

GAHC010157282019



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**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**WRIT APPEAL No.298 OF 2021**

1. Union of India, represented by the Secretary to the Government of India, Home Department, New Delhi.
2. The Director General, Assam Rifles, DGR, Shillong – 11, Meghalaya.
3. The Commandant, 27<sup>th</sup> Assam Rifles, C/o 99 APO.
4. The Commanding Officer, 27<sup>th</sup> Assam Rifles, C/o 99 APO.

**.....Appellants**

**-Versus-**

Shri Bikram Rana,  
Son of Shri Bhakta Br. Rana,  
Resident of Six Mile, Rampur,  
PO: Jagun, District: Tinsukia, Assam.

**.....Respondent**

**- B E F O R E -**

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI**  
**HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**For the Appellant(s)** : Mr. B. Chakravarty, Central Government Advocate.  
**For the Respondent(s)** : Mr. B. Chetri, Advocate.  
**Date of Hearing** : 18.02.2025.  
**Date of judgment** : 25.02.2025.

## **JUDGMENT & ORDER (CAV)**

**(Vijay Bishnoi, CJ)**

This writ appeal is preferred by the appellants being aggrieved with the judgment & order dated 28.02.2019 passed in WP(C) No.2461/2016, whereby the learned Single Judge has allowed the writ petition filed by the respondent and has set aside the order dated 05.11.2015 passed by the Director General of Assam Rifles, Shillong, whereby the representation filed by the respondent/writ petitioner was rejected. The learned Single Judge has further observed that the respondent will be liable to be reinstated in service without any benefit of back-wages and he will be deemed to be continued in service for the purpose of other service benefits and retiral benefits.

**2.** Brief facts of the case are that the respondent was appointed in the Assam Rifles on 15.04.2002 in the rank of Rifleman/GD. He submitted an application on 12.08.2011 with a prayer to discharge him as soon as possible in accordance with Paragraph 4 of the ROI 1/2024. The Commandant recommended the same for acceptance on 12.08.2011 itself and a Standing Committee was convened on the very same day and a recommendation was made by the Standing Committee for acceptance of the prayer of the respondent/writ petitioner for discharge from service.

Pursuant to the said recommendation, the higher authorities issued the discharge certificate vide order dated 15.09.2011 and the competent authority, vide letter dated 15.09.2011, issued the discharge certificate approving the discharge of the respondent/writ petitioner from the services to be effective from 01.01.2012.

**3.** The respondent/writ petitioner challenged the said discharge order in the year 2013 by way of filing WP(C) No.7056/2013. The said writ petition was disposed of by a Single Judge of this Court vide order dated 05.08.2015. Operative portion of the said order is reproduced hereunder:-

*“Submissions made by learned counsel for the parties have received the due consideration of the Court.*

*As already noticed above, discharge certificate dated 03.12.2011 was issued by the 27th Assam Rifles discharging the petitioner from the service of Assam Rifles w.e.f. 01.01.2012 ‘at his own request’. Petitioner now disputes that he never made any such request for voluntary discharge. According to the petitioner, his application dated 12.08.2011 was not voluntary and was obtained under duress, which he could not withstand being a lowly ranked Rifleman in the Assam Rifles. Petitioner had submitted application dated 09.01.2013 before the Director General for cancellation of discharge order which was rejected on 14.02.2013. Relevant portion of the intimation dated 14.02.2013 reads as under:-*

- ‘1. Refer to your letter dated 09 Jan 2013.*
- 2. On scrutiny of your record of service, it is revealed that you were enrolled in Assam Rifles on 10 Apr 2002 and discharged from service on 01 Jan 2012 at you own request after completion of 09 years, 03 months and 28 days of service.*
- 3. As requested by you vide application dated 12 Aug 2011, this Directorate had approved your request for discharge from service w.e.f. 01 Jan 2012. As per Rule 26 of CCS Pension Rules, 1972, resignation from service or post, entails forfeiture of past service. Thus you are not eligible for grant of pensionary benefits.*
- 4. Also, there is no rule/provision to reinstate a person who was discharged from service at own request.’*

*Stand taken in the said intimation is that there is no rule/provision to reinstate a person who was discharged from service at his own request. Respondents have invoked the provisions of Central Civil Services (Pension) Rules, 1972 to contend that voluntary discharge amounts to resignation from service which disentitles the petitioner from pensionary benefits. Rule 26(1) provides that resignation from service or a post, unless it is allowed to be withdrawn in the public interest by the appointing authority, entails forfeiture of past service. As per sub-rule (4) of Rule 26 of Central Civil Services (Pension) Rules, 1972 the appointing authority is vested with the power to permit a person to withdraw his resignation in the public interest subject to fulfillment of the conditions mentioned therein.*

*While the respondents may be technically correct in taking the plea that petitioner did not promptly file any application withdrawing the discharge application and that his application was subsequently approved, consequent upon which he was discharged from service, the fact remains that the petitioner had raised his objection in his application dated 09.01.2013, which has been reiterated in the present writ petition. Respondents in their affidavit have also annexed an order of this Court dated 07.08.2012, passed in WP(C) No.6891/2010 (Navin Ram Ex Rifleman (GD) Vs. Union of India & Ors.), which also relates to discharge from service at own request. In the facts and circumstances of that case, this Court had remanded back the matter to the Assam Rifles authorities for a fresh consideration of the prayer of the petitioner to be followed by a speaking order. Relevant portion of the order dated 07.08.2012 reads as follows:-*

