

Serial No. 13
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 21 of 2023

Date of Decision: 17.05.2023

No. G/38256M Havildar/GD
Mahammad Badruddin

Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner(s)

Mr. V. Kumar, Adv.
vice Mr. B. Pathak, Adv.

For the Respondent(s)

Ms. S. Rumthao, Adv.
vice Dr. N. Mozika, DSG

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| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |

JUDGMENT AND ORDER (ORAL)

1. The petitioner who is serving as Havildar(GD) is aggrieved with the impugned order dated 10.11.2022 by which the petitioner has been directed to retire from service on completion of 30 years of qualifying service on 01.06.2023 on the ground of lacking ACR.

2. It is the further case of the petitioner that he is fully medically fit to be retained in service beyond 30 years till the normal age of superannuation and that service review was not called for in view of the fact that no adverse entry in his ACR had ever been communicated to him. He prays that his service be reviewed on completion of 30 years and for retention in service till the age of superannuation.

3. Mr. V. Kumar, learned counsel for the petitioner at the outset submits that the instant case is squarely covered by Division Bench judgment of this Court dated 23.03.2022 passed in the case of *Union of India vs. Joseph K.S.* He further submits that on being informed by the respondents that he did not possess the requisite ACR criteria for further retention in service and being asked to show cause thereon, the petitioner has submitted the reply on 17.10.2022. It is then submitted that, vide the impugned order 10.11.2022, the respondent No. 3 informed the petitioner that as per policy there was no provision to expunge the ACR and hence the petitioner was not recommended for further service review by the Screening Board.

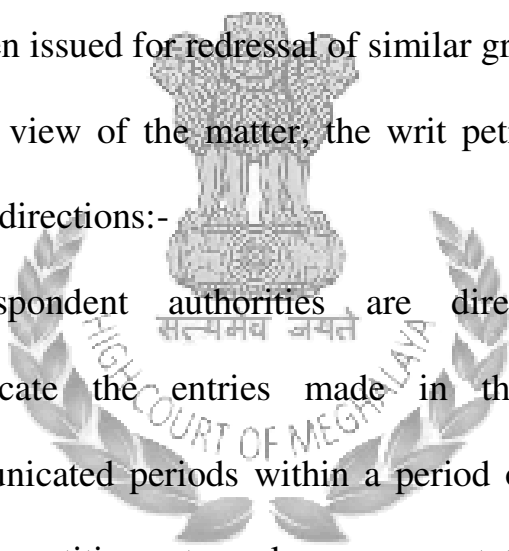
4. The learned counsel submits that as per the ROI (Record of Instruction) 5/97 of the Assam Rifles, every ACR has to be communicated to the employee concerned and consideration of any uncommunicated ACR is not permissible. The ACR of the petitioner he submits having not being communicated, the same should not have been

taken into consideration for the purpose of considering his case for review of service beyond 30 years.

5. Dr. N. Mozika, learned DSG assisted by Ms. S. Rumthao, learned counsel for the respondents does not dispute the position of law as put forth by the petitioner and also the judgment that has been delivered by this Court in this regard.

6. I have heard the learned counsels for the parties, and the case on examination is covered by the earlier order of this Court, wherein directions have been issued for redressal of similar grievances.

7. In this view of the matter, the writ petition is disposed of with the following directions:-

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- i) The respondent authorities are directed to formally communicate the entries made in the ACRs for the uncommunicated periods within a period of 4(four) weeks to enable the petitioner to make a representation within a period of 1(one) month thereafter against the refusal to review his service.
 - ii) The representation so presented will be decided within a period of 1(one) month thereafter, in accordance with law.

8. It is further directed that should the entries be expunged in consideration of the representation, the respondent authorities shall initiate a service review of the petitioner for retention in service. The

entire exercise shall be completed within a period of 2(two) months thereafter.

9. With the above directions, the writ petition is allowed and the impugned order 10.11.2022 is set aside and quashed.

10. No order as to costs.

JUDGE

Meghalaya
17.05.2023
"V. Lyndem-PS"

