



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 68 of 2021

Date of Decision: 09.09.2024

JC No. 3000886L NB Sub L. S. Singh,
Son of Shri. Laishram Temba Singh,
Permanent resident of Village Khangabok
Khemou Part III, Leipat Leirak,
District:Thoubal, Manipur-795138
Presently residing at C/o 99 APO

.....Petitioner

-versus-

1. The Union of India represented by the Secretary to the Government of India, Ministry of Home Affairs, Shillong.
2. The Director General,
Assam Rifles, HQ, DGAR,
Laitkor, Shillong
3. The Additional Director General,
Assam Rifles,
HQ, DGAR,
Laitkor, Shillong.
4. The Commandant,
30, Assam Rifles,
C/o 99 APO.
5. The Col (Records)
HQ, DGAR,
Laitkor, Shillong.
6. The Brigadier (Personnel),
HQ, DGAR,
Laitkor, Shillong.



7. Hirendra Pathak
JC No. 3000842N
C/O 99 APO

.....Respondent

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. P. Nongbri, Adv.
Mr. M.L. Nongpiur, Adv.

For the Respondent(s) : Mr. R. Debnath, CGC

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

J U D G M E N T

1. The petitioner herein being aggrieved by the Speaking Order No. LS Singh/UPAO-Legal/1126/2019/2454 dated 29.01.2020 by which the representation dated 30.09.2019 filed by him for upgradation of his ACR grading and/or to ignore the weak points found therein was rejected as devoid of merit, has now approached this Court with this petition under Article 226 of the Constitution of India with a prayer for issuance of a writ in the nature of mandamus and/or certiorari by setting aside the said impugned Speaking Order and for grant of promotion with all consequential benefits thereof.

2. Background facts as is seen from the petition and the materials on record is that the petitioner was enrolled in the Assam Rifles on



21.05.1986 as Rifleman (GD). In due course he was promoted to the rank of Naik w.e.f. 02.04.1995 and again, he was further promoted to the rank of Havildar/GD w.e.f. 10.10.1997. On 01.09.2007 he was finally promoted to the rank of Nb Subedar.

3. It is an admitted fact of the petitioner that for promotion from the rank of Nb Subedar to the rank of Subedar the relevant recruitment rules under the Assam Rifles is based on seniority-cum-merit subject to the fulfilment of the following criteria:

- a. Should have three years' service in the rank of Naib Subedar (GD).
- b. Should be in medical category SHAPE-I.
- c. Should have passed Map Reading standard I.

4. The petitioner has further stated that for promotion to the rank of Naib Subedar the ACR criteria framed by the Director General, Assam Rifles/respondent No. 2 as found in Record Office Instructions (ROI) 4 of 1997 is based on a 9 point basis beginning with 1 point for "Below Average" in ascending order to 9 point for "Outstanding".

5. As per the relevant communication dated 25.06.2012 the ACR criteria for promotion inter alia from the rank of Naib Subedar to Subedar w.e.f. 01.01.2013 are as follows:

- a. Three out of Five ACRs should not be below "Above Average" (i.e. minimum 7 points).
- b. Remaining Two ACRs should not be below "High Average"



(i.e. minimum 5 points).

c. Out of last Five reports, Three must be from bn/ARTC&S/NSG (not applicable to GD Pers forming part of any AR team of any discipline att to AR/Army/fmn) (Applicable to GD pers only).

d. Should have been recommended for promotion in the last five (5) reports.

6. Again, the petitioner has averred that it has come to his knowledge that in the year 2018 a vacancy arose for the post of Subedar and a DPC was held by the respondent authorities wherein Shri. Hirendra Pathak/respondent No. 7 who was junior to the petitioner was granted promotion thereby rendering the petitioner to be superseded.

7. Being aggrieved by such supersession, the petitioner had preferred a writ petition before this Court registered as WP(C) No. 309 of 2018 and this Court vide order dated 30.07.2019 had inter alia directed the respondents to communicate the entries made in the relevant ACRs to enable the petitioner to file a representation.

8. The petitioner accordingly filed a representation dated 05.08.2019 with a prayer to the respondent authority to upgrade the entries of his ACRs and to consider him for promotion with retrospective effect. However, the said representation was rejected vide order dated 03.09.2019.

9. The petitioner then preferred another representation dated 30.09.2019 with a prayer for upgradation of his ACR grading and/or to



ignore the weak points in his ACR and consequently to grant him promotion to the rank of Subedar/GD retrospectively w.e.f. 16.07.2018. This too, was rejected vide the order dated 29.01.2020. Hence this petition.

10. It is however admitted by the petitioner that in course of these proceedings the petitioner was granted promotion to the rank of Subedar (GD) vide promotion order dated 28.03.2022 w.e.f. 16.04.2022.

11. Heard Mr. P. Nongbri, learned counsel for the petitioner who has submitted that with reference to the DPC held in the year 2018 wherein his junior colleague had been considered for promotion but in his case it was refused on the ground that he was found lacking in the ACR criteria, the petitioner had approached this Court challenging the said decision and that this Court vide the order dated 30.07.2019 had directed the respondent authorities to communicate to the petitioner the entries made in the ACR. However, the respondent authorities had instead furnished a one page communication dated 03.09.2019 to him, inter alia, citing the reason as to why he was not considered for promotion, the same being that his ACR grading for the year 2013 was 7(Above Average), 2014 - 5(High Average), 2015 - 5(High Average), 2016 - 5(High Average), and 2017 - 7(Above Average), which according to the respondent authorities was found to be inadequate to be considered for promotion as the norm laid down is that to be considered for promotion, a JCO should have been graded at least three reports of “Above Average” and two of “High Average”.

12. The learned counsel has further submitted that not being satisfied with the said communication dated 03.09.2019, the petitioner has filed



another representation dated 30.09.2019 wherein it was pointed out that the non-consideration of promotion to him on the basis of the ACR grading has to be considered as adverse/weak report and in terms of the norms laid down in the “Record Office Instructions (ROI) No. 4/97, instructions at 40 has mandated that weak points/adverse remarks of the reporting officer in the CR must be communicated to the JCO in writing which was not done so at the relevant point of time.

13. In this regard, the learned counsel has referred to the case of *Dev Dutt v. Union of India & Ors.* reported in (2008) 8 SCC 725, para 12, 15, 16 & 17 and the case of *Abhijit Ghosh Dastidar v. Union of India & Ors.*, (2009) 16 SCC 146, para 5, 8 & 10 to submit that non-communication of the relevant entries in the ACR is held to be arbitrary, adversely affecting the promotional aspiration of the concerned official.

14. Another limb of argument advanced by the learned counsel is that the ACR for the year 2015-16 which was the ground for refusal of promotion of the petitioner was never communicated to him at the relevant point of time but was done so only after more than five years or so, that too on the strength of the order dated 30.07.2019 passed by this Court in WP(C) No. 309 of 2018 (supra). This has prejudiced the case of the petitioner which has prevented him to file representation at the relevant point of time as the said ACR grading has been relied upon to adversely affect the promotion of the petitioner. It is also the contention of the petitioner that it is settled law that uncommunicated adverse remarks/reports in the ACR cannot be taken into account if promotion is to be considered. In this regard, the case of *Sanjeev Ranjan v. Union of India* reported in (2018) 4 Gauhati Law Reports 405, para 15 & 16 and



the case of Mohamed Affan Farooqui v. Union of India & Ors., WA No. 35/2022 order dated 01.03.2023, High Court of Meghalaya have been cited.

15. As to the impugned order, the learned counsel has submitted that the same does not disclose any reasons or findings with regard to the upgradation of the ACR of the petitioner. No reasons was also cited as to why the grading of petitioner's ACR was lowered from 7 in the year 2013 to 5 in the year 2014 till 2016. The only reason given is that any alteration or upgradation in the grading earned by the petitioner in his ACR for the year 2013-14, 2014-15 and 2015-16 would set a bad precedence and bad paradigm in the force and the same would reopen a large number of cases which would not be in the interest of the Organisation. This, according to the learned counsel is not an acceptable explanation and by itself is arbitrary and against the essence of the order dated 30.07.2019 (supra). The case of Coal India Ltd. & Ors v. Saroj Kumar Mishra, (2007) 9 SCC 625, para 19 is referred to in this regard.

16. It is therefore the prayer of the learned counsel that the said impugned Speaking Order under challenge be set aside and quashed and the petitioner be directed to be promoted to the rank of Subedar (GD) with retrospective effect from the year 2018.

17. In response, Mr. R. Debnath, learned CGC appearing for the respondents in his submission has contended that though the petitioner has come into the zone of consideration for promotion to the post of Subedar (GD) in the year 2018, his case, along with other eligible candidates was considered by the DPC. However, since he was found to be lacking in the ACR criteria, the benchmark of which was laid down



in the Record Office Instructions (ROI) 4/2002, he was found not eligible to be promoted.

18. The learned CGC has also submitted that for personnel situated as that of the petitioner to be considered for promotion under the ACR criteria, one should have secured a grading of three “Above Average” rating and two “High Average” rating for the preceding five years. However, since the petitioner could secure only two “Above Average” and three “High Average” for the years 2012-13 to 2016-17, more particularly having been graded “ High Average” for the year 2015-16 for which there was a remark that he was ‘lacking for promotion’, therefore, he could not have been promoted to the rank of Subedar.

19. On the contention of the petitioner that he was not made known of the grading in the ACRs, particularly that of the year 2015-16, the learned CGC has submitted that though the petitioner was graded as “High Average” for that year, the same is neither a low figurative assessment nor adverse in nature, hence there was no requirement for the said ACR to be communicated to the petitioner.