*‘Considering all the above, while not interfering with the impugned order of discharge from service, the matter is remanded back to the Assam Rifles authority for examination of the case of the petitioner afresh as to whether his prayer for withdrawal of the resignation from service and reinstatement in service which he had made within 90 days of acceptance of resignation and discharge from service can be considered in view of the facts and circumstances indicated above.*

*Let the examination be made by passing a speaking order as expeditiously as possible preferably within three months.’*

*Taking an overall view of the matter and without commenting upon the rival contentions advanced by the parties, I am of the considered opinion that it would meet the ends of justice, if a similar course of action is adopted in the present case as well. Accordingly, without interfering with the discharge certificate dated 03.12.2011, case is remanded back to the office of the Director General, Assam Rifles for a fresh consideration of the grievance of the petitioner as discussed above.*

*Let the aforesaid exercise be completed within a period of two months from the date of receipt of a certified copy of this order. The authority after re-examining the case of the petitioner shall pass a speaking order, which shall be communicated to the petitioner.*

*Writ petition is accordingly disposed of. No costs.”*

**4.** Pursuant to the order dated 05.08.2015 passed in WP(C) No.7056/2013, the Director General of Assam Rifles passed an order dated 05.11.2015, whereby the prayer of the respondent/writ petitioner to reinstate him in service was rejected. The order dated 05.11.2015 is reproduced hereunder:-

“ORDER

1. WHEREAS, No.G/2701947 Ex-Rifleman/General Duty Bikram Rana, Petitioner was enrolled in Assam Rifles on 15 April 2002 and while serving with 27 Assam Rifles he had applied for discharge from service at his own request vide his application dated 12 Aug 2011 on grounds of domestic problems and that there was none to look after his aged mother. His request for voluntary discharge from service was duly considered by Commandant 27 Assam Rifles and recommended his case through proper channel for his discharge from service and forwarded to competent authority at HQ DGAR, Shillong for approval. The competent authority after due consideration to the recommendation and supporting document approved his voluntary discharge from service to be effective from 01 January 2012 vide Directorate General Assam Rifles letter No.I.31022/27AR/2011/Adm-III/934 dated 15 September 2011. Accordingly, he was discharged from service at his own request with effect from 01 Jan 2012. Thereafter, he never approached his superiors or authorities to withdraw his request for discharge in next three months when his discharge from service attained its finality. It is clarified that voluntary discharge from service at own request amounts to resignation from service under Rule 26 of Central Civil Services (Pension) Rules, 1972 and results in forfeiture of past service for pensionary benefits.

2. NEVERTHELESS, the Petitioner filed a writ petition (C) No 7056/2013 before Gauhati High Court for reinstatement into service by setting aside the discharge certificate dated 03 Dec 2011 on plea that application for resignation was procured from him under threat and coercion. However, as per document on record, the Petitioner had himself submitted a handwritten application dated 12 Aug 2011 and has not been able to make out any substantive proof of threat or coercion for making such an application for discharge from service. The said writ petition has been disposed of by the Hon'ble Court vide judgment and order dated 05 Aug 2015 with directions that 'Taking an overall view of the matter and without commenting upon the rival contentions advanced by the parties, I am of the considered opinion that it would meet the ends of justice, if a similar course of action is adopted in the present case as well. Accordingly, without interfering with the discharge certificate dated 03.12.2011, case is remanded back to the office of the Director General, Assam Rifles for a fresh consideration of the grievance of the petitioner as discussed above. Let the aforesaid exercise be completed within a period of two months from the date of receipt of a certified copy of this order. The authority after re-examining the case of the Petitioner shall pass a speaking order, which shall be communicated to the Petitioner.'

3 THEREFORE, in deference to the directions of the Hon'ble Gauhati High Court, the matter is re-examined here under:-

(a) *The Rule 26(4)(ii) of Central Civil Services (Pension) Rules, 1972 lays down:-*

*‘(4) The Appointing Authority may permit a person to withdraw his resignation in the public interest on the following conditions, namely:-*

*(iii) That the period of absence from duty between the date on which the resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw the resignation is not more than ninety days’*

*(b) Notwithstanding the above, the authority has the discretion even in cases where resignation has not become effective and the employee wishes to withdraw it, it is open to authority either to permit the officer to withdraw resignation or to refuse request for such withdrawal. It has been further clarified by Government of India, Department of Personnel & Training vide Office Memorandum No.28035/2/2007-Estt(A) dated 04 December 2007 that the purpose of provision under Rule 26(4) that the period of absence from duty between the date on which resignation became effective and the date on which the person is allowed to resume duty as a result of permission to withdraw resignation is not more than 90 days is that ‘once a person has been relieved of his appointment on acceptance of his resignation letter, his relation in that post with the Government gets terminated. An exceptional provision to consider a request for withdrawal of the resignation was made in view of the possibility that the circumstances under which the individual resigned from the post materially changed soon after his resignation, thus making the purpose of his resignation infructuous. The time limit of 90 days between the date on which the resignation became effective and the date on which he is allowed to resume duties after withdrawal of resignation is very sacrosanct to the scheme of acceptance of withdrawal of resignation by the Government.’ The Department of Personnel & Training has also clarified that no relaxation in limit of 90 days from the date after resignation has become effective can be entertained, if the application has not been made immediately after acceptance by the authority with convincing reasons for withdrawal of resignation.*

