
(2025) 11 GAU CK 1795
In the Gauhati High Court
Case No : WP(C) Of 2643 Of 2022

Birender Singh

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

Date of Decision : 10-11-2025

Acts Referred:

Citation : (2025) 11 GAU CK 1795

Hon'ble Judges : Kardak Ete, J

Bench : Single Bench

Advocate : S Bora, N Chakraborty, B Chakravarty

Final Decision : Disposed Of

Judgement

Kardak Ete, J

1. Heard Mr. S. Borah, learned counsel for the petitioner. Also heard Mr. B. Choudhury, learned Central Government Counsel for the respondents.

2. The grievance raised in this writ petition is for treating the appointment of the petitioner as Rifleman (GD) in the Assam Rifles from the date of his initial appointment, i.e. 23.05.2001, instead of the subsequent date of appointment, i.e. 26.05.2015, which was made pursuant to the directions of this Court.

3. The facts of the case, in brief, are that the petitioner was enrolled in the Assam Rifles on 23.05.2001 as Rifleman (GD) after qualifying in the recruitment test and was sent for training at Assam Rifles Training Centre and School, Dimapur, Nagaland. During the course of training, the petitioner was subjected to medical examination by the authorities and was found medically unfit, consequent to which he was discharged from service w.e.f. 31.10.2001 vide discharge certificate dated 09.10.2001.

4. Aggrieved by the said order of discharge, the petitioner approached this Court by filing a writ petition, being WP(C) No. 1766/2009. The said writ petition, along with other similar petitions, was disposed of by this Court vide judgment and

order dated 10.08.2012 directing the respondents to constitute a fresh Appeal/ Review Medical Board to find out as to whether the petitioners were medically fit for appointment as Rifleman (GD). Pursuant thereto, a medical re-examination was conducted and the petitioner was found fit. However, his case was rejected on the ground of overage. Thereafter, the petitioner has challenged the rejection on the ground of overage before this Court, which was allowed and directed the respondents to call the petitioner within a period of 1 (one) month for undergoing basic training by holding that the question of overage will not come into play in the factual matrix of the case. In compliance thereof, the respondents issued a provisional appointment letter dated 26.05.2015, directing the petitioner to report to the Assam Rifles Training Centre and School, Dimapur, Nagaland.

5. Subsequently, by an order dated 13.01.2021, sanction was extended for coverage under Central Civil Service (Pension) Rules, 1972 in respect of 1064 personnel. However, in the said order, the name of the petitioner was excluded by showing the date of appointment of the petitioner as 26.05.2015 and thereby placed him under National Pension System (NPS). Hence, this writ petition praying for treating the date of his appointment from the initial date of appointment on 23.05.2001 and not the subsequent date of appointment on 26.05.2015.

6. Ms. S. Borah, learned counsel for the petitioner, submits that due to no fault on the part of the petitioner, he had to face hardship and harassment and only upon intervention of this Court, the grievance of the petitioner against the arbitrary action of discharge was interfered with and accordingly the petitioner and other similarly situated persons were allowed to continue in the service as Rifleman (GD). She submits that since the initial appointment made on 23.05.2001, having been preceded by necessary test including written, physical and medical test, and as the discharge of the petitioner on medical ground being interfered with by this Court, the appointment of the petitioner cannot be treated as 26.05.2015, rather same be treated from his initial appointment on 23.05.2001.

7. Ms. Borah, learned counsel for the petitioner, relying on the judgment and order dated 05.04.2024, passed by this Court in WP(C) No. 198/2018 (Sandeep Kumar & Ors. Vs. The Union of India & Ors.), submits that this Court has allowed the said writ petition which is similar with the present case. Therefore, she submits that similar relief may be granted to the petitioner by treating the date of appointment as on 23.05.2001 and not from the date of subsequent appointment on 26.05.2015 and to provide arrear and salaries.

