



Serial No.02
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

W.A.No.16/2024

Reserved on : 10.05.2024

Pronounced on: 28.06.2024

Shri.Sashikant Pandey

... Appellant

-vs-

1. Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs, [REDACTED]

2. The Director General of Assam Rifles,
[REDACTED]

3. The Colonel Commandant,
[REDACTED]

4. The Colonel,
Presiding Officer,
[REDACTED]

... Respondents

Coram:

Hon'ble Mr. Justice S.Vaidyanathan, Chief Justice

Hon'ble Mr. Justice W.Diengdoh, Judge

For the Appellant : Mr. B. Deb, Adv with
Mr. N.I. Choudhury, Adv

For the Respondents : Dr. N. Mozika, DSGI with
Ms. A. Pradhan, Adv

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes



J U D G M E N T
(Made by the Hon'ble Chief Justice)

This Writ Appeal has been filed, challenging the order dated 05.03.2024 of the learned Single Judge in W.P(C) No.220 of 2022, in and by which, the Writ Petition, seeking reinstatement was dismissed as devoid of merits.

Brief Facts as put forth by the Appellant:

2. The Appellant was enrolled in the Assam Rifles as Rifleman (Barber) and had rendered unblemished service till his suspension order. There were two charges levelled against him, namely, i) under Section 55 and 23(d) of the Assam Rifles Act for firing 3 shots from his service weapon against his fellow staff called Deva Nand and ii) leaving his guard without orders from his Superior Officer. The appellant was arrested for the incident of shooting another Rifleman in respect of registration of an FIR in Chiephobozou P.S. Case No.14 of 2015 under Section 307 IPC and placed under Police custody.

3. A Trial was conducted against him for the above offences and during Trial in the Assam Rifles Court, the Appellant pleaded not guilty to both charges. The prosecution examined 19 witnesses, including 3



eye witnesses and 23 exhibits were marked along with three material exhibits. After completion of the Trial, the Court found him guilty of charges and sentenced him to undergo 3 years of imprisonment in Civil Custody with an order of dismissal from service vide order dated 23.03.2018. The sentence of imprisonment and the order of dismissal were confirmed by the Inspector General, Assam Rifles (North) on 11.09.2018 by setting off the imprisonment of 3 years from the period spent by the Appellant in civil custody during investigation. Though the Appellant preferred an appeal on 16.03.2021 before the Director of Assam Rifles under Section 139(2) of Assam Rifles Act, 2006 r/w Rule 178 of Assam Rifles Rules, 2010 against the order dated 23.03.2018, it was rejected on 22.03.2022 on the ground of delay and devoid of merits.

4. Aggrieved by the order of rejection dated 22.03.2022, the Appellant thereafter approached this Court by way of filing W.P(C) No.220 of 2022, stating that the punishment imposed on him was shockingly disproportionate to the offence alleged; that the delay in preferring appeal occurred due to Covid-19; that there was a serious irregularity in conducting trial by the Court and that he is without employment after his dismissal from service.



5. Learned counsel for the respondents contended that the Appellant, who was posted at 9 Assam Rifles on 21.05.2000 was found missing on 11.09.2015 along with his service weapon 5.56mm INSAS Rifle bearing Regn.No.16315656 between 12.30-13.00 hours from guard room and it was reported that the Appellant went to his barack and fired three rounds against one Deva Nand and caused injury in his right knee, right side of neck and lower abdomen. The said incident was immediately informed to the Civil Police on the same day, which had resulted in registration of an FIR No.14 of 2015 under Section 307 IPC. It was further contended that the Trial was conducted in accordance with the provisions of Assam Rifles Act and Rules and Summary of Evidence and Additional Summary of Evidence was carried out as per Rule 47, in which, the Appellant pleaded not guilty. After full-fledged trial, the Appellant was found guilty and sentenced to suffer three years Rigorous Imprisonment to be undergone in civil custody and to be dismissed from service. It was also contended that there was no violation of principles of natural justice and the trial was conducted after following due process of law. It was pointed out that since Assam Rifles is a Special Act, in terms of Section 5 of Cr.P.C., the provisions of Cr.P.C. are not applicable to any special law. It was strenuously



argued that for the sake of argument, if the Appellant is reinstated into service, he may endanger the lives of other fellow Riflemen and cause injury. Thus, it was pleaded the order of the learned Single Judge does not warrant any interference and the present Writ Appeal is liable to be dismissed.

