

IN THE HIGH COURT OF MEGHALAYA

WP(C) (SH) No. 259 of 2011

No. E/380163X
Mathai P.C.
Son of Late Quseph Chako,
Havilder SKT Engineer,
HQ Coy, 33 Assam Rifles,
C/O 99 APO

..... **Petitioner**

- versus -

1. Union of India,
Through the Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi.
2. Director General,
Assam Rifles, Shillong.
3. Commandant,
33 Assam Rifles,
C/o 99 APO
4. E/389353 Hav/Skt (Engr)
Pan Singh,
12 Assam Rifles,
C/o 99 APO

..... **Respondents**

BEFORE THE HON'BLE MR JUSTICE SR SEN

Advocate for the Petitioner	:	Mr. M Chanda
Advocate for the Respondents	:	Mr. SC Shyam
Date of Hearing	:	10.09.13
Date of Judgment and Order	:	10.09.13

JUDGMENT AND ORDER (ORAL)

The brief fact of the case in nut shell is that, the petitioner challenged the impugned order dated 8.04.10 whereby the respondent No. 4 Mr. Pan Singh has been promoted to the post of Naib Subedar SKT (Engr.) against the vacancy of Naib Subedar SKT (Engr.) vide order dated 8.04.10 and the promotion is given effect from 1.3.10 ignoring the case of the petitioner who is senior than the respondent No. 4.

2. Initially the petitioner made a representation to consider his promotion w.e.f. 1.03.10 along with the respondent No. 4 but the same was not considered. Being aggrieved by the said impugned order, the petitioner approached this Court by way of this instant petition.

3. Mr. M Chanda, the learned counsel appeared for on behalf of the petitioner submitted that by Annexure-1 (Page-9), impediment placed upon the petitioner has been removed. Unfortunately, by Annexure-2 (Page-10), a junior personnel who is the respondent No. 4 has been promoted ignoring the seniority of the petitioner.

4. Thereafter, the petitioner made a representation which is at Annexure-2A (Page-11) but the same has not been considered. The learned counsel further argued that the petitioner being senior and fit when promotion was considered on 8.04.10, he too should have been considered along with the respondent No. 4. Therefore, the petitioner's case has not been considered in accordance with law nor principle of natural of justice has been followed, so necessary direction may be passed.

5. On the other hand, Mr. SC Shyam, the learned senior counsel appeared for on behalf of the respondents submitted that, the matter for consideration of promotion came up on 8.04.10 but the ACR of the petitioner has not been placed before the Committee, hence his promotion could not be considered.

6. I have perused the Annexure-1 at Serial No. 17 which has clearly mentioned that :

“Upgrade to med cat P1 (SHAPE 1) for disability ‘Seizure Disorder (GTCS) w.e.f. 08 Feb 2010, Opinion of Col A K Sood, MD, DNB, DM, Senior Adviser. Previous med cat – P2 (T-24) Med Docu att for record)”.

7. On bare perusal of the above noting, it appears that impediment or disqualification imposed upon the petitioner has been removed w.e.f. 8.02.10. On further perusal of the Annexure-2, it appears that the respondent No. 4 Mr. Pan Singh has been promoted to the rank of

Naib Subedar SKT (Engr.) w.e.f. 1.03.10. I have also perused the representation made by the petitioner which at Annexure-2A (Page-11) as well as the Seniority List which is at Annexure-3 (Page-12). From the Seniority List it appears that the petitioner has been placed in the 11th position whereas the respondent No. 4 has been placed at Serial No. 32, if it is so, the petitioner is senior than the respondent No. 4.

8. On further perusal of the reply to the representation which is at Annexure-5 (Page-14), it is found mentioned that :

“No. E/380163 Hav/SKT (Engr.) Mathai PC (Now at DPC ser No. 6), upgraded to med cat SHAPE-1 on 08 Feb 2010, but the indl could not be promoted to the rank of Nb Sub/SKT (Engr) due to delay receipt of ACR 2009. In this connection ref this Dte letter No. 1.19012/04/Adm-1/2010 dt 31 Mar 2010 and Sig No. A-5032 dt 05 Apr 2010”.

9. On perusal of the said reply, it appears that the petitioner could not be considered for promotion on 8.04.10 just because his ACR has not been placed before the Committee.

10. On perusal of all those Annexures referred above and after considering the submissions advance by the learned counsel at bar, only 1(one) point has been placed on record that the petitioner could not be considered for promotion on 8.04.10 giving effect from 1.03.10 merely because his ACR has not been placed before the Committee at that point of time.

11. Now the question arise, whether it is the responsibility of the petitioner to place the ACR before the Committee or the Department concerned, the answer is definitely, the Department concerned.

12. For the failure of the Department the petitioner cannot be held responsible, therefore, I am of the considered view that the petitioner is entitled for promotion as and when he was fit and due for promotion. In this instant case, from the above discussion it is very clear to me that since the impediment for promotion has been removed w.e.f. 8.02.10 and Promotional Committee had sit on 8.04.10 for considering the promotion of the respondent No. 4, they should have also considered the petitioner for

promotion and if the ACR is not available, it is the duty of the Respondents concerned to call for the ACR and to consider the petitioner for promotion at that point of time. It is not correct to just sideline the case of the petitioner just because the ACR of the petitioner has not been placed in time and subsequently promoted him only after this instant writ petition has been filed. Therefore, I am of the considered view that, the respondent authorities has overlooked the matter and has grossly violated the principles of natural of justice.

13. Accordingly, the respondent authorities are hereby directed to promote the petitioner w.e.f. 1.03.10 within a period of 2(two) months from the date of this order and to safeguard the seniority at all cost and to give his arrear benefits.

14. With these observations and directions this instant petition is allowed and the matter stands disposed of.

15. The parties are to bear their own cost.

JUDGE

V.Lyndem