
(2015) 07 SC CK 0111

In the Supreme Court Of India

Case No : Civil Appeal No. 5616 of 2015 (Arising from SLP (C) No. 12917/2012)

Union of India and Others

APPELLANT

Vs

Balwant Singh

RESPONDENT

Date of Decision : 22-07-2015

Acts Referred:

Assam Rifles Act, 1941 — Section 4, 4(3)

Citation : (2015) 2 ESC 372 : (2015) 8 SCALE 201 : (2015) 7 SCJ 314 : (2015) 3 SCT 600

Hon'ble Judges : J.S. Khehar, J;A.K. Goel, J

Bench : Division Bench

Advocate : R. Balasubramanian, Madhvi Divan, Rashmi Malhotra and Santosh Kumar, Advocates for B. Krishna Prasad, AOR, for the Appellant; Avijit Bhattacharjee and Upma Shrivastava, Advocates for the Respondent

Final Decision : Allowed

Judgement

J.S. Khehar, J—The Respondent was inducted into the service of the Assam Rifles as a Rifleman on 25.11.1991. He claims to have discharged his duties to the absolute satisfaction of his superiors, and earned promotions to higher ranks till 2007, when he came to hold the rank of Havaladar. Whilst holding the rank of Havaladar, he was issued a show cause notice dated 27.08.2008 informing him, that he had earned four "Red Ink entries", and asking him why he should not be discharged from service. The aforesaid show cause notice relied upon certain provisions of the Assam Rifles Act, 1941, besides the Assam Rifles Manual, and also Clause 5 of the Record of Office Instructions 1/2004 (hereinafter referred to as the "ROI 1/2004").

2. In the show cause notice, the Respondent was intimated, that he had earned nine punishments which included five "Red Ink entries" and "four Black Ink entries". The details of the disciplinary action taken against the Respondent has been depicted in a compilation, which is a part of the record of the case, and is being extracted hereunder:

It is relevant to mention, that the four "Red Ink entries" taken into consideration, insofar as the show cause notice dated 27.08.2008 is concerned, are depicted at serial Nos. (d), (e), (g) and (h) of the above compilation. The details of the cause/action, why the above punishments were inflicted on the Respondent (at serial Nos. (d), (e), (g) and (h)), have also been expressed in the pleadings. Insofar as the punishment at serial No. (d) is concerned, the same came to be imposed on the Respondent on account of the fact that on 23.07.2007, while he was on "motor vehicle check post duty" at 19:50 hrs., he was found in an intoxication state. Insofar as the punishment at serial No. (e) is concerned, it was pointed out, that the Respondent was again found in an intoxicating state, while on "platoon training duty" at Diphu on 07.10.2007 at 20:45 hrs. The third punishment at serial No. (g) was imposed on the Respondent, on account of his having overstayed leave, granted to him, for a period of eighteen days. The last of the above punishments, depicted at serial No. (h), was imposed on the Respondent, on account of the fact, that he was again found in an intoxicated state on 11.08.2008 at 17:00 hrs., while on "road opening party duty".

3. In addition to the factual position, indicated hereinabove, learned Counsel for the Appellants highlights the fact, that after the first three "Red Ink entries" were recorded against the Respondent, a notice dated 2.3.2008 was issued to him, informing the Respondent, that he had already been issued three "Red Ink entries", and that he was liable to be discharged from service, in case one further "Red Ink entry" is recorded. The Respondent submitted a reply thereto, undertaking not to commit any further delinquency, and acknowledging, that in case one further "Red Ink entry" was issued to him, he may be discharged from service.

4. In response to the show cause notice dated 27.08.2008, which was issued to the Respondent after the fourth "Red Ink entry" was recorded on 26.08.2008, the Respondent submitted a reply acknowledging the entire factual position depicted in the show cause notice. It is therefore, that an order of discharge dated 7.2.2009 was passed. In the above order of discharge, it was mentioned, that the action had been taken against the Respondent, inter alia, Under Clause 5 of ROI 1/2004, as it had been concluded, that he was an "incorrigible offender". Despite having so concluded, he was held entitled to pension and gratuity, as were admissible under the rules.