6. Heard the learned counsel on either side and perused the material documents available on record.

7. At the first blush, it was submitted by the Appellant that he had not pleaded guilty to the charges and the charges were duly established in the domestic enquiry. For the offences committed by him in respect of firing 3 shots on the co-employee, he was proceeded with departmentally under Assam Rifles Act, in addition to initiation of criminal action against him. Since the Appellant was found guilty of charges, he was sentenced to undergo Rigorous Imprisonment for a period of three years under Civil custody. Insofar as his past record is concerned, he had indulged in such type of misconducts on three occasions and the details of punishments awarded to him on earlier occasions during his entire service are as follows:



- “i) 28 days Rigorous Imprisonment and 14 days pay fine on 28.06.2001;
- ii) 28 days Rigorous Imprisonment and 14 days pay fine on 30.04.2003; and
- iii) 28 days Rigorous Imprisonment and 14 days pay fine on 05.01.2009”.

8. In this case, the Appellant shot three rounds of fire and the fellow Rifleman suffered injuries on the right knee, right side of neck and lower abdomen. The guilt of the appellant was proved by examination of 19 witnesses, of whom, there were 3 eye witnesses. We find that there were no procedural lapses on the part of the respondents in conducting the enquiry. The next plea taken by the appellant was that since the incident had taken place during his duty shift, there is no jurisdiction for the Assam Rifles Court to try the case under Section 56 of the Assam Rifles Act. For the sake of convenience, Section 56 of the Assam Rifles Act, is extracted hereunder:

“56. Civil offences not triable by an Assam Rifles Court.—

A person subject to this Act who commits an offence of murder or of culpable homicide not amounting to murder against, or of rape in relation to, a person not subject to this Act shall not be deemed to be guilty of an offence against this Act and shall not be tried by an Assam Rifles Court, unless he commits any of the said offences:



- (a) while on active duty; or
- (b) at any place outside India; or
- (c) at any place specified by the Central Government, by notification in this behalf.”

9. The said submission cannot be accepted for the reason that the offence had been committed in connection with the employment, which is construed to be a continuous cause of action and the misconduct had impact on the employment and the occurrence had happened within the premises of the respondents. The Supreme Court in the case of *Glaxo Laboratories (I) Ltd. vs. Presiding Officer, Labour Court, Meerut and Others*, reported in *(1984) 1 SCC 1* held as follows:

“18. Reference was also made to *Tata Oil Mills Co. Ltd. v. Workmen*: (1964) 7 SCR 555. This case should not detain us for a moment because the standing order with which the court was concerned with in that case in terms provided “that without prejudice to the general meaning of the term ‘misconduct’, it shall be deemed to mean and include, inter alia, drunkenness, fighting, riotous or disorderly or indecent behaviour within or without the factory.” Mr. Shanti Bhushan, however, urged that the judgment does not proceed on the construction of the expression 'without' in the relevant standing order but the ratio of the decision is that purely private and individual dispute unconnected with employment between the workmen cannot be the subject-matter of enquiry under the standing order but in order that the relevant standing order may be attracted it must be shown that the disorderly or riotous behaviour had some rational connection with the employment of the assailant and the victim. Approaching the matter from this angle, it was urged that in the present case the charge-



