



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 427 of 2025

Date of Hearing : 07.08.2026

Date of Decision :03.09.2026

Shri Rakesh Chopra
S/o Sh. Kewal Kumar Chopra
R/o SE (Civil), HQ Research & Development Estt. (BRO)
C/o, 99 APO **... Petitioner(s)**

Versus

1. Union of India
Through Secretary,
Ministry of Defence,
Department of Defence,
North Block, New Delhi-110011.
2. Union of India,
Through its Secretary,
Department of Personnel & Training
Ministry of Personnel, PG and Pensions
North Block, New Delhi-110011.
3. Joint Secretary Border Road
Department of Defence,
Ministry of Defence,
Border Road Wing, South Block,
New Delhi-110011.
4. DGBR, Border Road Organization
Seema Sadak Bhawan,
Ring Road, Delhi Cantt,
New Delhi-110010.



5. Lt. Gen. Raghu Srinivas,
DGBR, Border Road Organization
Seema Sadak Bhawan,
Ring Road, Delhi Cantt,
New Delhi-110010.
6. Lt. Gen Rajeev Chodhary (Retd),
(Former) DGBR,
Through Border Road Organization
Seema Sadak Bhawan,
Ring Road, Delhi Cantt,
New Delhi-110010.
7. The Chief Engineer,
HQ Research & Development Estt (BRO)
Near William Carey University
Nongmynsong, Shillong
Meghalaya-793019

.... Respondent(s)

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge.

Appearance:

For the Petitioner(s) : Mr. N.K. Gupta, Adv. with
Ms. M. Surong, Adv.

For the Respondent(s) : Dr. N. Mozika, DSGI with
Ms. M. Myrchiang, Adv.

- | | | |
|-----|--|--------|
| i) | Whether approved for reporting in
Law journals etc: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
-



JUDGMENT AND ORDER

1. The petitioner who is currently serving as a Superintending Engineer (Civil) in the Border Road Organization is before this Court by the instant writ petition seeking the expunging of negative entries made by the Reviewing Officer (Respondent No. 6) in the 2022-23, Annual Performance Assessment Report (APAR) and to restore the original grading given by the Reporting Officer, to quash the rejection of representation and letter that declared the petitioner's APAR for the period 2023-24 as technically invalid and to direct the respondents to follow DoPT procedure for 2023-24 period including recording the petitioner's self-appraisal and for issuance of No Report Certificate.

2. Mr. N.K. Gupta, learned counsel for the petitioner submitted that the petitioner has maintained a distinguished 31-year career within the Border Road Organization (BRO) and in 2021, was also officially recognized for having "Integrity Beyond Doubt". However, he submits after the petitioner had filed a whistle-blower complaint on 29.03.2022, regarding mis-appropriation by Senior official for the BRO, the petitioner faced a multitude of retaliatory administrative actions from the respondents Nos. 5 & 6. Despite these actions, he submits on 03.10.2022, the CVC issued a protection order to shield him from victimization, on 08.05.2024 the Delhi



High Court in WP(C) No. 16645/2022, had ruled that the actions of the Department were unjust and arbitrary and that on 24.11.2025, the High Court of Meghalaya in WP(C) No. 374/2025, had quashed a Charge-Sheet dated 22.04.2025, and a corrigendum dated 05.08.2025. The learned counsel has asserted that there is a systematic institutional effort to retaliate against the petitioner, which has compelled him to approach the Courts repeatedly, seeking reliefs.

3. With regard to the petitioner's 2022-23 APAR, it is submitted that the Reviewing Officer (R-6), had no direct supervision over his works, yet issued the impugned remarks and a below benchmark grading, which rendered the petitioner ineligible for promotion. Further he submits the Reviewing Officer completely disregarded the assessment of the Reporting Officer, who had supervised the petitioner daily in Guwahati, and the down grading violates Rule 1.3 and 1.4 of the APAR Policy, which provides that the APAR process should be impartial and transparent, not to be used as a tool to punish or discipline an officer and that counseling and guidance be provided before an adverse report is filed. It is further submitted that the Reviewing Officer had violated the mandate of DoPT OM dated 23.07.2009, DoPT OM dated 13.04.2010 and clause 2.8 of the DoPT brochure, which provides that a Reviewing Officer, must provide specific reasons when



disagreeing with the Reporting Officer, and as such therefore, the unreasoned down grade is '*non-est*'. It is contended that though the Reviewing Officer had stated that the Reporting Officer had "over-assessed", no reason was however ascribed as prescribed by the Office Memorandum.

