

**IN THE ARMED FORCES TRIBUNAL REGIONAL BENCH,**  
**GUWAHATI.**

**OA-15 OF 2015**

**P R E S E N T**

**HON'BLE MR. JUSTICE B.P.KATAKEY, OFFICIATING CHAIRPERSON**  
**HON'BLE LT GEN S.K.SINGH, MEMBER (ADMN)**

**Ramkumar, No.2002720F Rfn/EBR,**  
S/o Late Bhikham Ram,  
Vill-Akawana,  
P.O. Barhara Semaria,  
Dist. Bhojpur,  
State- Bihar,  
Pin-802311.

..... Applicant.

Legal practitioner for  
the Applicant

**Mr. N.N.Karmakar.**

- Versus -

1. Union of India, represented by  
the Chief of the Army Staff, Army  
Headquarters,  
South Block, DHQ, P.O. New Delhi-110011.
2. The Commandant 20, Assam Rifles,  
C/O 99 APO, P.O. Samsai,  
Dist. Ukul,  
State- Manipur.

..... Respondents

Legal practitioner for the  
Respondents.  
**Brig. (Rtd.) N.Deka,**  
**CGSC**

Date of Hearing : 07.11.2016.

Date of Order : 10.11.2016.

O R D E R

*(Per Officiating Chairperson)*

1. The applicant, who was appointed as Eqpt. Boot Repairer in Assam Rifles and was dismissed from service vide order dated 01.09.2004, passed by the Commandant of 20 Assam Rifles, has filed this application challenging the said order of dismissal from service apart from for directing the respondents to reinstate him in service w.e.f. 28.06.1999 with all consequent benefits.
2. The facts relevant for the purpose of the present OA are that the applicant was appointed on 06.11.1987 as Eqpt. Boot Repairer in Assam Rifles. While he was discharging his duties as such, he was tried by Summery Court Martial for being in possession of 27 kilograms of *ganja*. The applicant, thereafter, was punished on 07.04.1999 and sentenced to undergo simple imprisonment for 3 (three) months in civil prison and also to dismiss from service. The applicant subsequently was handed over to Sajiwa Jail in the State of Manipur on 07.04.1999 to serve out the sentence of 3 months' simple imprisonment. The said decision of Summery Court Martial (SCM), however, was not accepted by the authority and hence vide order dated 19.05.1999, the sentence imposed by the SCM was set aside on the ground of lack of jurisdiction. Consequent upon the said order, the applicant was brought back from the jail on 25.06.1999 and since then he was in the unit Quarter Guard. According to the applicant, on 01.07.1999, there was a threat to his life for which he fled from the unit. According to the respondents, the applicant escaped from the unit Quarter Guard on 28.06.1999 and therefore apprehension roll was issued on 30.06.1999. A Court of Inquiry was held to enquire into the circumstances leading to the escape of the applicant. The Court of Inquiry recorded the finding on 17.04.2000 declaring the applicant as '*deserter*' and to strike off from the

strength w.e.f. 28.06.1999 (F/N). The applicant, thereafter, was dismissed from service on 01.09.2004 as he did not report back to service despite expiry of more than 5 (five) years from the date of his declaration as 'deserter'.

A Writ Petition being WP © No.783 of 2005 was filed by the applicant before the Hon'ble Gauhati High Court praying for a direction to the respondents to treat him to be in service on and from 28.06.1999 and also to pay the arrear of pay and allowance payable to him contending, inter alia, that after his release from the civil jail on 28.06.99 and putting him in Quarter Guard he was taken in a Jeep in the night of 01.07.1999 by the Commandant in the pretext of taking him to the hospital for medical checkup and when he was taken towards the cremation ground instead of hospital, he apprehending that he may be killed, jumped out of the Jeep and ran away and then on being consulted with Legal Practitioner, he filed the Writ Petition. The said Writ Petition was contested by the respondents denying the contention of the applicant and contending, inter alia, that after the order passed by the Head Quarter, Eastern Command on 19.05.1999 setting aside the order dated 07.04.1999 passed by the SCM, the applicant was reinstated in service w.e.f. 08.04.1999 and kept in Quarter Guard after he was released from the civil prison, when he escaped from the unit Quarter Guard on 28.06.1999. Nothing, however, has been stated in the said affidavit relating to the dismissal of the applicant from service on 01.09.2004, though the said affidavit was filed on 16.08.2005. No rejoinder affidavit was filed by the applicant. The Hon'ble Gauhati High Court vide order dated 24.04.2013 disposed of the said Writ Petition with the observations that the proceeding initiated against the applicant by the respondents shall govern the rights and liabilities of the applicant, since none of the learned Counsel appearing for the parties could apprise the Hon'ble Court about the position of the case as on the date of the disposal of

the Writ Petition. The applicant, thereafter, on 12.11.2014 filed a representation, which was rejected vide order dated 06.12.2015. The applicant then filed the present OA claiming the reliefs as aforesaid.

