

THE HIGH COURT OF MEGHALAYA

WP(C). No.337/2014

1. Shri Manzil Thapa,
Service No. M/5024991
M/RFN/Nursing Asstt,
S/o Shri Madan Thapa,
R/o Kanglatongbi, Vijaynagar,
District: Imphal West, Manipur.

... **Petitioner**

-Versus-

1. Union of India,
Represented by the Secretary,
Ministry of Communication,
New Delhi.
2. The Commandant,
Assam Rifles Training Centre and School,
Record Office,
Dimapur, Nagaland.
3. The Directorate General,
Assam Rifles (Rect. Branch),
Shillong – 793011.

.....**Respondents**

BEFORE THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the petitioner : Ms. L.Khiangte, Adv.

For the respondents : Mr. K. Paul, CGC.
Ms. R.Paul, Adv.

Date of hearing : 26-08-2015

Date of Judgment : 26-08-2015

JUDGMENT AND ORDER (ORAL)

Heard Ms. L. Khiangte, learned counsel appearing for the petitioner and also Mr. K. Paul, learned CGC appearing for the respondents.

2. By this writ petition, the petitioner is assailing (i) the order dated 12-07-2014 passed by the Deputy Inspector General Assam Rifles Training Centre and School P.O. Dimapur (Nagaland), in exercise of the power conferred by Sub-Section 2 of Section 11 of the Assam Rifles Act, 2006 for dismissing the petitioner from service w.e.f. 12-07-2014 for submitting false information at the time of enrolment and struck off strength and also (ii) the order dated 26-08-2014 intimating the dismissal order and also directing the petitioner to liaise with the Headquarters Directorate General Assam Rifles.

3. The concise fact of the case leading to the filing of the present writ petition, sufficient for deciding the matter in issue, is noted. The petitioner is a domicile of Kanglatongbi, Vijaynagar, District: Imphal West, Manipur. The Deputy Commissioner Imphal West District, Manipur issued a Certificate dated 10-06-2010 that the petitioner is a resident of Kanglatongbi, Vijaynagar, Lamsang within Imphal West District and also the Permanent Residential Certificate dated 10-06-2010 by the Deputy Commissioner Imphal West District, Manipur that the petitioner is a permanent resident of Kanglatongbi, Vijaynagar, Lamsang within Imphal West District, and copies of the said Domicile Certificate and Permanent Residential Certificate are annexed as Annexure – I and II

respectively to the present writ petition. For easy reference the said Domicile Certificate and Permanent Residential Certificate are reproduced hereunder:

“Sl. No.5307 of 2010

NO. DC (IW)/10/J/6/94-PT-I
OFFICE OF THE DEPUTY COMMISSIONER
IMPHAL WEST DISTRICT : MANIPUR
DOMICILE CERTIFICATE
Imphal, the 10th June 2010

This is to certify that

*Shri/Km/Smt MANZIL THAPA
S/o, D/o, W/o, MADAN THAPA
a resident of KANGLATONGBI VIJAYNAGAR
Sub-Division LAMSANG within Imphal West District is a
domicile of Manipur State.
He/She is not related to me.*

*Place : Imphal
Dated : 10-6-2010*

*Sd/-
(K. Radhakumar Singh)
Deputy Commissioner,
Imphal West District, Manipur.”*

“Sl.No.5308 of 2010

NO. DC (IW)/10/J/6/94-PT-I
OFFICE OF THE DEPUTY COMMISSIONER
IMPHAL WEST DISTRICT : MANIPUR
PERMANENT RESIDENTIAL CERTIFICATE
Imphal, the 10th June 2010

This is to certify that

*Shri/Km/Smt MANZIL THAPA
S/o, D/o, W/o, MADAN THAPA
a resident of KANGLATONGBI VIJAYNAGAR
Sub-Division LAMSANG within Imphal West District is a
Permanent Resident of Manipur State.
He/She is not related to me.*

*Place : Imphal
Dated:10-6-2010*

*Sd/-
(K. Radhakumar Singh)
Deputy Commissioner,
Imphal West District, Manipur.”*

