-executive personnel including ministerial personnel of SSB posted to category 'B' and 'C' stations. A copy of the Cabinet Secretariat order dated 30/01/2001 refer to above is enclosed.

2. All non-executive personnel including ministerial personnel holding non-gazetted posts and posted to category 'B' and 'C' stations declared vide this Directorate order No.30/SSB/A-2/97(17) dated 01/11/2000 are entitled to draw ration allowance w.e.f. 30/01/2001.

Encls: As above.

(S.S. BORA)
JOINT DEPUTY DIRECTOR(EA)

- To
1. D.O. : HP/UP/J&K/R&G/SB/HB/AP/NA/Shillong/M&N Division.
 2. Diso : FA Gwaldam/TC Sarahan/Haflong/Jammu/Salonibari/Kumargain.
 3. Commandant, CSD 'W' Bhopal/TC Faridabad.
 4. Accounts Officer, SSB.
 5. AI/A4/E1/E2 branches.
 6. Order File.

OFFICE OF THE DIVISIONAL ORGANISER:SSB:A.P.DIVN., ITANAGAR
No.NGE/F-9(C)/96-2001/35
Copy to:-

Dated:15.2.2001

1. The AOs:SSB:Bomdila/Ziro/Along/- for information and necessary action please.
2. The Comdts:SSB:CC:Dirang/Basar/Tezu -do-
3. The Comdt.,WATS,SSB, Itana-gar. -do-
4. The Accounts Officer,Div.HQ,A.P.Itanagar-do-

Attended
Smt. Acharya
24.2.2003

SECTION OFFICER
DIV.HQ:SSB:ITANAGAR
15/2/01

No.A.49011/2/2000-110-1(Vol.II).
Government of India
Cabinet Secretariat
Bikaner House Annex

Shahjahan Road
New Delhi, the

O R D E R

120 11/11 2001

Sanction of the President is hereby accorded to the extension of the Ration Money Allowance at the specified rates to the non-executive personnel, including the Ministerial personnel of Special Service Bureau, Aviation Research Centre (Directorate General of Security) posted at 'B' & 'C' Stations on par with the position prevailing in R&AW and in terms of para 2(b) of the Ministry of Finance OM No.50(4)/97-IC dated 11/01/2000

2. Special Service Bureau/Aviation Research Centre is requested to comply with the above orders of the Government. The Ration Allowance will consequently be admissible only prospectively based on the review undertaken for the purpose. The revised orders relating to the classification of stations should also be issued simultaneously along with the orders relating to the Ration Allowance.

3. No additional Budgetary provisions will be agreed to on account of liberalization.

4. This issues with the approval of Ministry of Finance (Department of Expenditure) vide their UO No 50(4)/97-IC dated 30.01.2001.

(Mukul Chatterjee)
(Mukul Chatterjee)
Deputy Secretary to the Government of India

Copy to:-

1. Director, SSB.
2. Director, ARC. [ARC may critically review the justification and necessity for the continued categorization of the stations as 'B' & 'C' as has already been done by D.S.A. 22/2/01 under intimation to this Secretariat.]
3. Director of Accounts, Cabinet Secretariat.
4. Director(F/S).
5. US(SR)
6. SO/EA-II.
7. Guard file.

*Affected
State
Advocate
24.08.2007*

CENTRAL ADMINISTRATIVE TRIBUNAL, NEW DELHI

Original Application No. 245 of 1995.

Date of order : This the 14th Day of June, 1996.

Hon'ble Shri G.L. Singlyino, Member (A)
Hon'ble Shri D.C. Verma, Member (J)

1. Sri Bishnu Prasad Galkia
Military Inspector,
Aviation Research Centre,
Doomdooma.

2. Sri Dipak Handi,
Radio Mistril,
ARC, Doomdooma.

... Applicants.

By Advocate G/Shri G.K. Bhattacharyya
with G.H. Das.

-VERGUE-

1. Union of India
represented by Cabinet Secretary,
Department Cabinet Affairs,
New Delhi.
2. Directorate General of Security Block
V (East), R.K. Puram,
New Delhi - 110066.
3. Director, Aviation Research Centre,
Block-V (East), R.K. Puram,
New Delhi.
4. Deputy Director,
Aviation Research Centre,
Doomdooma.

... Respondents.

By Advocate Shri S. Ali, Sr. C.G.S.C.

ORDER

G.L. SINGLYINO, MEMBER (A)

The Applicants are employees of the Aviation
Research Centre, Doomdooma (ARC for short). Applicant

contd...

A. Hefed
S. Hefed
Advocate
24.8.2007

37 1430
2.

No.1 is a Sanitary Inspector a post which is equivalent to Deputy Field Officer and is below Field Officer. The applicant No. 2 is a Radio Mistris. The post of Mistris falls under the category of Senior Field Assistant. This is also below Field Officer. The competent authority of ARC has classified Duma Duma as a category B station with effect from 22.2.94

2. Annexure -IV to this O.A., namely No.A.27011/4/86-EA-IB. (A) dated 6.12.1987 conveyed the sanction of the president to the grant of additional concessions mentioned in the Annexure thereto to the various categories of the staff of ARC except those on deputation from the Indian Air Force. According to the Annexure Ration Allowance at the rate admissible in the BSF in peace areas is admissible upto the rank of P.O. and below in category B areas of ARC. The applicant had requested the authorities concerned to allow them the Ration Allowance but this was declined by the authorities. Hence this Original Application under Section 19 of Administrative Tribunal Act, 1985.

3. Mr. G.K. Bhattacharyya, learned counsel for the applicants submitted that the applicants are entitled to the Ration Allowance with effect from 22.2.1994. This allowance was denied to them because of wrong interpretation of the order dated 6.12.1987 by which payment of the allowance was sanctioned. Relying on the written statement Mr.S. Ali, Sr.C.O.S.C., submitted that the applicants have made the claim on a wrong notion that Government had equated various non-executive posts with different executive cadres for all concessions. The fact however remains that the

contd...

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~~Annexure-3~~ - 31 -
- 38 -

3.

Equation of posts vide order No.A-11016/6/86 -DOI dated 23.10.1986 (Annexure-III) is for the purpose of House Rent Allowance only. Further, the concession of Ration Allowance has been extended to the employees of junior executive cadre only upto the rank of field officer on the analogy of the Junior Executive Staff, of R & AW and the applicants who do not fall in this category cannot get the benefit of Ration Allowance. Mr. O.K.Bhattacharyya submitted that this ground taken by the respondents is not tenable as in the case of Intelligence Bureau the Ration Allowance was allowed to the non-executive staff also and when the allowance was stopped to be paid applications were submitted before the Central Administrative Tribunal and the payment Ration Allowance was restored. In this connection he has referred to the orders in the O.A. of 163 of 1991 and No.199/91 of this bench.

4. We have perused the records and heard the counsel of the parties in this O.A. Letter No.A-49011/8/86-DO .1 (B) dated 10.5.1986 shows that the president is pleased to sanction 8 (eight) concessions to the various categories of staff of ARC. one of the concessions is House Rent Allowance and it has been stated that House Rent Allowance admissible to the Executive cadre will be admissible to the personnel of other cadres also of corresponding levels. consequently equation of posts was ordered by the order No.A-11016/6/86-DOI dated 23.10.1986 exclusively for the purpose of payment of House Rent Allowance. Under this order the applicants were entitled to draw House rent allowance. Under letter No.A.27011/4/86- EA-11(A) dated 6.12.1987 additional concessions were

contd...

4.

granted and one of them was Ration Allowance to the various categories of the staff of ARC. The claim of the respondents is that since there is no equation of posts in respect of Ration Allowance this allowance cannot be granted to the applicants who are non-executive staff. We are not impressed by such stand of the respondents. Until in the case of granting House Rent Allowance for the purpose of granting Ration Allowance such equation of posts is not required by the authorising letters. This position is clear from the following :-

Sl. No.	Nature of the concession	Extent of the concession	Remarks
1	2	3	4
<hr/>			
(A) Ration Allowance		Ration allowance upto the rank of P.O. and below at the following rates :-	
		<u>Location</u>	<u>Rate</u>
		(1) Category B stations .	As admissible from time to time in the Border Security Force in peace areas .
(B) House Rent Allowance.		House Rent Allowance facilities admissible to the Executive cadre will be admissible to the personnel of other cadres also of corresponding levels .	Separate orders will be issued about corresponding levels".

contd..

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5.

The respondents cannot bring in what is not there or what is not intended to be there by the letter No.A 27011/4/86-BA-11 (A) dated 6.12.1987 as indicated above. This letter simply clearly states that the allowance is admissible to the various categories of the staff of APC by placing a limit upto the rank of PO and below. In O.A. 163/91 and O.A. 179/9 of this Bench on the strength of the recommendations of the same one man committee referred to in this O.A. Ration Allowance was paid to the non-executive staff of the Intelligence Bureau but the payment was stopped in 1991. This Tribunal in the order dated 17.12.1993 (to which one of us was party) after discussion and relying on the order dated 27. .93 of the Central Administrative Tribunal, Chandigarh Bench, Circuit at Jammu in O.A. No. 391/JK/92 had held that Ration Allowance was admissible to the applicants in those two O.A.s. the facts in those two O.A.s and of the present O.A. insofar as they relate to Ration Allowance and House Rent Allowance are almost identical. The conditions in those two O.A.s is in respect of Ration Allowance that the personnel posted in category B locations will be entitled to Ration Allowance at nonqualifying area rate for NSF. For house rent allowance it is stipulated that House Rent Allowance would be applicable to all other cadres of the IB under the same terms applicable to the executive cadre of corresponding levels. In view of the facts mentioned above we hold that Ration Allowance is admissible to the applicants in this O.A. The respondents are directed to pay Ration Allowance to the applicants at the rate applicable to them with effect from the due date 22.2.94. The arrears amount shall be paid within 31.10.1996.

The application is allowed, No order as to costs.

