

Serial No. 22
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 220 of 2022

Date of Decision: 05.03.2024

Shri. Sashikant Pandey
No. G/95751K Rifleman, (Barber)
R/o Village – Sikrour,
P.O. – Sikrour, P.S. – Sibhar
District-Rohtas, Pin – 821104, Bihar

::::Petitioner

-Vs-

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

2.The Director General of Assam Rifles
East Khasi Hills, Pomlakrai,
Shillong-793010, Meghalaya.

3.The Colonel Commandant
9 Assam Rifles
PIN – 932009
C/o 99 APO

4.The Colonel
Presiding Officer
9 Assam Rifles
PIN-932009
C/o 99 APO

::::Respondents

Coram:

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

Appearance:

For the Petitioner/Appellant(s) : Mr. P.K. Roy Choudhury, Adv. with
Mr. H.L. Choudhury, Adv.
Ms. D. Basumatary, Adv.

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

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| i) | Whether approved for reporting in
Law journals etc.: | Yes/No |
| ii) | Whether approved for publication
in press: | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. The writ petitioner being aggrieved with the order dated 22.03.2022, whereby his post confirmation petition submitted under Section 139(2) of the Assam Rifles Act, 2006, against a sentence promulgated on 14.09.2018, was rejected by the respondent No. 2, is before this Court seeking directions for reconsideration of the same, on the ground that the same was dismissed only on the ground of delay.

2. The facts in brief are that the petitioner was tried by the General Assam Rifles Court on two counts, namely charges under Sections 55 and 23(d) of the Assam Rifles Act, firstly for firing three shots from his service

weapon at a Rifleman of his same unit, with the intent to murder him, thereby wounding him on his right knee, neck and lower abdomen, and secondly, for leaving his Guard without orders from his Superior Officer. At the trial, the General Assam Rifles Court found him guilty to both the charges and sentenced the petitioner “To suffer three years imprisonment to be undergone in civil custody” and “To be dismissed from service”.

3. The writ petitioner thereafter, preferred a petition under Section 139(2) of the Assam Rifles Act, read with Rule 178 of Assam Rifles Rule 2010, which provided the right to prefer a post confirmation petition. The same however, was limited by Rule 179 of the Assam Rifles Rule, which allowed a period of 3(three) months limitation from the date of which the sentence was promulgated. The said petition thereafter was rejected by order dated 22.03.2022, inasmuch as, though the petitioner had been afforded a copy of the complete General Assam Rifles Court proceedings on 14.09.2018, the petition was submitted only on 08.03.2021. In view of this inordinate delay, and due to the absence of any provision in law, empowering the authorities to condone such delay, the petition was therefore dismissed.

4. Mr. P.K. Roy Choudhury, learned counsel for the petitioner has submitted that the appeal or the post confirmation petition, against the sentence was not disposed of on merits, but was dismissed only on the

ground of delay. He however also advanced other arguments, with regard to the merits of the case, and submits that at the time of the commission of the offence, the petitioner was not in active duty, as it happened between his duty shifts and as such, his offence as per Section 56 of the Assam Rifles Act is not triable by an Assam Rifles Court. He has further submitted that with the dismissal of the appeal, the petitioner has been deprived of presenting such important facts, which would have had a bearing on the order of dismissal of appeal, had it been heard on merits.

5. Dr. N. Mozika, learned DSGI assisted by Ms. S. Rumthao, learned counsel for the respondents has submitted that the argument as put up by the petitioner that the offence is not triable by the Assam Rifles Court is incorrect, inasmuch as, the same relates to the commission of an offence, in relation to a person not subject to the Assam Rifles Act. The petitioner he submits, having committed the offence on a personnel of his own unit, Section 56 is not applicable. The learned DSGI then submits that Section 139(2) of the Assam Rifles Act 2006, for submitting pre and post confirmation petition is to be read with Rule 178 and 179 of the Assam Rifles Rule 2010, and as per Rule 179, it is mandatory that for preference of any post confirmation petition against any sentence of the General Assam Rifles Court, that the same be within 3(three) months from the date of promulgation. The petitioner therefore, he submits having submitted the

petition after more than 2(two) years, the same was rightly rejected by the respondent No. 2, as being time barred.

6. It has also been submitted by the learned DSGI that the petitioner has since served his sentence, and that there was sufficient evidence against the petitioner, on the basis of which he was found guilty of both charges by the General Assam Rifles Court. All procedures he contends, were complied with i.e. Court of Inquiry, serving of Tentative Charge Sheet, Hearing of Charge, Summary of Evidence and the General Assam Rifles Court Proceedings had been carried out, in accordance with the Assam Rifles Act and Rules. There being no violation of any provision, it is submitted that no prejudice has been caused to the petitioner in his defence, and the writ petition is liable to be dismissed.

7. Having heard learned counsel for the parties, the submissions are to be noted and the materials as presented before this Court have been given due consideration. The dismissal of the Appeal/Petition of the petitioner, it is seen was by the operation of law, as applicable under the Assam Rifles Act and Rules. The petitioner on this count is undeniably guilty of laches, inasmuch as, the petition was preferred after a lapse of more than 2(two) years, from the period of statutory limitation, as given in Section 179, Assam Rifles Rules, 2010, which is reproduced herein below.

“179. Period of limitation.— (1) A petition, before confirmation, shall be submitted, within one month of the conclusion of the trial.

(2) A petition after confirmation shall be submitted within 3 months of the date on which the sentence was promulgated:

Provided that the time taken by such person to obtain a copy of the proceedings shall be excluded in calculating this period of 3 months.”

This stipulation being clear, the dismissal of the petition due to the inordinate delay on the part of the petitioner cannot be faulted.

8. On the other limb of submission of the counsel for the petitioner that the offence was not triable by the Assam Rifles Court, a perusal of Section 56 of the Assam Rifles Act 2006, supports the submissions of the learned DSGI, as to its applicability. For the sake of convenience, the same is also quoted herein below.

“56. Civil offences not triable by an Assam Rifles Court.—A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by an Assam Rifles Court, unless he commits any of the said offences,— (a) while on active duty; or (b) at any place outside India; or (c) at any place specified by the Central Government, by notification in this behalf.”

9. The offence having been committed on a fellow service man of his own unit, who is governed by the same Act, the plea of application of Section 56 of the Assam Rifles Act, is therefore not tenable.

10. As such, in view of the stipulations of the Assam Rifles Act and Rules, and also the fact that the petitioner has since served his sentence, and there being no question as to the deprivation or violation of Natural Justice in the proceedings, the instant writ petition is devoid of any merit and is accordingly dismissed.

Judge

Meghalaya
05.03.2024
"D.Thabab-PS"