

GAHC010145792020



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

Case No. : WP(C)/4348/2020

DURGESH KUMAR MEEENA
S/O. SH. BADRI LAL MEENA, VILL. PAPRALA, P.O. PECH KI BOARI, DIST.
BUNDI, RAJASTHAN, PIN-323025, DISCHARGED FROM SERVICE AS
RUFLEMAN/GD FOR 7TH ASSAM RIFLES C/O. 99 APO, PIN-932007.

VERSUS

UNION OF INDIA AND 3 ORS
REP. BY THE SECRETARY THE GOVT. OF INDIA, MINISTRY OF HOME
AFFAIRS NEW DELHI-110001.

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

3:THE COMMANDER HEAD QUARTER 5 SECTOR ASSAM RIFLES
C/O. 99 APO.

4:THE COMMANDANT 7TH ASSAM RIFLES
C/O. 99 APO
PIN-932007

Advocate for the Petitioner : MR. V KUMAR

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HON'BLE MR. JUSTICE LANUSUNGKUM JAMIR

ORDER

26.02.2024

Heard Mr. B. Pathak, learned counsel for the petitioner. Also heard Mr. G. Pegu, learned CGC for the respondents.

2. The petitioner appeared for the Assam Rifles Recruitment rally in the year 2009 and after undergoing physical and medical tests, he was found fit and accordingly he was enrolled as Rifleman (GD) in the Assam Rifles on 19.10.2009. Thereafter, the petitioner successfully underwent the basic military training at the Assam Rifles Training Center and School after which he was posted to the 7th Assam Rifles.

3. While the petitioner was serving under the 7th Assam Rifles, he was awarded four Red Ink Entries in his service record. A show-cause notice was issued to the petitioner on 28.10.2019 to which the petitioner replied on 14.11.2019. The authorities by a letter dated 15.01.2020 after consideration of the reply given by him found his reply to be unsatisfactory and a decision was taken to discharge the petitioner from service. Accordingly, by order dated 23.05.2020, the petitioner was discharged from 7th Assam Rifles being an incorrigible offender with effect from 01.06.2020.

4. Being aggrieved with the discharge order dated 23.05.2020, the petitioner has approached this Court by way of the present writ petition.

5. The respondents have filed counter affidavit and in paragraph-2, it is stated as under:-

“2. That the brief history of the case is stated as follows:

i. Ex No. G/5018830N Rifleman (General Duty) Durgesh Kumar Meena was enrolled in the Assam Rifles on 19.10.2009 and was posted to 7 Assam Rifles on 17.09.2010 after completion of his basic military training at Assam Rifles Training Centre and School.

ii. The petitioner was tried summarily on four occasions between 2017- 2019 for acts/omissions on his part and he was awarded four red ink entries in his service dossier. Details of the offences committed by the petitioner and punishments/red ink entries awarded to him are as under:-

(a) "03 days Rigorous Imprisonment in Assam Rifles custody" on 22.09.2017 under Section 35 of the Assam Rifles Act 2006 for an offence of "Intoxication" (Copy of Summary Trial Proceedings attached as Annexure-I Series).

(b) "07 days Rigorous Imprisonment in Assam Rifles custody on 30.10.2017 under Section 26 (b) of the Assam Rifles Act 2006 for an offence of "Without Sufficient Cause Overstaying Leave Granted to Him" (total period of absence 11 days) (Copy of Summary Trial Proceedings attached as Annexure-II series).

(c)"07 days Rigorous Imprisonment in Assam Rifles custody" on 05.02.2018 under Section 26 (b) of the Assam Rifles Act 2006 for an offence of "Without Sufficient Cause Overstaying Leave Granted to Him" (total period of absence 35 days) (Copy of Summary Trial Proceedings attached as Annexure-III series).

(d)"28 days Rigorous Imprisonment in Assam Rifles custody and 14 days pay fine" on 19.08.2019 under Section 41 (b) of the Assam Rifles Act 2006 for an offence of "Losing by neglect Identity Card the property of the Government issued to him for his use" (Copy of Summary Trial Proceedings attached as Annexure-IV Series)."

6. Learned counsel for the petitioner submits that the discharge of the petitioner due to the four Red Ink Entries in his service dossier was done in a mechanical manner and the gravity of the four Red Ink Entries was not considered by the competent authority while the discharge order dated 23.05.2020 was issued.

He also submits that the Hon'ble Supreme Court in the case of **Veerendra**

Kumar Dubey Vs. Chief of Army Staff and others, reported in **(2016) 2 SCC 627**, has held that four Red Ink Entries simply pushes the individual concerned into a grey area where he can be considered for discharge, however, just because he qualifies for such discharge does not mean that he must necessarily suffer that fate.

7. In the present case, it is submitted that the four Red Ink Entries in the service dossier of the petitioner are not serious and, therefore, the impugned order dated 23.05.2020 deserves to be interfered with.

