

GAHC010066572025



2026:GAU-AS:1402

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

Case No. : WP(C)/1793/2025

3800392 HAV GD BHUSHAN KUMAR
S/O- SHANKAR LAL, SERVING AS HAVGD AT 38 AR, SRIKONA SILCHAR,
ASSAM C/O- 99APO

VERSUS

UNION OF INDIA
REP BY SECY TO THE GOVT OF INDIA, MIN OF HOME AFFAIRS, NEW
DELHI- 110001

2:THE DIRECTOR GENERAL

ASSAM RIFLES
HEAD QUARTER DIRECTORATE GENERAL
ASSAM RIFLES
SHILLONG-11.

3:THE COMMANDANT
38TH ASSAM RIFLES
C/O- 99 APO
PIN- 93203

Advocate for the Petitioner : MR V KUMAR, MR. T NATH,MS M TIWARI,MR B
HAZARIKA,MR B PATHAK

Advocate for the Respondent : DY.S.G.I., MR. R K D CHOUDHURY (DEPUTY SOLICITOR
GENERAL OF INDIA)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : N/A

Date of pronouncement of judgment : 04.02.2026

Whether the pronouncement is of
the operative of the judgment? : No

Whether the full judgment has been
pronounced? : Yes

JUDGEMENT(Oral)

Heard Mr. B. Pathak, learned counsel for the petitioner. Also heard Mr. R. K. D. Choudhury, learned Deputy Solicitor General of India for the respondents.

2. By filing this writ petition, the petitioner has prayed for a direction to the respondent authorities to consider his case for the benefit of MACP-III on completion of 30 years service, i.e. with effect from 24.10.2022, by expunging/ignoring any uncommunicated adverse entry in his Annual Confidential Reports (ACRs) and to grant all consequential service benefits.

3. The case of the petitioner, in brief, is that he was enrolled in the Assam Rifles on 24.10.1992 as a Rifleman/GD and was posted to the 4th Assam Rifles in the year 1993. He was promoted to the rank of Havildar/GD in the year 2007.

4. It is the contention of the petitioner that after promotion to Havildar/GD, his next higher promotional rank is Warrant Officer/GD. The petitioner was due to be considered for granting the benefit of MACP-III on completion of 30 years of service, i.e. with effect from 24.10.2022. Despite his eligibility, the petitioner has been deprived of granting financial upgradations under MACP Scheme. Aggrieved by the said action, the petitioner approached the respondent authorities for the grant of MACP-III. Despite requesting the respondents to communicate the reason, his grievance was ignored. Thereafter, the petitioner served a legal notice dated 24.01.2025 seeking benefit of MACP-III on completion of 30 years of service with effect from the year 24.10.2022.

5. It is contended that the respondent authorities, vide letter dated 28.02.2025, informed the petitioner that his case had been considered by the Departmental Promotion Committee (DPC) held in the year 2022, wherein, his last five Annual Confidential Reports/Annual Performance Assessment Reports (ACRs/APARs) for 2019-20, 2020-21 to 2021-22 were examined and he was graded "Average" (02 points) in 2020-21, below the prescribed benchmark of "Good" or "Very Good" (03/04 points). Consequently, the name of the petitioner was not recommended for the benefit of MACP-III, being ineligible under the ACR criteria.

6. It is contended that that no adverse entry in his ACRs/APARs had ever been communicated to the petitioner and he was unaware of the same until receipt of the reply dated 28.02.2025. It is the settled position of law that every

ACR/APAR must be communicated to the concerned employee and consideration of any uncommunicated entry is impermissible. Since the petitioner's ACR for the year 2021 was not communicated to him, it could not lawfully be taken into account for denying his benefit of MACP-III with effect from 24.10.2022.

7. Mr. B. Pathak, learned counsel for the petitioner, submits that the petitioner has rendered more than 32 years of unblemished service to the organization and is now at the fag end of his service career. Except for the grading in the ACR, which was below the prescribed benchmark required for the benefit of MACP-III, the petitioner fulfills all the requirements. The entries/remarks in the petitioner's ACR have never been communicated to him, thereby depriving him of the opportunity to raise his grievance by way of a representation in terms of the relevant provisions, which the respondents have expressly violated.

8. Mr. Pathak, learned counsel, while referring to the judgments of the Hon'ble Supreme Court in the cases of **Dev Dutt vs. Union of India & Ors.**, reported in **(2008) 8 SCC 725** and **Sukhdev Singh vs. Union of India & Ors.**, reported in **(2013) 9 SCC 566**, which have been reiterated in the subsequent cases, submits that law relating to recording of Annual Confidential Report (ACR) and its communication, has been settled by the Hon'ble Supreme Court, wherein it has held that uncommunicated remarks in the ACRs cannot be acted upon and are directed to be expunged. Therefore, he submits that a direction may be issued to the respondent authorities to grant the benefit of MACP-III to the petitioner on fulfilling all the requirements by ignoring the

uncommunicated entry/grading in the ACR.

