

GAHC010145802020



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

Case No. : WP(C)/4336/2020

RAJESH KUMAR GURUNG
S/O- LT. RAM BAHADUR GURUNG, VILL- PILLA BASTI,
P.O.RANGAPAHARA, DIST.- DIMAPUR, NAGALAND, PRESENTLY SERVING
AS A WARRANT OFFICER/GD (GENERAL DUTY) AT THE 31ST ASSAM
RIFLES C/O 99 APO, PIN- 932031

VERSUS

UNION OF INDIA AND 3 ORS
REP. BY THE SECY. THE GOVT. 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 31ST ASSAM RIFLES
C/O 99 APO
PIN- 932031

4:G/3100733W NAIB SUBEDAR/GD (GENERAL DUTY)
SHER BAHADUR CHAND
31ST ASSAM RIFLES
C/O 99 APO
PIN- 93203

Advocate for the Petitioner : MR. B PATHAK

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

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 08.05.2024

Heard Mr. V. Kumar, learned counsel for the petitioner as well as Mr. B. Chakraborty, learned CGC appearing for the respondents.

2. In brief, the case of the petitioner is that he is presently serving as a Warrant Officer/ GD (General Duty) in the Assam Rifles. The petitioner projects that he had come across the Battalion Routine Order (Pt.II) dated 12.06.2020 in respect of Unit-31 AR by which the respondent no.4, who has stated to be junior in rank to the petitioner was promoted from the post of Warrant Officer to the next higher post of Naib Subedar. The petitioner claims that he was senior in position to the respondent no.4. Thereafter, the petitioner had submitted a representation dated 15.05.2020 to the Commandant, 31st Assam Rifles. However, by response dated 04.06.2020, the petitioner was informed that his name was not recommended by the DPC for promotion due to lack of ACR. In this writ petition, it is projected that the respondents have arbitrarily not considered his ACR w.e.f. 15.11.2015 to 14.12.2019, during which period he was posted in the Assam Rifles Field Intelligence Unit (ARFIU for short). It is projected that the petitioner has no control over his posting and therefore, even if the petitioner had remained in the ARFIU for the period wherein his ACR from 15.11.2015 to 14.12.2019 was made, the petitioner could not have been denied his promotion. Accordingly, by filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for quashing of the promotion order of respondent no.4 bearing order no. I.1911/31/346/2020/Adm-I(A)/859 dated 06.05.2020; Battalion Routine Order Part-II, BRO no. 87 dated

12.06.2020; and for a direction upon the respondent authorities to consider the case of the petitioner for promotion w.e.f. 01.04.2020.

3. The learned counsel for the petitioner, by reiterating that the petitioner has no control over his posting, has submitted that the ACR grading earned by the petitioner for the ACR period 15.11.2015 to 14.12.2019 could not have been ignored. In respect of his submission, he has placed reliance on the case of *IGE Sora JC113838 Vs. Union of India and Ors., 2019 SCC Online Megh 299*.

4. Per contra, the learned CGC by referring to the affidavit-in-opposition filed on behalf of the respondents, vehemently opposed the prayer made in this writ petition on the ground as per the criteria for promotion of GD personnel applicable for the Assam Rifles, which is annexed to the said affidavit-in-opposition as Annexure-II is required to be followed. It is submitted that for being considered for promotion from the post of Warrant Officer to Naib Subedar (GD), the criteria laid is as follows:

WO to Nb Sub (GD)	Annexure-II MR-I TT-I Promotion cadre (s) Passed	6 Years service as WO/GD with total 16 yrs of service	(a) Three(3) out of last five(5) reports should not be below 'High Average' (b) Remaining two(2) reports should not be below 'Average' (c) Out of last five(5) reports, two reports 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) (d) Should have been recommended for promotion in the last three(3) reports.
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5. Accordingly, it is submitted that the stand of the respondents is that the posting of the petitioner at ARFIU is not entitled to be interpreted as an extraneous service. Accordingly, the said service cannot be counted for the purpose of promotion as the ARFIU is an integral part of the Assam Rifles

