

(2025) 04 GAU CK 0383
In the Gauhati High Court
Case No : WP(C) Of 7891 Of 2017

Jagat Ch. Baishya

APPELLANT

Vs

The State Of Assam And 2 Ors.

RESPONDENT

Date of Decision : 03-04-2025

Acts Referred:

Assam Rifles Rules, 2010 — Rule 15

Citation : (2025) 04 GAU CK 0383

Hon'ble Judges : Suman Shyam, J

Bench : Single Bench

Advocate : M Das, D K Nath, S K Barkataki, B Sharma, R Dhar

Final Decision : Disposed Of

Judgement

Suman Shyam, J

1. Heard Ms. K. Yadav, learned counsel appearing for the writ petitioner. Also heard Mr. H. Gupta, learned CGC appearing for the respondents.

2. It appears from the projections made by the writ petitioner that pursuant to a recruitment process undertaken by the Assam Rifles, the writ petitioner was appointed as 'Washerman' on 23-05-2001. However, the petitioner was discharged from service on 31-01-2001 on medical ground. Being aggrieved by the said decision of discharging him from service, the petitioner had submitted a representation before the authorities to reconsider his case. However, when no favourable action was taken in the matter, the petitioner had approached this Court by filing W.P.(C) No. 3705/2005, which was disposed of with a direction upon the Director General of Assam Rifles to dispose of the representation dated 31-01-2004 submitted by the writ petitioner. However, not being satisfied with the consideration of his representation, the petitioner had once again approached this Court by filing W.P.(C) No. 774/2013, which was dismissed by the learned Single Judge along with several other similar writ petitions.

3. Thereafter, writ appeals were preferred by some aggrieved candidates against

the order of the learned Single Judge. The writ appeals, along with several similar writ petitions including W.P.(C) No. 774/2013 preferred by the present petitioner was disposed of by the Division Bench of this Court vide order dated 26-10-2014. The operative part of the order dated 26-10-2014 is reproduced here-in-below:-

"15. In the result, the writ petitions as well as the appeals are allowed. The impugned order of the learned Single Judge, dated 03.12.2013, as well as the impugned order dated 27.12.2012, issued by the Deputy Commandant, Staff Officer-(I) (Recruitment) for Brigadier (Personnel), Assam Rifles are set aside. The respondents are directed to call the petitioners/ appellants, within a period of one month from the date of receipt of a certified copy of this order, for undergoing the basic training. The petitioners/ appellants may obtain certified copy of this order and produce the same before the authorities concerned for doing the needful."

4. Thereafter, the petitioner was subjected to another Medical Board, which had declared him medically fit. Consequently, he was taken back in service on 25-06-2015, i.e. after a lapse of nearly 14 years from the date of his initial appointment. Thereafter, the petitioner was also allowed to complete the basic training and on completion of such training, he has since been absorbed in the Assam Rifles on regular basis. The grievance of the petitioner is that instead of showing his initial date of appointment as 26-03-2001, the same has been recorded as 26-06-2014 and his age at the time of recruitment was recorded as 40 years. Aggrieved thereby, the petitioner has approached this Court, for the third time, by filing the instant writ petition.

5. Ms. K. Yadav, learned counsel for the writ petitioner submits that the issue raised in the writ petition is squarely covered by several decision of this Court including the judgment and order dated 01-05-2024 passed by a coordinate Bench in W.P.(C) No. 7201/2018 (Prabhu Dayal Vs. UoI & Ors.) wherein, the learned Single Judge, after examining the plea raised by the similarly situated petitioners therein, seeking similar relief, had allowed the writ petition. Therefore, this writ petition be also allowed by this Court on same terms.

6. Mr. Gupta, learned CGC, on the other hand, has strongly opposed the submission of Ms. Yadav by contending that the facts of this case are distinguishable in as much as, in the case of Prabhu Dayal (Supra), the writ petitioner was already a recruit meaning thereby that his discharge on medical ground was at a stage when he had partially undergone the basic training whereas in the present case, the petitioner was discharged from service on medical ground at the threshold, i.e. even prior to his enrolment as a Assam Rifle personnel.

