

THE HIGH COURT OF MEGHALAYA AT SHILLONG.

WA No. 71 of 2014

1. The Union of India,
Represented by the Secretary to the Government
of India, Ministry of Home Affairs, New Delhi – 110001.
 2. Director General Assam Rifles,
Laitkor, Shillong – 793010
East Khasi Hills District, Meghalaya.
 3. The Brigadier (Personnel)
HQ Director General Assam Rifles,
Laitkor, Shillong – 793010.
East Khasi Hills District, Meghalaya.
 4. The Inspector General Assam Rifles,
C/o 99 APO
The Commanding Officer,
36 Assam Rifles.
- : : : : : Writ Appellants

-Vrs-

Shri Govind Singh Bathyal
Son of Shri Shyam Singh,
Resident of Village : Kotyura
P.O. – Hupil, P.S. Thai
District – Pithoragarh, Uttaranchal.

: : : : : Respondent

BEFORE
THE HON'BLE MR. JUSTICE UMA NATH SINGH,
CHIEF JUSTICE (ACTING)
THE HON'BLE MR. JUSTICE S.R.SEN

For the Applicants : Mr. R.Deb Nath, CGC.
 For the Opposite Party : Mr. R. Jha, Advocate
 Date of hearing : **22.10.2014**
 Date of Judgment & Order : **22.10.2014**

JUDGMENT AND ORDER (ORAL)

Hon'ble Justice Uma Nath Singh, CJ (Acting)

We have heard learned counsel for the parties and perused the averments in writ appeal.

2. This writ appeal has been filed against judgment dated 23-5-2014, passed by learned Single Judge of this Court in WP(C) No. 195/2013, whereby the writ petition was allowed having been found to be squarely covered by the decision of the Gauhati High Court dated 29-8-2011, passed in WA. No. (SH) 33/2011, which attained finality in view of dismissal of the Special Leave Petition filed against judgment. That apart, the said judgment was complied with, and the petitioner, Govind Singh Bathyal, was reinstated in service. Moreover, while passing the impugned judgment, the learned Single Judge has also given liberty to the appellants herein to start the proceedings afresh, if necessary.

3. Learned counsel for the appellants notwithstanding the compliance of the aforesaid judgment passed on similar facts and circumstances by

the Gauhati High Court contends that the offence in the instant case was committed prior to enforcement of the new Act called 'the Assam Rifles Act, 2006 (for short the Act of 2006). Therefore, as provided under the earlier Act, a Commandant of the organization was competent to pass the dismissal order. It is also the submission of learned counsel for the appellants that this point was raised before learned Single Judge, but it did not find favour with the Court.

4. On the other hand, learned counsel for the respondent/writ appellant submitted that in the Gauhati High Court's judgment also, the offence was committed prior to enforcement of the Act 2006, which though is of 2006, was notified after 3 years in 2009, whereas, the impugned offence is of the year 2007. In the instant case, the authority has taken into consideration the offences committed prior to the new Act and thereafter, say, the enforcement thereof, for, the first offence was committed in 2005, the second in 2006, the third in 2008, and the fourth in 2009.

5. On due consideration of rival submissions, we do not find any merit in the writ appeal for the reason that under Section 11 of the Act of 2006, the power of dismissal, removal or reduction in rank have been given to Director General, Additional Director General or any Inspector General, and is also entrusted to the Deputy Inspector General in respect of personnel working under his command other than an officer or subordinate officer of such rank or the ranks as maybe prescribed. Thus, the Commandant has not been given any power of dismissal, removal or reduction in rank. Section 11 of the Act is reproduced as:

“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 of 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 the 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”.

6. The judgment passed by the Gauhati High Court on 29-08-2011 in WA No. (SH) 33/2011, which has been affirmed by Hon'ble the Apex Court by dismissing the special leave petition filed against the said judgment, is reproduced hereunder:

“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 under section 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) **Guruvayoor Devaswom Managing Committee & Anr Vs C.K.Ranjan & Ors : (2003) 7 SCC 546** (2) **Zee Telefilms Ltd & Anr Vs Union of India & Ors : (2005) 4 SCC 649** and (3) **Coal India Ltd & Ors Vs Saroj Kumar Mishra : (2007) 9 SCC 625**.*

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".

7. In another case with similar facts, i.e. WA. No. 51/2013 (Union of India vrs Sanjay Bhattacharjee), a Division Bench of this Court has dismissed the appeal filed by the Union of India, and the same has also been complied with. It is also noticeable that in the Gauhati case, the offence was committed in 2007 prior to coming into force of the Act of 2006 in 2009, whereas, in the instant case, five offences were committed prior to the date of enforcement of the new Act and one thereafter. The details are given as herein below:

<i>Ser</i>	<i>Offence</i>	<i>Date of offence</i>	<i>Statement of offence</i>	<i>Punishment awarded</i>
(a)	Army Act Sec 38(1)	23 Feb 05	<i>In that you at field on 23 Feb 05 (AN) while RTU from 43 Assam Rifles on discipline ground vide their Movement Order No. 1.43001/A/2005 dated 22 Feb 05, deserted enroute and voluntarily reported to unit on 08 May 2005 (AN). (Total period of absence 74 days).</i>	<i>28 days Rigorous Imprisonment.</i>
(b)	Army Act Sec 38 (1)	16 mar 06	<i>In that you, at field on 16 mar 06 at 1730 hrs deserted while on escort duty of mental patient from Tinsukia Railway Station and voluntarily rejoined on 26 Mar 2006. (Total period of absence 10 days).</i>	<i>14 days Rigorous Imprisonment.</i>
(C)	Army Act Sec 48	15 Jun 08	<i>In that you, consumed liquor more than authorized quota and were found in a state of intoxication in the unit line of 'F' Coy at 1250 hr on 15 Jun 2008.</i>	<i>07 Days Rigorous Imprisonment.</i>
(d)	Army Act Sec 48	15 Sep 08	<i>In that you, consumed liquor from unauthorised source and was found in a state of intoxication in the unit line of 'F' Coy at 2030 hr on 15 Sep 2008.</i>	<i>07 Days Rigorous Imprisonment.</i>
(e)	Army Act Sec 39 (b)	23 Dec 08	<i>In that you, at field on 23 Dec 2008 having been granted leave of absence from 14 Oct 2008 to 22 Dec 2008, to proceed to home, failed without sufficient cause to rejoin duty on the expiry of said leave and voluntarily rejoined on 19 Feb 2009 (FN) (Total period of absence 58 days).</i>	<i>28 days Rigorous Imprisonment.</i>

8. Therefore, the case of the respondent/writ appellant appears to be on a better footing. Moreover, the new enactment 2006 appears to be more tilted in favour of the employee because the power of dismissal and

removal has now been entrusted to higher officers of the organization and not to the Commandant. In that view of the matter, we do not find any merit in the writ appeal filed by the Union of India. That apart, learned Single Judge has already granted liberty to the organization to start fresh proceedings from the stage it became vitiated. In the premises discussed herein above, we dismiss this writ appeal being devoid of merits.

JUDGE

S.Rynjah

CHIEF JUSTICE (ACTING)