

## HIGH COURT OF MEGHALAYA

### WA No. 35 of 2013

1. The Union of India, Represented by the Secretary to the Government of India, Ministry of Home Affairs, North Block, New Delhi, Pin 110 001.
2. The Directorate General Assam Rifles, Laitkor, Shillong, Meghalaya, Pin 0 793010.
3. The Brigadier (Pers), H.Q. Directorate General Assam Rifles, Laitkor, Shillong, Meghalaya.
4. The Deputy Inspector General, Assam Rifles Training Centre & School, C/o 99 APO.
5. The Commanding Officer,  
No. 3 Training Battalion, ARTC & S, C/o 99 APO.

..... **Appellants**

**-Versus-**

No. C/4015273P Rect/Clk, Pankaj Kumar Singh, Son of Shri Niwas Singh, Vill – Nigahi, P.O. Nigahi, Tahsil : Singrauli, Dist : Singrauli (Madhya Pradesh)

..... **Opposite Party/Respondent**

Mr. SC Shyam, Sr. Advocate for Appellants.

Mr. R Jha, Advocate for the Opposite Party/Respondent.

Date of Hearing : 30.05.2014

Date of Judgment & Order : 30.05.2014

**HON'BLE THE CHIEF JUSTICE,  
and HON'BLE MR. JUSTICE S.R. SEN**

**(Oral : Hon'ble Prafulla C Pant, Chief Justice)**

This writ appeal is directed against the Judgment & Order dated 1.07.2013 passed by the Learned Single Judge in WP(C) No. 134 (SH) of 2012 whereby the said Court has quashed the order dated 31.10.08 dismissing the writ petitioner from service, and directed that the petitioner be reinstated.

2. Heard the learned counsel for the parties and perused papers on records.

3. Brief facts of the case are that the writ petitioner C/4015273P Rect/Clk, Pankaj Kumar Singh was recruited as Clerk with the Assam Rifles. He was undergoing training in Assam Rifles Centre & School. On 31.10.08, the services of the writ petitioner were dismissed vide order dated 31.10.08 issued by the Commanding Officer under Assam Rifles Manual Chapter VII (e) and Central Civil Services (Classification, Control and Appeal) Rules, 1965 [for short CCS (CCA) Rules]. Copy of the dismissal order which was annexed at Annexure-I to the writ petition discloses that the birth certificate of the writ petitioner was sent for verification and it was found to be forged and fake. The Tehsildar, Tehsil Singrauli, District Sidhi, Madhya Pradesh carried out an investigation and found that the residential certificate of the writ petitioner was also found to be forged.

4. The writ petitioner challenged the said order of dismissal on the ground that the said order was passed in violation of Rule-14 of CCS (CCA) Rules, 1965 as no inquiry was held nor any opportunity was given to the writ petitioner to defend himself. In the counter affidavit filed before the Learned Single Judge, the respondents have pleaded that verification report received from Tehsildar did not require any further verification and as such the order challenged by writ petitioner suffers from no illegality. The Learned Single Judge

after hearing the parties found that the respondents (present appellants) failed to comply with Rule-14 of CCS (CCA) Rules, 1965 before passing order under Rule-11 (2) of CCS (CCA) Rules, 1965, as such, dismissal order was liable to be quashed and the same was quashed.

5. On behalf of the appellant, attention of this Court has been drawn to Para-8 of the counter affidavit which reads as under:

***“8. That with regard to statement made in paragraphs 3(a),(b), (c), (d), (e), (f), (i), (j), (k), (h), (l) and (m), it is respectfully submitted that as per the Assam Rifles Manual, 1994, Chapter VII enlistment and recruiting of the Assam Rifles Personnel, Rule-11 of Chapter VII is deleted and constituted as under :***

***(a) Verification roll of all recruits on enrolment to be initiated by the ARTC & S within 30 days from the date of enrolment after interrogation of recruits by the training officer of their respective training battalions.***

***(b) If verification report is not received within the period of two months from the date of initiating, the first reminder will be issued to the Superintendent of Police.***

