

Serial No. 23
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 180 of 2022

Date of Decision: 20.04.2023

No. G/0110677N Havildar/GD
Gopal Dev Bhatt

Vs.

Union of India & Ors.

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. B. Pathak, Adv.
Ms. P. Chettri, Adv.

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

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

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

Oral:

1. The petitioner who was serving as Havildar (GD), being aggrieved with the impugned order dated 31.03.2022, whereby he has been directed to retire from service w.e.f. 01.07.2022, is before this

Court on the ground that, he was not recommended for promotion, for lacking ACR criteria for the year 2019-20. It is pertinent to note herein that, the petitioner had been earlier served with a retiring pension order dated 03.11.2021, against which he had approached this Court, by way of WP(C) No. 426/2021, which was stayed by this Court. However, the writ petition was withdrawn on 01.03.2022, as the impugned order had been recalled by the respondents. Thereafter, on the replacement of sub-rule 48(1)(b) of the Central Civil Service (Pension) Rules, 1972 by sub-rule 42(2) of the Central Civil Service (Pension) Rules, 2021, the petitioner was served with the impugned order dated 31.03.2022, under the replaced sub-rule.

2. It is also pertinent to note that, the petitioner while serving with 29 SCG, NSG, Kolkata on deputation was caught red handed for misappropriating rations meant for troops and also awarded punishment of 'Severe Reprimand' on 31.07.2020. Against the said punishment, the petitioner did not prefer an appeal nor approach the Courts.

3. Mr. B. Pathak, learned counsel for the petitioner submits that, notwithstanding any of the events that have transpired in the service of the petitioner, the undisputable fact that remains is that, he was not recommended for promotion, for lacking ACR criteria for the year

2019-20, the entry or grading of which, was never communicated to him.

4. Dr. N. Mozika, learned DSGI for the respondents submits that, the non-recommendation of promotion was justified, inasmuch as, the same was done in accordance with Para - 39 of the Record Office Instruction No. 5/97, dealing with annual confidential reports, but admits that, the ACR for the relevant year 2019-20, had not been formally communicated to the petitioner, who otherwise was aware of the reasons for lacking ACR criteria.

5. I have heard learned counsels for the parties. Notwithstanding the fact that, the petitioner has been punished in the disciplinary proceeding, which would surely go on his service record, and may have resulted in his lacking ACR criteria, he however, was not given an opportunity to represent against the same. As this case to the extent of non-communication of ACR stands covered by other similar matters, the petitioner's case is liable to be reconsidered by the respondents.

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

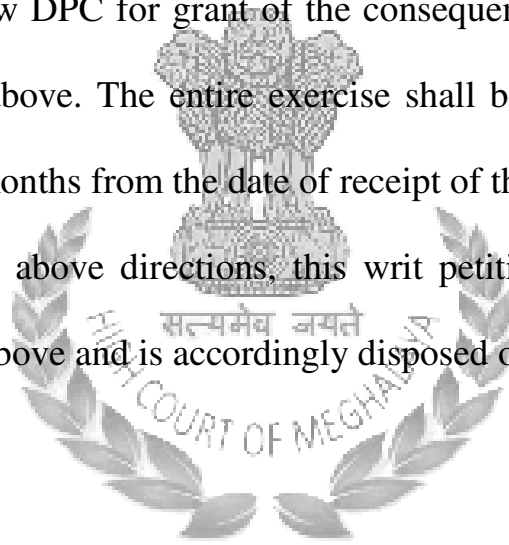
- i) The respondent authorities are directed to formally communicate the entries made in the ACR for the assessment year 2019-20, to enable the petitioner to

make a representation within a period of 1(one) month of receipt of this communication thereof.

- ii) The representation so presented will thereafter be decided within a period of 2(two) months, in accordance with law.

7. It is further directed that should the entries be upgraded in consideration of the representation, the respondent authorities shall constitute a review DPC for grant of the consequential reliefs, if any on the basis of the above. The entire exercise shall be completed within a period of 6(six) months from the date of receipt of the representation.

8. With the above directions, this writ petition is allowed to the extent indicated above and is accordingly disposed of.



Judge

Meghalaya
20.04.2023
"D.Thabab-PS"