Organization. It is submitted that the requirement of the promotion policy in the Assam Rifles, applicable for GD personnel is that out of last five reports, two reports must be from Battalion/ ARTC&S/ NSG. Accordingly, it is submitted that on one hand the petitioner has never made his representation for transfer to any of the said three services and moreover, the specific stand of the respondents in paragraph 4(iv) of the affidavit-in-opposition is that the petitioner was sent to ARFIU on 15.11.2015 from 31st Assam Rifles on his own verbal request for a tenure of three years and that after completion of the said tenure and after his reliever reported on 09.10.2019, the petitioner was reverted to 31st Assam Rifles. Accordingly, it is submitted that the criteria laid down by the Assam Rifles for promotion cannot be faulted. Accordingly, prays for dismissal of the writ petition.

6. From the pleadings made in paragraph 7 of the writ petition it is seen that the petitioner has taken a stand that after completion of his tenure, he requested the Commandant, ARFIU that he has completed his tenure and willing to return to his unit.

7. It is not in dispute that the petitioner had completed tenure of three years in ARFIU for a period from 15.11.2015 to 14.12.2019. From the documents annexed to this writ petition, it is also noted that in response to the letter dated 15.05.2020 by the petitioner claiming his consideration for promotion, the competent Authority of 31st Assam Rifles by a letter dated 04.06.2020 (Annexure-6) had informed the petitioner that on 15.11.2015, he was sent on ERE duty for three years of his own request and after completion of three years, he was not returned to the Unit and that the petitioner had not even submitted any written application for last four years one month to return

to the Unit. Therefore, from the pleadings made in paragraph 7 and to the contents of reply dated 04.06.2020 (Annexure-6), it is evident that the petitioner was transferred at his own request to ARFIU.

8. Therefore, when the promotion policy is in force in respect of GD personnel, it is expected that the petitioner would be aware of the criteria for promotion of GD personnel from the rank of Warrant Officer to Naib Subedar (GD). Therefore, the Court is of the considered opinion that the petitioner took a calculated risk to make a request transfer to ARFIU which is within the establishment of Assam Rifles, which would not qualify the petitioner to be considered for promotion in terms of clause-C of the promotion policy, which is already extracted hereinbefore. If the petitioner can be transferred at his own request and retransferred at his own request as per pleading made in paragraph 7 of the writ petition, there was no bar for the petitioner to opt for being transfer to Battalion/ ARTC&S/ NSG.

9. Therefore, the case of the *IGE Sora JC113838 (supra)*, cited by the learned counsel for petitioner would not help the petitioner in this case because of the fact that this is not a case where the petitioner was compulsorily transferred to ARFIU contrary to his request to be transferred to Battalion/ ARTC&S/ NSG. The petitioner has not denied the correctness of his stand taken in the hereinbefore referred letter dated 04.06.2020 by the competent Authority in the 31st Assam Rifles wherein it is stated that the petitioner was sent on ERE duty to ARFIU at his own request.

10. Therefore, having availed on-request transfer to ARFIU, the action of the respondent authorities in transferring the petitioner to the said unit cannot be said to be arbitrary or illegal and it cannot be held that the said transfer was

made to deny any promotion to the petitioner. From the pleadings made in paragraph 7 of the writ petition, it is seen that the petitioner had made a request for his transfer back to the battalion after completion of three years tenure under the Commandant, ARFIU and on the said ground this writ petition fails and the same is dismissed, because the petitioner did make a verbal request for his transfer and therefore, there was no impediment for him to seek transfer to other establishment such as Battalion/ ARTC&S/ NSG, and it would have been another thing if he was not transferred despite a request being made.

11. However, before parting with the records, the Court finds that the practice followed in the Assam Rifles to entertain verbal request for transfer and posting makes the entire process questionable and subject to existence of some direction with the authorities. Therefore, it is left open to the authorities in the Assam rifles to take corrective measure so that the members of the uniformed forces are not discriminated against by entertaining such verbal request. However, this would be a policy decision and left open to the authorities to decide.

JUDGE

Comparing Assistant