

(2025) 05 GAU CK 0313
In the Gauhati High Court
Case No : WP(C) Of 5548 Of 2021

Satish Kumar Yadav

APPELLANT

Vs

The Union Of India And 3 Ors

RESPONDENT

Date of Decision : 27-05-2025

Acts Referred:

Citation : (2025) 05 GAU CK 0313

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : S Bora, N Chakraborty, K Gogoi

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. The instant writ petition has been filed challenging an order dated 09.04.2020 by which the petitioner was discharged from his service in the Assam Rifles on the ground that he had earned four red ink entries. The petitioner contends that the red ink entries were awarded to him without adhering to the due process of law. It is further alleged that the impugned order was passed without any inquiry, thereby resulting into gross violation of the principles of natural justice.

2. As per the facts projected, the petitioner was appointed as a Rifleman in the Assam Rifles in 1993. In the year 1998 he had successfully completed the commando course and thereafter had completed the physical training course. It is the case of the petitioner, that in 2002, while he was on leave, his grandfather fell seriously ill and subsequently passed away, due to which he had to seek an extension of his leave. The petitioner has pleaded that he had made a telephonic request for the extension which was, however, refused. As a result, there was a delay of ten days in rejoining his duties. The aforesaid delay culminated in a court martial proceedings pursuant to which, the petitioner was sentenced to 28 days of rigorous imprisonment. The said sentencing and imprisonment led to the first red ink entry in his service record.

3. It has been pleaded that in January 2012, while the petitioner was detailed for a physical efficiency test and firing practice, he was hospitalised and advised two weeks of rest. However, the said period was treated as unauthorized absence and another court martial was conducted, which again resulted into a similar penalty of 28 days of rigorous imprisonment, thereby leading to a second red ink entry.

4. The petitioner also submits that in 2015, while he was in transit, he lost his Identity Card and train ticket due to theft. He claims that he had lodged an FIR in this regard. However, the matter was taken in an incorrect perspective and another court martial proceeding was initiated against him, leading to a third red ink entry.

5. Thereafter, in the year 2019, while the petitioner was detailed for Road Opening Patrol (ROP) duty, he was confronted by senior officers, sent to medical examination, and was allegedly found to be intoxicated. The petitioner submits that these allegations are wholly concocted and incorrect and that he was unnecessarily dragged to another court martial proceeding, leading to the fourth red ink entry. Consequently, in September 2019, a show cause notice was issued to the petitioner as to why he should not be discharged from service. The said show cause notice was replied to by the petitioner followed by the impugned order dated 09.04.2020 by which the petitioner was discharged from his duties. It is the aforesaid order of discharge that forms the subject matter of challenge in this present writ petition.

6. I have heard Ms. S. Bora, learned counsel for the petitioner, and also Sh. K. Gogoi, learned Central Government Counsel (CGC).

7. Ms. Bora, the learned counsel for the petitioner, has submitted that the red ink entries were recorded without any reasonable ground or proper basis. She contends that on each occasion, there were proper grounds cited by the petitioner which were not duly considered by the authorities. With regard to the first incident in February 2002, she submitted that the petitioner had applied for leave due to the serious illness of his grandfather. While he was on leave, his grandfather passed away and an extension for leave was sought which was unreasonably denied, leading to a delay in ten days in re-joining duty. She submits that such delay on the part of the petitioner was not intentional and therefore the same does not amount to misconduct. She contends that the first red ink entry was entirely unwarranted and deserves to be interfered with by this court.

8. Coming to the second incident of January 2012, the learned counsel for the petitioner has submitted that the petitioner was hospitalised and was advised two weeks of rest. However, that period was treated as unauthorized absence, and a red ink entry was made. She argues that this entry was baseless and was recorded solely to victimize the petitioner. As for the third incident of 2015, it is submitted that the petitioner lost his Identity Card and train ticket due to theft for which an FIR was duly lodged. Despite this, the matter was treated as

misconduct, and the authorities unjustly gave a third red ink entry. Concerning the fourth incident of 2019, the learned counsel submits that the petitioner was diligently discharging his duty as he was detailed for Road Opening Patrol duty. However, he was falsely implicated of being intoxicated while on duty, leading to the fourth red ink entry. The learned counsel has strenuously denied any such intoxication while on duty.