4. Learned counsel has also highlighted the alleged discrepancy or paradox between the Reviewing Officer's numerical grades and qualitative remarks and submits that while 6(six) (very good) was given for the work output but however, in the "Pen picture", the petitioner was labelled as "habitual offender" and having "shaky loyalty". It is also alleged that the final score was "reverse-engineered" to prevent the petitioner's promotion and that the grade of 5.9 is calculated attempt to keep the petitioner just 0.1 points below the 6.0 benchmark for promotion. This action he contends by the Reviewing Officer, shows a colorable exercise to predetermine a negative outcome while evading accountability. It is also asserted that there has been a violation of mandatory and binding legal framework as prescribed in the DoPT guideline, and that these guidelines being executive instructions are not merely directory but are mandatory safeguards and procedure established to protect government servants from arbitrary, or biased administrative actions. In this context, reference has been made by the



learned counsel to the Timelines and Forfeiture Rule, and it is submitted that completion of the APAR cycle is strictly governed by the DoPT OM dated 16.02.2009. This OM he submits, provides that a Reviewing Officer shall forfeit his right to enter any remarks in the APAR, if they fail to meet the 31st August deadline and remarks entered after this deadline are considered legally void as the officer is then “functus officio”. The respondents he submits cannot selectively treat these mandatory deadlines as “directory” to condone their administrative delay.

5. It is further submitted that to ensure adherence to these mandatory guidelines, the framework provides a “Force-Forward” mechanism under Para 5.1 of the DoPT APAR brochure, where if an officer fails to submits their self-appraisal by the 15th April deadline, the Reporting Officer must initiate the APAR suo muto. It is then submitted that the procedure for recording remarks on an officer’s integrity is governed by the DoPT OMs dated 20.05.1972, and 11.02.2016, which provides that any adverse entry regarding integrity specifically a marking of “doubtful” must be supported by a secret note containing specific, verifiable reasons for the suspicion. With regard to deciding an officer’s representation against adverse remarks, it is submitted that the same is governed by DoPT OM dated 13.04.2010, and the same must be decided within 30(thirty) days of



receipt. Under clause 9.5(i) of the OM dated 20.05.1972, he submits that the authority deciding the representation must be superior to the Reviewing Officer and that further the deciding authority is restricted to three aspects i.e. the representation, the APAR itself and the views of the Reporting, Reviewing Officer, if they are still in service, and that importing other feedback or third-party recommendations is legally impermissible. The learned counsel has also contended that the adverse APAR was used as a tool for institutional retaliation due to the petitioner's whistle-blower complaint, inasmuch as, an internal noting sheet lists the complaint as points highlighted against him, and that placing such disclosure before the disposing authority and negative material violates the whistle-blower's protection and CVC orders which mandate such disclosures be shielded from administrative reprisal.

6. It is further contended that the petitioner had submitted his self-appraisal on 24.06.2024, but however an objection was raised by letter dated 10.07.2024, with regard to the submission of the interim PAR before the retirement of the Reporting Officer i.e. 31.01.2024. It is submitted that the deadline was then extended by the DoPT to 30.06.2024 for the 2023-24 APAR cycle due to the General Elections, which was well within the time limit prescribed for the remaining period of the year (01.02.2024 to



31.03.2024). It has also been urged that the term “Technically Invalid” has no basis in the CCS Rules or the DoPT APAR brochure as the official framework recognizes only 3(three) situations for an un-assessed period namely; (i) Valid APAR (ii) No Report Certificate (NRC) and (iii) Gap Certificate. It is asserted that an NRC is only for periods where officer has worked under a Reporting Officer for less than 3(three) months, whereas in the case of the petitioner he had worked under the concerned Reporting Officer for the entire reporting year i.e. 01.04.2023 to 30.01.2024. It is submitted that as per the APAR brochure (Para 5.1) it provides that if a self-appraisal is not received, the Reporting Officer must initiate the APAR, and that in this regard the Reporting Officer Shri Manv Prasad was duly empowered to write the reports within 1(one) month of retirement i.e. until 29.02.2024 but failed to do so. It is further argued that as per the DoPT OM dated 16.02.2009, failure to initiate the APAR, forfeits his rights to enter remarks and the APAR should have been forwarded to the Reviewing Officer and thus the respondents’ failure to ensure this procedure was followed cannot be used to penalize the petitioner.