9. Mr. R. K. D. Choudhury, learned DSGI for the respondents, submits that for grant of benefit of MACP-III, the petitioner's case was considered by the Departmental Promotion Committee (DPC) held in the year 2022. The last five Annual Confidential Reports (ACRs) for the years 2019-20, 2020-21 to 2021-22 were taken into account to ascertain eligibility for promotion. It was revealed that the petitioner had been graded "Average" by his Initiating Officer and Reviewing Officer in the ACR for the year 2020-21, which is below the prescribed benchmark of 03/04 required for granting the benefit of MACP-III. Consequently, the petitioner was found ineligible for granting the benefit of MACP-III with effect from 24.10.2022.

10. Mr. R. K. D. Choudhury, learned DSGI submits that the respondent authorities have acted strictly in accordance with the extant policy. The claim of the petitioner for granting the benefit of MACP-III is not sustainable, as he did not meet the prescribed ACR criteria. A legal notice submitted by the petitioner was duly received and a reasoned reply was provided vide letter dated 28.02.2025. He submits that Assam Rifles transitioned to the Annual Performance Assessment Report (APAR) system in 2021, whereas the ACR system governed by Record of Instructions (ROI) 04/1997 was followed prior to that. As per the ROI, confidential reports are not shown to a JCO except where weak or adverse assessments are required to be communicated. In the instant case, the petitioner's ACR for the year 2020-21 did not contain any adverse remarks and was graded based purely on his performance during the

assessment period. Therefore, non-communication of the ACR does not constitute any violation of Rules or arbitrariness.

11. Mr. R. K. D. Choudhury, learned DSGI, submits that the ACR grading is a mandatory criterion for granting the benefit of MACP. Since the petitioner's grading fell below the prescribed benchmark, he was rendered ineligible for the benefit of MACP-III and his supersession in the DPC held on 2022, was strictly in accordance with the extant policy. He submits that the grant of MACP-III is carried out on completion of 30 years of qualifying service and subject to fulfillment of the required criteria. Therefore, no injustice has been caused to the petitioner, nor any of his legal or constitutional rights have been infringed. Accordingly, the present petition is without merit and is liable to be dismissed.

12. I have considered the submissions of the learned counsels for the parties and also perused the materials available on record.

13. The petitioner, who enrolled as a Rifleman/GD in the year 1992 and posted to 4th Assam Rifles, was promoted to the rank of Havildar/GD in the year 2007. The petitioner admittedly has completed 30 years of service for granting the benefit of MACP-III. The non-recommendation for the benefit of MACP-III by the DPC appears to be due to the grading of "Average" by his Initiating Officer and Reviewing Officer in the ACR for the year 2020-21, which is below the prescribed benchmark of "Very Good" required for promotion and financial upgradations under MACP Scheme.

14. Record reveals that admittedly the entry/grading in the ACRs of the petitioner was never communicated to him. The entry/grading in the APAR/ACR requires the Reviewing Authority to ensure communication of the APAR/ACR to the ratee. Thus, the respondent authority ought to have communicated the entry/grading on the APAR/ACR to the petitioner.

15. The law relating to the recording of ACRs/APARs has been well settled by a catena of judgments of the Hon'ble Supreme Court, right from **Dev Dutt** (supra) to **Union of India v. G.R. Meghwal**, reported in **2022 SCC Online SC 1291**. The Hon'ble Supreme Court has held that every entry, irrespective of whether it is poor, average, good, very good, or outstanding, should be communicated to the concerned government servant within a reasonable period. Non-communication of such an entry may adversely affect the employee. Thus, non-communication of any entry/grading in the APAR is arbitrary and violative of Article 14 of the Constitution of India. Accordingly, an uncommunicated entry/grade in an ACR/APAR cannot be acted upon and deserves to be expunged.

16. In the present case, as noted above, although the respondents have submitted that the grading was fair and based on performance without any adverse remark, it is undisputed that the entry/grade in the APAR of the petitioner was not communicated to him, which is not in accordance with the law. However, the authorities have acted on the said uncommunicated entry/grading of the APAR, thereby depriving the petitioner from being getting

the benefit of financial upgradation under MACP Scheme, to which the petitioner is legally entitled and therefore, such action is illegal and as such, same deserves to be interfered with.

17. In view of the above, the action of denying the benefit of MACP-III to the petitioner on the basis of uncommunicated entry/grading in the ACR is not sustainable. Accordingly, the respondent authorities are directed to ignore the uncommunicated entries/grading in the ACRs/APARs of the petitioner for the year 2020-21 and grant the benefit of financial upgradation of MACP-III on completion of 30 years of his serviced, i.e. with effect from 24.10.2022, along with all consequential service benefits, within a period of three (3) months from today.

18. Writ petition stands allowed and disposed of.

JUDGE

Comparing Assistant