BEFORE
HON'BLE MR. JUSTICE S.R. SEN
CRP. No. 44 of 2013

13.02.2014

Heard Mr. R. Sahu, learned counsel for the petitioner who submits that he is still to receive the certificate of service of notice from the post office.

The learned counsel is also directed to file the report supporting by an affidavit on the next date.

List this matter after 2(two) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
CRP. No. 61 of 2013

13.02.2014

Heard Mr. H.L. Shangreiso, learned counsel for the petitioner.

From record it appears that the AD card has not yet been received. The learned counsel is directed to obtain the service report from the post office and to place before the court by supporting with an affidavit.

List this matter after 2(two) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
MACAPP. No. 1 of 2011

13.02.2014

Heard Ms. P. Das, learned counsel for the petitioner who submits that the leading counsel, Mrs. PDB. Baruah is suffering from acute spondylitis, hence could not appear before the court, and prays that the matter may be fixed on Monday.

Mr. K.P. Bhattacharjee, learned counsel for the respondent is present and has no objection.

List this matter on Monday for hearing.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
MC(WP)(C)) No. 50 of 2013

13.02.2014

Heard Mrs. S. Bhattacharjee, learned GA, Meghalaya as well as State counsel, Mr. R. Gurung and Mr. B. Khyriem, learned counsel for respondent No. 3.

As prayed for by the learned counsels, list this matter tomorrow i.e. 14.02.2014.

JUDGE

D. Nary

THE HIGH COURT OF MEGHALAYA
AT SHILLONG.

W.P.(C) No. 208 of 2013

Shri Anil Kumar Yadav,
S/o Shri Papu Ram Yadav,
Village – Dilawarpur,
P.O. – Shahpur,
P.S – Alwar (Sadar),
District – Alwar,
State of Rajasthan,
Now camped at Rajasthan Vishram
Bhawan,
Luckier Road,
Garikhana, Shillong – 1,
Meghalaya ::::::: Petitioner

-Vrs-

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

2. The Directorate General Assam Rifles,
   C/o Assam Rifles Head Quarters,
   Laitkor, Shillong,
   Meghalaya

3. The Deputy Director (Records),
   C/o Assam Rifles Head Quarters,
   Laitkor, Shillong,
   Meghalaya.

4. The Commandant,
   Assam Rifles Training Centre and
   School, Dimapur, Nagaland. ::::::: Respondents

BEFORE
THE HON'BLE MR JUSTICE SR SEN

For the Petitioner : Mr. S. Chakravarty, Adv.

For the Respondents : Mr. R. Debnath, CGC

Date of hearing : ***13.02.2014***

Date of Judgment & Order : ***13.02.2014***

JUDGMENT AND ORDER (ORAL)

The petitioner's case in a nutshell is that:

"The petitioner was recruited as a General Duty (Driver) personal with the Assam Rifles and enlisted for training with effect from 10.12.2008 and his identification number was AR No. G/5016889P Recruit/ General Duty (Driver), and thereafter he was duly sent for training. During his training the petitioner was taken ill and had to be hospitalized for treatment with effect from 19.05.2009 to 05.12.2009 and upon completion of the treatment, he was discharged from the Military Hospital at Namkum, Ranchi, on the basis of the case summary and opinion of the Doctor Major Vikas Marwah, dated 20.11.2009, wherein the clear medical opinion given was the petitioner was fit for retention of service vide Government of India, Ministry of Defense Letter No. 22679/ DGAFMS/DG3A/2433/06/D Med, dated 20.07.2006. After his discharge from the Military Hospital at Namkum, Ranchi, the petitioner duly reported back for training, and thereafter he was not taken ill anymore.

Subsequently the petitioner was discharged from service in the Assam Rifles on the ground that his stay at the Assam Rifles Training Centre and School was exceeding 24 months and, such discharge of the petitioner was with effect from 31.07.2010, by the Discharge Certificate dated 07.07.2010.

However the petitioner could not immediately obtain legal assistance on account of his extreme impoverished condition and he could contact a lawyer at Delhi, only in 2011, whereupon the Advocate sent a lawyer's notice to the respondents and thereafter the respondents sent the reply to that lawyer's notice by the Letter No. I.36011/A/Legal-2011/3878, dated 13.10.2011, whereby the circumstances of the discharge of the petitioner were elucidated. Subsequently the petitioner again could not immediately seek redressal on account of his condition of extreme impoverished and only now he has been able to travel to Shillong for the purpose of instituting this instant petition before this Honourable High Court for necessary directions declaring the Discharge certificate dated 07.07.2010, as unlawful and illegal and also to

set aside and the quash the same with necessary direction for re-instatement of the petitioner in service forthwith".

