

A UNION OF INDIA & ORS.

v.

KRISHNA KUMAR & ORS.

(Civil Appeal No. 672 of 2019)

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JANUARY 14, 2019

**[DR. DHANANJAYA Y CHANDRACHUD
AND HEMANT GUPTA, JJ.]**

C *Assam Rifles Warrant Officer (General Duty) Group 'C'*
D *Combatised Posts Recruitment Rules, 2012 – Promotion to the post*
E *of Naib Subedar after re-structuring of Assam Rifles in 2011 and*
F *creation of Recruitment Rules in 2012 – Eligibility of – In 2011,*
G *Union of India introduced an intermediate rank of Warrant officer*
by the abolition/upgradation of one post of Havildar – Thereafter,
Recruitment Rules, 2012 were notified – In terms of the Recruitment
Rules, 2012 the post of Warrant Officer was created which was
required to be filled up by promotion amongst members of the Assam
Rifles holding the rank of Havildar – Consequently, promotion orders
were issued for Havildars to the newly created post of Warrant
Officer – Writ proceedings were instituted with a grievance that the
promotion ought to have been made to the rank of Naib Subedar –
Writ petition allowed by the High Court – On appeal, held: The
entire basis of the decision of the High Court was that those who
were recruited prior to the restructuring exercise and were holding
the post of Havildars had acquired a vested right of promotion to
the post of Naib Subedar – This does not reflect the correct position
in law – The right is to be considered for promotion in accordance
with the Rules as they exist when the exercise is carried out for
promotion – Thus, once the structure of the Assam Rifles underwent
a change following the creation of the intermediate post of Warrant
officer, persons holding the post of Havildar would be considered
for promotion to the post of Warrant Officer – Service Law.

H Respondents were appointed between 1982 and 1989 on the post of Rifleman in Assam Rifles. At the relevant point of time they were working as Havildars. Under the Rules, as they existed earlier, the promotional avenue for a Havildar lay to the

post of Naib Subedar. In 2011, Union of India introduced an intermediate rank of Warrant officer by the abolition/upgradation of one post of Havildar. In terms of the new Recruitment Rules i.e. Assam Rifles Warrant Officer (General Duty) Group 'C' combatised Posts Recruitment Rules, 2012, the post of Warrant Officer was created which was required to be filled up by promotion amongst members of the Assam Rifles holding the rank of Havildar. Consequent to which, promotion orders were issued for Havildars to the newly created post of Warrant Officer. Writ proceedings were instituted. The High Court allowed the writ petition and held that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies. Hence, present Appeals.

Disposing of the appeals, the Court

HELD: 1. It is well-settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in Y.V. Rangaiah vs. Sreenivasa Rao has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time frame. Hence, it has been held in H.S. Grewal vs. Union of India that the creation of an intermediate post would not amount to an interference with the vested right to promotion. [Para 11][987-F-H; 988-A]

2. Once the structure of Assam Rifles underwent a change following the creation of the intermediate post of Warrant Officer, persons holding the post of Havildar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed

A at the time of the occurrence of the vacancies. As the decided cases noted earlier indicate, there is no such rule of absolute or universal application. The entire basis of the decision of the High Court was that those who were recruited prior to the restructuring exercise and were holding the post of Havildars had acquired a vested right of promotion to the post of Naib Subedar. This does not reflect the correct position in law. The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion. [Para 14][989-E-G]

C *Y.V. Rangaiah v. Sreenivasa Rao* (1983) 3 SCC 284;
H.S. Grewal v. Union of India (1997) 11 SCC 758;
Deepak Agarwal v. State of Uttar Pradesh (2011) 6 SCC 725 : [2011] 4 SCR 149; *State of Tripura v. Nikhil Ranjan Chakraborty* (2017) 3 SCC 646 – relied on.

	<u>Case Law Reference</u>		
D	(1983) 3 SCC 284	relied on	Para 5
	(1997) 11 SCC 758	relied on	Para 5
	[2011] 4 SCR 149	relied on	Para 6
E	(2017) 3 SCC 646	relied on	Para 7

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 672 of 2019 @ SLP(C) No. 26451 of 2014.

From the Judgment and Order dated 10.12.2013 of the High Court of Manipur at Imphal in Writ Petition No. 590 of 2012.

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Civil Appeal Nos. 673 of 2019 @ SLP (C) No. 30337 of 2014, and 674 of 2019 @ SLP(C) No. 30334 of 2014.

G Ms. Pinky Anand, ASG, Ms. V. Mohana, Sr. Adv., T. A. Khan, Shankar Divate, Hemant Arya, Bipin Kurian, Anish Kumar Gupta, Chandra Shekhar Suman, B. V. Balaram Das, B. Krishna Prasad, K. G. Bhagat, Ms. Archana Midha, Vineet Bhagat, Niraj Jha, Vinod Sharma, Pawan Reley, Advs. for the appearing parties.

