



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

Case No. : WP(C)/294/2023

RAJIB KUMAR SARKAR,
JC-356629W
SUBEDAR (CIPHER),
HQ IGAR (NORTH), SIGNALS COY,
INSPECTOR GENERAL
ASSAM RIFLES (NORTH),
C/O-99 APO, PIN 932554

VERSUS

THE UNION OF INDIA AND 5 ORS
REPRESENTED THROUGH THE SECRETARY TO THE MINISTRY OF HOME
AFFAIRS,
GOVERNMENT OF INDIA,
NORTH BLOCK, NEW DELHI 110011

2:THE DIRECTOR GENERAL OF ASSAM RIFLES
LAITKOR
SHILLONG
MEGHALAYA 793011

3:INSPECTOR GENERAL ASSAM RIFLES (NORTH)
C/O 99 APO
PIN 932554
KOHIMA
NAGALAND

4:BRIGADIER VS GULERIA
SM COMMANDER
21 SECTOR ASSAM RIFLES
C/O 99 APO
AGARTALA
TRIPURA

5:COL AJIT KHATRI
EX COMMANDANT
18 ASSAM RIFLES AGARTALA
TRIPURA
NOW POSTED AT H. NO. 302A
GROUND FLOOR ARMY WAR COLLEGE MHOW
INDORE
MADHYA PRADESH
PIN 453441

6:MAJ SHUVADEEP PAUL
EX ADJUDANT
18 ASSAM RIFLE AGARTALA
TRIPURA
NOW POSTED AT HQ BTY/336 FD REGT
PIN 926336

C/O 56 AP

Advocate for the Petitioner : IMKONG JAMIR

Advocate for the Respondent : CGSC

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

05.12.2023

1. Heard Mr. I. Jamir, learned counsel for the petitioner and Mr. Z.N. Ngullie, learned CGC for the respondents.

2. The issue raised in the writ petition is very small, inasmuch as, the petitioner had submitted representations dated 06.09.2021, 19.12.2022, 06.01.2023 and 27.10.2023 to the respondents, against the adverse remarks recorded in the petitioner's ACR/APAR for the year 2019-2020 and for the year 2021-2022.

3. The petitioner's counsel submits that till date, the petitioner's representations have not been decided by the respondent authorities, which would prejudice the case of the petitioner in the DPC proceedings to be held in the month of January, 2024, for promotion to the post of Subedar Major (Cipher). The petitioner's counsel submits that the petitioner, who is presently serving as Subedar (Sepoy) under the Inspector General, Assam Rifles (North), would be superseded by his juniors, due to the inaction of the respondents in not taking a decision on the petitioner's representations, if the above ACR/APAR are considered in its present form. He accordingly prays that a direction to be issued to the respondent nos.2, 3 & 4, to take a decision on the petitioner's representations, regarding his prayer to upgrade the adverse Gradings given in the petitioner's ACR/APAR for the year 2019-2020 and for the year 2021-2022, in terms of the judgment of the Supreme Court in the case of ***Dev Dutt vs. Union of India & Others***, reported in ***(2008) 8 SCC 725***.

4. Mr. Z.N. Ngullie, learned CGC submits that he has got no objection to the prayer made by the petitioner's counsel.

5. I have heard the learned counsels for the parties.

6. As can be seen from the pleadings, documents and the submission made by the petitioner's counsel, the only prayer of the petitioner is for a direction to be issued to the respondents, to take a decision in respect of the petitioner's representations against the

adverse remark given in the petitioner's ACR/APAR for the year 2019-2020 and for the year 2021-2022.

7. In the case of ***Dev Dutt (supra)***, the Supreme Court has held that every entry of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such an entry may adversely affect the employee in two ways : (1) Had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future (2) He would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. The Supreme Court further held that non-communication of an entry is arbitrary, which violates [Article 14](#) of the Constitution.

8. In paragraph 37 of the judgment in ***Dev Dutt (supra)***, the Supreme Court has held that when the entry in the ACR is communicated to the officer, the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. It also held that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration, as it would be an appeal from Caesar to Caesar.

9. Paragraph 37 of the judgment of the Supreme Court in **Dev Dutt (supra)** is reproduced below as follows :

“37. We further hold that when the entry is communicated to him the public servant should have a right to make a representation against the entry to the concerned authority, and the concerned authority must decide the representation in a fair manner and within a reasonable period. We also hold that the representation must be decided by an authority higher than the one who gave the entry, otherwise the likelihood is that the representation will be summarily rejected without adequate consideration as it would be an appeal from Caesar to Caesar. All this would be conducive to fairness and transparency in public administration, and would result in fairness to public servants. The State must be a model employer, and must act fairly towards its employees. Only then would good governance be possible.”

10. In the present case, the ACR/APAR for the year 2019-2020 and for the year 2021-2022 have been communicated to the petitioner and accordingly the petitioner had written the above representations to various authorities, i.e. the representations dated 06.09.2021 and 19.12.2022 had been addressed to the respondent no.5, while the representations dated 06.01.2023 and 27.10.2023 have been addressed to the Director General of Assam Rifles, i.e. respondent no.2. However, no communication has been made to the petitioner informing him as to whether the petitioner's representations have been decided by the respondent authorities.

11. In view of the law laid down by the Supreme Court in the case of **Dev Dutt (supra)**, it is incumbent upon the respondents to take

a decision on the petitioner's representations for upgradation of his adverse remarks. However, in terms of paragraph 37 of the judgment of the Supreme Court in ***Dev Dutt (supra)***, the authority to consider the petitioner's representations, would have to be an authority higher than the one who gave the adverse entry to the petitioner.

12. In view of the reasons stated above, the respondent nos.2, 3 & 4 are directed to take a decision, as to which authority higher than the authority who gave the Gradings in the ACR/APAR for the year 2019-2020 and for the year 2021-2022, is to examine and take a decision on the petitioner's representations dated 06.09.2021, 19.12.2022, 06.01.2023 and 27.10.2023. Thereafter, the chosen authority should decide the petitioner's representations. The entire exercise should be concluded within a period of 3 (three) weeks from the date of receipt of a certified copy of this order. The decision taken by the authority should be communicated to the petitioner thereafter.

13. The writ petition is accordingly disposed of.

Sd/-

JUDGE

Comparing Assistant