GAHC010049292019

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

Case No. : WP(C)/1602/2019

SANDEEP KUMAR
S/O- SH. ISWAR SINGH YADAV, VILL AND P.O. GANIAR, DIST- MAHENDRERGARH, HARAYAN, PIN- 123021, PRESENTLY RESIDING AT BELTOLA, KAMRUP (M), GHY, ASSAM

VERSUS

UNION OF INDIA AND 3 ORS.
REP. BY THE SECY. THE GOVT. OF INDIA, MINISTRY OF HOME AFFAIRS, NEW DELHI- 110001

2:DIRECTOR GENERAL OF ASSAM RIFLES
SHILLONG
MEGHALAYA-11

3:THE COMMANDER 27TH SECTOR
ASSAM RIFLES
C/O 99APO

4:THE COMMANDANT
25TH ASSAM RIFLES
C/O 99APO
PIN- 93202

:::BEFORE:::

HON'BLE MR. JUSTICE RAJESH MAZUMDAR

Advocates:

For the petitioner : Ms. S. Bora, Advocate

For the respondents: Ms. A. Gayan, CGC

Date on which judgment is reserved: N/A

Date of pronouncement of judgment: 12.03.2026

Whether the pronouncement is of the Operative part of the judgment : N/A

Whether the full judgment has been Pronounced : Yes

Judgment & Order (ORAL)

Heard Ms. S. Bora, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned CGC appearing for the respondents.

2. The bone of contention in this writ petition under Article 226 of the Constitution of India, is the manner, in which, the petitioner has been discharged from his services as a Rifleman/General Duty from the Assam Rifles by the order dated 20th October, 2018. As per the undisputed records, the petitioner had joined his services as a Rifleman/General Duty on 29.09.2007 in Assam Rifles and during the course of his service, he earned four red ink entries on 06.07.2013, 30.09.2017, 29th January, 2018 and 30th May, 2018 respectively.

3. On 26th June, 2018, Col/Officiating DIG of Headquarter 27th Sector Assam Rifle had issued a show cause notice to the petitioner to the following effect:-

CONFIDENTIAL

12095/A/18/069 HQ- 27 Sect AR
No.G/5013846P Rfn/GD PIN 932 527

Sandeep Kumar C/o 99 APO

25 Assam Rifles

PIN- 932 025

C/o 99 APO

SHOW CAUSE NOTICE

1. You were enrolled as Rect (GD) on 29 Sep 2007 in Assam Rifles. Thereafter, in your service of 10 years, 08 months and 02 days (as on 01 Jun 2018), you have incurred 04 (four) Red Ink Entries in your service dossier. The details of the offences are as given below:-

Ser No.	Offence	Date of Offence	Statement of Offence	Punishment Awarded
a)	AR Act 2006 Sec 35 Intoxication	06 Jul 13	In that he, at field, on 06 Jul 2013 at 1700 hrs, returning from 160 MH Silchar after medical review consumed liquor in Halflong market and was found in an intoxicated state on arrival at Bn main gate unit RP.	Twenty eight days RI by Col. P.S. Arora, Comdt 25 Assam Rifles on 10 Jul 2013
b)	AR Act 2006 Sec 35 Intoxication	30 Sep 17	In that he, at field, on 30 Sep 2017 at 1230 hrs, was found in an intoxicated state.	To suffer Rigorous Imprisonment for fourteen days in force custody by Col Mithun R Shetty on 05 Oct, 2017

c)	AR Act 2006 Sec 35 Intoxication	29 Jan 18	In tht he, at field, on 29 Jan 2018, at 0730 hrs, was found in an intoxicated state.	To suffer Rigorous Imprisonment for twenty one days in force custody by Col Mithun R Shetty on 01 Feb 2018.
d)	AR Act 2006 Sec- 35 Intoxication	13 May 18	in that he, at field, on 13 May 2018, at 1115 hrs, was found in an Intoxicated state.	To suffer Rigorous Imprisonment for twenty one days in force custody by Col Mithun R Shetty on 16 May 2018.