*(c) The perusal of records reveals that Petitioner did not apply for withdrawal of resignation within a period of 90 days from date the resignation has become effective. This is the admitted position of Petitioner vide Para 9 of his writ petition which clearly establishes that he kept silent for considerable time and submitted an application dated 09 Jan 2013 to Respondent No.2 and 3 namely DG AR and Commandant 27 Assam Rifles seeking reinstatement into service that is one year after date of his discharge has already become effective.*

(d) Besides, the service records of Petitioner further reveal that he was a habitual offender soldier in the unit for which he was summarily tried and was punished for following acts of omissions and commissions:-

(i) Tried for an offence of over staying leave and awarded 28 days Rigorous Imprisonment and 14 days pay fine on 06 Jul 2007 under Section 39(b) of Army Act, 1950.

(ii) Tried for an offence of absenting himself without leave and awarded 07 days Rigorous Imprisonment and 14 days pay fine on 15 Oct 2007 under Section 39(a) of Army Act, 1950.

(iii) Tried for an offence of intoxication and awarded 05 days Rigorous Imprisonment on 02 Jan 2008 under Section 48 of Army Act, 1950.

(iv) Tried for an offence of intoxication and awarded 07 days Pack Drill and 07 days Pay Fine on 26 Aug 2008 under Section 48 of Army Act, 1950.

(v) Tried for an offence of absenting himself without leave and awarded 07 days Pay Fine and 07 days Pack Drill on 02 Jan 2010 under Section 39(a) of Army Act, 1950.

4. HENCE, from the facts stated above, it is evident that Petitioner has not made application for withdrawal of resignation within the permissible limit of 90 days and therefore neither relaxation under Central Civil Services (Pension) Rules nor under instructions of Department of Personnel & Training can be made available to Petitioner at this belated stage. Since, the proposals for relaxation of time limit of 90 days by Department of Personnel & Training are considered only in exceptional cases where the time limit has been exceeded very marginally, and the case of Petitioner as such has become conclusive and time barred and cannot be re-opened.

5 In light of the above, the Director General Assam Rifles, after a careful re-examination of the case for withdrawal of resignation from service as per the Rules, is of the considered opinion that No.G/2701947 Ex-Rifleman/General Duty Bikram Rana has no locus standi to get reinstated into Assam Rifles service as he has not submitted application for withdrawal within permissible time limit of 90 days as specified under Rule 26 of Central Civil Services (Pension) Rules, 1972. Hence, grievance of the Petitioner for reinstatement into service is devoid of merit and is hereby rejected.”

5. Aggrieved with the order dated 05.11.2015, he respondent/writ petitioner has preferred WP(C) No.2461/2016 seeking the following relief:-

*“(i) re-instate the petitioner as RFN/GD, in 27<sup>th</sup> Assam Rifles (under the Respondent No.3) with immediate effect by cancelling/quashing the impugned, illegal discharge certificate dated 1.1.2012 as well as impugned order dated 5.11.2015 (Annexure-H).*

*(ii) to pay the arrear the salary of the poor petitioner with other service benefits due to him w.e.f. 24.4.2011 to till date;*

*On perusal of records and upon hearing the parties, this Hon’ble Court may be pleased to make the Rule absolute.*

*- And -*

*May be pleased to pass such other or further order(s) as Your Lordship may deem fit and proper.”*

**6.** The learned Single Judge, vide the impugned judgment & order dated 28.02.2019, has allowed the aforesaid writ petition. Operative portion of the impugned judgment & order is reproduced hereunder:-

*“16. Heard learned counsel for the parties and also perused the materials on record.*

*17. Learned CGC has also produced the relevant records about the proceedings of the Standing Committee and other proceedings relating to discharge of the petitioner.*

*18. Before this Court proceeds to deal with this matter, it may be noted that though the petitioner had earlier approached this Court by filing WP(C) 7056/2013, raising various pleas and contentions and the Assam Rifle authorities also had given their justifications and explanation for the same, the Court did not go into the merit of the case as clearly reflected in the effective portion of the order and remanded the matter to the Assam Rifle authority for reconsideration. It was observed as follows:*

*“Taking an overall view of the matter and without commenting upon the rival contentions advanced by the parties, I am of the considered opinion that it would meet the ends of justice, if a similar course of action is adopted in the present case as well. Accordingly, without interfering with the discharge certificate dated 03.12.2011, case is remanded back to the office of the Director General Assam Rifles for a fresh consideration of the grievance of the petitioner as discussed above. Let the aforesaid exercise be completed within a period of two months from the date of receipt of a certified copy of this order.”*

Since, the Court in the earlier instance, had not decided the issues raised therein, this Court is of the view that it may be permissible to examine the issues on merit in this present petition.

19. Be that as it may, the main thrust of the argument of the learned counsel for the petitioner is that the application for discharge was not voluntarily submitted but was submitted under duress under the circumstances narrated above.

20. If the discharge application submitted was not voluntarily as contended by the petitioner, and if it is true, such decision of the authority to accept the same may be liable to be interfered with.

On the other hand, if the discharge application was submitted voluntarily as contended by the authorities, it does not call for interference by this Court.

