



Serial No. 02
Daily List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No. 55 of 2025

Date of order: 10.11.2025

Rohit Kumar

...Appellant

- versus -

1. Union of India represented by the Secretary, Home Department, Govt., of India, New Delhi, India.
2. The Director General, Assam Rifles, Head Quarter, Unit Pay & Accounts Office (NE-III), Shillong, 793011, Meghalaya.
3. Inspector General, Headquarters, Assam Rifles (North) PIN-932554, C/o 99 APO, S/o-1(A)
4. The Commandant, 31 Assam Rifles, Changlang, Arunachal Pradesh, C/o 99 APO.
5. Brigadier Commander, 25 Sector, Assam Rifles, Lekha Pani, Tinisukia, Assam.

....Respondents

Coram:

Hon'ble Mr. Justice Soumen Sen, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr N.Z. Ahmed, Adv. with
Mr A. Sahad, Adv.

For the Respondents : Dr N. Mozika, DSGI with
Ms K. Gurung, Adv.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |



JUDGMENT: (per the Hon’ble, the Chief Justice) (Oral)

This is an appeal arising out of an order dated 19.06.2025 in a writ petition filed by the appellant challenging the order dated 06.09.2023 discharging him from service, Discharge Certificate dated 23.11.2023 and quashing of the order dated 01.08.2024 and for allowing him to rejoin the service by regularising the suspension period and for grant of all service benefits.

2. By the impugned order he was discharged from service. However, the order of discharge records that he shall be entitled to pensionary benefits.

3. The appellant was enrolled as a rifleman in the Assam Rifles and in the course of his service in the years 2014, 2015, 2021 and 2023 he had been awarded with five red ink entries for overstaying leave and for such offence, he had suffered rigorous imprisonment as awarded by the Assam Rifles Court for such overstayed leave.

4. This time for overstaying of one day in the year 2023, he has suffered two days’ rigorous imprisonment in the force custody and also suffered one red ink entry. This time the authority has taken a strict view of the matter and discharged him from service by a reasoned order. It appears that the Inquiry Officer after taking into consideration that he had on earlier occasions suffered rigorous imprisonment for unauthorised overstaying leave for the periods mentioned above, has again repeated



the same offence and since he is a habitual and repetitive offender, the Inquiry Officer has opined that the appellant has become a liability to the organisation and his retention in service may not be in the interest of the organisation. Furthermore, repetitive instances of misconduct and present physical state of the individual is in total contradiction to the minimum standard expected from a person in uniform and he is a factor of demotivation and his presence would be misleading other troops serving in the same environment.

5. Following the said report of the Inquiry Officer dated 13.03.2023, on 23.11.2023, the Brigadier as competent authority in exercise of his power under Section 11(2) of the Assam Rifles Act, 2006 read with Rule 17 and 25 of Assam Rifles Rule, 2010 discharged the appellant. However, it was made clear that he shall be entitled to pensionary and all other pensionary benefits as admissible on compulsory retirement under Rule 40(i) of CCS Pension Rules, 1972.

6. The learned counsel appearing on behalf of the appellant has submitted that in imposing punishment, Regulation 108(b) of the Assam Rifles Regulation, 2016 has not been followed. It is submitted that in terms of the said Regulation, if an individual has earned four or more red ink entries, his case is required to be decided on its own merit depending upon the nature and gravity of the offence and the aggravating circumstances under which these were committed.



7. Learned Deputy Solicitor General has submitted that the order of the preliminary Inquiry Officer read with the order of the competent authority would show that the authority concerned has taken into consideration the past conduct of the appellant and thereafter has taken a lenient view and instead of dismissing the appellant, the competent authority has passed an order granting pensionary benefits and other benefits as admissible on compulsory retirement under Rule 40(i) of the CCS Pension Rules, 1972.

8. There cannot be any doubt that if the past conduct of the appellant is taking into consideration, there has been overstayed leave of 75 days in the year 2013, 70 days (in total) in the year 2014 and 63 days in the year 2021 in an armed force where discipline is of paramount consideration is a matter of concern however, for each act of overstay he had suffered rigorous imprisonment imposed in accordance with the Regulation. The earlier decisions have not been challenged by the appellant. He has accepted that he has overstayed beyond the leave sanctioned for all these years. This undoubtedly could be a relevant consideration in taking a decision as to whether he would be removed or discharged from service for the unauthorised absence for the year 2023. However, having taken into consideration that for the year 2013, 2014 and 2021 for the unauthorised overstayed leave he had already suffered rigorous imprisonment as maximum as 75 days and as minimum as 7



days and even for the unauthorised overstaying leave for the year 2023, he has suffered rigorous imprisonment for two days in the light of his representation that he is the only earning member in the family and there is no livelihood available for him without his job in the Assam Rifles, we feel that the competent authority shall reconsider the decision of compulsory retirement from service taking into consideration his representation dated 21.08.2023 in which he had explained the reason for overstay and had promised that in future he would never commit any mistake or do any act of indiscipline. For better appreciation, the translated copy of the representation dated 21.08.2023 is reproduced below:

“To : Deputy Inspector General
Headquarters 25 Sector Assam Rifles.

From : No L/5023404K Rifleman Armourer
Name Rohit Kumar, 31st Battalion
Assam Rifles, C/o 99 APO
(Through Proper Channel)

Subject : Letter Number 25 Sec/A/A2/2484/2023/1744
dt 09 Aug 2023.

Sir : It is humbly requested that I, No. L/523404K
Rank Rifleman/Armourer Rohit Kumar,
serving in Headquarter Company 31st
Battalion Assam Rifles for the last 09 years 11
months. Sir, I am the sole earning member in
my family. Sir, also I am the eldest in my
family, I have one younger brother, two
sisters, my elderly parents, my wife and one
small child in my family. Sir, due to some
persistent problem in the past, the financial
condition of my family is not sound enough.



Sir, due to some mistakes of mine, I have been punished four times. Therefore, through this application I promise that in future I will never commit any mistake or do any act of indiscipline which may spoil unit's name. Therefore, it is my humble request to you that considering the above problems and for the bright futures of my children, kindly allow me with one more opportunity to serve the country. For this act of your magnanimity, I with my entire family shall remain ever grateful to you. *(emphasis supplied)*

(Thank you)

Date: 21 August 2023

Sd/-xx xx xx
No. – L/5023404K
Rank- Rifleman/Armourer
Name Rohit Kumar
Company-Headquarters
Unit-31st Battallon Assam Rifles
C/o 99 APO”

9. Moreover, he had absented without leave from training camp for one day only for which he had already suffered two days' rigorous imprisonment. Considering the fact that the appellant had already suffered imprisonments on earlier occasions and also two days for absent from duty for one day it would be harsh to discharge him from service. If the authorities were satisfied that punishment by way of rigorous imprisonment instead of any other punishment for the past misconducts were reasonable, for being absent for a day in joining the duty, discharging him from service would be harsh. In such circumstances, since the quality of mercy is not strained and he had expressed remorse



and asked for forgiveness and the fact that there has been no charge of major misconduct, the competent authority may give him another opportunity to mend himself may be for the last time and any repeat may be a fait accompli for him.

10. We accordingly direct the competent authority to reconsider the decision with compassion in the light of the above observation by a reasoned order within four weeks from date after giving him a reasonable opportunity of hearing. The reasoned order shall be communicated to him within a week from the date of the order. However, we are not allowing reinstatement at this stage and shall abide by the decision to be taken by the authorities. The appeal is allowed in part.

(W. Diengdoh)
Judge

(Soumen Sen)
Chief Justice