4. The Director General Assam Rifles, Shillong issued an advertisement for recruitment in the Assam Rifles through the Public Employment News. In the said advertisement, it is stated that there will be a recruitment rally at Dimapur (Nagaland) for recruitment of Nursing Assistants for (1) State of Manipur, (2) State of Meghalaya and other States. The said advertisement is also annexed at Annexure-III to the present writ petition which read as follows:

“ADVERTISEMENT TO BE PUBLISHED IN EMPLOYMENT NEWS

**OFFICE OF THE DIRECTORATE GENERAL ASSAM
RIFLES,
SHILLONG – 793011**

RECRUITMENT IN ASSAM RIFLES

***Applications should reach by 08 September 2012.
Applications received after 08 September 2012 will not
be entertained.***

1. Assam Rifles recruitment rally will be held at **Dimapur (Nagaland), NRS-Dimapur and Lokhra (Assam), {NRS-Tezpur/NRS-Rangapara (NORTH)}** from 25 Sep 2012 onwards for enrolment to 719 vacancies (male candidates) from following States for the posts mentioned against each :-

(a) **RECRUITMENT RALLY AT DIMAPUR, (NAGALAND).** The rally will be conducted for enrolment of candidates belonging to the States for the posts specified against each :-

State	Technical Trade																Total	Vacancies				TOTAL
	Nursing Asst	ORA	RT JCO	B & R JCO	Elect	Plumber	Blacksmith	Draftman	EFS	ORL	Lmn Fd	Armr	VM (MV)	Elect (MV)	Metalsmith	Upholster		SC	ST	OBC	GEN	
Arunachal Pradesh	4	1	0	1	5	6	1	1	3	24	3	1	4	1	1	1	57	0	26	0	31	57
Assam	2	1	0	1	3	3	1	0	1	14	2	0	2	1	0	1	32	2	4	9	17	32
Bihar	3	1	1	1	3	3	1	1	2	12	2	1	2	1	0	1	35	6	0	9	20	35
Jharkhand	1	0	0	0	1	1	0	0	0	6	1	0	1	0	0	0	11	1	3	1	6	11
Manipur	4	1	0	1	5	6	1	1	3	25	3	1	4	1	1	1	58	2	20	7	29	58
Meghalaya	2	0	0	0	2	2	0	0	1	12	1	0	1	0	0	0	21	0	9	1	11	21
Mizoram	4	1	0	1	5	6	1	1	3	26	3	1	3	1	0	1	57	0	26	3	28	57
Nagaland	4	1	0	1	5	6	1	1	3	25	3	1	4	1	1	1	58	0	26	0	32	58
Tripura	2	0	0	0	2	2	0	0	1	13	1	0	1	0	0	0	22	4	7	0	11	22
West Bengal	3	1	0	1	3	3	1	0	1	14	2	1	2	1	0	1	34	8	2	7	17	34
Total	29	7	1	7	34	38	7	5	18	171	21	6	24	7	3	7	385	23	123	37	202	385

Note:

(i) These vacancies are tentative and may increase or decrease.”

5. In response to the said advertisement, the petitioner filed an application for recruitment to the post of Nursing Assistant for the State of Manipur. A copy of the application for recruitment in the Assam Rifles dated 28-08-2012 filed by the petitioner is also annexed as Annexure – II to the affidavit-in-opposition filed by the respondents. Since the petitioner had been removed from service on the alleged ground that the petitioner had submitted false information at the time of filing the application for appointment to the post of Nursing Assistant for the State of Manipur, it would be more profitable to reproduce the application for recruitment in

Assam Rifles dated 28-08-2012 filed by the petitioner which read as follows:

“APPLICATION FOR RECRUITMENT IN ASSAM RIFLES

<u>PARTICULARS</u>	<u>DETAILS</u>
1. NAME	: MR MANZIL THAPA
2. FATHER’S NAME	: SHRI MADAN THAPA
3. DATE OF BIRTH	: 12 AUG 1993
4. DOMICILE ADDRESS	: <u>MANIPUR STATE</u>
5. VILLAGE	: HAPPYVALLEY(AR BAZAR)
6. POST OFFICE	: HAPPY VALLEY
7. TEHSIL	: SHILLONG
8. DISTRICT	: EAST KHASI HILLS
9. STATE	: MEGHALAYA
10. PIN	: 793007
11. MOBILE TELEPHONE NO.	: 9089846826
12. CASTE TYPE (SC/ST/OBC/GEN)	: GEN
13. EDUCATION (10/ 10+2/ GRADUATE)	: 10+2 PASSED
14. TRADE FOR WHICH APPLIED	: NURSING ASST
15. FOR RALLY AT	: DIMAPUR (NAGALAND)
16. DD NO	: 215946
17. DD DATE	: 27-08-2012
(LEFT HAND THUMB IMPRESSION)	APPLICANTS SIGNATURE DATED: 28 AUG 2012”

