



**Serial No.26**  
**Regular List**

**HIGH COURT OF MEGHALAYA**  
**AT SHILLONG**

WP(C). No. 327 of 2024

Date of Decision: 09.06.2025

Shri. Tokhuye Z. Wotsa,  
S/o Zhekiye Wotsa,  
Permanent resident of Alahuto Colony,  
Zenheboto district, Nagalang,  
Currently residing at BSF Camp,  
Umpling, Shillong,  
East Khasi Hills district, Meghalaya.

...Petitioner

-Versus-

1. Union of India  
Represented by the Secretary to the Govt. of  
India, Ministry of Home Affairs, New Delhi.
2. The Director General, Border Security Force,  
BSF HQ, New Delhi.
3. The Inspector General, BSF Frontier HQ,  
Meghalaya, Shillong.
4. The Commandant (Rectt/Pers), Directorate  
General Border Security Force,  
Personnel Directorate, New Delhi.
5. The Commandant, 172 BSF Battalion,  
Meghalaya, Shillong.

...Respondents

**Coram:**

**Hon'ble Mr. Justice H.S.Thangkhiew, Chief Justice (Acting)**

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**Appearance:**

For the Petitioner/Applicant(s) : Mr. S.Dey, Adv.  
Mr. D.Syiemlieh, Adv.  
Ms. S.Dhar, Adv.

For the Respondent(s) : Dr. N.Mozika, DSGI with  
Ms. M.Myrchiang, Adv.

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i) Whether approved for reporting in Law journals etc: Yes/No

ii) Whether approved for publication in press: Yes/No

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**JUDGMENT AND ORDER (ORAL)**

1. The petitioner is before this Court aggrieved with the impugned order dated 08-06-2023 and impugned letters dated 16-10-2023 and 21-02-2024, whereby he has not been granted Senior Time Scale (STS) on the ground that an injury that had been sustained by him in 2017, while representing the BSF as team captain in the All India Police Commando Competition (AIPCC) in 2017, was treated as an injury sustained on 'Bonafide Government Duty' and not 'Active Duty.'



2. Mr. S.Dey, learned counsel for the petitioner has submitted that the petitioner upon examination by the Medical Board had been placed under the medical category of S1H1A2P1E1 w.e.f. 06-09-2019 and subsequently, in a Departmental Promotion Committee conducted on 28-12-2022, was assessed as 'Fit' for grant of Senior Time Scale w.e.f. 29-02-2020. It is further submitted that the petitioner while in service had also completed all mandatory courses for promotion to the next rank of Deputy Commandant. Vide letter No. 311800, it is submitted, while the list was prepared of Assistant Commandants who were eligible for grant of STS as on 01-01-2022, the petitioner's name was also included and as such, he was under the legitimate expectation that he would be granted STS as entitled. However, while other batchmates were granted STS, the petitioner's name, he submits, was not included in the impugned order dated 08-06-2023, issued by the Commandant (Pers) BSF to which the petitioner submitted a representation on 19-06-2023.

3. The learned counsel then submits that vide the impugned letter dated 16-10-2023, the petitioner's claim for STS was rejected on the ground that the injuries sustained was attributable to bonafide government duty and not active duty, and hence, the same did not fall under the relaxation clause. Though another representation was filed, he submits, the respondents by another letter dated 21-02-2024, replied by stating that his proposal and



others had been submitted in the Ministry of Home Affairs for consideration and that on receipt of any decision, the same would be communicated. It is contended by the learned counsel that Section 2 (1) (a) of the Border Security Force Act, 1968, has defined what is active duty and in furtherance of the said definition, the Ministry of Home Affairs has by Notification dated 29-07-2010, mentioned that persons serving in the States indicated therein, from 1<sup>st</sup> July, 2010 were to be considered as under active duty until further orders. The petitioner, he submits, serving in Madhya Pradesh which is listed in the said Notification, the injuries suffered by him therefore, have to be taken as to be sustained during active duty. The denial therefore, he contends, is arbitrary and discriminatory.

4. Dr. N.Mozika, learned DSGI assisted by Ms. M.Myrchiang, learned counsel for the respondents has submitted that only Officers or men who are wounded/injured during field firings/ accidental firings etc. while on active government duty will be eligible for promotion in different SHAPE categories as per the Instructions for Medical Examination and Classification of Personnel Service in CPMFs, and the petitioner having sustained the injuries while on bonafide government duty, will therefore not be eligible.

5. Heard learned counsel for the parties.



6. On consideration of the facts as placed, the only issue in question that has to be decided by this Court, is whether the denial of STS to the writ petitioner is justified on the sole ground that the injuries that had been sustained, were held to be not while in active duty but on bonafide government duty, inspite of the petitioner also having been duly recommended for promotion.