As to whether an application for discharge which had been submitted by an employee was voluntary or not is a pure question of fact which perhaps would not be appropriate for this Court to decide.

However, if there sufficient materials to indicate that such application was not voluntarily submitted, perhaps this Court would be within its jurisdiction to interfere with the same.

21. Accordingly, this Court will proceed to examine whether any such facts or circumstances have been revealed in the case which would indicate that such application for discharge was not voluntarily made.

22. This Court has observed and also it is not in dispute that the petitioner submitted his application for discharge on 12.08.2011.

It is order on record that on the same day on 12.08.2011, the authority convened the Standing Committee to consider the application of the petitioner.

It was under same day on 12.08.2011 that the recommendation of the Committee to accept the application of the discharge of the petitioner was accepted by the Commandant.

It was also on the same day on 12.08.2011 that the respondent authorities obtained an undertaking certificate from the petitioner as quoted above.

23. Perusal of the undertaking certificate would indicate that the undertaking was only to the effect that the petitioner understands that in the event of his discharge at his own request on extreme compassionate ground being sanctioned, he would not be entitled to any pensionary benefits for the service rendered.

This undertaking does not at all deal with the issue as to whether he had given the discharge application voluntarily or not and whether the authorities explained to him to the implications of such discharge application in terms of his income etc.

*The said undertaking merely refers to the fact that in the event his application is accepted, he will not be entitled to any pensionary benefits.*

24. *From the above, what transpires is that it was on the same day when the petitioner submitted his application for discharge, the same was acted upon by the authorities. Normally, the authorities cannot be faulted with for acting promptly and expeditiously in any administrative matter but the issue which arises for consideration before this Court is whether the manner in which the authorities proceeded in post haste under the circumstances could be considered to be proper or not.*

25. *In this regard, a reference has been made by the learned counsel for the petitioner to a Circular issued by the CRPF to ensure that any such application sought for discharge or seeking voluntary retirement is to be considered by the authority to ensure that such application is not submitted under duress but purely on voluntary basis. In this regard, it has been submitted by the learned CGC that the Circular is not applicable to the Assam Rifles but to the CRPF only.*

26. *This Court is of the view that is a too technical objection and the Assam Rifle authority ought to apply the same principle while considering such application for voluntary discharge as raised in this petition. This Court is of the view that the standard adopted in other paramilitary forces can also be held to be applied for the reason that it merely lays down certain precautionary measures to be taken by the authorities before accepting any discharge application by ensuring that such application was made voluntarily.*

*The aforesaid circular has been issued for the benefit of the employees. This Court is of the view that there is no reason why similar criteria/principles should not be adopted in the Assam Rifles also, even if the said Circular was issued exclusively for the CRPF personnel and not applicable to the Assam Rifles. This Court is of the view that any procedure adopted by the authority while taking any administrative decision must be fair, reasonable, keeping in mind the mandate of Article 14. Therefore, these precautionary procedures can be read into the existing rules of the Assam Rifles for the Assam Rifles Authority or any authority cannot deny the reasonableness of the same.*

*The main concern in such case is to ensure that any such application filed for discharge was voluntarily submitted.*

27. *This Court has requisitioned the records and the same have been produced before this Court.*

28. *Perusal of the said records do not indicate that the petitioner was personally examined by any of the Members of the Standing Committee to ensure that he had given his discharge application voluntarily and that the*

*Committee had given the finding that no undue pressure by any authority has been exercised over the individual who had applied for discharge from service and that he had done on his own wisdom after examining the relevant and concerned persons including the applicant.*

*In absence of any materials or documents on record as to how the Committee had come to such a conclusion, this Court is not able to accept such a conclusion by the Committee that the petitioner had voluntarily applied for discharge.*

*There is nothing on record to indicate as mentioned above that the Members of the Committee had interacted with the individual concerned or any other members of the unit. Therefore, if such finding has been arrived merely on the basis of the examination of the application which seems to have been done, in absence of any other material in this regard, this Court would hold that the finding given by the Standing Committee cannot be said to be proper. Non application of mind by the Standing Committee on the particular issue of voluntariness of the petitioner is quite apparent on the face of the records.*

*The undertaking given by the petitioner also has nothing to do with the issue as to whether he had given the application voluntarily as the said undertaking was given only as regards his entitlements of his pensionary benefits.*

*Therefore, this Court is satisfied that there was no attempt by the authorities concerned to examine properly as to whether the application for discharge from service had been voluntarily given by the petitioner or not.*

29. *In that view of the matter, this Court is of the opinion that all the subsequent actions taken by the authorities would be vitiated for the reason that the initial decision to accept the discharge application of the petitioner itself stands vitiated.*

*It is a settled legal position that if the initial action is not in consonance with law, all subsequent and consequential proceeding would fall through for the reason that illegality strikes at the root of the order. The legal maxim 'sublato fundamento cadit opus', meaning thereby that foundation being removed, structure/wall falls, comes into play. [See State of Punjab Vs. Davinder Pal Singh Bhullar, (2011) 14 SCC 770]*

30. *In the result for the reasons discussed above, the present petition is allowed. The impugned order dated 05.11.2015 is set aside and the petitioner will be liable to be reinstated in service however, without any benefit of back wages. The petitioner however, will be deemed to be continued in service for the purpose of other service benefits and retiral benefits."*

**7.** It appears that after delivery of the impugned judgment, the learned counsel for the respondent/writ petitioner has moved an interlocutory

application being I.A. (Civil) No.1858/2019 in WP(C) No.2461/2016 and sought for certain corrections in the order dated 28.02.2019 passed in WP(C) No.2461/2016. The learned Single Judge, while disposing of the said application by order dated 10.06.2019 has held that the discharge certificate dated 01.01.2012 is not sustainable in law and accordingly has set aside the same. It is also clarified that the said order will form part of the order dated 28.02.2019 passed in WP(C) No.2461/2016. The order passed by the learned Single Judge on 10.06.2019 is reproduced hereunder:-

*“Heard Mr. B. Chetri, learned counsel for the applicant. Also heard Ms. B. Bora, learned CGC appearing for the Union respondents.*

2. *In this application, the applicant has sought for making certain corrections in the order dated 28.02.2019 passed by this Court in WP(C) No.2461/2016.*

3. *It is the case of the applicant that this Court had allowed the writ petition by setting aside the impugned speaking order dated 05.11.2015 by which the authority gave the reasons for discharging the petitioner from service. The said order was issued because of the intervention by this Court to pass a fresh order relating to discharge certificate issued on 01.01.2012. In other words, impugned order dated 05.11.2015 was issued reiterating and reaffirming the discharge certificate issued on 01.01.2012 by assigning reasons thereof. However, while allowing and quashing the order dated 05.11.2015, this Court did not mention about setting aside the discharge certificate dated 01.01.2012.*

4. *Accordingly, it has been submitted that this is an omission may be made up as the impugned order dated 05.11.2015 was merely reaffirmation of the discharge certificate dated 01.01.2012 and accordingly, it has been prayed that it may be mentioned in the order that discharge certificate dated 01.01.2012 is also set aside.*

5. *Other contention of the applicant is that the applicant had rendered service for the period from 24.04.2011 to 21.12.2011 for which the petitioner had not been paid his salary.*

6. *As regards the first contention, the learned CGC appearing for the respondents has fairly submitted that since the speaking order dated 05.11.2015 which reaffirmed the discharge certificate dated 01.01.2012 has been set aside, as a natural corollary, the said discharge order dated*

*01.12.2012 also cannot stand in the eyes of law.*

7. *This Court is also of the view that if the impugned order dated 05.11.2015 had been set aside by this Court and if the said order is reiteration and reaffirmation of the discharge certificate dated 01.01.2012, the said discharge certificate also cannot stand any longer.*

8. *As regards the prayer for payment of salary, it is also the matter which the authority can verify as a person would normally be entitled to the salary for the service rendered, and it is a matter which can be examined by the authority by passing appropriate order in this regard.*

9. *Learned CGC however, submits that as regards this claim for payment of salary, the petitioner can prefer appropriate applications as it does not come within the purview of review.*

10. *Though this Court finds force in the submission advanced by the learned CGC in this regard, this Court is of the opinion that considering the nature of the relief claimed and since it does not really touch upon the merit of the case and consideration of the said relief claimed does not involve re-opening or the re-hearing the matter in merit, the said prayer can be allowed.*

11. *This Court accordingly, allows this application by holding that the discharge certificate dated 01.01.2012 cannot be sustainable in law and is set aside.*

12. *As regards the payment of salary for the above mentioned period, the authorities will examine the same and release the salary after making necessary verification if the petitioner is found to have rendered service for the above mentioned period.*

13. *This order will form part of the order dated 28.02.2019 passed in WP(C) No. 2461/2016.”*

**8.** Assailing the impugned judgment, Mr. B. Chakravarty, the learned counsel for the appellants has argued that the learned Single Judge has erred in interfering with the discharge order dated 12.08.2011 by observing that the decision to accept the discharge application of the respondent/writ petitioner itself was vitiated because no attempt was made by the authorities concerned to examine properly as to whether the application for discharge from service had been voluntarily given by the respondent/writ petitioner or not. It is

contended that once this Court, while exercising writ jurisdiction, has refused to interfere with the discharge order while deciding the earlier WP(C) No.7056/2013 filed by the respondent/writ petitioner vide order dated 05.08.2015, and the same has attained finality, it was not open for the learned Single Judge to again examine the validity of the said discharge order.

It is argued that as per the direction of the Writ Court, vide order dated 05.08.2015, the Director General was required to consider the only point that the respondent/writ petitioner had filed any application for withdrawal of his resignation or not within the time limit of 90(ninety) days and the Director General, in his order dated 05.11.2015, has considered the said point and recorded a finding that the respondent/writ petitioner has never filed any application for withdrawal of his resignation within 90(ninety) days' time limit.

It is contended that the learned Single Judge at best could examine the validity of the order dated 05.11.2015 passed by the Director General, Assam Rifles pursuant to the remand made by the learned Single Judge vide order dated 05.08.2015, however, in the impugned judgment, the learned Single Judge has not examined the validity of the order dated 05.11.2015 and has wrongly examined the validity of the discharge order of the respondent/writ petitioner dated 01.01.2012, which is not permissible in view of the fact that earlier this Court had refused to interfere with the said discharge certificate.

**9.** The learned counsel has further submitted that the learned Single Judge has erred in applying the circular, applicable only to the CRPF personnel, in the case of the respondent/writ petitioner, who was admittedly an employee of the Assam Rifles. It is contended that the Assam Rifles has separate set of Instructions to be followed while discharging its employees on the employees'

own requests or on compassionate ground and the procedure prescribed in those guidelines have been fully complied with in the case of the respondent/writ petitioner. It is contended that when separate Instructions are already available for discharge of the employees of the Assam Rifles, the Notification issued in relation to the CRPF personnel has wrongly been applied by the learned Single Judge in the case of the respondent/writ petitioner. The learned counsel for the appellants has argued that the respondent/writ petitioner has applied for discharge from service voluntarily as per Record Branch Instructions (RBI) 1/2024 and the procedure for dealing with the premature voluntary retirement, as prescribed in those instructions, have been followed.

**10.** The learned counsel for the appellants has placed reliance on the further Instructions issued by the Director General of Assam Rifles dated 24.03.2009 in respect of premature discharge before completion of pensionable services and has submitted that the above referred Instructions provide that the Committee, considering the premature discharge request from an employee of the Assam Rifles, will obtain a certificate from the individual certifying that his voluntary retirement, or resignation from service before completion of pensionable service, is as per his own free will and no coercion, threat, pressure or inducement whatsoever has been used by any authority in the Unit Headquarter of Assam Rifles. It is contended that before recommending for premature discharge of the respondent/writ petitioner before completion of the pensionable service, the said certificate had also been obtained.

**11.** The learned counsel for the appellants has produced the original record pertaining to the premature discharge of the respondent/writ petitioner

before pensionable service and referred to Appendix-F, wherein the respondent/writ petitioner has certified that his resignation from service before completion of pensionable service is as per his own free will and no coercion, threat, pressure or inducement whatsoever has been used to him by any authority in the Assam Rifles. The learned counsel has also submitted that in the short tenure of service, i.e. from 2009-2011, the respondent/writ petitioner was summarily tried and punished on 5(five) occasions for various acts and omissions and just before submission of the application for premature discharge, the respondent/ writ petitioner was absent from his duties without leave from 24.04.2011 to 23.07.2011 and his unauthorized leave was regularized by granting 27 days Earned Leave and 64 days Half Pay Leave. It is contended by the learned counsel for the appellants that the respondent/writ petitioner had voluntarily resigned from the services of the Assam Rifles due to family problem being fully aware that no pensionary benefits would be allowed to him. It is also contended that the respondent/writ petitioner approached the Writ Court for the first time after around 1(one) year of his discharge from service, and looking to the overall facts and circumstances of the case, he was not entitled for the relief of reinstatement, as granted by the learned Single Judge. The learned Counsel has further submitted that the Assam Rifles is a disciplined force and the conduct of the respondent/writ petitioner disentitled him from the relief of reinstatement.

The learned counsel for the appellants has, therefore, prayed that the impugned judgment & order may be set aside and the writ petition filed by the respondent/writ petitioner may be dismissed.

**12.** Per contra, Mr. B. Chetri, learned counsel appearing for the respondent/writ petitioner has vehemently opposed the writ appeal and has

argued that the learned Single Judge has not committed any illegality in passing the impugned judgment & order. It is contended that the appellants have pressurized the respondent/writ petitioner to submit an application for premature discharge before completion of the pensionable service and after submission of the said application by the respondent/writ petitioner, the Committee concerned recommended for his premature discharge on the very same day, which itself leaves no manner of doubt that before recommending the premature discharge, the Committee concerned had made no attempt to examine properly as to whether the application for discharge from service had been voluntarily given by the respondent/writ petitioner or not. The learned counsel has also argued that the learned Single Judge has not committed any illegality in examining the validity of the discharge certificate because, in the earlier round of litigation, this Court did not examine the same and kept it open for examination.

**13.** The learned counsel appearing for the respondent/writ petitioner has further submitted that as per Section 8 of the Assam Rifles Act, 2006 read with Rule 27 of the Assam Rifles Rules, 2010, an employee of the Assam Rifles requires to obtain previous permission for submitting application for withdrawal of service, however, in the present case, this requirement has not been followed and, therefore, the discharge order has rightly been interfered with by the learned Single Judge.

The learned counsel for the respondent/writ petitioner has, therefore, prayed that the order passed by the learned Single Judge is not liable to be interfered with and the writ appeal preferred on behalf of the appellants is liable to be dismissed.

**14.** Heard the learned counsel appearing for the parties and perused the material available on record.

**15.** Having gone through the order dated 05.08.2015 passed by a Single Bench of this Court in WP(C) No.7056/2013, we are of the view that the learned Single Judge, while taking into consideration the facts and circumstances of the case in that writ proceeding, refused to interfere with the discharge certificate and remanded the matter back to the Office of the Director General of Assam Rifles for fresh consideration of the grievance of the respondent/writ petitioner regarding not permitting him to withdraw his resignation.

**16.** We are of the view that vide order dated 05.08.2015, the Writ Court has remanded the matter to the Director General to consider the only point whether the respondent/writ petitioner had filed any application for withdrawal of his resignation within 90(ninety) days limit or not. While remanding the matter, the Writ Court has also refused to interfere with the discharge order and as the said order has attained finality, it was not open for the learned Single Judge to examine the validity of the discharge order in the subsequent writ petition, which is allowed by the impugned judgment. The learned Single Judge was supposed to only examine the validity of the order dated 05.11.2015, which was passed by the Director General of Assam Rifles pursuant to the remand made by the Writ Court vide order dated 05.08.2015. However, the learned Single Judge has not examined the validity of the said order and has interfered with the discharge order, which in our view, was not permissible.

**17.** The learned Single Judge has also erred in relying on a Notification dated 17.05.1990, issued by the Director General of CRPF, New Delhi in respect of the CRPF personnel only, and in applying the said notification in relation to discharge order of the respondent/writ petitioner.

**18.** In respect of the employees of the Assam Rifles, separate instructions titled as "Record Branch Instructions" are in vogue and any application of the employees of the Assam Rifles is required to be considered as per the provisions of those Instructions. Instruction 4 of the Record Branch Instructions reads as under:-

*"4. Discharge at own Request/Compassionate Ground: The terms and conditions of service in respect of personnel enrolled in Assam Rifles permit an individual to serve upto the age of 60 years. He may, however, elect to proceed on pension after completion of 20 years of qualifying service for which no reasons are required to be given. If an individual seek discharge at own request which tantamount to resignation or on compassionate grounds before completion of 20 years of qualifying service, forfeits any right to pension. However, as per Assam Rifles Act, 1941 an individual can seek discharge on compassionate grounds after completion of four years service (in the case of GD) and eight years (in the case of Technical trades) without any pensionary benefits. A certificate as per Appx 'H' & 'J' will in their cases be forwarded to Sector Crd. along with application for discharge on compassionate grounds. An OR having more than 15 years of service will be advised not to apply for discharge on compassionate grounds but to proceed on voluntary retirement after completion of 20 years of service as in the case of NCO/Riflemen so that such personnel earns minimum service pension for their past service reckonable towards pension and gratuity etc."*

**19.** The Director General of Assam Rifles has issued further Instructions in relation to premature discharge before completion of pensionable service of employees of the Assam Rifles. The said instructions dated 24.03.2009 are reproduced hereunder:-

*"PREMATURE DISCHARGE BEFORE PENSIONABLE SERVICE*

*1. Of late it has been experienced that the PBOR when reporting to this Dte for disch drill; complaint to senior officers that they were compelled by*

*the CO/other officers in the units to sign application for voluntary discharge under threat and duress.*

*2. Voluntary/premature retirement before completion of pensionable service are approved by this Dte only after ascertaining the correctness of voluntary or premature retirement applications. Complaints are submitted by the indis to senior officers at this Directorate or to VIP at Govt. level.*

*3. In view of the above, it has been decided that case of voluntary premature retirement before completion of pensionable service will Committee composed as under:-*

*(a) Presiding Officer – 2LC of unit/Adm Comdt at Sect/IG HQ.*

*(b) Members 1. - One x Coy Cdr  
2. - Sub Maj of the unit.*

*4. The committee will:-*

*(a) Examine the request of the indi to rule out the possibility that no pressure by any auth in the unit was ex over the indi. to put up application for voluntary retirement or premature retirement before completion of pensionable service. The committee will obtain the following cert from the indi and encl with his application fwd to DGAR Records br:-*

*I No. \_\_\_\_\_ certify that I have applied for voluntary retirement, or resignation from service before completion of pensionable service at my own free will and no coercion threat , pressure or inducement that so ever has been used to me by any authority in the unit/higher Headquarters of the Assam Rifles.*

*(b) Recommend the application of the indi and fwd to the CO for his recommendation and further submission to this Dte for further necy action alongwith pen docu on quarterly basis by 15 Mar, 15 Jun, 15 Sep and 15 Dec. Applications received in piecemeal will be returned unactioned.*

*5. This letter may please be handed over on relief.*

*6. Please ack.”*

**20.** As per the Instructions dated 24.03.2009, in case of voluntary/premature discharge of an employee of the Assam Rifles before completion of pensionable service, a Quarterly Standing Committee is to be formed for the purpose of ruling out the possibility that no pressure or inducement is used by any authority on the employee to opt for voluntary

retirement or premature discharge before completion of the pensionable service, and to ensure that, the Committee is to obtain a certificate from the individual and enclose the same along with the forwarding papers. In the original record, an appendix (Appendix-F) is available, wherein the respondent/writ petitioner has submitted a certificate expressing his willingness for discharge from service on his own request. It is certified by the respondent/writ petitioner that he is preferring the application for premature retirement at his own will and no coercion, threat, pressure or inducement has been used upon him by any authority of the Assam Rifles. The Appendix-F, signed by the respondent/writ petitioner, is reproduced hereunder:-

“WILLINGNESS CERTIFICATE FOR DISCHARGE FROM SERVICE AT OWN REQUEST

*I, No.2701947A Rfn/GD Bikram Rana of 27 Assam Rifles certify that I have applied for resignation from service before completion of pensionable service at my own free will and no coercion, threat, pressure or inducement what so ever has been used to me any authority in the Unit/Higher Headquarters of the Assam Rifles.*

*(Signature of the applicant)  
No.2701947A Rfn/GD  
Bikram Rana”*

So far as the recommendation of the Committee is concerned, the learned Single Judge has already taken note of the same by quoting it in Paragraph 5 of the impugned judgment.

**21.** From the above, we are of the view that when separate Instructions in respect of the employees of the Assam Rifles for the purpose of considering a request of premature retirement before completion of pensionable service are already in vogue, the Notification applicable in respect of the employees of CRPF has wrongly been relied upon by the learned Single Judge.