9. As regards, the impugned discharge order dated 09.04.2020, the learned counsel for the petitioner contends that there has been gross violation of principles of natural justice, as no inquiry was conducted prior to the passing of the discharge order. She further submits that there are no rules in the Assam Rifles that permit discharge on the basis of four red ink entries. It is also contented that in the same organisation, no action has been taken against individuals who have faced as many as nine red ink entries. In support of her contention, the learned counsel for the petitioner relies upon a judgement of the Hon'ble Supreme Court in *AmarendraKr. Pandey Vs. Union of India* [Judgment dated 14.07.2022 in Civil Appeal No. 11473-11474 of 2018] wherein the Apex Court had interfered with a similar nature of grievance. The learned counsel accordingly submits that the Impugned Order of Discharge is required to be interfered with and the petitioner is to be directed to be reinstated in the service.

10. Per Contra, Sh. Gogoi, the learned Central Government Counsel, by referring to the affidavit-in-opposition filed on 04.02.2022, has submitted that the claims made by the petitioner in the writ petition are entirely incorrect. He submits that the red ink entries pertain to the years 2002, 2012, 2015, and 2019. He further submits that the petitioner being fully aware that such red ink entries were made subsequent to court martial proceedings, no objection or challenge was made at that time. It is, therefore, contented that the present challenge made in 2020, is not only belated but also an afterthought.

11. Refuting the submissions that there are no rules prescribed for the discharge of officials in the Assam Rifles, the learned CGC has submitted that the Records Office Instructions No. 1 (ROI No.1) is admittedly applicable to personnel of the Assam Rifles. By drawing the attention of this court to the affidavit-in-opposition, learned CGC has submitted that the said ROI, in clear terms prescribes for issuing a discharge order after four red ink entries. Refuting the allegations of violation of principles of natural justice, he submits that in September 2019, a show cause notice was issued to the petitioner which he had duly replied and only after due consideration of his reply, the impugned order of discharge dated 09.04.2020 was passed.

12. The learned CGC has submitted that all the four red ink entries were preceded by Court Martial proceedings involving serious charges. He puts emphasis on the fact that the Assam Rifles is a disciplined force where strict adherence to discipline is paramount and non-negotiable. With respect to the first red ink entry, he submits that it was imposed due to the petitioner overstaying his leave without sufficient grounds. Regarding the second incident,

the learned CGC submitted that it involved unauthorized absence which again warranted disciplinary action. As for the 2015 incident, he submitted that the same was serious in nature as the petitioner had lost his Identity Card and train ticket and later claimed the same to be a case of theft. Sh. Gogoi further submits that the 2019 incident was particularly grave as the petitioner was found to be intoxicated, while on duty.

13. The learned Central Government Counsel contented that all the allegations were proved in the connected court martial proceedings, leading to penalties and subsequent red ink entries. He argued that the cumulative effect of these red ink entries, as contemplated under the Records Office Instructions No. 1 (ROI No.1), led to the issuance of the impugned discharge order dated 09.04.2020. He, therefore, submitted that no case for interference is made out, and the writ petition is liable to be dismissed. In support of his submissions, the learned CGC relies on the decision of the Hon'ble Supreme Court in Union of India Vs. Balwant Singh, reported in (2015) 14 SCC 389, wherein the applicability of ROI No. 1 to the Assam Rifles was discussed in detail. By drawing the attention of this court to the observations made in paragraphs 12 and 13 of the said judgement, the learned counsel has submitted that there is no manner of any doubt on the source of power to issue such discharge order under the said institution. For ready reference, the aforesaid paragraphs are extracted herein below:

"12. We have given our thoughtful consideration to the submissions advanced at the hands of the learned counsel for the rival parties. Assam Rifles is admittedly a disciplined force, wherein indiscipline would undermine the task entrusted to it. Therefore, indiscipline at that hands of the uniformed personnel of force, cannot be tolerated. Insofar as the present controversy is concerned, after three "Red Ink entries" were issued to the respondent, wherein he was "severely reprimanded", he was issued a notice dated 2.3.2008 informing him that one further "Red Ink entry" would entail discharge from service. The respondent acknowledged the receipt of the aforesaid notice, and undertook to ensure that he would not earn any further "Red Ink entry". And that, in case another "Red Ink entry" was issued to him, he would accept discharge from service. Despite the above, soon after the receipt of the above notice dated 2.3.2008, yet another "Red Ink entry" was issued to the respondent on 11.08.2008. Not only that, even a further punishment was inflicted on the respondent, after the last of the four "Red Ink entries", on 29.12.2008, when he was again severely reprimanded and issued a further "Red Ink entry" on

6.1.2009, for having absented himself without leave and for having been found in an intoxicated state, while on duty, on 29.12.2008.

