

# THE HIGH COURT OF MEGHALAYA AT SHILLONG.

## WP(C) No. 53 of 2013

Shri Jasvir Singh,  
S/o Shri Karam Chand,  
R/o Village & P.O. Rajwal,  
Tehsil Mukerian,  
District – Hoshiarpur

:::::: Petitioner

-Vrs-

1. Union of India, represented  
by the Secretary, Ministry of Home  
Affairs, North Block,  
New Delhi

2. Chief of the Army Staff,  
Army Headquarters,  
South Block, New Delhi, through  
its Adjutant General

3. The Director General of Assam  
Rifles, Shillong – 793001, through  
its Director General

4. Col. H.V. Singh, Deputy  
Commandant, Assam Rifles  
Training Centre & School, Dimapur  
(Nagaland).

5. Major Amitabh Jha, Assam  
Rifles Training Centre and School,  
Dimapur (Nagaland).

:::::: Respondents

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

For the Petitioner : Mr. P.K. Roy Choudhury, Adv.

For the Respondent s : Mr. N. Mozika, CGC.

Date of hearing : **07.10.2015**

Date of Judgment & Order : **07.10.2015**

### JUDGMENT AND ORDER (ORAL)

The petitioner's case in a nutshell is that:

*"An application under article 226 of the Constitution of India for issuance of writ in the nature of certiorari, under article 226 of the Constitution of India for setting aside or quashing the impugned order dated 11.11.2004 being illegal and in gross violation of the statutory and constitutional provisions enunciated in Assam Rifles Act, read with Central Civil Services (Class, Control and Appeal) Rules, 1965, and for issuance of writ in the nature of mandamus directing the respondents to reinstate the petitioner with retrospective dated i.e. 6<sup>th</sup> June, 2003.*

*That petitioner challenge the impugned order of punishment on following question of law.*

- (a) Whether, Respondent No. 4 could ignore a regular inquiry as enunciated in Rule 14 of Central Civil Services (Class, Control and Appeal) Rules, 1965?*
- (b) Whether, Respondent No. 4 could ignore the sanction from the appropriate criminal court or from the government to try the petitioner for a civil offence?*
- (c) Whether, Respondent No. 4 could impose major penalty under Rule 19 (i) of the Central Civil Services (Class, Control and Appeal) Rules, 1965?*
- (d) Whether, Respondent No. 4 could ignore providing legal aid to the Petitioner?*

- (e) *Whether, Respondent No. 4 could impose major penalty of dismissal from service vide Annexure-I on the petitioner when he was in Jail?*
- (f) *Whether, Respondent No. 3 could ignore the appeal with a remark that it lacks merit and substances?"*

2. Mr. P.K. Roy Choudhury, learned counsel appeared for and on behalf of the petitioner and contended that, the petitioner was initially send to civil imprisonment and subsequently, he was dismissed from service without any enquiry. The learned counsel further contended that, as per Assam Rifles Act, 1941 Section 7 (t) speaks as follows:

*“7 (t) neglects to obey any battalion or other orders, or commits any act or omission prejudicial to good order and discipline such act or omission not constituting an offence under the Indian Penal Code or other Act in force in Assam. shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to two hundred rupees, or with both”.*

The learned counsel for the petitioner also further contended that the petitioner had not committed any offence. He being a Havildar (Branch Clerk) and his duty was to deliver newspaper and magazines to the residence of his superior officer, Major Raja Sharma. One day when he went to deliver newspaper and magazines to the residence of Major Raja Sharma, he has been charged for trespassing and put him in civil imprisonment for 80(eighty) days and subsequently, he was dismissed from service on the same charge without any enquiry. The contention of the learned counsel further is that, how can a staff be dismissed without any enquiry. So, necessary order may be passed.