8. On the other hand, Mr. B. Choudhury, learned Central Government Counsel, submits that the petitioner was re-appointed provisionally w.e.f. 26.05.2015 pursuant to the directions of this Court. He submits that since the petitioner was discharged and thereafter on the intervention of this Court was appointed on certain conditions provisionally w.e.f. 26.05.2015, the petitioner could not claim

for treating his initial appointment in the year 2001. He submits that the judgment and order relied by the learned counsel for the petitioner in the case of Sandeep Kumar (supra) would not cover the case of the petitioner as in that case, the petitioners therein had approached this Court within a reasonable period after the issuance of provisional appointment order in the year 2015. In the present case, the petitioner has approached this Court in the year 2022 after a lapse of 7 (seven) years. Therefore, the petitioner is a fence sitter and not entitled for any equitable relief under the law.

9. I have considered the submissions of learned counsel for the parties and also perused the materials available on record including the various judgments and orders passed by this Court.

10. Admittedly, the petitioner was initially appointed as Rifleman (GD) in the Assam Rifle on 23.05.2001 after having been qualified in the recruitment test. The petitioner was discharged without notice on the ground of the petitioner having been declared medically unfit vide discharge certificate dated 09.10.2001. Against the said discharge, the petitioner, along with other similarly situated persons, approached this Court, which was interfered with. The authorities on medical re-examination subsequently found the petitioner and other similarly situated persons to be medically fit. However, the petitioner was denied appointment on the ground of overage, which was also interfered with by this Court. Consequently, the petitioner was issued a provisional appointment order dated 26.05.2015 with certain conditions including to undergo basic training at Assam Rifles Training Centre and School, Dimapur, Nagaland, which the petitioner has completed successfully.

11. The petitioner appears to have accepted the appointment order dated 26.05.2015 which clearly indicates that the appointment is pursuant to the order of this Court without any demur. Thereafter, having been found that the name of the petitioner is excluded from the list for entitlement under the Old Pension Scheme by showing the date of appointment as 26.05.2015, the petitioner has approached this Court by filing the present petition in the year 2022. The order in respect of said listing was for 1064 personnel excluding the petitioner. Ordinarily, once the appointment order is accepted, the appointee would not be permitted to challenge the same after lapse of many years. However, since the similarly situated persons having been approached this Court with a similar grievance as projected by the petitioner in the present proceedings, this Court is of the considered view that since this Court has already granted a relief in the similarly circumstanced matter, the petitioner would be entitled to be provided with the similar relief.

12. This Court in the case of Sandeep Kumar (supra), in a similarly circumstanced case, arising out of the same recruitment process, and also with regard to discharge on being medically unfit and rejection of appointment on the ground of overage, has provided relief to the similarly situated personnel, the operative portion of which is quoted herein below:

"15. On the aforesaid facts and circumstances, this Court is of the considered opinion that the claim of the petitioners to hold their appointment from the year 2001 appears to be justified as the so called break in their service is not attributable to any fault of the petitioners and in fact the impugned decisions of the authorities firstly to discharge them on the ground of being medically unfit and secondly to decline appointment on the ground of being over aged have been consistently interfered with by this 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 petitioners. This Court is of the opinion that the claim of the petitioners are liable to be allowed."

13. Perusal of the above judgment and order clearly reflects that the claim of the petitioners in that case to treat their appointment from the year 2001 appears to be justified as the break in service of the petitioners is not attributable to any fault on the part of the petitioners. Having considered that the similarly situated persons have been granted relief in a similarly circumstanced matter, this Court has no other option but to allow this writ petition.

14. In view of the discussions made herein above and also considering that the petitioner herein stands on identical footing as the petitioners in the case of Sandeep Kumar (supra), I find no reason to take a different view and therefore, the petitioner is entitled to be provided with similar relief as provided in the above case.

15. Accordingly, the grievance of the petitioner is allowed thereby directing the respondents to treat the appointment of the petitioner as Rifleman (GD) in the Assam Rifles from his initial date of appointment, i.e. 23.05.2001, and not from the subsequent appointment order dated 26.05.2015. However, as held in Sandeep Kumar (supra), the claim would only be confined to notional benefit including fitment and also treat the petitioner to be in appointment from the year 2001 in the context of his pensionary benefits and the claim for back wages is rejected applying the principle of "no work, no pay".

16. Writ petition stands disposed of in terms of above. No order as to cost(s).