

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.P(C) No.28 of 2024 &
W.P(C) No.1 of 2024

Reserved on: 05.03.2024
Pronounced on: 03.05.2024

W.P(C) No.28 of 2024

1. Union of India represented by the Secretary
to the Government of India, Ministry of Home Affairs,
New Delhi – 110 011.

2. The Director General, Assam Rifles,
DGAR, Laitkor, Shillong.

3. The Commander,
21 Sector Assam Rifles, C/0 99 APO, Pin-932421 ... Petitioners

-vs-

No.5450016 Shri.Dharamvir Singh ... Respondent

W.P(C) No.1 of 2024

No.5450016 Shri. Dharmvir Singh ... Petitioner

-vs-

1. The Union of India, represented by the Secretary
to the Government of India, Ministry of Home Affairs,
North Block, New Delhi – 110 001.

2. The Director General Assam Rifles,
The Directorate General Assam Rifles,
East Khasi Hills, Laitkor, Shillong,
Meghalaya, Pin-793 010.

3. The Sector Commander,
21 Sector Assam Rifles, C/o 99 APO, Pin-932421 ... Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice
Hon'ble Mr. Justice W.Diengdoh, Judge

Appearance (W.P(C) No.28 of 2024):

For the Petitioners : Dr.N.Mozika, DSG with
Ms.A.Pradhan, Adv.

For the Respondent : Mr.H.Betala, Adv.
Mr.D.K.Bhuyan, Adv.
Ms.A.Surana, Adv

Appearance (W.P(C) No.1 of 2024):

For the Petitioner : Mr.H.Betala, Adv.
Mr.D.K.Bhuyan, Adv.
Ms.A.Surana, Adv

For the Respondent : Dr.N.Mozika, DSG with
Ms.A.Pradhan, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes

COMMON ORDER
(Made by Hon'ble Chief Justice)

W.P(C) No.28 of 2024 has been filed by the Union of India / Assam Rifles, seeking to extend the time for completion of the disciplinary proceedings against the respondent / Writ Petitioner in W.P(C) No.1 of 2024, as ordered by this Court in W.P(C) No.444 of 2020 dated 22.03.2022 till 31.08.2024.

2. The Writ Petitioner in W.P(C) No.1 of 2024 has filed the Writ Petition before the learned Single Judge, a) to set aside and quash the improper disciplinary proceedings ordered vide Order No.5450016/DS/Estt-A(Discp)/2022/635 dated 22.08.2022 and grant all consequential benefits to the petitioner, b) to forbear/recall/withdraw/stay the disciplinary proceedings ordered against the petitioner vide authority Order No.5450016/DS/Estt-A(Discp)/2022/635 dated 22.08.2022 and grant all consequential benefits to the petitioner, c) to direct the Director General, Assam Rifles to consider the representation dated 09.11.2023 and pass speaking order within a stipulated time frame, d) to direct the respondent authorities to prepare fresh pay fixation due to the petitioner as per his entitlements, e) to direct the respondent authorities to release the arrear payments with effect from 26.03.2016 till 31.07.2022 and f) to direct the respondent authorities to comply with the order dated 22.03.2022 passed by the Hon'ble Division Bench of the High Court of Meghalaya in W.P(C) No.444 of 2020.

3. Since the issue involved in both Writ Petitions is one and the same, we directed the Registry to club W.P(C) No.1 of 2024 pending before the Single Bench along with W.P(C) No.28 of 2024 for joint

disposal. For the sake of brevity, the parties are referred to as “Assam Rifles” and Employee”.