3. On the other hand, Mr. N. Mozika, learned CGC submits that the Deputy Commandant (Colonel H.V. Singh) has the power of a First Class Magistrate and he has the right to dismiss the petitioner and he further stated that, since the Magistrate has made an enquiry and convicted him, no further enquiry is necessary as per Rule 19 of the Central Civil Services (CCA) Rules, 1965 and he also further submitted that there is no double jeopardy. So, the petition may be dismissed. In support of his submission, Mr. N. Mozika, learned CGC relied on: **(i) Union of India & Ors versus Sunil Kumar Sarkar: (2001) 3 SCC 414 Para 11 (ii) Chairman & Managing Director, V.S.P. and Others versus Goparaju Sri Prabhakara Hari Babu: (2008) 5 SCC 569 Para 16, 18 and 19 (iii) Himachal Pradesh Road Transport Corporation and Anr versus Hukam Chand: (2009) 11 SCC 222 Para 12 and 13 and (iv) Vijay Singh versus State of Uttar Pradesh and Ors: (2012) 5 SCC 242 Para 21 and 22.**

4. After hearing the submissions advanced by the learned counsel for the parties, now, I looked back to the file and go through the Annexure-C Page 20 of the writ petition under the heading "Crime Report". On perusal of the said Annexure-C it appears that the only offence committed by the petitioner is that, he went to the residence of his superior officer, Major Raja Sharma without authority. For easy reference the contents of the offence noted in the Annexure-C is reproduced herein as under:

“CRIME REPORT

Charge against: 362717H  
Coy: ARTC & S

Rank: Hav/Clerk

Name: Jasvir Singh  
Date of enrolment: 28/12/98

Place of offence	Date of offence	Rank	Offence	Plea of Guilty	Name of Witness	Punishment Awarded	By whom Awarded
Dimapur	03 June 2003	Havildar Clerk	<u>ASSAM RIFLES ACT 1941</u> <u>SECTION 7(t)</u> <u>AN ACT PREJUDICIAL TO GOOD ORDER AND DISCIPLINE (TRESSPASSING INTO THE OFFICERS RESIDENTIAL HOUSE)</u> In that, he while serving with Engineer Branch Assam Rifles Training and School, Dimapur (Nagaland) on 03 Jun 2003 at 19:15 hours, individual trespassed into the residence of Major Raja Sharma (quarter No. DT/SF 347) without authority, contrary to the existing standing orders of Assam Rifles Training Centre and School, Dimapur (Nagaland) and knowing fully well that the officer was away on temporary duty to Headquarters Directorate General Assam Rifles, Shillong	Guilty	1. IC-54967F Major Amitabh Jha, SM  2. 212660 Regimental Havildar Major M.B. Adhikari	To be tried by judicial proceeding	(H.V. Singh) Colonel Deputy Commandant and First Class Magistrate Assam Rifles Training Centre and School 03 Jun 2003

Total length of service: 04 Years 5 months 05 days  
Last red ink entry: NIL  
LPB Ser No. 37

Station: Dimapur  
Date: 03 June 2003

Sd/-  
(A.K. Vyas)  
Major  
Offg OC Training Coy”.

5. Now, on further perusal of the order dated 25.08.2003 passed by Colonel H.V. Singh, The Disciplinary Authority (Deputy Commandant), Assam Rifles Training and School Dimapur (Nagaland) which is at Annexure-I Para 1 of the writ petition, it appears that, he had convicted the petitioner on a criminal charge under section 7 (t) of the Assam Rifles Act, 1941 and awarded 80(eighty) days rigorous imprisonment in Civil Jail, Dimapur on 06 June 2003. Para 7 of the said order also states that, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965 dismissed the petitioner from service with effect from 25<sup>th</sup> August 2003 (Forenoon). For easy reference the order dated 25.08.2003 passed by Colonel H.V. Singh, The Disciplinary Authority (Deputy Commandant), Assam Rifles Training Centre and School, Dimapur (Nagaland) which is at Annexure-I of the writ petition is reproduced herein as under:

**“GOVERNMENT OF INDIA  
MINISTRY OF HOME AFFAIRS**

**OFFICE OF THE DEPUTY INSPECTOR GENERAL,  
ASSAM RIFLES TRAINING CENTRE & SCHOOL  
P.O. DIMAPUR, NAGALAND**

**No. 1-36011/Discp/362717H/03-A/2944      Dated: 25 Aug 2003**

**O R D E R**

1. *WHEREAS, No. 362717H Havildar/Clerk Jasvir Singh has been convicted on a criminal charge under Section 7 (t) of Assam Rifles Act, 1941 and awarded 80 days rigorous imprisonment in Civil Jail, Dimapur on 06 Jun 2003.*
2. *AND WHEREAS, it is considered that conduct of the said No. 362717H Havildar/Clerk Jasvir Singh which has led to his conviction is such as to render his further retention in the public service undesirable and gravity of the charge is such as to warrant the imposition of a major penalty.*