6. On bare perusal of the said application for recruitment in Assam Rifles dated 28-08-2012 filed by the petitioner, it is crystal clear that the petitioner had clearly mentioned that the petitioner is a domicile of the State of Manipur. The petitioner’s father, Shri Madan Thapa, by then was working as Naib Subedar in the Headquarters DGAR, Shillong. It is the further case of the petitioner that since the petitioner was residing with his father i.e. Naib Subedar Madan Thapa at Shillong, the petitioner had mentioned his address as Happy Valley (AR Bazar), P.O. Happy Valley, Tehsil: Shillong, District: East Khasi Hills. It is also stated that after the petitioner successfully participated in the

recruitment rally, the respondents issued the appointment letter 25-03-2013 directing the petitioner to report at the Assam Rifles Training Centre and School, Dimapur (Nagaland) on 01-05-2013. Under that appointment letter dated 25-03-2013, the petitioner had been directed to produce the documents in original with two sets of photostat copies duly attested by a Gazetted Officer. For easy reference the said appointment letter dated 25-03-2015 is also quoted hereunder:

"State- MEGHALAYA
BP Ser 1016 ID No. 0944

REGISTERED POST
Assam Rifles Training Centre & School
PIN -900300 C/o 99 APO
12011/67/Rec/Tech-Dimapur/2013/107
Date 25 Mar, 2013

MANZIL THAPA
S/O MADAN THAPA
VILL - HAPPY VALLEY (AR BAZAR)
P.O - HAPPY VALLEY
DIST. -EAST KHASI HILLS
STATE- MEGHALAYA
PIN - 793007

APPOINTMENT LETTER

1. You are hereby selected for appointment as Recruit NURSING ASST in the scale of pay Rs. 5200-20200 + Grade Pay Rs. 200 per month subject to reporting at this Centre and School. You are hereby directed to report to Assam Rifles Training Centre and School, Dimapur (Nagaland) on 01 May 2013 at 0600 hrs for basic military training along with the following documents in original with two sets of photostate duly attested by Gazetted Officer:-

- (a) Education certificate and mark sheet.
- (b) Technical certificate (Diploma/ITI) on the trade
- (c) SC/ST/OBC certificate from competent authority (if applicable)
- (d) Domicile/ Permanent Residential certificate.

- (e) Latest character certificate (issued by Police Station)
- (f) Ten copies of recent passportsize photographs.
- (g) Three copies of Joint Passport photographs with the Next of Kin (preferably mother)
- (h) Age proof certificates of mother, father, brothers and sisters.

2. You will be appointed as Recruit NURSING ASST from the date of reporting to this Centre & School and Pay & Allowances will be admissible accordingly.

3. If you fail to successfully complete the recruit training within the stipulate period your service is liable to be terminated without any notice and assigning any reason.

4. The Assam Rifles will not be held responsible for any injury/ loss sustained by you during your journey till reporting to Assam Rifles Training Centre and School.

5. No TA/DA is admissible. You should cater for sufficient money for your personal expenditure till you have reported to this Centre and School.

6. "In case of receipt of adverse verification of your character and antecedents or your claim to belong to Scheduled Caste or Scheduled Tribe, as the case may be, is false, the services will be terminated forthwith without assigning any further reasons and without prejudice to such further action as may be taken under the provisions of the Indian Penal Code for production of false certificate".

7. As per Para 27 of Assam Rifles Rule 2010, Assam Rifles may permit you to resign from service before completing the terms of your engagement subject to return of three months pay and allowances drawn or the total cost of training imparted, whichever is higher. However, one month grace period will be given for the same from the date of reporting to ARTC & School.

