

GAHC010004112011



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

Case No. : WP(C)/1155/2011

DILMAYA THAPA
W/O LT. GAUTAM THAPA,R/O VILL. TIRAP GATE, LEDO, DIST TINSUKIA,
ASSAM

VERSUS

THE DIRECTOR GENERAL , ASSAM RIFLES and 3 ORS
MAHANIDESHALAYA ASSAM RIFLES,DIRECTORATE GENERAL , ASSAM
RIFLES, SHILLONG - 793011, MEGHALAYA

2:THE COMMANDANT

HEAD QUARTERS
TRIPURA RANGE
ASSAM RIFLES
C/O 99 APO

3:THE RECORD OFFICER

COL RECORDSMAHANIDESHALAYA ASSAM RIFLES
DIRCTORATE GENERAL
ASSAM RIFLES
SHILLONG-793011
MEGHALAYA

4:THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA
MINISTRY OF HOME AFFAIRS
NEW DELHI

Advocate for the Petitioner : Mr. M. P. Sarma, Advocate

Advocate for the Respondents : Ms. M. Konyak. W, Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 29.08.2023

Date of Judgment : 29.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner challenging the order dated 02.06.2001 whereby one Gautam Thapa (since deceased) was dismissed from service as well as also the order dated 20.02.2006 whereby the application so filed by Late Gautam Thapa for reconsideration was also dismissed.

2. Before dealing with the facts of the case, this Court finds it relevant to observe that Late Gautam Thapa who originally filed the present writ petition expired on 02.10.2011, and thereupon, an application was filed by his wife seeking substitution which was allowed by this Court dated 11.06.2013.

3. Taking into account the above, this Court proceeds to deal with the facts of the case. For the sake of convenience, this Court refers to Late Gautam Thapa as the original petitioner and his wife Smti. Dilmaya Thapa as the substituted petitioner.

4. The facts as could be discerned from the pleadings are that the original petitioner was enrolled as the Rifleman/Carpenter in the Assam Rifles w.e.f. 21.06.1980. Subsequently, he was promoted to the rank of a Clerk and thereafter to the rank of Naik Clerk. In the year 1996, the original petitioner was promoted to the rank of Havildar Clerk. In the year 2000, at the instance of the original petitioner, a proposal was mooted as regard his voluntary retirement and consequently the Director General, Assam Rifles vide an Official Communication dated 11.08.2000 approved the voluntary retirement of the

original petitioner w.e.f. 31.03.2001.

5. It was the case of the original petitioner that he was suffering from Viral Hepatitis with Alcoholic Psychosis and was admitted at the Margherita Central Hospital during the period 07.12.2000 to 12.12.2000 and was under medical supervision for the said medical condition till the month of February, 2001. On 20.03.2001, the Senior Medical Officer of the Margherita Central Hospital had issued a Medical Certificate declaring that the original petitioner to be fit to attend his duty upon which he joined his duties on 24.03.2001. The original petitioner was duly allowed to join his duties on 24.03.2001. However, to the utter shock and dismay, a Notice of Summary Court Martial proceedings bearing No.S/02/2001 dated 25.05.2001 was issued by the Commandant, Headquarters, Tripura Range, Assam Rifles which was served upon him. It was mentioned in the said notice that the original petitioner would be tried by Summary Court Martial which shall commence at 1130 hrs on 02.06.2001. It was mentioned that on the same date, the original petitioner would be subjected to medical examination at 0800 hrs and shall be produced in the Court at 1115 hrs. Thereupon, a Summary Court Martial Proceedings was held on 02.06.2001 and on the said date, a Memorandum bearing No.309/73 was issued by the Commandant, Headquarters, Tripura Range, Assam Rifles thereby reducing the rank of the original petitioner to Riflemen and further proceeded to dismiss him from service. The charge which was brought against the original petitioner was that though he was granted 25 days Earned Leave w.e.f. 16.10.2000 till 12.11.2000, but he failed to report back on due date and remained absent without leave and intimation till 24.03.2001, thereby a total absence of 132 days. The original petitioner was further informed vide another communication dated 02.06.2001 that he may prefer a petition before the appropriate authority against the Award issued by the Memorandum dated 02.06.2001. The original petitioner, thereupon, filed a representation after almost 5 years thereafter on 06.02.2006 before the Directorate General, Assam Rifles (Record Branch) praying for cancellation of the Memorandum dated 02.06.2001 whereby the

original petitioner's rank was reduced to that of a Riflemen and further his services were dismissed. The original petitioner further prayed by the said representation that he may be allowed to go on voluntary retirement in terms of the Official Communication dated 11.08.2000 on a sympathetic consideration of the matter on humanitarian grounds reckoning the 21 years of dedicated service rendered by him and in view of his family consisting of his aged mother, wife, son and three daughters; all dependants on the income of the petitioner. It was also mentioned in the said representation that the original petitioner went on Casual Leave for a period of 15 days w.e.f. 16.10.2000 to 02.11.2000. However, owing to sudden illness he requested for a further extension of 10 days extension which was according granted till 12.11.2000. Thereafter, as he was suffering from Viral Hepatitis, he had not completely recovered from his sickness, and as such, could not report for duty on expiry of the said leave and stayed at home without intimation for further extension. However, the representation of the original petitioner was rejected vide the order dated 20.02.2006 thereby intimating the original petitioner that his case had been examined in details and from his service records, it could be seen that he was dismissed from service under Section 39 (b) of the Army Act, 1950 for over-staying leave without sufficient cause, and as such, the punishment imposed upon him cannot be considered into discharge, and hence, he is not entitled to get any pensionary benefits as per Rule 24 of CCS (Pension) Rules, 1972. Thereupon, after another gap of 5 years the instant writ petition was filed on 17.02.2011.

