

IN THE HIGH COURT OF TRIPURA
AGARTALA

W.A No.126 of 2023

Shibu Limbu

JC/E- 380007N, Ex-Subedar (B and R) of Headquarters, 10 Sector, Assam Rifles, attached to Headquarters, 21 Sector, Assam Rifles, Agartala, C/O 99 APO.

Permanent residence- Ambootia Tea Estate Vill- Basseri, P.O- Kurseong, Dist- Darjeeling, West Bengal, Pin-7342032

..... Appellant (s)

– V e r s u s –

1. The Union of India and Ors

Represented by the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi-110011

2. The Director General of Assam Rifles

Directorate General of Assam Rifles, Laitkor, Shillong-10, Meghalaya.

3. The Inspector General Assam Rifles, (North)

Headquarters IGAR (N), C/O 99 APO, PIN-932554.

4. The Inspector General Assam Rifles, (East)

Headquarters IGAR (East), C/O 99 APO, PIN-932553

5. Colonel (Administration)

Headquarters IGAR (North), C/O 99 APO, PIN-932554

6. Ex-Officio Commandant

Headquarters, Nagaland Range, (North), C/O 99 APO, PIN-934827

7. IC 65988M-Maj. Deepak Bayala

Recording Officer of SOE
Headquarters Nagaland Range, (North), C/O 99 APO, PIN-934827

8. The Sector Commander

Headquarters 21 Sector, Assam Rifles
C/O 99 APO

..... Respondent(s)

For the Appellant (s)	:	Mr. A. Puri, Adv. Ms. A. Saha Hirawat, Adv.				
For the Respondent (s)	:	Mr. B. Majumder, Deputy SGI				
Date of hearing & delivery of Judgment & order	:	01.04.2025				
Whether fit for reporting	:	<table border="1"><tr><td>YES</td><td>NO</td></tr><tr><td></td><td>√</td></tr></table>	YES	NO		√
YES	NO					
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**HON’BLE THE CHIEF JUSTICE APARESH KUMAR SINGH
HON’BLE MR. JUSTICE S. DATTA PURKAYASTHA**

JUDGMENT & ORDER (ORAL)

Heard Mr. A. Puri, learned counsel assisted by Ms. A. Saha Hirawat, learned counsel appearing for the writ petitioner-appellant and Mr. B. Majumder, learned Deputy SGI appearing for the respondents.

[2] The learned Writ Court has dismissed the writ petition vide impugned judgment dated 24th August, 2023. The petitioner had sought quashing of the impugned order dated 18th October, 2021 whereby his services were terminated by way of dismissal. The petitioner had also sought quashing of the order dated 9th March, 2022 by which the appeal was rejected. The petitioner had sought reinstatement with all pay and allowances with permission to allow the petitioner to retire at his normal date of retirement and get all the pensionary and post retirement benefits. The impugned judgment dated 24.08.2023 reads as under:

“This present application has been filed under Article 226 of the Constitution of India seeking the following reliefs:-

- “i. Certiorari shall not be issued setting aside and quashing the impugned Order dated 18.10.2021 whereby the service of the petitioner is terminated by way of dismissal, and,
- ii. Certiorari shall not be issued setting aside and quashing the impugned Order dated 09.03.2022 of the Appellate Authority rejecting the appeal of the petitioner, and,
- iii. Mandamus shall not be issued directing the respondents to reinstate the petitioner in service with all pay and allowances as it existed at the time of passing of the impugned order and thereafter, to allow the petitioner to retire from service with all pension and retirement benefits as the age of the

petitioner is now completed 60 years which is the retirement age in Assam Rifle and

iv. Mandamus directing the respondents to keep the impugned orders in abeyance till disposal of the present petition and upon such causes shown be pleased to make the Rule absolute and/or pass such further order and and/or direction as Your Lordships may deem fit and proper in the interest of Justice.

AND

Pending disposal of the writ petition. Your Lordship may pleased to pass an order in the interim staying/suspending the operation of the impugned Order dated 18.10.2021 and 09.03.2022.”

2. Heard Mr. K.D. Singha, learned counsel appearing for the petitioner as well as Mr. B. Majumder, learned CGC appearing for the respondents-Union of India.