2. It is clear from above that you inspite of having been advised many times to Improve in your conduct did not show any change for the better. You have thus become an incorrigible offender. Keeping this in view, it has become essential to initiate action against you in terms of Section 11 (1)/(2) of Assam Rifles Act, 2006.

3. You are hereby directed to show cause that why action to discharge you from service in terms of section 11(1)/(2) of Assam Rifles Act should not be taken against you. Please submit your reply to this Show Cause Notice within 15 days of its receipt, failing which it shall be presumed that you have no grounds to urge against the proposed action and an ex-parte decision shall be taken against you.

(Saurabh Saxena)

Col

Offg DIG

Copy to:-

1. HQ DGAR (A Br, Discp Sec/Law/Rec Branch) Shillong-793010

2. Q IGAR (S) (A Br), PIN-932555, d/o 90 APO.

3. 25 Assam Rifles PIN 932 025

C/o 99 APO

4. Office Copy

Three copies of the Show Cause Notice are encl. Your are requested to return one copy of the Show Cause Notice duly signed and dated by the individual.

Received by

No.G/5013846P Rfn(GD)

Sandeep Kumar

25 Assam Rifles

Signature_____

Dated _____2018

CONFIDENTIAL"

4. Thus, having formed an opinion that the petitioner had become an incorrigible offender, the competent authority was of the view that it had become essential to initiate action against the petitioner in terms of Section 11(1)/(2) of the Assam Rifles Act, 2006. The petitioner replied to the aforesaid show-cause notice on 07 August, 2018, praying for a chance to complete his service up to 20 years. There was an assurance that he would not repeat such mistake in the future.

5. By the order dated 20th October, 2018, the Brigadier, DIG Assam Rifle, Headquarters 27th Sector, had discharged the petitioner from his services w.e.f. 31st October, 2018 with a further stipulation that as per CCS Pension Rule, 1972, Rule 40(1) he would be entitled to get pension and gratuity. The order passed by the DIG, Assam Rifle is reproduced herein below for easy reference :-

OFFICE of THE DEPUTY INSPECTOR GENERAL, ASSAM RIFLES HEADQUARTERS 27 SECTOR ASSAM RIFLES, C/O 99 APO

ORDER

12095/4/18/133

Dated 20 Oct 2018

1 WHEREAS, it is considered that the conduct of Number 0/5013846P Rifleman (General Duty) Sandeep Kumar of 25 Assam Rifles of which has led him getting four ting four red Ink entries is such as to render his further retention in the public service undesirable being an Incorrigible offender and having shown no improvement during his service.

2. AND WHEREAS, Number G/5013848P Rifleman (General Duty) Sandeep Kumar was afforded an opportunity to show cause against the proposed action vide this HQ letter Number 12005/A/18/069 dated 28 Jun 2018

3. AND WHEREAS, Number G/5013840P Rifleman (General Duty) Sandeep Kumar has submitted his reply vide letter Number Nit dated 07 Aug 2018. The same was considered in terms of Para 108. Assam Rifles Regulations 2016 and was found unsatisfactory by the undersigned.

4. NOW THEREFORE, in exercise of the powers conferred on me under the provision of Section 11 (1)/(2) of Assam Rifles Act 2006, the undersigned hereby discharge Number G/5013846P Rifleman (General Duty) Sandeep Kumar from the Assam Rifles being incorrigible offender with effect from 31 Oct 2018 (Afternoon/Forenoon). As per CCS Pension Rule 1972. Rule 40 (1), "Entitled to get pension and gratuity".

(H R Desal)
Brig
DIG AR

(Received copy of discharge order NO.12095/A/18/133 dt 29 Oct 2018 by)

Signature
No. G/5013846R Rfh (GD)
Sandeep Kumar
25 Assam Rifles

6. Ms. S. Bora, learned counsel for the petitioner has submitted that it would be evident from the notice dated 26th June, 2018 that, on the basis of the four red ink entries earned by the petitioner during his service career spanning from 2007 to 2018, the respondent authorities had initiated action because the petitioner had, in their opinion, become "incorrigible offender."

