

(2016) 06 MEG CK 0003
In the Meghalaya High Court
Case No : Writ Petition (C) No. 288 of 2015

Shri. Bal Krishan Yadav

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 16-06-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 4 NEJ 520

Hon'ble Judges : Mr. S.R. Sen, J.

Bench : Single Bench

Advocate : Mr. N. Mozika, CGC, for the Respondents; Mr. S. Chakrawarty, Sr. Advocate and Ms. M. Mahanta, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Mr. S.R. Sen, J. - Heard Mr. S. Chakrawarty, learned Sr. counsel, assisted by Ms. M. Mahanta, learned counsel for and on behalf of the petitioner and also Mr. N. Mozika, learned CGC for and on behalf of the respondents.

2. The petitioner's case in a nutshell is that:

"The petitioner was recruited as a General Duty (Rifleman) personnel with the Assam Rifles with effect from 10.12.2008, having the AR No. G/5016887K/Rect/GD (Rifleman) and he was sent for training. His enrolment was done after being duly examined by the authorised and competent medical examiner.

Initially the petitioner was sent for training at Lakhimpur and in February, 2009, he was sent from there to Varanasi at the 39 GTC. Upon being released from Varanasi in September, 2009, he returned for his training at Lakhimpur. Thereafter, in September, 2009 only he was sent to Shillong for his medical check up. During his check up at Shillong, the petitioner was asked to go on rest for medical treatment and recuperation. After completing his treatment the petitioner came to Shape-1 in April, 2010, and he was not taken ill anymore. Subsequently, the petitioner was discharged from service in the Assam Rifles

with effect from 31.08.2010, by the Discharge Certificate dated 24.08.2010, on the sole ground that his stay at the Assam Rifles Training Centre and School was exceeding 24 months.

The petitioner could not immediately seek legal redressal on account of his condition of extreme impoverishment. Now, the petitioner has somehow garnered the means to come and file this instant petition as he has learnt that the identical discharged of another contemporary recruit has been set aside by this Honourable High Court by the judgments and orders dated 13.02.2014 in the Writ Petition (Civil) No. 208 of 2013 and dated 26.02.2015 in the Writ Appeal No. 25 of 2014.

The Discharge Policy of recruits of Assam Rifles does not specifically stipulate that if any recruit stays for more than 24 months at the Assam Rifles Training Centre and School than he use to be compulsorily discharged.

Now the humble petitioner is most respectfully praying before this Honourable High Court that his discharged from Assam Rifles may also be kindly set aside and quashed with directions to the respondents to take the petitioner back in service."

3. Mr. S. Chakrawarty, learned Sr. counsel submitted that the petitioner joined his service in Assam Rifles as Rifleman on 10.12.2008 and was sent for training at Lakhimpur in the year 2008. Thereafter, he was sent to Varanasi in February, 2009 at 39 GTC for further training programme; and completed the training and came back to Lakhimpur in the month of September, 2009 from where he was sent back to Shillong for medical checkup where he was advised to take rest. In the month of April, 2010, he was declared as Shape-1 and went back to the training. On 31.08.2010 he was then discharged on a flimsy ground and the Discharge Certificate is at annexure - 1 page 16.

4. On the other hand, Mr. N. Mozika, learned CGC in reply submitted that the petitioner approached the Court late and besides that, the petitioner failed in most of the examinations. In further reply, Mr. S. Chakrawarty, learned Sr. counsel pointed to para 12 and 13 of the affidavit filed by the respondents.

5. After hearing the submission advanced by the learned counsels for the parties, two crux issues came up for redressal before this Court:

- (i) Whether the petitioner was discharged on valid ground;
- (ii) Whether the petitioner failed in all the examinations?

6. At the onset, I noted that the instant case is covered by the judgment and order dated 13.02.2014 passed in WP(C) No. 208/2013 as well as WP(C) No. (SH) 43/2011. In the said judgments, this Court clearly noted that "I have perused the discharge policy, and on perusal of the discharge policy, it appears to me that the same is not mandatory but discretionary, because the work "can be" has been used in the heading." Para 4 and 5 of the judgment of WP(C) No.

208/2013 reads as follows:

"4. I have perused the discharge policy, and on perusal of the discharge policy, it appears to me that the same is not mandatory but discretionary, because the word "can be" has been used in the heading. I have also perused the discharge certificate issued by the respondent where I have noticed the ground for discharge at Annexure-II page 13 where the grounds of discharge has been noted as "Stay at ARTC & S exceeding 24 months". In a similar type of case this court has passed one judgment in WP(C) No. (SH) 43 of 2011. I reiterate my view once again to further clear the mind of the respondent.

5. After hearing the submissions advanced by the learned counsel at the Bar and after going through the discharge policy as well as the discharge certificate, I find that the sole ground for discharge is "Stay at ARTC & S exceeding 24 months". I could not understand how a person can be discharged simply because he had to stay at ARTC & S exceeding 24 months due to illness. The respondent concerned should remember that even a very healthy and strong man can fall ill, and that does not mean or enough ground to discharge him from service."

7. In this present writ petition on perusal of annexure-1 at page 16, same stand has been taken by the respondents as taken earlier in WP(C) No. 208/2013 as well as WP(C) No (SH) 43/2011 i.e?. "Stay at ARTC & S exceeding 24 months". Therefore, I do not find any new ground to further consider the case. I reiterate once again that there is no impediment arising before the authority not to allow the petitioner to continue the training. The respondents are bound to allow the petitioner to continue further training where the grounds are genuine and the intention is clear on the part of the petitioner. He should be given certain relaxation and must remember that laws and rules are made for people, people are not made for laws. Nothing has appeared from the record also that the petitioner has failed in all the examinations. Therefore, the said issues can not be taken up for consideration.

8. WP(C) No. 208/2013 was challenged before the Division Bench of this Court and the Hon'ble Division Bench of this High Court has upheld the same in the judgment dated 26.02.2015 passed in WA. No. 25/2014. Para 14 of the said judgment reads as follows:

"14. We had given anxious consideration to the object to be achieved in issuing the said executive instruction/policy decision i.e. more particularly para 21, which had been quoted above in extenso keeping in view of the ratio laid down by the Apex Court in the cases aforementioned and we are of the considered view that "the case of the appellants/respondents in the present writ appeal that the period of 24 (twenty four) months for completing the training is rigid and should be followed mandatorily in all the cases and consequences of failure to complete the training within the said period of 24 (twenty four) months would be mandatory discharge of the trainee from service" is not sustainable. Accordingly, the only ground for assailing the impugned judgment and order of the learned

Single Judge dated 13.02.2014 is not entertained. Hence the writ appeal is devoid of merit."

9. Ground of discharge in the case in hand is also stay at ARTC & S exceeding 24 months. Nothing has been placed to show that the petitioner failed in his examination.

10. Therefore, for the reasons discussed above, I find that the decision taken by the respondents is arbitrary and irregular and has no leg to stand. Hence, the discharge certificate i.e. annexure-1 is hereby set aside and the respondents authorities are directed to re-instate the petitioner forthwith and to allow him to continue the rest of his training.

11. With this observation and direction, the instant writ petition is allowed and stands disposed of.