3. Mr. K.D. Singha, learned counsel appearing for the petitioner submits that respondents committed arbitrary, unreasonable, high-handed, and malafide action against the petitioner herein by dismissing him from service vide order dated 18.10.2021 on the ground of misconduct without proper inquiry/trial and urged this Court to allow this appeal and quash the impugned order.

4. Heard both sides and perused the evidence on record.

5. In a petition filed under Article 226 of the Constitution of India, procedural irregularities and violation of legal provision are to be highlighted, but on the point of factual aspects and other issues, the same cannot be appreciated. For that aspect, disciplinary authority and appellate authority are there but the petitioner has crossed all those limits. Further, the petitioner herein has been given an opportunity by way of cross-examination by the respondents in the form of question head, but the petitioner did not choose to take the opportunity. As such, this Court is of the opinion that the petitioner side has failed to make out the case, and accordingly, this present writ petition stands dismissed.

6. As a sequel, stay if any stands vacated. Pending application(s), if any also stands closed.”

[3] Learned counsel for the appellant *inter-alia* has taken a number of grounds to assail the impugned order of dismissal from his service and rejection of the appeal. The chronology of facts and events culled out from the pleadings on record placed on behalf of the appellant are as under:

S. No.	Date	Particulars
1	05.07.1985	Petitioner was enrolled in Assam Rifles on Recruit/General Duty.
2	19.01.1987	Appointed as Naib Subedar (B&R) in Assam Rifles.
3	01.05.1993	Promoted as Subedar (B&R) in Assam Rifles.
4	04.08.2014-12.08.2014	An alleged sting operation was carried out by blacklisted contractor, Assam Rifles, Mr. CC Mathew in connivance with Mr. Shyju Maruthumpilly of Tehelka.Com at Imphal, Ukhrul, Shillong and Guwahati to expose the corruption in Assam Rifles.
5	24.09.2014-25.09.2014	A purported broadcast was aired in Malayalam Channel Mathrubhumi News and Tehelka.com alleging corruption in Assam Rifles based on the aforesaid alleged sting operation.
6	29.09.2014 @ Pg. No.129	A Court of Inquiry was convened by the HQ, DGAR.
7	01.10.2014 @Pg. no. 130	Amendment to the convening order in respect of composition of COI was passed by the HQ, DGAR.
8	07.10.2014	A Corrigendum was issued to the convening order dated 29.09.2014

