

GAHC010242642015



2024:GAU-AS:8503

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

Case No. : WP(C)/6293/2015

MR. BINU D,
NO.F/38443L RFN/COOK, 43 ASSAM RIFLES, PIN9932043, C/O 99 APO,
PRESENT ADDRESS MR. BINU D, VILL. RARALANGSO, P.S. and P.O. DIPHU,
TEH- KARBI ANGLONG, DIST- KARIBI ANGLONG, ASSAM, PIN-782460

VERSUS

THE UNION OF INDIA and 5 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF DEFENCE, DHQ
NEW DELHI-1

2:THE ASSAM RIFLES
REP. BY DIRECTORATE GENERAL
A BRANCH DISCP SEC./VIGILANCE
LANE BR./NE/UPAO/ARGIS/REC BR
SHILLONG-793010

3:DIRECTORATE GENERAL ASSAM RIFLES
SHILLONG-793010

4:INSPECTOR GENERAL
HQ
ASSAM RIFLES EAST PIN-932553
C/O 99 APO

5:DY. INSPECTOR GENERAL
ASSAM RIFLES EAST
22 SECTOR ASSAM RIFLES
PIN-932553
C/O 99 APO

6:THE COMMANDING OFFICER
43 ASSAM RIFLES

C/O 99 APO
PIN-93202

Advocate for the Petitioner : MR.A K PURKAYASTHA, MR.V K CHOPRA,MR.S K SINGH

Advocate for the Respondent : C.G.C., MRM R ADHIKARI,ASSTT.S.G.I.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioner : Shri A. K. Purkayastha, Advocate.
Advocate for the respondents : Shri M. R. Adhikary, C.G.C.

Date of hearing : **29.08.2024**

Date of Judgment : **29.08.2024**

JUDGMENT & ORDER

The present petition under Article 226 of the Constitution of India has been filed challenging an order of discharge from service dated 27.09.2014. The departmental appeal preferred by the petitioner has also been rejected on 28.10.2014.

2. As per the facts projected, the petitioner was serving as a Cook in the Assam Rifles. While in service, he had faced four different proceedings wherein he was punished and accordingly, there were 4th Red Ink Entry. Thereafter, the petitioner was served with a Show Cause Notice dated 30.08.2014 as to why he should not be discharged. The notice was responded to by the petitioner on 10.09.2014 whereafter the impugned order dated 27.09.2014 has been passed.

3. I have heard Shri A. K. Purkayastha, learned counsel for the petitioner. I have also heard Shri M. R. Adhikary, learned CGC.

4. Shri Purkayastha, the learned counsel has submitted that so far as the 4th

Red Ink Entry is concerned pertaining to loss of Identity Card and certain articles, no fault could have been attributed to the petitioner and therefore the impugned order dated 27.09.2014 has been passed without jurisdiction. It is submitted that to exercise powers for discharge, there is a requirement of having at least 4 Red Ink Entries. By drawing the attention of this Court to a Chart which has been given in paragraph 10 of the petition, the learned counsel has submitted that the first three charges were of unauthorized absence which according to the petitioner is not of serious nature. So far as the 4th Charge is concerned regarding loss of Identity Card and other materials, it is submitted that the same could not have been a charge as the petitioner had explained the matter by assigning cogent reasons. It is submitted that on that particular date, the petitioner was unwell while at Dimapur Railway Station and had fell unconscious and in that event, the items went missing.

5. The learned counsel has relied upon a decision of this Court in a writ petition being WP(C)/4348/2020 (***Durgesh Kumar Meena Vs Union of India & Ors.***). In the said case wherein a similar challenge was made, this Court had also relied upon the case of the Hon'ble Supreme Court in ***Veerendra Kumar Dubey Vs Chief Of Army Staff & Ors*** reported in ***(2016) 2 SCC 627***. It is submitted that simply because of Red Ink Entries, the same would not mean that the only option of discharge is left and accordingly the discharge order was interfered with. The learned counsel has also submitted that the past services of the petitioner was not taken into account before taking a decision to discharge him from service. Reliance has also upon placed upon a decision of the Hon'ble Division Bench of this Court in ***Balwant Singh Vs Union of India & Ors*** reported in ***2011 (5) GLT 640***. In that case, the Hon'ble Division Bench had interfered with the order of discharge.

6. The learned counsel for the petitioner accordingly submits that the impugned order dated 27.09.2014 be interfered with and a further direction to reinstate the petitioner in service be issued. It is pointed out that the petitioner still has a number of years left wherein he can render his service.

