

THE HIGH COURT OF MEGHALAYA

WP(C)No.235/2012

Ex. No.61789
NK Parsuram Limbu,
C/o Pashupati Clinic,
Assam Rifles Bazar, Happy, Valley,
Shillong-793007,
East Khasi Hills District, Meghalaya

:::: **Petitioner**

-Vs-

1. Union of India represented by the
Home Secretary, Ministry of Home Affairs,
Govt. of India, New Delhi.
2. The Director General,
HQ Assam Rifles,
Laitkor, Shillong-793010
East Khasi Hills District, Meghalaya.
3. The Commandant,
6th Assam Rifles,
C/o 99 APO.
4. The Deputy Director Records
(Pension & Grievance Cell)
Office of the Director General,
Assam Rifles, Arbuthnot Road,
Laitumkhrah, Shillong-793011,
East Khasi Hills District, Meghalaya.

:::: **Respondents**

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the Petitioner	:	Mr. BC Das, Adv.
For the Respondents	:	Mr. SC Shyam, Sr. Adv.
Date of hearing	:	25.02.2014
Date of Judgment & Order	:	25.02.2014

JUDGMENT AND ORDER (ORAL)

Heard Mr. BC Das, learned counsel appearing for the petitioner and Mr. SC Shyam, learned senior counsel appearing for the respondents.

2. It appears from the present writ petition that the petitioner approached this Court by filing the present writ petition after a lapse of 42 years. The only reason for the delay in approaching this Court is that there were several correspondences between the petitioner and the respondents and also the petitioner was not mentally sound for a number of years. It is the submission of Mr. SC Shyam, learned senior counsel appearing for the respondents that there is no sufficient reason for the delay of about 42 years in approaching this Court. He further contended that if there be no response to the applications or letters of the petitioner, the petitioner should have approached this Court within a reasonable period. However, there is no fixed period or limitation for filing the writ petition.

3. In the present case, it appears that the petitioner has awoken like a *Rip van winkle*. The relief cannot be granted to Rip van winkle who had awoken from deep slumber after a number of years. In Para-3 of the writ petition, it is stated that the petitioner was granted three months leave by his Unit, 6th Assam Rifles w.e.f. 02.09.1971 and allowed him to visit his original native place, village Funling-2, Mechi Zone, P.O. Taplejung, East Nepal; and he fell down from a tree on 17.10.1971 and as a result, he sustained severe head injury and fractured on his left leg and he became completely immobilized and bed ridden and could not rejoin his Unit. Further, it is clear from the pleadings of the petitioner in the present writ petition that he did not inform his Unit personally but his wife sent three letters dated 02.11.1971, 28.12.1971 and 15.06.1974 addressed to the Zila Sainik Board with a copy to

the Commandant, 6th Assam Rifles, C/o 99 APO, stating that her husband was bed ridden on account of fracture on his left leg. Further, it is clear that there is no letter from the side of the petitioner or from his wife to the concerned authority that the petitioner fell from a tree and he could not rejoin his Unit.

4. The respondent had filed their joint affidavit; and Para-9 of the joint affidavit reads as follows:-

“9. That while denying the correctness of the statement made in para 5 & 6, it is respectfully submitted that “the petitioner has been declared as a deserter as per the finding of a Court of Inquiry w.e.f. 31-10-1972 as he failed to report back on duty after expiry of leave without any information from him or his next of kin. There is no record with 6 AR about receipt of any letters from the wife of petitioners as stated. Therefore, the petitioner was a deserter and was deemed to have been dismissed from service w.e.f. the date of desertion i.e. 31-10-1972, on expiry of lien period of 05 years from the desertion. The respondent would like to point out that no treatment for a severe fracture can take as long as 41 years. The next of kin or petitioner himself could have contacted the unit in time to explain the circumstances and for extension of leave immediately after sustaining injury. The petitioner being a Govt. servant was entitled to have been treated in service hospitals at the cost of respondents/Govt. The silence of 41 years on part of petitioner only confirms that he was actually hiding and evading duties and arrest being a deserter.”

5. In the present writ petition, the petitioner is not assailing the order for declaring him as deserter w.e.f. 31.10.1972. As per Rule 24 of CCS Pension Rule 1972, dismissal or removal of a Govt. servant from service entails forfeiture of his past service; resulting not eligible for grant of any type of pensionary benefits. It is the case of the respondents that since the petitioner had been removed from service by declaring him as deserter, the past service of the petitioner will not be counted for grant of any type of pensionary benefits.

6. For the foregoing discussions, this Court is of the considered view that this writ petition is devoid of merit and is accordingly dismissed.

JUDGE

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