6. This Court further finds it relevant to take note of that this Court vide an order dated 04.03.2011 issued notice making it returnable by 8 weeks. Thereupon, vide an order dated 07.10.2013, this Court issued Rule. The record further reveals that an affidavit-in-opposition was filed by the respondent Nos.1, 2 & 3. In the said affidavit-in-opposition, it was mentioned that in the month of July 2000, the original petitioner had submitted an application to proceed on voluntary retirement which was admittedly approved by the competent authority fixing his date of retirement with effect from

31.03.2001 (AN) vide the communication dated 11.08.2000. It was further mentioned that necessary casualty was published vide Part-II order Serial No.50/2000 dated 25.09.2000. However, the same did not come into force because a disciplinary proceedings was initiated against the original petitioner for his unauthorized absence. It was further mentioned that the original petitioner had requested for 15 days Casual Leave on compassionate ground which was granted with effect from 16.10.2000 to 02.11.2000 with further permission to extend 10 days Leave with effect from 03.11.2000 to 12.11.2000. However, on expiry of said granted leave period, the original petitioner failed to report on due date and he remained absent without leave till he reported back voluntarily to Headquarters Tripura Range Assam Rifles on 24.03.2001. As such, the total period of absence was 132 days. Under such circumstances, the original petitioner was charge sheeted and after hearing of charge, a Summary of Evidence was recorded. Thereafter, with due compliance of the Army Rules and the Army Act, the original petitioner was tried by a Summary Court Martial held on 02.06.2001 under Section 39 (b) of the Army Act for without sufficient reason overstaying leave granted to him. It was further mentioned that there was a detailed investigation carried out and applying all the legal provisions of the Army Rules 115(2) as applicable to the Assam Rifles personnel operating under the operation control of Army and after hearing the charge, Summary of Evidence was recorded and the individual was tried by a Summary Court Martial, held on 02.06.2001. The original petitioner was found guilty under the Army Act Section 39 (b) for “without sufficient cause overstaying leave granted to him” and sentenced him “to be reduced to Rifleman and dismissed from service” on 02.06.2001 vide Memorandum dated 02.06.2001. It was further mentioned that the original petitioner being aggrieved had preferred a post confirmation petition dated 06.02.2006 for cancellation of Memorandum dated 02.06.2001 to allow him to go on voluntary retirement on humanitarian grounds reckoning that 21 years of dedicated service rendered by him and in view of his family. The said representation/petition dated 06.02.2006 addressed to Directorate General Assam Rifles (Record Branch) was

examined in details and previous service records of the original petitioner was also taken into account, and accordingly, the said representation was rejected. In paragraph No.10 of the affidavit-in-opposition it has also been mentioned that during the Summary Court Martial proceedings, the original petitioner had pleaded guilty, and accordingly, he was awarded sentence “to be reduced to Rifleman and dismissed from service”.

7. This Court, upon perusal of the materials on record had heard the learned counsels for the parties on 01.08.2023. During the course of hearing, a question arose as to whether the original petitioner was a habitual offender in as much as it has been mentioned in the impugned order dated 02.06.2001 that the original petitioner was a habitual offender as he had over-stayed leave on three occasions in the past for which he was punished to mend his attitude. Under such circumstances, this Court directed the respondent authorities to bring on record as to whether the original petitioner was habitual offender prior to the charge for over-stayed leave for 132 days.

8. Ms. M. Konayak. W, the learned counsel for the appearing on behalf of the respondents today has produced the communication issued by the Lt. Col. SO1 (A) for DIG, Assam Rifles dated 23.08.2023. In the said communication it was mentioned that as per record available in the Punishment Register of the Establishment Branch of the said Secretariat Head Quarter, the original petitioner was awarded severe reprimand under Army Act Section 63 for 58 days absent without leave (AWL), and in that regard, the photocopy of the page of the Punishment Register was enclosed. It was further mentioned that there were no other record of any previous punishment awarded to the original petitioner with the Headquarter. The said communication is kept on record and marked with the letter “X”.

9. I have heard the learned counsel for the parties and perused the materials on record. From the perusal of the materials on record and taking into account that the original petitioner had also pleaded guilty to the charge for over-staying the leave granted without sufficient cause, it would be an offence under Section 39 (b) of the Army Act,

1950. Further to that, it is seen from the Section 39 of the Army Act, 1950 that the person shall, on conviction by court-martial, be liable to suffer imprisonment for a term which may extend to three years or such less punishment as mentioned in the said Army Act, 1950.

10. This Court further finds it relevant to take note of Section 71 of the Army Act, 1950 wherein it has been stipulated that punishments may be inflicted in respect of offences committed by a person subject to the Army Act, 1950 and convicted by courts-martial, according to the scale mentioned therein which includes dismissal from service.

11. In that view of the matter, taking into account that the original petitioner had already been convicted upon pleading guilty to the offence under Section 39 (b) of the Army Act, 1950, the imposition of penalty under Section 71 of the Army Act, 1950 for dismissal of the original petitioner cannot be said to be arbitrary and unreasonable, more so, when it is seen that on the earlier occasion also the original petitioner was punished for being absent without leave for 58 days.

12. Considering the above, this Court finds no merit in the instant writ petition for which the instant writ petition stands dismissed.

JUDGE

Comparing Assistant