

Serial No. 46
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 293 of 2022

Date of Decision: 24.08.2023

JC-3300194P NB Sub, Gouranga Vs. Union of India & Ors.
Debbarma

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. M. Sarania, Adv. with
Ms. A.P. Kharsahnoh, 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 being aggrieved with his supersession in promotion to the rank of Subedar (GD), by the private respondents especially the respondent No. 5, is before this Court, impugning the

order dated 05.11.2021, whereby the respondent No. 5 was accorded promotion and order dated 28.01.2022, whereby the other private respondents were promoted. On a representation being filed, the petitioner was informed that promotion was not granted, as he did not meet the ACR criteria for the year 2016-17, which was below the benchmark for promotion. As the entries in the ACR were not communicated, which would have allowed the petitioner a chance to represent against the same, the petitioner is seeking directions for promotion to the post of Subedar w.e.f. 01.11.2021, the date on which the respondent No. 5, who is junior to him in service was promoted.

2. Mr. M. Sarania, learned counsel for the petitioner, at the outset has submitted that, during the pendency of the writ petition, the petitioner has been promoted to Subedar, and that the only grievance that remains is that, the same should be made retrospective from 01.11.2021, the date of promotion of the respondent No. 5. The non-communication of the entries in the ACR for the year 2016-17, by the respondents he submits, has resulted in the deprivation of his rights.

3. Dr. N. Mozika, learned DSGI for the respondents submits that it is a fact, as indicated in Para – 7 of the affidavit, that the grading for the period of 2016-17, made the petitioner ineligible for promotion and that promotion was denied to the petitioner at that point of time, based

on extant policy instructions. He however, does not dispute the fact that, the ACR for the said period was not communicated to the petitioner.

4. I have heard learned counsels for the parties and perused the materials on records. The DPC proceedings for promotion from Naib Subedar (GD) to Subedar (GD) for the year 2021, has also been perused. It is noted that, the petitioner was graded at '5' for the period 01.09.2016 to 31.08.2017, though for other periods from 2016 to 2020, apart from the period so mentioned, the petitioner was graded '7', which is 'Above Average' or 'Very Good'. From the materials, it is also seen that, the respondent No. 5 is immediately junior to the writ petitioner.

5. The case on examination is squarely covered by earlier judgments of this Court, wherein directions have been issued for redressal of the petitioner grievances on similar facts, such as that of the petitioner who was never communicated with the adverse entries for the period 01.09.2016 to 31.08.2017.

6. In this view of the matter, 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 period 01.09.2016 to 31.08.2017, to enable the petitioner to

make a representation, within a period of 1(one) month after receipt of the same thereof.

- ii) The representation so presented will thereafter be decided positively within a month thereafter, taking into account the relevant parameters for consideration of promotion.

7. It is further provided that should the entries be upgraded in consideration of the representation taking into account the petitioner's earlier track record, 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 5(five) 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
24.08.2023
"D.Thabab-PS"