2. The learned counsel, Mr. S. Chakravarty appearing for and on behalf of the petitioner submits that the petitioner was initially recruited on 10.12.2008 as a driver in the Assam Rifles and started training with effect from 31.12.2008 but, unfortunately, on 19.05.2009 he had fallen sick and had to be hospitalized at military hospital, Varanasi. On 20.11.2009 he has been discharged from the hospital with a fitness certificate as category P-2. On 02.12.2009 further he was discharged from military hospital at Namkum*,* Ranchi. On 05.12.2009 the petitioner had reported to Assam Rifles Composite Hospital at Sokhuvi and was discharged from there on the same day. On 03.05.2010 the petitioner was sent to the Assam Rifles Composite Hospital for medical review. There he has been given medical certificate as Shape-I and finally, he was discharged by the Assam Rifles Composite Hospital on 22.05.2010. On 26.05.2010 a board of officers was constituted to ascertain whether the petitioner could complete his basic training within the stipulated period of 24(twenty four) months and the board found that the petitioner has already stayed at Assam Rifles Training Centre for 17 and ½ months till May 2010 and he had to undergo another 7 and ½ months for training which would come to a total of 25(twenty five) months exceeding the stipulated period of 1(one) month, and finally the discharge certificate was issued against the petitioner on 31.07.2010 on the ground that his stay at Assam Rifles Training Centre and school was exceeding 24(twenty four) months.

The learned counsel, Mr. S. Chakravarty also further contended that the petitioner could not complete the training within the stipulated period due to his ill health which was beyond his control. So, necessary direction may be issued.

3. The learned CGC, Mr. R. Debnath appearing for and on behalf of the respondents submits that he has been discharged as per the discharge policy of the Assam Rifles.

4. I have perused the discharge policy, and on perusal of the discharge policy, it appears to me that the same is not mandatory but discretionary, because the word ***'can be'*** has been used in the heading. I have also perused the discharge certificate issued by the respondent where I have noticed the ground for discharge at Annexure-II page 13 where the grounds of discharge has been noted as ***"Stay at ARTC & S exceeding 24 months"***. In a similar

type of case this court has passed one judgment in WP(C) No. (SH) 43 of 2011. I reiterate my view once again to further clear the mind of the respondent.

5. After hearing the submissions advanced by the learned counsel at Bar and after going through the discharge policy as well as the discharge certificate, I find that the sole ground for discharge is ***"Stay at ARTC & S exceeding 24 months"***. I could not understand how a person can be discharged simply because he had to stay at ARTC & S exceeding 24 months due to illness. The respondent concerned should remember that even a very healthy and strong man can fall ill, and that does not mean or enough ground to discharge him from service.

In my considered opinion, there is none available in this earth who does not fall sick in his lifetime. As such, I am not convinced with the grounds of discharge, besides that, the discharge policy is not mandatory but a discretionary one. When there is discretion the authority concerned should apply their discretion not in the arbitrary manner but in a judicious manner and also to take humanity as well as the concept of the principle of natural justice.

6. In this instant case, it is also apparent from the submissions that ultimately on 19.05.2010 the petitioner was upgraded to Shape-I by Assam Rifles Composite Hospital. Therefore, there is no impediment arose before the authority not to allow the petitioner, but to allow him for further training where the grounds are genuine and intention is clear on the part of the petitioner. He should be given certain relaxation. We must not forget whatever the rules and laws are made, these are for the benefit of the people and for their well being. Laws are made for the people and people are not made for the law.

7. For the reasons discussed above, I find that the discharge certificate at Annexure-II page 13 is completely arbitrary, and liable to be set aside. Accordingly, it is set aside with a direction to the respondent to re-instate the petitioner forthwith and to allow him to continue with the rest part of his training.

8. With this observation and direction, this instant writ petition is allowed and stands disposed of.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 76 of 2013

13.02.2014

Heard the learned counsel for the petitioner, Ms. K. Chisa who prays for 4(four) weeks' time to which the learned Sr. counsel, Mr. S.C. Shyam for the respondent has no objection.

Prayer is allowed.

List this matter after 4(four) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 77 of 2013

13.02.2014

Heard the learned counsel for the petitioner, Ms. K. Chisa who prays for 4(four) weeks' time to which the learned Sr. counsel, Mr. S.C. Shyam for the respondent has no objection.

Prayer is allowed.