3. *AND WHEREAS, No. 362717H Havildar/Clerk Jasvir Singh was afforded an opportunity to show cause against the proposed action vide ARTC&S letter No. I. 136011/Discp/362717/03-A/2100 dated 24.07.2003.*
4. *AND WHEREAS, No. 362717H Havildar/Clerk Jasvir Singh has submitted his reply vide Central Jail, Dimapur letter No. CJ18/02-03/582 dated 02 Aug 2003. The same has been duly considered by the undersigned and was found unsatisfactory by the competent authority.*
7. *NOW THEREFORE, in exercise of the powers conferred by Rule 19 (i) of the Central Civil Service (Classification, Control and Appeal) Rules, 1965, the undersigned hereby dismisses the said No. 362717H Havildar/Clerk Jasvir Singh from service with effect from 25<sup>th</sup> August 2003 (Forenoon).*

Sd/-  
(H.V. Singh)  
Col. Deputy Commandant,  
Disciplinary Authority, Assam  
Rifles Training Centre & School,  
P.O. Dimapur, Nagaland".

6. On perusal of the charge discussed above, I find that the offence is not a heinous one, but the punishment awarded to the petitioner is not at all proportionate to the alleged offence. From the Annexure-I of the writ petition i.e. the order passed by Colonel H.V. Singh, The Disciplinary Authority (Deputy Commandant), Assam Rifles Training and School Dimapur (Nagaland) it is clear that the petitioner was charged under section 7 (t) of the Assam Rifles Act, 1941.

Since the Deputy Commandant concerned has found and charged the petitioner under section 7 (t) of the Assam Rifles Act, 1941 he cannot exceed the punishment prescribed therein. On bare perusal of section 7 (t) of the Assam Rifles Act, 1941 it is clear to me that, if anybody is charged and found guilty under section 7 (t) of the Assam Rifles Act, 1941 he can be

punished with imprisonment for a term which may extend to one year, or with fine which may extend to two hundred rupees, or with both and the said punishment is mandatory in nature not discretionary as the word “Shall” has been used. Therefore, I am of the considered view that the dismissal of the petitioner from service does not cover with the offence if any committed under section 7 (t) of the Assam Rifles Act, 1941.

7. The Hon’ble Supreme Court in the case of **Vijay Singh versus State of Uttar Pradesh and Ors: (2012) 5 SCC 242 Para 21 and 22** was pleased to observe that:

*“21. Undoubtedly, in a civilized society governed by the Rule of law, the punishment not prescribed under the statutory rules cannot be imposed. Principle enshrined in Criminal Jurisprudence to this effect is prescribed in the legal maxim nulla poena sine lege which means that a person should not be made to suffer penalty except for a clear breach of existing law.*

*22. In S. Khushboo v. Kanniammal: (2010) 5 SCC 600 : (2010) 2 SCC (Cri) 1299 : AIR 2010 SC 3196, this Court has held that a person cannot be tried for an alleged offence unless the Legislature has made it punishable by law and it falls within the offence as defined under Sections 40, 41 and 42 of the Indian Penal Code, 1860, Section 2(n) of the Code of Criminal Procedure, 1973, or Section 3(38) of the General Clauses Act, 1897. The same analogy can be drawn in the instant case though the matter is not criminal in nature”.*

8. The Hon’ble Supreme Court in the case of **Union of India & Ors versus Sunil Kumar Sarkar: (2001) 3 SCC 414 Para 11** was pleased to observe that:

*“11. Before concluding we must point out that during the course of arguments, a doubt was raised as to the maintainability of the concurrent proceedings initiated against the respondent by the*



*authorities. The respondent in this case has been punished for the same misconduct both under the Army Act as also under the Central Rules. Hence, a question arises whether this would tantamount to double jeopardy and is in violation of Article 20 of the Constitution of India. Having considered the arguments addressed in this behalf, we are of the opinion that so far as the concurrent proceedings initiated by the Organisation against the respondent both under the Army Act and the Central Rules are concerned, they are unexceptionable. These two proceedings operate in two different fields though the crime or the misconduct might arise out of the same act. The Court Martial proceedings deal with the penal aspect of the misconduct while the proceedings under the Central Rules deal with the disciplinary aspect of the misconduct. The two proceedings do not overlap. As a matter of fact, Notification No.SRO-329 dated 23.9.1960 issued under the Central Rules and under sub-sections (1) and (4) of Section 4 of the Army Act makes this position clear. By this notification, the punishments that could be meted out under the Central Rules have been taken out of the purview of the Court Martial proceedings under the Army Act. We further find support for this view of ours in the judgment of this Court in *R. Viswan v. Union of India*: (1983) 3 SCC 401 : 1983 SCC (L&S) 405 : AIR 1983 SC 658”.*

I have perused the judgment referred above and in my humble understanding; the said judgment is not applicable in the facts and circumstances of this case.

