

GAHC010026622015



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

Case No. : WP(C)/7335/2015

S/356343F HAV/ORL KULDEEP SINGH
HQ COY 11 ASSAM RIFLES, C/O- 99 APO, PIN- 932011.

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS, NEW DELHI- 110001.

2:DIRECTOR GENERAL OF ASSAM RIFLES
SHILLONG
MEGHALAYA- 11.

3:CDR. HQ 26 SECTOR
ASSAM RIFLES
PIN- 932560
C/O- 99 APO.

4:COMMANDANT 11 ASSAM RIFLES
PIN- 932011
C/O- 99 APO.

5:MAJOR SOMENDRA SAIN
11 ASSAM RIFLES
PIN- 932011
C/O- 99 APO.

6:MAJOR HITESH
11 ASSAM RIFLES
PIN- 932011
C/O- 99 APO

Advocate for the Petitioner : MRS.S BORA

Advocate for the Respondent : C.G.C.

**BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

O R D E R

24.05.2023

Heard Ms. S Bora, learned counsel for the petitioner and Ms. R Devi, learned CGC for the respondents.

2. The petitioner HAV/ORL Kuldeep Singh has instituted this writ petition with the following prayers:-

“a. Issue writ direction in the nature of Certiorari quashing impugned warning order dated 03.06.2015 as well as Tentative Charge Sheet dated 13-01-2015 to remove the 4th Red Ink Entry to his service career.

b. Issue a writ order direction in the nature of mandamus directing respondent to not take any disciplinary action against the Petitioner as directed by Respondent No. 2 in letter dated 03.06.2015 wherein Commandant is directed to take appropriate disciplinary action against the Petitioner.

c. Issue a writ, order, direction in the nature of prohibition, prohibiting the respondent from mentally torturing the Petitioner.

d. Issue a writ, order, direction in the nature of prohibition to take cognizance of punishment entries awarded to Petitioner on 01-05-2014 and 13-01-2015 as same is awarded without Court of Inquiry, application of mind on factual circumstances and thus bad in law.

e. On perusal of the records causes being shown if any and hearing the parties your lordships would be pleased to make the rule absolute and/ or pass any other appropriate order/ orders and/ or direction/ directions to the respondents so as to grant adequate relief to the Petitioner entitled under the law of equality and as your lordship may deem fit and proper in the interest of justice.

AND

Further pending disposal of Rule, your lordship would be pleased to pass an interim order suspending/ staying the operation of impugned order dated 03.06.2015 and not to proceed for any disciplinary action against the Petitioner as directed by respondent No. 2 to Commandant 11 Assam Rifles (Respondent No. 4)."

3. A reading of the prayer (a) makes it discernible that a writ in the nature of certiorari is sought for quashing an order dated 03.06.2015 of the Brigadier/CDR in the Headquarters 26 Sector, Assam Rifles. The order dated 03.06.2015 is extracted as below:-

"1. You were enrolled as Rect/ORL on 17 Sep 1988 in Assam Rifles. Since then, in your service of 26 years 07 months and 20 days (as on 07 May 2015), you have till date incurred three red link entries in your dossier. The details of the offences are as given below:-

Ser No	Offence	Date of Offence	Statement of Offence	Punishment awarded
(a)	AA Sec 39(b)	17 Sep 1995	In that he, at 27 Assam Rifles on being SOS to 28 Assam Rifles wef 11 Aug 95 (FN), failed without sufficient cause to report to this unit on 17 Sept (FN) after availing 15 days joining time and 22 days earned leave as granted to him and rejoined on 30 Oct 95 (AN) at his own accord. (Total period of absence- 44 days)	14 days RI on 11 Nov 1995
(b)	AA Sec 39(b)	03 Jul 1999	In that he, at ARTC having been gtd 15 days casual leave on course duration wef 20 May 99 to 03 Jun	07 days RI IN AR custody on 13 Jul 99

			<i>99 failed without sufficient cause to rejoin duty on expiry of lve till he voluntarily rejoined on 17 Jun 99. (Total period of absence – 14 days)</i>	
(c)	AR Act Sec 49	24 Apr 2014	<i>In that he, at filed, on 24 Apr 2014 at 1915 hrs while performing the duties of Operator Radio Line at 'A' Coy, 11 Assam Rifles was in unauthorized possession of 30 Litres of HSD, the property belonging to the Government with a malafide intent.</i>	<i>Severe Reprimand on 01 May 2014</i>

2. It is clear from the above that in spite of having been advised many times to improve your conduct you did not show any improvement. You are hereby warned, to be more careful in your conduct. If you incur fourth red ink entry in your service document, then action will be taken to discharge you from service by rules governed in Section 11(2) of Assam Rifles Act 2006 read with AR Rule 25 of Assam Rifles Rule 2010.

4. A reading of the said order makes it discernible that in fact it is a warning letter wherein three earlier punishments awarded to the petitioner dated 11.11.1995, 13.07.1999 and 01.05.2014 have been referred and that in respect of the three punishments, three red inks had been entered in the dossier of the petitioner.

5. We have been informed by Ms. R Devi, learned CGC that red ink entries are made against each of the punishment that may be meted to a particular member of the Assam rifles and the red ink itself is not a punishment, but it is a

consequential entry pursuant to a punishment been inflicted in a given proceeding. The warning letter of 03.06.2015 informs the petitioner that as three red ink entries have already been entered in his dossier, the fourth red ink entry may entail a discharge from service under the Rules. It is stated by Ms. R Devi, learned CGC that in a circumstance, where fourth red ink entries are made in respect of a particular member of the force, the same by itself entails a discharge from service.

