

**HIGH COURT OF TRIPURA
AGARTALA**

WP(C) No.202/2022

Sankar Chandra Natta, Son of Late Nishi Kanta Natta, resident of Sukanta Colony, Gakulnagar, P.O.-Gakulnagar, P.S.-Bishalgarh, District-Sepahijala, Tripura.

..... Petitioner(s).

V E R S U S

1. The State of Tripura, represented by the Secretary, Government of Tripura, Department of Home, Civil Secretariat, New Capital Complex, P.O.-Kunjaban, District:-West Tripura, Pin:-799006.

2. The Secretary, Government of Tripura, Department of Home, Civil Secretariat, New Capital Complex, P.O.-Kunjaban, P.S.-West Agartala, District-West Tripura.

3. The Director General of Police, Government of Tripura, Police Head Quarter, Akhaura Road, PO-Agartala, District:-West Tripura.

4. Inspector General, Government of Tripura, Police Head Quarter, Akhaura Road, PO-Agartala, District:-West Tripura.

5. Deputy Inspector General, AP (Adm and Trg), Government of Tripura, Police Head Quarter, Akhaura Road, PO-Agartala, District:-West Tripura.

6. The Commandant, 1st Battalion Tripura State Rifles, Veer Bandhu Gram, Gakulnagar, P.O.-Gakulnagar, Bishalgarh, District-Sepahijala Tripura.

.....Respondent(s).

For Petitioner(s) : Mr. Raju Datta, Advocate.

For Respondent(s) : Mr. Mangal Debbarma, Addl. G.A.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH

Date of hearing and judgment: **27th June, 2023.**

Whether fit for reporting : **YES.**

JUDGMENT & ORDER(ORAL)

Heard Mr. Raju Datta, learned counsel appearing for the petitioner and Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the respondents-State.

2. Petitioner has joined service on 01.02.1987 on the post of Riflemen (Band) under Tripura State Rifles. But he has not got single promotion since joining in his service. He faced criminal proceedings under Section 302 of the Indian Penal Code (IPC, for short) for intentionally causing death of his wife. He was sentenced to undergo rigorous imprisonment for 10(ten) years with a fine of Rs.10,000/- (rupees ten thousand) by the trial Court under Section 304 Part-II of the IPC vide judgment dated 14.02.2006 (Annexure-1). However, the appellate Court acquitted him of the charges vide judgment dated 03.07.2013 passed in CrI.A. No.31 of 2006 rendered by this Court (Annexure-2). The departmental proceedings initiated against him for the same charges were dropped on 11.09.2013. His suspension period was also regularized and treated as having spent on duty. Thereafter, petitioner urged the department to grant him promotion which he had in the meantime lost. He approached this Court in WP(C) No.584 of 2017. The said writ petition was disposed of

vide judgment dated 08.04.2021. It transpires from a reading of the judgment passed in WP(C) No.584 of 2017 (Annexure-13) that in the DPC held on 27.08.2012 it was found that for the five years under consideration for the period between the year 2007-08 to 2011-12 he had got overall "good" remarks only in three years whereas for the years 2009-10 and 2010-11 his overall performance was graded as "average". The learned Writ Court taking into account that the "average" ACRs were not communicated to him disposed of the writ petition with the following directions:

"7. In the result, the petition is disposed of with following directions:

The competent authority shall communicate the grading of "average" to the petitioner for the said years 2009-10 and 2010-11 and the remarks on which these overall gradings are based. This shall be done within a period of four weeks from today upon which the petitioner would have four weeks to make a representation to the competent authority against such remarks if he wishes to. If there is any change in his overall gradings for both those years and the petitioner does achieve the remarks of "good" or above, he would be granted promotion from the date when on the basis of recommendations of the DPC dated 27.08.2012 the colleagues and juniors of the petitioner were promoted. This would be retrospective for all purposes except for pay and allowances.

8. Pending application(s), if any, also stands disposed of."

3. Petitioner was communicated the grading of "average" for the period 2009-10 and 2010-11 and he also made a representation for its upgradation. That has been declined by the respondent No.6 vide orders dated 30.06.2021 and 07.11.2021 impugned herein. The Reviewing/ Accepting Authority declined to upgrade his ACR after careful appraisal of his performance and examination of all files and related documents for the years 2009-10 and 2010-11.