	@Pg. no. 131	wherein it was stated that while recording of summary of evidence Assam rifle Rule 49 (1-4) and Rule 183 will be strictly complied with.
9	03.12.2014 @Pg. 132- 135	Mr. C. C. Mathew had approached the Hon'ble Delhi High Court by filing a writ, petition being WP (Crl.) No.2420/2014 for issuance of a writ of Mandamus to the Respondents to change the venue of the Court of Inquiry or in the alternative record the evidence of the Petitioner at Delhi under the protection of the Respondents as there is danger and threat to the life of the Petitioner in case of conducting the inquiry at Silchar, Assam. Hon'ble Delhi High Court disposed off the Writ Petition vide order dated 03.12.2014 directing the Respondent to escort Mr. C.C. Mathew to the Court of Inquiry from the airport and escort back Mr. C.C. Mathew to airport.
10	09.10.2014- 20.12.2014 @ Pg. no. 220-229	A court Inquiry was carried out in the intervening period wherein Contractor Mr. Suresh Kumar Gupta and Mr. Swapan Sha of Assam Rifles denied the allegation.
11	23.12.2014 @ Pg. no. 275-277	Order of finalization of court inquiry was passed.
12	25.02.2015 @Pg. no. 136	Tentative Chargesheet was issued to the Petitioner wherein charges purported under Section 7 of the Prevention of Corruption Act and Section 49 of Assam Rifle Act were proposed to be framed.
13	28.02.2015 @Pg. no. 344-346	Hearing on charge took place.
14	02.03.2015 @Pg. no. 137	Order issued for recording of Summary of Evidence.
15	04.03.2015- 23.05.2015	Summary of Evidence was recorded at HQ 7 Sector Assam Rifles at Tuensang (Nagaland)
16	16.05.2015 @Pg. no. 138	Recording officer dispensed with the personal appearance of Complainant Mr. CC Mathew by endorsing certificate on a Letter sent by him as Written statement and accepted it as evidence.
17	29.05.2017 @Pg. no. 278-279	Order of convening of the General Assam Rifles Court was passed.
18	01.06.2017	Intimation was given that trial will be conducted by General Assam Rifles Court at HQ 21 Sector, Assam Rifles at Agartala.
19	04/16.06.2017 @Pg. no.140	Another Chargesheet issued to the Appellant under the Section 55 and Section 49 of the Assam Rifles Act.
20	08.06.2017	General Assam Rifles Court assembled at HQ, 21 Sector, Assam Rifles, Agartala.
21	09.06.2017	GARC was adjourned till 09.07.2017.
22		Petitioner filed a Writ petition bearing no. WP(C) No.710/2017 before the Hon'ble High Court of Tripura with a prayer to quash the Charge Sheet on the ground that the General Assam Rifles Court cannot carry out trial of offence under the Prevention of Corruption Act, 1988 and in violation of the procedure set forth in Assam Rifles Act, 2006 and Assam Rifles Rules, 2010. The Appellant has also challenged the findings of the Court of Inquiry and Summary of Evidence proceedings.
23	20.07.2017 @ Pg. No.280-281	High Court of Tripura passed an order in WPC) No.710/2017 filed by the petitioner and stayed the GARC proceedings.
24	13.03.2018 @Pg. No.282-321	Judgment and order passed by the Hon'ble High Court of Tripura in WP(C) No. 710/2017 whereby it held that the GARC has the jurisdiction to try offences under PC. Act, 1988 and also directed to take out the statement (Manuscript @ Pg. No. 210-219) of Mr. CC Mathew from the SOB and to procure attendance to record his statement and to allow the petitioner to cross examine him.
25		Respondent filed Review Petition bearing No.45/2018 filed by the respondent against the Judgment and Order dated 13.03.2018 passed in WP(C) No.710/2017.
26	27.06.2018	Hon'ble High Court of Tripura dismissed the Review Petition being No.45/2018 filed by the respondent against the aforesaid Judgment and Order dated 13.03.2018 passed in WP(C) No.710/2017
27	01.07.2019 @Pg. no.322-339	Judgment passed by Hon'ble Supreme Court in Civil Appeal No.5136 of 2019 whereby it held that GARC has the jurisdiction to try the offences under Prevention of Corruption Act.
28	26.02.2020 @Pg. no.340	Order passed by Hon'ble Supreme Court in Review Petition (Civil) No. 673 of 2020 in Civil Appeal No.5136 of 2019 whereby it

		dismissed the Review Petition.
29		Respondent filed an Appeal being No. WA/52/2018 before Hon'ble Division Bench of High Court of Tripura against the Judgment and Order dated 13.03.2018
30	01.12.2020 @Pg. no.141-149	Hon'ble Division Bench of High Court of Tripura allowed the Appeal being No. WA/52/2018 filed by the respondent against the aforesaid Judgment and Order dated 13.03.2018 passed in WP(C) No.710/2017 whereby it was held that it would be open for GARC to proceed with the trial and the issue of cross examination of Mr. CC Mathew is kept open being not necessary to interfere in the interim stage of trial.
31	26.06.2020 @Pg. no.342	Convening order dated 29.05.2017 was cancelled vide order passed by IGAR (North).
32	15.06.2021 @ Pg. no.150-153	Show Cause Notice for termination of service was issued to the Appellant under Section 11(1) of Assam rifles Act r/w Rule 20 of the Assam rifles rules, 2010.
33	18.07.2021 @Pg. no.154-172	Petitioner submitted its reply to the aforesaid Show cause notice dated 15.06.2021.
34.	18.10.2021 @Pg. no.173-177	Impugned order passed by the IGAR (North) whereby it terminated the Petitioner from service by way of dismissal on the ground of misconduct.
35.	28.12.2021 @ Pg. No.178-198	Petitioner preferred an Appeal under Rule 28 of Assam Rifle Rules before the DGAR against the aforesaid order dated 18.10.21.
36	09.03.2022 @ Pg. No.196-200	Appeal preferred by the petitioner was rejected by the DGAR.
37.	27-05-2022	The Petitioner filed Writ Petition vide WP(C) 462 of 2022 before the Hon'ble High Court praying for issuance of Writ of Certiorari and Mandamus and/or necessary Order/direction upon the Respondents to set aside and quashed impugned termination order dated 18.10.2021 whereby the service of the Petitioner was terminated by way of dismissal and re-instate the Petitioner in service with all pay and allowances as it existed at the time of passing the impugned order and thereafter to allow the Petitioner to retire from service with all pension and retirement benefits.
38	27.09.2022 @Pg. No.231-346	Counter Affidavit was filed on behalf of the respondents in W.P (C) 462/2022
39.	31.07.2023 @Pg. No.202-230	The Appellant herein filed its Affidavit to bring additional documents on record.
40	24.08.2023 @Pg. No.348-349	The Hon'ble Single Judge of the High Court vide Judgment and Order (Oral) dated 24.08.2023, dismissed the writ petition.

