

**IN THE HIGH COURT OF MANIPUR  
AT IMPHAL**

**WP(C) No. 447 of 2019**

1. Shri Dev Datt Sharma aged about 55 years, son of (Late) Sitaram Sharma, a permanent resident of 14-A Setia Farm Main Road, Sri Ganga Nagar (Rajasthan), presently posting at HQ IGAR (South), Mantripukhri Imphal East, Manipur PIN-932555

**..... Petitioner**

**– Versus –**

1. The Union of India through the Secretary, Ministry of Home Affairs, Government of India, North Block, New Delhi, PIN-110001.
2. The Directorate General Assam Rifles, Records Branch, Shillong, PIN-793011.
3. The HQ, Inspector General Assam Rifles (South), PIN-932555 c/o 99 APO
4. The Commandant, 42 Assam Rifles PIN-932042 c/o 99 APO

**.....Respondents**

BEFORE

**HON'BLE THE ACTING CHIEF JUSTICE MR. M.V. MURALIDARAN**

For the Petitioner : Mr. Momota Oinam, Adv.,

For the Respondents : Mr. W. Darakishwor, Sr. Penal Counsel.

Date of hearing & :

reserving 13.09.2023 & 27.09.2023.

**JUDGMENT & ORDER**  
**CAV**

This writ petition has been filed by the petitioner to quash the impugned letter dated 26.6.2018 and the ACR of the petitioner for the year 2014-15 and to direct the second respondent to consider the case of the petitioner for giving promotion to the rank of Sub (Clk) from the date of his juniors who have been given promotion to the rank of Sub (Clk) vide order dated 24.6.2018.

2. Brief facts which led to the filing of the writ petition are as follows:-

The petitioner is working as Nb. Sub (Clk) in the Assam Rifles Organisation and presently posting at IGAR (South) since April, 2017. While he was posted in 42 Assam Rifles as Nb. Sub (Clk), some of his juniors working in the rank of Nb. Sub have been given promotion by superseding him to the higher rank of Sub (Clk) by an order dated 24.6.2018 issued by the DGAR (Record Branch), Shillong. Aggrieved by the said promotion order, the petitioner has submitted a representation dated 14.7.2016 to the DGAR (Record Branch) requesting to let him know the actual reason for his supersession from promotion to the rank of Sub (Clk) and also to provide copies of ACRs for the last five years, if lacking from ACR criteria.

2.1. The DGAR (Record Branch), vide letter dated 25.6.2016, communicated the reason for supersession from promotion due to lack of the ACR criteria for the year 2014-2015 wherein it was awarded "average" while the other four years awarded "above average". Thereafter, the petitioner filed a representation dated 6.10.2016 to set aside the ACR for the year 2014-2015. The Commandant, 42 Assam Rifles under whom the petitioner was working at the relevant years of ACR had submitted the statement of case dated 22.11.2017 giving justification for setting aside the ACR of the petitioner for the year 2014-2015. However, the DGAR (Record Branch) without considering the statement of case submitted by the Commandant, issued the impugned letter dated 26.6.2018 rejecting the request of the petitioner for setting aside the ACR for the year 2014-2015 on the ground that there is no policy exist to set aside the ACR. Challenging the same, the present writ petition has been filed.

3. The respondents filed affidavit-in-opposition stating that the petitioner was enrolled as Recruit (General Duty) with effect from 20.8.1984 and remustered as Lance Naik (Writer) with effect from 1.4.1986. As on date, the petitioner has put in 55 years of service. The petitioner has been graded "average" (4 points) in the ACR for the year

2014-2015 both by Initiating Officer and Reviewing Officer while serving with 42 Assam Rifles. The petitioner was screened for promotion to the rank of Subedar (Clerk) in DPC 2016-2017. The individual was not fulfilling the ACR criteria for the year 2014-2015 and hence he was superseded for promotion to Subedar (Clerk) from his batch mates. Since the petitioner has not met the ACR criteria for promotion to the next rank, he has been superseded for promotion. Hence, prayed for dismissal of the writ petition.

4. Assailing the impugned order, the learned counsel for the petitioner submitted that the petitioner was screened for promotion by the DPC of 2016 and 2017, wherein he was considered to be ineligible for promotion due to lacking of ACR criteria on the ground that he was being awarded "average" rating for the year 2014-2015. According to the learned counsel, the petitioner was not communicated about his "average" rating and thus he was not given a chance to show any improvement. The IGAR (South) in his letter dated 12.8.2018 clearly mentioned that the ACR of 2014-2015 can be set aside on the ground that the petitioner has not been issued with any warning or performance counselling letter prior to award of "average" rating in the ACR for the year 2014-2015. Thus, the petitioner has been denied opportunity to

explain or show improvement in his work for which he was rated "average".

5. The learned counsel for the petitioner further submitted that the action of the respondents has an adverse effect the petitioner's career. On one hand the respondents did not consider the ACR of the petitioner for the year 2014-2015 as adverse report and recommended for promotion, but on the other hand they have considered the petitioner as ineligible for promotion due to the lack of ACR. The petitioner was not given any opportunity to show improvement if there was any weak point. Therefore, the action of the respondents is unfair, unjust and arbitrary.

6. The learned counsel for the petitioner urged that the respondents have been focusing on the stand taken by the Initiating Officer and the Reviewing Officer not to review the ACR stating that the petitioner has been graded "average" as per his efficiency and overall performance for the reporting year. However, the respondents have failed to take into consideration the letter dated 12.1.2018 which clearly states that the ACR of the petitioner for the year 2014-2015 should be set aside on the ground of non-communication and due to absence of any record of performance counselling or warnings. Thus, a prayer has been made to set aside the impugned letter and the ACR of the petitioner for the year

2014-2015 and to direct the second respondent to consider the case of the petitioner for giving promotion to the rank of Sub (Clk) from the date of his juniors who have been given promotion to the rank of Sub (Clk).

7. Per contra, Mr. W. Darakishwor, the learned counsel for the respondents submitted that since the ACR of the petitioner has already been initiated and reviewed and also keeping in mind the stand taken by the Initiating Officer and the Reviewing Officer not to review the ACR stating that the petitioner has been graded "average" as per his efficiency and overall performance for the reporting year, it is not feasible to set aside the ACR for the year 2014-2015. There exists no policy to set aside the ACR merely on the ground of supersession which is not in order of merit. The request of the petitioner to set aside the ACR for the year 2014-2015 has been considered by the competent authority. Since the petitioner being Junior Commissioned Officer, he should be well versed with official matters and policy where he was found lacking both by Initiating Officer and Reviewing Officer.

8. The learned counsel for the respondents further submitted that the grading "average" is not required to be communicated to the rate as per Para 6(C) of Appendix B to record office instruction 04/97. As per policy in vogue, three preceding years out of last five reports should not

be below "above average" and the remaining two reports should not be below "high average". But the ACR of the petitioner for the year 2014-2015 is "average" (4 point) which is contrary to the policy for promotion. Thus, the competent authority is right in not considering the case of the petitioner and declined to set aside the ACR for the year 2014-2015. Thus, a prayer has been made to dismiss the writ petition.

9. This Court considered the rival submissions and also perused the materials available on record.

10. The grievance of the petitioner is that while he was working in 42 Assam Rifles, he came to know that the HQ DGAR issued an order dated 24.6.2016 giving promotion to some of his juniors in the rank of Nb Sub (Clk) to the rank of Sub (Clk) by superseding him. Aggrieved by the same, on 14.7.2016, the petitioner has submitted a representation to the DGAR (Record Branch, Admn-IV) through proper channel requesting him to look into the matter and to provide the reason for his supersession from promotion to the rank of Sub (Clk) and also to provide photocopy of last five year ACRs, if lacking from ACR criteria.

11. As could be seen from the records, vide Signal dated 8.8.2016, the HQ DGAR sent a communication to the effect that due to lacking of ACR criteria, the name of the petitioner was not included for promotion to

the rank of Sub (Clk). After that, the petitioner submitted another representation dated 6.10.2016 through proper channel to the DGAR requesting him to look into the matter judiciously and to set aside the ACR for the year 2014-2015 to enable him to get promotion from the date his juniors are promoted. The said representation of the petitioner was forwarded to the HQ IGAR (South) and the IGAR in turn forwarded to the DGAR (Record Branch) along with chain of recommendations of the Commandant 42 Assam Rifles and Officiating Commander HQ 27 Sector Assam Rifles. The HQ DGAR, vide Signal dated 19.5.2017, communicated the reasons for supersession of promotion of the petitioner to the next higher rank as due to lack of ACR criteria to the 42 Assam Rifles with a request to forward comments from the present and previous Initiating Officer and Reviewing Officer duly mentioning the grounds based on which the petitioner was awarded "average" grading and recommended for further promotion and reply of which should reach the directorate by 25.5.2017 with a further request to forward the statement of case with full justification to set aside the ACR of 2014-215.