4. Mr. Raju Datta, learned counsel for the petitioner, submits that the Reporting Officer is in a better position to consider the performance of the employee concerned. It is contended that the Reporting Officer (Company Commandant) had granted him "good" grading for the relevant years as per statement made at paragraph-12 which was downgraded to "average" by the Commandant without giving any reasons.

5. Learned counsel for the petitioner has relied upon the decision of the Apex Court in the case of *Union of India and others vrs. G.R. Meghwal* reported in *2022 SCC OnLine SC 1291* (paragraphs-16 and 17) and submitted that the opinion of the Reporting Authority ought to have been accepted. On account of the downgrading of the ACRs for the relevant years, petitioner has not got any promotion till date. As such, the impugned

orders dated 30.06.2021 and 07.11.2021 call for interference in exercise of powers of judicial review by this Court.

6. Mr. Mangal Debbarma, learned Addl. Government Advocate appearing for the respondents-State, has referred to the counter affidavit. He submits that the representation of the petitioner was duly considered taking into account the relevant files and records concerning the relevant years 2009-10 and 2010-11 by the Reviewing Authority and regretted as the performance of the petitioner was not up to the mark. The list of his allegations/misdemeanors during that period have been enumerated under paragraph-12 of the counter affidavit which if read together completely justifies the downgrading of the ACRs. It is submitted that it is not a case of lack of any instance of absent from duty or misdemeanor on the part of the petitioner during the said period calling for interference by the Writ Court in exercise of judicial review. The recording of ACR depends upon the satisfaction of the Reporting Authority and the Reviewing Authority which ordinarily should not be interfered in writ jurisdiction unless it suffers from malice in law or malice on facts or is totally perverse. Since petitioner was facing a criminal case, only after his acquittal, the disciplinary proceedings on similar charges were dropped in September, 2013. During the period of 2009-10 and 2010-11 since several instances of absence from duty and other

misdeemeanors were found and charges were also framed for absenting from duty without permission which led to confinement to the quarter guard and fine on two occasions, the satisfaction recorded by the Reviewing Authority after consideration of the representation of the petitioner does not suffer from any legal infirmity for interference by this Court.

7. Having considered the submissions of learned counsel for the parties and having taken into account the relevant pleadings placed from the record and being conscious of the limited grounds of interference in such matters relating to recording of ACRs by the Reporting/Reviewing/Accepting Officers, this Court is of the considered view that the impugned orders rejecting the representation of the petitioner for review of the ACRs for the relevant years 2009-10 and 2010-11 do not call for any interference in exercise of writ jurisdiction as they do not suffer from any perversity or malice in law. The enumeration of the entries made in his Service Book relating to absence or other misdemeanors and minor punishments imposed upon him as well do not leave any room of doubt that the satisfaction recorded by the Reviewing Authority regarding the grading of the ACR as "average" does not suffer from any illegality or arbitrariness or perversity which can be interfered with or substituted by this Court in writ jurisdiction. The instances of absence and misdemeanors and punishments have been

enumerated at paragraph-12 of the counter affidavit which deserves to be extracted hereunder in support of the observations recorded by this Court:

"12. That, in reply to para 12 to 14 of the writ petition, I say that on the following irregularities in discharging duties relating to regular activities of Battalion and committing offences U/S 10 & 11 of TSR Act, 1983 the ACR grading for the year 2009-10 and for the year 2010-11 in respect of the petitioner were considered as "Average". Details are as under:-

During the period of 2009-2010

(i) On 03.06.2009 the petitioner was absent from Physical Training held on 0500 hrs and voluntarily joined duty on 04.06.2009 at 0600 hours submitting written mercy petition on 04.06.2009.

(ii) On 09.06.2009 the petitioner was absent from morning PT/Parade and other Battalion duties w.e.f. 09/0515 hrs to 09/1900 hours without obtaining any permission. Later on the petitioner has submitted Joining report requesting for mercy for his unauthorized absence from active duties.

(iii) On 24.07.2009 morning the petitioner left Bn HQR and remained absent from all regimental duties/activities and voluntarily joined duties on 25.07.2009 at 1815 hours after unauthorized absence for 2(two) days.

