GAHC010001112025

2026:GAU-AS:15582

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

Case No. : WP(C)/74/2025

SUKMAN GURUNG
S/O LATE BALRAM GURUNG, VILL- APOUN, P.O. AND DIST- GORKHA, NEPAL, RETIRED FROM SERVICE FROM 30 ASSAM RIFLES, LOKRA, DIST- SONITPUR, ASSAM, C/O 99 APO

VERSUS

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

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

3:THE COMMANDANT
30TH ASSAM RIFLES
C/O 99 APO
PIN-93203

Advocate for the Petitioner : MS. S BORA, MR. P BORAH

Advocate for the Respondent : DY.S.G.I., MS. B SARMAWP(C.G.C)

:::BEFORE:::

HON'BLE MR. JUSTICE KARDAK ETE

Date on which judgment is reserved : 29.09.2026

Date of pronouncement of judgment : 14.10.2026

Whether the pronouncement is of the operative of the judgment? : No

Whether the full judgment has been pronounced? : Yes

JUDGMENT & ORDER (CAV)

Heard Ms. S. Bora, learned counsel for the petitioner. Also heard Ms. B. Sarma, learned Central Government Counsel for the respondents.

2. By filing this writ petition, the petitioner has put to challenge the order dated 05.02.2024, by which his claim for promotion to the rank of Subedar Major/GD was not considered, as well as the subsequent communication dated 13.06.2024, whereby his representation against the said decision has been rejected. The petitioner has further prayed for a direction to the respondent authorities to consider his case for promotion to the rank of Subedar Major/GD with effect from 01.03.2019, i.e. from the date when his junior was promoted, with all consequential service benefits.

3. The petitioner was initially appointed as Rifleman/GD in the Assam Rifles on 18.04.1977 and after serving in different capacities, was promoted to the rank of Subedar/GD on 01.09.2008. The next promotional post being that of

Subedar Major/GD, the petitioner, being senior Subedar in 30th Assam Rifles, was due for promotion to the said post in the year 2019. His case was considered by the DPC held in the year 2019 on the basis of his ACRs for the years 2014 to 2018. However, his name was not recommended on account of the ACR for the year 2017-18, in which he was graded "High Average". The said ACR was not communicated to him. Aggrieved thereby, the petitioner approached this Court by filing WP(C) No. 9097/2019. The said writ petition was disposed of vide order dated 31.10.2022, directing the respondent authorities to communicate the entries and grading given to the petitioner in his ACR for the year 2017-18 and to afford him an opportunity to make a representation. It was further directed that in the event the entries/grading were upgraded, a review DPC be constituted for consideration of the petitioner's case for promotion.

4. Pursuant to the aforesaid order, the petitioner submitted his representation on 23.11.2022 seeking consideration of his case for promotion to the rank of Subedar Major/GD as per his seniority by expunging the uncommunicated ACR for the year 2017-2018. In the meantime, he retired from service on superannuation on 01.12.2022 after rendering about 44 years of service. Thereafter, the respondent authorities, upon re-examination of his case, expunged the grading in his ACR for the year 2017-18 and a review DPC was conducted. However, by the impugned order dated 05.02.2024, the petitioner was informed that out of the last five ACRs in the rank of Subedar, he had earned 2 (two) Mandatory Field Service (MFS) reports and 3 (three) Extra Regimental Employment (ERE) reports and in terms of Appendix 'B' to ROI 04/2002, 3 (three) ACRs were required to be from Bn/ARTC&S/NSG. Consequently, despite the expunction of the adverse grading for the year 2017-

18, the petitioner was held ineligible for promotion to the rank of Subedar Major/GD for want of the requisite MFS reports. The petitioner thereafter served a legal notice dated 09.05.2024, which was replied to by the respondent authorities on 13.06.2024 reiterating the same ground that the petitioner had earned 2 (two) MFS reports and 3 (three) ERE reports, whereas he should have earned 3 (three) MFS with prescribed benchmark of Above Average/High Average, i.e. very good grading. It was further intimated that though the High Average (05 points) earned by the petitioner in the ACR for the year 2017-2018 has been expunged, he was lacking in MFS report criteria.

5. Ms. S. Bora, learned counsel for the petitioner, submits that the petitioner had been posted on ERE duty to Headquarters 23 Sector Assam Rifles and had earned ACRs during the said period, which were graded "Outstanding" and "Above Average". She submits that Headquarters 23 Sector Assam Rifles is an integral part of the Assam Rifles organization and the petitioner had been posted there pursuant to the orders of his superior authorities and not out of his own choice. Therefore, the ACRs earned during such ERE tenure could not have been discarded for the purpose of considering his promotion.