4. It was the case of the Employee that he joined the services of Assam Rifles on 26.06.2000 as Hindi Typist and served in various units of Assam Rifles and he was granted 15 days casual leave from 12.08.2013 to 01.09.2013 on account of his elder daughter’s sudden ailment and on the expiry of leave, he failed to join duty and on 11.09.2014, he voluntarily re-joined duty after absenting himself for 373 days. In view of unauthorized absence of 373 days, Assam Rifles issued a show cause notice seeking explanation as to why disciplinary action should not be initiated against him. It was further case of the Employee that he replied that his wife had expired previous year, leaving behind three children and he had to take care of them. He also suffered acute back pain and underwent medical treatment at District Hospital, Agra from 28.08.2013 to 22.08.2014, on account of which, he was not able to re-join duty. According to him, he had produced the medical documents in respect of his ailment.

5. According to the Assam Rifles, the Employee, after receiving the charge sheet, has admitted his guilty, based on which, the Disciplinary Authority had decided to impose a major punishment of

removal from service vide order dated 25.03.2016, which reads as follows:

“4. NOW THEREFORE, after due application of mind to the facts of the case, and in exercise of the power conferred by the Central Civil Services (Classification, Control and Appeal) Rules, 1965, a major penalty of “Removed from service which shall not be a disqualification for future employment under the Government” is hereby imposed as enumerated in Rule 11 (viii) on the charged official, No.5450016 Shri. Dharmvir Singh, Hindi Typist of 21 Sector Assam Rifles with immediate effect.

5. AND it is further directed that above mentioned absence period be treated as unauthorized absence from duty and be penalized by recovering from his pay, the whole amount of pecuniary loss caused by his absence to the Government. Accordingly, necessary casualty be published and be recorded in his Service Book/Record.”

6. It was contended by the Assam Rifles that against the order of removal from service, the Employee preferred an appeal to the Secretary, Ministry of Home Affairs, who is the Appellate Authority to set aside the order of the Disciplinary Authority, namely, Lieutenant General, DGAR dated 25.03.2016. The Employee also filed an Original Application No.456 of 2016 before the Central Administrative Tribunal (CAT), Guwahati Bench to set aside the order and also for his reinstatement in service with all consequential benefits and the Central Administrative Tribunal, Guwahati Bench had disposed of the application on 15.03.2019 with the following directions:

“12. We have gone through the records placed before us and considered the pleadings and submissions made. We are of the definitive view that though a semblance of disciplinary proceedings was attempted against the charge official, but no proper inquiry was actually conducted. He was neither given any opportunity to defend himself nor record of his pleadings guilty of the charge is found. As such, we found that the inquiry purported to have been conducted by the respondent authorities was highly vitiated, bad in law and liable to be set aside. Accordingly, the Disciplinary Authority's order No.112015/A(Discp)/HT-21 Sect/2016 dated 25.03.2016 is hereby set aside and quashed. The appellant may be reinstated with immediate effect with all consequential benefits. The period of absence, however, may be settled by granting him leave as admissible to the appellant.”

7. It was further contended by the Assam Rifles that since the Employee was directed to be reinstated, Assam Rifles preferred W.P(C) No.444 of 2020 before this Court, wherein this Court passed the following order on 22.03.2022:

“5. The order speaks of procedural lapses that resulted in serious prejudice and the respondent herein not being afforded an opportunity to adequately defend himself. The order does not refer to the proceedings being bad ab initio. There is no observation as to the mendacity of the show-cause notice issued or the charges forwarded or the statement of imputation of conduct pertaining thereto. Indeed, it appears that what the Tribunal intended was to only quash and set aside the order of punishment and not quash the proceedings; but it failed to expressly give leave for the employer to continue with the disciplinary proceedings from the show-cause stage or from any other subsequent stage.

6. Accordingly, the order dated March 15, 2019 passed by the Tribunal is modified by not interfering with that part thereof that quashed the penalty and the final order passed in the disciplinary proceedings, but by granting leave to the writ petitioner-employer to continue with the proceedings from the stage of the reply to the charges having been filed by the

respondent. If no reply was used, the respondent will be entitled to furnish his reply within a fortnight of the employer calling upon him to do so. The further proceedings will be conducted by affording a reasonable opportunity to the respondent to defend himself and any report furnished in course thereof or order passed therein should not be unduly influenced by the order of the Tribunal.