(iv) On 20.08.2009 at 1830 hrs the petitioner was found absent during evening roll call parade and he had been remaining absent from duty till on 21.08.2009 at 1920 hrs. After joining he had submitted representation seeking mercy for un-authorized absent from duty.

(v) On 09.09.2009 at 0530 hrs the petitioner was found absent from morning PT/Parade till 11.09.2009 at 1730 hrs without any permission from the competent authority. After joining he had submitted an application begging pardon for absence.

(vi) On 17.11.2009 at 0600 hrs the petitioner was found absent without obtaining any permission from his superior till 18.11.2009 at 1730 hrs and voluntarily joined duty by submitting a written representation begging mercy for his un-authorized absence.

(vii) On 12.01.2010 from 1730 hrs the petitioner had failed to attend evening roll call which is unbecoming being a member of the Rifles.

(viii) On 28.01.2010 at 1730 hrs the petitioner was found absent during evening roll call parade and was remaining absent from duty till 29.01.2010 up to 1730 hrs. which is unbecoming being a member of the Rifles.

(ix) On 03.02.2010 at 1730 hrs the petitioner was found absent from evening roll call till 08.02.2010 at 1030 hrs. without any permission from the competent authority. At the time of joining he had submitted an application begging pardon for his absence.

(x) On 15.03.2010 from 0530 hrs the petitioner had failed to attend morning PT/Parade and submitted a writ petition with begged mercy.

(xi) On 18.03.,2010 at 1800 hrs the petitioner was detailed for G.B. Hospital duty but he left BN HQr and remained absent from duties and voluntarily reported at Battalion head quarters on 20.03.2010 at 1830 hours after unauthorized absent for 2(two) days.

(xii) On 27.03.2010 at 2200 hrs the petitioner was detailed for 2nd duty of night area patrolling at Bn HQr but he had failed to perform duty and remained absent from static duties and voluntarily reported at Bn/HQr on 29.03.2010 at 1000 hours from unauthorized absence.

During the period of 2010-2011

(i) On 25.04.2010 the petitioner remained absent from scheduled working fall-in at 1500 hrs and voluntarily joined duties on 29.04.2010 at 1900 hours after 04 (four) days un-authorized absence.

(ii) On 03.05.2010 at 1500 hrs the petitioner remained un-authorized absent from scheduled working fall-in till on 09.05.2010 at 1800 hours and voluntarily joined duties after 06(six) days absence.

In addition to the above indiscipline activities, the petitioner was dealt in Commandant's Orderly Room on 4 (four) occasions and the Commandant being the Disciplinary Authority awarded following minor punishments considering guilty of disobedience, neglect of duty and other misconduct during the **period 2009-2010 and 2010-2011**. Details of offence and punishment awarded is furnished below:-

Sl. No.	Date of Orderly Room	Gist of Allegation	Punishment awarded
01.	27.03.2010	In that, while Rfn(GD) Sasnkar Ch Natta detailed for Law & Order duties at GBP Hospital on 26.03.2010 at 1800 hours under command of Hav(GD) Ramjan Ali. During his active duty period he was drunken and was hue & cry using filthy words with civil	"Severe Censure" under section-12(1)(f) of TSR Act 1983.

		security which is prejudicial to good order and discipline of the Rifles. He has committed an offence Under section-11(a) of TSR Act, 1983.	
02.	31.03.2010	In that Rfn (Band) Sankar Chandra Natta was absenting from Bn HQr. Gokulnagar which detail are as under:- (1) AWL w.e.f. 04.06.2008 to 07.06.2008=04 days (2) AWL w.e.f. 03.09.2008 to 04.09.2008=01 day (3) AWL w.e.f. 12.09.2008 to 13.09.2008=01 day (4) AWL w.e.f. 21.09.2008 to 22.09.2008=01 day (5) AWL w.e.f. 04.10.2008 to 13.10.2008=08 days (6) AWL w.e.f. 01.11.2008 to 02.11.2008=02 days (7) AWL w.e.f. 03.06.2009 to 04.06.2009=01 day (8) AWL w.e.f. 09.06.2009 to 09.06.2009=01 day (9) AWL w.e.f. 24.07.2009 to 25.07.2009=02 days (10) AWL w.e.f. 20.08.2009 to 21.08.2009=01 day (11) AWL w.e.f. 09.09.2009 to 11.09.2009=03 days (12) AWL w.e.f. 17.11.2009 to 18.11.2009=02 days (13) AWL w.e.f. 12.01.2010 to 13.01.2010=01 day (14) AWL w.e.f. 28.01.2010 to	"Confinement in quarter guard" for 15 days under section 12(1)(d) of TSR Act 1983.

		29.01.2010=01 day (15) AWL w.e.f. 03.02.2010 to 08.02.2010=04 days (16) AWL w.e.f. 15.03.2010 to 15.03.2010=01 day (17) AWL w.e.f. 18.03.2010 to 20.03.2010=02 days (18) AWL w.e.f. 27.03.2010 to 29.03.2010=01 day Total period of absence is 37(thirty seven) days.	
03.	10.05.2010	<u>Charge No.01.</u> Rfn (Band) Sankar Chandra Natta absenting from Bn/HQr Gakulnagar w.e.f. 25.04.2010 at 1500 hrs without any permission and voluntarily reported back after AWL for 04 (four) days on 29.04.2010 at 1900 hrs, which is gross misconduct against the disciplined of the Rifles. <u>Charge No.02.</u> Further he absented from Bn HQr. Gokulnagar w.e.f. 03.05.2010 at 1500 hrs without any permission from the authority and voluntarily reported back after AWL for 06 (six) days on 09.05.2010 at 1800 hrs, which is gross misconduct against the disciplined of the Rifles. Total period of AWL (04 + 06)=10(ten) days.	"Confinement in quarter guard" for 03 days under section 12(1)(d) of TSR Act 1983.
04.	04.06.2010	Rfn(GD) Sankar Ch Natta and Hav(band) Samir Chandra Natta both are involved in a physical	"Fine of 7(seven) days pay and allowances" under

		brawl on 03.06.2010 at 0645 hours in Sukanta Market near battalion complex, which brings bad image and reputation and prejudicial to good order and discipline of the Rifles.	section-12(1)(b) of TSR Act, 1983.
--	--	---	------------------------------------

On the assessment of the performance in respect of the petitioner during the year of 2009-2010 and for the year of 2010-2011, the Commandant 1st Bn TSR, respondent No.6 being the ACR Reviewing/ Accepting Authority has considered and graded ACR of the petitioner for the year of 2009-2010 and for the year of 2010-2011 as "**AVERAGE**".

8. The instances of absence without leave and misdemeanors entailing minor punishments upon the petitioner during this period do substantiate the opinion of the Reviewing Officer in refusing to upgrade the "average" ACRs of the petitioner for the period in question.

9. On perusal of the judgment rendered by the Apex Court in the case of **G.R. Meghwal** (supra), it appears that the same is not applicable to the facts of the present case in the light of the discussions made hereinabove and the numerous instances of absence or misdemeanors and minor punishments imposed upon the petitioner which the Reporting Officer seems to have overlooked but was rightly recorded by the Reviewing Officer.

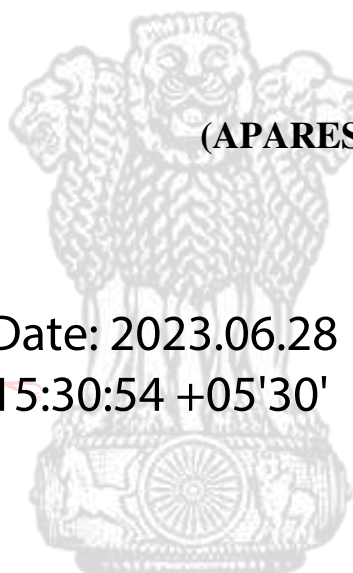
10. As such, this Court is not inclined to interfere in the matter.
The writ petition is accordingly dismissed.

Needless to say, this Court has not made any comments upon the eligibility and claim of the petitioner for promotion for subsequent years which is open for the petitioner to claim and the respondent to consider in accordance with law.

Pending application(s), if any, stands disposed of.

(APARESH KUMAR SINGH), CJ

PULAK BANIK Date: 2023.06.28
15:30:54 +05'30'



सत्यमेव जयते