Sd/- Member (A)

Sd/- Member (J)

Affected
Sent
Admitted
24.8.2003

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.136 of 1999

Date of decision: This the 20th day of February 2001

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

1. Shri J.C. Paul Choudhury
2. Shri Subrata Das
3. Shri B.K. Sarkar
4. Shri P.K. Chakraborty

The applicants are working as Stenographer Grade I under the Director General of Assam Rifles, Shillong. By Advocates Mr J.L. Sarkar, Mr M. Chanda, Mrs S. Deka and Mr S. Mukherjee.

- versus -

1. The Union of India,
Through the Secretary,
Ministry of Home Affairs,
New Delhi.
 2. The Director General of Assam Rifles,
Shillong.
 3. The Secretary,
Ministry of Home Affairs,
New Delhi.
- By Advocate Mr B.C. Pathak, Addl. C.G.S.C.

.....Applicants

.....Respondents

ORDER

CHOWDHURY, J. (V.C.)

The question involved in this application pertains to pay parity between civilian Stenographers vis-a-vis Combatant Stenographers in the Assam Rifles.

2. The applicants, four in number, are working as civilians in the Assam Rifles or working there as Stenographer Grade I, drawing the revised scale of pay of Rs.5500-9000 after implementation of the 5th Central Pay Commission Report. In the Assm Rifles there is another class of Stenographers who are in the Combatant Roll and not civilian. According to the applicants since combatant Stenographers also discharge identical

Attested
for
Advocate
24.6.2003

nature of duty of Stenographers like the civilians, the incumbents and duties are interchangeable. There is one common gradation list for the civilians and combatants for the purpose of pay, promotion and posting. The civilian as well as combatant Stenographers are posted in hard, insurgent places as well as soft areas where Assam Rifles formations exist in the entire North Eastern Region and are equally responsible to execute the same nature of work. All the Stenographers of Assam Rifles, including combatant Stenographers were provided the same scale of pay with effect from 1.1.1996, after implementation of the recommendations of the 5th Central Pay Commission Report. However, with effect from 10.10.1997, the combatant Stenographers were granted the scale of pay of Rs.6,500-10,500, i.e. one step higher scale of pay than that of the civilian Stenographers working under the Ministry of Home Affairs. The scale of pay of combatant Stenographers were raised on the analogy of pay scale of the cadre of Central Police Organisation vide Notification dated 10.10.1997. The applicants felt aggrieved by the decision of the respondents in not giving them the higher scale of pay of Rs.6500-10500 as was granted to their counterparts Subedar Stenographer (PA). Realising the anomaly, the Directorate of Assam Rifles took up the matter with the Ministry of Home Affairs and requested the Ministry to accord necessary approval for implementation of same scale of pay for civilian Stenographers as was granted to their counterparts in the combatised cadre. The Government of India, Ministry of Home Affairs did not accede to the proposal of the Directorate. The applicants thereafter also represented before the authority for redressal of their grievances by providing them equal pay with that of the combatised cadre. Failing to get the remedy the four applicants moved this Bench assailing the action of the respondents as arbitrary, discriminatory and violative of Article 14.

3. The respondents submitted their written statement and denied and disputed the claim of the applicant. The respondents pleaded that the combatant Stenographers, though render services of Stenographer they are also engaged in operational and administrative tasks, besides their official works. The Government of India decided to combatise posts including posts of Stenographers in the Assam Rifles vide order No.27011/

44/88.FP.I dated 19.9.1989. In the order it was stipulated that all future appointments/recruitments against the vacancies in various categories of posts combatised by the sanction would be in the combatised ranks as per the recruitment rules. The existing incumbents of the posts were given an option to opt for combatisation within a period of three months from the date of issue of the Ministry of Home Affairs order dated 19.7.1989. Those who did not opt for combatisation were to continue in the civilian posts until superannuation under the existing conditions of service which were deemed to continue as personal to them. The conditions of service of combatants and civilians are different, and therefore, both were not comparable. The respondents did not dispute that the civilian Stenographers like the combatant Stenographers are likely to serve in insurgent and hard areas, but the nature of duties of combatant Stenographers are not similar since they are liable to perform operational duty like patrolling, ambush, raid etc., whereas the civilian Stenographers are not susceptible to such onerous duties. The service conditions of combatant Stenographers are different and the combatised Stenographers, thus, cannot be equated with the civilian Stenographers.

4. Mr J.L. Sarkar, learned counsel for the applicants submitted that for all purposes the civilian Stenographers as well as the combatant Stenographers render the same and similar nature of job, discharge the same and/or similar responsibilities and, therefore, there should be equal pay for equal work in conformity with the policy laid down in Article 39 of the Constitution as well as in conformity with the equality clause enshrined in Article 14. Mr Sarkar, in course of his argument, referred to the inter se seniority and submitted that as per the seniority list, the combatant Stenographers are junior to the civilian Stenographers. Some of the combatant Stenographers were not borne in the cadre when the applicants were appointed as Stenographers. The learned counsel referred to the communication dated 26.3.1998 sent from the Directorate to the Government of India, wherein anomalies were pointed out. The competent authority pointed out that the Stenographers, combatant and non-combatants are of the same rank and perform the same job, though combatised ranks

were.....

were paid much higher. The learned counsel submitted that the recruitment qualification of combatant and non-combatant Stenographers are the same and their pay scales were all along the same even after 5th Central Pay Commission Report. The pay scale of combatant Stenographers were raised and/or revised from Rs.5500-9000 to Rs.6500-10500 by Notification dated 10.10.1997 and in a most arbitrary fashion same and similar benefits were denied to the civilian Stenographers in violation of Article 14 of the Constitution. The learned counsel, in support of his contention also referred to, amongst others, the decision of the Supreme Court in Union of India and others vs. Debashis Kar and others, reported in 1995 Supp (3) SCC 528. The learned counsel in support of his contention further referred to the pleadings in O.A.No.41 of 1999, which was filed by the applicant No.2, Shri Subrata Das, assailing the order of his transfer. The learned counsel pointedly referred to paragraphs 4 and 7 of the written statement wherein the respondents admitted that for all practical purposes the combatant and civilian Stenographers are one and the same.

5. Mr B.C. Pathak, learned Addl. C.G.S.C. appearing on behalf of the respondents submitted that the combatant and civilian Stenographers are two distinct classes. The combatant Stenographers by virtue of being combatant are required to discharge additional responsibilities of a soldier as they are enrolled under the Assam Rifles Act, 1941. Apart from office work they are liable for additional responsibilities of carrying out duty pertaining to military operation whenever called upon to do so round the clock as provided under the Act and Rules. The Army Act is made applicable to the combatant Stenographers and, therefore, they are guided by the rigors of the Army Act. The pay scale of the combatant Stenographers was fixed by the 5th Central Pay Commission and the same was given in accordance with the rank and structure. The 5th Central Pay Commission also recommended the pay scale of the civilian Stenographers and they are being paid as per the recommendations of the Pay Commission. Mr Pathak submitted that since there is a qualitative distinction between the civilian Stenographers vis-a-vis combatant Stenographers, therefore the question of equal pay for equal work did not arise.

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6. There is no dispute on the principle awarding equal pay for equal work. Article 39(d) as a doctrine, though not enforceable, the principle is required to be adhered to on the ground of discrimination. The essential consideration for pay parity is the nature of duties and responsibilities, qualifications, etc. A classification can be said to be a reasonable classification when a distinction can be drawn inter se between the two classes. As alluded, the nature and character of the job/responsibilities, the area and sphere of work, the working hours/duration those relatable to the performance of duties are some of the conditions. The principle of equal pay for equal work is a known and accepted principle, but in awarding equal pay for equal work it would depend on numerous circumstances that can only be decided on in-depth scrutiny.

7. The applicants as well as the combatant Stenographers, no doubt, serve under the Assam Rifles, but they do not belong to the same class. The combatant Stenographers are enrolled under Section 4 of the Act and their ranks are determined as per Section 4. As mentioned, the combatants are enrolled under the Act by following the procedure prescribed in Rule 12 of the Rules. They are to undergo training for the operational work under the Commandant. The combatant Stenographers are covered under the Assam Rifles Act and subjected to the Army Act, 1950 and the rules framed thereunder, whereas the civilian Stenographers are covered under the CCS(CCA) Rules. As per Notification No.S.R.O. 117 dated 28.3.1960 and S.R.O. 318 dated 6.12.1962, the provision of the Army Act is made applicable to the combatants. The combatants are subject to the Army Act and the fundamental rights of such class are restricted and abrogated under Section 22 of the Army Act read with Rules 19, 20 and 21 of the Army Rules as per Article 33 of the Constitution of India.

8. We have given our anxious consideration in the matter. The combatant Stenographers, in addition to the duties they discharge as Stenographers also discharge the duties as combatants as per their ranks and they perform arduous nature of work in operationally sensitive areas. Mr Sarkar is right in his submission that non-combatant Stenographers are also posted in hard and sensitive areas, but that by itself, cannot

equate.....



equate them with the combatised personnel, though posted in the sensitive and operational areas, for which they may be entitled for some admissible allowance like ration allowance, etc like that of the combatants.

However, that by itself, would not make them equal with the combatants.

The terms and service conditions are totally different. As mentioned earlier, the combatised personnel are covered by the Assam Rifles Act as well as

the Army Act and the Army Act and Rules are more stringent than the rules applicable to the non combatised staff covered by the Civilian Law.

The question regarding the entitlement of pay scales was already examined by the Pay Commission and on evaluation of the nature of duties and responsibilities of the posts, the Pay Commission made the recommendations

which were accepted by the concerned authorities. The Court or the Tribunal would loathe to intervene in such matters unless it appears that

it was made for extraneous consideration. The non-combatant Stenographers

were given the option to join in the combatised force and those who opted

were accordingly enrolled as combatants. In the circumstances the ground

of discrimination is not sustainable.

9. For the reasons stated above, we do not find any merit in this application and accordingly the application stands dismissed. There shall, however, be no order as to costs.

Sd/VICE CHAIRMAN

Sd/MEMBER(A)

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प्रतिनिधि

Section Officer

Central Government Tribunal

Guwahati - 781 005

पुनर्वासी - गुवाहाटी - 781 005

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Accepted
Sd/-
24.8.2023

12/12/2021

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

61

Original Application No.74 of 2002.