20. The learned CGC has further submitted that in compliance with this Court’s order dated 30.07.2019 (supra), the petitioner has filed a representation dated 05.08.2019 for upgradation of his entries and consequent promotion to the post of Subedar. On this representation, the petitioner was furnished with the relevant ACR grading obtained by him for the relevant period which was done so vide communication dated 03.09.2019 to show that he was found not eligible for promotion.

21. The learned CGC has also submitted that in response to the



communication dated 03.09.2019, the petitioner had once again filed another representation seeking upgradation of his ACR and has also raised the issue that because of the alleged non-communication of the ACRs to him at the relevant point of time, the same which ought to have been counted as an adverse report, the resultant affect has left him without an option to file representation at the relevant point of time which ought to have been considered by the respondent authorities, however the fact is that the respondent authority has considered the same and has passed a speaking order dated 29.01.2020 (impugned herein) and as such, no case can be made out by the petitioner for his promotion then.

22. Yet another submission made by the learned CGC is that the petitioner has no case made out in his favour at this juncture, as by his own admission, he was granted the 3rd financial upgradation under the Modified Assured Career Progression (MACP) Scheme since the year 2016 whereby his pay scale was equivalent to that of a Subedar (GD).

23. As to his promotion to the post of Subedar (GD), the petitioner being eligible and having fulfilled all the eligibility criteria, he was accordingly promoted as Subedar (GD) vide order dated 28.03.2022 w.e.f. 16.04.2022, as such, he could not have had any grievance that his case for promotion was not considered, submits the learned CGC.

24. This Court having heard the parties and on perusal of the petition and other related materials including the counter affidavit filed by the respondents and also on going through the record of proceedings of the Department as far as the case of the petitioner is concerned, is made to understand that this is the second round of litigation before this Court



pursued by the petitioner herein.

25. Facts and circumstances as narrated hereinabove need not be repeated except for emphasis. However, it appears that the petitioner when he was serving in the post of Naib Subedar, at the relevant point of time, that is in the year 2018 when a vacancy for the post of Subedar arose, the same being the immediate promotional post, the case of the petitioner along with other similarly situated Officers was considered by the Departmental Promotion Committee. Records would show that the petitioner being found fit in many respects, is however not considered for promotion solely on the ground that he lack in the area of ACR criteria (supra). Therefore, his case for promotion was not considered and instead his immediate junior who is the respondent No. 7 herein was found fit to be promoted.

26. Being aggrieved by such denial for promotion, the petitioner had approached this Court with an application under Article 226 of the Constitution of India, the same being registered as WP(C) No. 309 of 2018. The main contention of the petitioner in the said application is that because of the adverse and weak report in his ACR, which was never communicated to him to enable him to file a proper representation and such non-communication being violative of the procedure laid down in the ROI No. 4 of 1997, he was denied of his rightful contention to be promoted to the next higher post.

27. This Court has vide order dated 30.07.2018 disposed of the application with the following directions:

“...the respondents authorities are directed to communicate the



entries made in the ACR to the petitioner to enable him make a representation, if he so, chose within a period of 1 (one) month. The representation so presented will be decided within a period of 1 (one) month thereafter in accordance with law. Further, it is directed that if the entry is upgraded in consideration of the representation, the respondents authorities thereafter shall consider the case of the petitioner for promotion retrospectively by holding DPC. The entire exercise shall be within a period of 6 (six) months from the date of receipt of the certified copy of this order...”

28. In compliance with the said direction of this Court (supra) the respondent authorities have issued a communication to the petitioner dated 03.09.2019 wherein at para 3 of the same is indicated the reason why the petitioner was not recommended for further promotion since he was lacking in ACR criteria inasmuch as from the year 2013-2017 the petitioner was graded “Above Average” in only two years and was graded “High Average” in three years when he is required to obtain at least three “Above Average” within the said 5 years’ period.

29. Not being satisfied with this communication dated 03.09.2019 the petitioner had filed two separate representations which culminated in the response of the respondent authorities to the same vide the Speaking Order dated 29.01.2020 (impugned herein).

30. It is the case of the petitioner that communication of entries in the ACR of a public servant is mandatory since non-communication of the same would be considered as an arbitrary action being thus violative of the provision of Article 14 of the Constitution of India. The case of Dev Dutt (supra) and other authorities on the same point have been cited by the petitioner to bring home this point. To be clear on this issue it may not be out of place to reproduce para 12, 15, 16 and 17 of the said



judgment of Dev Dutt (supra) as under:

“12. It has been held in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] that arbitrariness violates Article 14 of the Constitution. In our opinion, the non-communication of an entry in the ACR of a public servant is arbitrary because it deprives the employee concerned from making a representation against it and praying for its upgradation. In our opinion, every entry in the Annual Confidential Report of every employee under the State, whether he is in civil, judicial, police or other service (except the military) must be communicated to him, so as to enable him to make a representation against it, because non-communication deprives the employee of the opportunity of making a representation against it which may affect his chances of being promoted (or get some other benefits). Moreover, the object of writing the confidential report and making entries in them is to give an opportunity to a public servant to improve his performance, vide *State of U.P. v. Yamuna Shankar Misra* [1997 (4) SCC 7]. Hence such non-communication is, in our opinion, arbitrary and hence violative of Article 14 of the Constitution.

15. If we hold that only “poor” entry is to be communicated, the consequences may be that persons getting “fair”, “average”, “good” or “very good” entries will not be able to represent for its upgradation, and this may subsequently adversely affect their chances of promotion (or get some other benefit).

16. In our opinion if the office memorandum dated 10/11-9-1987, is interpreted to mean that only adverse entries (i.e. “poor” entry) need to be communicated and not “fair”, “average” or “good” entries, it would become arbitrary (and hence illegal) since it may adversely affect the incumbent's chances of promotion, or get some other benefit. For example, if the bench mark is that an incumbent must have “very good” entries in the last five years, then if he has “very good” (or even “outstanding”) entries for four years, a “good” entry for only one year may yet make him ineligible for promotion. This “good” entry may be due to the personal pique of his superior, or because the superior asked him to do something wrong which the incumbent refused, or because the incumbent refused to do sycophancy of his superior, or because of caste or communal prejudice, or for some other



extraneous consideration.

17. In our opinion, every entry in the ACR 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. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in *Maneka Gandhi v. Union of India* [(1978) 1 SCC 248] that arbitrariness violates Article 14 of the Constitution.”

31. Though the contention of the respondents is that the grading obtained by the petitioner for the year 2015 and 2016 are “High Average”, that is 5 points, the same is neither a low figurative assessment nor adverse in nature and hence was not communicated to the petitioner being found not necessary. However, it was precisely because of such grading received by the petitioner in the said 5 years’ period in question that has adversely affected his promotional prospect. Therefore, as was held in the case of *Dev Dutt* (supra) and other related cases that every entry in the ACR of a public servant whether poor, fair, average, good or very good must be communicated to him/her within a reasonable period, to allow such public servant to make a representation for upgradation etc. of his/her ACR grading, the same would be applicable to the case of the petitioner.

32. However, this aspect of the matter has been dealt with in the case filed by the petitioner, that is in WP(C) No. 309 of 2018 and this Court taking cognizance of the principles as laid down in the case of *Dev Dutt*



(supra) and other related cases has accordingly passed a direction in this regard calling upon the respondent authorities to communicate the said ACR entries to the petitioner.

33. As a follow-up to the proceedings in WP(C) No. 309 of 2018, the petitioner not being satisfied with the findings rendered vide the impugned order dated 29.01.2020 has reiterated his prayer for grant of promotion from the post of Naib Subedar to the post of Subedar (GD) w.e.f. 16.07.2018.

34. At this point of time, it is no longer relevant for the petitioner to say that he was not communicated with the entries in his ACR for the relevant period as the same was covered by the communication dated 03.09.2019. In spite of not being satisfied with the said communication, the petitioner has once again approached this Court harping on the same issue.

35. This Court on careful perusal of the impugned order does not find any infirmity in the same inasmuch as the respondent authority has covered the entire case of the petitioner and has reiterated that because of his inadequate grading in his ACR for the relevant period he could not be considered for promotion. His prayer for upgradation of such entries has not been entertained for which process this Court could find no fault thereof.

36. Be that as it may, the fact that the petitioner was granted financial upgradation in the year 2016 under the MACP Scheme which was not denied by him, the respondent authority confirming the fact that because of the said financial upgradation by which his pay scale was equivalent



to the pay scale of a Subedar (GD), therefore, there is no financial loss to the petitioner. It is also brought out in course of these proceedings that the petitioner has since been promoted to the post of Subedar (GD) w.e.f. 16.04.2022, therefore, no discrimination is found apparent as far as the petitioner is concerned.

37. In view of the observations made hereinabove, this Court finds that the petitioner has not been able to make out a case on merits. This petition is accordingly devoid of merits and the same is hereby dismissed.

38. It may be mentioned that the authorities cited by the petitioner, some of which are found not applicable to the case of the petitioner and/or such authorities being relevant to the subject matter but not exactly applicable to the factual matrix of the case herein, have not been extensively discussed by this Court. Suffice it to say that the crux of the matter in this petition having been duly considered and decided, discussion of such authorities if at all, is but academic.

39. The relevant records of the Department produced before this Court is directed to be handed over to the learned CGC handling this case.

40. Petition disposed of. No costs.

Judge