

GAHC010019342024



2024:GAU-AS:7759

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

Case No. : WP(C)/584/2024

INDIRA LAL
S/O- LTE GUSHAI RAM OF 13TH ASSAM RIFLES C/O 99 APO, PRESENTLY
SERVING AS NO. JC- 134192K SUBEDAR GD (GENERAL DUTY) ON
DEPUTATION WITH 13TH NATIONAL DISASTER RESPONSE FORCE, ASSAM
RIFLES C/O 56 APO

VERSUS

UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY THE GOVERNMENT 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 13TH ASSAM RIFLES
C/O 99 APO
PIN- 932013

4:THE COMMANDANT 13TH NATIONAL DISASTER RESPONSE FORCE
ASSAM RIFLES C/O 56 AP

Advocate for the Petitioner : MS. S BORA, MR. P BORAH

Advocate for the Respondent : DY.S.G.I., MS. B SARMA

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Ms. S. Bora, Advocate.
Advocate for the respondents : Ms. B. Sarma, CGC

Date of hearing : **09.08.2024**
Date of Judgment : **09.08.2024**

JUDGMENT & ORDER

The grievance raised in this petition filed under Article 226 of the Constitution of India is pertaining to denial of promotion. The primary contention is that such denial is on the basis of certain gradings in the ACRs which according to the petitioner were not communicated.

2. I have heard Ms. S. Bora, learned counsel for the petitioner. I have also heard Ms. B. Sarma, learned CGC, who has also filed affidavit-in-opposition on 05.04.2024.

3. Ms. Bora, the learned counsel has submitted that the petitioner was enrolled in the Assam Rifles on 03.01.1986 as a Rifleman/ (GD) General Duty. He was promoted to the rank of Havildar (GD) in the year 1998 and to the rank of NB sub /GD (General Duty) on 01.07.2005. Thereafter he was promoted to the rank of Subedar/GD on 01.09.2016 as per his seniority. The petitioner belongs to Scheduled Caste category. The name of the petitioner was not recommended for the Departmental Promotion Committee conducted in the month of January 2024.

4. The specific case of the petitioner, as contended by the learned counsel is

that the promotion is based on the gradings of the ACRs and such gradings were not communicated. It is submitted that communication of the gradings in ACRs is a mandatory requirement and a legal obligation by which the employee gets an opportunity to file representation for upgrading the gradings as well as to improve his performance. The learned counsel has also submitted that in the affidavit-in-opposition, the aforesaid aspect has been admitted.

5. The learned counsel has relied upon the following decisions on the aspect of the requirement to communicate the gradings of ACRs:-

i. Dev Dutt Vs Union of India and Ors reported in (2008) 8 SCC 725

ii. Anil Kumar Vs Union of India & Ors reported in 2019 (4) SCC 276.

iii. Sukhdev Singh Vs Union of India & Ors. reported in (2013) 9 SCC 566.

6. *Per contra*, Ms. Sarma, the learned CGC has submitted that there is no admission in the affidavit-in-opposition and the promotion is not dependent on the ACRs gradings alone. She submits that the gradings of the ACRs of the petitioner were upgraded and therefore the same would not be the sole reason for the impugned action. She submits that the promotions to the other incumbents were done by following the procedure established in law and in a fair manner and none of the said candidates have been made parties. She has also highlighted the aspect that it is not only the petitioner but even persons senior to him in the gradation list who have been denied promotion and MACPs in the exercise performed.

7. The rival submissions have been duly considered.

8. Promotion is dependent on various factors out of which the grading in the ACRs is one of the prominent factors. That brings us to the aspect of the importance of such gradings and the legal obligation of the employer to communicate the gradings in terms of the settled law.

9. The Hon'ble Supreme Court in the case of **Anil Kumar** (supra), after considering the earlier judgments holding the field, had reiterated the requirement of an opportunity to be granted to an employee to submit representation in respect of the ACRs. For ready reference, the relevant observations are extracted hereinbelow:

“10. In Dev Dutt v. Union of India a two-Judge Bench of this Court held that fairness in public administration and transparency require that all entries in the Annual Confidential Reports of a public servant must be communicated within a reasonable period in order to enable the employee to make a representation for upgradation. The view of the Court was that non-communication of entries in the ACRs has civil consequences since it may affect the chances of the employee for promotion and other benefits. A failure to communicate would be arbitrary. This Court held that these directions would apply to employees of statutory authorities, public sector corporations and other instrumentalities of the State, in addition to government servants.

11. A three-Judge Bench of this Court has in Sukhdev Singh v. Union of India affirmed the correctness of the view taken in Dev Dutt noting that an earlier three-Judge Bench in Abhijit Ghosh Dastidar v. Union of India had adopted the same principle.

12. The three-Judge Bench in Sukhdev Singh, held thus :

‘8. In our opinion, the view taken in Dev Dutt that every entry in ACR of a public servant must be communicated to him/her within a reasonable period is legally sound and helps in achieving threefold objectives. First, the communication of every entry in the ACR to a public servant helps him/her to work harder and achieve more that helps him in improving his work and give better results. Second and equally important, on being made aware of the entry in the ACR, the public servant may feel dissatisfied with the same. Communication of the entry enables him/her to make representation for upgradation of the remarks entered in the ACR. Third, communication of every entry in the ACR brings transparency in recording the remarks relating to a public servant and the system becomes more conforming to the principles of natural justice. We, accordingly, hold that every entry in ACR—poor, fair, average, good or very good—must be communicated to him/her within a reasonable period.’

...”

10. The materials on record, however, do not indicate that the gradings were communicated to the petitioner.

11. In view of the above, this Court is of the considered opinion that the petitioner be given a chance to submit adequate representation on the aforesaid gradings of the ACRs so as to convince the employer to make a higher grading.

12. In view of the aforesaid discussions, the writ petition is disposed of by giving liberty to the petitioner to submit a representation on those gradings of the ACRs which according to the petitioner is not as per his performance. Such representation may be filed within a period of 15 (fifteen) days from today and

on submission of such representation, the same is directed to be considered and disposed of by a reasoned/speaking order which is required to be communicated to the petitioner. The respondents are also directed to take consequential action in case the representation is favourably considered. The aforesaid exercise be completed expeditiously and preferably within a period of 2 (two) months from the date of receipt of the representation.

13. Writ petition is disposed of.

JUDGE

Comparing Assistant