5. Dissatisfied with the order of discharge, the Respondent addressed a representation dated 20.04.2009 to the Director General, Assam Rifles. The aforesaid representation was rejected by an order dated 8.5.2009. The Respondent assailed all the adverse orders passed against him, by filing Writ Petition No. 167(SH) of 2009 before the Gauhati High Court. The aforesaid writ petition was dismissed by a learned Single Judge on 22.4.2010. The Respondent then preferred Writ Appeal No. (SH)54 of 2010, which was allowed by an order dated 2.11.2011. The instant special leave petition was filed by the Union of India and others, so as to assail the order passed by the Division Bench on

2.11.2011.

6. Delay condoned. Leave granted.

7. A perusal of the impugned order reveals, that the Division Bench of the High Court did not find any serious fault with the impugned order passed by the learned Single Judge, except that it was felt, that the punishment imposed upon the Respondent was disproportionate, when compared to the charges on which the four "Red Ink entries" had been recorded. To appreciate the basis of the directions, and the nature of the direction issued by the High Court while disposing of the writ appeal filed by the Respondent on 2.11.2011, we find it just and appropriate to extract paragraphs 18 and 19 of the order passed by the Division Bench:

18. Bearing in mind the long service career that the delinquent was left with in the Organization and considering the serious hardship that the family would suffer when the bread earner is discharged at the age of 35 years after 17 years of service and also taking into consideration the discretionary nature of the power Under Clause 5 of the Record Office Instructions (ROI) and taking into account the nature of the 4 violations for which the red ink entries were given, we feel that a penalty which will not result in discontinuation of service, would better serve the cause of justice. In the context of the charges, we feel that the punishment is disproportionate and the disciplinary authority should have inflicted a lesser punishment to the delinquent, so that he could continue in service.

19. Consequently we feel inclined to interfere with the impugned order(s) of 07-07-2009 and 08-05-2009 and accordingly the same are set aside and quashed. The Petitioner is ordered to be reinstated in service subject to assessment of his physical fitness. However, the Respondents are at liberty to impose any lesser punishment balancing the interest of the organization and also of the delinquent. Accordingly we interfere with the impugned judgment of 29-11-2010 and allow this Appeal without any order of cost.

8. During the course of hearing, learned Counsel for the Appellants supported the impugned order of discharge dated 7.2.2009, merely on the strength of Clause 5 of the ROI 1/2004. The same is being extracted hereunder:

5. Discharge/Disposal of Undesirable/Inefficient Personnel: Vide Chapter VIII, Rule 24 of the Assam Rifles Manual confers powers on the commandants of Assam Rifles Battalion to discharge any members of the Assam Rifles below the rank of Nb/Sub. This power may be exercised by a Commandant in case where a person has got four or more red ink entries. In case, it is necessary to send an individual on discharge under this provision, a notice will be served on the individual affording an opportunity to him to explain his case. Thereafter the complete case will be forwarded to Sector HQ along with the notice and reply received from the individual, for the approval of the Sector Commander. Thereafter the documents will be sent to this Directorate, Record Branch/UPAO

for final settlement of his IRLA.

Referring to the above clause, it was the contention of the learned Counsel for the Appellants, that before an order of discharge could be passed by the Commandant, there were certain perquisites which included that a notice need to be served to the concerned individual, affording him an opportunity to explain his case. Upon receipt of his reply and the determination of the issue, the complete case need to be forwarded to the Sector Headquarter (along with the notice and the reply, for approval at the hands of the Commander), and finally all the documents were to be sent to the Directorate, Record Branch/UPAO for final settlement of the "individual running ledger account". It was submitted by the learned Counsel for the Appellants, that all the necessary perquisites were complied with, and more particularly, the show cause notice dated 27.8.2008 was issued to the Respondent, and action was taken against the Respondent, only upon his having submitted a reply thereto. It is also the contention of the learned Counsel for the Appellants, that in the reply filed by the Respondent, he had admitted the factual position, namely, the recording of four "Red Ink entries", which constituted the basis for the show cause notice for discharge, issued to him.