12. The records further reveal that the HQ 27 Sector, Assam Rifles, vide letter dated 23.12.2017, had forwarded the statement of case dated 22.11.2017 to set aside the ACR for the year 2014-2015 in respect of the petitioner to DGAR (Record Branch, Admn-IV), Shillong for further necessary action. However, by the impugned order dated 26.6.2018,



the DGAR, Record Branch, not considered the request of the petitioner for setting aside the ACR for the year 2014-2015.

13. The learned counsel for the petitioner argued that the DGAR (Record Branch) did not consider the statement of case submitted by the Commandant 42 Assam Rifles instead while considering the request of the petitioner for setting aside the ACR for 2014-2015, they have given more emphasis to the findings of the Initiating Officer and Reviewing Officer to the award of "average" by ignoring the points raised in the statement of case and the recommendation for setting aside the ACR for 2014-2015, which they asked to submit the same. As such the action of the DGAR (Record Branch) is lacking fairness, transparency and arbitrary and unreasonable.

14. In reply, the learned counsel for the respondents submitted that the petitioner has not met with the ACR criteria for promotion to next rank. Hence, he has been superseded for promotion. Also no such policy exists to set aside such ACR merely on the ground of supersession which is not in order of merit as the petitioner was graded "average" in his ACR by the Initiating Officer and the Reviewing Officer.

15. At this juncture, the learned counsel for the petitioner submitted that the ACR grading of the petitioner for the year 2014-2015 has not been communicated to the petitioner. An uncommunicated adverse report should not form the foundation to deny the benefits to a Government servant when similar benefits are extended to his juniors. In support, the learned counsel placed reliance upon the decisions of the Hon'ble Apex Court in the case of *Vijay Kumar IAS v. State of Maharashtra and others, 1988 (Supp) SCC 674* and *Dev Dutt v. Union of India and others, (2008) 8 SCC 725*.

16. In *Vijay Kumar IAS, supra*, the Hon'ble Apex Court held:

*"3. .... It is settled principle that an uncommunicated adverse report should not form the foundation to deny benefits to a government servant when similar benefits are extended to his junior."*

17. In *Dev Dutt, supra*, the Apex Court held:

*"17. In our opinion, every entry in the ACR of a public servant must be communicated to him within a reasonable period, whether it is a poor, fair, average, good or very good entry. This is because non-communication of such entry may adversely affect the*

*employee in two ways: (1) had the entry been communicated to him he would know about the assessment of his work and conduct by his superiors, which would enable him to improve his work in future; (2) he would have an opportunity of making a representation against the entry if he feels it is unjustified, and pray for its upgradation. Hence, non-communication of an entry is arbitrary, and it has been held by the Constitution Bench decision of this Court in Maneka Gandhi v. Union of India, (1978) 1 SCC 248 that arbitrariness violates Article 14 of the Constitution."*

18. The respondents contended that the grading "average" is not required to be communicated. By relying upon the decisions in the cases of *Dev Dutt v. Union of India and others*, (2008) 8 SCC 725 and *Sukhdev Singh v. Union of India and others*, the learned counsel for the respondents further contended that the non-communication of entries in the ACR of a public servant, whether he is in civil, judicial, police or any other service (other than the military) certainly has civil consequences because it may affect his chances for promotion or get other benefits.

19. The view taken in *Dev Dutt*, supra, 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 three-fold objectives. Firstly, 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. Secondly 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. Thirdly, 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. The ratio in *Dev Dutt*, supra, is clear to the effect that every entry in ACR – poor, fair, average, good or very good – must be communicated to Government servant within a reasonable period.

20. The purpose of adverse entries is primarily to forewarn the Government servant to mend his ways and to improve his performance. That is why, it is required to communicate the adverse entries so that the Government servant to whom the adverse entry is given, may have either opportunity to explain his conduct so as to show that the adverse entry was wholly uncalled for, or to silently brood over the matter and on being convinced that his previous conduct justified such an entry to improve his performance.

21. The learned counsel for the petitioner further contended that whether an entry is adverse or not depends upon its actual impact on employee's career and not on its terminology. As per the ratio laid down in *Dev Dutt*, supra, even a "good" entry can be adverse in the context of eligibility for promotion.

