



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

Case No. : WP(C)/144/2020

SACHIN KUMAR THAKUR
S/O CHANDRA SHEKHAR THAKUR, VILLAGE - ROY DANGA SCHOOL PARA
POST - DURGAPUR, DISTRICT - PASCHIM BURDWAN - 713201, WEST
BENGAL

VERSUS

OFFICE OF THE COMMANDANT ASSAM RIFLE AND 5 ORS
TANNING CENTRE AND SCHOOL, P.O - DIMAPUR, NAGALAND 2:THE
MINISTRY OF PERSONNEL

P.G. AND PENSION DEPTT. OF PERSONAL AND TRAINING
STAFF SELECTION COMMISSION(NER)
RUKMINI NAGAR
P.O. ASSAM
SACHIVALAYA
GUWAHATI - 6

3:ARWWA SECRETARIAT
HQ DIRECTORATE GENERAL ASSAM RIFLES
MEGHALAYA
SHILLONG - 793010

4:OFFICE OF THE COMMANDING OFFICER NO.2
TRG BATTALION ASSAM RIFLE TANNING CENTRE AND SCHOOL
P.O. - DIMAPUR
NAGALAND

5:ASSAM RIFLE TANNING CENTRE AND SCHOOL

DIMAPUR
NAGALAND - 797115

6:THE DIRECTOR GENERAL OF ASSAM RIFLES

SHILLONG
MEGHALAYA - 79301

Advocate for the Petitioner : MD.APZAL ANSARI

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 15.03.2024

Heard Md. A. Ansari, learned counsel for the petitioner, who has appeared through video conferencing. Also heard Mr. Z.N. Ngullie, learned CGC appearing for the respondents.

2. In brief, the case of the petitioner is that pursuant to a selection process, the petitioner was issued an appointment letter dated 31.05.2011 in respect of recruitment to the post of Constable (GD) in Assam Rifles, 2011. On being declared provisionally qualified for the Medical Examination Test and accordingly, he was directed to report on the appointed date for Medical Examination Test. After being successful in the Medical Examination Test, an appointment letter dated 13.12.2011 was issued in favour of the petitioner for his appointment as Recruit General Duty. By a communication, the petitioner was directed to report at Assam Rifles Training Centre and School, Dimapur on 15.01.2012 at 08.00 hrs. with all relevant documents. After undergoing training about 2 months 16 days, a discharge certificate, on request, was issued to the petitioner, a trainee, by the Deputy Commandant and C.I., Assam Rifles Training Centre and School, Dimapur. This was followed by an order dated 31.03.2012 issued by the officiating Commanding Officer of the

Commanding Officer No.2, Training Battalion, Assam Rifles Training Centre and School, Dimapur, by which in terms of powers under Chapter IV, para 27(4) of the Assam Rifles Rules, 2010, notice was given to the petitioner of being discharged from service on 31.03.2012 (AM) at his own request.

3. The learned counsel for the petitioner has referred to representation dated 12.10.2015 of the petitioner to project that after about 15 days of training, the petitioner was being tortured by a cook of the company, which made impossible for him to reside in the company and therefore, the matter was reported to the concerned officials of the Assam Rifles. It is projected that the mother of the petitioner wanted to meet the senior officer of the rank of Lieutenant Colonel, but the said officer refused to meet her. It is projected that under coercion, the petitioner was made to sign an affidavit as well as other documents, which were thereafter converted into resignation letter. Therefore, on 31.05.2013, the petitioner had applied for reinstatement, which was forwarded by the Major, Adjutant, which was forwarded to the Director General of Assam Rifles, Recruitment Branch. But as nothing happened, a second representation dated 24.02.2014 was submitted by the petitioner to rejoin in service, but he received a response dated 14.03.2014 by the Major, Adjutant, that he cannot be reinstated in service as the discharge order was approved by the competent authority. The petitioner made an application to the Director General of Assam Rifles to reconsider his prayer to join the force, which was not responded to and thereafter, representation dated 12.10.2015 was submitted to the Director General of Assam Rifles. It is further submitted that during the currency of the said process of representations and effort of the petitioner to rejoin in service, he

was informed on 31.05.2013 of being reinstated back into the service and when the petitioner approached the authorities for joining, on 14.03.2014, the respondent authorities took an U-turn and rejected the claim of the petitioner. It is submitted that initially the petitioner was advised to approach the Supreme Court of India and by order dated 08.11.2019, passed in Writ Petition (Civil) No. 1285/2019, the Supreme Court of India, on the request made by the petitioner, dismissed the writ petition as withdrawn. Thereafter, the present writ petition has been filed under Article 226 of the Constitution of India, whereby, the petitioner, amongst others, has made a prayer for quashing of the discharge order dated 31.03.2012 and consequential communications and to reinstate the petitioner in service.