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The Judgment of the Court was delivered by

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DR. DHANANJAYA Y CHANDRACHUD, J.

CIVIL APPEAL (@ SLP(C) No.26451 of 2014)

1. Leave granted.

2. This appeal arises from an order of a learned Single Judge of the High Court of Manipur dated 10 December 2013. The High Court, by its impugned order, has issued a direction to the appellants to consider the case of the respondents (the petitioners before the High Court) if they are eligible and within the zone of consideration for promotion to the post of Naib Subedar against vacancies which occurred prior to the changes that were made in the structure of Assam Rifles in 2011 and before the enforcement of the Recruitment Rules for Warrant Officer in 2012. The High Court directed that such an exercise be carried out in respect of other Havildars against vacancies which had occurred prior to 2011.

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3. The respondents were appointed between 1982 and 1989 on the post of Rifleman in Assam Rifles. At the relevant point of time, they were working as Havildars. Under the Rules, as they existed earlier, the promotional avenue for a Havildar lay to the post of Naib Subedar. Following the recommendations of the Sixth Pay Commission, the Union of India in the Ministry of Home Affairs conveyed its sanction on 3 March 2011 for the introduction of an intermediate rank of Warrant Officer by the abolition/upgradation of one post of Havildar. On 16 June, 2012, the Assam Rifles Warrant Officer (General Duty) Group 'C' Combatised Posts Recruitment Rules, 2012 were notified. In terms of the Recruitment Rules, the post of Warrant Officer was created which was required to be filled up by promotion amongst members of the Assam Rifles holding the rank of Havildar (General Duty) with five years' regular service in the grade and possessing the requisite educational qualifications. The Rules, *inter alia*, stipulated the following conditions for promotion:

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“Promotion amongst the members of Assam Rifles holding the rank of Havildar (General Duty) with five years regular service in the grade and possessing the following educational qualifications, namely:-

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(i) Map reading standard one-Pass

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- A (ii) Promotion cadre passed – Pass
(iii) Technical Trade Test One – Pass

Note 1: Where juniors who have completed their qualifying or eligibility service are considered for promotion their seniors would also be considered provided they are not short of the requisite qualifying or eligibility service for more than half of such qualifying or eligibility service or two years, whichever is less, and have successfully completed their probation period for promotion to the next grade with their juniors who have already completed such qualifying or eligibility service.

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- C Note 2: For the purpose of counting minimum qualifying service for promotion, the service rendered on a regular basis by an officer prior to the 1st January, 2006 i.e. the date from which the revised pay structure band or the Sixth Central Pay Commission recommendations has been extended, shall be deemed to be service rendered in the corresponding grade pay or pay scale extended based on the recommendations of the Commission.”
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4. On 13 August 2012, promotion orders were issued for Havildars to the newly created post of Warrant Officer. The respondents were promoted as Warrant Officers.

- E 5. Writ proceedings were instituted before the High Court with a grievance that the promotion from the post of Havildar was to a lower and inferior rank of Warrant Officer, whereas the promotion ought to have been made to the rank of Naib Subedar.

- F 6. The High Court allowed the writ petition by holding that despite the changes which were brought about in the structure of Assam Rifles in 2011, rights which accrued prior to the enforcement of the changed structure in favour of Havildars for being considered for promotion as Naib Subedars, were required to be enforced. The High Court observed that:

- G “It is now well settled that vacancies occurring prior to amendment or creation of Recruitment Rules, are to be governed by the Rules which existed at the time of occurrence of the vacancy.”

7. On this basis, the High Court directed the appellants to consider the case of the respondents and other Havildars for promotion to the

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post of Naib Subedars against vacancies which had occurred prior to the changes which were carried out in 2011 and before the enforcement of the Recruitment Rules, 2012. A

8. Assailing the judgment, the Union of India is in appeal.

9. Ms. Pinky Anand, learned Additional Solicitor General appearing on behalf of the appellants, submits that the High Court has proceeded on the erroneous basis that vacancies which occurred prior to the amendment of the Recruitment Rules were required to be governed by the erstwhile provisions under which the promotion from the post of Havildar would lie to the post of Naib Subedar. The learned Additional Solicitor General submitted that once there was a change in the structure of Assam Rifles in 2011 and the Recruitment Rules of 2012 prescribe that promotion from the post of Havildar would lie to the post of Warrant Officer, the High Court was not justified in issuing the above directions. B C

10. On the other hand, it has been submitted on behalf of the respondents that if Havildars are to be promoted as the Warrant Officers, that would violate their fundamental rights under Articles 14 and 16 of the Constitution. Learned counsel submits that under the Rules, as they prevailed prior to the restructuring of Assam Rifles, promotion for Havildars lay to the post of Warrant Officer. While the respondents have not challenged the Recruitment Rules, as noted by the High Court, they urge that vacancies which have arisen prior to 2011 must be filled up by promoting Havildars eligible for promotion to the post of Naib Subedars. D E

