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

Case No. : WP(C)/5452/2022

HARENDRA NATH ROY
S/O. LT. PRANESHWAR RAY, PRESENTLY SERVING AS NO.G/153824Y
WARRANT OFFICER/GD (GENERAL DUTY) AT 15TH ASSAM RIFLES C/O. 99
APO, PIN-932015.

VERSUS

UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY 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 15TH ASSAM RIFLES

C/O. 99 APO
PIN-932015.

4:JC-153283 NAIB SUBEDAR/GENERAL DUTY MALA RAM YADAV

C/O. THE COMMANDANT 15TH ASSAM RIFLES
C/O. 99 APO
PIN-932015.

5:JC-153368 NAIB SUBEDAR/GENERAL DUTY DILAWAR SINGH

C/O. THE COMMANDANT 15TH ASSAM RIFLES
C/O. 99 APO

PIN-932015

Advocate for the Petitioner : MS S BORA,

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

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 20.11.2024

Heard Ms. S. Bora, learned counsel for the petitioner. Also, heard Mr. K. Gogoi, learned CGC, for the respondents Union of India.

2. By way of this petition under Article 226 of the Constitution of India, the petitioner is seeking consideration for promotion to the rank of Naib Subedar/G.D. (General Duty) w.e.f. 01.05.2022 i.e. from the date on which his juniors were promoted with all consequential service benefits. The specific case of the petitioner is that the petitioner who was enrolled as a Rifleman/G.D in the Assam Rifles on 17.07.1989 was subsequently promoted to the rank of Havildar/G.D. in the year 2003 and thereafter to the rank of Warrant Officer/G.D. in the year 2016. Though the petitioner was expecting promotion thereafter to the rank of Naib Subedar/G.D, however, instead of promoting the petitioner, the respondent authorities promoted his juniors to the post of Naib Subedar/G.D. Situated thus, the petitioner filed representation before the Commandant 15th Assam Rifles on 29/06/2022 seeking promotion as per his seniority to the said post of Naib Subedar. However, the respondent by letter dated 03.07.2022 turned down the said representation filed by the petitioner on the ground that due to lack of Annual Confidential Report (ACR) criteria the

petitioner could not be promoted to the said post of Naib Subedar/G.D. Accordingly, the present petition has been filed.

3. Pertinent that it is admitted at the bar that the entries in the ACR in question was not communicated to the petitioner.
4. It is submitted at the bar that the issue involved in the present writ petition is squarely covered by the Judgment and Order dated 09.12.2021 passed by this Court in WP(C) no. 9571/2019 in the case of ***Hav/na Murali Kumar P Vs. The Union of India and 3 others*** and Judgment and Order dated 27/01/2022 passed in WP(C) no. 4872/2019 in the case of ***Yogendra Nath Singh Vs The Union of India and 2 Others***.
5. A perusal of the aforesaid cases indicates that this Court by relying on the decision of the Apex Court in ***Dev Dut Vs Union of India*** report in *2008 8 SCC 725* specially paragraph 41 held that non communication of entries in the ACR of a Public Servant, whether he is in Civil, Judicial, Police or in other services (other than Military), is arbitrary and violative of Article 14 of the Constitution.
6. It further appears that that this Court in the aforesaid case i.e. ***Hav/na Murali Kumar P (supra)*** after noting that the issue as whether the Assam Rifles is a military organization or is a para military organization is pending adjudication before the Delhi High Court held that the proposition enunciated by the Apex Court in paragraph 41 of ***Dev Dutt (supra)*** is applicable to the petitioner in that case, who is an employee of the Assam Rifles and accordingly directed the respondent authorities in the Assam Rifles to provide MACP benefit to the petitioner

from the concerned date. As it is submitted at the bar that the aforesaid issue is still pending before the Delhi High Court, I find no reason to defer from the aforesaid Judgment and Order passed by this Court and accordingly, I am inclined to dispose of this writ petition in similar line as that of Judgment and Order dated 09.12.2021 passed in WP(C) no. 9571 of 2019.

7. In view of the above the adverse entry in the ACR of the concerned having not been communicated to the petitioner and the same having been relied upon to deny the petitioner for promotion is unsustainable.

8. In view of the above, the letter dated 03.07.2022 intimating the petitioner that the petitioner is not meeting the ACR criteria for further promotion is set aside and quashed. The respondents are directed to reconsider the case of the petitioner for the promotion to the subject post in accordance with law.

9. It is needless to be clarified that the entire exercise shall be carried out within a period of 3 (three) months from the date of receipt of certified copy of the Court's order.

10. Ordered accordingly.

11. With the aforesaid observations and directions, the writ petition is disposed of.

JUDGE