7. *Per contra*, Shri M. R. Adhikary, the learned counsel has submitted that so far as the 4 Red Ink Entries are concerned, there is no manner of any challenge to the same. It is submitted that each of the Red Ink Entries were made by following the due process of law. By referring to the affidavit-in-opposition filed on 10.03.2016, the learned CGC has submitted that each of the 4 Red Ink Entries were preceded by a due process of law whereby the petitioner was given adequate opportunity as per prescription of the law. It is submitted that in any case, none of the 4 Red Ink Entries are the subject matter of challenge. It is submitted that after the Red Ink Entries, on 10.05.2014, the petitioner was given a specific warning not to indulge in any further activities which would entail a further Red Ink Entry in which case he would be discharged from service. However, even after that the 4th Red Ink Entry had to be made on certain charge.

8. As regards the case of **Durgesh Kumar Meena** (supra) cited on behalf of the petitioner, the learned CGC has submitted that the aforesaid case of **Durgesh Kumar Meena** (supra) has taken into consideration the case law of the Hon'ble Supreme Court in **Veerendra Kumar Dubey** (supra). By referring to the case of **Veerendra Kumar Dubey** (supra), the learned counsel for the respondents has submitted that in that case there was no enquiry at all and in that context the observations were made. The learned counsel has also informed this Court that so far as the case of **Balwant Singh** (supra) is concerned the same was the subject matter of appeal before the Hon'ble

Supreme Court and the said appeal was allowed and the discharge of the incumbent was upheld. The said decision is reported in **(2015) 14 SCC 389** (Union of India & Ors Vs Balwant Singh).

9. As regards the apprehension expressed on behalf of the petitioner regarding non-receipt of pension, the learned CGC has submitted that pension, gratuity, leave encashment and all other benefits have been paid to the petitioner.

10. The learned CGC accordingly submits that the writ petition is liable to be dismissed as same is without any merits.

11. The rival submissions have been duly considered.

12. The challenge in this petition is with regard to the Discharge Order dated 27.09.2014. Though an argument has been sought to be developed that the aforesaid discharge order has been passed without jurisdiction as the 4th Red Ink Entry was done in an improper manner, this Court has seen that there is no challenge to any of the Red Ink Entries or the procedure adopted. Be that as it may, to dispel any doubts, this Court has looked into the procedure adopted before making the Red Ink Entries which have been disclosed and annexed to the affidavit-in-opposition of the respondents. Each of the Red Ink Entries were preceded by the procedure laid down in law and the petitioner was given adequate opportunity to defence himself. In any case, as observed above, none of the procedure adopted or the action of making the Red Ink Entries are the subject matter of challenge. In that situation, this Court cannot go back to the aspect of the legality of the procedure adopted for the Red Ink Entries.

13. The petitioner was admittedly issued a Show Cause Notice on 30.08.2014 after the 4 Red Ink Entries were given. The said show cause notice was replied on 10.09.2014 and the primary concern of the petitioner was to allow him to

serve at least 20 years of pensionable service so that he could get pension after his retirement. However, a bare look at the Discharge Order dated 27.09.2014 would disclose that the petitioner was held to be entitled to pension and gratuity as admissible under the Rules. So far as the procedure adopted, this Court had noted that under Clause 5 of the Record Office Instruction 1 of 2004, the power is vested upon the authorities to discharge any members who has got four or more Red Ink Entries. For ready reference the aforesaid provision is extracted herein below:-

“5. Discharge/Disposal of Undesirable/Inefficient Personnel: Vide Chapter VIII Rule 24 of the Assam Rifles Manual confers powers on the commandants of Assam Rifles Battalion to discharge any members of the Assam Rifles below the rank of Nb/Sub. This power may be exercised by a Commandant in case where a person has got four or more red ink entries. In case, it is necessary to send an individual on discharge under this provision, a notice will be served on the individual affording an opportunity to him to explain his case. Thereafter the complete case will be forwarded to Sector HQ along with the notice and reply received from the individual, for the approval of the Sector Commander. Thereafter, the documents will be sent to this Directorate, Record Branch/UPAO for final settlement of his IRLA.”

14. The provision of the aforesaid instruction being clear and there being no apparent violation of the procedure laid down, this Court is not in a position to accept the submission of the petitioner towards his challenge against the Discharge Order dated 27.09.2014.

15. In view of the above, the writ petition is dismissed.

JUDGE

Comparing Assistant