

**(2024) 08 GAU CK 1116**  
**In the Gauhati High Court**  
**Case No : WP(C) Of 5411 Of 2021**

Ravi Ranjan Kumar

APPELLANT

Vs

Union Of India And 3 Ors

RESPONDENT

**Date of Decision :** 13-08-2024

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Assam Rifle Rules, 2010 — Rule 21, 21(2)

**Citation :** (2024) 08 GAU CK 1116

**Hon'ble Judges :** Sanjay Kumar Medhi, J

**Bench :** Single Bench

**Advocate :** P. Das, P.S. Lahkar

**Final Decision :** Dismissed

## Judgement

Sanjay Kumar Medhi, J

1. An order dated 21.04.2021 by which the petitioner, who was serving as Recruit / Plumber has been discharged from service is the subject matter of challenge in this petition filed under Article 226 of the Constitution of India.

2. As per the facts projected, in a recruitment held, the petitioner was successful and was provisionally appointed as Plumber vide an order dated 19.11.2019 in the Assam Rifles. In the said letter of provisional appointment, it was specifically mentioned that on the failure to successfully complete the recruit training within the stipulated period, his services was liable to be terminated without any notice or assigning any reasons. It is the case of the petitioner that the statute holding the field namely, the Assam Rifle Rules, 2010 contain the provision of Discharge. As per Rule 21, before discharging a person on account of unsatisfactory service, he has to be given adequate warning and sufficient time to show progress. The Rule also stipulates that there should be documentary evidence to justify such discharge. It is the case of the petitioner that in violation of the aforesaid provision, namely, Rule 21 (2), the impugned order has been passed.

3. I have heard Ms. P. Das, learned counsel for the petitioner. I have also heard Shri P.S. Lahkar, learned C.G.C., who submits that the affidavit-in-opposition has also been filed on 29.04.2022.

4. Ms. Das, the learned counsel for the petitioner has submitted that the petitioner tried to redress his grievance by filing an appeal against the impugned order dated 21.04.2021 and the said appeal was also not responded to. She has also contended that the recourse of the Right to Information Act was taken in spite of which no information was received.

5. By drawing the attention of this Court to the affidavit-in-opposition, the learned counsel for the petitioner has submitted that certain tabulation has been annexed therein from which it would appear that the petitioner was not fairly dealt with. It is submitted that no justification or adequate reasons have been cited for discharging the petitioner. It is also submitted that the materials on record would show that the finding arrived at regarding the petitioner being unsuccessful is also belied by the fact that the petitioner appears to have been crossed the initial stages and has reached the stage of DIG's Check Test. It is also contended that no suitable warning as per Rule 21 (2) was given to the petitioner and the impugned order is not supported by any documentary evidence. The learned counsel for the petitioner accordingly submits that the impugned order of discharge dated 21.04.2021 be interfered with and a direction be issued for allowing the petitioner to undergo the test for confirmation of his service.

6. Per contra, Shri Lahkar, the learned C.G.C., by drawing the attention of this Court to the affidavit-in-opposition filed on 29.04.2022 has submitted that the provisions of Rule 21 (2) of the Rules of 2010 have been duly complied with. It is submitted that on 23.12.2019, the petitioner had joined the Assam Rifles as a recruit Plumber and thereafter, the training started. As per the norms, such a trainee is given 22 (Twenty Two) weeks to pass the Physical Proficiency Test (PPT) and 23 (Twenty Three) weeks to pass the Battle Physical Efficiency Test (BPET). It is only when a recruit is successful in the aforesaid 2 (two) tests, he attains the stage of DIG's Check Test. In case a recruit is not able to clear the first two aspects of PPT and BPET, he is given further time.

7. In the instant case, the petitioner had failed to qualify in the PPT and BPET and therefore, as per the norms, he was supposed to get 2 (two) further weeks. However, since the next batch was not yet ready, the petitioner got extra time and he had applied for the second chance on 16.11.2020 where again he had failed. After 9 (nine) weeks, the petitioner was given a third chance on 10.03.2021, wherein also he had failed. Thereafter, on 20.03.2021, a Show Cause Notice was issued to the petitioner to improve his performance within a period of 4 (four) weeks. The petitioner had thereafter appeared in a further test on 07.04.2021 in which he had again failed. It is only after that the impugned order of discharge has been passed on 21.04.2021.

8. The learned C.G.C. has submitted that in the Organisation concerned, namely, Assam Rifles, irrespective of the nature of the posting, all personnel are required to undergo the basic test including the PPT and BPET and failure on those aspects would be construed to be a disqualification for a confirmation in the services.

9. To appreciate the rival submissions, it would be convenient if the concerned Rules are taken into consideration. Rule 21 (2) of the Rules of 2010 reads as follows:

"21. Discharge from service on grounds of unsatisfactory progress in training.

(1)...

(2) In all cases of recommendations for discharge of a person, the Commandant of the training establishment shall establish clearly the fact that the person has been given suitable warning and sufficient time to show progress, documentary evidence to this effect shall accompany the recommendation.

(3)..."

10. The Rules stipulates that while a discharge is permitted, such discharge is to be preceded by suitable warning and sufficient time to show progress. Further, documentary evidence is to accompany the recommendation. In the instant case, as per the projection of the petitioner, the aforesaid provision has been violated.

11. It is not in dispute regarding the necessity to qualify the PPT within 22 (Twenty Two) weeks and BPET within 23 (Twenty Three) weeks. The petitioner had failed in the first attempt held on 01.06.2020 when he was given a further chance. Though the period granted is 2 (two) weeks, so far as the petitioner is concerned, he got about 14 (Fourteen) weeks due to certain exigencies. Even in the second chance held on 16.11.2020, the petitioner had failed followed by a third attempt on 10.03.2021 which was held after 9 (nine) weeks. The petitioner having failed in his third attempt, the Show Cause Notice was issued to the petitioner.

12. Incidentally, the said Show Cause Notice has not been annexed in the writ petition and it is only in the affidavit-in-opposition, the Show Cause Notice has been annexed as Annexure A.04. There is no denial of the Show Cause Notice by the petitioner. In the affidavit-in-opposition, it has been categorically stated that by the aforesaid Show Cause Notice, the petitioner was given a further chance to improve his performance and in the test held on 07.04.2021 he had failed again leading to the passing of the impugned order of discharge. The affidavit has also enclosed the tabulation pertaining to the requirements of Rules including the period granted to clear the PPT and BPET. This Court, on examination of the materials on record is of the considered view that the requirement of Rule 21 (2) have been complied with.

13. This Court is also of the view that the Organisation in question is a highly

disciplined force wherein each of the recruit are to pass the various test towards their proficiency and to be battle combat.

14. The order of Discharge does not appear to sustain from any procedural or legal infirmity and accordingly the writ petition is dismissed.