

**IN THE HIGH COURT OF MEGHALAYA**

**WP(C ) No. 178 of 2012**

No. S/358868, Rfn/ORL  
**Shri. Manoj Kumar Srivastav,**  
Son of Shri. Bashisth Munni Lal,  
Resident of Qtr. No. CD-729, Sector-II,  
Side-5, P.O. Dhurwa,  
P.S. Jagarnathpur, District: Ranchi,  
Jharkhand.

..... **Petitioner**

**- versus -**

1. The Union of India, represented by the  
Secretary, Ministry of Home Affairs,  
New Delhi.
2. The Director General, Assam Rifles,  
Laitkor, Shillong- 793010,  
Meghalaya.
3. The Inspector General, Assam Rifles,  
C/O 99 A.P.O.
4. The Commanding Officer,  
11<sup>th</sup> Battalion, Assam Rifles,  
C/o 99 A.P.O.

..... **Respondents**

**BEFORE  
THE HON'BLE MR JUSTICE SR SEN**

|                              |   |                   |
|------------------------------|---|-------------------|
| Advocate for the Petitioner  | : | Mr. R Jha         |
| Advocate for the Respondents | : | SC Shyam, Sr. CGC |
| Date of Hearing              | : | 28.11.2013        |
| Date of Judgment and Order   | : | 28.11.2013        |

**JUDGMENT AND ORDER**

The instant petition is directed against the impugned order dated 30.06.09 which is at Annexure-VII (Page-33).

2. The petitioner's case in nut shell is that, "this writ petition has been filed by the petitioner under Article-226 of the Constitution of India for issuance of a Writ of Mandamus for setting aside the impugned order of Dismissal dated 30<sup>th</sup> June 2009 issued by the Commandant, whereby the petitioner was dismissed from service in exercise of power

under Assam Rifles Act, 1941 which was communicated to the petitioner on 19<sup>th</sup> October 2011 by the office of the Commandant through his letter dated 19<sup>th</sup> October 2011.

3. The petitioner challenged the impugned order dated 30<sup>th</sup> June 2009 being arbitrary, illegal and malafide as well as unconstitutional and not sustainable in the eyes of law in as much as the impugned order had been issued under the Assam Rifles Act, 1941 which was already rescinded by the new Act of Assam Rifles known as Assam Rifles Act, 2006 which came into force on 20<sup>th</sup> February 2009. Under the new Act, the Commandant does not have the power to dismiss the personnel of Assam Rifles. Moreover, the impugned order was issued on 30<sup>th</sup> June 2009 giving back dated effect which is also contrary to the service rules and regulations and as such the same is not tenable in the eyes of law. Hence, this instant petition.”

4. Mr. R Jha, the learned counsel appeared for on behalf of the petitioner as well as Mr. SC Shyam, the learned senior CGC appeared for on behalf of the respondent.

5. After hearing the submissions advanced by the learned counsel at bar, it appears that the crux issue involved in this instant case is; whether the impugned order has been passed under the proper rule of law or not. It is an admitted fact that the Assam Rifles Act, 2006 has come into force w.e.f. 20.02.2009 and the impugned order in question has been passed on 30.06.2009, if it is so, definitely the impugned order should have been regulated and guided by the Assam Rifles Act, 2006 which was already in force when the impugned order was issued, hence, such order has no legs to stand.

6. Accordingly, the impugned order dated 30.06.09 is hereby set aside and the respondent authorities are at liberty to take fresh

course of action, if feel necessary against the petitioner in accordance with rules and laws.

7. With above observations and directions, this instant petitioner allowed and the matter stands disposed of.

**JUDGE**

V. Lyndem