6. As the order dated 03.06.2015 which was assailed in this writ petition is in fact a warning letter informing the petitioner that three red ink entries have already been made in his dossier and the fourth may entail a discharge from service, it cannot in any view be stated to be in violation of any law or that it violates any of the legal rights of the petitioner. In fact the warning letter can be appreciated to the extent that the petitioner had been duly warned and informed about his status in the service.

7. Prayer (a) also assails the charge-sheet dated 13.01.2015 of the Colonel Commandant, 11 Assam Rifles. The contents of the charge-sheet is extracted as below:-

“TENTATIVE CHARGE SHEET

The accused No. S/356343F Havildar (Operator Radio Line) Kuldeep Singh of 11th Battalion Assam Rifles is charged with:-

AN ACT PREJUDICIAL TO GOOD ORDER AND

DISCIPLINE OF THE FORCE

AR ACT SEC 49

in that he,

at filed, on 09 January 2015 at about 1730 hrs was found absent from the place duty and found at Pfutsero market.”

8. A perusal of the charge-sheet makes it discernible that there was an allegation against the petitioner that he was found absent from duty whereas on

the other hand he was found at Pfutsero market on 09.01.2015 at about 17.30 hrs. But no reasons have been set forth by the petitioner on the unsustainability of the aforesaid charge-sheet other than taking a stand that the charge itself is factually incorrect. If it is the stand of the petitioner that the charge itself is incorrect, the appropriate remedy would be to respond to the charge and establish the fact before the authorities that the charge may be not based on truth. But taking a mere stand in a writ petition that the allegation contained in the charge-sheet is false or incorrect, it cannot entitle the petitioner for an interference with the charge-sheet unless some further materials are provided that either the charge-sheet is without jurisdiction or it is in aberration of any procedural law.

9. In respect of the prayer (b) of the petition seeking for a direction that no disciplinary action be taken against the petitioner pursuant to the letter dated 03.06.2015, it is already noticed that the letter dated 03.06.2015 is not an initiation of any disciplinary proceeding, but it is merely a warning letter informing the petitioner that three red ink entries have already been entered in his dossier and the fourth may entail the consequence of discharge from service. From such point of view, the prayer made for a direction that no disciplinary action be taken against the petitioner, also cannot be accepted.

10. Prayer (c) is for a writ in the nature of prohibition by prohibiting the respondents from mentally torturing the petitioner. No materials are available in the writ petition as to what kind of mental torture had been inflicted on the petitioner other than the materials that some kind of disciplinary action is sought to be taken. Further a writ of prohibition is maintainable only in the circumstance when an inferior Court, Tribunal or any authority exercising a quasi-judicial function acts in a manner beyond its jurisdiction. But, no such

material is available to support the prayer No. (c) that the respondents acted in any manner beyond their jurisdiction.

11. From such point of view, we do not find the maintainability of any writ in the nature of prohibition.

12. Prayer No. (d) is for prohibiting the respondents from taking cognizance of the punishment entries awarded to the petitioner on 01.05.2014 and 13.01.2015. By the order of 01.05.2014, the petitioner was imposed a punishment of severe reprimand for having been in unauthorized possession of 30 liters of high speed diesel. The learned counsel for the petitioner seeks to substantiate that it is factually incorrect that the petitioner was in unauthorized possession of 30 liters of high speed diesel and therefore, the order is bad.

13. But, it is noticed that by this writ petition the petitioner has not assailed the order dated 01.05.2014 or the procedure adopted in arriving at such order. On the other hand, the prayer is to prohibit the respondents from taking cognizance of an order of punishment. If the order of punishment is on record and it is not assailed in any manner bringing forth any illegality, no direction can be issued to the respondent authorities not to take note of the said order.

14. Further, with respect to prayer No. (d) that the punishment entries awarded to the petitioner on 13.01.2015 be also interfered, it is reiterated, as concluded above that 13.01.2015 is merely a charge-sheet and not an entry of imposing any punishment.

15. For both the reasons, the prayer No. (d) is also unacceptable.

15. It is stated that in the meantime, the charge-sheet dated 13.01.2015 had resulted in an order of punishment of further severe reprimand which the authorities are now taking it to be fourth red ink entry and accordingly had

discharged the petitioner. In the circumstance, although we are unable to accept the writ petition in its present form, but, however, it is also recognized that if the charge-sheet dated 13.01.2015 had resulted in an order of punishment and correspondingly the fourth red ink entry, the petitioner has a legal right to challenge the order of punishment pursuant to the charge sheet dated 13.01.2015 including the procedure that may have been adopted in reaching such order of punishment. Similarly, if the petitioner is aggrieved by the order dated 01.05.2014 against the punishment of severe reprimand, again the said order and the procedure adopted thereto would have to be challenged and a mere prayer not to take note of such orders of punishment cannot be accepted to be sufficient to take a view that both the orders of punishment and the procedure adopted had also been assailed.

16. In the circumstance, while otherwise dismissing the writ petition in respect of prayers No. (a), (b), (c), (d) and (e), we grant liberty to the petitioner to assail the order dated 01.05.2014 and the procedure adopted thereof as well as any such order of punishment that may have been made pursuant to the charge sheet dated 13.01.2015, if so advised.

17. With the above, the writ petition stands closed.

JUDGE

Comparing Assistant