3. We have heard Mr.N.N.Karmakar, learned Counsel appearing for the applicant and Brig N.Deka (Retd.), learned Central Govt. Standing Counsel, for the respondents.

4. The learned Counsel for the applicant challenging the order dated 01.09.2004, whereby and whereunder the applicant has been dismissed from service, submitted that as the Court of Inquiry was conducted against the applicant under the provisions of the Army Act and the applicant being subjected to the Army Act, he cannot be dismissed from service by invoking the provisions of Assam Rifles Act, as has been done in the instant case. According to the learned Counsel, after conducting the COI, the applicant has to be dealt with under the provisions of Army Act, i.e., convening the Court Martial and without holding the same, the applicant cannot be dismissed from service, that too, under the provisions of the Assam Rifles Act. It has also been contended that the order of dismissal dated 01.09.2004 in any case cannot be sustained in law as in the said order nothing has been mentioned about the date of desertion as well as the declaration made in that respect by the concerned authority. The learned Counsel also submits that there being no provision in the Assam Rifles Act as section 4 (a), the dismissal of the applicant from service by invoking the said provision of law makes the said order of dismissal illegal. It has also been submitted that the order of dismissal dated 01.09.2004 is nothing but a manufactured document as the respondents in the affidavit-in-opposition filed in the Writ Petition never stated about the said order though such affidavit-in opposition was filed much after 01.09.2004. Learned Counsel for the applicant, therefore, submits that the order of dismissal dated 01.09.2004 needs to be set aside and directions needs be

issued to the respondent authorities to reinstate the applicant in service with all consequential benefits.

5. Learned Central Govt. Standing Counsel, appearing for the respondents, on the other hand, supporting the order of dismissal dated 01.09.2004, has submitted that it is evident from the records that after the applicant had disappeared from the unit Quarter Guard on 28.06.1999, COI was held wherein the applicant has been declared as 'deserter' on and from 28.06.1999 and he was struck off from the strength w.e.f. 28.06.1999. It has also been submitted that since admittedly the applicant was a personnel of Assam Rifles and by virtue of S.R.O 318 dated 06.12.1962 the operation of sections 6, 7, 8 and 9 only of the Assam Rifles Act, 1941 was suspended, the Commandant had the authority to discharge the applicant by invoking the section 4 of the Assam Rifles Act, 1941, which empowers the Commandant to discharge any personnel from service. Referring to Standard Operational Procedure (SOP) issued by the authority relating to handling of case of desertion/absence without leave, it has also been submitted by the learned CGSC that since the Commandant is required to dismiss the '*deserter*' from service, under section 4 (1) of the Assam Rifles Act, 1941, after a period of 5 years of such desertion, the Commandant has rightly passed the order on 01.09.2004 as the applicant did not report back to duty for more than 5 (five) years from the date of his desertion w.e.f. 28.06.1999. The learned CGSC further submits that wrong quotation of the provision of Assam Rifles Act, 1941 would, therefore, not vitiate the order of dismissal dated 01.09.2004.

6. The arguments advanced by the learned Counsel for the parties received our due consideration. We have also perused the pleadings of the parties apart from the pleadings in the Writ Petition filed by the parties before the Hon'ble High Court. The records produced by the respondents have also been perused.

