

GAHC010253502022



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

Case No. : WP(C)/8039/2022

NO. G/2083 EX HAVILDAR/GD (GENERAL DUTY) HARDEV SINGH
CHAUHAN
S/O LATE SIRHAT SINGH, RETIRED AS HAVILDAR/GD (GENERAL DUTY)
FROM SERVICE FROM 40TH ASSAM RIFLES, C/O 99 APO, P/R/A GOPINATH
NAGAR, KALAPAHAR COLONY, GUWAHATI, DIST- KAMRUP (M),
GUWAHATI, ASSAM

VERSUS

UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI 110001

2:THE DIRECTOR GENERAL ASSAM RIFLES
SHILLONG
MEGHALAYA - PIN 973011

3:THE COMMANDANT 40TH ASSAM RIFLES
C/O 99 APO PIN-93204

Advocate for the Petitioner : MR V KUMAR

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

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

Date : 07.03.2024

Heard Mr. V. Kumar, learned counsel for the petitioner. Also heard Mr. B. Deka, learned CGC.

2. The writ petitioner herein had retired as Havildar/GD(General Duty) on 01/08/2022 while serving under the 40th Assam Rifles, C/o. 99 APO. While in service, the petitioner's case was not considered for extending the benefit of 3rd MACP on the ground that there were adverse entries in his ACR. However, According to the petitioner, those adverse entries in the ACR were never communicated to him and, therefore, the authorities could not have relied on the un-communicated adverse entries in the ACR, so as to deny him the benefit of 3rd MACP.

3. Mr. Kumar submits that after completion of 30 years of qualifying service in the Assam Rifles, the petitioner had to retire without the benefit of 3rd MACP, to which, he was entitled to under the law. By relying upon the law laid down by the Hon'ble Supreme Court rendered in the case of *Dev Dutt Vs. Union of India and others* reported in (2008) 8 SCC 725, Mr. Kumar submits that the recourse taken by the authorities in this case is arbitrary and illegal and, therefore, calls for interference by this Court.

4. In the affidavit filed on behalf of the respondents, it is admitted that the gradings in the form of "Average" in the ACRs of the petitioner for the year 2020-21 were taken into consideration so as to deny him the benefit of 3rd

MACP but such entry was not communicated to him as according to the respondents, such entry cannot be treated to be an adverse remark. From the averments made in the affidavit, it is seen that for the years 2018-19 and 2019-20, the petitioner was graded as "Above Average" and "High Average". And because of his grading as "Average" for the year 2020-21, he was not found eligible for being granted the benefit of 3rd financial upgradations under MACP scheme. The grading of "average" would be considered as adverse entry in the ACR. If that be so, there can be no doubt about the fact that in view of the law laid down by the Supreme Court in the case of *Dev Dutt (Supra)* as well as *Sukhdev Singh Vs. Union of India and others* reported in (2013) 9 SCC 566, for the year 2020-21 the petitioner was downgraded to "Average" when compared to the gradings for the years 2018-19 and 2019-20. Such downgrading will be considered to be an "adverse entry" and cannot be taken into account for the purpose of assessment of ACRs unless communicated to the petitioner. Therefore, un-communicated adverse entries in the ACR could not have been relied upon by the respondents so as to deny the benefit of 3rd MACP to the petitioner. It is not the stand of the respondents' counsel that there was any other ground for which the benefit of 3rd MACP was denied to the petitioner.

5. In view of the above, this Court is of the opinion that the petitioner has made out a good case for interference by this Court. As such, the writ petition stands allowed.

6. The respondents are directed to ignore the un-communicated adverse entries in the ACR of the petitioner for the relevant years and there-after reconsider his application for grant of 3rd MACP and pass appropriate order therein, in the light of the observations made herein above, within 3 (three)

months from the date of receipt of a certified copy of this order.

7. Whatever be the decision, the same be communicated to the petitioner in writing, within the aforesaid time period.

8. Writ petition stands disposed of.

JUDGE

Comparing Assistant