
(2015) 09 MEG CK 0012
In the Meghalaya High Court
Case No : WP(C) No. 282 of 2013

Rajib Kumar Sarkar

APPELLANT

Vs

The Union of India and Others

RESPONDENT

Date of Decision : 01-09-2015

Acts Referred:

Citation : (2015) 09 MEG CK 0012

Hon'ble Judges : S.R. Sen, J

Bench : Single Bench

Advocate : P. Nongbri, for the Appellant; K. Paul, CGC, Advocates for the Respondent

Final Decision : Allowed

Judgement

S.R. Sen, J—The petitioner's case in a nutshell is that:

"The petitioner was enrolled in Assam Rifles on 12/05/1989 as a Rfn/ORL. The Directorate General Assam Rifles remustered the petitioner from the rank of Rfn/ORL to the rank of Hav (Cipher) w.e.f. 24/11/1994 after successfully completed the Cipher-III course and on fulfilling other Qualification Requirement (QR). He was promoted to the rank of Nb Sub (Cipher) w.e.f. 01/01/2008. The Directorate General Assam Rifles by an impugned dated the 2nd day of February, 2013 promoted the following Nb Sub (Cipher) junior to him, to the rank of Sub (Cipher) w.e.f. 01/01/2013.

(i) JC-356521 Nb Sub (Cipher) Chaman Lal

(ii) JC-356606 Nb Sub (Cipher) Sunil Kumar

The Directorate General Assam Rifles by an impugned letter dated the 25th day of June, 2012 with a malafide intention illegally informed the Director, National Commission for Schedule Caste that alongwith many others the petitioner was screened by a board but he was not empanelled for promotion due to lacking of Annual Confidential Report criteria as mentioned in HQ DGAR letter No. I.

17033/08/ACR-SEC/2011-12/620, dated the 25th day of June, 2012, which was made applicable w.e.f. 01/01/2013. As per the said impugned letter the petitioner earned the following grading.

The petitioner had never been communicated aforesaid entries in the Annual Confidential Report and appropriate feedback and guidance for correcting his deficiencies and improvement of the performance had never been provided to him by his superior. The adverse remarks are those remarks which reflect otherwise on the performance of an incumbent to the particular year and also have an impending effect in consideration for promotion to the next high post. They are therefore, required to be communicated to the concerned incumbent to accord an opportunity to improve his performance. Such un-communicated entries (adverse entries) in the Annual Confidential Report cannot be acted upon to deny promotional opportunities unless it is communicated to the person concerned so that he has an opportunity to improve his work and conduct or to explain the circumstances leading to the report. Such an opportunity is not an empty formality, its object, partially, being enable the superior authorities to decide on a consideration of the explanation offered by the person concerned, whether adverse report is justified and therefore non-communication has vitiate the proceeding. From the year 2008 to till date he had never been communicated the aforesaid entries in his Annual Confidential Report, therefore non-communication of aforesaid entries viz, High Average and above Average is arbitrary and hence illegal and therefore the petitioner entitled to promotion to the rank of Sub (Cipher) w.e.f. 01/01/2013. Hence this Writ Petition".

2. Mr. P. Nongbri, learned counsel appeared on behalf of the petitioner and submits that, the grading obtained by the petitioner in his Annual Confidential Report (For short "ACR") with effect from 2008-2012 was not communicated to the petitioner. As a result, he is deprived to file any representation to the authority concerned (respondent). Consequently, his promotion has been held up and disturbed. Hence, this instant writ petition.

