
(1998) 06 GAU CK 0037
In the Gauhati High Court
Case No : Writ Appeal No. 440 of 1996

Nurulislam

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision : 03-06-1998

Acts Referred:

Army Act, 1950 — Section 26

Penal Code, 1860 (IPC) — Section 147, 148, 427, 506

Citation : (1998) 2 GLT 335

Hon'ble Judges : V.D. Gyani, Acting C.J.; H.K.K. Singh, J

Bench : Division Bench

Advocate : M.A. Sheikh, for the Appellant; K.N. Choudhuiy, C.G.S.C., for the Respondent

Final Decision : Dismissed

Judgement

H.K.K. Singh, J.—This Writ Appeal is against the judgment and order dated 1.8.96 passed by the learned Single Judge in C.R. No. 1952/96 dismissing the writ petition wherein the Appellant herein as Petitioner challenged the orders by which he was discharged from service and also his application for reinstatement was rejected.

2. The Petitioner, a graduate with Honours in Assamese, after due selection in the interview was appointed as Havildar-Clerk in the Indian Army on 29.8.90 and was sent for training to Roorkee. On completion of the training while the Petitioner was expecting regularisation of his service by order dated 1.3.92 passed by the Commanding Officer of the Training Battalion he was discharged. Against the order the Petitioner approached the statutory authority u/s 26 of the Army Act and that was rejected on 16.7.92, another appeal which was preferred was also rejected. Again, ground for the discharge from the service was found to be his involvement in a criminal case being G.R. No. 339 of 1987 under Sections 147/148/427/506 IPC which was pending in the Court of Chief Judicial Magistrate, Guwahati at the time of his first entry in service. Though, ultimately

the Petitioner was acquitted in the said case.

3. Mr. M.A. Sheikh, the learned Counsel for the Appellant/Petitioner has submitted that at the time of filling up of Enrolment Form everything was done by the Enrolment Officer, the Petitioner was not allowed even to see the contents of the Form but he was simply asked to sign and put his thumb mark which he accordingly did. He did not know the contents of Form. The photocopy of the Enrolment Form is found on record. The concerned column No. 8 is reproduced below :

Have you ever been imprisoned by the Civil Power or are you under trial for any offence or has any complaint for report been made against you to the Magistrate or Police for any offence? If so, give details.

Answer to this being "No".

4. Again, the declaration made by the Petitioner with his signature and thumb impression which appears at a column of the enrolment form reads as follows:

I, Nurul Islam do solemnly declare that the above answers made by me to the above questions are true and that I am willing to fulfil the engagements made.

Further, there is a certificate of the Enrollment Officer which also reads as follows:

The conditions of service for which he is now enrolled were read and explained to the abovenamed person by me (or in my presence). After having cautioned him that if he made a false answer to any of the above questions Nos. 1 to 11 he would be liable to be punished as provided in the Army Act. I put all the above questions to him and his answer to each questions has been duly entered as replied to. I am satisfied that the fully understands all the questions put to him and consents to the conditions of service.

4. It is not disputed that the Petitioner was involved in a criminal case at the time of involvement thus, the statement that he was not involved in any case is a false one. An educated person is not expected to sign on an important document like the present one without knowing the contents thereof. The contents as recited above will not lead to any interference that he did not know the same. Even otherwise, if an educated person signs without knowing the contents of the document, he simply does so on his own peril.

5. Mr. Sheikh has submitted that the order was passed in violation of principle of natural justice as no chance of hearing was given to the Petitioner. Though giving of right of hearing is a normal rule and there must a basis for not giving of right of hearing at the pre-decisional stage in the present case, Petitioner made a wrong statement and that he wanted to explain the reason for making the false statement in his own way which cannot be accepted as observed above. When the Petitioner has admitted that he made a wrong statement and wanted to explain for his wrong statement in a way which cannot be accepted at all, no prejudice is caused to the Petitioner for not giving the chance of pre-decisional

hearing. Thus, considering the facts and circumstances of the case, no hearing is necessary, thus, there has been no violation of principle of natural justice. The learned Counsel also cited several decisions in support of submission of violation of principle of natural justice. But we are not inclined to burden ourselves with those decisions considering the nature of the present case. We are also not inclined to interfere with a decision of the concerned authorities in rejecting the Petitioner's/Appellant's prayer for reinstatement in service in terms of Para No. 142 of the Defence Service Regulation as the authority concerned in their wisdom decided not to take back a person who had concealed and suppressed facts at the time of enrolment, only for the purpose of getting appointment.

6. From the above, we do not find any ground to interfere with the judgment and order of the learned Single Judge.

7. Accordingly, the appeal fails and dismissed.