List this matter after 4(four) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 109 of 2013

13.02.2014

Heard Mr. L. Khyriem, learned counsel for the petitioner who informed the court that the learned Sr. counsel, Mr. H.S. Thangkhiew is out of station, and prays for 2(two) weeks' time.

The learned counsel for the State, Mr. K.P. Bhattacharjee and the learned counsel for the respondent No. 2, Mr. S.D. Upadhya are present and has no objection.

As prayed for, list this matter after 2(two) weeks.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 183 of 2013

13.02.2014

Heard Mr. S. Wahlang, learned counsel for the petitioner.

Also heard learned Sr. counsel, Mr. V.G.K. Kynta assisted by Mr. R. Thangkhiew, learned counsel.

The learned counsel, Mr. S. Wahlang submitted that the matter has already been settled as an order was passed by the Joint Secretary to the Executive Committee, KHADC, Shillong addressed to the Syiem of Hima Mylliem, Mylliem Syiemship respondent No. 2 directing him to conduct the election to elect the headman of the village of Lawmei Pdengshnong. And also directed that all real inhabitants of the village of Lawmei Pdengshnong should be given a chance to take part in the Durbar and the election.

I have perused the translating copy of the letter dated 22.01.2014 which speaks as follows:

"OFFICE OF THE EXECUTIVE COMMITTEE
KHASI HILLS AUTONOMOUS DISTRICT COUNCIL
SHILLONG

No. DC.XXVII/Genl/11/96-2014/69 Dated : Shillong, the ___January, 2014

To,

The Syiem of Hima Mylliem,
Mylliem Syiemship.

Subject:- ***Matter relating the Headman of Lawmei Pdeng-Shnong,***
Mylliem Syiemship

Reference:- ***Your Letter No. MS/V-26/2006-13/750-58***
Dt. 28th May, 2013

Syiem,

With reference to the subject cited above, I am directed to say that this Office after thoroughly examined

the above matter of the documents received from both sides once again direct you to conduct the election to elect the Headman of the Village of Lawmei Pdeng-Shnong.

At the same time, you should ascertain that only those real inhabitants of village Lawmei Pdeng-Shnong have the right to present in the Durbar and take part in the above election of the Headman.

Yours faithfully,

Joint Secretary to the Executive Committee,
Khasi Hills Autonomous District Council,
Shillong."

After hearing the submissions advanced by the learned counsel for the petitioner as well as the respondents, it is an admitted fact that the whole dispute was about the voters' lists, but, since the respondent No. 1 District Council has empowered the Syiem of Mylliem to conduct the election and also further directed to allow all the real inhabitants to take part in the Durbar and the election, there remains no dispute further.

I have made it clear that, while conducting the election all eligible voters' who are the permanent members of the respective village should be allowed to take part in the Durbar as well as in the election.

Court Master is directed to keep on record the letter dated 22.01.2014 issued by the respondent No. 1 to the respondent No. 2.

With this observation and direction, this instant writ petition is allowed and the matter stands disposed of.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 218 of 2013

13.02.2014

Heard Mr. S.D. Upadhya, learned counsel for the petitioner who prays that this instant writ petition may be taken up along with WP(C) No. 56 of 2013.

The learned CGC, Mr. R. Debnath appearing for and on behalf of the respondents is present and has no objection.

List this matter accordingly.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 224 of 2011

13.02.2014

Heard Mr. A.H. Hazarika, learned counsel for the petitioner.

Also heard Mr. R. Debnath, learned CGC appearing for and on behalf of the respondents who submits that he intends to file the additional affidavit for incorporating certain documents and the same is not ready and prays for 10(ten) days time.

Prayer is allowed.

List this matter after 10(ten) days for further orders.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 246 of 2013

13.02.2014

Heard Ms. S.G. Momin, learned counsel for the petitioner who informed the court that the leading counsel, Mr. R. Kar is still sick and under treatment at Kolkata, and prays that the matter may be fixed after 2(two) weeks.

Mr. S.P. Mahanta, learned counsel appearing for and on behalf of the respondents and Mr. R. Gurung, learned State counsel has no objection.

List this matter accordingly.

JUDGE

D. Nary

BEFORE
HON'BLE MR. JUSTICE S.R. SEN
WP(C) No. 361 of 2011

13.02.2014

Heard Mr. C. Khyriem, learned counsel for the petitioner who informed the court that the leading counsel, Mr. R. Jha could not appear due to his ill health, and sought time.

The learned Sr. counsel, Mr. S.C. Shyam for the Union of India is present.

List this matter in the usual course of time for hearing.

JUDGE

D. Nary