

GAHC020001762021



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

Case No. : WP(C)/72/2021

TOKAVI CHOPHY
NO.G/105160Y, RFN/GD,
10TH ASSAM RIFLES,
PERMANENT ADDRESS AKULUTO VILLAGE,
ZUNHEBOTO, NAGALAND

VERSUS

THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF HOME AFFAIRS,
GOVT. OF INDIA,
NEW DELHI

2:THE DIRECTOR GENERAL

ASSAM RIFLES

HQ DGAR

SHILLONG
MEGHALAYA

3:THE COMMANDANT

10TH ASSAM RIFLES

C/O 99 AP

Advocate for the Petitioner : I. IMTI LONGCHAR

Advocate for the Respondent : CGSC

Date of hearing and judgment : **20.05.2024**

**BEFORE
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI**

JUDGMENT & ORDER (ORAL)

An Order of Discharge from service dated 16.01.2008 with regard to the petitioner from Assam Rifles is the subject matter of challenge in this writ petition. The primary contention is that provisions of a wrong Act which is not applicable to the petitioner had been applied which had culminated in the Order of Discharge.

2. A brief narration of the facts would be necessary for adjudication of the issue raised.

3. The petitioner was serving with the 10th Assam Rifles in the rank of Rifleman/GD when he was served with a show cause notice dated 14.12.2007. Prior to the same, the petitioner was served a warning letter dated 07.10.2006. After consideration of the reply, vide the impugned Order dated 16.01.2008, the petitioner was discharged from service w.e.f. 18.01.2008. It was stated that the discharge was on incurring 4 (four) red ink entries in the service. The petitioner had earlier filed a writ petition, WP(C)/188/2018, before this Court wherein he had put to challenge the Discharge Certificate. However, from the affidavit-in-opposition, the petitioner could come to learn about the order of 16.01.2008, and therefore, the said writ petition was withdrawn on 01.04.2019, however, with liberty to file afresh.

4. I have heard Mr. I. Imti Lonchar, learned counsel for the petitioner whereas the respondents are represented by Mr. Yangerwati, learned CGC. The materials placed before this Court

have been duly considered.

5. The learned counsel for the petitioner has structured the challenge to the impugned Order dated 16.01.2008 mainly on the ground that the same is based on certain factors not in the Assam Rifles Act but under the Army Act. By drawing the attention of this Court to the show cause notice dated 14.12.2007, the learned counsel has submitted that 4 (four) numbers of offences were stated and all were under various provisions of the Army Act. He has submitted that specific reference has been made to Sections 39(a) and 63 of the Army Act. He submits that when the genesis of the impugned action can be related back to the application of the Army Act, the impugned Order is, wholly unsustainable in law and accordingly liable to be set aside and quashed. As regards the reply by the petitioner to the show cause notice, the learned counsel has clarified that this Court may not go into the expressions used as the petitioner was not aware of the intricacies involved in law.

6. Mr. Yangerwati, learned CGC, has at the outset raised the preliminary objection of delay and laches in approaching the Court. It is submitted that the Discharge Order is dated 16.01.2008 whereas the instant writ petition has been filed only on 12.04.2021, i.e. after a delay of more than 13 (thirteen) years. With regard to the merits of the case, the learned CGC has submitted that the petitioner was found to be indulging in misconduct of various nature for which he was given warning from time to time including red entries in the Service Book. As regards the grounds projected for the present challenge, the learned counsel has drawn the attention of this Court to the affidavit-in-opposition filed on 01.11.2023, more specifically the averments made in paragraph "v" of heading "A"

wherein a brief history of the case has been given. He submits that though the Assam Rifles Act, 1941 was applicable, the petitioner was subjected to the Army Act, 1950 as his unit was operating under operational control of the Army when he was awarded the four punishments. It is further submitted that the earlier punishments were never put to challenge by the petitioner in any proceedings. This Court has also been informed that subsequently, the Assam Rifles Act, 2006 and the Assam Rifle Rules, 2010 had come into operation.

