
(2014) 04 MAN CK 0002
In the Manipur High Court
Case No : W.P. (C) No. 637 of 2004

Paotingthang Sitlhou

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Citation : (2014) 04 MAN CK 0002

Hon'ble Judges : Laxmi Kanta Mohapatra, Acting C.J.;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : Babloo, Advocate for the Appellant; Amarjit Naorem, CGSC,
Advocate for the Respondent

Judgement

1. The petitioner, while working as Rifleman in the 4th Assam Rifles having been discharged from service by order of the Colonel Commandant dated 02.01.2004 in Annexure-A/4, has filed this writ application challenging the said order of discharge as well as the order passed by the Lieutenant General Director General, Assam Rifles rejecting his appeal. The petitioner while working as Rifleman incurred 4(four) red ink entries in his dossier. The 4(four) red ink entries had been given in between 1989-1998, details whereof are given below:-

2. Though the 4th and the last red ink entry was given in Jan/98, he was allowed to continue in service in 2003. The Col. Commandant issued a notice to the petitioner to show cause as to why he shall not be discharged from service having incurred 4 red ink entries and also having become an incorrigible offender. The said notice to show cause in Annexure-A/2 was responded and the petitioner submitted his reply in Annexure-A/3. It was stated in the reply that he has been allowed to work even after 4 red ink entries for a period of 6(six) years and during the said period of 6 years, there was no allegation against him. However, Col. Commandant did not accept the reply submitted by the petitioner and passed the order of discharge on 02.1.2004 in Annexure-A/4. The petitioner, thereafter, submitted a representation to the Director General, Assam Rifles to reconsider the punishment imposed by the Col. Commandant, but the said

prayer was also turned down by the Director General on 14.6.2004 in Annexure-A/7. Challenging both the orders in Annexure-A/4 and A/7, this writ petition was filed.

3. When the writ application was pending before this Court, Armed Forces Tribunal was constituted and the case was transferred to the Armed Forces Tribunal for adjudication. The writ application was registered before the Tribunal as TA No. 04 of 2013. After hearing the parties, by judgment and order dated 3rd Oct. 2013, records were sent back to the High Court for adjudication again on the ground that employees of Assam Rifles are not covered and the Arm Forces Tribunal (Original Bench, Gauhati) was not competent to adjudicate the dispute. After the Tribunal remitted the matter back to the High Court, it was taken up for hearing.

4. Mr. Th. Babloo, learned counsel appearing for the petitioner assails the impugned order of discharge solely on one ground. According to the learned counsel appearing for the petitioner the 4th and the last red ink entry was made in 1998, but the petitioner was permitted to continue in service till 2004. In between 1998-2004 there was no allegation against the petitioner. It was further contended by the learned counsel that even after the petitioner incurred 4 red mark entries in the year, 1998, the respondent did not consider it fit to discharge the petitioner from service and allowed him to continue for about 6 years. In absence of any allegation during the above period of 6 years, the competent authority could not have taken recourse to Section 4(a) of the Assam Rifles Act, 1941 read with ROI 4/99 to discharge the petitioner from service.

5. Mr. Amarjit Naorem, learned CGSC appearing for the respondents submitted that the entire purpose behind permitting the petitioner to continue in service even after he had incurred 4 red ink entries was to see that the petitioner after being discharged from service gets pension. Otherwise, the Commandant was competent to pass the order of punishment immediately after the petitioner incurred 4 red ink entries.

6. Undisputedly, the petitioner had incurred 4 red ink entries in his dossier in between 1989-1998. On all the four occasions he had also been punished. The Record Branch Instruction No. 4 of 1999, on the basis of which the impugned order has been passed, prescribes that Chapter VIII Rule 24 of the Assam Rifles Manual vests power with the Commandant of the Assam Rifles Battalion to discharge any Member of the Assam Rifle below the rank of Naik Sub. This power may be invoked by a commandant in case where a person has got four and more red ink entries. Relying on this provision, it was contended by Mr. Amarjit Naorem, learned CGSC that the power lies with the Commandant to discharge an employee below the rank of Naik Sub the moment of such employee incurs 4 or more red ink entries. There is nothing in the said provision as to when such power is to be invoked. The Commandant was free to invoke such power even 6 years after the last entry was made.

7. No doubt, the above provision empowers the Commandant to pass an order of discharge, the moment any member of Assam Rifles below the rank of Naik Sub gets 4 or more red ink entries. However, this power is to be exercised within a reasonable time. If an employee, even after incurring 4 red ink entries is allowed to serve the organization for a period more than 5 years, in absence of any further allegation during the above period of 5 years, it would not be appropriate to exercise the said power. It cannot be said that passing of an order of discharge in exercise of such power 6 years after the last entry was made is within a reasonable time. In that case, an employee can be discharged from service even 10 years or 20 years after last entry was made. We, therefore, are of the view that such power must be exercised within a reasonable time from the date the last entry was made. The learned counsel for the petitioner relied upon a decision of the Gauhati High Court in the case of Balwant Singh v. Union of India & Ors reported in 2011 (5) GLT 640. In the said reported case, 4 red ink entries were recorded by one particular Commanding Officer within a span of one year in 17 years of service of the petitioner therein. It appears that 16 years after such red ink entries were given, the order of punishment was imposed. Under those circumstances, the Court held that punishment imposed is disproportionate and it also shocked judicial conscience. In the present case, the order of punishment of discharge has been imposed 6 years after the last red ink entry was made. As stated earlier, there being no allegation against the petitioner during the above 6 years of service, exercise of such power 6 years after the last entry was made, according to us, appears to be unreasonable. We, therefore, quash the order of punishment passed by the Col. Commandant in Annexure-A/4 as well as the order of the Director General in Annexure-A/7 and direct the petitioner to be reinstated in service. It is further directed that the period of service from the date of discharge till the date of reinstatement shall be taken into account for the purpose of seniority, pension and other retiral benefits.