7. The learned counsel for the petitioner has drawn attention to the order dated 20th October, 2018, to submit that the petitioner had indeed been discharged from his service since he had become, in the opinion of the

authorities, an "incorrigible offender." By referring to the Assam Rifles Regulation, 2016, the learned counsel for the petitioner has submitted that the cases of removal of undesirable, incorrigible and inefficient subordinate officers and other enrolled persons are governed by the provisions of Regulation 107 which is to the following effect:-

"*107.* ***Removal of undesirable, incorrigible and inefficient Subordinate Officers, Under Officers and other enrolled persons****.*

(a) A Subordinate Officer, Under Officers and other enrolled person who by his conduct has proved himself undesirable, incorrigible, inefficient and whose retention in the service is therefore considered unsuitable for the Force will be recommended for discharge/dismissal from service. Dismissal should only be recommended where an Assam Rifles Court, if held, would have awarded a sentence not less than dismissal but trial by a Assam Rifles Court is considered impracticable or inexpedient. In other cases, recommendations will be for discharge from service.

(b) Before recommending or sanctioning discharge, the following points must be considered:-

(i) If lack of training is the cause of his inefficiency, arrangements will be made for his further training.

(ii) If an individual has become unsuitable through no fault of his own, he will be recommended for suitable extra regimental employments instead of discharge from service.

(c) The procedure for dismissal/discharge of unsuitable subordinate officer/under officer/enrolled person will be as under:-

(i) As provided under Rules 24 and 25 of Assam Rifles Rules, the person concerned, subject to the exception mentioned therein, shall be served with a Show Cause Notice against the contemplated action.

(ii) Preliminary enquiry. Before recommending discharge or dismissal of an individual the authority concerned will ensure that an impartial enquiry (not necessarily a Court of Inquiry) has been made into the allegations against him and that he has had adequate opportunity of hearing.

(iii) Rule 24 of the Assam Rifles confers powers on the Commandants of the Assam Rifles Units/establishment to discharge any subordinate officer/under officer/enrolled persons of Assam Rifles. However, the power of discharge by the Commandant shall be exercised with prior approval of immediate superior officer not below Sector Commander in case of Under Officers and other enrolled person and that of Inspector General Assam Rifles in case of Subordinate Officers.

(iv) After compliance of the provisions enumerated above, a show cause notice will be served on the individual affording him an opportunity to explain his case. Thereafter, the complete case file will be forwarded to next superior authority/Sector Headquarters for approval of the

superior authority/Sector Commander.

(v) The authority competent to sanction the dismissal/discharge of the individual will before passing orders re-consider the case in the light of the individual reply to the show cause notice. A person who has been served a show cause notice for proposed dismissal may be ordered to be discharged if it is considered that discharge would meet the end of justice. If the competent authority accepts the reply of the individual to the show cause notice as entirely satisfactorily, he will pass orders accordingly"

8. According to the learned counsel for the petitioner, once an enrolled person is found to be "incorrigible", he may be considered and recommended for discharge/dismissal from service. In cases where dismissal would have been awarded upon a trial by an Assam Rifles Court, the recommendation would be for a dismissal from service, but in all other cases, the recommendations would be for a discharge from service.

9. As per Regulation 107(c), the person concerned is required to be served with a show-cause notice against the contemplated action. Before recommending the discharge or the dismissal, the authority which would be recommending such discharge, would be required to ensure that an impartial enquiry has been made into the allegations against him and that he had adequate opportunity of hearing.

10. This according to the learned counsel for the petitioner would indicate that the first show cause notice would be required to be served upon the person concerned, intimating him that action for recommendation for his discharge was sought to be initiated and thereafter, he would have an opportunity to showing cause against such proposed action.

11. As per the provision of Regulation 107(c)(iv), a second show cause notice has to be served upon an individual affording him another opportunity to explain the case after impartial enquiry has been conducted by the authority concerned. It is only thereafter, that a complete case file would be forwarded to

the next superior authority for approval.