7. It has been contended that the respondents’ attempt to penalize the petitioner for the alleged delays in submitting reports as an Inquiry Officer is legally impermissible, as an officer who has been appointed as an



Inquiry Officer performs a quasi-judicial function and acts as an independent adjudicator rather than a subordinate. In this context, the learned counsel has cited the case of *Zunjarrao Bhikaji Nagarkar vs. Union of India (1999) 7 SCC 409*, wherein he submits it has been held that negligence or delay in quasi-judicial duties cannot form the basis for adverse APAR remarks unless there is prove of mala fide or extraneous considerations. To take adverse action it is submitted for an Inquiry Officer's conduct requires a formal procedure, i.e. full opportunity to explain and CVC advise, which it is asserted that the respondents have bypassed such mandatory process and have used the APAR as an instrument of punishment.

8. The respondents it is submitted have also committed perjury by stating on oath that the memorandum of charges was active when in fact this Court had already been quashed and set aside the chargesheet in a previous writ petition and further the affidavits were sworn by junior officers, and that the respondents had engaged in a manufactured process designed to prejudice his career. It is also further asserted that though this Court had set aside and quashed the chargesheet on 24.11.2025, however, during the DPC meeting held on 10.12.2025, the respondents failed to inform the other DPC members of this judicial order, which led the DPC to apply the seal cover procedure purportedly on a disciplinary proceeding that no longer existed in



the eye of law. In conclusion, it is prayed that the Reviewing Officer's entries be expunged by quashing and setting aside all numerical downgrades in the APAR for 04.09.2022 to 31.03.2023, and to restore the Reporting Officer grading as final and direct the same be treated as 7.0, as assessed, and also to quash the NRC and to preserve Self-appraisal for APAR 2023-24.

9. Dr. N. Mozika, learned DSGI assisted by Ms. M. Myrchiang, learned counsel for the respondents has firstly taken up the issue of territorial jurisdiction and submits that no part of the cause of action arose within this Courts' jurisdiction. It is argued that the representation was disposed of in Delhi and the petitioner's receipt of the rejection in Shillong is a mere incidental correspondence. The learned DSGI has relied upon the judgment in the case of *Ex Rect Vinod Kumar vs. Union of India 2006 SCC OnLine Del. 1401* to contend that parties cannot confer jurisdiction by consent and that substantial or integral cause of action must exist within the Court's territory. The Departmental Promotion Committee (DPC), which handles the consideration for promotion of the petitioner, it is submitted, is held in Delhi and that the petitioner's posting to Shillong is a fortuitous circumstance.

10. It is then submitted that the APAR timelines are directory and not mandatory and are executive instructions rather than statutes, and if such guidelines are mandatory all parties would have to adhere to the same



strictly. The non-compliance or neglect of these timelines by an officer it is submitted may be punishable but does not invalidate the action taken, such as a delayed appraisal and, in this context, reliance has been placed on the case of *State of U.P. vs. Manbodhan Lal Srivastavas AIR 1957 SC 912* to illustrate the distinction between directory and mandatory provisions. With regard to the specific appraisal for the period 04.09.2022 to 31.03.2023, it has been submitted that there was a 40-day delay by the Reporting Officer and a subsequent 26-day delay by the Reviewing Officer and that the delay on the part of the Reviewing Officer was because the file was received late from the Reporting Officer. It is also been pointed out that the petitioner failed to submit a self-appraisal report for this period, despite of reminder sent on 08.08.2023, and is now seeking selective condonation to condone the Reporting Officer's delay, where he received a favourable grading of 7.0, while challenging the Reviewing Officer delay, where the grading was 5.9.

11. With regard to the contention that as prescribed by OM dated 11.02.2016, that secret note procedure has to be followed or to give observation that "not watch the officer's work", it is submitted that Para-3 of the said OM specifically states that remarks against the integrity column of APAR of the officer reported shall be made by the Reporting Officer, and as such is for his guidance and not for the Reviewing Officer. As far as OM



dated 23.07.2009 is concerned, it is submitted that the same provides that a provision be made in the APAR in the relevant section for remarks by the Reviewing Officer to indicate differences with the assessment made by the Reporting Officer, and as such remarks were made in this context that the Reporting Officer had over assessed and had been liberal in the assessment.