8. As per AR Act 2006 Para 30 "Any person subject to this Act who knowingly attempts to get enrolled or enrolls any other person who does not fulfill the conditions enabling him to be enrolled, shall, on conviction by the Assam Rifles Court, be liable to suffer imprisonment for a term which may extend to five years or such less punishment as is in this Act mentioned" in addition to his dismissal from service.

9. The validity of medical examination is 90 days from the date of initial examination. Individual permitted to join after 90 days of initial medical examination, will be required to undergo the complete

medical examination and qualify the medical examination before joining the training.

10. The validity of this appointment letter is 90 days from the date of reporting mentioned above. However, request for extension based on extreme compassionate grounds may be considered by Department on merit of the case but the total period granted including the extension shall not exceed 180 days. Offer of this appointment would lapse automatically after the expiry of six months from the date of issue of the original offer of appointment.

11. Candidates should have a Savings Bank account in SBI with core banking facility. Candidate should be in possession of ATM card and Bank Pass book on arrival at Assam Rifles Training Centre and School, Dimapur. The candidates should also note the SBI Code of the Branch, its name and the State in which located.

*Sd/-
(Abhishek Swain)
Major
Adjutant
For Commandant.”*

7. On bare perusal of the appointment letter dated 25-03-2013, it is clear that the Domicile Certificate is nothing but a Permanent Residential Certificate as per the said appointment letter dated 25-03-2013. In compliance with the directions of the authority under the said appointment letter dated 25-03-2013, the petitioner had produced the documents in original including the Domicile Certificate as well as the Permanent Residential Certificate which clearly mentions that the petitioner is a domicile of Kanglatongbi, Vijaynagar, Lamsang within Imphal West District. This fact is not disputed by the respondents in their affidavit-in-opposition. Rather the respondents in their affidavit-in-opposition clarified that the petitioner had produced the Domicile Certificate which shows that the petitioner is a resident and domicile of Kanglatongbi, Vijaynagar, Lamsang within Imphal West District. As the petitioner

was not clear, even if he mentioned clearly in his application for recruitment that he is a permanent resident and domicile of Kanglatongbi, Vijaynagar, Lamsang within Imphal West District, whether he was appointed as Nursing Assistant for the State of Meghalaya or the State of Manipur, petitioner filed an application/representation dated 16-02-2014 that at the time of filing the application for recruitment, the petitioner had clearly mentioned and supported by documents that the petitioner is a domicile and permanent resident of Kanglatongbi, Vijaynagar, Lamsang within Imphal West District, and also it appears that through clerical mistake, the petitioner had been allotted against the vacancy for the State of Meghalaya. The said application dated 16-02-2014 (page 23 to the writ petition) read as follows:

*“M/50244991M
Rect/N.A.
Manzil Thapa
No.3 Trg Bn
Shukhoni, Dimapur,
797115
To,*

*Assam Rifles Training Centre and School,
Record Office, Dimapur, Nagaland.*

*Sub: Requesting for changing of my home
address and to allotted the vacancy of
Manipur State instead of Meghalaya State.*

Respected Sir,

*I would like to state the following lines for
your kind consideration and favourable action
please.*

That Sir,

*I No. M/5024991M, Rect/NA, Manzil
Thapa of Kohima Company, No. 3 Training
Battalion, with an I.D. No. :- 0944 was being
appointed as a Nursing Assistant in Assam
Rifles, joined on 01 May, 2013. At the time of post
apply the correspondence address was*

mentioned as Assam Bazar, Happy Valley, Shillong – 793007, as my dad, serving at Assam Rifles, was being posted at UPAO branch (Pension section) HQ DGAR Shillong, attached with pay & Account office Assam Rifles, that the call letter would come on to his hand applied this post for me by him. At the time of application applied by me for recruitment, my domicile Certificate was mentioned of Manipur state but my vacancy has been allotted of Meghalaya state which is clerical mistake. Sir, all document of mine is being produced of Manipur State at the time of checking of my document by board Officer.

Therefore, With due respect I request you to consider my case sympathically being a serving soldier.

For this act of your kindness, I shall be ever grateful to you.