11. In considering the rival submissions, it must, at the outset, be noted that it is well-settled that there is no vested right to promotion, but a right be considered for promotion in accordance with the Rules which prevail on the date on which consideration for promotion takes place. This Court has held that there is no rule of universal application to the effect that vacancies must necessarily be filled in on the basis of the law which existed on the date when they arose. The decision of this Court in Y.V. Rangaiah Vs. Sreenivasa Rao¹ has been construed in subsequent decisions as a case where the applicable Rules required the process of promotion or selection to be completed within a stipulated time frame. Hence, it has been held in H.S. Grewal Vs. Union of India² that the creation of an intermediate post would not amount to an interference F G

¹(1983) 3 SCC 284

²(1997) 11 SCC 758

A with the vested right to promotion. A two-Judge Bench of this Court held thus:

B “...Such an introduction of an intermediate post does not, in our opinion, amount to interfering with any vested rights cannot be interfered with, is to be accepted as correct. What all has happened here is that an intermediate post has been created prospectively for future promotions from Group-B Class-II to Group-A Class-I. If, before these rules of 1981 came into force, these officers were eligible to be directly promoted as Commandant under the 1974 rules but before they got any such promotions, the 1981 Rules came in obliging them to go through an intermediate post, this does not amount to interfering with any vested rights.”

C 12. In Deepak Agarwal Vs. State of Uttar Pradesh³, this Court observed thus:

D “26. It is by now a settled proposition of law that a candidate has the right to be considered in the light of the existing rules, which implies the ‘rules in force’ on the date the consideration took place. There is no rule of universal or absolute application that vacancies are to be filled invariably by the law existing on the date when the vacancy arises. The requirement of filling up old vacancies under the old rules is interlinked with the candidate having acquired a right to be considered for promotion. The right to be considered for promotion accrues on the date of consideration of the eligible candidates. Unless, of course, the applicable rule, as in Y.V. Rangaiah’s case (supra) lays down any particular time frame, within which the selection process is to be completed. In the present case, consideration for promotion took place after the amendment came into operation. Thus, it cannot be accepted that any accrued or vested right of the appellants have been taken away by the amendment. The judgments cited by learned counsel for the appellants namely B.L. Gupta Vs. MCD (supra), P. Ganeshwar Rao Vs. State of Andhra Pradesh (supra) and N.T. Devin Katti & Ors. Vs. Karnataka Public Service Commission & Ors (supra) are reiterations of a principle laid down in Y.V. Rangaiah’s case (supra).”

G 13. Recently, in State of Tripura Vs. Nikhil Ranjan Chakraborty⁴, another two-Judge Bench of this Court held thus:

³(2011) 6 SCC 725

H ⁴(2017) 3 SCC 646

“The law is thus clear that a candidate has the right to be considered in the light of the existing rules, namely, “rules in force on the date” the consideration takes place and that there is no rule of absolute application that vacancies must invariably be filled by the law existing on the date when they arose. As against the case of total exclusion and absolute deprivation of a chance to be considered as in the case of Deepak Agarwal (supra), in the instant case certain additional posts have been included in the feeder cadre, thereby expanding the zone of consideration. It is not as if the writ petitioners or similarly situated candidates were totally excluded. At best, they now had to compete with some more candidates. In any case, since there was no accrued right nor was there any mandate that vacancies must be filled invariably by the law existing on the date when the vacancy arose, the State was well within its rights to stipulate that the vacancies be filled in accordance with the Rules as amended. Secondly, the process to amend the Rules had also begun well before the Notification dated 24.11.2011.”

14. In view of this statement of the law, it is evident that once the structure of Assam Rifles underwent a change following the creation of the intermediate post of Warrant Officer, persons holding the post of Havildar would be considered for promotion to the post of Warrant Officer. The intermediate post of Warrant Officer was created as a result of the restructuring exercise. The High Court was, in our view, in error in postulating that vacancies which arose prior to the amendment of the Recruitment Rules would necessarily be governed by the Rules which existed at the time of the occurrence of the vacancies. As the decided cases noted earlier indicate, there is no such rule of absolute or universal application. The entire basis of the decision of the High Court was that those who were recruited prior to the restructuring exercise and were holding the post of Havildars had acquired a vested right of promotion to the post of Naib Subedar. This does not reflect the correct position in law. The right is to be considered for promotion in accordance with the Rules as they exist when the exercise is carried out for promotion.

15. Hence, we see merit in the appeal. We accordingly allow the appeal and set aside the impugned judgment and order of the High Court. There shall, however, be no order as to costs.

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A CIVIL APPEALS [@SLP(C) No.30337 of 2014) and SLP(C)
No.30334 of 2014]

16. Applications for impleadment are allowed.

17. Delay condoned.

B 18. Leave granted.

19. In view of the judgment delivered today in Union of India Vs. Krishna Kumar [Civil Appeal @SLP(C) No.26451 of 2014], these appeals are accordingly disposed of. No costs.

Ankit Gyan

Appeals disposed of.