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**(2018) 07 UK CK 0126**

**In the Uttarakhand High Court**

**Case No : Writ Petition (S/S) No. 1256 of 2004**

Virendra Singh Rawat

APPELLANT

Vs

Union of India and others

RESPONDENT

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**Date of Decision : 24-07-2018**

**Acts Referred:**

Assam Rifles Act, 1941 — Section 4

Assam Rifles Act, 2006 — Section 6, 168

**Citation : (2018) 07 UK CK 0126**

**Hon'ble Judges : SUDHANSHU DHULIA, J**

**Bench : Single Bench**

**Advocate : Ravi Babulkar, Rajesh Sharma**

**Final Decision : Allowed**

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## **Judgement**

SUDHANSHU DHULIA, J. (ORAL)

1. The petitioner before this Court, when he was barely 21 years of age, was recruited as a Rifleman in Assam Rifles. The date of enrollment of the

petitioner as a trainee is of 27.05.2001. He was thereafter posted at Dimapur, Nagaland. All this was done after a due selection process, which

included his medical examination. While the petitioner was at Dimapur, he underwent another medical examination where it was found that there is a

fine tremor in both his hands. Thereafter the petitioner was discharged from services on 31.10.2001 on medical grounds. The discharge

order shows that the petitioner was discharged as a trainee bearing No. TC-61643/GD, namely, Birendra Singh.

2. As the petitioner hails from the hills in Uttarakhand, he returned to his village at District Tehri Garhwal, awaiting his pension. The petitioner then

received a letter on 18.08.2002 from the Assistant Commandant, Training Officer,

P.S. Dimapur (Nagaland), informing the petitioner that the Directorate General, Assam Rifles has approved his disability pension on medical grounds. By this letter dated 18.08.2002, the petitioner was advised to report at the Assam Rifles Training Centre and School at Dimapur (Nagaland) alongwith certain documents, including 6 copies of photograph, bank account number, family particulars, etc. The order dated 18.08.2002 says that a minimum pension is fixed for him which is Rs. 2,500/- (Rupees Two Thousand Five Hundred only) per month. All the papers as requested by the Department were sent by the petitioner. Thereafter he was informed by another letter dated 21.11.2002 that in case the petitioner has already reported to Assam Rifles Training Centre and School, Dimpur (Nagaland), he is not required to report again to Assam Rifles Training Centre and School. The petitioner, however, did not receive any pension, but a letter dated 15.09.2003 from the Asst. Commandant, Training Officer, Assam Rifles Training Centre and School, Dimapur, which said that it was found that petitioner was unfit for service due to fine tremor of both hands and that this medical condition is not attributable to the services in Assam Rifles and, moreover, as his percentage of disability is also NIL, he is not entitled for any medical or disability pension. The letter dated 15.09.2003 further states that the earlier letter dated 18.08.2002 by which his pension was fixed was inadvertently issued, and is therefore being cancelled. Later another letter was received dated 23.09.2003 from the Record Officer, Directorate General Assam Rifles, Shillong, which reiterates that the medical condition of the petitioner is not attributable to services in Assam Rifles and therefore he is not liable to be given any disability pension and all he is entitled to get is a sum of Rs. 1,525/- (Rupees One Thousand Five Hundred Twenty Five only) as gratuity. Aggrieved, the petitioner has filed the present writ petition.

3. The prayer of the petitioner is for quashing of the order dated 23.09.2003 and for a mandamus to the respondent authority to give him his disability pension.

4. During the course of argument, another prayer has been made by the petitioner that in case it is not being done, and in the alternative the order of discharge be quashed and he may be taken back in service, with entire past benefits and arrears of salary, etc.

5. At the time when the petitioner was recruited in Assam Rifles, the Act governing the service conditions of the petitioner was the Assam Rifles

Act, 1941 (from hereinafter referred to as the Act of 1941). Section 4 of the Act of 1941 speaks about appointment and discharge, which

reads as under:-

4. Appointment and discharge. (1) The appointment of all rifleman 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 or Assistant Commandant, and shall be signed by him in acknowledgement of its 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.

