

# THE HIGH COURT OF MEGHALAYA

## WP(C)(SH) No. 307 of 2011

Ex No. G/5010850 Rfn/GD  
Rupesh Suryavanshi  
E-Coy, 4<sup>th</sup> Battalion, the Assam Rifles,  
Presently residing at  
Village: Janai Krishnasmruti  
Rajigrebol, Sakharwadi  
Post Office- Nipani,  
District- Belgaum, Karnataka

... **Petitioner**

**-Versus-**

1. The Union of India, represented by the  
Secretary to the Government of India,  
Ministry of Home Affairs,  
North Block, New Delhi, Pin-110001.
2. The Director General Assam Rifles  
Mahanideshalaya  
(the Directorate General Assam Rifles)  
Shillong, Meghalaya, Pin-793011.
3. The Commandant,  
4<sup>th</sup> Battalion, the Assam Rifles  
C/o 99 APO, Pin- 932004.

... **Respondents**

**B E F O R E**  
**THE HON'BLE MR.JUSTICE S.R. SEN**

Advocate for petitioner	:-	Mr. HG Baruah
For the respondent	:-	Mr. R Debnath.
Date of hearing	:-	25.06.2013
Date of Judgment &Order	:-	25.06.2013

### J U D G M E N T   A N D   O R D E R (Oral)

The brief fact of the case in nut shell is that, the petitioner Rupesh Suryavanshi joined Assam Rifles as Rifleman/GD in the year 27.03.06. During his 4 years and 6 months of service he has been given 4(four) Red Ink Entries under the Army Act, 1950 and he was finally discharged from service by the Commandant, 4<sup>th</sup> Battalion, Assam Rifles

vide impugned order dated 19.10.10. Being aggrieved by the said impugned order, the petitioner approached this Court by way of this instant writ petition.

2. Heard Mr. HG Baruah, the learned counsel for the petitioner who submitted that, 1<sup>st</sup> Red Ink Entry was made on 4.11.09 on the ground that he was absent from duty without leave for about 10 Hours 30 Minutes and he was awarded 14 days Rigorous Imprisonment and charges were also framed on the same day. The 2<sup>nd</sup> Red Ink Entry was made on 9.03.10 on the ground that he was found intoxicated during the game parade and was awarded 21 days Rigorous Imprisonment and charges were also framed. The 3<sup>rd</sup> Red Ink Entry was made on 8.06.10 on the ground that he was found intoxicated and 28 days Rigorous Imprisonment was awarded and charges were framed. The 4<sup>th</sup> Red Ink Entry was made on the ground that he was absent from duty without leave for a period of 14 days and awarded 28 days Rigorous Imprisonment and charges were framed.

3. The learned counsel further contended that, though punishment has been awarded against the delinquent official but the same has not been followed by any procedures and rules nor any inquiry has been conducted by the authority before taking any action and finally he has been discharged from service vide order dated 19.10.10 by the Commandant, 4<sup>th</sup> Battalion, Assam Rifles.

4. The learned counsel further argued that Assam Rifles Act has come into force w.e.f. 20.02.09, as such, those actions taken against the delinquent should have been regulated by the Assam Rifles Act and not by Army Act, 1950. In support of his submissions, the learned counsel placed a Notification which is at Annexure-E and further submitted that, when a person is to be dismissed or discharged from service, a proper inquiry should be made, after proper inquiry, action should be taken after giving an opportunity to the delinquent official to defend himself. In support of his submissions, he relied a judgment

passed in ***Balwant Singh vrs Union of India & Ors. reported in Meghalaya Judgments (Page-110) (2013) 1 MJ 110. (Division Bench).***

5. In reply to the submissions advanced by the learned counsel for the petitioner, Mr. R Debnath, the learned counsel for and on behalf of the respondent Assam Rifles submitted that, the order of discharge has been passed under Record Branch, Instruction No. 1/2004 and produced the Assam Rifles Manual, Chapter-VIII, Clause 24 wherein the Commandant has the power to dismiss any member of the Assam Rifles below the rank of Jemadar. This Court has enquired from the respondent counsel, whether any medical examination has been conducted in establishing intoxication of the delinquent. The learned counsel could not reply and in the counter affidavit, there is no averment made that, the delinquent official was medically examined and found to be intoxicated.

