

(2024) 05 GAU CK 0102

In the Gauhati High Court

Case No : Writ Petition (C) No. 8803 Of 2018

Anil Kumar Yadav

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 01-05-2024

Acts Referred:

Citation : (2024) 05 GAU CK 0102

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : K Yadav, RI Yadav, A Gayan

Final Decision : Allowed

Judgement

1. Heard Ms. K. Yadav, learned counsel for the petitioner. Also heard Ms. A. Gayan, learned Central Government Counsel (C.G.C) appearing for the respondents.

2. The claim raised in this writ petition which is filed by the petitioner is with regard to treating the appointment of the petitioner as General Duty (Driver) in the Assam Rifles from the date of the initial appointment in the year 2008 and not the subsequent date which was pursuant to certain directions of this Court.

3. There is a chequered history of this case and a brief narration would be necessary.

4. In the year 2008, a recruitment process was initiated, amongst others, for the post of General Duty (Driver) along with post of Rifleman under the Assam Rifles.

5. In the said recruitment, the petitioner who had offered his candidature was recruited as a General Duty (Driver) personal with the Assam Rifles with effect from 10.12.2008. After such appointment, he was sent for training with effect from 31.12.2008. However, in the midst of such training on 19.05.2009, the petitioner fell sick and had to be hospitalized at different military hospitals and on 20.11.2009, he was discharged from the hospital with a fitness certificate as

category P-2. Thereafter, on 03.05.2010, the petitioner was sent to the Assam Rifles Composite Hospital for medical review. There, he was given medical certificate as Shape I and finally, he was discharged by the Assam Rifles Composite Hospital on 22.05.2010. After his discharge, the Petitioner reported back for duty.

6. However, subsequently, the petitioner was discharged from service by a discharge certificate dated 07.07.2010, thereby discharging the petitioner on and from 31.07.2010 on the ground that his stay at Assam Rifles Training Centre and School was exceeding 24 (twenty four) months.

7. Being aggrieved, the petitioner filed a writ petition, being WP(C) (SH) 208/13 before the High Court of Meghalaya, which was disposed of vide judgment and order dated 13.02.2014 wherein the discharge certificate was set aside with a further direction to reinstate the petitioner forthwith and allow him to continue with the rest part of his training.

8. Against the said order dated 13.02.2014, the respondents filed a writ appeal, being W.A. No. 25/2014 arising out of WP(C) (SH) No.208/2013 which was dismissed by judgment and order dated 26.02.2015. In pursuance of the aforesaid order, by letter dated 23.5.2015, the petitioner was reinstated as Recruit General Duty (Driver) and accordingly the petitioner joined his duty on 25.07.2015.

9. It is the claim of the petitioner that his appointment should be given effect and regularized from the initial date of appointment i.e. 10.12.2008 with a further claim for payment of arrear salaries and other benefits which the petitioner is legally entitled to in all respects.

10. Ms. K. Yadav, the learned counsel for the petitioner has submitted that due to no fault of the petitioner, he had to face all the harassment and only upon intervention by this Court, the matter was sorted out. It is submitted that the initial appointment made on 10.12.2008 having been preceded by the necessary tests, including written, physical and medical and the discharge of the petitioner vide discharge certificate dated 07.07.2010, thereby discharging the petitioner on and from 31.07.2010, being interfered with by this Court, the claim of the petitioner is reasonable, justified and bona fide.

11. The learned counsel for the petitioner has also submitted that similarly situated person have been given the benefits. In this connection, reference has been made to an order dated 07.06.2019 passed by this Court in Review Petition No. 111/2018 filed by one Sant Lal. The learned counsel accordingly submits that there should not be any impediment in granting the relief as prayed for.

12. Per contra, Ms. Gayan, the learned C.G.C. has submitted that the petitioner was re-appointed only in the year 2015, pursuant to the order dated 13.02.2014 passed in WP(C) (SH) 208/13 by the High Court of Meghalaya wherein a direction was given to reinstate the petitioner and allow him to continue with the

rest part of his training. It is submitted that as the re-instatement of the petitioner was done in the year 2015 and therefore, giving benefit to the petitioner of such appointment from the year 2008 would not be justified.

13. Rival contentions advanced have been duly considered and the materials placed before this Court have been carefully examined.

14. It is not in dispute that the petitioner had undergone the recruitment process in its full rigour and was accordingly appointed on 10.12.2008. The requirement of basic training was also being undertaken by the petitioner and in the midst of such training, on 19.05.2009, the petitioner fell sick and had to be hospitalized at different military hospitals and after obtaining medical certificate as Shape I, he was discharged from hospital and after such discharge, the petitioner reported back for duty and later on the petitioner was discharged from service by a discharge certificate dated 07.07.2010, thereby discharging the petitioner on and from 31.07.2010 on the ground that his stay at Assam Rifles Training Centre and School was exceeding 24 (twenty four) months.

15. The discharge of the petitioner from his service after his due appointment in the year 2008 was interfered with by the High Court of Meghalaya in different round of litigation. The same would amply demonstrate that the petitioner cannot be put on fault for the gap in the service from 31.07.2010 to 25.07.2015. The reliance of the petitioner in the case of Sant Lal has also not been able to be refuted by the learned C.G.C. This Court has noticed that the benefits given to the said incumbent Sant Lal pursuant to the order dated 07.06.2019 passed in Review Petition 111/2018 clearly refers to the order dated 26.10.2014 of the Division Bench passed in WA No.153/2014, WA/119/2014, etc.

16. On the aforesaid facts and circumstances, this Court is of the considered opinion that the claim of the petitioner to hold his appointment from the year 2008 appears to be justified as the so called break in his service is not attributable to any fault of the petitioner and in fact the impugned decision of the authorities to discharge him has been interfered with by the Court. Further, granting the benefit to a similarly situated incumbent (Sant Lal) for which no explanation has been put forward that the said case is distinguishable would be an additional ground in favour of the petitioner. This Court is of the opinion that the claim of the petitioner is liable to be allowed.

17. This Court is however of the opinion that such claim would only be confined to the notional benefits, including fitment and also to treat the petitioner to be in appointment from the year 2008 in the context of his pensionary benefits. The claim for back wages from the year 2010, however cannot be considered in terms of the principle of "no work no pay".

18. With the aforesaid directions, the present writ petition stands allowed.

19. No order as to cost.