9. Despite the satisfaction of the terms and conditions of discharge emerging from Clause 5 of ROI 1/2004, it was the contention of the learned Counsel for the Respondent, that it will be unfair and unjust to discharge the Respondent from service, on account of his unblemished record of service, including the fact that he had been selected for participation in the Republic Day contingent for three consecutive years, besides that, he had also earned laurels for having captured militants and recovered arms and ammunitions. Additionally, it was the contention of the learned Counsel, that the Respondent had discharged unblemished service selflessly by risking his life on various occasions, only with the object of obediently discharging the duties assigned to him.

10. The second contention advanced at the hands of the learned Counsel for the Respondent, was of discrimination. It was the contention of the learned Counsel for the Respondent, that one Jose Nedum Joseph, who was dismissed from service, had approached the High Court by filing Writ Petition (C) No. 2099 of 1999, and the order of dismissal from service inflicted upon him, was reduced to that of discharge. It was submitted, that the afore-stated Jose Nedum Joseph was alleged to have committed delinquencies relating to cheating, indiscipline, and such actions, where the safety of the unit was compromised. Additionally, the aforesaid Jose Nedum Joseph was also accused of insubordination. It was the contention of the learned Counsel for the Respondent, that as compared to the delinquency alleged against the afore-stated Jose Nedum Joseph, the charges levelled against the Respondent were only, that of having been found intoxicated while on duty on three occasions, and absent from duty without leave on one occasion. It was submitted, that none of the above charges compromised the security of the unit, and as such, the punishment of discharge was highly

disproportionate to the accusations levelled against him.

11. 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.

12. 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.

13. Another basis, for concluding the issue in favour of the Respondent by the Division Bench was, that while exercising the power to discharge, the competent authority had not complied with the mandate contained in Sub-section (3) of Section 4 of the Assam Rifles Act. Section 4, relied upon by the High Court, is being extracted hereunder:

4. APPOINTMENTS AND DISCHARGE

1.) The appointment of all riflemen shall rest with the Commandant.

2.) Before any person is appointed to be a rifleman, the statement in the Schedule shall be read and if necessary explained to him in the presence of a Magistrate, Commandant, and shall be signed by him in acknowledgment of it's having been so read to him.

3.) A rifleman shall not be entitled to be discharged except in accordance with the terms of the statement which he has signed under this Act or under the Assam Rifles Act, 1920.

14. Learned Counsel for the Appellants vehemently contended, that Sub-section (3) of Section 4, referred to by the High Court, is inapplicable in a situation where the discharge is to be ordered by the employer. According to the learned

Counsel, Sub-section (3) of Section 4, would be applicable when the concerned employee claims discharge after having rendered specified service, as depicted in "The Schedule Statement", appended to the Assam Rifles Act, namely, four years of service in the first instance.

15. We find merit in the contention advanced at the hands of the learned Counsel for the Appellants. In a case of discharge by the employer, namely, the Assam Rifles, Sub-section (3) of Section 4 has no applicability. A collective perusal of Section 4 extracted above, and "The Schedule Statement" appended to the Assam Rifles Act, leaves no room for any doubt, that the provisions of the Act also vest an option with the employees governed by the Act to seek discharge from service. Section 4(3) is the pointed provision. As such, it is imperative for us to hold, that the Division Bench of the High Court erroneously concluded, that the punishment in the present case, could not have been supported on the basis of the powers given to the Commandant, Under Section 4 of the Assam Rifles Act.

16. Insofar as the issue of discrimination is concerned, insofar as the instance of Jose Nedum Joseph has been cited on behalf of the Respondent, we find no comparison thereof with the delinquency alleged against the Respondent. Firstly, because Jose Nedum Joseph was originally ordered to be dismissed from service. The High Court had reduced the order of punishment of dismissal to that of discharge. In the instant case, on account of the compliance of the provisions of Clause 5 of ROI 1/2004, the Respondent was merely discharged from duty. The order of discharge was in compliance with the provisions made by the authorities. Moreover, it cannot be accepted that the Respondent did not compromise the safety of his unit, whilst he was found to be in an intoxicated state while on duty. It is quite another matter, that no incident occurred at the time, when the Respondent was found to be intoxicated. The plea of discrimination is accordingly unacceptable.

17. For the reasons recorded hereinabove, we are satisfied that the impugned order passed by the Division Bench of the High Court dated 2.11.2011 deserves to be set aside. Ordered accordingly.

18. The instant appeal is accordingly allowed. The parties shall bear their own costs.