22. Thus, if we apply the aforesaid decision of the Hon'ble Apex Court to the present case, the action of the respondents definitely has an adverse effect the petitioner's career. As rightly argued by the learned counsel for the petitioner, on one hand the respondent authorities did not consider the ACR of the petitioner for the year 2014-2015 as adverse report and recommended the petitioner for promotion, but on the other hand, the respondents have considered the petitioner as ineligible for promotion due to the lack of ACR. Since the petitioner was not given any opportunity to show improvement if there was any weak point at the relevant point of time, the action of the respondent authorities is unacceptable. If the entry had been communicated to the petitioner at the relevant point of time, he would have a right to make a representation to the authority concerned who must decide the representation in a fair manner and within a reasonable period.

23. In the instant case, the ACR remark for the year 2014-2015 came to the knowledge of the petitioner only when his juniors in the rank of Nb Sub (Clk) were given promotion by superseding him. Immediately, the petitioner submitted a representation dated 14.7.2016 through proper channel to the DGAR to provide the reason for his supersession from promotion and also provide copy of the last 5 years ACRs. After receipt of the reason for not being considered for promotion, the petitioner had submitted a representation on 6.10.2016 through proper channel to the DGAR (Records Branch) to set aside the ACR for the year 2014-2015 enabling the petitioner to get promotion to the rank of Sub (Clk) from the date of his juniors are promoted.

24. On 19.5.2017, the HQ DGAR sent a Signal to 42 Assam Rifles. The reason for supersession of promotion of the petitioner to the next higher rank was due to lack of ACR criteria, with a request to forward comments from the present and previous Initiating Officer and Reviewing Officer duly mentioning the grounds based on which the petitioner was awarded "average" grading and recommended for further promotion. On 6.10.2017, the HQ DGAR further requested to forward the statement of case with full justification to set aside the ACR of 2014-2015.

25. Pursuant to the Signal dated 6.10.2017, the HQ 27 Sector, Assam Rifles, vide letter dated 23.12.2017, had forwarded the statement of case dated 22.11.2017 to set aside the ACR for the year 2014-2015 in respect of the petitioner to the HQ IGAR (South) and the HQ IGAR, vide letter dated 12.1.2018, forwarded the said statement of case to the DGAR (Record Branch) for further necessary action.

26. The statement of case for setting aside the ACR for the year 2014-2015 in respect of the petitioner annexed to the writ petition (Annexure-A/7) is extracted hereunder for ready reference:

*"STATEMENT OF CASE FOR SETTING-ASIDE OF ANNUAL CONFIDENTIAL REPORT (ACR) FOR THE YEAR 2014-15 IN RESPECT OF JC-361280 NAIB SUB (CLK) DEV DATT SHARMA OF 42 ASSAM RIFLES (NOW HQ IGAR (S))*

***INTRODUCTION***

*1. No.JC-361280 Naib Subedar (Clerk) Dev Datt Sharma has served with 42 Assam Rifles from 13 Jan 2014 to 25 Mar 2017 while the unit was deployed at Jairampur/Bishnupur. The JCO has completed 33 years of qualifying service and has held various clerical appointments which included Quarter Masters Branch Incharge, Record's Branch Incharge and also carried out duties of Head Clerk of the unit during his posting with 42 Assam Rifles. However, Junior Commissioned Officer was superseded for promotion*

*from Naib Subedar (Clerk) to Subedar (Clerk) due to lack of ACR Criteria. The Junior Commissioned Officer had made a representation vide his application dated 14 Jul 2016 against HQ DGAR promotion order No. Rec (Adm-IV)/342/Promotion/2016/152 dated 24 Jun 2016. The same was turn down vide HQ 27 Sector Signal No A 1914 dated 07 Sep 2016 stating that JC-361280 Naib Subedar (Clerk) Dev Datt Sharma has been superseded due to lack of requisite grading in the Annual Confidential Report for the year 2014-15. The case was further perused and forwarded to HQ DGAR vide HQ IGAR(S) letter No.1524/A/Appln/2017/140 dated 31 Janu 2017. HQ DGAR vide their Sig A 5167 dated 19 May 2017 asked comments from present and previous IO and RO for upgradation of said ACR. As per 42 Assam Rifles Sig No. A 1952 dated 26 May 2017, present IO and RO submitted their comments for review of ACR. However, the previous IO did not agree for review and same was communicated to HQ DGAR vide 42 Assam Rifles Sig No.A 1938 dated 08 Aug 2017. Now HQ DGAR vide their sig No. 536 dated 25 Sep 2017 asked for submission of Statement of Case to set-aside the ACR for the year 2014-15.*