Date of Order: This the 11th Day of October 2002.

MR. JUSTICE D.N. CHOUDHURY, VICE-CHAIRMAN
HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

1. Shri J.C. Bhattacharjee
Head Assistant
2. Sri B. Dutta Purkayastha
Senior Accountant
3. Shri M.K. Chakraborty
Senior Accountant
4. Sri S.K. Dhar
Head Assistant
5. Sri Maden Lal Jabru
Senior Accountant
6. Sri Arun Chandra Chanda
Senior Accountant
7. Sri Pijush Kanti Sirkar
Senior Accountant
8. Shri Mohit Ranjan Chakraborty
Head Assistant
9. Sri J.K. Chakraborty
Senior Accountant.
10. Shri Nikhi Chandra Dutta
Head Assistant
11. Sri Jagneswar Sarma Bordoloi
Senior Accountant.
12. Sri Subhendu Bhattacharjee
Head Assistant
13. Sri G.B. Damai
Head Assistant
14. Sri Dilip Chakraborty
Head Assistant
15. Sri Shasi Mohan Sharma
Senior Accountant
16. Sri Nareswar Das
Senior Accountant
17. Sri KN. Sreedharan Pillai
Head Assistant.



contd/-

10/10/02
A. K. Sharma
24.8.2003

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18. Shri Niranjan Dey
Senior Accountant
19. Sri Nataraj Bhattacharjee
Head Assistant
20. Sri Dulal Chandra Dey
Head Assistant
21. Smtd Hema Prava Changmi
Head Assistant
22. Sri P.N.Deb
Head Assistant.

23. Sri B.C.Bhattacharjee ... Applicants

(All the applicants are working in different in the capacity of Head Assistant/ Senior Accountant under the Director General of Assam Rifles, Shillong and posted at Ranges/Unit Officers/Field offices in North Eastern Region.)

By Advocate Mr.J.L.Sarkar, Mr.M.Chanda, Mr.G.N.Chakraborty

-Vs-

1. Union of India
Represented by the Secretary to the
Government of India
Ministry of Home Affairs, North Block,
New Delhi-110001.

The Director General,
Assam Rifles,
Shillong-793011

Joint Secretary(Police) to the
Government of India
Ministry of Home Affairs.
New Delhi-110001.

Respondents.

Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R.

K.K.SHARMA, MEMBER(ADMN) :

There are 23 applicants in this application.
They have been allowed to pursue their grievances by a
common-application under the provision of Rule 4(5)(a) of
the Central Administrative Tribunal(Procedure) Rules

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2. The applicants have claimed parity of pay scales with their counter parts holding the posts of Naib Subedar Clerk and Subedar Clerk. The applicants are Civilian Employees in the capacity of Head Assistant/ Senior Accountant under the Director General of Assam Rifles working in Range Unit Offices/Field Offices in North Eastern Region. They are glaring disparities in the matter of pay scale of the applicants. Prior to 1973, the pay scale, staffing pattern, recruitment rules, promotion policy for the Civilian Ministerial staff of Assam Rifles, and of combatant non-combatant were similar. It is stated that the post of Senior Accountant and Head Clerk on the non-combatant side carried similar functions and responsibilities like the Naib Subedar Clerk and Subedar Clerk on combatant side. The pay scales of Senior Accountant and Head Assistant as well as the Naib Subedar clerk and Subedar clerk under the 3rd, IVth and Vth Central Pay Commissions are as follows:-

Subedar(Clerk)(Combatant side)	Senior Accountant(Non combatant side)
3rd CPC Rs. 460 - 580	3rd CPC Rs. 550-800
4th CPC Rs. 1640-2900	4th CPC Rs. 1600-2660
5th CPC Rs. 5500 - 9000	5th CPC Rs. 5000 - 8000
Note: Again granted scale of Rs. 6500-10500 w.e.f. 1.10.1997	
Naib Subedar(clerk)	Head Clerk
3rd CPC Rs. 350 - 440	3rd CPC Rs. 425 - 700
4th CPC Rs. 1400 - 2300	4th CPC Rs. 1400-2300
5th CPC Rs. 4500-7000	5th CPC Rs. 4500-7000
Note: Again revised to Rs. 5500-9000 w.e.f. 1.10.1997.	
Naib Subedar Clerk	Head Clerk

Due to the revision of pay scale of Naib Subedar Clerk/ Subedar Clerk with effect from 7.11.97 they are given higher

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pay scale than their counter parts on Civilian side. The Civilian employees are working under the same environment with equal duties and responsibilities as combatant staff. The higher scales given to Naib Subedar and Subedar has created disparity with their counterparts as Head Assistant and Senior Accountants. The Naib Subedar Clerk and Subedar Clerk in the combatant side who were similar in rank and status with the Head Assistant and Senior Accountant in the Civilian side are still discharging similar duties and responsibilities. The Naib Subedar, Subedar, Head Assistant and Senior Accountant have a common seniority list. Surprisingly the pay scale of Naib Subedar and Subedar have been up-graded which is discriminatory and violative of Article 14 of the Constitution. All the employees working in the same categories are performing duties in the same environment with the same advantages and disadvantages and are also entitled to the benefit of upgradation of pay scale which have been granted to their counter parts with effect from 7.11.1997. The applicants are also entitled to revised pay scale of Rs. 5500-9000/- for Head Assistants and pay scale of Rs. 6500-10500 for Senior Accountant. The post of Naib Subedar/Subedar were all along treated by the Government of India, Ministry of Home Affairs lower in the rank and status than the cadre of Head Assistant/Senior Accountant. It is stated that the applicants who are working in the non-combatant side have been ignored. Up to the 3rd Pay Commission the Director General of Assam Rifles maintained pay parity for both the posts of Head Assistant and Senior Accountant with the Naib Subedar Clerk and Subedar Subedar Clerk. As such there is no justification to deny the upgraded pay scale to the applicants. The Naib Subedar Clerk and Subedar Clerk are also being provided other allowances and facilities like

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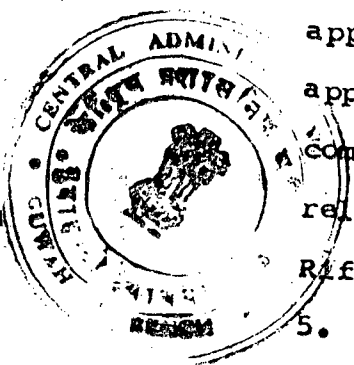
free ration/Ration Allowance free clothing and leave allowances. These are also denied to the applicants. The D.G.A.R. took up the case of the applicants with the Ministry of Home Affairs for removal of the anomalies by making a reference to the Ministry of Home Affairs. The applicants also submitted representation which was considered by the Ministry of Home Affairs and finally rejected vide DGAR letter No.A/4A/277-86/Pt.218 dated 26.6.2001. There have been glaring disparity in the matter of grant of pay scales to the applicants which has resulted in discrimination and as such violative of Article 14 of the Constitution.

3. We have heard Mr.M.Chanda learned counsel appearing on behalf of the applicants. The Respondents have submitted their written statement and were represented by Mr.A.Deb Roy, Sr.C.G.S.C. In the written statement it is stated that the case is covered by the order of this Tribunal in O.A.No.321 of 2001 dated 19.8.2002 and O.A.No.472 of 2001.

4. Mr.M.Chanda learned counsel for the applicants submitted that the order in O.A.No.321 of 2001 is not applicable in this case on the ground that the present applicants were working in the Range/Unit alongwith the combatant personnel in border areas. In O.A. 321 of 2001 related to staff working in the headquarters of Assam Rifles.

5. We have given our anxious consideration to the submissions made by the learned counsel for the applicants and also perused of the records. We are not convinced by the submission made by Mr.M.Chanda, learned counsel that

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the case of the applicants is not similar to the one considered in O.A.No.321 of 2001. In para 4.21 and para 5.4. of the O.A. the applicants submitted that their case is similar to the Assistants and Sr.Accountants in Headquarter. These two paras are reproduced below :-

"4.21 That it is stated that the post of Head Assistant is all along treated as equivalent to the cadre of Assistant in the DGAR Headquarter and the post of Senior Accountant all along being treated at par with the cadre of Superintendent of the Headquarter office DGAR."

"5.3. Again Head Assistant and Senior Accountant of the Range/Unit/Field officers are being all along treated at par with the posts of Assistants and Superintendent respectively with the Headquarter, DGAR Establishment."

As the Head Assistants and Senior Accountant are discharging the same functions as their counter parts in the Headquarters, the findings given in O.A.No.321 of 2001 are applicable to the applicants also. In O.A.No.321 of 2001 the Assistants in Assam Rifles claimed parity of pay scale with their counter parts holding the similar posts as combatant. On consideration of the facts, rules, regulations and case law on the subject, we came into the decision that the claim of the applicants mentioned in O.A.No.321 of 2001 for pay parity with combatants was not acceptable. Following one finding in O.A.No.321 of 2001 the claim for pay parity is not accepted.

6. Regarding the claim for Free Ration/Ration Allowance it is seen that the claim has been made for the first time in this application. In the circumstances it would be unfair

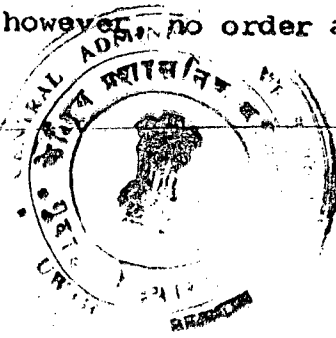
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on our part to give direction to the Respondents on the point. The applicants are directed to make a claim for this benefit before the Respondents.

The application is accordingly dismissed.
There shall however be no order as to costs.