7. The learned counsel for the petitioner in his rejoinder has submitted that the aspect of delay was explained in this proceeding by filing I.A.(Civil)/53/2021. He has further submitted that the subsequent Assam Rifles Act of 2006 and the Rules of 2010 would not be relevant as all along the Act of 1941 was in operation.

8. The rival contentions have been duly considered.

9. The writ petition has been structured, as indicated above on the ground that the show cause notice which is submitted to be a basis of the impugned Order mentions the Army Act and not the provisions of the Assam Rifles Act. The aforesaid contention has been replied on behalf of the respondents by submitting that the earlier four punishments inflicted on the petitioner was at a time when he was under the operational control of the unit of Army.

10. To examine the said issue this Court has carefully scrutinized the show cause notice. Though it is true that the earlier punishments were inflicted in terms of certain provisions of the Army Act, the present show cause notice was issued on 14.12.2007 under Section 4(a) of the Assam Rifles Act, 1941 read with ROI 4/99 and para 24 of Chapter VIII of Assam Rifles Manual. The Discharge

Order is mainly on the aspect of there being four red ink entries in the service of the petitioner. The point which is required to be noted is that the action of putting four red ink entries in the service of the petitioner was never the subject matter of challenge in any proceedings. The present impugned Order is on culmination of the show cause notice which was indeed issued under the provisions of the Assam Rifles Act, 1941. In the considered opinion of this Court, the submissions made on behalf of the petitioner and the challenge projected do not appear to be a sustainable and tenable. The reply to the show cause notice also indicates an admission. Nonetheless, the discharge is on the ground of having four red ink entries in the Service Book and is not on any subjective specification of the Disciplinary Authority wherein there could be any element of bias or procedural impropriety. The discharge is based on objective materials, namely, the four red entries in the Service Book which is an admitted fact.

11. With regard to the aspect of delay, though it is submitted that this is the second writ petition which had to be filed on coming to know about the impugned Discharge Order dated 16.01.2008 in the earlier proceeding, namely WP(C)/188/2018, this Court is of the opinion that the conduct of a writ petitioner approaching the Court is of paramount importance as this Court under Article 226 of the Constitution of India exercises equitable jurisdiction. Though an explanation has been tried to be given that information was sought under the RTI Act, such application for RTI is also of the year 2017. As regards the submission that orders were based in I.A.(Civil)/53/2021, a perusal of the Order dated 01.08.2023 would, however, show that the application was closed,

as such, an application under Section 5 of the Limitation Act, 1963 is not maintainable in a writ proceeding.

12. It is a settled law that the Limitation Act, *per se* would not have a strict application in filing of a writ petition. However, it is equally important that the aspect of laches is a relevant aspect which is required to be considered. A Constitutional Bench of the Hon'ble Supreme Court in the case of ***State of Madhya Pradesh Vs. Bhailal Bhai*** reported in ***1964 0 AIR SC 1006*** has laid down as follows:

"21. ...Learned counsel is right in his submission that the provisions of the Limitation Act do not as such apply to the granting of relief under Art 226. It appears to us however that the maximum period fixed by the legislature as the time within which the relief by a suit in a Civil Court must be brought may ordinarily be taken to be a reasonable standard by which delay in seeking remedy under Article 226 can be measured. The court may consider the delay unreasonable even if it is less than the period of limitation prescribed for a civil action for the remedy but where the delay is more than this period, it will almost always be proper for the court to hold that it is unreasonable..."

13. In the instant case, even assuming that the period is to be construed not from filing of this case but of the previous case which was of the year 2018, then also, there is a delay of almost a decade which is not explained in the writ petition. As observed above, though there is no requirement under the law to file any application under Section 5 of the Limitation Act in a writ petition,

there should be sufficient pleadings in the petition itself, in case there is any delay in approaching this Court with any cause of action, which is not there.

14. In view of the aforesaid discussion and the facts and circumstances, this Court is of the opinion that no relief can be granted to the petitioner in this case and accordingly, the writ petition is dismissed.

15. No order as to cost.

Sd/-
JUDGE

Comparing Assistant