6. Whereas the case of the petitioner is that he was enrolled in services of the Assam Rifles as a rifleman, the case of the respondent Union of India

is that the appointment of the petitioner was only provisional and he was appointed as a trainee.

7. The fact that the petitioner was a trainee is not in dispute. The only question is whether the appointment of the petitioner was provisional in nature.

The Act of 1941 does not speak about a provisional appointment at all. Moreover, this Act has been repealed by the Assam Rifles Act, 2006, which

also does not speak about any provisional appointment, rather Section 6 of the Act of 2006 says that a person who has, for a continuous period of

three months, been in receipt of pay as a person enrolled under this Act and borne on the rolls of the Force shall be deemed to have been duly

enrolled.

8. Learned counsel for the petitioner would say that though by the Act of 2006, the Assam Rifles Act, 1941 has been repealed but the provisions of

Act of 2006 will also be applicable in terms of Section 168 of the Act of 2006, which reads as under:

168. Repeal and savings.

(1) The Assam Rifles Act 1941 is hereby repealed.

(2) Notwithstanding such repeal, -

(a) the Assam Rifles in existence at the commencement of this Act and constituted under the Act so repealed shall be deemed to be reconstituted

under this Act;

(b) members of the Assam Rifles in existence at the commencement of this Act and appointed under the Act so repealed shall be deemed to have

been appointed or, as the case may be, enrolled as such under this Act;

(c) any appeal, application, trial, inquiry or investigation pending immediately before the commencement of this Act shall be disposed of, continued,

held or made, as the case may be, in accordance with the provisions of the Assam Rifles Act, 1941, as if this Act had not come into force;

(d) any thing done or any action taken before the commencement of this Act, in relation to any person appointed or enrolled, shall be valid and as

effective in law as if such thing or action was done or taken under the corresponding provisions of this Act.â??

9. Be that as it may, the fact remains that before the discharge, the petitioner was getting the salary of a rifleman for a period of five months.

Moreover, the discharge order says that the petitioner was enrolled on 27.05.2001 and discharged on 31.10.2001. The order of discharge is self-

explanatory, which is a proof of the fact that petitioner was enrolled in Assam Rifles as â??riflemanâ?, and only a person who is enrolled in service

can be â??dischargedâ?, as the petitioner was vide order dated 31.10.2001.

10. As far as the medical condition of the petitioner is concerned, all the discharge order says that there is a â??fine tremor in both handsâ? of the

petitioner. It does not specify as to what is the cause of this â??fine tremorâ? although the respondents have categorically stated that the petitioner

was put before a specialized medical board and it was the opinion of the Board that as the petitioner has a â??fine tremor of both handsâ?, he is liable

to be discharged on medical ground. Even at the stage when discharge was made, there was no thought given by the respondents for assigning the

petitioner a non-combatant or sedentary post within Assam Rifles, as is usually done in such cases. Whether the discharge of the petitioner was

justified or not is a different aspect but, as initially an approval was granted by the highest body of the Assam Rifles i.e. the Directorate General for

the grant of disability pension to the petitioner, its recall without assigning any reason is arbitrary and illegal. The letter dated 18.08.2002 is quoted

verbatim as under:

240022(A)/2003-Trg/3541  
18 Aug 2002

Ex TC No. 61643 RECT./ GD

Birendra Singh

S/o Shri Rama Singh

Vill " Milya Gaon

P.O. " Amni

Dist " Tehri

(Uttaranchal)

#### PENSION CLAIM PAPERS OF DISCHARGE RECRUITS

1. It is to inform you that Directorate General Assam Rifles has approved disability pension to you on medical ground. You are hereby advice to report

Assam Rifles Training Centre and School, Dimapur (Nagaland) alongwith following documents for making and signing of pension claim papers:-

1.

