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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: 15.11.2021

+ **W.P.(C) 12840/2021 & CRL.M.A. 17302/2021**

NO. G/5007784K RANK - RIFLEMAN (GENERAL DUTY)
ANILKUMAR Petitioner

Through: Mr.K.K. Singh, Adv.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr.Ripudaman Bhardwaj,
CGSC with Mr.Kushagra
Kumar, Adv. for UOI.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (Oral)

The petition has been heard by way of video conferencing.

1. This petition has been filed by the petitioner challenging the constitution of the General Assam Rifles Court (hereinafter referred to as the 'GARC') convened vide order dated 05.10.2021 as null and void being in violation of Section 90 and 106 of the Assam Rifles Act, 2006 (hereinafter referred to as the 'Act') and praying for declaration of annulment of proceedings of the GARC under Section 140 of the Act. The petitioner further challenges findings and proceedings of the Court of Inquiry convened vide order dated 03.06.2021 as also the record of Summary of Evidence vide order dated 15.07.2021.

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2. Vide the Impugned Order dated 05.10.2021, GARC has been convened by the Additional Directorate General, Assam Rifles in respect of the petitioner, constituting of five officers. The petitioner contends that as three of the five officers belonged to the Indian Army, the constitution of the GARC is in violation of Section 90 of the Act.

3. The learned counsel for the petitioner submits that objection/challenge under Section 106 of the Act to the GARC was raised by the petitioner, however, the petitioner has been orally informed of the rejection of the same.

4. The learned counsel for the petitioner submits that the petitioner has been wrongly and falsely implicated in the offence as he had refused to carry out the household chores while working as a 'Buddy' with the Lieutenant Colonel.

5. We have considered the submissions made by the learned counsel for the petitioner, however, find no merit in the same.

6. Section 90 of the Act gives the composition of the GARC as under:

“ 90. Composition of General Assam Rifles Court.—A General Assam Rifles Court shall consist of not less than five officers, each of whom has held the post of Assistant Commandant for not less than three whole years and of whom not less than four are of a rank not below that of confirmed Assistant Commandant.

Explanation.—For the purpose of this section and section 91, “Assistant

Commandant” includes any post of a higher rank and any post declared by the Central Government, by notification to be an equivalent post as also any post higher in rank than the post so declared.”

7. A reading of the above provision would show that GARC has to consist of not less than five ‘officers’ each holding the post of Assistant Commandant for not less than three years and of whom at least four are of the rank not below that of confirmed Assistant Commandant.

8. Section 2(s) of the Act defines the term ‘Officer’ as under:

“2.(s) “officer” means a person appointed or in pay as an officer of the Force; but does not include a subordinate officer or an under-officer;”

9. The term ‘member of a Force’ is defined in Section 2(p) of the Act as under:

“2.(p) “member of the Force” means an officer, a subordinate officer, an under-officer or other enrolled person and includes the persons on deputation;”

10. Similarly, Section 2(x) of the Act defines the terms ‘Superior Officer’ as under:

“2.(x) “ superior officer”, when used in relation to a person subject to this Act, means—

(i) any member of the Force or a person on deputation to whose command such person is for the time being subject in accordance with the rules;

(ii) any officer of higher rank or class or of a higher grade in the same class, and includes when such person is not an officer, a subordinate officer or an under-officer of higher rank, class or grade;”

11. Rule 7 of the Assam Rifles Rules, 2010 (hereinafter referred to as the ‘Rules’) gives the ‘Constitution of the Force’ as under:-

“7. Constitution of the Force.—

The Assam Rifles shall consist of—

(1) officers, subordinate officers and enrolled persons appointed to or enrolled into the Assam Rifles who shall be liable for continuous service for the term mentioned in their enrolment form, letter of appointment or in the rules made in this behalf.

(2) the officers on deputation and other personnel appointed to the Assam Rifles who shall serve for the term mentioned in their letter of appointment.”

12. Rule 12 of the Rules gives the mode of appointment of ‘Officers’ in the Force as under:-

“12. Appointment of officers.— *The Central Government may appoint such persons as it considers to be suitable as officers in the force in the following manner 6 and their conditions of service shall be such as may be provided in the rules made in this behalf by the Central Government —*

(a) by direct recruitment;

(b) by transfer on deputation from the Defence Forces, any other armed forces of the Union or any other department of the Central Government or of the State Government;

(c) by promotion as may be prescribed from time to time;

(d) by transfer;

(e) by reemployment”

13. A reading of the above provisions would clearly show that an ‘Officer’ includes a person appointed to the Force on deputation.

14. The term ‘Deputation’ is also defined in the Act in Section 2(i), as under:

“2.(i) “deputation” means a period for which the services of a person belonging to any department of the Central Government are placed at the disposal of the Director-General;”

15. Therefore, a person appointed on deputation to the Force is also an ‘Officer’ for purposes of Section 90 of the Act. The term “Officer” in Section 90 of the Act does not refer to only persons directly appointed as such in the Force.

16. Reliance of the learned counsel for the petitioner on Section 3(3) of the Act to contend that the ‘Officer’ taken on deputation from Indian Army are not subject to the Act, would not make any difference to the above position. Section 3(3) of the Act merely states that any person who is employed in the Force on deputation from regular army shall himself/herself not to be subject to the Act and shall, during the period of such deputation, be deemed to be subject to the Army Act, 1950. The same, however, would not denude, while being on deputation, his position as an ‘officer’ under the Act and to discharge functions assigned to him/her in such position.

17. Similarly, the reliance of the learned counsel for the petitioner on certain responses given to queries raised under the Right to

Information Act, 2005 to the effect that officers from Indian Army are appointed on tenure posting, also cannot come to the avail of the petitioner. Deputation is also a tenure posting. In any case, replies given under the Right to Information Act, 2005 cannot be used to explain the statutory position with respect to such officer.

18. As far as the submissions on merit of the allegations against the petitioner are concerned, it is settled law that at this stage where the inquiry has been ordered, the Court would be slow to interfere with such proceeding. The Act gives adequate remedy to the petitioner in case the findings of GARC are against the petitioner.

19. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to costs.

NAVIN CHAWLA, J

MANMOHAN, J

NOVEMBER 15, 2021/rv/U.

Signature Not Verified

Signed By: SHALOO BATRA

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