12. It is then submitted that the petitioner submitted his APAR on 24.06.2024 for the period 01.04.2023 to 31.03.2024 and it is contended that the same was beyond the prescribed timeline and that the APAR submission was also defective, for which by letter dated 10.07.2024, he was required to submit an interim PAR before the Reporting Officer (retired), on 31.01.2024. Though the petitioner submitted a clarification on 26.07.2024, stating that he was on leave for portion of the time and that if a self-appraisal is not received, the Reporting Officer is obligated to fill up the APAR, in the case of the respondents it is submitted that the self-appraisal for the 2023-24 period remained defective, and was submitted beyond the timeline. It is thus maintained by the learned DSGI that the petitioner, has consistently neglected his administrative responsibilities regarding his performance report, despite receiving reminder.

13. With regard to the representation filed by the petitioner, it is submitted that though the communication was issued by the Deputy



Secretary, he was not the deciding officer as the speaking order dated 22.05.2025, explicitly states that ‘competent authority has rejected the representation’ and the Deputy Secretary merely acted as the official channel to convey that decision. It has been further submitted that the representation was decided by a consultation process as per administrative guidelines, which require taking the views of the Reporting and Reviewing Officers into account if they are still in service, and in this manner, comments were received from the Reporting Officer (Shri P.K.H. Singh) on 23.01.2024, but however, as the Reviewing Officer had already retired, his specific comments could not be obtained. As to the delays of 18 months in disposing of the representation, it has been contended that firstly the 30-day timeline for disposing of such representations are directory and not mandatory, secondly, the petitioner had acquiesced to the delay by awaiting the outcome without challenging the same and had approached the Court only after receiving a negative result. The learned DSGI also maintained that the speaking order cannot be disregarded solely because of the time factor and that remanding the matter back to the authority based on delay would be counterproductive, apart from the fact that the word ‘shall’ can be read as ‘may’ and ‘may’ can be read as ‘shall’ depending on the context.



14. The learned DSGI has rebutted the allegation of mala fide against the respondent No. 6 (rank of Lt. General) by submitting that he was four levels than the petitioner and never had the opportunity to observe his works and being a high official had no reason to have any mala fide against the petitioner, and he also having since retired, even his comments were not available for disposing of the representation. It is lastly argued that this Court had quashed only the memorandum of charges and not the charges which have not been wiped out, which have only halted the disciplinary proceedings but does not wipe out the allegations, and the same can still be taken into account for other purposes.

15. Heard the learned counsel for the parties.

16. Before delving into the contentions raised by the petitioner, it is relevant to note herein that while the instant writ petition was pending judgment, a miscellaneous application being M.C [WP(C)] No. 128 of 2026 was filed by the petitioner bringing on record new facts after the judgment had been reserved and a prayer sought for opening of the sealed cover and to act upon the DPC recommendation, which was held on 10.12.2025. This Court by order dated 10.06.2025, while disposing of the application, had observed that on the quashing of the chargesheet and corrigendum and by operation of OM dated 14.09.1992, there was no necessity of placing the



case of the petitioner under sealed cover and had noted that the action of the respondents, had only fortified the assertion made by the petitioner of a vendetta against him. However, on a subsequent hearing it has been reported by the respondents that the sealed cover was opened and the petitioner found unfit for promotion.

17. The issue that has to be decided presently therefore, is whether downgrading the petitioner's 2022-23 APAR is legally sustainable, whether declaration of the of the petitioner's 2023-24 report as technically invalid, is baseless or punitive, and whether non-adherence to the prescribed timelines will adversely affect the petitioner's promotion. Added to this is the objections raised with regard to territorial jurisdiction of this Court to entertain the writ petition.

18. Before dealing with the grievances of the writ petitioner as given hereinabove, as the respondents have raised an objection on territorial jurisdiction, it is firstly to be noted that this is the second round of litigation whereby the writ petitioner has approached this Court. In the first round of litigation i.e. WP(C) 327 of 2025, which was disposed of on 24.11.2025, this objection was not raised by the respondents in their pleadings, and has been raised now, only at the stage of final arguments. This Court therefore, will not attach much significance to this objection which appears to have been



made as an afterthought. Moreover, the events leading to the present situation being continuous, whereby the service record affects him wherever he is stationed, jurisdiction in this particular case is not limited to a single location. As such, the objection is not sustained.

19. On the other main issues, upon consideration of the pleadings, materials placed on record and the applicable guidelines governing the preparation and consideration of Annual Performance Assessment Reports (APARs), this Court is of the considered view that the grievance of the petitioner, insofar as the APAR's for the periods 04.09.2022 to 31.03.2023 and 2023-31.03.2024 are concerned, merits consideration.