[4] Learned counsel for the appellant, Mr. Puri has *inter-alia* taken a number of grounds to question the findings of the disciplinary authority as upheld in appeal. Apart from that the learned counsel for the appellant has also assailed the impugned judgment on the ground that it is a non-speaking order. Learned counsel for the appellant while assailing the impugned order made specific reference to the provisions of Section 11(2) of the Assam Rifles Act, 2006 read with Rule 20 of the Assam Rifles Rules, 2010 and submitted that the plea taken by the respondents in conducting a Force Court as inexpedient or impracticable, is wholly untenable in law and on facts in the present case. Learned counsel for the appellant in support of his proposition has placed reliance on the case of **Tarsem Singh vs. State of Punjab and others**, reported in (2006) 13 SCC 581,

Prithpal Singh vs. State of Punjab, reported in (2006) 13 SCC 314, wherein the Constitution Bench judgment in the case of **Union of India vs. Tulsiram Patel**, reported in (1985) 3 SCC 398 has also been referred. These are in relation to dispensing of a regular enquiry under Article 311(2) of the Constitution of India. He also referred to another judgment of the Apex Court in **Union of India and others vs. Ram Bahadur Yadav**, reported in (2022) 1 SCC 389 in context of the similar provisions in the Railway Protection Force Rules, 1987. He submitted that Rule 20(2) is couched in similar language. Therefore, the interpretation of Rule 20(2) will follow the principles as have been held applicable to interpretation of Article 311(2) of the Constitution. In the present case, there was no such basis to dispense with an enquiry which had already been commenced by GARC dated 29th May, 2017. However, the Inspector General, Assam Rifles has cancelled it by an order dated 26th June, 2020 (Page-342 of the memo of appeal) by a cryptic single line order.

[5] The learned Writ Court has failed to deal with any of the contentions raised by the writ petitioner while dismissing the writ petition by a non-speaking order. Learned counsel for the appellant, therefore, submits that this Court may either remand the matter for fresh consideration or decide it afresh.

[6] Learned Deputy SGI appearing for the respondents-Union of India and Assam Rifles has submitted that a detailed counter affidavit was filed before the Writ Court contesting the grounds urged by the writ petitioner on all counts. However, he is not in a position to dispute that the learned Writ Court has not dealt with any of the grounds of law and facts both urged by the writ petitioner-appellant as contested by the respondents.

[7] On consideration of the rival submissions of the parties, we are inclined to remand the matter to the learned Writ Court for fresh consideration since we are of the

opinion that none of the grounds of law and facts urged by the writ petitioner have been dealt with by the learned First Court to enable the appellate court to test the correctness and legality of the impugned judgment. However, since the writ petition has been filed in the year 2022 and the petitioner is out of service since 2021 and by now, he has also reached the age of superannuation, the learned Writ Court is requested to decide the writ petition, if possible, within a period of 3[three] months. However, it is indicated that this court has not expressed any opinion on the merits of the grounds of law or facts urged by the parties.

The writ appeal is accordingly allowed to the extent as indicated above.

Interim application(s), if any, also stands disposed of.

(S.D. PURKAYASTHA, J)

(APARESH KUMAR SINGH, CJ)

SUJAY GHOSH

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