7. It is an admitted position of fact that the SCM had punished the applicant for possessing *Ganja* vide order dated 07.04.1999 and he was sentenced to Simple Imprisonment for 3 (three) months apart from dismissal from service. The said order, however, has been set aside by the authority vide order dated 19.05.1999. The records produced by the respondents reveal that the applicant was thereafter brought back from the civil prison by the authority on 25.06.1999 and he was in unit Quarter Guard. The respondents claim that the applicant escaped from the unit Quarter Guard on 28.06.1999. The applicant, however, claims that he had to jump out of the Jeep on the night of 1.07.1999. To find out the circumstances of disappearance of the applicant, a COI was conducted which recorded the findings of *desertion* by the applicant w.e.f. 28.06.1999. The COI has also declared the applicant as 'deserter' on 17.04.2000 w.e.f. 28.06.1999.
8. The Standard Operating Procedure (SOP) issued by the Head Quarter of Assam Rifles provides that when a person fails to report or fails to surrender or is not apprehended by the civil police, shall be dismissed from service by the Commandant under section 4 (1) of Assam Rifles Act, 1941, after the period of lien on service. It also provides that the lien on service would expire after 5 years of absence/overstayal of leave in the circumstances other than those who deserts with arms or lethal weapons ; due to subversive/espionage activities ; who commit any other serious offence in addition to desertion who proceeded abroad after desertion, for which the period of lien on service is 10 years.
9. In the instant case, the applicant was declared as '*deserter*' w.e.f. 28.06.1999. Even assuming the applicant's contention that he under the compelling circumstances had to leave the unit on 01.07.1999 is correct, admittedly he did not report to the unit for more than 5 years before passing the impugned order on 01.09.2004. The applicant neither in the

Writ Petition nor in the present OA has made any statement that he made any attempt between 01.07.1999 and 01.9.2004 to report back to the unit for duty. The applicant, therefore, admittedly disappeared from duty for more than 5 years. The COI proceeding produced by the respondents reveals the declaration of the applicant as '*deserter*' w.e.f. 28.06.1999 and striking him off from the strength of the unit. The impugned order dated 01.09.2004 also indicates the desertion of the applicant w.e.f. 28.06.1999. Non mentioning of the proceeding of the COI in the order of dismissal dated 01.09.2004 would not make the said order illegal when the date of desertion has been mentioned in the said order. The contention of the applicant that the order of dismissal is a manufactured order as the same was not disclosed in the affidavit-in-opposition filed in the Writ Petition filed in the Hon'ble High Court, cannot be accepted as the records produced by respondents clearly reveal conduct of COI as well as passing of the order of dismissal. Nothing could also be placed before this Tribunal by the applicant which may create doubt about the existence of the said order at the time of filing of the affidavit-in-opposition in the Writ Petition. Hence merely because the said fact was not mentioned in the said affidavit, the order of dismissal cannot be held to be a document created afterwards.

10. The contention of the applicant that the COI having been conducted under the provision of Army Act, he cannot be dismissed from service except otherwise by the Court Martial, cannot also be accepted in view of the stipulation in the Standard Operating Procedure for dismissal of a deserter after 5 years if the person fails to report or surrender or is not apprehended by the civil police after he was declared as '*deserter*'.

11. The other contention that the Commandant, Assam Rifles, has no jurisdiction to pass the order of dismissal dated 01.09.2004 also cannot be accepted in view of SRO No.318 dated 06.12.1962 as amended by

SRO No.364 dated 29.11.1973, SRO No. 890 dated 22.02.1974 and SRO No.325 dated 31.08.1977, which reads as under :-

*" S.R.O. 318 dated 6<sup>th</sup> December 1962 (as amended by S.R.O. No.325 dated 31<sup>st</sup> August,1977).—In exercise of the powers conferred by sub-section (1) of Section 4 of the Army Act,1950 (46 of 1950) and in supersession of the notification of the Government of India in the late External Affairs Department NO.93-X dated 25<sup>th</sup> June 1942, as subsequently amended, the Central Government hereby—*

- (i) applies to every unit of the Assam Rifles, being a force raised and maintained in India under the authority of the Central Government, all the provisions of the said Act, except those specified in Part A of the schedule annexed hereto, subject to the modifications set forth in Part B of the that Schedule, when attached to or acting with any body of the regular army ; and*
- (ii) suspends, while this notification remains in force the operation of sections 6, 7, 8 and 9 of the Assam Rifles Act, 1941 (5 of the 1941). "*

12. It is therefore evident from the said SRO that when the said notification remains in force, the operation of sections 6,7,8 and 9 only of the Assam Rifles Act, 1941, have been suspended and not any other provision of the said Act. The Commandant of Assam Rifles derives his power and jurisdiction to discharge the applicant, after he is declared as 'deserter' and when he did not report back to duty for 5 years thereafter, from section 4 (1) of the Assam Rifles Act, 1941. Wrong quotation of the provision of the said Act, i.e, mentioning of section 4 (a) in place of section 4 (1) would not vitiate the order of dismissal from service.

13. In view of the aforesaid discussion, we do not find any merit in the OA and hence it is dismissed.

14. No order as to costs.

**MEMBER (A)**

**OFFICIATING CHAIRPERSON**

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