sheet under Clauses 2(c) to 2(h) clearly and unmistakably alleged that the ‘loyal workmen’ were threatened with dire consequences with a view to frightening them away from responding to the duty and this provides the necessary link between the disorderly behaviour and the employment both of the assailant and victim. Even where a disorderly or riotous behaviour without the premises of the factory constitutes misconduct, every such behaviour unconnected with employment would not constitute misconduct within the relevant standing order. Therefore, even where the standing order is couched in a language which seeks to extend its operation far beyond the establishment, it would none the less be necessary to establish causal connection between the misconduct and the employment. And that is the ratio of the decision, and not that wherever the misconduct is committed ignoring the language of the standing order if it has some impact on the employment, it would be covered by the relevant standing order. In order to avoid any ambiguity being raised in future and a controversial interpretation question being raised, we must make it abundantly clear and incontrovertible that the causal connection in order to provide linkage been the alleged act of misconduct and employment must be real and substantial, immediate and proximate and not remote or tenuous. An illustration would succinctly bring out the difference. One workman severely belaboured another for a (*sic*) duty on the next day. Would this absence permit the employer to charge the assailant for misconduct as it (*sic*) had on the working in the industry. The answer is in the negative. The employer cannot take advantage to weed out workmen for incidents that occurred far away from his establishment.”

10. The Apex Court, in a recent judgment in the case of **Mukesh Kumar Raigar Vs. Union of India (UOI) and Others**, reported in **AIR 2023 SC 482** observed that it is absolutely mandatory on the part of the



personnel in a disciplined force to maintain discipline of the highest order and the relevant paragraphs run as under:

“9. Having regard to the guiding principles, laid down in case of *Avtar Singh v. Union of India* reported in (2016) 8 SCC 471 and in case of *Satish Chandra Yadav v. Union of India* reported in (2023) 7 SCC 536, this Court has no hesitation in holding that the Single Bench of the High Court had committed an error in interfering with the order passed by the Respondents-authorities. The Respondents-authorities had after taking into consideration the decision in case of *Avtar Singh* terminated the services of the Petitioner holding inter-alia that while the Petitioner was appointed in CISF, a criminal case was pending against him at the time of his enrolment in the force, but he did not reveal the same and that there was deliberate suppression of facts which was an aggravating circumstance. It was also held that CISF being an armed force of Union of India, is deployed in sensitive sectors such as airports, ports, department of atomic energy, department of space, metro, power and steel, for internal security duty etc., and therefore, the force personnel are required to maintain discipline of the highest order; and that the involvement of the Petitioner in such grave offences debarred him from the appointment. Such a well-reasoned and well considered decision of the Respondent-authorities should not have been interfered by the Single Bench in exercise of its powers under Article 226 of the Constitution, more particularly when there were no allegations of malafides or of non-observance of Rules of natural justice or of breach of statutory Rules were attributed against the Respondent authorities.

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13. In view of the afore-stated legal position, we are of the opinion that the Division Bench of the High Court had rightly set aside the order passed by the Single Bench, which had wrongly interfered with the order of removal passed by the



Respondent authorities against the Petitioner. The Petitioner having been found to have committed gross misconduct right at the threshold of entering into disciplined force like CISF, and the Respondent authorities having passed the order of his removal from service after following due process of law and without actuated by malafides, the court is not inclined to exercise its limited jurisdiction under Article 136 of the Constitution.”

11. The appellant referred to Section 121 of the Assam Rifles Act, which deals with the procedures to be adopted in respect of a person with lunacy / insanity to establish that there was a procedural lapse on the part of the respondents in conducting enquiry. First of all, the said plea had been taken neither before the General Assam Rifles Court (GARC) nor before the learned Single Judge and it has been taken for the first time before this Court. Therefore, we, at the appellate stage, cannot render any finding on this aspect. Even if it is taken that the appellant is a lunatic, reinstating an employee with unsound mind in a disciplined force is dangerous not only to the Force, but also to the society at large. It is pertinent to mention here that already the appellant fired three rounds against a co-employee, who, though sustained severe injuries, escaped from the clutches of Yama Dharmaraja and we do not want to be a party to enable the appellant to use the balance bullets against other fellow personnel so as to accomplish his mission / task in



the years to come. Thus, finding that the order of the learned Single Judge is perfectly valid, warranting no interference by this Court, the same is hereby upheld.

12. In the result, *W.A.No.16 of 2024 is dismissed.*

(W.Diengdoh)
Judge

(S.Vaidyanathan)
Chief Justice

Meghalaya
28.06.2024
“Lam DR-PS”

PRE-DELIVERY JUDGMENT IN
W.A.No.16 of 2024