



<u>Serial No.07</u>

<u>Supp. List</u>

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 169 of 2024

Date of Decision : 13.12.2024

G/134441 X Warrant Officer/GD
(General Duty) Samuel Kutty,
Aged about 54 years,
S/o. Late N V Abraham,
Serving as a Warrant Officer/GD
(General Duty) at the
13th Assam Rifles C/O 99APO, Pin 932013.

...Petitioner

-Versus-

1. Union of India represented by the
Secretary Government of India,
Ministry of Home Affair,
New Delhi – 110001.
2. The Director General, Assam Rifles,
Head Quarter Directorate General,
Assam Rifles, Shillong -11.
3. The Commandant 13th Assam Rifles,
C/O 99 APO, Pin 932030.

...Respondents

Coram:

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

Appearance:

For the Petitioner/Applicant(s) : Mr. V.Kumar, Adv.

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



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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: _ | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. Heard Mr. V.Kumar, learned counsel on behalf of the petitioner, who submits that the grievance of the writ petitioner is with the impugned order dated 28-03-2024, wherein he was intimated that he was ineligible for promotion due to lacking in Annual Confidential Report criteria (i.e. Mandatory Field Service Reports), inasmuch as, as per the policy, the petitioner should have earned two reports (out of last five reports) from the Battalion/Assam Rifles Training Centre etc. He further submits that the petitioner who is presently serving as a Warrant Officer GD (General Duty) is due for consideration for promotion to the post of Naib Subedar, but on account of the stand taken by the respondents, his promotion has not been put up for consideration. Learned counsel further submits, that the case of the petitioner is also covered by the judgment dated 05-12-2019, passed in WP(C). No. 242 of 2016, wherein it has been held that the ACRs which were obtained by the petitioner while he was sent for Extra Regimental Employment (ERE), for the relevant years were to be taken into consideration for the purposes of consideration of ACRs for promotion. He



therefore, prays that directions be issued to the respondents to take into account the petitioner's ACRs while he was on ERE into consideration for promotion.

2. Dr. N.Mozika, learned DSGI assisted by Ms. K.Gurung, learned counsel on behalf of the respondents, has concurred to that part of the submission made by learned counsel for the petitioner that the ACRs generated while on ERE duty be considered for the purposes of promotion, but however, has drawn the attention of this Court to the affidavit of the respondents, wherein at para 2(E), it has been stated that even if the last five ACR/APARs for the year 2019 to 2023 are taken into account, the petitioner would not be eligible for promotion due to the lack in the ACR criteria.

3. This Court has considered the submissions made by the learned counsels for the parties and also the impugned order dated 28-03-2024, against which the instant writ petition has been preferred. An examination of the same at para 3 thereof, clearly only speaks about the ineligibility for promotion of the petitioner being due to not having the ACRs for the required years from the Battalion/Assam Rifles Training Centre etc. Para 3 of the impugned letter dated 28-03-2024, being relevant for the purposes of this case is reproduced herein below:



“3. Your client had come up for promotion to the rank of Naib Subedar (General Duty) in the year 2024 as per his seniority and was screened by the Departmental Promotion Committee – 2024. However, he was found to be ineligible for promotion due to lacking in Annual Confidential Report criteria (i.e Mandatory Field Service Reports). As per policy to be eligible for promotion to the rank of Naib Subedar (General Duty), your client should have earned two reports (out of last five years) from Battalion/Assam Rifles Training Centre & School/National Security Guard (Not applicable to GD personnel forming part of any Assam Rifles Team of any discipline attached to Assam Rifles/Army Formation) whereas he had earned four reports (out of last five reports) from HQ 9 Sector Assam Rifles while on Extra Regimental Employment. Accordingly, the Departmental Promotion Committee -2024 did not recommend your client and his immediate juniors were promoted to the rank of Naib Subedar (General Duty).”

4. At this juncture, this Court has also examined the judgment placed by the learned counsel for the petitioner wherein at para 13 thereof, this Court had come to a finding that the duty spent on ERE and the ACR grading earned by the petitioner thereof, be considered for promotion, inasmuch as, it was service duty within the same organization. The said para for the sake of convenience, is also reproduced herein below:

“13.This Court is not persuaded to approve of the action of the respondents as to why, when the



petitioner was sent on Extra Regimental Employment (ERE) duty to Headquarters IGAR (North), Nagaland, Kohima as Intelligence JCO in public interest on 10.04.2010, within the same organization, the ACR grading earned by him should not be considered for promotion. Legitimate right of the petitioner to consideration for promotion cannot be stultified by involving such arbitrary executive instruction and his junior could not be preferred over him owing to such fortuitous circumstance, which was not in his control. Since the respondents have not disputed the assertion of the petitioner that he earned ACR grading of Very Good/Outstanding during 2010, 2010-11, 2011-12 and 2012-13, the action of the respondents in not granting promotion to the petitioner is declared to be illegal, arbitrary and discretionary, being violative of Article 14 and 16 of the Constitution of India.”

5. Accordingly, in view of the circumstances as seen hereinabove, the respondents are therefore directed to consider the case of the petitioner and for this purpose to also take into account the ACRs for the years 2020, 2021, 2022, 2023, where he was graded when he was on Extra Regimental Employment. The impugned order dated 28-03-2024, is therefore set aside and the respondents are directed to proceed in accordance with law, if the petitioner is otherwise found eligible on other parameters.

6. Matter accordingly stands allowed and disposed of.



Judge