9. The Hon'ble Supreme Court in the case of ***Chairman & Managing Director, V.S.P. and Others versus Goparaju Sri Prabhakara Hari Babu***: (2008) 5 SCC 569 Para 16, 18 and 19 was pleased to observe that:

*“16. Indisputably, the respondent was a habitual absentee. He in his explanation, in answer to the charge-sheet pleaded guilty admitting the charges. In terms of Section 58 of the Evidence Act, charges having been admitted were not required to be proved. It was on that premise that the enquiry proceeding was closed.*

*Before the enquiry officer, he did not submit the explanation of his mother being ill. He, despite opportunities granted to report to duty, did not do it. He failed to explain even his prior conduct.*

**18.** *It was observed that judicial admissions can be made the foundation of the rights of the parties.*

**19.** *A subsequent explanation before another authority, which had not been pleaded in the departmental proceedings, cannot by itself be a ground to hold that the principles of natural justice had not been complied with in the disciplinary proceedings”.*

After careful reading of the said Paras referred above, I am of the opinion that the guidelines given by Hon’ble the Apex Court at Para 16 is not applicable in the facts and circumstances of this instant case.

10. The Hon’ble Supreme Court in the case of ***Himachal Pradesh Road Transport Corporation and Anr versus Hukam Chand: (2009) 11 SCC 222 Para 12 and 13*** was pleased to observe that:

**“12.** *Compliance with the principles of natural justice, either by holding an enquiry or by giving the employee an opportunity of hearing or showing cause, is necessary, where an employer proposes to punish an employee on a charge of misconduct which is denied, or when any term or condition of employment is proposed to be altered to the employee's disadvantage without his consent.*

**13.** *On the other hand, if there is an admission of misconduct, or if the employee pleads guilty in respect of the charge, or if the employee consents to the alteration of any terms and condition of service, or where the employee himself seeks the alteration in the conditions of service, there is no need for holding an enquiry or for giving an opportunity to the employee to be heard or show cause. Holding an employee guilty of a misconduct on admission, or altering the conditions of service with consent, without enquiry or*

*opportunity to show cause, does not violate principles of natural justice”.*

11. In reply to the judgment referred above, Mr. P.K. Roy Choudhury, learned counsel for the petitioner made it clear that, the respondent has taken forcefully the signature of the petitioner in some blank papers and thereafter, the fill up is best known to them. If it is so, then again this judgment is also not applicable in the facts and circumstances of this case.

12. Now, the question remains why the petitioner did not approach the court within the stipulated time. From record it appears that the petitioner was dismissed from service in the year 2003 and he approached the Delhi High Court in the year 2007 and ultimately that petition was dismissed on 2009 on the ground of lack of jurisdiction, and the court has observed that since the cause of action is at Shillong, the petition lies within the jurisdiction of the Shillong High Court. So, ultimately the petitioner approached the Shillong High Court on the same year i.e. 2009 as the High Court of Meghalaya, Shillong was under the jurisdiction of the Gauhati High Court.

13. After considering the submissions advanced by the learned counsel for the parties and keeping in mind the facts and circumstances of the case as discussed above and the provision of law, I am of the considered view that, justice was not properly rendered to the petitioner and I also do not agree that, just a mere trespassing or entering the residence of the senior officer, one should face dismissal of service. Therefore, the impugned order dated 25.08.2003 (Annexure-I of the writ petition) is hereby set aside and direct the respondent to conduct a fresh enquiry giving full opportunity to the petitioner to place his case and then to take the decision in accordance with law and rules. In the meantime, the petitioner is restored back to his service as on 2003

without any arrear, salary or other benefits and if possible the enquiry should be completed within 3(three) months from the date of receipt of a certified copy of this judgment and order. The judgment and order is to be implemented from the date of receipt of a certified copy of this judgment and order.

14. With these observations and directions, this instant writ petition stands disposed of.

**JUDGE**

*D. Nary*