7. By referring to Rule 15 of Assam Rifles Rules, 2010, Mr. Gupta has further argued that from a bare perusal of the Rules, it would be clear that until such time, the name of an employee is actually enrolled, he cannot be deemed to be

an employee of the Assam Rifles. Under such circumstances, the question of granting seniority to the petitioner w.e.f. his original date of appointment, i.e. 23-05-2001 would not arise in the eyes of law by placing reliance on the decision in Prabhu Dayal (Supra).

8. In the case of Prabhu Dayal (Supra) the writ petitioner therein was recruited by the Assam Rifles on 23-05-2001 but just like the writ petitioner, he was also discharged on medical ground. Subsequently, in terms of the direction issued by the Division Bench of this Court vide order dated 26-10-2014, whereby the writ petition being W.P.(C) No. 4608/2008 preferred by Prabhu Dayal (Supra) was also disposed of by the Division Bench along with the batch of similar writ petitions including W.P.(C) No. 774/2013 instituted by the present petitioner, the said writ petitioner was reinstated. Thereafter, he had approached this Court by filing W.P.(C) No. 7201/2018 raising similar grievance seeking recognition of his initial joining in service w.e.f. 23-05-2001.

9. By the judgment and order dated 01-05-2024 passed in the case of Prabhu Dayal (Supra), the learned Single Judge had made the following observations:-

"13. It is not in dispute that the petitioner had undergone the recruitment process in its full rigor and was accordingly appointed on 23.05.2001. The requirement of basic training was also being undertaken by the petitioner and in the mid way, on 31.10.2001, he was discharged from service on medical grounds. The aforesaid discharge was interfered with by this Court by directing that a Review Medical Board be constituted and it is also not in dispute that in the said Review Medical Board, the petitioner has been found to be medically fit. Subsequent thereto, the petitioner was re-inducted in service in the year 2011.

14. The discharge of the petitioner from his service after his due appointment in the year 2001 on medical grounds was interfered with by this Court. The same would amply demonstrate that the petitioner cannot be put on fault for the gap in the service from 2001 to 2011. The reliance of the petitioner in the case of Sant Lal (supra) has also not been able to be refuted by the learned Asst. SGI. 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.

15. 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 2001 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 on the ground of being medically unfit and has been 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 petitioner. This Court is of the opinion that the claim of the petitioner is liable to be allowed.

16. 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 2001 in the context of his pensionary benefits. The claim for back wages from the year 2001, however cannot be considered in terms of the principle of "no work no pay".

17. With the aforesaid directions, the present writ petition stands allowed."

10. After examining the aforesaid decision rendered by a coordinate Bench in the case of Prabhu Dayal (Supra) this Court is of unhesitant opinion that the petitioner's case is also squarely covered by the directions contained in the case of Prabhu Dayal (Supra).

11. Mr. Gupta has made an attempt to distinguish the facts of this case by contending that the writ petitioner herein was neither enrolled nor recruited whereas in the case of Prabhu Dayal (Supra), he was discharged after enrolment and at the stage of undergoing basic training. Therefore, he was a recruitee. This Court is unable to countenance such arguments purely on account of the fact that the issue involved in both the writ proceedings is not pertaining to the stage on which the discharge was made but the ground on which by the candidates were discharged and also the manner of their reinstatement. Upon reinstatement, whether the benefit of initial date of appointment, i.e. 23-05-2021 should be granted to the petitioner or not is the core issue in both the proceedings. Viewed from that angle, this Court is unable to find any distinguishable feature in both these proceedings. Mr. Gupta may have some justification in arguing that after long lapse of time since the date of discharge, the question of granting seniority, even if notional, cannot arise in the eyes of law. However, the fact remains that the respondents have not preferred any appeal against the judgment and order passed in Prabhu Dayal (Supra), which decision will have a binding effect on this case as well. In view of the above, for the sake of maintaining judicial discipline this Court cannot take a different view in this case, on similar set of facts.

For the reasons stated above, this writ petition is being disposed of in terms of the observations and direction made in paragraphs 13, 14, 15, and 16 of the decision rendered in the case of Prabhu Dayal (Supra), granting similar relief to the present writ petitioner.

Parties to bear their own cost.