
(2008) 01 GAU CK 0051
In the Gauhati High Court

M.C. Journey

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 07-01-2008

Acts Referred:

Army Act, 1950 — Section 39, 48

Citation : (2008) 1 GLT 535

Hon'ble Judges : K. Meruno, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

K. Meruno, J.—Heard Ms. Bisheswori, learned Counsel appearing for the petitioner and also Mr. N. Ibotombi Singh, learned CGSC appearing for all the respondents.

2. In brief the case of the petitioner is that he was appointed as a Sepoy in the 2nd Naga Regiment on 21.1.1987 and given regimental No. 14702372. That while the petitioner was discharging his duty dutifully and faithfully without any stigma, he was issued the impugned movement order dated 5.7.2000 issued by the respondent No. 4. The petitioner also states that he was also served in the Kargil War and received serious bullet injuries and after having fully recovered from the said bullet injuries he joined back to his posting place. Thereafter, he was found to be suffering from ulcer, as a result, he was evacuated to 92 Base Army Hospital at Srinagar for further treatment. After undergoing medical treatment for 15 days, sometimes in the month of June/July, 2000 the concerned Doctors issued discharge certificate and advised him to report to his battalion. Accordingly, he reported at Kargil Camp on 4.7.2000. But to his utter surprise while the petitioner was discharging his duty, on 5.7.2000, he was summoned by his higher authority, i.e. the respondent No. 4, and issued the impugned movement order dated 5.7.2000. Thereafter, he left home obediently with broken heart. The further case of the petitioner is that he was discharged from service under Rule 13(3)(III) as alleged having found medically unfit than the

recommendation of the Invaliding Board which is necessary. In the absence of the recommendation of the Invaliding Board, no authority can issue discharge order under the said Rule 13(3) (III). Also, that the petitioner was discharged under Rule 13(3)(v) as alleged without giving any opportunity to show cause notice which is mandatory. In the absence of show cause notice, no authority can issue the discharge order under Rule 13(3)(v). In fact, in the case of the petitioner, no such recommendation from the Invaliding Board and also no show cause notice was issued at the event of issuing the impugned movement order. Further, the petitioner received Extended Army Group Insurance Certificate dated 01.01.2001 and forwarding of DCRG/Terminal Gratuity Claim in R/O dated 1.2.2001 issued by the respondent No. 5 for which a sum of Rs. 15,092/- was received by the petitioner. The petitioner's counsel submitted legal notice dated 9.4.2001 to the respondent No. 3 demanding, inter alia, to disclose the reason (s) for issuing the impugned movement order/discharging the petitioner from service and re-minder but the respondents have not yet taken any step till date. Being aggrieved, the petitioner has filed the present writ petition. Various grounds have been taken up by the petitioner which are elaborated in para-12 Clause (a) to (k) of the writ petition and under such circumstances the petitioner is praying for issuance of rule in the nature of mandamus thereby quashing and setting aside the movement order dated 5.7.2000, which is annexed as Annexure-A/1 to the writ petition, and thereby also directing the respondents to take back the petitioner in service with all service benefits or in the alternative to pass any order or direction so as to release pension amount in favour of the petitioner.

3. The learned Counsel for the petitioner has relied upon the decisions as reported in (I) Rolston John Vs. Central Government Industrial Tribunal-cum-Labour Court and others, (2) Union of India and others Vs. Giriraj Sharma, and (3) 2002 (1) GLT 476. Relying on the said decided cases, the counsel for the petitioner submitted that in view of the said cited cases, the impugned movement order is liable to be quashed and set aside and also reinstated the petitioner in service with full service benefits.

4. Counter on behalf of the respondents have also been filed. In the counter of the respondents, in para-2 of the said counter, the respondents have stated that the petitioner was a habitual offender for which he was punished. Details of punishment awarded to him are as under:

Ser:	Offence	Date	of	Punishment	punishment	awarded
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(a)	Red Ink Entry (i)	AA Section 39(b)	08th Oct. 92	Without sufficient	Awarded	
	21 cause overstaying	days RI in mil	leave granted to him	custody (OSI-176 days)		
(ii)	AA Section 39(b)	30th June 97	Without sufficient	Awarded	28 cause	
	overstaying days RI,	14 leave granted to him	days detention (OSL-19 days)			
	mil custody and 14 days	pay fine (iii)	AA Section 39(b)	17th Dec. 97	Without	

sufficient Awarded 31 cause overstaying days RI in mil leave granted to him. custody (OSL-19 days) (iv) AA Section 48 06th Aug. 98 Intoxication Awarded 14 days RI in mil custody. (v) AA Section 48 23rd May 2K(b) Black Ink Entry Awarded 07 days RI in mil custody (i) AA Section 39(b) 09th Aug 96 Without sufficient Awarded 07 cause overstaying days pay leave granted to fine and 07 him (OSL 14 days) days extra guard and duties.

5. With reference to the show cause notice, the respondents have stated that the petitioner was served with the show cause notice on 8.6.2000 bearing No. 2012/3/A before discharging him from service and the same was duly received by the petitioner. The petitioner also after receiving the show cause notice, requested the authority by a letter dated 15.6.2000 to pardon him and also to allow him to continue in service and the said letter dated 15.6.2000 has been annexed in the counter of the respondents, which is marked as Annexure-X/6 to the counter affidavit. The respondents in their counter have also stated that the petitioner was a perpetual offender, therefore, his retention in service was detrimental to the organization being an undesirable person and as such he was discharged from service w.e.f. 4.8.2000 (AN) under the said Army Rule 13(3)(III) (V). Further, the respondents have stated that the petitioner was given ample chance to improve his discipline and to amend his ways but he failed to do so and rather he earned 5 Red Ink Entries and one Black Ink Entry and as such his retention in service was inadvisable. The respondents further state that the petitioner had earned 5 Red Ink Entries and one Black Ink Entry in his service span of 13 years and hence he has no right to continue in service. Mr. N. Ibotombi Singh, learned CGSC appearing for the respondents submitted that the said issue of Red Ink Entry and Black Ink Entry had been examined in the case of Jose Nedumthottiyil Joseph v. Union of India And Ors. In W.P. (C) No. 2099 of 1999 by this Court vide judgment and order dated 9th May, 2001 which was also affirmed by a Division Bench of this Court vide an order dated 7.6.2001 in W.A. No. 164 of 2001. The Apex Court also in an SLP (Civil) No. 16821/2001 vide an order dated 6.3.2002 dismissed the SLP and upheld the decision of the learned Single Judge as well as the Division Bench. In view of this, the learned Counsel for the respondents states that the writ petition has no merit and as such the same is liable to be dismissed.

6. After hearing the learned Counsel for the parties at length in the matter and upon perusal of the pleadings as well as the documents and cases relied upon by the parties, the present case is squarely covered by the decision of the Apex Court as reported in Union of India and others Vs. Corporal A.K. Bakshi and another, Discharge from service on the ground of unsuitable basis on record of punishment, commission of misconduct has been thoroughly discussed by the Apex Court in the said case. It held that the punishments referred to in the policy of discharge are punishments that have been imposed for misconduct under the relevant provisions of the Army Act and Rules. It has also been held that the punishments that have been imposed earlier being part of the record of service

have taken into consideration for the purpose of deciding whether such person is suitable for retention in the service. The discharge in such circumstances is, therefore, discharge following under the Act and Rules and it cannot be held to be termination of service by way of punishment for misconduct following under the Act and Rules.

7. Considering the decisions of the Apex Court as cited above, in the present case also the petitioner has earned 5 Red Ink Entries and one Black Ink Entry and under Military parlance or Army Terminology, a person who earns 4 Red Ink Entries, being habitual of-fender, his retention in service was inadvisable and undesirable being detrimental to the organisation and in such circumstances discharge from service is the only option. In the present case also since the retention of the petitioner was detrimental to the organisation, he was discharged from service by serving him the movement order wherein it is clearly mentioned that--(1) his discharge sanctioned under AR 13(3)(III)(V) being undesirable and (2) he is proceeding on local discharge in terms of Army Rule 13(3) (III) being undesirable.

8. In view of what has been stated above, there is no merit in this writ petition and the same is accordingly dismissed.

9. However, dismissal of the writ petition will not be a bar for the respondents to pay the pension and retiral benefits to the petitioner as permissible under the rules. No order as to costs.