Sd/ VICE CHAIRMAN

Sd/ MEMBER (ADM)

LM

Certified to be true

प्रमाणित प्रतिलिपि

29/8/03

Section Officer

C.A.T. GUWAHATI (ADM)

Guwahati-781005

A Hester
Advocate
24.8.2003

To,

A

The Director General
Assam Rifles
Shillong-793011

(Through Proper Channel)

Sub : GRANT OF ALLOWANCES

Ref : Judgement and order dated 11.10.2002 in O.A. No 74/2002
Passed by the Hon'ble Central Administrative Tribunal,
Guwahati Bench.

Sir,

Most humbly and respectfully I beg to refer to the above subject and beg to lay the following few lines before you for your kind consideration.

That Sir, I have been working as Head Assistant under your kind control and have been shouldering all duties and responsibilities similar to that of my other counterparts namely Naib Subedar and Subedar Clerk. My counterparts aforesaid, in addition to their higher scale of pay have also been getting some other facilities including Free Ration/Ration Allowance, Free Clothing, Leave Ration Allowance, 60 days Earned Leave etc. Unfortunately, I have been denied the same facilities although I am similarly situated like that of Naib Subedar, Subedar Clerk.

That Sir, I approached the Hon'ble C.A.T, Guwahati, seeking for justice against the discrimination faced by me as stated above and the Hon'ble C.A.T vide its judgement and order dated 11.10.2002 passed in O.A. No 74/2002, directed me to submit my claim for the benefit of ration and other allowances to your honour for consideration. A copy of the judgement dated 11.10.2002 is enclosed herewith for your kind perusal.

Under these circumstances, I pray your honour kindly to consider my case sympathetically and grant me Ration Allowances and all other allowances and benefits as have been granted to the Naib Subedar and Subedar Clerk and for this act of kindness, I shall be grateful to you.

Yours faithfully,

J C Bhattacharjee

(J C Bhattacharjee)

Head Asst

No 1 Constr Coy, Assam Rif

Dated : 24 Mar 2003

*Attested
Sd/-
Asst. Secy
24.8.2003*

Annexure-7 9

No 1 Constr Coy Assam Rifles
PO: Happy Valley
Shillong-793007

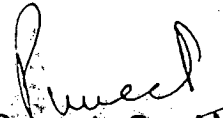
A/IV-45/2002/315

27 Mar 2003

Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
(A Branch (Pers Sec))
Shillong-793011

PAY AND ALLOWANCES: CIV CLK STAFF

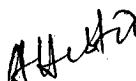
An application submitted by Shri J C Bhattacharjee, Head Asst of this unit is fwd herewith alongwith a photocopy of CAT, Guwahati Order No 74/2002 dt 11 Oct 2002 for your needful action please.


(Puneet Suri)
Maj
2IC
for Comdt

Copy to :-

✓ Shri J C Bhattacharjee
Head Asst
No 1 Constr Coy, AR
Shillong-3007

- for info please.


29.8.2003

Mahanideshalaya Assam Rifles
Directorate General Assam Rifles
Shillong-793011


A/A-II/5th CPC/APS/03/242

28 May 2003

No. 1 Constr Coy Assam Rifles
P.O. : Happy Valley
Shillong-793007

PAY AND ALLOWANCES : CIV CLK STAFF

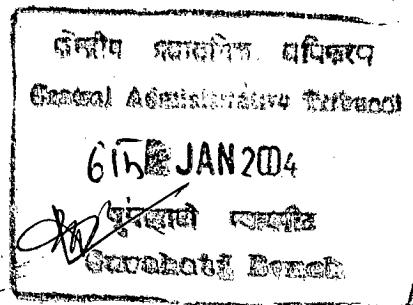
1. Please ref to your letter No. A/IV-45/2002/315 dated 27 Mar 2003.
2. Only combatants of the Force are eligible drawing entitled ration/ration allowance. Hence, the claim made by Shri J C Bhattacharjee, Head Asst of your unit fwd vide your above mentioned letter is devoid of merit. Individual may please be informed accordingly. This has the approval of the DGAR.


(S K Chowdhury)
Col
Col(A)
for Director General
Assam Rifles

Copy to :-

✓ Shri JC Bhattacharjee
Head Asst
No. 1 Constr Coy. AR - for info please
Shillong-793007

Affected
Law. Advocate
24.8.2003



Filed by
6/1/04
(A. DEBROY)
Sr. C.
G. A. T. Guwahati Bench

**BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI**

OA NO 195 of 2003

Shri JC BhattacharjeeApplicant

Vs

Union of India & OthersRespondents

-And-

In the matter of :

Written Statement submitted by the respondents No 1

and 2.

1. That with regard to statement made in Para 1 of the application the respondents beg to state that the terms and conditions of service of combatant personnel and non combatant personnel are different. Combatant personnel are entitled ration/clothing/60 days earned leave and leave allowance etc. as per terms and conditions of their service which are not admissible to the non combatant personnel.

2. That with regard to the statement made in Para 2 to Para 4.2 of the application, the respondents beg to offer no comments being matter of record and factual.
3. That with regard to statement made in Para 4.3 and 4.4 of the application the respondents beg to state that the civilian staff of units are transferable. They are liable to be transferred from one unit to another on completion of specified tenure. However it is submitted that their service conditions cannot be equated with the combatant and while posted in the units located at field areas they are not required to perform any combatant duties. In this connection it is submitted that they are posted as ministerial staff in the units. Further in the case of combatised clerical cadre of the Force these personnel are also required to perform various combatant duties.
4. That with regard to statement made in Paras 4.5 and 4.6 of the application the respondents beg to offer no comments.
5. That with reference to Paras 4.7 of the O.A, the respondents beg to offer no comments as this relates to Assam Rifles History.
6. That with regard to grounds for relief mentioned in Para 4.8 of the O.A, the respondents beg to submit that prior to 01 Jan 1973, the civilian staff of Assam Rifles were on the Assam Scale of pay and allowances. With effect from 01 Jan 1973 the pay scales recommended by 3rd CPC were made applicable to the civilian staff of Assam Rifles, both at HQ DG Assam Rifles and Ranges/Units level vide MHA letter No 4/12/73-Imp dated 20 Mar 1975.
7. That with regard to Para 4.9 of the O.A, the respondents beg to submit that the nomenclature of certain posts in the HQ DGAR establishment has to be changed to match with the nomenclature in the Central Civil Service structure. Erstwhile Assam

type of designation of UDA and LDA of HQ DGAR were re-designated Assistant and UDC respectively with the approval of MHA vide letter No 2/5/76-FP.IV dated 07 May 1976.

8. That with regard to Para 4.10 of the O.A, the respondents beg to submit that non combatised staff of Force is not entitled for the same pay scale of combatants of the Force for the following reasons:-

- (a) Terms and conditions of service and recruitment rules are different.
- (b) At the time of combatisation, the non-combatised staff was asked to opt for combatisation scheme vide MHA letter dated 19 Sep 1989. However, no one opted for the same.
- (c) The rank structure and pay scales of combatised staff of Central Police Organisation were rationalized as per MHA Order o 27012/1/97-PC Cell/PF-1 dated 10 Oct 97. It is further submitted that the terms and conditions of service of combatised staff as well as recruitment rules are quite different from that of non combatised staff and hence comparison of pay scales as well as other allowances between the two cannot be made.

9. That with regard to Para 4.11 of the O.A, the respondents beg to submit that terms and conditions of service of combatised personnel and non combatised staff are different. Combatised personnel are entitled rations/clothing etc as per terms and condition of their service, which are not admissible to the non-combatised staff.

**A true copy of Recruitment Rules for Civ Staff
(Head Assistant) is attached as Annexure -I**

**A true copy of Recruitment Rules for Combatant
Staff (Naib Subedar/Clk) is attached as Annexure**

- II

10. That with regard to Para 4.12 of the O.A, the respondents beg to submit that Govt orders for combatisation was received during 1989 and circulated to all for submitting option but none of the non-combatised staff had given option for combatisation. At that time the option was given to non-combatised staff to continue in the posts until their superannuation under the existing terms and conditions of service, which will be deemed to continue as personal to them.

That it is further submitted that the nature of work, so far as combatised personnel are concerned, is arduous in nature. Even terms and conditions of combatised staff and non-combatised staff are totally different. The combatised staff are governed by the Assam Rifles Act, Army Act and Army Rules which are more stringent in nature while non combatised staff are governed by CCS rules. In this connection Hon'ble Tribunal has observed in OA No 321/2001 Shri SK Sarbajna Vs UOI and others that the non-combatants cannot plead equality with combatants as they were given option of combatisation in 1989. The combatant staff are also expected to perform the duty which is expected of a soldier in time of war and in normal circumstances they are combating insurgency and guarding of borders. Therefore the question of discrimination in the matter of pay and allowances does not arise.

A true copy of Judgement and Order passed in OA No 321/2001 is attached as Annexure – III

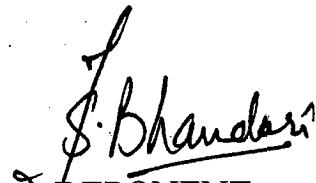
11. That with regard to Para 4.13 of the O.A, the respondents beg to submit that same has already been replied vide Para 9 & 10 above and the same are not repeated for sake of brevity.

12. That with regard to Para 4.14 of the O.A, the respondents beg to offer no comments.

13. That with regard to Paras 4.15 to 4.18 of the O.A, the respondents beg to submit that same has already been replied vide Para 9 & 10 above and the same are not repeated for sake of brevity.
14. That with regard to Para 4.19 of the O.A, the respondents beg to offer no comments.
15. That with regard to Para 5.1 of the O.A, the respondents beg to submit that the service of civil staff borne on the strength of field offices are liable for inter unit transfer as per terms and conditions of their service.
16. That with regard to Para 5.2 of the O.A, the respondents beg to submit that same has been replied vide Para 9 & 10 above and the same are not repeated for sake of brevity.
17. That with regard to Para 5.3 of the O.A, the respondents beg to submit that same has been replied vide Para 15 above and the same are not repeated for sake of brevity.
18. That with regard to Para 5.4 of the O.A, the respondents beg to submit that same has been replied vide Para 9 & 10 above and the same are not repeated for sake of brevity.
19. That with regard to Paras 5.5 to 5.8 of the O.A, the respondents beg to offer no comments.
20. That with regard to Para 6 of the O.A, the respondents beg to submit that same has been replied vide Para 8, 9 & 10 above and the same are not repeated for sake of brevity.
21. That with regard to Para 7 of the O.A, the respondents beg to offer no comments.

22. That with regard to Paras 8.1 to 8.4 of the O.A, the respondents beg to submit that same has been replied vide Para 8, 9 & 10 above and the same are not repeated for sake of brevity.

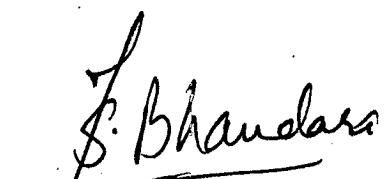
23. That with regard to Paras 9 to 11 of the O.A, the respondents beg to offer no comments.


DEPONENT

VERIFICATION

I, Major TS Bhandari, aged 37 years s/o Shri TS Bhandari, working as SO2 (Legal) in the Office of the Directorate General Assam Rifles being authorized by the Director General Assam Rifles the 2nd respondent herein to hereby verify and declare that the statements made in Paras 1 to 8 and 11 to 23 are true to my knowledge and statements made in Paras 9 and 10 are true to my information and I have not suppressed any material fact.

And I, sign this verification on this _____ day of _____ 2003.


DEPONENT

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Annex - I - 56-67

SCHEDULE

Name of the Post	Number of posts	Classification	Scale of pay	Whether Selection post or non-Selection posts	Whether benefit of added years of service admissible under rule 30 of the Central Civil Services Pension Rules, 1972	Age limit for direct recruits
1	2	3	4	5	6	7
Senior Accountant	33* (2001) *Subject to variation dependent on workload.	Group 'C' (Non-Gazetted, Ministerial).	Rs. 5000-150-8000	Non-Selection	Not applicable	Not applicable

Educational and other qualifications required for direct recruits	Whether age and educational qualifications prescribed for direct recruits will apply in the case of promotees	Period of probation, if any	Method of Recruitment, whether by direct recruitment or by promotion or by deputation/absorption and percentage of the posts to be filled by various methods
8	9	10	11

Not applicable	Not applicable	Not applicable	100% by promotion
----------------	----------------	----------------	-------------------

In case of recruitment by promotion/deputation/absorption, grades from which promotion/deputation/absorption to be made	If a Departmental Promotion Committee exists, what is its composition	Circumstances in which Union Public Service Commission is to be consulted in making recruitment.
12	13	14

Promotion for amongst the members of Assam Rifles holding the rank of Head Assistant with three years regular service in the grade.	Departmental Promotion Committee for Considering Promotion (a) Inspector General (HQs) Assam Rifles —Chairman (b) DIG (Admn.) Directorate General Assam Rifles —Member (c) Assistant Director (A), Directorate General Assam Rifles —Member (d) One Group A Officer from SC/ST community. —Member	Not applicable
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1	2	3	4	5	6	7
2. Head Assistant	50* (2001) *Subject to variation dependent on workload.	Group 'C' (Non-Gazetted, Ministerial)	Rs. 4500-125-7000	Selection-cum-Seniority	Not applicable	Not applicable

8	9	10	11
Not applicable	Not applicable	Not applicable	100% by promotion

12	13	14
Promotion from amongst the members of Assam Rifles holding the rank of Upper Division Assistant with five years regular service in the grade.	Departmental Promotion Committee for Considering Promotion (a) Inspector General (HQs) Assam Rifles —Chairman (b) DIG (Admn.) Directorate General Assam Rifles —Member (c) Assistant Director (A), Directorate General Assam Rifles —Member (d) One Group A Officer from SC/ST community —Member	Not applicable

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ANNEXURE - II

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1	2	3	4	5
10. Naib Subedar (Clerk)	181* (1999) *Subject to variation dependent on workload.	Group 'C' (Non-Gazetted, Combatised, Ministerial Staff)	Rs. 5500-175-9000	Selection by merit
6	7	8		
No	Not applicable	Not applicable		
9	10	11	12	
Not applicable	Not applicable	By promotion	Promotion from amongst the members of Assam Rifles holding the rank of Warrant Officer (Clerk) with 5 years regular service in the grade. Medical Category must be AYE (ONE) except for low medical categories attributable to actual hostilities/insurgency operations and aggravated due to service.	
13	14			
Departmental Promotion Committee for considering Promotion				Not applicable
(a) Deputy Director General Assam Rifles	Chairman			
(b) Deputy Director (Records), Directorate General	Member			
(c) Assistant Director (Administration), Directorate General Assam Rifles	Member			
(d) One Technically qualified officer	Member			
(e) Two Officers of Assam Rifles not below the rank of Junior Commissioned Officer, one belonging to minority community and other belonging to the Scheduled Caste/Scheduled Tribe	Members			
11. Naib Subedar (Personal Assistant)	1* (1999) *Subject to variation dependent on workload.	Group 'C' (Non-Gazetted, Combatised, Ministerial Staff)	Rs. 5500-175-9000	Selection by merit
6	7	8		
Not applicable	Not applicable	By promotion	Promotion from amongst the members of Assam Rifles holding the rank of Warrant Officer (Personal Assistant) on the basis of merit-cum-seniority with minimum of 5 years service in the grade. Medical Category must be AYE (ONE) except for low medical categories attributable to actual hostilities/insurgency operations and aggravated due to service.	

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

9
Annexure - III

Original Application No. O.A.No.321 of 2001 & O.A.No.472 of 2001

Date of Order: This the 19th Day of August 2002.

HON'BLE MR.JUSTICE D.N.CHOUDHURY, VICE-CHAIRMAN

HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER

O.A.No.321 of 2001

1. Shri Swapan Kumar Sarbajna, Assistant & 318 others.

..... Applicants.

(All the applicants are working in different capacities (Assistants, UDC, Supdt. respectively) under the Director General of Assam Rifles, Shillong and posted at HQs, office Shillong.

By Advocate Mr.J.L.Sarkar, Mrs.S.Deka, Mr.A.Chakraborty.

1. Union of India (represented through the Secretary, Govt. of India, Ministry of Home Affairs, North Block, New Delhi-110001.

2. Director, General, Assam Rifles Shillong-793011

3. Joint Secretary(Police) to the Govt. of India Ministry of Home Affairs New Delhi-110001.

..... Respondents.

By Advocate Mr.B.C.Pathak, Addl.C.G.S.C.

O.A.No.472 of 2001

1. Ram Krishna Goswami, Assistant, North East Police Academy, Umsaw, Umiam, District Ri-bhoi, Meghalaya, PIN-793123

2. Pradip Kumar Bhattacharjee, Assistant, North East Police Academy, Umsaw, Umiam, District- Ribhoi, Meghalaya, PIN-793123.

3. Field Back Lyngdoh Tron, Assistant, North East Police Academy, Umsaw, Umiam, District Ri-bhoi, Meghalaya, PIN-793123.

... Applicants.

By Advocate Mr.P.K.Tiwari, Mr.U.K.Goswami.

contd/-

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1. Union of India through the Secretary to the Government of India Ministry of Home Affairs, North Block, New Delhi.
 2. The Director, North East Police Academy, Ministry of Home Affairs, Government of India, Umsaw, Umiam Meghalaya.
 3. The North Eastern Council, through the Secretary, North Eastern Council Secretariat, Shillong-1 ... Respondents.
- By Advocate Mr.A.Deb Roy, Sr.C.G.S.C.

O R D E R.

MR.K.K.SHARMA MEMBER(ADMIN):

These two application are taken up together as the issue involved is similar. The arguments advanced in one application were also relied on in other application. The applications we also heard together.

2. In O.A.No.321 of 2001 the reliefs sought are:-

- i) Parity of pay scale for the civil posts in HQ of Assam Rifles with their counterparts.
- ii) The pay scale of Assistants be revised to Rs. 1640-2900/- notionally effect from 1.1.1986 and effectively with effect from 1.5.91 as in the case of Assistants in HQ Directorate General, BSF. The relief sought in O.A.No.472 of 2001 is for revision of pay scale of Assistants in North East Police Academy(NEPA) to Rs. 5500-9000/- and/or in the alternative Rs. 5000-8000/-.



O.A.No.321 of 2001

There are 319 applicants who have joined together to pursue the same cause. Their request for a common application

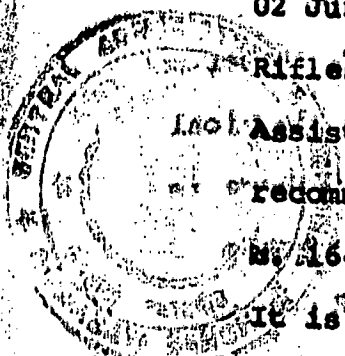
11/11/2001

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has been accepted under the provision of Rule sub-rule (1) 4(5)(a) of C.A.T. Procedure Rules 1987. All the applicants are civilian employees working in different capacities under the Director General of Assam Rifles at Shillong. It is stated that the Civilian employees in Assam Rifles is a dying cadre. The Assam Rifles is a Central Police Organisation under the Government of India, Ministry of Home Affairs. There are glaring disparities in the matter of grant of pay scale to the applicants. There is discrimination amongst similarly placed employees which has caused financial loss to the applicants. The Assistants of Assam Rifles on implementation of the 3rd Pay Commission were granted the pay scale of Rs. 1425-700/- and consequent to the 4th Pay Commission the Assistants were granted the pay scale of Rs. 1400-2300/- with effect from 1.1.1986. In some other Central Police Organisation the pay scale of Assistant was revised to Rs. 1640-2900/- after the 4th Central Pay Commission and the Ministry of Home Affairs vide D.O. letter No.13011/11(ii)/92-Fin II dated 02 Jun 92 had directed and the Director General, Assam Rifles to grant the pay scale of Rs. 1400-2600/- to the Assistant which was higher than the scale of Rs. 1400-2300/- recommended by 4th Central Pay Commission but less than Rs. 1640-2900/- granted to other Central Police Organisation. It is stated that the scale of pay sanctioned for the Assistants of Non-Secretariat Organisations as per Part 'B' of First Schedule of the Central Civil Services (Revised) pay Rules, 1997 is Rs. 5000-8000/-, whereas the Assam Rifles being a Non-Secretariat Organisation has adopted the scale of Rs. 4500 - 7000/-. There are two categories of



contd/-4

(12)

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Ministerial staff employed viz., Civilian and Combatant. Both the categories were given equal scale of pay till revision of pay by the 5th Central Pay Commission. The two categories of posts are as under :-

Civilian

Combatant.