(a) Single photographs - 06

copies

(b) Joint photographs (for married Pers only) - 06 copies

(c) Single bank account number in a nationalized bank of their locality, name of bank with code number and place of payment.

(d) Family particulars with date of birth

(e) Discharge cert issued by this officer

2. It is also informed you that minimum pension will be allowed Rs. 2,500/- per month.

3. No TA/DA and fooding/lodging will be provided by this centre and school.

(R R Sharma)

Asst. Comdt

Training Officer

For Commanding Officer

11. The petitioner was not given any pension, and without assigning any reasons

or giving any opportunity of hearing to the petitioner following orders were passed on 15.09.2003 and 23.09.2003 which read as under:

I.240022(A)/2003-Trg/3541 dated 15 Sep 2003

Ex TC No. 61643 Rect./GD

Birendra Singh

S/o Shri Rama Singh

Vill "Milya Gaon

P.O. "Amni

Dist "Tehri (Uttaranchal)

#### DISABILITY PENSION

It is to inform you that your case has been examined thoroughly and as per Medical Board proceeding, it is seen that during confirmatory medical

examination you were found unfit due to Fine Tremor of both hands. Therefore, you were once again referred to 165 Military Hospital on 02.07.2001

and found UNFIT. More over your disease is not connected with service and your percentage of disability is NIL. Since your disability is neither

attributable nor aggravated due to Assam Rifles service, hence, you are not entitled to any disability pension as per CCS (EOP) Pension Rules.

2. In view of the above, it is regretted that No action can be taken by this centre for admitting any pension in your favour and our letter No.

I.240022(A)/2002-Trg/3448 dated 18 Aug 2002 which was inadvertently issued is hereby cancelled.

(R R Sharma)

Asst. Comdt

Trg Officer

Offg Commandant

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No. TC-61643/ARTC&S-836/NE-III 23 Sep 2003

Shri Birendra Singh

Ex NO. TC-61643 Rect/GD

Vill "Mkilya Gaon

P.O. Amni

Dist. Tehri Garhwal

Uttaranchal

## DISABILITY PENSION

1. Reference your application dt. 07-08-2003.

2. It is to inform you that you were enrolled in Assam Rifles on 27-5/201 and discharged from service on Medical ground wef 31-10-2001. You were

referred to 165 MH for confirmatory Medical examination and declared a case of fine tremor of both hands by the Classified Specialist (Medicine) of

165 MH on 02-7-2001 and had been recommended unfit for further service.

3. Based on the specialist recommendation a constituted Medical Board was held on 18.08.2001. As per the opinion of the medical board proceedings

your disability is not attributable or aggravated in the service condition and disability percentage is also nil. You are not entitled to get disability pension

under the provision of CCS (EOP) Rules.

4. You are entitled to get service gratuity for Rs. 1525/-. Same had already been sanctioned.

(E Lyngdoh)

Record Officer

For Colonel (Records)â??

12. In the order dated 15.09.2003, it has been said that earlier order dated 18.08.2002 was passed due to inadvertence and is hereby cancelled. This is

totally arbitrary and in violation of the principles of natural justice and fair play.

13. In view of the above, order dated 15.09.2003 and 23.03.2003 are hereby quashed. Writ petition is allowed.

14. Normally under these circumstances, this Court would have directed the respondents to take back the petitioner in service with full back wages,

but considering that it is a para military force, this would not be in the best interest of the public or the Assam Rifles. In the alternative, however, the

petitioner is in any case entitled for the pension which was calculated by order dated 18.08.2002 i.e. Rs. 2,500/- (Rupees Two Thousand Five Hundred

only), which shall be subject to the normal increase of pension which the petitioner was liable to get had the order dated 18.08.2002 been not recalled.

It is further directed that the entire arrears of the pension along with an interest of 7 % per annum shall be given to the petitioner within a period of

three months from the date of production of a certified copy of this order.