The learned counsel for the petitioner further submits that, the authority concerned who prepared the ACR is bound to communicate the grading of the employee whether it is poor or outstanding or whatever the case may be. To support his submission, Mr. P. Nongbri, learned counsel for the petitioner relied on the judgment passed by Hon"ble the Apex Court in the case of Sukhdev Singh Vs. Union of India (UOI) and Others, (2013) 4 ABR 1138 : (2014) 1 AD 227 : AIR 2013 SC 2741 : (2013) 137 FLR 907 : (2013) 8 JT 270 : (2013) LabIC 2925 : (2013) 2 LLN 578 : (2013) 171 PLR 823 : (2013) 6 SCALE 490 : (2013) 9 SCC 566 : (2014) 1 SCC(L&S) 279 : (2013) 4 SCT 129 : (2013) AIRSCW 3801 at Para 4 and 8. For easy reference the same is reproduced herein as under:

"4. Then in paragraph 22 at SCC p. 734 of the Report this Court in: Dev Dutt Vs. Union of India (UOI) and Others, (2008) 117 FLR 1024 : (2008) 7 JT 463 : (2008) 7 SCALE 403 : (2008) 8 SCC 725 : (2008) 2 SCC(L&S) 771 : (2008) 3 SLJ 244 made the following weighty observations:

"22. It may be mentioned that communication of entries and giving opportunity to represent against them is particularly important on higher posts which are in a paramedical structure where often the principle of elimination is followed in selection for promotion, and even a single entry can destroy the career of an officer which has otherwise been outstanding throughout. This often results in grave injustice and heart-burning, and may shatter the morale of many good officers who are superseded due to this arbitrariness, while officers of inferior merit may be promoted."

8. In our opinion, the view taken in: Dev Dutt Vs. Union of India (UOI) and Others, (2008) 117 FLR 1024 : (2008) 7 JT 463 : (2008) 7 SCALE 403 : (2008) 8 SCC 725 : (2008) 2 SCC(L&S) 771 : (2008) 3 SLJ 244 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".

3. On the other hand, Mr. K. Paul, learned CGC appeared for the Union of India and submits that, as per the judgment, only the adverse entries/remarks is to be communicated. It is not necessary to communicate all the grading and he also further submitted that, this principle specifically applies to non communication of the ACR which is applicable to military organization and to support his submission, he relied on the judgment passed by Hon"ble the Apex Court in the case of Dev Dutt Vs. Union of India (UOI) and Others, (2008) 117 FLR 1024 : (2008) 7 JT 463 : (2008) 7 SCALE 403 : (2008) 8 SCC 725 : (2008) 2 SCC(L&S) 771 : (2008) 3 SLJ 244 .

4. After hearing the submissions advanced by the learned counsel at Bar and after going through the petition before me and other documents on record and keeping in mind the judgment given by Hon"ble the Apex Court referred above, I am of the opinion that, this matter may be disposed of immediately.

5. At the outset, I note that, the Assam Rifles is not a military organization. Therefore, the argument advanced by Mr. K. Paul, learned CGC that, the grading obtained in the ACR are not supposed to be communicated to the employee is not applicable in this case as the petitioner here belongs to the Assam Rifles. Generally, the principles of natural justice demands, whatever the grading may be, whether it is average, good or outstanding, it should be communicated to the

employee concerned so that, he may get the opportunity to place his representation if at all he has got any grievances. But, in this case, I find that this principle has not been followed.

6. The Hon''ble Supreme Court in the case of Sukhdev Singh Vs. Union of India (UOI) and Others, (2013) 4 ABR 1138 : (2014) 1 AD 227 : AIR 2013 SC 2741 : (2013) 137 FLR 907 : (2013) 8 JT 270 : (2013) LabIC 2925 : (2013) 2 LLN 578 : (2013) 171 PLR 823 : (2013) 6 SCALE 490 : (2013) 9 SCC 566 : (2014) 1 SCC(L&S) 279 : (2013) 4 SCT 129 : (2013) AIRSCW 3801 at Para 4 and 8 made an observation that, the grading or adverse remarks obtained in the ACR needs to be communicated to the employee concerned. Therefore, there is no doubt which remains that, the grading and adverse remarks obtained should not be communicated to the employee. The authority concerned is duty bound to communicate the remarks in the ACR to the employee. Therefore, the respondent (Union of India) is directed to communicate the grading and adverse remarks if any, to be communicated to the petitioner within a month from the date of receipt of this order and thereafter, the petitioner is at liberty to file his representation if he desires so and the respondent shall be bound to consider his representation.

7. With these observations and directions, this instant writ petition is allowed and stands disposed of.