Superintendent
Assistant
UDC
LDC

Subedar Clerk
Nb/Sub Clerk
Warrant Officer
Havildar Clerk

The 5th Central Pay Commission recommended pay scale of Ministerial staff of HQ DGAR Establishment were as under :-

Group 'B' Officer	Rs. 6500 - 10500/-
Supdt.	Rs. 5500 - 9000/-
Asst/Overseer/Nazir/ Draughtsman	Rs. 4500 - 7000/-

The pay of the Combatant Ministerial staff were revised as under:-

Subader Clerk	Rs. 6500- 10,500/-
Nb/Sub Clerk	Rs. 5500 - 9000/-

The Civilian ministerial staff were being given the lower scale although both the categories are performing identical duties and are placed similarly. It is stated that there is a discrimination in the matter of granting the pay scale to the applicants. The combatant staff of HQ, DGAR, Assam Rifles and vis-a-vis other Central Police Organisation, namely, BSF the applicants are similarly placed. The Assis-

tants of HQ Directorate General, BSF had been given the pay scale of Rs. 1640-2900/- on the basis of relief granted by Central Administrative Tribunal. The Assam Rifles Civilian employees Association represented against the disparity and the matter was referred by Respondent No.2 to the Ministry of Home Affairs by ^{letter} dated 17.9.99. Again by a letter dated



100/5/99

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02 Feb.2001 the respondents No.2 again requested to grant the following scale to the Civilian employees of DGAR :-

- (a) Group 'B' Officers - Rs. 7450-11500/-
- (b) Superintendents - Rs. 6500-10500/-
- (c) Assistants - Rs. 5500-9000/-

The Employees Association made another representation dated 06th Jun.2001 to the Respondents No.2 which has been replied to vide Respondents No.2 dated 26th Jun., 2001 denying the analogous pay scale to the applicants.

O.A.No.472 of 2001.

There are three applicants in this O.A.. The applicants are presently serving as Assistant in Northeastern Police Academy (NEPA). Permission has been granted to them to pursue the cause by a common application in terms of Rule, Sub-Rule 4(5)(a) of CAT Procedure Rules 1987.

3. NEPA is under the control of Ministry of Home Affairs. The Assistants in NEPA are in the revised pay scale of Rs. 4500-7000/-, where as the Assistants working under attached or subordinate offices of the Department of Ministry of Home Affairs are getting two different pay scales of Rs. 5500-9000/- and Rs. 5000-8000/- . It is stated that the Assistants are holding Supervisory level post. The Recruitment is made as per Northeastern Police Academy Group 'C' and 'D' posts Recruitment Rules 1983. The recruitment to the post of Assistant is made by the method of promotion from the feeder cadre of UDC or through transfer on deputation. All the applicants joined NEPA as LDCs and were promoted to the post of Assistant. The 4th Pay Commission recommended the pay scale of Assistants in NEPA at Rs. 425-700/-.

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In many other Organisation the Assistants were given the pay scale of Rs. 425-800/-. The 4th Pay Commission recommended 3 standard levels of Supervisory posts in the scale of Rs. as under :-

1. Rs. 1400 - 2300/-
2. Rs. 1540 - 2900/-
3. Rs. 2000 - 3200/-

The pay scale of Assistants in Central Secretariat were revised with effect from 1.1.1986 to Rs. 1400 - 2600/- whereas the pay scale of Assistants in ~~NEPA~~ were revised to Rs. 1400-2300/-. With effect from 30.7.90 the pay scale of Assistants in other departments under the Ministry of Home Affairs were revised to Rs. 1640 to 2900/- from pre-revised scale of Rs. 1400-2600/- on the basis of the order of CAT, Principal Bench in O.A.No.548 of 94 dated 19.1.96. The Assistants working in various department were given the pay scale of Rs. 1640-2900 by the Principal Bench of CAT on the ground that no discrimination can be made in regard to the pay scale of Rs. 425 -800/- or Rs. 425-700/- if the nature of the duties were same. The SLP against the decision of Principal Bench was dismissed. Similar issue again came up before the Principal Bench, New Delhi, in the case of India ESI Corporation Employees Federation, -Vs- Director General, ESI and Anr., in U.A.No.981 of 94. The Delhi High Court also allowed revised pay scale of Rs. 140-2900/- to the Assistants of National Book Trust. Thus employees of the ESI and many other Organisations were given the pay scale of Rs. 1640-2900/- on the basis of decisions rendered in their cases. In pursuance to the pronouncement of various Benches of C.A.T, the ^{same} pay scale was allowed to the Assistant in various subordinate officers of the Government of India. The matter was also put up before the JCM. The Joint



12/1/94

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Consultative Machinery vide reply dated 11.7.95 informed that the matter has been remitted to the 5th Pay Commission for consideration. The applicants also took their grievances before the authorities and the Ministry of Home Affairs vide their letter No.6/26/27-NE-II dated 17.12.97 informed that in their view the order was not applicable to Assistants in O.M.No.2/1/90-in O.M.No.2/1/90-in NEPA and they may be given normal replacement scale of pay with effect from 1.1.96 and that the grant of higher pay scale involves up-gradation of the post.

4. The matter has been heard at length. Mr.J.L.Sarkar appeared for the applicants in O.A.No.321 of 2001 and Mr.P.K. Tiwari appeared for the applicants in O.A.No.472 of 2001. Mr.B.C.Pathak, learned Addl.C.G.S.C. appeared for the Respondents in O.A.No.321 of 2001 and Mr.A.Deb Roy Sr.C.G.S.C. appeared for Respondents in O.A.No.472 of 2001. Mr.Sarkar argued that the works done by civilian employees as well as combatants are identical. Their duties are equal. The office structure is as below:-

Superintendent	Rs. 5500-9000/-	
Assistant	Rs. 4500-7000/-	Naib Subedar
		Rs. 5500-9000/-
Upper Division	Rs. 4000-6000/-	
Clerk /		Warrant Officer
		Rs. 4000-6000/-

The 5th Pay Commission recommended identical scale of pay Rs. 4500-7000/- to Assistant/Naib Subedars. The Naib Subedars were given higher pay scale of Rs. 5000-8000/- in 1998 with retrospective effect from 1.1.96. The scale was again revised for Naib Subedar with effect from 10.10.97 to Rs.5500-9000/-. Similar was the in the case of UDCs and Warrant Officers in which case identical scale were recommended.

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Warrant

/Officers were given higher scale with effect from 10.10.97.

Mr.Sarkar also argued that up to 5th Pay Commission the pay scale as combatant and non-combatant posts were same. Subsequently the combatant post were given the higher pay scale.

5. Mr.P.K.Tiwari learned counsel for the applicants submitted that the matter has not been considered in the proper perspective. The 5th Pay Commission in its report dealt with the Organisational set up of NEPA but remained silent about the pay scale of the Assistants of NEPA. The matter was referred to anomaly Committee. The anomaly committee was never set up at NEPA. In the Ministry of Environment, Department of Forests, the Assistants in the Regional Offices of the Ministry of Environment were given the revised pay scale of Rs. 5500-9000/-. The post of Assistant in NEPA is also a promotional post. The Assistants in the office of Registrar General, Census under the Ministry of Home Affairs were given the revised pay scale of Rs. 5000-8000/-. The Assistants of North Eastern Council which exercised budgetary and financial control in NEPA are in the pay scale of Rs. 5000-8000/-. The Assistants in Central Secretariat were given the pay scale of Rs. 5500-9000/- and other subordinate officers of the Ministry of Home Affairs are also getting the pay scale of Rs. 5500-9000/-. The Assistants working in subordinate Officers of Government of India like Ministry of Home Affairs and North Eastern council are in the pay scale of Rs. 5000-8000/-. But the Assistants of NEPA were given the revised pay scale of Rs. 4500-7000/-. On implementation of the recommendation of the 5th Central Pay Commission the pay scales of the applicants were initially revised to Rs. 5000-8000/- with effect from 1.1.96, for a



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period of two months and thereafter the pay scale was reduced to Rs. 45.00-7000/-. It was submitted by Mr.P.K.Tiwari that the Assistants working in NEPA should be treated equally in the matter of pay scale to Assistants in the different department of Government of India. No discrimination can be made between the Assistants on the ground of difference in their source of recruitment.

6. Mr.Pathak disputed the submission made on behalf of the applicants that 5th Pay Commission had recommended similar pay scale for combatants/non-combatants.

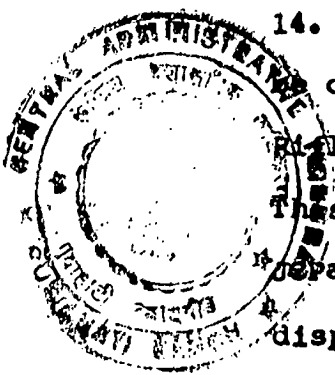
On behalf of the applicants reliance was placed on the case of Mr.V.R.Panchal,-Vs-Union of India,1996(2), CAT All India Services Law Journal, 682 and 2000(1) SLJ-139 while on behalf of the respondents reliance was placed on Union of India,-Vs-P.V.Hariharan, 1997, SCC,L&S,838. The State of U.P. and others,-Vs- Ramashyraya Yadav and another, 1996, SCC, L&S,714. All India Services Law Journal, 2001(2) 865 Vol.6/Union of India -Vs- Pradip Kumar Dey.

7. We have carefully considered the submissions on behalf of the parties and have perused the record. The matter of parity of pay scale has been subject matter of litigation and certain principles have been laid down on the basis of these decisions. The learned counsel for the applicant had argued that the Assistants of Assam Rifles and Nepa are performing same type of jobs as the Assistants of Central Secretariat and other departments of the Central Government or the Assistants working in other Central Police Organisations. Therefore, there cannot be any discrimination in the pay scale of Assistants. The Assistants working in Assam Rifles and in NEPA are entitled to the same pay scale as Assistants in

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other Organisation. Similarly as combatants and non-combatants are performing the same type of job there cannot be any discrimination, in payment of salaries. The respondents have contested the claims made on behalf of the applicants and have also filed their written statement. It is the case of the respondents that the comparison made by the Assistants with the combatants is not legally tenable. Article 14 of the Constitution does not mean that every law must have universal application for all persons who are not by nature, attainment or circumstances in the same position, as the varying need of different classes of persons often require separate treatment. Different treatment does not constitute violation of Article 14. The applicants being civilian employees as such cannot be compared with the combatant staff of HQ DGAR., Assam Rifles as there is reasonable basis for differentiation. This Tribunal in O.A.No.136 of 1999 dated 20.1.2001 in Paul Choudhury, Vs.U.O.I has examined the issue of the disparity of pay scale between Civilian and combatant Stenographers and has held there is no questions of discrimination between combatant Stenographers and Civilian Stenographers. The combatants are different and a separate class. The applicants cannot compare themselves with combatants. It is stated that certain CPO's had revised pay scale of Assistant to Rs. 1640-2900/- with effect from 1.1.1986, without consultation with the Ministry of Home Affairs or MOF on the analogy of Assistants of CCS cadre. This was found irregular and it was desired to restore the pay scale of Rs. 1400-2600/-. However, BSF, ITBP had given revised pay scale of Rs. 1640-2900/- their Assistants. The 5th Pay Commission has recommended separate pay scales



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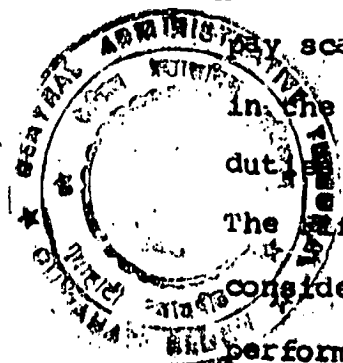
as admissible to the civilian staff in the non-secretariat organisations including the CPOs. It is stated that these civilian posts and are dying posts in Assam Rifles and have been provided normal replacement scales. The combatants constitute a different class in themselves and thus are easily distinguishable with the civilian staff. There is no equality of work. In order to explain the difference between combatants and Civilian staff. The Respondents have given the comparative chart as under :-

S/No	Combatants	CIVILIAN STAFF
(a) Acts applicable	AR Act, 1941. The aspects of discipline is controlled by AR Act 1941 and AA 1950 while serving under op control of Army. Under Army Act trial is by Court Martial for any offence and delinquent can be punished by death sentence. Under the AR Act 1941 also maximum penalty is death	CCS Rules
(b) Conditions of Service	Combatants may be posted anywhere in the NE region and anywhere in India. The Assam Rifles Units have taken active part in Indian Peace Keeping Force in Sri Lanka and also have been deployed in J&K to combat militancy. The Combatant clerks have also moved with the unit to serve in such areas. In North-East the combatants have effectively controlled the insurgency	They are posted only DGAR at Shillong.
(c) Restriction on Fundamental Rights	According to Article 33 of the Constitution of India the Fundamental Rights of the combatants are restricted as they are Armed Forces of Union as described in Scheduled VII List Entry 2.	NO RESTRICTION
(d) Medical Fitness	The combatants are required to be medically fit and in case of any ailment due to which they can not cope up with stress and strain of service then they are invalided out.	Even persons in low medical category can continue.
(e) Charter of Duties	Alongwith normal charter of duties of a clerk a combatant is also has an Additional task to go out on operational Duties such as patrolling, ambush in counter insurgency prone areas.	Only office job

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The applicants cannot plead equality with combatants as the petitioner were given option of combatisation in 1989. However, claim this is denied on behalf of the applicants in the rejoinder. The combatant staff are also expected to perform the duty which is expected of a soldier in time of war and in normal circumstances they are combating insurgency and guarding of borders. The revision of pay scales by BSF was without any authority and is therefore, irregular and cannot be a ground for revision for the applicants. It is stated that the Rules applicable in the case of Assam Rifles and BSF are different; allowances/benefits are different. In the Assam Rifles, before revision, Assistants were sanctioned pay scale lower than in BSF. There is no disparity/anomaly in the scale when considered in the light of nature of duties being performed by combatants and civilian employees. The Fifth Central Pay Commission after due deliberation and consideration of the various factors such as the duties being performed by the combatants gave them higher pay scale than the civilian employees. The difference in pay scale is thus based on reasonable classification. The recommendations of expert body such as Pay Commission cannot be termed to be arbitrary or violative of Article 14. In regard to the Assistants in NEPA it is stated that the post is not supervisory. It is not designation that solely is determinative of the pay scale and there are many factors for determining the pay scale like eligibility, minimum educational qualifications, nature of duties and responsibilities, work load, professional skill proficiency and method of recruitment. As the Assistants in NEPA did not enjoy the pay scale of pay Rs. 1640-2900/- but worked in the pay scale of Rs. 1400-2300/-, they are entitled to normal replacement scale of Rs. 4500-7000/-.



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As the Assistants in Northeastern Council, Shillong were given in the pay scale of Rs. 1400-2600/- therefore, they were given the pay scale of Rs. 5000-8000/- being the replacement scale. In order in O.A.No.144 of 93 decided on 19.1.96 in the case of V.R. Pranchal, -Vs- Union of India & Ors All India Services Law Journal Vol.6, 1996(2) C.A.T. 682. The Principal Bench discussing the Supreme Court Judgment in case of Hariharans up held the view that courts should not interfere with the recommendation of expert like Central Pay Commission in the matter of pay scale excepting in certain situations as under :-

- (i) The Pay Commission omitted to consider the pay scale of someposts of any particular service, or
- (ii) the pay Commission recommended certain scale based on no classification or irrational classification, or
- (iii) after recommendation of the Pay-Commission is accepted by the Govt., there is unjust treatment by subsequent arbitrary State action/or in action. In other words the subsequent State action/in action results in favourable treatment to some and unfair treatment to others."

8. We have given careful consideration to the submission made before us. It has been held by Supreme Court in the cases referred above/that the Expert bodies like Central Pay Commission have the final say in the matter of fixation of pay. The 5th Pay Commission dealt with the question of parity of pay scale in para 46.7 with regard to parity in and Secretariat pay scale, para 46.9 dealt with the case of Assistants. The paras are extracted below:-

"46.7. Parity with Secretariat pay scales and cadre structure - Complete parity has been demanded between the pay scales of clerical staff in the Central Secretariat and subordinate offices. In some cases, it has been asserted that field jobs entail more rigorous working conditions, whereas Secretariat staff enjoy better amenities without any accountability

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and thus a claim for higher pay scales in the subordinate offices has been made. A number of administrative ministries have recommended parity on the ground of responsibilities, transfer liability and interaction with public. In case of Assistants of organisations like Enforcement Directorate, CBI, Central Passport Organization etc. various Benches of Central Administrative Tribunal have given judgments granting parity with the pay scale of Assistants in CCS.

46.9. In the case of Assistants in the Secretariat, the position of entirely different. Assistants in the Secretariat have always been given a special status as they have been holders of Group 'B' posts. They have always had a higher pay scale as compared to Assistants in Non-Secretariat Organisations, even though the difference was limited to a higher maximum. There has been a significant element (50%) of direct recruitment with the higher educational qualification of graduation in the case of Assistants in the Secretariat, as compared to their counterparts in subordinate offices, who are promoted from the post of UDCs for which the prescribed minimum qualification is matric only. Assistants in Secretariat perform more complex duties in as much as they are involved in analysing issues which have policy implications in comparison to their counterparts in subordinate offices, where the nature of works is confined to routine matters related to establishment personnel and general administration only. Assistants in the Secretariat also submit cases directly to the decision making level of Under Secretary/Deputy Secretary under the scheme of level jumping. Taking all these factors into consideration, we are of the definite view that the pay scale of Assistants in the Non-Secretariat Organisations should slightly be lower as compared to the pay scale of Assistants in the Secretariat. Assistants in subordinate offices may therefore, be placed in the pay scale of Rs. 1600-2,660. "



The Pay Commission also considered in case of North Eastern Police Academy para 70.113 and gave its recommendation in Para 70.116 for analogous scales.

Both the paras are reproduced below:-

70.113. The North Eastern Police Academy (NEPA) training is a Police Training Institute under the Ministry of Home Affairs imparting to police personnel of the 7 North Eastern States. It is situated 22 Kms away from Shillong in Meghalaya. It is headed by a Director in the pay scale of Rs. 5100-6150 who is assisted by a Joint Director, a Dy Director, Asstt. Director and other staff. The total staff strength is 237.

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70.116. The replacement scales for analogous posts recommended in the relevant chapters will be given to the posts in the organisations. "

There is no dispute that the Assistant in Assam Rifles and in NEPA have been given analogous scale. They have not been given the scale more than those recommended by the Pay Commission. It has been observed by Supreme Court in Ashutosh Gupta, -Vs- State of Rajasthan and others, 2002 Supreme Court cases (L&S), 465 with regard to principle of equality as under :-

"The concept of equality before law does not involve the idea of absolute equality amongst all, which may be a physical impossibility. All that Article 14 guarantees is the similarity of treatment and not identical treatment. The protection of equal laws does not mean that all laws must be uniform. Equality before the law means that among equals the law should be equal and should be equal and should be equally administered and that the likes should be treated alike. Equality before the law does not mean that things which are different shall be treated as though they were the same. It is true that Article 14 enjoins that the people similarly situated should be treated similarly but what amount of dissimilarity would make the people disentitled to be treated equally, is rather a vexed question. A legislature, which has to deal with diverse problems arising out of an infinite variety of human relations must of necessity, have the power of making special laws, to attain particular objects; and for that purpose it must have large powers of selection or classification of persons and things upon which such laws are to operate. Mere differentiation or inequality of treatment does not "per se" amount to discrimination within the inhibition of the equal protection clause. The State has always the power to make classification on a basis of rational distinctions relevant to the particular subject to be dealt with."