20. With regard to APAR for the year 04.09.2022 to 21.03.2023, it is important to note that the Reporting Officer, who had the occasion to supervise the petitioner in the discharge of his duties, had assessed the petitioner at the level of 7.0. The Reviewing Officer, however, differed from the assessment and reduced the grading to 5.9, while recording that the petitioner had been "*over-assessed*". The materials on record do not disclose any cogent or specific reasons demonstrating the basis on which such substantial departure from the assessment of the Reporting Officer was made.



21. The requirement of recording reasons where the Reviewing Officer differs from the assessment of the Reporting Officer is not an empty formality. The APAR system, is intended to provide a fair and objective assessment of the performance of a Government servant and cannot be permitted to become an instrument of penalty or adverse action. As such, it can safely be concluded that the mandate of DoPT OM dt. 23.07.2009, has not been adhered to, which at (ii) has provided as follows:

“(ii) A provision may be made in the APAR in the relevant section for remarks by the reviewing officer to indicate specifically the differences, is any, with the assessment made by the reporting officer, and the reasons therefor.”

22. This Court is also conscious of the fact that the petitioner had earlier approached the authorities and this Court, in relation to proceedings which have subsequently been interfered with by judicial orders. The subsequent order passed by this Court in relation to the sealed-cover proceedings, has already noticed the manner in which the petitioner's promotional prospects came to be dealt with and had directed the respondents to open the sealed cover and consider the petitioner in accordance with law.



23. In the facts and circumstances of the present case, therefore, the impugned remarks and downgrading, particularly when considered alongside the qualitative remarks appearing in the APAR, cannot be sustained without the matter being reconsidered in accordance with the prescribed procedure. The impugned APAR entries cannot be permitted to operate to the prejudice of the petitioner without a fresh and procedurally compliant consideration.

24. Accordingly, the impugned adverse remarks and the downgraded grading of 5.9 recorded by the Reviewing Officer in respect of the APAR for the period 04.09.2022 to 31.03.2023 are hereby set aside.

25. The respondents are directed to reconsider the said APAR strictly in accordance with the applicable DoPT instructions and APAR guidelines, after taking into consideration the assessment of the Reporting Officer and by recording specific and cogent reasons for any departure therefrom. The exercise shall be undertaken by an authority competent under the applicable rules and by an officer unconnected with the impugned assessment, so as to ensure fairness and objectivity.

26. It is, however, made clear that this Court does not direct that the grading of 7.0 awarded by the Reporting Officer, shall automatically be treated as the final grading. The fresh consideration shall be undertaken in



accordance with the applicable rules and on the basis of the material legitimately available for consideration.

27. In respect of the APAR for the period 01.04.2023 to 31.03.2024, here the respondents have a stronger defence, inasmuch as, the contention of the respondents is that the petitioner submitted his APAR/self-appraisal late and defectively. In the view of this Court the petitioner, however, has an arguable answer because the DoPT Guidelines/Mechanism at Clause 5.1 thereof, requires the Reporting Officer to initiate the APAR, where the self-appraisal is not submitted.

28. Accordingly, as the APAR for the period 01.04.2023 to 31.03.2024 is concerned, the respondents shall reconsider the petitioner's case in accordance with the applicable DoPT procedure and shall not deny the petitioner the benefit of consideration merely on the basis of the expression "technically invalid" without identifying the specific statutory or administrative provision authorising such treatment.

29. The respondents shall also consider the petitioner's self-appraisal and determine, in accordance with the applicable APAR guidelines, whether the circumstances warrant preparation of a valid APAR, a No Report Certificate, or any other permissible course under the governing instructions.



30. As the main issues have been discussed, the other contentions raised though ancillary, in the opinion of this Court are not necessary to be gone into at this juncture. The judgments placed by the parties though noted, are not discussed as this writ petition is being disposed of on the short points as adjudicated above.

31. The exercise shall be completed within a period of **six weeks** from the date of receipt of a certified copy of this order.

32. The respondents shall thereafter reconsider the petitioner's case for all consequential service benefits, including promotion, if otherwise due, in accordance with the result of the aforesaid exercise and applicable rules.

33. It is clarified that this Court has not expressed any opinion on the petitioner's entitlement to promotion on merits and the competent authority shall take an independent decision in accordance with law.

34. The writ petition is accordingly allowed in part in the above terms.

35. No order as to costs.

JUDGE

Meghalaya
03.09.2026
"V. Lyndem- AR-PS"