***(c) If report is not received within six months, a fresh verification roll of the recruit will be initiated by ARTC & S/Units where the individual is serving. If recruit is already posted out to a battalion, an intimation will be given by the ARTC & S to the concerned unit for progressing the case with the Civil authorities.***

***(d) Unverified recruits should be warned by the OC unit and instruct them to obtain their verification report from the Civil authority in their own interest by liaison with Civil Police during their leave period.***

***(e) In case of adverse verification reports of any recruit from Civil authority, Commandant, ARTC & S S/OC Unit will discharge the recruit immediately.***

***(f) All possible efforts will be made by the ARTC & S/Battalions to get the verification report from Civil authority, where required and at the discretion of the DIG, ARTC & S/Units & S/Unit may depute a JCO/NCO on temporary duty to liaise with the Civil authority for this purpose. As such, the order of dismissal issued by the Commandant is in accordance with the Assam Rifles Rules governing the enlistment and recruitment of Assam Rifles personnel.”***

6. From the Rule quoted above which was relied by the appellants (respondents in writ petition), it is clear that under clause (e) in case of adverse verification reports of any recruit, the Commandant could have discharged the recruit immediately. But the respondents have not opted to discharge the employee, instead the employer has dismissed the writ petitioner from service referring to Rule-11 (2) of CCS (CCA) Rules, 1965.

7. Rule-14 of CCS (CCA) Rules, 1965 provides that, *No order imposing any of the penalties specified in Clause (v) to (ix) of Rule-11 shall be made except after an inquiry held as far as may be, in the manner provided in this Rule (Rule-14) and Rule-15, or in the manner provided by the Public Servants (Inquiries Act, 1850, where such inquiry is held under that Act.* From the affidavit and counter affidavit filed in the writ petition, it is clear that neither any inquiry was held nor any opportunity was given to the writ petitioner to defend himself before passing order awarding major penalty for dismissal.

8. The Judgment passed by the Apex Court in ***Devendra Kumar vs State of Uttaranchal & Ors: (2013) 9***

**SCC 363** relied on behalf of appellants, shows that it upheld the order of discharge/termination of an employee during training, probation/during the period of his temporary service on finding that the employee has entered into service by giving forged or fraudulent information. There is no requirement to hold departmental inquiry or giving opportunity to defend in such a case before passing order of discharge or termination. Even Rule-5 of CCS (CCA) Rules, 1965, simplicitor order of termination without assigning any reasons thereof with one month notice or with one month salary in lieu thereof could have been passed by the employer.

9. In the present case, strangely the employer has chosen to pass an order of dismissal under Rule-11 (2) of CCS (CCA) Rules, 1965 for which compliance of the provision contained in Rule-14 is mandatory.

10. We are unable to agree with learned counsel for the appellants that impugned order was passed under Clause (e) Rule-11 Chapter-VII of the Assam Rifles Manual, 1994 for the reason that the order challenged by the writ petitioner is not order of “discharge”. The word used in Clause (e) Rule-11 Chapter-VII of the Assam Rifles Manual, 1994 is “discharge” and not “dismissal”. In the case of “discharge”, it is open for the employee to seek employment elsewhere with the Government, but in the case of “dismissal”, the doors for other employment are closed.

11. In the above, circumstances, we agree with the Learned Single Judge that dismissal order challenged by the writ petitioner was liable to be quashed, as such, we are not inclined to interfere with the impugned order passed by the Learned Single Judge. Therefore, we dismiss the Writ Appeal with an observation that the respondents shall be at liberty to pass appropriate order under Assam Rifles Manual or to hold departmental inquiry and to give opportunity to the writ petitioner before any order of major penalty is passed under CCS (CCA) Rules, 1965.

**(Hon'ble Mr. Justice S.R. Sen)**  
**JUDGE**  
30<sup>th</sup> May 2014

**(Prafulla C Pant)**  
**CHIEF JUSTICE**  
30<sup>th</sup> May 2014

V. Lyndem