7. The entire exercise should be completed by the employer by August 31, 2022 and the respondent will not be entitled to seek any adjournment in the course of the proceedings.”

8. In terms of the above judgment, the enquiry was to be completed on or before 31.08.2022 and without prejudice to the disciplinary proceedings, the Employee should be reinstated in service, pursuant to which, he reported for work on 20.05.2022. Thereafter, disciplinary proceedings were initiated for the unauthorized absence of 373 days.

9. According to the Assam Rifles, the Employee is a habitual offender and his unauthorized absence is not in the interest of organization. As the time limit to conclude the enquiry had expired, Assam Rifles has filed W.P(C) No.28 of 2024, seeking extension of time to complete the same.

10. After hearing the arguments on both sides, on the last hearing, this Court directed the Assam Rifles to inform this Court as to

what is the punishment proposed to be imposed on the Employee, who is now in a non-sensitive post and a capital punishment should not be imposed. Learned counsel for the Assam Rifles, on instructions, stated on 05.03.2024, on which date, cases were reserved for orders that Assam Rifles is going to impose a punishment of stoppage of increment for three years without cumulative effect in the light of Rule 11(iv) of Central Civil Services (Classification, Control and Appeal) Rules.

11. From the records, more so, Paragraph No.13 of the Writ affidavit, it is very clear that the Employee absented himself on several occasions from 2007 and the details of the same are as follows:

Ser.No.	Unit	Period	No. of days
1.	13 Assam Rifles	02 Oct 2007 - 06 Feb 2008	128 days
2.	13 Assam Rifles	15 May 2008 - 08 Apr 2008	330 days
3.	17 Assam Rifles	08 Nov 2009 - 30 Apr 2010	174 days
4.	17 Assam Rifles	13 Dec 2010 - 03 Feb 2011	53 days
5.	17 Assam Rifles	13 Jun 2011 - 27 Mar 2012	289 days
6.	HQ 21 Sector Assam Rifles	02 Sep 2013 - 09 Sep 2014	373 days

Though the Assam Rifles stated that the Employee is a habitual offender, no document has been produced to show that for the absence from 2007-2012 in the tabular column mentioned supra, any disciplinary action has been initiated for the misconduct. When no disciplinary action has been initiated, details of which are not available

on record, the period mentioned in Sl.Nos.1 to 5 cannot be treated as past record. However, the Employee has not disputed the leave taken from Sl.Nos.1 to 6 and he has given explanation only for the leave taken for 373 days as found in Sl.No.6.

12. After giving our anxious consideration to the arguments advanced by the parties, we find that Writ Petitions filed by both the Assam Rifles and the Employee are not maintainable. The Assam Rifles, instead of filing a Writ Petition for extension of time, should have filed a Miscellaneous Application with the said relief. Similarly, the Employee cannot approach this Court directly, seeking wages etc., without exhausting his remedy available before the Central Administrative Tribunal (CAT), which is impermissible in the light of the judgments of Apex Court in the cases of **Kendriya Vidyalaya Sangathan and another vs. Subhas Sharma etc., [2002(2) Supreme 314]** and **Rajeev Kumar Vs. Hemraj Singh Chauhan, [(2010) 4 SCC 554]**.

13. A Division Bench of Madras High Court in the case of **Government Of Tamil Nadu And Ors. vs P. Hepzi Vimalabai, reported in 1995 (2) SCT 503** held that the Tribunal alone has the

jurisdiction to deal with all the pre-recruitment matters and the relevant paragraphs are extracted below:

“30. In our view, the use of the expression 'matters concerning recruitment' is wide enough to cover and include all matters concerning recruitment. There is no warrant to make a distinction between 'pre-recruitment matters' and 'recruitment matters'. We are of the opinion that the view expressed by the Division Bench in Ruban's case, 1990 W.L.R. 1 : (1990)2 L.L.J. 92, that only 'in service' candidates can raise disputes in respect of matters pertaining to recruitment and not a person not in service is not acceptable. On the contrary, 'recruitment' is a process which would cover within its ambit all the necessary steps commencing from the stage of notifying the vacancies and ending with the appointment of selected candidates. The fact that the definition of the expression 'service matters' in Section 3(q) of the Act does not make any reference to recruitment is wholly irrelevant'. 'Recruitment' is separately referred to in the preamble as well as in the relevant provisions of the Act. In addition thereto, the expression 'conditions of service of persons appointed' is also found. Section 3(q) of the Act is applicable to persons appointed to service. That is why that section does not make any reference to recruitment.

31. The above view expressed by us finds full support from the following Full Bench decisions of the Andhra Pradesh and Madhya Pradesh High Courts reported in K. Naga Raja v. The Superintending Engineer, Irrigation Department, Chittoor and Dr. Usha Narwariya v. State of M.P. (1994)2 L.L.J. 252.

32. The Supreme Court had occasion to consider the meaning of the words 'Recruitment' and 'Appointment' in Prafulla's case (1993)1 L.L.J., 749. The observations of the Supreme Court have been extracted in paragraphs supra. The position of law expounded by the Supreme Court amply supports the above view taken by us.”

14. However, in order to avoid multiplicity of the litigation and also considering the fact that Assam Rifles has proposed to impose the punishment of stoppage of increment for 3 years without cumulative effect, there is no need to extend the time for completion of the enquiry and there is no bar for them to straightaway issue the punishment as

stated by them before this Court. The Apex Court in the case of **Gujarat State Road Transport Corporation vs. U.A. Malek**, reported in **(2001) 10 SCC 548** held that when an employee is reinstated and is in employment for such a long period, it would not be appropriate to upset the present state of affairs. Though the said finding has been given by the Apex Court in a case arising out of Industrial Dispute, an opportunity is given to the Employee herein to correct himself and work properly.

15. At this juncture, learned counsel for the Employee, on instructions, submitted that though the Employee is prepared to accept the above imposition of punishment to be inflicted upon him, the only concern expressed by him was that proper fixation of pay and other monetary benefits need to be extended to him. For the sake of repetition, it is stated that as assured before this Court, the Assam Rifles shall impose the punishment of stoppage of increment for 3 years without cumulative effect on the Employee and thereafter, shall extend proper fixation of pay and other monetary benefits to him.

16. The Employee has not produced any document with regard to his daughter's illness and his absence from duty has also been established. However, taking note of the fact that the petitioner has

already been reinstated in service, pursuant to the orders of this Court and that there is a consensus arrived at, it is expected that the Employee shall discharge his work without going on leave and without proper permission, as has been done earlier. In case he is found to be absent for any reason in future or commit any other misconduct, the entire period of absence as mentioned in Sl.Nos.1 to 6 (supra) will have to be treated as his past record and there is no impediment for the Assam Rifles to impose a major punishment after issuing charge sheet, following other procedures, etc., in accordance with law. It is made clear that merely because this Court has passed an order modifying the punishment, it does not mean that Writ Petitions are maintainable and because of the consensus arrived at between the parties and to avoid mental agony to both parties, this Court has moulded the relief. Had the parties not consented for amicable solution, this Court would have definitely dismissed the W.P(C) No.1 of 2024, giving liberty to the Department to proceed with the enquiry, which may ultimately end in dismissal of the employee, as the duration of his absence is huge. It is further made clear the period of his absence is not treated as *dies non* and for the services not rendered, the period will have to be treated as “No Work No Pay”.

17. In the result, both W.P(C) No.28 of 2024 and W.P(C) No.1 of 2024 are dismissed.

(W. Diengdoh)
Judge

(S. Vaidyanathan)
Chief Justice

Meghalaya
03.05.2024
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PRE-DELIVERY ORDER IN
W.P(C) No.28 of 2024 &
W.P(C) No.1 of 2024