

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP (C) No.323/2015

Date of Order: 05.03.2024

No.G/134688 Rfn (GD) R. Ramu

..... Petitioner

Vs.

1. Union of India, represented by the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi Pin-110001.
2. The Director General Assam Rifles, Mahanideshalaya, (The Directorate General Assam Rifles) Shillong, Meghalaya-793011.
3. The Commandant, 13th Battalion, the Assam Rifles, C/o 99 APO, Pin-932013. Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice

Appearance:

For the Petitioner : Mr. R. Jha, Adv

For the Respondents : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv

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

ii) Whether approved for publication in press: Yes

ORDER

The petitioner was appointed as Rifleman (GD) in Assam Rifles on 03.07.1994, Meghalaya, Shillong and on completion of basic training, he was posted to 13th Assam Rifles on 17.09.1995. The case of the petitioner is that while serving at Assam Rifles Administrative Unit,

Shillong, he was sent on deputation to Sardar Vallabhbhai Patel National Police Academy, Andhra Pradesh for a period of three years w.e.f. 13.12.2005. On completion of three years of service in the Police Academy, the petitioner made a representation to the Police Academy expressing his willingness to absorb him on regular basis in the Academy and the Academy sought for consent from the Assam Rifles to extend the tenure of deputation and requested for issuance of No Objection Certificate (NOC) for his transfer to the Police Academy.

2. It is the case of the petitioner that the Assam Rifles has declined to issue NOC and he questioned the action of the Assam Rifles in declining to grant NOC to him and also filed Writ Petition in W.P.No.21144 of 2009 and W.P.M.P. No.58 of 2010 in the High Court of Andhra Pradesh for a direction to continue him in the Police Academy, in which, there was an interim order passed by the High Court of Andhra Pradesh on 18.02.2010, directing the Respondent No.4 to permit the petitioner to continue in service as Constable in the Police Academy. Thereafter, by an order dated 08.06.2010 passed in W.P.M.P. No.58 of 2010, the High Court of Andhra Pradesh vacated the interim order dated 18.02.2010. Against the order dated 08.06.2010, the petitioner preferred an appeal in WA No.717 of 2010, in which, a Division Bench of the Andhra Pradesh High Court, by an order dated

29.11.2010, disposed of both W.A.No.717 of 2010 and WP No.21144 of 2009 and passed the following order:

“Accordingly, the Writ Appeal and the Writ Petition are disposed of. However, we make it clear that in the event of the appellant-petitioner still insisting any exigency for further extension, he can file a representation before the authorities concerned within a period of two (2) weeks from today and the same shall be considered on merits and disposed of in accordance with law within a period of six (6) weeks thereafter. It is needless to mention that till the representation filed by the appellant-petitioner is considered and disposed of, he shall not be disturbed. No costs.”

3. Subsequently, the petitioner filed two representations on 08.12.2010 and 23.12.2010, which were considered and rejected by the Assam Rifles. The petitioner thereafter preferred another writ petition for rejection of his representation before the High Court of Andhra Pradesh being WP No.7646 of 2011, wherein the Court passed the following order:

“The petitioner is the permanent member of the 2nd respondent-organization. It was on his representation, that he was sent on deputation to the 4th respondent-organization for a period of three years. That period expired long back. The petitioner stated several reasons in support of his claim for permanent absorption in 4th respondent-organization. However, unless the principal employer gives consent for absorption of such nature, it would not be possible. The 2nd respondent has stated the reasons on account of which, the request of the petitioner cannot be acceded to.

A member of para-military force does not have a right to insist on no objection, for being absorbed in another organization. This Court cannot sit as an Appellate Authority, nor the reasons stated by the 2nd respondent can be said to be irrelevant or untenable.”

4. Since the writ petition filed by the petitioner being WP No.7646 of 2011 was dismissed, the petitioner by way of an appeal approached the Division Bench and the said Writ Appeal was also dismissed on 19.09.2011. According to the petitioner, the Police Academy had informed him vide proceedings dated 14.11.2011 that the Service Book, LPC and other documents, pertaining to the petitioner had been dispatched to the parent organization, namely, Assam Rifles and that he is no longer in the rolls of the Police Academy.

5. Challenging the said proceedings, the petitioner filed another writ petition being WP No.31563 of 2011, wherein it has been stated that he was not paid salary from 09.10.2009 by the Academy and that the Academy may be directed to pay the entire wages from that date. It was stated by the Police Academy before the High Court of Andhra Pradesh that the Assam Rifles have not given NOC for further continuation of the petitioner in the Academy and that the petitioner failed in several attempts in seeking relief before the High Court of Andhra Pradesh and that the petitioner would not be entitled to any relief. The writ petition was disposed of by the Andhra Pradesh with the following directions:

“Accordingly, the Writ Petition is disposed of directing the 4th respondent to issue movement order to the petitioner within a period of one week from the date of receipt of a copy of this order. On receipt of such movement order, the petitioner shall report to the 2nd respondent within a week thereafter. The 2nd respondent is directed to consider the case of the petitioner for regularization of his service for the period from 9.10.2009 till

date, in accordance with law, as he was pursuing legal remedies during that period. No costs.”