8. Mr. G. Pegu, learned CGC appearing on behalf of the respondents, on the other hand, submits that the petitioner is serving under the 7th Assam Rifles, which is a disciplined force and, therefore, the four Red Ink Entries would automatically mean that the service of the petitioner is no more required as he is an incorrigible offender and, accordingly, the impugned order dated 23.05.2020 was issued. He also submits that the petitioner was show-caused before issuance of the impugned order and after consideration of his reply, discharge order was issued.

9. I have considered the submissions made by learned counsel for the parties.

10. The four Red Ink Entries entered into the service dossier of the petitioner has already been extracted hereinabove.

11. This Court has also considered the Advisory issued by the Ministry of Home Affairs, Directorate General Assam Rifles, Shillong on 15.07.2021. The relevant portion of the Advisory is quoted here-in-below:-

“3. Keeping in view the judgment and order dt 16 Oct 2015, the competent authorities at all levels must take cognisance of the following during application of mind while exercising the disciplinary powers for discharging an individual from service on incurring four red ink entries:-

(a)The case of each individual on incurring four red ink entries should be examined for its own merit depending upon the nature and gravity of the offence and the

aggravating circumstances under which these offences were committed by the individual.

(b) Discharge from the service on incurring four red ink entries is not a mechanical process. The termination of service is warranted on the merits of a particular case and each case has to be examined in detail based on facts and circumstances.

(c) The total service rendered by an individual should be considered and wherever possible individual should be given an opportunity to complete the qualifying service for the grant of pension (non NPS personnel).

(d) Before discharging an individual from service for incurring four red ink entries, adequate opportunity should be provided to the individual for his defence by way of convening an appropriate inquiry."

12. A perusal of the Advisory issued by the Ministry of Home Affairs, Directorate General of Assam Rifles would clearly indicate that incurring four Red Ink Entries should be examined on its own merit depending upon the nature and gravity of the offence and the aggravating circumstances under which these offences were committed by the individual and the discharge from service on incurring four Red Ink Entries is not a mechanical process.

13. On consideration of the four Red Ink Entries awarded to the petitioner, it is seen that he underwent three days rigorous imprisonment for the offence of intoxication on 22.09.2017; seven days rigorous imprisonment on 30.10.2017 for the offence of overstaying the leave granted to him; seven days rigorous imprisonment on 05.02.2018 for the offence of overstaying the leave granted to him and 28 days rigorous imprisonment on 19.08.2019 for losing his Identity Card. Assuming that the first three Red Ink Entries are serious in nature, this Court is of the considered opinion that the fourth Red Ink Entry is a matter which needs consideration of the respondents inasmuch as losing of the Identity Card may be beyond the control of the petitioner.

14. In the case of **Veerendra Kumar Dubey** (supra), the Supreme Court has held as under:-

“10.The Government has, as rightly mentioned by the learned counsel for the appellant, stipulated not only a show-cause notice which is an indispensable part of the requirement of the Rule but also an impartial enquiry into the allegations against him in which he is entitled to an adequate opportunity of putting up his defence and adducing evidence in support thereof. More importantly, certain inbuilt safeguards against discharge from service based on four red ink entries have also been prescribed. The first and foremost is an unequivocal declaration that mere award of four red ink entries to an individual does not make his discharge mandatory. This implies that four red ink entries is not some kind of Laxman rekha, which if crossed would by itself render the individual concerned undesirable or unworthy of retention in the force. Award of four red ink entries simply pushes the individual concerned into a grey area where he can be considered for discharge. But just because he qualifies for such discharge, does not mean that he must necessarily suffer that fate. It is one thing to qualify for consideration and an entirely different thing to be found fit for discharge. Four red ink entries in that sense take the individual closer to discharge but does not push him over. It is axiomatic that the Commanding Officer is, even after the award of such entries, required to consider the nature of the offence for which such entries have been awarded and other aspects made relevant by the Government in the procedure it has prescribed.”

15. This Court has also considered the communication dated 15.01.2020 by which the reply given by the petitioner was held to be found not satisfactory. On consideration of the same, it appears that the communication dated 15.01.2020 was issued in a mechanical manner without giving any due consideration to the gravity of the four Red Ink Entries entered into the service dossier of the petitioner. Further, no reasons have been assigned in the communication dated 15.01.2020 to indicate as to why the reply given by the petitioner has been found to be not satisfactory.

16. On consideration of the same, this Court is of the considered opinion that the discharge of the petitioner from 7th Assam Rifles by the order dated 23.05.2020 is harsh and without considering the gravity of the offences involved in the matter.

17. In view of the discussions made here-in-above, the impugned order dated 23.05.2020 is set aside and quashed. The respondents are directed to forthwith

reinstate the petitioner back into service. It is, however, made clear that the petitioner would not be entitled to any back wages from the date of his discharge till the date he joins back to service.

18. The writ petition is, accordingly, allowed.

19. There shall, however, be no order as to costs.

JUDGE

Comparing Assistant