

representing the respondents/Union of India and two others.

The challenge in the present appeal is to the judgment dated 08.05.2024, passed by a learned Single Judge of this Court in WP(C) No. 4336/2026, declining to interfere with the decision of the respondents in not granting promotion to the appellant on account of there being no two mandatory Annual Confidential Reports (ACR) from the Field Battalion or specified units of the Assam Rifles, wherein the appellant had been serving as a Senior Warrant Officer.

The appellant contends that he was sent on Extra Regimental Employment (ERE) duty for three years from November, 2015 to November, 2018, in public interest, by his parent unit, namely, the 31 Assam Rifles. However, he remained in that position (ERE) for four years; not out of his choice but because no reliever was sent to relieve him of that assignment enabling him to join Field/Battalion duty.

Though the appellant claims that he desired to return to his parent unit but that could not happen only because no reliever was sent to relieve him from his ERE duty; but the fact of the matter is that there is nothing to indicate any written request having been made by the appellant for being relieved from the ERE duty for joining Field/Battalion duty.

The Recruitment and Promotion Instructions (ROI) 4/2002, as amended in 2013, specifies that for promotion, an officer must have at least two ACRs from a Field Battalion or specified Units within five years of service.

By the time the appellant had joined the Field Battalion duty after having been relieved from ERE, four years had already passed and,

therefore, he did not have the requisite two ACRs from the Field Battalion/Specified Unit, which precisely was the reason for denying promotion to him.

The contention raised on behalf of the appellant before the learned Single Judge was that the ROI 4/2002 (as amended in 2013), requiring two of the five ACRs to be from the Field Battalion or Specified Unit, are only instructions and, therefore, not mandatory as such instructions do not have any statutory force and, therefore, relying on such instructions, the promotional avenues of an officer and, in the present case, the appellant, could not have been marred.

It was further urged on behalf of the appellant before the learned Single Judge that as a matter of fact, the appellant being a disciplined member of the Force, could not have done anything except obeying the orders of his parent Field Unit and remaining posted at the place of his ERE duty, until relieved by a reliever.

It was also argued that in the case of the appellant, the ROI ought to have been read down for the reason of the appellant having remained on ERE duty without any specific demand made by him for remaining on ERE duty beyond three years.

On the contrary, Mr. Chakraborty contended before the learned Single Judge, as also before this Court, that the ERE posting of the appellant was given to him on his own choice and it was not in public interest. Had the appellant wanted to come back to the parent unit or to any other field duty, such request would have been made by him. In fact, Mr. Chakraborty alludes, the appellant chose to remain on the ERE duty because the field posting of the appellant in Manipur was a difficult

assignment as compared to the ERE duty in Shillong.

True it is, as it appears from the records, that there was no written request from the appellant for being relieved from the ERE duty or for his return to his parent unit, nor is there any formal order from the parent unit asking him to join his parent unit, but the fact that he remained on ERE duty beyond three years, was against the instructions of the Department issued in that regard.

Mr. Pathak, learned counsel for the appellant has drawn the attention of this Court to the Assam Rifles Record Office Instructions for ERE Postings, which imposes an obligation on the employer for timely dispatch of reliever for relieving the person on ERE duty. The instructions further specify that no personnel on ERE ought to be withheld for more than four days of the reporting of their reliever. In case reversion is not carried out even after thirty days of the reporting of the reliever, unilateral *suo motu* movement order shall be issued on that date.

This condition, Mr. Chakraborty explains, is with respect to the fact situation where reliever is dispatched but the personnel in the ERE does not come back to the parent unit. Under such circumstances, after four days of the reliever having been dispatched, there would be *suo motu* movement order. However, the fact of the case of the appellant is different. There was no reliever sent after completion of three years of the ERE assignment of the appellant and also there was no written request whatsoever of the appellant for being repatriated to his parent unit. In that case, there would be a presumption, and a valid one, that the appellant remained on the ERE duty at Shillong of his own choice, which ultimately turned out to his disadvantage, because by the time he had

joined his Field/Battalion duty, he had already lost out on one of the two ACRs from the Field Battalion, required for his promotion.

The learned Single Judge, taking into account the above facts, refused to interfere with the denial of promotion on that count, and we find no strong reason to upset such finding, more so, in the background of the stark paucity of any written request having been made by the appellant for being relieved from the ERE duty, or for joining his parent unit/ Field Battalion.

Thus, without adverting to the other reasons and without interfering with the observations made by the learned Single Judge, which are in the nature of suggestions in the matter of posting of personnel on such ERE, we dismiss this appeal, but without any order as to costs.

The appeal is dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant