

GAHC010108862025



2026:GAU-AS:4633

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

Case No. : WP(C)/2984/2025

NO JC 0110717Y NAIB SUBEDAR/GD (GENERAL DUTY) PIAR SINGH
S/O LT JALL SINGH, PRESENTLY SERVING AT 1ST ASSAM RIFLES, C/O 99
APO

VERSUS

UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NEW INDIA-110001

2:THE DIRECTOR GENERAL
ASSAM RIFLES
HEAD QUARTER DIRECTORATE GENERAL
ASSAM RIFLES
SHILLONG-11

3:THE COMMANDANT
1ST ASSAM RIFLES
C/O 99 APO
PIN-93200

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

Advocate for the Respondent : DY.S.G.I., MRS. A GAYAN (C.G.C.)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : N/A
Date of pronouncement of judgment : 31.03.2026
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 Mrs. A. Gayan, learned Central Government Counsel 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 promotion to the rank of Naib Subedar/GD (General Duty) as per his seniority, i.e. with effect from the date when his junior was promoted, 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 26.06.1992 as a Rifleman/GD and was posted to the 1st Assam Rifles in the year 1993. He was promoted to the rank of Havildar/GD in the year 2005 and subsequently to the rank of Warrant Officer/GD in the year 2014.

4. It is the contention of the petitioner that after promotion to Warrant Officer/GD, his next higher promotional rank is Naib Subedar/GD. The petitioner has completed the qualitative requirements for promotion and being the senior-most Warrant Officer in his category, was due to be considered for promotion in the year 2024. Despite his eligibility, the petitioner has been deprived of promotion, while the said benefit has been granted to his juniors. Aggrieved by the said action, the petitioner approached the respondent authorities for the grant of promotion as per his seniority or to communicate the reason for non-consideration of his promotion. Despite requesting the respondents to communicate the reason, same was ignored. Thereafter, the petitioner served a legal notice dated 16.09.2024.

5. It is contended that the respondent authorities, vide letter dated 17.10.2024, informed the petitioner that his case had been considered by the Departmental Promotion Committee (DPC) held in the year 2024, wherein, his last five Annual Confidential Reports/Annual Performance Assessment Reports (ACRs/APARs) for 2019 to 2023 were examined and he was graded "Average" (02 points) in 2019, below the prescribed benchmark of "High Average/Above Average" (03/04 points), which is required for promotion. Consequently, the name of the petitioner was not recommended for promotion to Naib Subedar/GD, 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 17.10.2024. It is settled position of law that every

ACR/APAR must be communicated to the concerned employee and consideration of any uncommunicated ACR is impermissible. Since the petitioner's ACR was not communicated to him, it could not lawfully be taken into account for denying his promotion to the rank of Subedar/GD with effect from the year 2024.

7. Mr. B. Pathak, learned counsel for the petitioner, submits that the petitioner has rendered more than 33 years of unblemished service to the organization and is now at the fag end of his service career. Except for the alleged grading in the ACR, which was allegedly below the prescribed benchmark required for promotion, the petitioner fulfills all the promotional qualitative 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 promotion to the petitioner on fulfilling all the promotional qualitative requirements by

ignoring the uncommunicated entry/grading in the ACR.

9. Mrs. A. Gayan, learned Central Government Counsel for the respondents, submits that for grant of promotion, the petitioner's case was considered by the Departmental Promotion Committee (DPC) held in the year 2024. The last five Annual Confidential Reports (ACRs) for the years 2019-2023 were taken into account to ascertain eligibility for promotion. It was revealed that the petitioner had been graded "Good" by his Initiating Officer and Reviewing Officer in the ACR for the year 2019, which is below the prescribed benchmark of "Very Good" required for promotion. Consequently, the petitioner was found ineligible for promotion and his immediate junior was promoted to the rank of Naib Subedar/GD with effect from March, 2024.

10. Mrs. Gayan, learned CGC, submits that the respondent authorities have acted strictly in accordance with the extant policy. She submits that the Assam Rifles has switched over to Annual Performance Assessment Report (APAR) system in the year 2021, whereas the ACR system was followed prior to that. According to her, the claim of the petitioner for promotion is not sustainable, as he did not meet the prescribed benchmark in the ACR criteria. She further submits that the petitioner, on being superseded in promotion by his immediate junior, has never sought any institutional remedy available to him under Section 15 of the Assam Rifles Act, 2006, which entitles him to submit a representation. Moreover, the respondents have also introduced a specific redressal mechanism vide Assam Rifles Order dated 26.09.2023 to deal with the grievances relating to ACR/APAR. However, instead of availing such remedy, the petitioner served a legal notice dated 16.09.2024, which was duly replied by the authorities vide letter dated 17.10.2024. She submits that the proper course for the petitioner

was to submit a personal representation before the Commandant under whom he is serving, as provided under the Assam Rifles Order dated 26.09.2023. Such representation would be examined through the chain of command and finally considered by the Director General, Assam Rifles, who is competent to expunge the impugned ACR/APAR if found to be either technically invalid or uncommunicated adverse report. Accordingly, she submits that the present writ petition is liable to be dismissed on the ground of availability of an alternative remedy under the aforesaid Assam Rifles Order.

11. Mrs. Gayan, learned CGC, submits that the ACR grading is a mandatory criterion for promotion. Since the petitioner's grading fell below the prescribed benchmark, he was rendered ineligible for promotion and his supersession in the DPC held on 2024, was strictly in accordance with the extant policy. She submits that promotion in the Assam Rifles is carried out strictly as per seniority and subject to fulfillment of the prescribed qualitative requirements. 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 1st Assam Rifles, was promoted from time to time to different higher ranks, the last being the rank of Warrant Officer/GD in the year 2014. The petitioner admittedly has completed the qualitative requirements for promotion to the post of Naib Subedar/GD being the senior most Warrant Officer/GD. The non-

recommendation for promotion by the DPC appears to be due to the grading of "Good" in the ACR for the year 2018-2019, which is below the prescribed benchmark of "Very Good" required for promotion.

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 promoted to the post of Naib Subedar/GD, 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 promotion to the petitioner to the post of Naib Subedar/GD 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 2018-2019 and grant promotion to the post of Naib Subedar/GD as per his seniority from the date when his junior was promoted, 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