**22.** We have also taken into consideration the provisions of the Instructions applicable in the case of the Assam Rifles personnel and found that before discharge of the respondent/writ petitioner from service, the same have been complied with. Apart from the above, the past conduct of the respondent/ writ petitioner, as highlighted by the appellants in their counter affidavit as well as in the order dated 05.11.2015, passed by the Director General of Assam Rifles, which has not been countered by the respondent/writ petitioner, does not entitle him to be retained in Assam Rifles, which is a disciplined force.

It is also to be noticed that no attempt was made on behalf of the counsel for the respondent/writ petitioner, either before the learned Single Judge or before us, to assail the validity of the order dated 05.11.2015 passed by the Director General of Assam Rifles.

**23.** So far as the contention of the learned counsel for the respondent/writ petitioner to the effect that the provisions of Section 8 of the Assam Rifles Act read with Rule 27 of the Assam Rifles Rules have not been complied with is concerned, the same is considered but only for rejection.

Section 8 of the Assam Rifles Act and Rule 27 of the Assam Rifles Rules are reproduced hereunder:-

*“8. Resignation and withdrawal from the post. – No member of the Force shall be at liberty –*

*(a) to resign his appointment during the term of his engagement; or*

*(b) to withdraw himself from all or any of the duties of his appointment,*

*except with the previous permission in writing of the prescribed authority.”*

*“27. Resignation.– (1) The Central Government may, having regard to the special circumstances of any case, permit any officer of the Force to resign from the Force before completing the term of engagement:*

*Provided that before granting such permission the Central Government may require the officer to refund to the Government three months pay and allowances drawn by him or the cost of training imparted to him, whichever is higher.*

*(2) The Central Government may accept the resignation under sub-rule (1) with effect from such date as it may consider expedient.*

*(3) The Central Government may refuse to permit an officer to resign, -*

*(a) if an emergency has been declared in the country either due to internal disturbance or external aggression; or*

*(b) if it considers it to be inexpedient so to do in the interest of the discipline of the Force; or*

*(c) if the officer has specifically undertaken to serve for a specified period and such period has not expired.*

*(4) The provisions of this rule shall apply to and in relation to subordinate officers and enrolled persons as they apply to and in relation to any officer of the Force and the powers vested in the Central Government under sub-rules (1) and (2) shall be exercised in the case of a Subedar-Major and Subedar by an Inspector-General, in the case of a Naib-Subedar by an officer not below the rank of Additional Deputy Inspector-General, and in the case of an enrolled person, by a Commandant.”*

**24.** A bare perusal of the above referred provisions makes it clear that an employee of the Assam Rifles cannot resign or withdraw himself during the term of his engagement, except with the previous permission in writing of the prescribed authority. As per Section 2(1)(t), “prescribed” means prescribed by the Rules made under the Act. The Assam Rifles Rules, 2010 are enacted in exercise of the powers conferred by Section 165 of the Assam Rifles Act. Sub-rule (1) of Rule 27 of the Assam Rifles Rules provides that the Central Government can permit any Officer to resign from the Force before completing his/her term of engagement, however, before granting such permission, it may require an Officer to refund to the Government 3(three) months’ pay and

allowances drawn by him/her or the cost of training imparted to him/her, whichever is higher. It means that it is within the discretion of the Central Government to require an Officer, who sought premature retirement, to refund to the Government 3(three) months' pay and allowances or cost of training imparted to him/her, whichever is higher. The Central Government can permit an employee premature retirement even without asking any refund of 3(three) months' pay and allowances or the cost of training imparted to him/her.

Sub-rule (3) of Rule 27 says that in certain conditions, the Central Government can refuse to permit an Officer from seeking premature retirement. However, sub-rule (4) specifies the authorities, who can exercise the powers vested on the Central Government in accepting the resignation or allowing premature retirement of an employee.

**25.** From the analysis of the above provisions, it can be concluded that before allowing an employee of the Assam Rifles to withdraw from its services, previous permission of competent authority is required. In view of the above conclusion, there is no merit in the submission of the counsel for the respondent/writ petitioner that an employee of the Assam Rifles has to seek prior permission from the competent authority before submitting application for withdrawal from service.

**26.** In the present case, the Committee convened under the Record Branch Instructions, has recommended the premature retirement of the respondent/writ petitioner and the Director General of Assam Rifles examined the recommendation and the discharge papers received from the Unit with the Policy instructions on the subject and approved his voluntary discharge from service w.e.f. 01.01.2012 vide letter dated 15.09.2011. It is after the approval

granted by the prescribed authority, the respondent/writ petitioner was prematurely discharged from his services. It is not the case of the respondent/writ petitioner that the approval in his case was not granted by the competent authority.

**27.** In view of the above discussion, we are of the view that the impugned judgment & order dated 28.02.2019 passed by the learned Single Judge in WP(C) No.2461/2016 and the order dated 10.06.2019 passed in I.A. (Civil) No.1858/2019 cannot be sustained. Hence, the same are set aside. The writ appeal is accordingly disposed of. Resultantly, the writ petition filed by the respondent/ writ petitioner also stands dismissed.

**28.** No orders as to costs.

**29.** The original records, as produced by Mr. Chakravarty, learned counsel for the appellants, be returned forthwith.

**JUDGE**

**CHIEF JUSTICE**

**Comparing Assistant**