
(2025) 03 GAU CK 0445
In the Gauhati High Court
Case No : WP(C) Of 3181 Of 2018

Amrit Minz

APPELLANT

Vs

The Union Of India And 2 Ors.

RESPONDENT

Date of Decision : 28-03-2025

Acts Referred:

Constitution Of India, 1950 — Article 226
Central Civil Services (Pension) Rules, 2021 — Rule 26(4), 56(j)

Citation : (2025) 03 GAU CK 0445

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S Bora, N Chakraborty, S S Roy

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. The discharge from service of the petitioner from the post of Rect/ Lab Assistant under the Assam Rifles, vide order dated 28.08.2017 is the subject matter of challenge in this writ petition filed under Article 226 of the Constitution of India. The grounds of challenge, in brief, are violation of the principles of natural justice and that the impugned action is a forced one whereby the consent of the petitioner has been wrongly shown.

2. The facts of the case, in a nutshell, is that pursuant to a recruitment drive held in March 2016, the petitioner was appointed to the post of Rect / Lab Assistant in the Assam Rifles and he had joined the Training Centre, Dimapur on 01.01.2017 and had undergone the Military Basic Training. However, an incident had occurred on August, 2017 when the petitioner was detailed with night guard duty in the family line of the Training Centre. According to the petitioner, he had heard a noise from a nearby family quarter and he had accordingly gone there and saw a girl crying loudly and had tried to pacify her. However, he was surprised that in the next morning he was called to the main office and was

assaulted and kept in custody in a dark room with no light, fan or even ventilation for 10 days. It is further contended that his signatures were obtained on some papers and the contents were not known to him. He had also sustained injuries because of the assault and was ultimately discharged from service on 28.08.2017. The petitioner alleges that he comes from a poor family and belongs to the ST Community and after being treated for the injuries, he could file this writ petition.

3. I have heard Ms. S. Bora, learned counsel for the petitioner. I have also heard Shri SS Roy, learned CGC.

4. Ms. Bora, learned counsel for the petitioner has submitted that the entire action of discharging him from service vide the order dated 28.08.2017 is vitiated in law as the same was taken in a forceful manner and in gross violation of the principles of natural justice and the procedures laid down. It is submitted that there was no proper inquiry on the nature of allegations which itself was incorrect. It is contended that the petitioner had gone to the place on bona fide reasons as he heard one girl crying loudly and for such bona fide action, the allegations against the petitioner were wrongly made.

5. With regard to the nature of the procedure adopted, the learned counsel has emphasized that everything was done by coercion and the petitioner was assaulted for more than 10 days and he was kept in custody in a dark room without any light, fan or even ventilation and his signatures were obtained in papers without the contents of the same known to him. It is submitted that the documents enclosed with the writ petition would show that the procedure adopted was only a formality and the discharge, therefore is not sustainable in law.

6. She has drawn the attention of the Court to the discharge certificate dated 28.08.2017 and has contended that under serial no. 8, the grounds of discharge has been written as "Own Request". She has submitted that at no point of time the petitioner had expressed any desire to get himself discharged from the services.

7. The learned counsel for the petitioner has also drawn the attention of this Court to the documents annexed to the affidavit-in-opposition filed by the respondents on 31.05.2019. She has submitted that in the said affidavit-in-opposition, an application for discharge has been annexed which is in Hindi language whereas the signature of the petitioner is in English language. It is the submission that when the petitioner puts his signature in English language, there was no occasion for having the application made in Hindi language. She has also drawn the attention of the Court to the affidavit alleged to have been submitted by her client dated 24.08.2017. It is submitted that when the application for discharge was dated 23.08.2017, there was no occasion for submitting an affidavit thereafter. The learned counsel has also drawn the attention of this Court to the CCS(Pension) Rules, more particularly, Rule 26(4) thereof. She has

also referred to FR 56(j) wherein there is a requirement of at least 3 months for acceptance of such an offer of discharge.

8. In support of her submissions, she has relied upon the following judgments of this Court:

i. Biswarup Mukherjee Vs. Union of India [WP(C)/6356/2011]

ii. Navin Ram, Ex Rifleman (GD) Vs. Union of India [WP(C)/6981/2010]

9. In the case of Biswarup Mukherjee (supra), it was observed that the accepting authority of resignation was required to abide by notice period. The said case was however under the CRPF Act. In the case of Navin Ram (supra), the aspect of deceitfully obtaining the signature of the incumbent on a blank paper which was converted into a resignation letter was found substantially by other documents on record.

10. Ms. Bora, learned counsel for the petitioner has also referred to an Office Memorandum dated 11.02.1988 more particularly, paragraph 3 thereof as per which a resignation becomes effective when it is accepted and the Government Servant is relieved of his duties. The learned counsel has also referred to the Assam Rifles Regulation, 2016 more particularly Regulation 105 on the aspect of "Resignations and premature voluntary retirement / release" and has contended that the impugned action is not sustainable in law and the writ petition is liable to be allowed.