The matter of discrimination with regard to pay scale of combatants staff came for consideration of this Bench of this Tribunal in O.A.No.136 of 1999 and gave findings as under :-

" The combatant Stenographers, in addition to the duties they discharge as Stenographers also discharge the duties as combatants as per their ranks and they perform arduous nature of work in operationally sensitive areas. Mr. Sarkar is right in his submission that non-combatant Stenographers

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are also posted in hard and sensitive areas, but that by itself cannot equate them with the combatised personnel, though posted in the sensitive and operational areas, for which they may be entitled for some admissible allowance like ration allowance, etc. like that of combatants. However, that by itself would not make them equal with the combatants. The terms and service conditions are totally different. As mentioned earlier, the combatised personnel are covered by the Assam Rifles Act as well as the Army Act and the Army Act and Rules are more stringent than the rules applicable to the non-combatised staff covered by the Civilian Law. The question regarding the entitlement of pay scales was already examined by the Pay Commission and on evaluation of the nature of duties and responsibilities of the posts, the Pay Commission made the recommendations which were accepted by the concerned authorities. The Court of the Tribunal would loathe to intervene in such matters unless it appears that it was made for extraneous consideration. The non-combatant Stenographers were given the option to join in the combatised force and those who opted were accordingly enrolled as combatants. In the circumstances the ground of discrimination is not sustainable. "

The Supreme Court has held in the decision read with Union of India , -Vs- P.V.Hariharan, para 5 of 1997 SCC/as below:-

"Before parting with this appeal, we feel impelled to make a few observations. Over the past few weeks, we have come across several matters decided by Administrative Tribunals on the question of pay scales. We have noticed that quite often the Tribunals are interfering with pay scales without proper reasons and without being conscious of the fact that fixation of pay is not their function. It is the function of the Government which normally acts on the recommendations of a Pay Commission. Change of pay scale of a category has a cascading effect. Several other categories similarly situated, as well as those situated above and below, put forward their claims on the basis of such change. The Tribunal should realise that interfering with the prescribed pay scales is a serious matter. The Pay Commission, which goes into the problem at great depth and happens to have a full picture before it, is the proper authority to decide upon this issue. Very often, the doctrine of "equal pay for equal work" is also being misunderstood and misapplied, freely revising and enhancing the pay scales across the board. We hope and trust that the Tribunals will exercise due restraint

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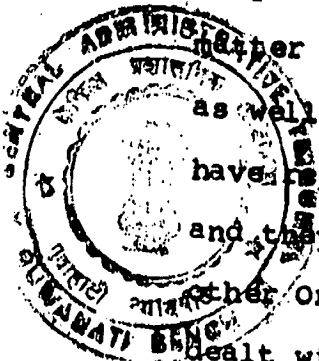
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in the matter. Unless a clear case of hostile discrimination is made out, there would be no justification for interfering with the fixation of pay scales. We have come across orders passed by Single Members and that too quite often Administrative Members, allowing such claims. These orders have a serious impact on the public exchequer too. It would be in the fitness of things if all matters relating to pay scales, i.e. matters asking for a higher pay scale or an enhanced pay scale, as the case may be, on one or the other ground, are heard by a Bench comprising at least one Judicial Member. The Chairman of the Central Administrative Tribunal and the Chairman of State Administrative Tribunals shall consider issuing appropriate instructions in the matter."

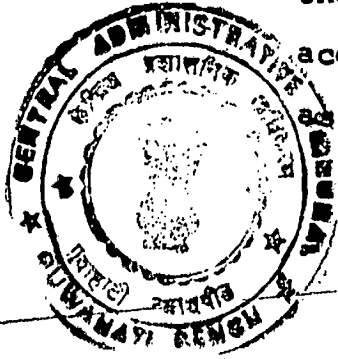
9. The subject of pay scale of Assistants of Assam Rifles and NEPA has come for consideration before the Pay Commission including the 5th Pay Commission and they have given different pay scale to the Assistants. Keeping in view of the pronouncement of Supreme Court in the cases cited above, we are of the view that after the decision of the Supreme Court, the Central Administrative Tribunal is not competent to interfere with the pay scales and the matter of parity is to be decided by Govt. and Pay Commission. The matter has been considered by the Govt. and Pay Commission as well and they have not accepted the claim. The applicants have represented their case before the 5th Pay Commission and they claimed parity with the pay scale of Assistants of other Organisations. The Pay Commission as an expert body dealt with the subject matter including pay scale of different organisation and had a huge Bank Data/information at their disposal and had also given opportunity for representation to the applicants and with all Data at the disposal did not feel it prudent to give higher pay scale to the applicants. With the material placed before us we are of the view that this Tribunal has no scope for interference in the pay scale given to the applicants. The applicants have been given analogous replacement scale.



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10. We do not find any justification to accept the claim of the applicants. The application is accordingly, dismissed. There shall however be no order as to costs.



Sd/ VICE CHAIRMAN
Sd/ MEMBER (Adm)

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Certified to be true Copy
प्रमाणित प्रतिलिपि

Section Officer (J)

आनुमान अधिकारी (अध्यक्ष शाखा)
Central Administrative Tribunal

केन्द्रीय प्रशासनिक अधिकरण
Guwahati Bench, Guwahati-8
गुवाहाटी बेंच, गुवाहाटी-8

22/8/02

16th FEB 2004

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH: GUWAHATI

In the matter of :

O.A. No. 195 of 2003

Sri J.C. Bhattacharjee

-vs-

Union of India & Ors.

-And-

In the matter of

Rejoinder submitted by the
applicant in reply to the written
statement submitted by the
Respondents.

The applicant above named most humbly and respectfully
begs to state as under:

1. That with regard to the statement made in paragraphs
1,3,8, 8(a), 8(c) and 9 of the written statement the
applicant categorically denies all the contentions save
and except which are borne out by records and the
applicant further beg to state that the non-combatant
staff working in the field officers (non static
formation) in the range offices/unit offices posted
with the troops and the nature of work discharging by
the non combatant staff are more arduous in nature and
the service conditions are more stringent than the
combatant staff of Assam Rifles. Be it stated that a
non-combatant staff require to spend entire service

Filed by the applicant
through:-
Subrata Nath
Advocate
16.02.2004

88

career in the range and unit offices which are situated in remote insurgency prone areas and also in the border areas in the hilly terrains under operational control of Army, risking their life along with the troops, non combatant staff in the field offices require to work round the clock without enjoying Sundays and Holidays. Moreover the non combatant staff facing more risk while discharging their jobs because they are not imparted any sort of training for their self protection while moving by convoy due to restriction on movement by civil vehicles whereas the combatant staff are at least trained and can protect themselves in the event when enter into the encounter with the militant. Therefore in reality there is no difference in service conditions among the combatant staff and non-combatant staff.

A mere perusal of the Recruitment Rules Senior Accountant, Subedar Clerk (Now Subedar Major Clerk) it would be evident that there is no notable distinction in between the recruitment rules of Accountant, Subedar Clerk (Now Subedar Major Clerk. Similarly there is no difference in the Recruitment Rules for the post of Head Assistant, with their counterpart (Now Subedar Clerk) and the applicant demanding the parity since their entire service in Assam Rifles. It is evident to mention here that Subedar Clerk/Naib Subedar Clerk has been determined in the 3rd CPC lower in the rank and status with lower rank and status and as a result they were granted lower pay scale by the 3rd CPC than the post of Senior Accountant & Head Assistant. Promotions

89

are also till date effecting from common gradation list since there is no fixed ratio so far staff strength of combatant and non-combatant staffs are concerned.

2. That with regard to the statement made in paragraph 8 of the written statement the applicant was asked to opt for combatisation scheme vide Ministry of Home Affairs letter dated 19.9.1989. In this connection it is stated that the applicant was very much interested for submission of his option to switch over the combatisation but when enquired about the terms and conditions for combatisation, the respondent Union of India failed to provide till date any guidelines or terms and conditions and thereby the respondents did not come forwarded to implement the scheme of combatisation which would be evident from W.T. message No. A 5134 dated 11th January, 1999, therefore applicant cannot be held responsible for non implementation of the combatisation scheme.

So far statements made in paragraph 8 (c) it can rightly be said that the incumbent holding the post of Subedar Clerk (Subedar Major Clerk) and Naib Suedar Clerk (Now Subedar Clerk) were granted/upgraded in a higher pay scale vide Ministry of Home Affairs order dated 10.9.1997 as well as letter No.K/III..P/5-86(Part)/30 dated 22.08.2003, following the orders of the Ministry of Home Affairs without any reference to the Pay Commission, which 3rd CPC adjudged the post

90

of Senior Accountant and Head Assistant higher in the rank and status and granted higher pay scales.

There were no recruitment rules in the post for any particular cadre. The recruitment rule for certain post has been framed only in 2000.

3. That with regard to the paragraphs 9,10,11,13,15,16,17,18,20,22 of the written statement the applicant denies the averments of those paragraphs which are not borne out by the records and the applicant further reiterates the contentions raised in the O.A. The judgment referred to the written statement of O.A. 321 of 2001, 472/2001 has no bearing with the case of the present applicant and in the facts and circumstances of the case stated above the instant O.A. is deserves to be allowed with cost.

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VERIFICATION

I, Sri J. C. Bhattacharjee, S/o Late Jatindra Kumar Bhattacharjee, aged about 51 years, working as Head Assistant, in the Office of the No. 1 Construction Company, Assam Rifles, Shillong, do hereby verify that the statements made in Paragraph 1 to 3 of this rejoinder are true to my knowledge and the rest are my humble submission before the Hon'ble Tribunal and I have not suppressed any material fact.

And I sign this verification on this the 15th day of February, 2004.

Jagadish Ch: Bhattacharjee