13. In the above view of the matter, we are of the view, that not only were the parameters depicted in Clause 5 of the ROI 1/2004 fully satisfied, even the Commanding Officer was satisfied that the delinquency of the respondent could be ignored, and as such, the order of discharge dated 7.2.2009 was passed. We find no infirmity in the passing of the above order."

14. Shri Gogoi has also drawn the attention of this Court to the case of Binu D vs. Union of India, decided by this Court on 29.08.2024 in W.P.(C) No. 6293 of 2015, wherein a similar factual scenario, this Court declined to grant relief to the petitioner. He further submitted that in the present case, the petitioner is receiving pension benefits, and therefore, no prejudice of any kind has been caused to him. Sh. Gogoi has also distinguished the case of Virendra Kumar Dubey Vs. Chief of Army Staff, reported in (2016) 2 SCC 627, by pointing out that the in the case no show cause notice was given to the petitioner. Moreover, the case pertains to the Indian Army, while the present matter concerns the Assam Rifles.

15. In her rejoinder, Ms. S. Bora, the learned counsel for the petitioner reiterated that each of the red ink entries were entered illegally without following the due process of law. She has submitted that the case of Balwant Singh(supra) relied upon by the respondents is misplaced, as the same has been clarified and distinguished by the Hon'ble Supreme Court in Virendra Kumar Dubey(supra). She has also brought the attention of this Court to an order dated 26.02.2024, passed by this Court in W.P. (C) 4348 of 2020. The learned counsel has also submitted that a rejoinder affidavit has been filed on 06.02.2025.

16. The rival contentions of the learned counsel for the parties have been duly considered and the materials available on record have been duly examined.

17. The order impugned in the present writ petition is the order of discharged dated 09.04.2020. Since the power/ jurisdiction itself is one of the issues raised by the petitioner, it would be necessary to address that aspect first. The petitioner has contended that there is no authority to issue a discharge order solely based on red ink entries. This Court has however noticed that the Records Office Instructions No. 1 (ROI No.1), in clear terms, lays down such powers. The aforesaid power has also been the subject matter of discussion by the Hon'ble Supreme Court in the case of Balwant Singh (supra),the relevant observation of which has already been extracted above. From the aforesaid decision, there is no ambiguity at all that the Assam Rifles has the authority to issue discharge orders on the basis of four red ink entries.

18. This brings us to the contention of the petitioner questioning the discharge order. As observed above, there is no ambiguity regarding the power of the authorities to issue such discharge order, which may be passed on the basis of four red ink entries. In the present case, the four red ink entries were occasioned in April 2002, January 2012, 2015 and 2019. Admittedly, the aforesaid red ink entries and the connected court martial proceedings were not subject matters of challenge. Even in the present writ petition, there is no specific challenge to those red ink entries. The petitioner has submitted that the allegations on the basis of which the court martial proceedings were initiated, subsequently leading to penalties and the issuance of red ink entries are not in accordance with law. This Court is, however, of the opinion that the legality or otherwise of those proceedings cannot be raised after such an inordinate delay and further in this

petition, the challenge is only with regard to the impugned discharge order dated 09.04.2020.

19. In Balwant Singh(supra) which has been discussed in detail above, Records Office Instructions No. 1 (ROI No.1)was extensively analysed, and it was held to confer the requisite authority for such discharge. The reliance of the petitioner in the case of Virendra Kumar Dubey(supra)by contending that Balwant Singh (supra) was held to be inapplicable is misplaced, as in Virendra, no show-cause notice was issued to the petitioner. However, in the instant case, show-cause notice was issued to the petitioner.

20. This Court has also perused the order dated 28.08.2024 passed by this court in the case of Binu D(supra), in which the writ petition was dismissed on similar grounds and therefore, there is no occasion to take a different view for the instant case. The reliance on the order dated 26.08.2024 passed in W.P.(C) 4348 of 2020 would not persuade this Court to take a different stand in view of the opinion expressed in Binu D(supra). This Court has also noted that the petitioner in the present case is receiving pension as he had completed the qualifying service period. In contrast, in the cases relied upon by the petitioner, the incumbents were not granted pension, and that was a key consideration for the relief granted therein.

21. In view of the aforesaid facts, circumstances and the discussions made above, this Court is of the considered opinion that no case for interreference is made out and the writ petition is accordingly dismissed.

22. There shall be no order as to costs.