6. The High Court of Andhra Pradesh, while disposing of the writ petition being WP 31563 of 2011, vide order dated 29.08.2018, directed the Assam Rifles to consider the case of the petitioner for regularization of his services from 09.10.2009 in accordance with law.

7. The case of the petitioner was that inspite of the orders of the Andhra Pradesh High Court, he was not put back in service and granted relief and that he has been asked to appear in the enquiry and there was no enquiry conducted at all.

8. The case of the respondent Assam Rifles herein was that the facts narrated by the petitioner supra are not in dispute. The respondents would submit that the petitioner did not evince any interest in joining the service and wanted to continue in the Police Academy at Andhra Pradesh. Even after the order of the High Court of Andhra Pradesh dated 29.08.2018 passed in WP No.31563 of 2011 mentioned supra, the petitioner was asked to report for duty and that the petitioner did not join service after seeking leave, which was initially granted. Since the petitioner did not join the duty, he was declared as deserter and his name was struck off from the rolls of Assam Rifles. This resulted in the petitioner filing a writ petition before this Court being WP (C) No.72 of 2013. On 05.05.2015, this Court passed an order that the petitioner was

not given an opportunity before passing the order of desertion dated 22.08.2010 and interfered with the same and directed the Assam Rifles to conduct a fresh enquiry.

9. According to the respondents, a fresh enquiry was fixed on 10.06.2015 and the petitioner was asked to report to the Presiding Officer to make statement before the Court of Inquiry on 02.07.2015 and the Court of Inquiry recorded the statement of the petitioner and also submitted a written representation. In another writ petition being WP (C) No.31563 of 2018, the Court directed issuance of movement order which was stayed in Writ Appeal No.1562 of 2018 on 03.12.2018. Finally, the Division Bench had allowed the Writ Appeal No.1562 of 2018 and set aside the order of the learned Single Judge, which means that the petitioner is not entitled to seek for a movement order.

10. Learned counsel for the respondents fairly stated that the enquiry has not been completed and the petitioner has not shown any interest to join duty. There is no objection in conducting the enquiry and complete the proceedings at the earliest point of time. Since the petitioner is a Rifleman (GD) who joined services on 03.07.1994 is expected to be fit for duty and should be consistent. The petitioner cannot blow hot and cold i.e., namely, after joining the services and went on deputation to the Police Academy and wanted to continue there. For various reasons, the petitioner's services could not be continued at Police

Academy and the Court observed that there was no NOC issued. Learned counsel for the respondents submitted that the petitioner has not joined duty inspite of asking him to report for work. Though he has been initially called as deserter, which was interfered with by this Court, the petitioner has to cooperate in the enquiry. Learned counsel further submitted that since the petitioner has not reported for duty, he is not entitled to any wages on the ground of “No Work No Pay”. Since the order of this Court dated 05.05.2015 passed in WP (C) No.72 of 2013 has attained finality and binding on the parties, the petitioner has no right to demand anything except participating in the enquiry.

11. There is a dispute with regard to reporting of work and this Court is not inclined to make any comment on that or to make any observation as to whether the petitioner will be entitled to wages from 09.10.2009 as per the order of the High Court of Andhra Pradesh. The payment of wages and other benefits will depend upon the outcome of the order that may be passed by the Disciplinary Authority after completion of the enquiry. It is open to the respondents either to reinstate the petitioner and conduct the enquiry or place him under suspension and conduct the enquiry. In case the respondents decide to conduct the enquiry after suspending him from service, it is open to the respondents to take a decision in respect of payment of subsistence allowance in terms of the judgment of the Supreme Court in the case of *State of*

Maharashtra vs. Chandrabhan Tale, reported in **(1983) 3 SCC 387**.

Non-payment of subsistence allowance violates Article 21 of the Constitution of India. In case a person is placed under suspension without payment of subsistence allowance or paid full wages with or without reinstatement, the enquiry would be vitiated. The petitioner is expected to cooperate with the enquiry and the respondents are directed to conduct the enquiry on day to day basis without adjourning the matter beyond seven working days at any point of time and bring the issue to a logical conclusion within a period of four months from the date of receipt of the order, preferably on or before 15.08.2024. In the enquiry, the petitioner is expected not to seek any adjournment on any score. After the enquiry proceedings are completed, depending upon the order that may be passed by the Disciplinary Authority, the other relief based on the order of the Disciplinary Authority or the Appellate Authority will follow, if it attains finality.

12. With the above observation and direction, the writ petition stands disposed of.

(S. Vaidyanathan)
Chief Justice

Meghalaya
05.03.2024
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