

GAHC010118762021



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3919/2021

MASTAN SINGH
S/O LATE BHAGAR SINGH, RETIRED AS HAVILDAR/GD (GENERAL DUTY)
FROM SERVICE 43 ASSAM RIFLES, C/O 99 APO, PRESENTLY RESIDING AT
GOPINATH NAGAR, KALAPAHAR COLONY, GUWAHATI, KAMRUP (M)
GUWAHATI ASSAM

VERSUS

UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI 110001

2:THE DIRECTOR GENERAL
ASSAM RIFLES
SHILLONG
MEGHALAYA
973011

3:THE COMMANDANT
43RD ASSAM RIFLES
C/O 99 APO
93204

Advocate for the Petitioner : MR V KUMAR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER**Date : 18/05/2023**

Heard Mr. V. Kumar, learned counsel for the writ petitioner. Also heard Mr. S.S. Roy, learned CGC, appearing for the respondents.

The writ petitioner herein had retired as Havildar/GD(General Duty) on 01/01/2021 while serving under the 43rd Assam Rifles, C/o. 99 APO. While in service, the petitioner's case was not considered for extending the benefit of 3rd MACP on the ground that there were adverse entries in his ACR. However, According to the petitioner, those adverse entries in the ACR were never communicated to him and, therefore, the authorities could not have relied on the un-communicated adverse entries in the ACR, so as to deny him the benefit of 3rd MACP.

Mr. Kumar submits that after completion of 30 years of qualifying service in the Assam Rifles, the petitioner had to retire without the benefit of 3rd MACP, to which, he was entitled to under the law. By relying upon the law laid down by the Hon'ble Supreme Court rendered in the case of ***Dev Dutt Vs. Union of India and others*** reported in ***(2008) 8 SCC 725***, Mr. Kumar submits that the recourse taken by the authorities in this case is arbitrary and illegal and, therefore, calls for interference by this Court.

By filing affidavit on behalf of the respondents, it has been virtually admitted that the gradings in the form of "**average**" in the ACRs of the petitioner was taken into consideration so as to deny him the benefit of 3rd MACP but such entry was not communicated to him. The grading of "average" would be considered as adverse entry in the ACR

If that be so, there can be no doubt about the fact that after the law laid down by the Supreme Court in the case of ***Dev Dutt (Supra)*** as well as ***Sukhdev Singh Vs. Union of India and others*** reported in ***(2013) 9 SCC 566***, un-communicated adverse entries in the ACR could not have been relied upon by the respondents so as to deny the benefit of 3rd MACP to the petitioner. It is

not the stand of the respondents' counsel that there was any other ground for which the benefit of 3rd MACP was denied to the petitioner.

In view of the above, this Court is of the opinion that the petitioner has made out a good case for interference by this Court. As such, the writ petition stands allowed.

The respondents are directed to ignore the un-communicated adverse entries in the ACR of the petitioner for the relevant years and there-after re-consider his application for grant of 3rd MACP and pass appropriate order therein, in the light of the observations made herein above, within three months from the date of receipt of a certified copy of this order.

Whatever be the decision, the same be communicated to the petitioner in writing, within the aforesaid time period.

Writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant