
(2015) 05 MEG CK 0008

Meghalaya High Court

Case No: WP(C) No. 72 of 2013

No. G/134688 Rfn (GD)
R. Ramu

APPELLANT

Vs

The Union of India and
Others

RESPONDENT

Date of Decision: May 5, 2015

Acts Referred:

- Assam Rifles Act, 2006 - Section 12, 25, 83, 84, 84(2)
- Central Reserve Police Force Act, 1949 - Section 12, 9
- Constitution of India, 1950 - Article 226

Hon'ble Judges: S.R. Sen, J

Bench: Single Bench

Advocate: H.G. Baruah, for the Appellant; S.C. Shyam, Sr. Adv., Advocates for the Respondent

Final Decision: Disposed off

Judgement

Sudip Ranjan Sen, J.

The petitioner's case in a nutshell is that:

The petitioner was enrolled in Assam Rifles No. 03/07/1994 as a Rfn (GD). While posting with Assam Rifles Administrative Support Unit, Happy Valley, Shillong, the Directorate General Assam Rifles (herein after referred as HQ D.G.A.R sent him on deputation to SVPNPA (herein after referred as SVPNPA) for a period of 3(three) years w.e.f. 13.12.2005. His performance in the SVPNPA was found very exceptional. By a letter dated the 27th day of January, 2009, the Director, SVPNPA informed HQ D.G.A.R. that as per deputation Policy of the Ministry of Home Affairs, the deputation period of Central Armed Police Forces Personnel may be extended upto a maximum period of 5(five) years and as academy is facing acute shortage of constables for want of nomination from the Central Armed Police Forces, he request HQ D.G.A.R. to extend the

deputation period of the petitioner.

By a letter dated the 6th day of May, 2009, the Director, SVPNPA informed the HQ D.G.A.R that they are utilizing the service of the petitioner in Motor Training Branch and he is involved in various training related duties and academy seeks absorption of personnel at the level of constables who possess proven skill and further informed him that constable R. Ramu possesses the requisite proven skills in driving, maintenance and mechanism of light, medium and heavy vehicles, which is very useful to the academy and request the HQ D.G.A.R. to absorb him as constable (Driver) in the SVPNPA in the public interest. The Director, SVPNPA by a letter dated the 3rd day of July, 2009, informed the HQ D.G.A.R that a committee headed by Joint Director and other three Senior IPS Officers have conducted a test on the performance of Rifleman R Ramu and has graded him the best performer in the Motor Mechanism filed and therefore the committee has recommended for permanent absorption of the petitioner and further requested the Directorate General Assam Rifles in the interest of the academy to issue "No Objection Certificate" for his transfer to the academy.

By a letter dated the 31st day of July, 2009, the Directorate General Assam Rifles informed the Director, SVPNPA that permanent absorption and extension of tenure beyond permissible limit is not permitted and the Assam Rifles is agreeable to discharge Rfn (GD) R Ramu for him to re-employ him at his Organization and request him not to insist in the interest of Assam Rifles.

By a signal No. A 5212, dated the 22nd day of April, 2010, the Directorate General Assam Rifles sent one No. G/144267 Rfn (GD) Suraj Thapa for deputation to Intelligence Bureau in the rank of Security Assistant (Exe) for an initial period of 5(Five) years. The Directorate General Assam Rifles by a Signal No. A 5220, dated 27th day of April, 2010, issued "No objection Certificate" to one No. G/76235 A Rfn (GD) T. Sonkhosei Haokip for posting under Bureau of Police Research and Development.

The Directorate General Assam Rifles by a signal No. A 5212, dated the 17th day of May 2012, sent the 22 (twenty two) Rfn (GD) on deputation of National Security Guard (NSG) w.e.f. 29/04/2012 for a initial period of 5 (five) years.

When the authority of SVPNPA for the public interest request HQ D.G.A.R to extend the deputation tenure of the petitioner and to issue "No objection Certificate", HQ D.G.A.R informed the Director, SVPNPA that extension beyond permissible limit is not permitted and therefore not to insist them in that matter. In view of non-issuance of "No objection Certificate" and not passing any favorable order from end of the lending organization, he was constrained to file WP(C) No. 21144 of 2009 and W.P.M.P. No. 58 of 2010 before the High Court of Judicature of Andhra Pradesh at Hyderabad seeking a direction to the borrowing organization to permit the petitioner to continue in service and by an Order dated the 18th day of February, 2010, passed in W.P.M.P. No. 58 of 2010, the single judge of the Hon"ble High Court of Judicature of Andhra Pradesh at Hyderabad directed

the respondent No. 4 to permit the petitioner to continue in service as a constable in SVPNPA. By an order dated the 29th day of November, 2010, the Division Bench of the Hon"ble High Court of Judicature of Andhra Pradesh at Hyderabad disposed of the Writ Appeal No. 717 of 2010 and W.P. No. 21144 of 2009, directing the petitioner/appellant to file a representation before the authority concerned within a period 2(two) weeks i.e., before 14/12/2010 and directed the respondent authorities to consider the same on merit and disposed of in accordance within a period 6(six) weeks thereafter, i.e., before 24/01/2011 and further directed the respondents not to disturb the petitioner/appellant till the representation of the petitioner/appellant is considered and disposed of in pursuance of the direction of the Hon"ble High Court of Judicature of Andhra Pradesh at Hyderabad, the petitioner on 08/11/2010 and 23/12/2010, filed 2(two) representation addressing HQ D.G.A.R. seeking issuance of extension order of deputation period and or seeking of issuance of "No objection Certificate" for absorption in SVPNPA. By an order No. 134688/Rec(Legal)/2011, dated the 31st day of January, 2011, the Directorate General Assam Rifles rejected prayer of the petitioners.

The HQ D.G.A.R. in para 6 of the said order suggested the petitioner to report 13th Battalion, the Assam Rifles.

Assailing the legality and validity of the aforesaid impugned order, the petitioner again approached the Hon"ble High Court of Judicature of Andhra Pradesh, at Hyderabad by way of writ which was registered as Writ Petition No. 7646 of 2011 and by an Order dated the 11th day of August 2011, the Hon"ble High Court Judicature of Andhra Pradesh at Hyderabad dismissed the said writ petition. The petitioner having no alternative again approached the said Hon"ble High Court by way of Writ Appeal, which was registered as W.A. No. 731 of 2011 and the Hon"ble High Court after hearing dismissed the said Writ Appeal. The petitioner on 30/09/2011, submitted a representation addressing the Director, SVPNPA and prayed him to issue "Movement Order" for his joining in the parent department and when the authority of SVPNPA for considerable period of time had not supplied the "Movement Order" to the petitioner, he tried his level best to report the 13th Battalion without "Movement Order" but the Commandant refused to take him on the strength (ToS) without showing any reason. The Directorate General Assam Rifles filed an Affidavit-in-opposition on 10/11/2012 in WP No. 31563 of 2011 [an application under Article 226 of the Constitution of India seeking a direction to the authority of SVPNPA to issue Movement Order for his joining in the parent organization and to pay the salary] which is now pending in the High Court of Judicature of Andhra Pradesh at Hyderabad and in paragraph 5 of the said Affidavit-in-opposition, the Director General Assam Rifles stated it that the petitioner was declared deserted w.e.f. 02/01/2010 vide 13th Assam Rifles letter No. I. 11011/A-Depu/11/12/62, dated the 15th day January, 2011. By an order dated the 18th day of February 2010, passed in W.P.M.P. No. 58 of 2010, the single judge of the Hon"ble High Court of Judicature of Andhra Pradesh directed the respondents to allow the petitioner to continue in service as constable in the SVPNPA. Again by an order dated the 29th day of November, 2010, the Division Bench of the

Hon"ble High Court of Judicature of Andhra Pradesh at Hyderabad disposed of the Writ Appeal No. 717 of 2010 and W.P. No. 21144 of 2009, directing the petitioner to file a representation before the authorities concern within a period 2(two) weeks. i.e. before 14/12/2010 and directed the respondents to consider the same on merit and disposed of in accordance with law within a period of 6(six) weeks, i.e. before 26/01/2011 and further directed the respondents not to disturb the petitioner till his representation is considered and disposed of. The Directorate General Assam Rifles by a dated the 1st day of December, 2010, informed the Ministry of Home Affairs in Appendix G, Sl. No. 1 [to reply in the Parliament of India (Lok Sabha)] that the petitioner is working on deputation with SVPNPA w.e.f 13/12/2005. The Commandant, 13th Battalion, Assam Rifles by an impugned order dated the 15th day of January, 2011, declared the petitioner as deserter w.e.f. 02/01/2010, illegally, without authority of law, whimsically, arbitrary, without applying his mind. It is pertinent to mention herein that said impugned order is not supplied to the petitioner therefore he failed to annexed the said impugned order in this writ petition.

HQ D.G.A.R. by a Order No. 134688/Rec (Legal)/2011, dated the 31st day of January, 2011, rejected the representation of the petitioner. The authority of SVPNPA has not insisted the petitioner to fill up or sign the "Clearance Certificate" for issuance of "Movement Order" and no "Movement Order" was served on the petitioner by the authority SVPNPA for his joining in the parent Organization.

The Commandant, 13th Battalion illegally, whimsically without applying his mind, with a malafide intension i.e., to debar the petitioner in reporting the battalion and to finished his service career declared the petitioner as deserter.

In the order dated the 31st day of January 2011, no where, HQ D.G.A.R. mentioned it that by an Order dated the 15th day of January, 2011, Commandant 13th Battalion declared him as deserter. HQ D.G.A.R. in paragraph 6 of the said order suggest the petitioner to report 13th Battalion.

On the one hand non-receipt of "Movement Order" from the end of the authority of SVPNPA for reporting in the parent organization and on the other hand declaration deserter by the Commandant, 13th Battalion on 15/01/2011 and refusal of the Commandant, 13th Battalion to take him on the strength (ToS), the petitioner is now out of service.

Before issuance of the impugned order dated the 15th day of January, 2011, no show cause notice was issued by the Commandant, 13th Battalion to the petitioner asking as to why he will not be declared as deserter. The Hon"ble Gauhati High Court already settled it that denial of opportunity before being declaring deserter is unsustainable both in law and facts½.

2. Mr. H.G. Baruah, learned counsel appearing for and on behalf of the petitioner, submits that the petitioner R. Ramu joined the service of Assam Rifles as a Rifleman on 03.07.1994. During his service, he was placed on deputation with effect from 13.12.2005 for three years by the Directorate General Assam Rifles at Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh. The petitioner sought extension for further two years for deputation, which was not accepted by the Assam Rifles Authority. As a result, he approached the Hon'ble High Court of Judicature of Andhra Pradesh at Hyderabad by way of a writ petition bearing WP(C) No. 21144 of 2009 along with W.P.M.P. No. 58 of 2010. The Hon'ble High Court of Judicature of Andhra Pradesh, Hyderabad passed an interim order allowing the petitioner to continue in the deputation till disposal of the writ petition. Subsequently, the said interim order was vacated on 08.06.2010. Thereafter, the petitioner approached the Division Bench of the said Hon'ble High Court of Judicature of Andhra Pradesh, Hyderabad against the vacation of the interim order vide Writ Appeal No. 717 of 2010 and Division Bench directed the petitioner to file a representation to the Assam Rifles for extension and to dispose of the representation in accordance with law within 6(six) weeks, but the same was again rejected.

Mr. H.G. Baruah, learned counsel further contended that, Assam Rifles Act, 1941, Assam Rifles Act, 2006 and Assam Rifles Rules, 2010 never empower the authority to conduct a court of enquiry. He also further argued that, in this case no notice was served upon the petitioner about the said court of enquiry. Therefore, to support his submission, he relied on the judgment and order of the Hon'ble High Court of Gauhati in the case of Kukheswar Sakia Versus Union of India and another in WP(C) No. 6309 of 2000 at Para 5, 9 and 17.

3. To reply to the submission advanced by Mr. H.G. Baruah, learned counsel for the petitioner, Mr. S.C. Shyam, learned Sr. counsel assisted by Mr. B. Deb, learned counsel for the respondent, submits that, the petitioner was initially placed on deputation for three years and thereafter, he made an application for extension for further two years, which was rejected as his service was required in the parent department i.e. in Assam Rifles, though, a separate request was also made by the Directorate General Assam Rifles at Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh, but the same was also rejected by the respondent, and subsequently, Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh issued the release order as well as the movement order directing him to report to the 13th Battalion, Assam Rifles, but he failed to do so. The learned Sr. counsel also further contended that, after release and issuance of the movement order, the petitioner approached for two months' leave for the treatment of his mother, which was granted. But, after completion of the leave period, he did not report to the Assam Rifles Authority. Hence, directed to call for a court of enquiry and find him a deserter and strike off his name from the strength. So, there is nothing wrong in the whole departmental process.

4. To the contra, Mr. H.G. Baruah, learned counsel for the petitioner vehemently submits that, no movement order was issued to the petitioner by the Directorate General Assam Rifles at Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh, and in that regard another writ petition bearing WP(C) No. 31563 of 2010 is pending before the Hon'ble High Court of Judicature of Andhra Pradesh, Hyderabad.

5. After hearing the rival submissions advanced by the learned counsel, three issues evolve before me. Firstly, whether the respondent is authorized or empowered under the Assam Rifles Act, 1941, Assam Rifles Act, 2006 and Assam Rifles Rules, 2010 to constitute a court of enquiry? Secondly, whether a court of enquiry can be conducted in the absence of the petitioner being the aggrieved party in this case? Thirdly, whether the punishment as awarded by the respondent to the petitioner is too harsh? Mr. S.C. Shyam, learned Sr. counsel for the respondent could not answer specifically at that moment of time and prayed that the matter may be listed on Monday.

6. List this matter on Monday i.e. 16.03.2015 for further hearing on these three issues only.

7. Mr. S.C. Shyam, learned Sr. counsel for the respondent in reply to the questions raised by this court submits that, section 83, 84 of the Assam Rifles Act, 2006 as well as section 25 of the Assam Rifles Act, 2006 and section 96(3) of the Assam Rifles Act, 2006 has made elaborate arrangements for a court of enquiry and the court of enquiry was conducted according to the said provision and the respondent No. 3 was empowered to conduct such enquiry.

The learned Sr. counsel also further submits that, after the enactment of the Assam Rifles Act, 2006, it has superseded the earlier Act of 1941. The learned counsel also further submits that, all efforts were made to serve the notice upon the petitioner, but he was not found. So, the notice could not be served upon the petitioner before the court of enquiry. However, after completion of the court of enquiry, the notice was served under section 84(2) of the Assam Rifles Act, 2006 through the Superintendent of Police of his native states which are on record, and therefore, he argued that, there is nothing wrong in the enquiry. The learned Sr. counsel also further submits that the petitioner was initially sent for deputation to Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh for 3(three) years. After completion of 3(three) years, the petitioner made an application for extension for further 2(two) years, which was not allowed by the parent department i.e. Assam Rifles 13th. As a result, he approached the Hon'ble High Court of Judicature of Andhra Pradesh at Hyderabad and got a stay against the representation to his parent department. Thereafter, the Division Bench of the Andhra Pradesh High Court directed the petitioner to file a representation to his parent department, stay was vacated and the writ appeal was disposed of. The learned Sr. counsel also further submits that the petitioner was released from deputation on 09.10.2009. The contention of the learned Sr. counsel is that, since the petitioner was not in the Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh nor he was found in his

parent department, therefore, the respondents has the right to conduct the court of enquiry and notice also could not be served upon him as his whereabouts were not known to the respondents, and prayed that the instant writ petition may be dismissed.

8. On the other hand, Mr. H.G. Baruah, learned counsel for the petitioner submits that, in the case of Assam Rifles Rules, the court of enquiry cannot be conducted under the Army Act, 1950. The learned counsel also argued that, as per the Assam Rifles Rules, 2010, Rule 183 Sub Rule 8 (i) it is clear that, no enquiry can be conducted in the absence of a delinquent employee or officer, but in this case, the court of enquiry was conducted without giving any opportunity to the petitioner. Hence, the entire enquiry was defective and has no stand in the eye of law and prayed that the petition may be allowed and direction may be given to reinstate him in the service immediately.

9. After hearing the submissions advanced by the learned counsel on the law points and after perusal of section 183 Sub Rule 8 (i) of the Assam Rifles Rules, 2010 which is reproduced herein below:

1½(8)(i) Save in the case of a prisoner of war who is still absent whenever the subject matter of inquiry is the conduct, character or reputation of particular person, such person shall be associated throughout with the inquiry and be given full opportunity of making any statement, or giving any evidence, he may wish to make or give, and of cross-examination of any witness whose evidence, in his opinion, affects his character or reputation1½.

10. It is amply clear that, for a court of enquiry, notice must be given to the delinquent employee or officer and he should be given full opportunity of being heard and examined and cross-examined the witnesses, and then only necessary order to be passed by the authority concerned.

11. To support his submission, Mr. H.G. Baruah, learned counsel for the petitioner relied on Para 5, 9 and 17 in the case of [Kukheswar Saikia Vs. Union of India \(UOI\) and Another](#), (2003) 3 GLR 1 : (2002) 3 GLT 336 of the Gauhati High Court. Para 5, 9 and 17 in the case of Kukheswar Sakia (Supra) reads as follows:

1½5. It has been submitted, on behalf of the petitioner, that the Court of Enquiry was held against the petitioner in violation of the provisions of Rule 31 of the CRPF Rules. It has also been submitted, on behalf of the petitioner, that there was overlapping of charges, which caused serious prejudice to the petitioner. It is further submitted, on behalf of the petitioner, that the petitioner is a semi-literate person, who studied up to Class-IX and, hence, the petitioner was not conversant with English language, but the entire Inquiry was conducted in English language and even the plea of the petitioner was recorded in English and the petitioner was made to sign all the documents written in English without knowing as to what he was signing on. The Inquiry so held was, contends Mrs. Saikia, wholly against the principles of natural justice. Mrs. Saikia also contends that

no effective opportunity was given to the petitioner to prove his innocence inasmuch as the petitioner was neither provided with any defence assistance nor was he informed of his right to engage a defence counsel. It is further contended, on behalf of the petitioner, that the petitioner, had suffered from severe depression and he was not really a deserter, but his conduct was misconstrued as an act of desertion and he was illegally removed from service.

9. Having heard both sides and upon perusal of the record, I find that the submissions made on behalf of the parties are, somewhat, misconceived inasmuch; as declaration of the fact that a person, subject to the CRPF Act, is a deserter does not in itself or ipso facto make him liable for punishment; otherwise, instead of merely declaring that the person concerned is a deserter, the CRPF Act and Rules would have provided for imposition of punishment on him under Rule 31 itself, whereas it is Section 9 of the CRPF Act, which prescribes the punishment for offence of desertion and it is Section 12 of the CRPF Act, which lays down when a person can be removed from service. A Court of Inquiry (COI), it needs to be borne in mind, is neither a trial nor a disciplinary proceeding and, on the basis of the findings of a Court of Enquiry, no punishment can be awarded, otherwise, a COI will become a substitute for trial/disciplinary proceeding and a person, under Rule 31, instead of being declared a deserter, can be treated to have been tried in absentia and the punishment for his imprisonment (under Section 9) as well as his removal from service (under Section 12) can also be awarded/ordered in absentia. If it were so, the logical consequence will be that in such a situation, when the person, who is declared deserter, reports back for duty, he can be straight away sent to prison for undergoing imprisonment and, then, dismissed from service. Such a step would be against the basic concept of principles of natural justice, which forbids punishment without giving opportunity of hearing/showing cause to the accused/delinquent. It is for this reason that the CRPF Act and Rules, same as Army Act and Rules, do not provide for imposition of punishment merely on the basis of the deserter role published following the COI.

17. It may be mentioned that in the case at hand, the petitioner was declared a deserter, as indicated above, following a Court of Enquiry under Rule 31. This declaration was not reached and could not have been treated to have been reached in any trial or disciplinary proceeding. The effect of such a declaration is that when a deserter role bearing the name of the delinquent is published, warrant of arrest is issued against the deserter so that whenever and wherever he is apprehended, he can be brought to face trial/disciplinary proceeding for imposition of punishment under Section 9(f). In the case at hand, since the petitioner never faced any charge of desertion in any trial or disciplinary proceeding, the question of removing him from service did not arise at all½.

12. After hearing the submissions advanced by the learned counsel for the parties, the Assam Rifles Rules, 2010 and relied judgment quoted above, it is no doubt a fact that, the court of enquiry cannot be conducted in the absence of a person who is going to be affected by such court of enquiry, but under the facts and circumstances of this instant

case, it appears that the petitioner concerned has already been released from the Sardar Vallabhbhai Patel National Police Academy, Hyderabad, Andhra Pradesh on 09.10.2009 and the court of enquiry was conducted on 02.02.2010. It is also an admitted fact that the petitioner obtained Earned Leave from his parent department after his released on deputation, but the question remains before the court that, if he is released, so, why he has not joined his parent department? That remains unanswered by the petitioner's counsel. However, for the ends of justice, in these peculiar circumstances of the case, I feel that a proper opportunity should be given to the petitioner since he was not being heard nor get any opportunity to place his case before the authority concerned. Hence, I hereby set aside the impugned order dated 22nd August, 2010 and further ordered to conduct a fresh proceeding against the petitioner if the department desires so as per the Assam Rifles Rules, 2010, Assam Rifles Act, 2006. And if, he is found innocent, he to be reinstated forthwith with all arrears and other service benefits.

13. With these observations and directions, the instant writ petition stands disposed of.

14. No order as to costs.