7. Section 2 (1) (a) of the BSF Act, 1968 has defined ‘Active Duty’ as follows:

*“2. Definitions. – (1) In this Act, unless the context otherwise requires, - (a) “active duty”, in relation to a person subject to this Act, means any duty as a member of the Force during the period in which such person is attached to, or forms part of, a unit of the Force-*

- (i) which is engaged in operations against an enemy, or*
- (ii) which is operating at a picket or engaged on patrol or other guard duty along the borders of India,*

*and includes duty by such person during any period declared by the Central Government by notification in the Official Gazette as a period of active duty with reference to any area in which any person or class of persons subject to this Act may be serving;”*

8. A perusal of the said definition shows that it shall include any period declared by the Central Government by notification in the Official Gazette as a period of active duty with reference to any area in which any person or class of persons subject to this Act may be serving. In this context, it may be



noted that the Central Government Notification No. S.O.1877 (E) dated 29-07-2010, in pursuance to Section 2 (1) (a) quoted above, had listed the States or Union Territories wherein persons referred to in clause (a) were to be considered to be in active duty from 01-07-2010 until further orders. For the sake of convenience, the Notification is reproduced herein below:

**“MINISTRY OF HOME AFFAIRS  
NOTIFICATION**

*New Delhi, the 29<sup>th</sup> July, 2010.*

*S.O. 1877 (E). – In pursuance of clause (a) of Sub-section (1) of Section 2 of the Border Security Force Act, 1968 (47 of 1968), the Central Government hereby declares that the duty of every person referred to in the said clause (a) serving in the States or Union Territories mentioned below with effect from the 1<sup>st</sup> July, 2010 till further orders as active duty for the purposes of the said Act, namely :-*

1. *Andhra Pradesh*
2. *Assam*
3. *Arunachal Pradesh*
4. *Andaman and Nicobar Islands*
5. *Bihar*
6. *Chandigarh*
7. *Chhattisgarh*
8. *The National Capital Territory of Delhi*
9. *Daman and Diu*
10. *Dadra and Nagar Haveli*
11. *Goa*
12. *Gujarat*
13. *Haryana*
14. *Himachal Pradesh*
15. *Karnataka*
16. *Jammu and Kashmir*
17. *Jharkhand*
18. *Kerala*



19. *Lakshadweep*
20. *Madhya Pradesh*
21. *Maharashtra*
22. *Manipur*
23. *Meghalaya*
24. *Mizoram*
25. *Nagaland*
26. *Orissa*
27. *Punjab*
28. *Pudducherry*
29. *Rajasthan*
30. *Sikkim*
31. *Tamil Nadu*
32. *Tripura*
33. *Uttar Pradesh*
34. *Uttarakhand*
35. *West Bengal.*

[F.No.14/15/GN-OPS/BSF]  
ASHOK LAVASA, Jt.Secy.”

9. A judgment of the Supreme Court in the case of *State of Jammu and Kashmir vrs. Lakhwinder Kumar & Ors.* reported in (2013) 6 SCC 333 on the same point, at paragraph 8, 9 and 10 has held as follows:

“8. The expression ‘active duty’ has been defined under Section 2(1)(a) of the Act, it reads as follows:

“2. **Definitions.**-(1) In this Act, unless the context otherwise requires,-

(a) ‘**active duty**’, in relation to a person subject to this Act, means any duty as a member of the Force during the period in which such person is attached to, or forms part of, a unit of the Force-

(i) which is engaged in operations against an enemy, or



*(ii) which is operating at a picket or engaged on patrol or other guard duty along the borders of India, and includes duty by such person during any period declared by the Central Government by notification in the Official Gazette as a period of active duty with reference to any area in which any person or class of persons subject to this Act may be serving;”*

**9.** *The aforesaid provision makes the duty of the nature specified therein to be active duty and includes duty declared by the Central Government by notification in the Official Gazette. From a plain reading of the aforesaid, it is evident that any duty as a member of the Force and enumerated in sub-clauses (i) and (ii), i.e. engaged in operations against an enemy or operating at a picket or engaged on patrol or other guard duty along the borders of India shall come within the definition of active duty. It shall also include such duty by the member of the Force as active duty declared by the Central Government in the Official Gazette.*

**10.** *The Central Government by Notification SO.1473(E) dated 8-8-2007 in exercise of the powers conferred under Section 2(1)(a) of the Act, had made a declaration that the duty of every personnel serving in the State as mentioned in the said Notification for the period 1-7-2007 to 30-6-2010, shall be “active duty”. The State of Jammu & Kashmir is at Serial Number 16 of the said Notification.”*

**11.** As such, in view of the facts and circumstances of the case, the denial of STS to the writ petitioner who was on duty in Madhya Pradesh, a listed State, is found to be arbitrary and wholly unjustified. Consequently, the impugned order dated 08-06-2023, impugned letters dated 16-10-2023 and



21-02-2024 are set aside and quashed and the respondents are directed to afford and grant Senior Time Scale to the writ petitioner w.e.f. 29-02-2020, the date he became entitled for the same within a period of three months from the date of this order.

**12.** As ordered above, the writ petition is allowed and accordingly disposed of.

**Chief Justice (Acting)**