## **PROPOSAL**

*2. It is proposed to set-aside the Annual Confidential Report in respect tof JC-361280 Naib*



*Subedar (Clerk) for the year 2014-15 in order to grant him promotion from Naib Subedar (Clerk) to Subedar (Clerk)*

### **JUSTIFICATION**

*3. No. JC-361280 Naib Sub (Clerk) DevDatt Sharma having completed 33 years of service in Assam Rifles, however superseded by his juniors namely No.JC 361288 Naib Subedar (Clerk) S.Bhattacharjee, JC-361338 Naib Subedar Radheshayam Mandal, JC-361336 Naib Subddar (Clerk) Dayanand Roy an dothers for promotion from Naibsubedar (Clerk) to Subedar (Clerk) due to lack of requisite Annual Confidential Report for the year 2014-15. His performance and competence in the duties assigned to him in the unit have always been satisfactory and there is no record of him having been warned or counselled on that account ever. As per the existing promotion policy, issued by HQ DGAR vide their letter No. I.36012/35/ACR/Rec (Coord)/2016/962, the bench mark for promotion from Naib Subedar to Subedar is as under:-*

- (a) Three out of last five ACR grading should not be below "Above Average" (7 points) and remaining two ACRs should not be below "High Average" (5 points).*
- (b) Should have been recommended for promotion in all the last five reports.*

4. *JC-361280 Naib Subedar (Clerk) Dev Datt Sharma has been graded 'Average' rating (4 points) and at the same time recommended for promotion in the Annual Confidential Report for 2014-15 due to which the Junior Commissioner Officer was superseded for promotion. It is pertinent to mention here that sudden drop in performance clothe JCO appears to be contradictory in absence of any record of performance counselling or warnings.*

5. *Annual Confidential Report for the year 2014-15 in respect of JC-361280 Naib Subedar (Clerk) DevDatt Sharma can be set aside on following grounds:*

*(a) The JCO has not been issued with any warning or performance counselling letter prior to award of 'Average' rating in the ACR for the year 2014-15. Thus, the JCO has been denied opportunity to explain or show improvement in his work for which he was rated 'Average'.*

*(b) The JCO has been rated "Above Average" (7 points) in three ACRS out of last five ACRs considered by the Departmental Promotion Committee. It may also be noted that the JCO was rated "Above Average" (7 points) in ACR of immediate preceding year 2013-14 and has been continued to be rated "Above Average" (7 points) for subsequent years.*

### **FINANCIAL EFFECT**

6. *No financial effect is involved if JC-361280 Naib Subedar (Clerk) DevDatt Sharma is promoted to the rank of Subedar (Clerk) by setting aside the Annual Confidential Report for the year 2014-15 as the individual is already drawing pay scale of Subedar (Clerk) due to Modified Assured Career Progression Scheme.*

### **CONCLUSION**

7. *The 'Average' grading or any rating which interferes with the promotion of serving personnel is considered as adverse grading/remarks and prescribed procedure for award of such ACR grading should invariably be followed by reporting officers. Hence, it is recommended that Annual Confidential Report for the year 2014-15 in respect of JC-361280 Naib Subedar (Clerk) DevDatt Sharma may please be set aside in order to take an appropriate corrective action and provide an opportunity to JCO for promotion."*

27. The justification for setting aside the ACR report for the year 2014-15 in respect of the petitioner has been clearly stated in the statement of case referred to supra. In particular, in the said

statement of case, it has been stated that the petitioner has not been issued with any warning or performance counselling prior to awarding of "average" rating in the ACR for the year 2014-15, which denied the opportunity to explain or show improvement in his work for which he was rated "average". Further, the petitioner has been rated "above average" (7 points) in three ACRs out of last five ACRs considered by the DPC. It is to be highlighted that, in fact, a recommendation has been made in the ACR for 2014-15 for promotion. However, the impugned order has been issued stating that no policy exists to set aside the ACR by the DGAR (Records Branch). The said conclusion arrived at by the DGAR (Records Branch) is admittedly unsustainable in the eye of law.

28. As stated supra, awarding of "average" (4 point) rating has not been communicated to the petitioner for making a representation to the authority concerned for its upgradation as the "average" rating is adverse to his promotion, inasmuch as the petitioner was denied the opportunity to explain or improve in his work for which he was rated "average" which is very much violative of natural justice. When an entry is communicated to the petitioner, he should have a right to

make representation to the authority concerned who must decide the representation in a fair manner and within a reasonable period.

