

GAHC010079902020



2024:GAU-AS:12175

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

Case No. : WP(C)/2382/2020

SUBASH KUSHWAHA
S/O- LT. JUGUL KISHOR KUSHWAHA, VILL- KUNDAULI, P.O. LARROAD,
DIST.- DEORIA, UTTER PRADESH, PRESENTLY SERVING AS A WARRANT
OFFICER/GD IN THE 42ND ASSAM RIFLES C/O 99 APO, PIN- 932042

VERSUS

THE UNION OF INDIA AND 2 ORS
REP. BY THE SECY. THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110001

2:THE DIRECTOR GENERAL
ASSAM RIFLES
HEAD QUARTER DIRECTORATE GENERAL
ASSAM RIFLES SHILLONG-11

3:THE COMMANDANT 42ND ASSAM RIFLES
C/O 99 APO
PIN- 93204

Advocate for the Petitioner : MS. S BORA, MS. N CHAKRABORTY

Advocate for the Respondent : ASSTT.S.G.I., MR. K K PARASAR

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

03-12-2024

Heard Ms. S. Bora, learned counsel for the petitioner and Mr. K. K. Parasar, learned CGC appearing for respondent nos. 1, 2 & 3.

2. Having regard to the nature of the case projected by the petitioner the writ petition is taken up for disposal at the admission stage itself.

3. It is the case of the petitioner that he was eligible to be considered for promotion from the rank of Warrant Officer to the rank of Naib Subedar in the DPC which was held in the year 2019. However, he was not recommended for promotion while those junior to him have been promoted and thereby superseding him. The petitioner submitted two representations before the respondent authorities but as the same has not been considered and disposed of, the petitioner is before this Court.

4. The respondents have resisted the writ petition by filing their affidavit-in-opposition wherein it has been stated that against the 5 ACRs under consideration namely, 2013-2014, 2014-2015, 2015-2016, 2016-2017 and 2017-2018, the petitioner failed to score the required points in the last ACR. As per the Standing Instructions circulated by the Directorate General Assam Rifles on 23.11.2016, the grading for promotion and finalization of gradation in respect of Warrant Officer/Havildars will be "Above Average (4 Pts)" and "High Average (3 Pts)". As for the petitioner, he could score only 2 points and therefore, he was

not recommended for promotion.

5. It is the case of the petitioner that even if there was such deficit in his ACR for the year ending 2017-2018, the respondent authorities never communicated the same to him and the same is only in violation of the Restricted Directorate General of Assam Riles Record Office Instruction No. 5 of 1997, more particularly Clause 37 of the Instruction. The learned counsel for the petitioner therefore submits that the respondents having failed to communicate the weak points/average remarks/below average grading given to him for the year ending 2017-2018, they are liable to be directed to reconsider his case for promotion from the date his junior to the rank of Naib Subeder. In support of her submission the learned counsel has relied upon the order dated 27.01.2022 passed by a Coordinate Bench of this Court in WP(C)/4872/2019 (Yogendra Nath Singh Vs Union of India and 2 Ors) and also the case of ***Dev Dutt Vs Union of India and Ors.*** reported in ***(2008) 8 SCC 725***. The learned counsel has also relied upon the case of ***Sukhdev Singh Vs Union of India and Ors.*** reported in ***(2013) 9 SCC 566***.

6. Mr. K. K. Parasar, learned CGC submits that as per the Standing Instructions No. 5 of 1997, the ACRs are not to be shown to the NCOs concern and that since there is a pending representation, the same may be directed to be disposed of by the respondent authority concerned.

7. I have heard the submissions made by the learned counsel for the parties and I have perused the materials available on the record. There is no dispute to the fact that the ACR of the petitioner for the year ending 2017-2018 wherein he scored only 2 points has not been communicated to him. The Standing Instructions No. 5 of 1997 no doubt provides that the ACRs will not be shown to

the NCOs concerned but it is however provided that they are to be communicated in writing in the form of a letter by the initiating officer. In case the initiating officer is posted out or is not available, the unit concerned will be responsible for communicating the weak points/adverse remarks/below average figurative grading in any quality to the NCOs concerned. A copy of the communication duly signed and dated by the NCO and countersigned by the IO or the Officer communicating the same is to be enclosed with the ACRs. This provision has been provided under Clause 37 of the Standing Instructions. Further Clause 41 of the same instructions provides that suitable periodical warnings/performance counsellings should be administered to the NCO before endorsing weak points or adverse remarks in the ACR. Fair opportunity and due guidance should be given to the NCO for improvement. If he shows due improvement, weak points/adverse remarks need not be endorsed.

8. From what has been stated herein above, it only appears that the respondent authorities fail to adhere to their own guidelines. The facts and issues involved in ***Yogendra Nath Singh*** (supra) cited by the learned counsel for the petitioner is found to be similar. Relevant portion of the said order which is paragraphs 9 & 10 is quoted herein below for perusal:-

“9. It is too well settled that any entry in the ACR, whether good or bad or adverse are required to be duly communicated to the concerned employee. As the entry in the ACR resulted in the denial of promotion to the petitioner, it was a bounden duty of the respondent authorities to communicate the adverse entry in the ACR to the petitioner. The said adverse entry in the ACR having been not communicated, the Court is inclined to hold the grading of the petitioner as “Average (02 points)” in the ACR for the year 2015-2016 is bad in law and not sustainable as the petitioner had lost an opportunity to make a representation against such adverse remarks. Hence, the said remark in ACR for the year 2015-16 is set aside. Accordingly, the Court is inclined to

direct the Commandant, 42nd Assam Rifles (respondent no.3) or any other competent authority of the Assam Rifles including the Director General, Assam Rifles (respondent no.2) to pass appropriate orders for an appropriate rectification of the ACR, which would not cause any impediment for his promotion to be considered as on 10.04.2019, i.e. the date of impugned order of promotion.

10. As a consequence of the finding as recorded above, the said respondent nos.2 and 3 are directed to promote the petitioner from the rank of Havildar (General Duty) to the next higher post of Warrant Officer (General Duty) on and from the date on which his admitted juniors were promoted with consequential benefit of pay and seniority."

9. From what has been extracted herein above, this Court is of the considered view that the case of the present petitioner is fairly covered and therefore a similar order should also follow in the present case. The respondents are therefore directed to pass appropriate orders for an appropriate rectification of the ACR of the petitioner for the year ending 2017-2018 which will not cause any impediment for his promotion to be considered as on 16.04.2019, the date on which his junior was promoted. Consequent upon such rectification, the respondents are directed to promote the petitioner to the next higher rank of Naib Subedar with effect from the date on which his immediate juniors have been promoted with consequential benefit of pay and seniority. The entire exercise be carried out as expeditiously as possible and at any rate, within a period of 2 (two) months from the date of receipt of a certified copy of this order.

10. The writ petition accordingly stands disposed of.

11. No cost.

JUDGE

Comparing Assistant