6. Learned counsel for the petitioner submits that the very issue had been considered by the High Court of Meghalaya in the case of **Ige Sora JC-113838 v. Union of India & Ors. (WP(C) No. 242/2016)**, decided on 05.12.2019, wherein the action of the authorities in disregarding ACRs earned during ERE duty within the same organization was held to be unsustainable. Therefore, she submits that in view of the aforesaid decision and the facts of the present case, the petitioner ought to have been considered for promotion to the rank of Subedar Major/GD from the date on which his junior was promoted,

with all consequential service benefits.

7. On the other hand, Ms. B. Sarma, learned Central Government Counsel, submits that pursuant to the order dated 31.10.2022, passed in WP(C) No. 9097/2019, the adverse grading in the petitioner's ACR for the year 2017-18, i.e. "High Average (05 Points)", was duly expunged and a review DPC was constituted. However, upon re-examination, the petitioner was found ineligible for promotion as he had earned only 2 (two) Mandatory Field Service (MFS) reports out of the last 5 (five) ACRs, whereas the applicable promotion policy requires 3 (three) ACRs from Battalion/Assam Rifles Training Centre & School/ National Security Guard. The remaining 3 (three) reports were earned during his tenure on Extra Regimental Employment (ERE) at Headquarters 23 Sector Assam Rifles and therefore, could not satisfy the mandatory MFS report criterion prescribed under the applicable policy.

8. Learned Central Government Counsel further submitted that the petitioner had proceeded on ERE duty with his consent and was aware of the eligibility criteria for promotion, his seniority and the likelihood of his promotion to the next higher rank. Therefore, the petitioner cannot seek to attribute his non-fulfilment of the mandatory MFS criteria to the respondents. She submits that the decision of the High Court of Meghalaya in **Ige Sora** (supra) would not support the case of the petitioner, as the facts of the present case are distinguishable, particularly that the petitioner had proceeded on ERE duty on his own volition. Reliance is also placed on the judgment dated 08.05.2024, passed by this Court in W.P.(C) No. 4336/2020, **Rajesh Kumar Gurung v. Union of India & Ors.**, wherein the decision in **Ige Sora** (supra) was distinguished in the context of an ERE posting availed at the request of the

personnel concerned. Therefore, she submits that the petitioner was denied promotion not on account of the earlier ACR grading, which already stood expunged, but because he failed to satisfy the independent and mandatory MFS report criterion prescribed under the prevailing promotion policy.

9. Due consideration has been extended to the submissions of learned counsel for the parties and also perused the materials available on record.

10. The short issue which arises for consideration in the present proceeding is as to whether the petitioner could have been denied consideration for promotion to the rank of Subedar Major/GD on the ground that he did not possess the requisite number of Mandatory Field Service (MFS) reports, by excluding the ACRs earned by him during his tenure on Extra Regimental Employment (ERE) at Headquarters 23 Sector Assam Rifles. It is not in dispute that the adverse grading of "High Average" in the petitioner's ACR for the year 2017-18, which had earlier operated against his claim for promotion, was subsequently expunged pursuant to the order dated 31.10.2022, passed by this Court in WP(C) No. 9097/2019. A review DPC was thereafter convened, but the petitioner was again found ineligible on the ground that out of the last five ACRs, only two were MFS reports, while the remaining three were earned during his ERE tenure at Headquarters 23 Sector Assam Rifles. The petitioner contends that such ACRs could not have been disregarded merely because they were earned during ERE posting, whereas the respondents contend that the requirement of three MFS reports is mandatory under the applicable promotion policy and the petitioner had proceeded on ERE duty with his consent. The issue, therefore, essentially turns upon whether the ACRs earned by the petitioner during his ERE tenure could have been excluded for the purpose of assessing his eligibility for promotion.

11. The issue regarding consideration of ACRs earned during ERE tenure has already been considered by the High Court of Meghalaya in **Ige Sora** (supra). In the said case, the High Court of Meghalaya did not approve the action of the authorities in excluding the ACRs earned by the petitioner during his ERE tenure within the same organisation. It was observed that the duty performed on ERE was service within the same organisation and the fortuitous circumstance of such posting could not operate to the prejudice of the legitimate right of the personnel to be considered for promotion.