11. Per contra, Shri Roy, the learned CGC has submitted that the facts portrayed are wholly incorrect and categorically disputed. By drawing the attention of this Court to the affidavit-in-opposition filed by the respondents dated 31.05.2019, the learned CGC has submitted that the case sought to be projected regarding certain allegation is wholly incorrect as the discharge is not on the basis of any allegation. In paragraph 3(b) of the said affidavit-in-opposition, it has been averred that the petitioner has submitted a handwritten application to the Commandant requesting for release from service as his old parents were not keeping well. However, taking into consideration the career aspect, the petitioner was counseled by his superiors and advised to withdraw the application. He has also drawn the attention of this Court to the averments made in paragraph 3(c) of the affidavit-in-opposition with regard to the personal counseling by the Commandant, which reads as follows-

"3(c) That on receipt of the affidavit, the Commandant personally interviewed the petitioner and once again advised him to withdraw his application and also inform him about the disadvantages on proceeding on discharge at this stage. But the petitioner did not pay heed to the advice and insisted to process his application for premature discharge. Hence, his application for discharge from service was approved with effect from 28.08.2017 vide ARTC & S Order No. I.11011/Trg-08/SKV/2017 dated 28.08.2017."

He has submitted that though the petitioner has filed an affidavit-in-reply, there

is no response to the aforesaid averment of affording a personal counseling on the petitioner by the Commandant.

12. He has also drawn the attention of this Court to the averments made in paragraphs 7 and 8 of the affidavit-in-opposition wherein it has been contended that the story made out by the petitioner was false and flimsy and the aspect of submission of the affidavit duly notarized has also been highlighted.

13. As regards the reliance on the Fundamental Rules, the learned CGC has submitted that FR 56(j) has no application in the present case as in the present case it is the petitioner who had given the application and not the authorities.

14. The learned CGC has also highlighted that the petitioner has raised disputed questions of fact which cannot be otherwise gone into by this Court in exercise of its writ jurisdiction.

15. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

16. The edifice on which the writ petition has been instituted is on the manner of issuance of the discharge certificate dated 28.08.2017. The very foundation of the discharge certificate which has been shown to be on the own request of the petitioner has been questioned and in this regard reliance has been made on the nature of the application allegedly filed by the petitioner on 10.08.2017 and the affidavit in support of such application which was sworn before the Notary. The grounds of challenge, as dilated above is that the discharge application is in Hindi language and only the signature of the petitioner was used which is in English. As regards the affidavit, it is submitted that the affidavit is dated 24.08.2017 while the application for discharge was submitted on 23.08.2017.

17. This Court has perused the discharge certificate and in serial no. 8 it has been recorded that the same has been issued on the own request of the petitioner. The petitioner however has not annexed any application in the writ petition for discharge and the same has been annexed by the respondents in their affidavit-in-opposition filed on 31.05.2019 against Annexure-1. Though the date of the discharge application has been stated to be 23.08.2017, the application appears to have been submitted on 10.08.2017 and it was only recommended on 23.08.2017. There is no doubt that the application is in Hindi language whereas the signature of the petitioner is in English language. There is nothing however, on record that the petitioner has disputed the signature appearing in the said application. As regards the affidavit, the same is dated 24.08.2017 which was sworn by the petitioner before the Notary Public. There is nothing in the petition to deny the execution of the affidavit and the only point raised is that the affidavit is dated 24.08.2017 while the application for discharge is dated 10.08.2017. The application does not refer to any affidavit and therefore the aforesaid point will not be an issue of dispute.

18. This Court has also noticed that the relevancy of the date of the affidavit

would only be in the context of the date of the discharge certificate which is of subsequent date. As mentioned above, the discharge certificate was issued on 28.08.2017 while the affidavit before the Notary is dated 24.08.2017. This Court therefore does not find any force in the aforesaid ground.

19. What is also intriguing is that in the affidavit-in-opposition filed by the respondents on 31.05.2019, there is a categorical averment that the petitioner was personally counseled by the Commandant and, as pointed out by the learned CGC, the said averment has not been refuted by the petitioner though he had filed an affidavit-in-reply on 08.11.2021. The averments appearing in paragraph 3(c) of the affidavit-in-opposition has already been extracted above and there is no reply at all to the aforesaid averments. As regards the reliance on FR 56(j) by the petitioner concerned, the aforesaid provision is not applicable in the instant case as the application for discharge was not given by the authority but by the incumbent.

20. Be that as it may, this Court has relooked into the nature of the allegations and the pleadings. This Court has noticed that the challenge is mainly based on factual dispute and such factual grounds have been clearly disputed by the respondent authorities. As mentioned above, the respondents have also clearly taken up the issue of the petitioner being personally counseled by the Commandant which have not been refuted. The story tried to be introduced regarding certain allegations has been categorically denied in paragraph 7 of the affidavit-in-opposition by terming the same to be false and flimsy. Further, the said averment has not been denied in the affidavit-in-reply and in paragraph 6 of the same, it has been stated as follows:

"6. That the statements made in para 4 to 14 of the affidavit in opposition, the reiterate and reaffirms the statement made in the preceding paras of this instant affidavit in reply.

And under the facts and circumstances stated herein above, the instant writ petition deserves to be allowed with cost."

21. This Court has also noticed that though the relevant documents were not annexed to the petition, those have been placed on record by way of an affidavit-in-opposition and the grounds sought to be urged, at best are factual grounds which are disputed and therefore cannot be gone into in any case by this Court in exercise of its powers under Article 226 of the Constitution of India. The case laws relied upon by the petitioner have been gone through and the same have to be confined to the facts of those cases.

22. In view of the above, this Court is of the opinion that no case for interference is made out and accordingly, the writ petition is dismissed.

23. No order as to cost.