Sd/-
Dated: 16.02.2014
Your faithfully (R.T.I)
No:-M/5024991M
Rect of Nursing Assistant
Manzil Thapa
Kohima Coy 5 Platoon
Shukoni, Dimapur”

8. It is also the admitted case of both the parties that the period of probation for appointment of the petitioner as Nursing Assistant is one year and the probation period had expired on 24-03-2014. After expiry of the probation period, to the utter surprise of the petitioner, the respondents issued a show cause notice dated 26-05-2014 alleging as to why the petitioner should not be removed from service on the ground of furnishing false or incorrect information at the time of appointment or enrolment as per the Assam Rifles Act 2006 and Assam Rifles Rule 2010 Chapter IV Rule 22. It is also alleged in the show cause notice that the petitioner reported to the ARTC & S on 01-05-2013, the petitioner produced the documents with regard to his domicile that the petitioner is a domicile of the State of Manipur. In response to the show cause notice dated 25-05-2014, the petitioner had filed his

show cause reply dated 13-06-2014. In the show cause reply dated 13-06-2014, it is stated that in the said application of the petitioner for recruitment in Assam Rifles, the petitioner had clearly mentioned that the petitioner is a domicile of the State of Manipur and also submitted the relevant documents to support that the petitioner is a domicile and permanent resident of the State of Manipur. It is also stated in the show cause reply that at the time of filing his application form, the petitioner was residing at AR Bazar, Happy Valley, P.O. Happy Valley, Shillong, and accordingly he had filled up his address as such in the application form. It is a matter of common sense and basic logic that the address is meant for communication and it is to be mentioned where the person is actually staying at the particular time and as such as the petitioner was staying at Shillong at the time of filing the application form, the petitioner had mentioned his address as AR Bazar, Happy Valley.

9. On conjoint reading of the said application dated 28-08-2012 for recruitment in Assam Rifles and also the appointment letter dated 25-03-2013, it is clear that the permanent residential certificate of a person of a particular place is nothing but domicile certificate of the person concerned of that place. Therefore, in other words, the Domicile Certificate is nothing but the Permanent Residential Certificate. Therefore, in the said application for recruitment dated 28-08-2012, the petitioner had clearly disclosed that the petitioner is a domicile of the State of Manipur and for communication the petitioner had mentioned his address i.e. temporary address as AR Bazar, Happy Valley, P.O: Happy Valley,

Tehsil: Shillong and District: East Khasi Hills. Therefore, it appears that there is no question of giving false information regarding the domicile of the petitioner at the time of filing the application for recruitment to the post of Nursing Assistant for the State of Manipur in response to the said advertisement issued through the Public Employment News.

10. The Apex Court in ***Kamal Nayan Mishra vrs State of Madhya Pradesh and Ors : (2010) 2 SCC 169***, para 18 held that:

*“18. There are also several other features in this case which distinguish it from **Ram Ratan Yadav : (2003) 3SCC 437: 2003 SCC (L&S) 306**. First is that Ram Ratan Yadav (Supra) related to an employee of Kendriya Vidyalaya Sangathan, who did not have the protection of Article 311 of the Constitution of India, whereas in this case we are concerned with a government servant protected by Article 311. Second is that the attestation form in this case, was required to be furnished by the employee, not when he was appointed, but after fourteen years of service. The third is that while action was promptly taken against the probationer in Ram Ratan Yadav (Supra), within the period of probation, in this case even after knowing that the appellant had furnished wrong information, the respondents did not take any action for seven long years, which indicated that the Department proceeded for a long time on the assumption that the wrong information did not call for any disciplinary or punitive action. The belated decision to terminate him, seven years later was unjustified and violative of Article 311”.*

11. From the above factual backdrop, this Court is not persuaded by the case of the respondents that the petitioner had submitted false or incorrect information regarding his domicile at the time of appointment or recruitment to the post of Nursing Assistant. Over and above, the probation period had already expired at the time of issuing the show cause notice dated 26-05-2014.

12. For the foregoing discussions, this Court is of the considered view that the petitioner could make out sufficient materials for interfering with the impugned order dated 12-07-2014 and 26-08-2014. Accordingly, the impugned order dated 12-07-2014 and 26-08-2014 are hereby quashed. The corollary of this order is that the petitioner should be reinstated in service within 2(two) months from the date of receipt of certified copy of the judgment and order.

12. Writ petition is allowed to the extent indicated above.

JUDGE

S.Rynjah