12. The aforesaid view has also been reiterated by the High Court of Meghalaya in its subsequent judgment dated 13.12.2024 passed in **WP(C) No. 169/2024 (G/134441 X Warrant Officer/GD (General Duty) Samuel Kutty Vs. Union of India & Ors.** In the said case also, the petitioner was found ineligible for promotion on the ground that the requisite number of ACRs from Battalion/Assam Rifles Training Centre & School/National Security Guard were not available, as the remaining ACRs had been earned while the petitioner was serving on ERE at Headquarters 9 Sector Assam Rifles. Taking note of the earlier decision in **Ige Sora** (supra), the High Court of Meghalaya directed the respondents to take into consideration the ACRs earned during the period of ERE while considering the petitioner's case for promotion.

13. Having perused the aforesaid judgments, this Court is persuaded by the observations and view expressed by the High Court of Meghalaya as the same appears to be correct view. In the present case also, the petitioner had served on ERE at Headquarters 23 Sector Assam Rifles and had earned ACRs during such tenure. There is no dispute that the said posting was within the Assam Rifles organisation and the ACRs in question were earned by the petitioner in the course of his service. Merely because the petitioner was serving on ERE, the

ACRs earned during such period, forming part of his service record, cannot be excluded from consideration for promotion so as to render him ineligible on the ground of want of the prescribed number of MFS reports.

14. The contention of the learned Central Government Counsel that the petitioner had proceeded on ERE duty with his consent and was aware of the applicable promotion criteria also does not persuade this Court to take a different view. The fact that the petitioner may have consented to or accepted the ERE posting cannot deprive him of consideration of the ACRs earned by him during the period when he continued to remain in the service of the same organization. The relevant consideration is whether the service rendered by the petitioner during such posting and the ACRs earned in the course thereof can be completely disregarded for determining his eligibility for promotion. As viewed by the High Court of Meghalaya, this Court is also of the considered view that such ACRs cannot be excluded merely on the ground that the petitioner had served on ERE.

15. The reliance placed by the respondents upon the judgment of this Court in **Rajesh Kumar Gurung** (supra), would also not persuade this Court to take a different view in the facts of the present case. The said decision was rendered in the context of the facts obtaining therein, including the circumstances in which the ERE posting had been availed. The facts and circumstances of the present case, however, require consideration of the ACRs earned by the petitioner during his ERE tenure within the same organisation. The said decision, therefore, does not preclude consideration of such ACRs in the facts of the present case.

16. In the present case, once the adverse grading in the petitioner's ACR for the year 2017-18 was expunged pursuant to the order passed by this Court in

WP(C) No. 9097/2019, his case was required to be reconsidered on the basis of the ACRs forming part of his service record. The ACRs earned by him during his ERE tenure at Headquarters 23 Sector Assam Rifles could not have been excluded merely on the ground that the same were not MFS reports. Such exclusion has resulted in the petitioner being held ineligible for promotion despite the ACRs earned by him during his service on ERE. In the considered view of this Court, such exclusion cannot be sustained as it cannot be construed as requiring the MFS reports and ERE to be cumulatively satisfied for promotion.

17. In view of the foregoing discussion, this Court is of the considered view that the petitioner's ACRs earned during his ERE tenure are required to be taken into consideration for the purpose of assessing his eligibility for promotion to the rank of Subedar Major/GD. Consequently, the impugned order dated 05.02.2024, insofar as the petitioner has been held ineligible for promotion solely on the ground of want of the requisite MFS reports by excluding the ACRs earned during his ERE tenure, cannot be sustained. The subsequent communication dated 13.06.2024, reiterating the same ground, is also liable to be set aside.

18. Accordingly, the impugned order dated 05.02.2024 and the subsequent communication dated 13.06.2024 are hereby set aside. The respondent authorities are directed to reconsider the case of the petitioner for promotion to the rank of Subedar Major/GD by taking into consideration the ACRs earned by him during his ERE tenure at Headquarters 23 Sector Assam Rifles, in accordance with the applicable rules and policy. If, upon such reconsideration, the petitioner is otherwise found eligible for promotion, his case shall be considered for promotion from the date on which his immediate junior was promoted, with all consequential service benefits, in accordance with law.

19. The aforesaid exercise shall be completed as expeditiously as possible, preferably within a period of 3 (three) months from the date of receipt of a certified copy of this order.

20. With the aforesaid observations and directions, writ petition stands allowed and disposed of.

JUDGE

Comparing Assistant