4. The learned counsel for the petitioner has also submitted that the petitioner comes from a very poor background and that he was forced to write a letter of resignation. It is also submitted that the petitioner had visited a doctor in view of the torture upon him and the doctor had advised him few days of rest and it is during this period that coercion on part of the respondent authorities took place and while he was made to understand that leave would be granted to him, he was made to sign papers, and he was discharged from service. It is also submitted that the affidavit purportedly sworn by the petitioner before the Notary Public at Dimapur regarding resignation from service was not executed voluntarily and that the documents were signed by the petitioner with a projection that he would be granted leave. It is submitted that the application regarding discharge and the said affidavit purportedly sworn on 16.02.2012 was never served on the petitioner and the documents regarding his resignation and discharge was provided to the

petitioner for the first time in the affidavit-in-opposition filed by the respondents and in this regard, reliance is placed on the affidavit-in-reply filed by the petitioner.

5. The learned CGC has referred to the affidavit-in-opposition filed by the respondents in support of the contention that the petitioner voluntarily resigned from service and had left the unit without completing the mandatory 12 months of training.

6. It appears from the scheme regarding procedure in the Assam Rifles Rules, 1985 a person having desire of joining the Assam Rifles has to undergo a training process, during which period, a trainee under the Assam Rifles is allowed fixed pay and allowances till his appointment as a Rifleman in accordance with Rule 12, 13 and 14 of the Assam Rifles Rules, 1985. It appears that on completion of the training program, as per Rule 13, oath or affirmation is required to be administered by the Commandant as per certificate set out in Part-III of Appendix-I, is required to be attached to the Sheet Roll. Thereafter, the requirement of Rule 14 is to be complied with, which includes verification of his character and antecedents and then such person is required to sign a statement in schedule annexed to the Act in accordance with the provisions of Sub-Section (2) of Section 4 of the Assam Rifles Act.

7. It appears that once a person becomes a member of the force of Assam Rifles, as per the provisions of Section 8 of the Assam Rifles Act, 2006, no member of the force is at liberty to resign his appointment during the term of his engagement or to withdraw himself from all or any of the duties of his appointment except with the previous permission in writing of the prescribed authority. In the present case in hand, there is no document to

show that the petitioner was enrolled as a member of the Assam Rifles on successful completion of his training. Therefore, when the petitioner had exercised his right to resign, the process not covered by Section 8 of the Assam Rifles Act, 2006.

8. Assuming that the petitioner was compelled to resign which was not voluntarily done, the petitioner has enclosed the discharge certificate dated 27.03.2012 in this writ petition, by which an inference can be drawn that at least he was provided with a discharge certificate by the Deputy Commandant and C.I., Assam Rifles Training Centre and School, Dimapur. The petitioner has not been able to convince the Court that he was forced to sign the letter of resignation as well as the affidavit purportedly sworn on 16.02.2012 before the Notary Public, because on a perusal of the said affidavit, which is annexed as Annexure-II of the affidavit-in-opposition, it is noted that in the manner and space where the signature of the petitioner is made, it would be impossible for a signature to be taken on a blank stamp paper and then the affidavit be printed thereafter. The said signature of the deponent is more or less in the center of the page and there are writing above the signature as well as below it. The notary certificate is of 16.02.2012. Therefore, there is a presumption that even if the copy of the said affidavit was not served on the petitioner, the petitioner did have knowledge of the contents of the affidavit, which he had signed on 16.02.2012. However, the petitioner did not lodge any protest immediately.

9. From the appointment letter dated 13.12.2011, Clause-3 thereof makes it very abundantly clear that if the petitioner fails to successfully complete the recruitment training within the stipulated

period, his service was liable to be terminated without any notice and assigning any reason. Therefore, it cannot be said that the petitioner was not aware that unless he completes and concludes his training successfully, he would not be absorbed as a member of the force of Assam Rifles. On the other hand, it is noticed that the order of discharge of the petitioner from service w.e.f. 31.03.2012 (AM) at his own request was issued on 31.03.2012.

10. Notwithstanding the representations, made by the petitioner from time to time, the present writ petition claiming reinstatement of service was filed on 15.09.2020, which is more than 8 (eight) years after he was discharged during the training period.

11. As the petitioner is not found to have been absorbed in the Assam Rifles in service on successful completion of training, the Court is unable to accept that the petitioner is a member of the force of Assam Rifles and therefore, the question of reinstatement of the petitioner to service would not arise at all as he did not complete his training successfully.

12. In view of the aforesaid discussions, the Court does not find merit in this writ petition and therefore, this writ petition stands dismissed. However, there shall be no order as to cost.

Sd/-

JUDGE

Comparing Assistant