12. The provisions of regulation 107(c)(v) thereafter requires the authority competent to sanction the discharge to re-consider the case of the individual in the light of the reply to the show-cause notice and the competent authority would also be at liberty to accept the reply of the individual to the show cause notice as satisfactory and pass orders accordingly.

13. The learned counsel for the petitioner has submitted that the order dated 20th October, 2018, has been admittedly passed in terms of Regulation 108 of the Assam Rifles Regulation 2016, which deals entirely with the discharge on the ground of red ink entries.

14. The learned counsel for the petitioner has submitted that when the action against the petitioner had been initiated on the opinion that he had become an incorrigible offender, it was incumbent upon the respondent authorities to have followed the procedure under Regulation 107 of the Assam Rifles Regulation 2016 and they could not have resorted to a summary procedure as enunciated in Regulation 108 of the Assam Rifles Regulation 2016.

15. The learned counsel for the petitioner has submitted that the sufficiency or adequacy of the allegations against the petitioner may not be within the realm of a writ Court exercising powers under Article 226 of the Constitution of India but when procedural lapses are brought to the fore before the Court, the Court would examine such procedural lapses and the effect of such lapses on the order impugned.

16. Ms. A. Gayan, learned CGC appearing for the Assam Rifles has drawn the attention of this Court to the affidavit-n-opposition and several judgments which have been referred to the affidavit-in-opposition to impress upon this Court that

once a person acquires four red ink entries in his service career, the competent authority, in accordance with Regulation 108 the Assam Rifles Act, 2006 and also under the Assam Rifle Rules, 2010, would be empowered to take into consideration the entire gamut of the matter and pass necessary orders either discharging or dismissing or removing or lowering in rank, a person who had earned such red ink entries.

17. The learned CGC has submitted that the powers of the authorities have not been questioned and the earning of the red ink entries, four in number, have also not been disputed, this writ petition does not deserve any further consideration of the Court and therefore, no interference would be called for in the impugned order dated 20.10.2018.

The learned CGC has referred to the different records to show that the petitioner had, atleast on three occasions within a period of eight months, been found to be in an intoxicated condition where the trials were held summarily by the competent authority and no appeals had been preferred by the petitioner against the red ink entries endorsed in his service book.

18. The learned CGC has submitted that there is no dispute to the fact that the petitioner had been served with a notice on 26th June, 2018, allowing him to clarify or show-cause against the proposed action sought to be taken in terms of Section 11(1)/(2) of the Assam Rifles Act and he had also, to the best of his ability, replied to the same.

19. The learned CGC has further submitted that by an order dated 13.10.2018, the petitioner had been informed that he was ordered to be discharged from service since his reply was found to be unsatisfactory and it is only thereafter, that the order dated 20.10.2018, has been passed by the

respondent authorities.

20. This Court has considered the arguments made on behalf of the contesting parties and has also perused the records available on record as well as the affidavit-in-opposition filed by the contesting parties.

21. The notice dated 26.06.2018 has already been reproduced hereinbefore and on perusal of the same, this Court is of the opinion that on the basis of the four red ink entries earned by the petitioner, the competent authority in the Assam Rifles had come to a conclusion that the petitioner had become an incorrigible offender. It is not in dispute that the procedure for removal of undesirable, incorrigible and inefficient subordinate officer is laid down in Regulation 107 of the Assam Rifles Regulation 2016, which not only require an initial recommendation, but also is required to be preceded by a notice and an impartial enquiry. Even after the enquiry, a show cause notice has to be served upon the individual affording him an opportunity to explain his case. The recommendation is then required to be forwarded to the next superior officer along with the show cause notice, which was served after the preliminary enquiry/impartial enquiry and the reply thereto along with all records to take a decision on the recommendation/proposal in the light of the reply of the show cause notice.