6. After hearing the submissions advanced by the learned counsel for the parties and after going through the annexures referred to above by the petitioner's counsel i.e. (annexures-16 to 32), it appears that, on 2(two) occasions, the delinquent official was found to be intoxicated, on 1(one) occasion, he was delayed to join his duty and on 1(one) occasion, he remained absent from duty without leave and all those orders have been passed after October 2009. On record also, I do not find any medical evidence available to support or to believe that the delinquent official was intoxicated during his duty and those annexures also proved that, for the offences alleged, he has already been punished and finally he was discharged from service vide order dated 19.10.10.

7. Now the question arises, when a person is found to be intoxicated, it is a settled law that he needs to be examined by medical expert to confirm whether he is really intoxicated, but in the instant case, no such action has been taken by the authority. Besides that, it is also clear that the Assam Rifles Act, 2006 has come into force w.e.f. 20.02.2009. If it is so, in my considered view, all actions are to be taken against the delinquent official should have been under Assam Rifles Act,

2009, since the instant case in hand, offences occurred much later after the enforcement of the Assam Rifles Act, 2009.

8. The Division Bench of the Hon'ble Gauhati High Court was pleased to note that, "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 for 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 Section HQ along with the notice and reply received from the individual, for approval of the Sector Commander. Thereafter, the documents will be sent to this Directorate, Record Branch/UPAO for final settlement of his IRLA".

9. Both the learned counsel for the parties agreed that, this procedure has been followed and as such, there is no controversy about the procedure, however, the question remains that, the gravity of offences involved in the instant case. Similar nature of cases where intoxication and over-stay in which the Division Bench in the erstwhile Guahati High Court had made an observation (Para-15) **Balwant Singh vs Union of India & Ors. reported in Meghalaya Judgments (2013) 1 MJ 110.**

***"15. After tracing out the source of the power for the penalty to clause 5 of the ROI, we should now consider the nature and gravity of the four violations for which, the red ink entries were recorded. to appreciate this aspect a comparison of the red ink entries recorded against another Assam Rifles Personnel (Josh Nedum Joseph) whose case is referred to by the learned Government Counsel, may be in order. It is seen that in the case of Jose Nedum Joseph (who had filed WP(C) No. 2009/1999 where this Court altered the punishment of dismissal with an order of discharged and which decision was eventually upheld by the Apex Court), the violations related to cheating, indiscipline where the safety of the unit was compromised and insubordination. If we compare this with the four violations of the present delinquent, it becomes apparent that 3 charges of the intoxication and 1***

***overstaying can't be considered in the same class of serious offence more particularly when, the violation did not jeopardize the security of the Unit"***

10. Similarly, in the present case in hand, I find that 2(two) charges against the delinquent official for intoxication and absent from duty without proper leave application. In my considered view, such charges cannot be considered as serious offences when violation does not threaten the security of the Unit concerned. Besides that, since for the offences committed, the delinquent has already been punished by way of Rigorous Imprisonment. Therefore, discharge from service on same grounds amount to violation of Article-20 of the Constitution of India, "No person shall be prosecuted and punished for the same offence more than once".

11. For the reasons discussed above, I feel that such violations of intoxication or absent from duty without leave, such harsh punishment is not proper, therefore, I could not agree with the discharge order dated 19.10.10.

12. Accordingly the impugned order dated 19.10.10 is hereby quashed with a direction to the respondent to reinstate the petitioner within a period of 15(fifteen) days from the date of this order.

13. No order as to cost.

14 With these observations and directions, the petition is allowed and the matter stands disposed of.

JUDGE

V. Lyndem