29. It is not only when there is a benchmark but in all cases that an entry whether it is poor, fair, average, good or very good must be communicated to a public servant, otherwise there is violation of the principle of fairness, which is the soul of natural justice.

30. Natural justice is another name for common-sense justice. Rules of natural justice are not codified canons. But they are principles ingrained into the conscience of man. Natural justice is the administration of justice in a common-sense liberal way. Justice is based substantially on natural ideals and human values.

31. What is meant by the term 'principles of natural justice' is not easy to determine. Lord Sumner (then Hamilton, L.J.) in *R. v. Local Govt. Board*, (1914) 1 KB 160 described the phrase as sadly lacking in precision. In *General Medical Council v. Spackman*, 1943 AC 627, Lord Wright observed that it was not desirable to attempt 'to force it into any Procrustean bed'.

32. Thus, the non-communication of the entries in the ACR of a public servant certainly has civil consequences because it may affect his chances for promotion or get other benefits. Hence, such non-communication would be arbitrary and violative of Article 14 of the Constitution of India.

33. It is settled law that even an “outstanding” entry should be communicated since that would boost the morale of the employee and make him work harder.

34. Apart from the above ground, one factual aspect needs to be mentioned. As per policy of DGAR qua ACR of Junior Commissioned Officer as contemplated under Clause 12, which transpires that if a Junior Commissioned Officer does not complete a minimum of 90 days physical service on 1<sup>st</sup> January under the immediate superior officer of the new Unit, his confidential report may be initiated by the immediate superior officer of his previous Unit under whom he had served physically for 90 days. In the case on hand, the confidential report of the petitioner for the year 2014-2015 was initiated by an officer under whom the petitioner does not complete a minimum of 90 days physical service, which is totally against the guidelines for ACRs of the Junior

Commissioned Officer. The said aspect has not been controverted by the respondents. That apart, the DGAR (Recorded Branch) while considering the request of the petitioner for setting aside the ACR for 2014-15 has taken more emphasis to the findings of the Initiating Officer and Reviewing Officer to the award of "average" (4 points) by ignoring the points raised in the statement of case and the very recommendation made for setting aside the ACR of 2014-2015 which they asked to submit. As such, the action of the DGAR (Records Branch) lacks fairness, transparency and arbitrary and unreasonable.

35. Admittedly, the petitioner had been denied promotion by citing the lack of ACR criteria for 2014-2015 and his juniors were given promotion superseding the petitioner. In the facts and circumstances of the case, such an action of the respondent authorities is illegal. The denial of promotion to the petitioner by citing the ACR rating "average" for 2014-2015 is bad in law, as in the ACR of 2014-2015 itself, a recommendation has been made for promotion.

36. It is apposite to note that the petitioner has completed considerable years of service in Assam Rifles, which includes 10 years in the rank of Nb. Sub (Clerk) at the time when the DPC was held for promotion to the rank of Sub (Clerk). Nothing has been produced by

the respondents to show that the performance and competence in duties assigned to the petitioner in the Unit are not satisfactory. In the statement of case for setting aside the ACR for the year 2014-2015, the Col. Commandant stated that the performance of the petitioner and competence in the duties assigned to him in the Unit have always been satisfactory and there is no record of him having been warned or counselled on that account ever. When such being the report of the higher authority, merely because the petitioner has been awarded "average" in the ACR for 2014-2015, he cannot be denied promotion. In the given facts and circumstances of the instant case, the grading "average" is not an adverse report.

37. For all the reasons stated above, this Court is of the view that the impugned letter dated 26.6.2018 and the ACR entry of the petitioner for the year 2014-2015 are not sustainable in the eye of law and are also violative of natural justice. Resultantly, the petitioner is to be considered for promotion to the rank of Sub (Clerk) from the date on which his juniors have been given promotion to the rank of Sub (Clerk).



38. In the result,

- (i) The writ petition is allowed.
- (ii) The impugned letter dated 26.6.2018 issued by the Directorate General Assam Rifles, Records Branch, Shillong and the ACR entry of the petitioner for the year 2014-2015 are set aside.
- (iii) The second respondent is directed to consider the case of the petitioner for giving promotion to the rank of Sub (Clerk) from the date his juniors have been given promotion to the rank of Sub (Clerk).
- (iv) The said exercise is directed to be completed within a period of eight weeks from the date of receipt of a copy of this order.
- (v) There will be no order as to costs.

FR/NFR

**ACTING CHIEF JUSTICE**

*Ab. Surjit*