22. In the present case, this Court has observed that while the initial show cause notice was served holding the petitioner to be an incorrigible offender, the process was then diverted to one where the authorities proceeded on the basis of the four red ink entries earned by the petitioner. The notice dated 26th June, 2018, is specific when it states that the petitioner had become an incorrigible offender and it did not refer to the proposal of the authorities to proceed under

the provisions of Regulation 108 of the Assam Rifles Regulation, 2016. Thus, if the respondents wanted to proceed against the petitioner on the ground of his becoming an incorrigible offender, it was necessary that the show-cause notice dated 26th June, 2018 was to be preceded by an impartial enquiry to be held by the recommending authority.

23. In the present case, it is seen that there is no reference to any impartial preliminary enquiry held against the petitioner in the notice dated 26th June, 2018, although the grounds on which, the discharge was being recommended was one which was covered by Regulation 107 of the Assam Rifles Regulation 2016.

24. The order discharging the petitioner from service passed on 20.10.2018 had also proceeded on the basis that the petitioner was being discharged, he being an incorrigible offender. At paragraph 3 of the order dated 20.10.2018, a sudden reference is drawn to paragraph 108 of the Assam Rifle Regulation 2016, which deals with the discharge on the ground of red ink entries. This is the first time that the provision of Rule 108 of the Assam Rifles Act, 2016 has been brought in by the respondents. Prior to this, the case was proceeding on the basis that his further retention in public service is undesirable because he was an incorrigible offender, the discharge or dismissal for which, would be regulated by Regulation 107 of the Assam Rifles Regulation, 2016. When two separate provisions are made available in a Regulation relating two different species of discharge/dismissal, in the opinion of this Court, the respondents have the responsibility to proceed under one of the regulations and in case either of the two was required to be made applicable to the petitioner, he was required to be given adequate notice of the procedure which the respondents

deemed fit to follow while processing the case of the petitioner.

25. In the present case, while originally the petitioner was given the impression that he would be proceeded against for being an incorrigible offender, at the end of the day, the discharge was inflicted upon him on the process laid down for discharge from service on the basis of red ink entries. It is trite that when a person faces adverse situation in his service career at the instance of the competent authority, he has a right to be put to adequate notice of the process that was sought to be followed and also of the charges/allegations which he had to reply. In the present case, the reply of the petitioner was an attempt to defend the allegation that he had become an incorrigible offender and he never had the opportunity to have his say on the allegation that his discharge may follow on the basis that he earned four red ink entries in his service. In such view of the matter, this Court is of the opinion that there has been a serious procedural lapse in the process adopted by the respondent authorities in unceremoniously terminating the service career of the petitioner by the order 20.10.2018. Therefore, the order 20.10.2018 is interfered with and set aside and quashed by this Court. As a consequential relief, since the petitioner had been kept out of service on the basis of an illegal order, the respondents are directed to reinstate the petitioner in service within a month of receipt of the certified copy of this order and treat the period of his absence from service w.e.f. 31.10.2018 to the date of his reinstatement as continuous service for all practical purposes.

26. The petitioner has stated in the writ petition that because of the wrongly discharge from service, the entire family has been pushed to severe hardship, but there is nothing in the writ petition to the effect that the petitioner had not earned during the period of his being kept out of service.

27. In such circumstance, following the law laid down in the case of ***Deepali Gungu Surwase –vs- Kranti Junior Adyapak & Ors*** reported *in* ***(2013) 10 SCC 324***, the petitioner shall file an affidavit regarding his earnings or income during the period of being kept out of service before the respondent authorities and the respondent authorities having regard to the affidavit filed and after making such enquires as may be required, pass necessary orders on the entitlement of the petitioner on the backwages and other actual monitory benefits to be granted to him during the period of his absence.

28. Although the order dated 20th October, 2018 is interfered with by this Court, it is clarified that this order would not be read to act as an impediment in the way of the respondents in taking up such appropriate action as may be deemed fit against the petitioner with regard to discharge from service for earning four red ink entries or with regard to the allegations of he being an incorrigible offender.

29. However, if any such action is taken up or proposed, the same shall be done in accordance with law after giving due opportunity as required under the Act, Rule and Regulation applicable to the concerned Assam Rifles.

30. Writ petition is accordingly disposed of.

31. No order as to costs.

JUDGE

Comparing Assistant