
(2014) 09 MEG CK 0014

In the Meghalaya High Court

Case No : W.A. No. 27/2013 in W.P. (C) No. 307/2011 and W.A. No. 51/2013 in W.P. (C) No. 17/2013

The Union of India

APPELLANT

Vs

Rupesh Suryavanshi

RESPONDENT

Date of Decision : 03-09-2014

Acts Referred:

Assam Rifles Act, 2006 — Section 11, 11(2)

Citation : (2014) 4 GLT 949

Hon'ble Judges : Uma Nath Singh, Acting C.J.; T. Nandakumar Singh, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Uma Nath Singh, Actg. C.J.

1. Heard learned counsel appearing for parties and perused the record of writ appeals.

2. This order shall also dispose of similar Writ Appeal No. 51/2013 listed today. One and only question that needs to be addressed has already been concluded vide a Judgment dated 29.08.2011 passed by Division Bench headed by one of us (T.N.K. Singh, J) in WA No. (SH)33/2011, wherein it has been held that the discharge order in terms of Section 11(2) of the Assam Rifles Act, 2006 (for short "the Act of 2006") has to be passed by a Deputy Inspector General of Assam Rifles and not by a Commandant. For easy reference, Section 11 of the said Act of 2006 is reproduced herein below:-

"11. Dismissal, removal or reduction by Director-General and by other officers.-

(1) The Director-General, Additional Director-General or any Inspector-General may dismiss or remove from service or reduce to a lower grade or rank or the ranks any person subject to this Act other than an officer.

(2) An officer not below the rank of Deputy Inspector-General may dismiss or remove from the service any person under his command other than an officer or

a subordinate officer of such rank or the ranks as may be prescribed.

(3) Any such officer as is mentioned in sub-section (2) may reduce to a lower grade or rank or the ranks any person under his command except an officer or a subordinate officer.

(4) The exercise of any power under this section shall be subject to the provisions of this Act and the rules and regulations."

3. In the judgment/order passed by Division Bench as referred to herein above in Writ Appeal No. (SH)33/2011, the issue has been discussed in the light of various judgments of Hon"ble the Apex Court which may now need no further elucidation. The judgment dated 29.08.2011 passed in WA No. (SH)33/2011 is also reproduced for ready reference as under:-

"29.08.2011

(T.N.K. Singh, J)

Heard Mr. S.C. Shyam, learned counsel for the appellants-respondents in the writ petition.

This appeal is directed against the judgment and order of the learned Single Judge dated 20.07.2011 allowing Writ Petition (C) No. (SH) 148 of 2010 filed by the respondent-writ petitioner, assailing the order dated 09.02.2010 issued by the Commanding Officer for dismissing the writ petitioner from service for the simple reason that u/s 11(2) of the Assam Rifles Act, 2006 the Deputy Inspector General is the competent authority for dismissing Rifleman (General Duty).

The only ground for filing the present writ appeal is that if the relief sought for by the respondent-writ petitioner in WP(C) No. (SH) 148/2010 is allowed on the ground that the Commandant is not the competent authority for dismissing Rifleman, a flood gate will be opened inasmuch as many Riflemen had been dismissed from service by the Commandant. We have also perused Section 11(2) of the Assam Rifles Act, 2006 and it is clear that the Deputy Inspector General is the competent authority for dismissing the Riflemen (General Duty).

Such being the situation, we are of firm view that dismissal order dated 09.02.2010 issued by the Commandant is illegal inasmuch as he is not competent authority for issuing dismissal order of the Riflemen (General Duty), and the Deputy Inspector General is competent authority.

It is fairly well settled that door of justice cannot be closed to the citizens only on the ground that relief sought for, if granted will open the flood gate. Regarding this point, reference may be made to the decisions of the Apex Court in (1) Guruvayur Devaswom Managing Commit. and Another Vs. C.K. Rajan and Others, (2) Zee Telefilms Ltd. and Another Vs. Union of India (UOI) and Others, and (3) Coal India Ltd. and Others Vs. Saroj Kumar Mishra, .

For the foregoing reasons we are in complete agreement with the judgment and

order of the learned Single Judge dated 20.07.2011 allowing WP(C) No. (SH) 148 of 2010 for setting aside the dismissal order dated 09.02.2010 issued by the incompetent authority i.e. Commandant.

Accordingly, this writ appeal is devoid of merit and dismissed.

Mr. Shyam, learned CGC appearing for the appellants prays for extending time for compliance with the directions mentioned in the impugned judgment and order dated 20.07.2011. Taking into consideration of the prayer and also the peculiar circumstances of this case, further two months" time is granted for complying direction of this court (learned Single Judge) in the judgment and order dated 20.07.2011 from today."

4. Moreover, the above judgment/order dated 29.08.2011, has also been affirmed by the Hon"ble Apex Court vide the order of dismissal dated 06.02.2012 passed in SLP No. 2164 of 2012 filed by appellants-Union of India against the order dated 29.08.2011 of Division Bench as referred to herein above. In this view of the matter, learned counsel for appellants-Union of India, has no valid case to advance. Thus, these appeals are dismissed and disposed of in terms of the aforesaid judgment and order dated 29.08.2011.