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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 14591/2022**

AR 196 COMMANDANT WAZIR SINGH PANGHAL RETD

..... Petitioner

Through: Mr. Krishan Kumar, Advocate

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Harish Vaidyanathan Shankar,
CGSC with Mr. Srish Kumar Mishra,
Mr. Sagar Mehlawat, Mr. Alexander
Mathai Paikaday, Advocates

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

% **17.10.2022**

1. The Petitioner has filed the present writ petition as a Public Interest Litigation (PIL), with the following prayers:-

“1. To direct the Respondents to put an end to violation but strictly follow Assam Rifles Act, Rules and Regulations in letter and spirit for all purposes including the posting of Army officers to Assam Rifles.

2. To direct the Respondents to follow the directions and conditions imposed by Hon'ble Supreme Court of India regarding “Deputation” while posting of Army officers to Assam Rifles.

3. To direct the Respondents to forthwith, withdraw the appointment of all such Army Officers and invalidate all disciplinary actions illegally taken against Assam Rifles personnel by the committee of Army officers violating AR Act, Rules and Regulations till date.

4. To direct the Respondents to call for an investigation in the matter of heavy financial embezzlement of illegally claiming Deputation allowance by army officers while posted in Assam Rifles in connivance with the officials of respective ministry(s) and treasury department.

5. Pass any order or grant any relief as this Hon'ble Court deems fit to pass in the facts and circumstances of the present case."

2. The aforesaid reliefs as has been sought by the Petitioner reveal that the Petitioner is objecting to the posting of Army Officers/Army Personnel to Assam Rifles. The Petitioner has gone to the extent of seeking for issuance of an appropriate writ, order or direction to the Union of India to withdraw appointment of all such Army Officers from Assam Rifles besides other reliefs.

3. Mr. Harish Vaidyanathan Shankar, learned CGSC, has drawn the attention of this Court towards the judgment passed by a Division Bench of this Court in No.G/5007784 Rank-Rifleman (General Duty) Anil Kumar v. Union of India & Ors., W.P.(C) 12840/2021.

4. In the aforesaid case, the court martial proceedings under Section 140 of the Assam Rifles Act, 2006 were under challenge on the ground that the Petitioner therein was an Army personnel and it was contended that the Officer on deputation from Indian Army cannot be subjected to Assam

Rifles Act. The prayers, as sought for, in No.G/5007784 Rank-Rifleman (General Duty) Anil Kumar v. Union of India & Ors., W.P.(C) 12840/2021 are reproduced as under:-

“a. To kindly grant stay of the ongoing proceedings of General Assam Rifles Court convened w.e.f. 11th October 2021.

b. To dissolve and declare the current illegally constituted General Assam Rifles Court as null and void because it is in contravention to Section 90 and 106 of the Assam Rifles Act, 2006.

c. To declare the annulment of proceedings of GARC under section 140 of the Assam Rifles Act, 2006 on the ground that they are illegal and unjust.

d. To quash the findings and proceedings of Court of Inquiry convened vide order dated 03rd June, 2021 being null and void.

e. To quash the findings and proceedings of Officer directed to record the Summary of Evidence vide order dated 15th July, 2021 being null and void.

f. To release the Petitioner from custody/arrest during convening of GARC.

g. To pass an appropriate order or instruction to present application with all consequential benefits.

h. Any other relief which this Hon’ble Court may find appropriate in the interest of justice, equity and good conscience.”

5. The Division Bench of this Court had passed a detailed and exhaustive Judgment in the aforesaid case, rejecting the prayers sought

therein. The Division Bench has also not interfered with the court martial proceedings. Paragraph 13 to 19 of the Judgment dated 15.11.2021 passed by the Division Bench in W.P.(C) 12840/2021 read as under:-

“13. A reading of the above provisions would clearly show that an „Officer” includes a person appointed to the Force on deputation.

14. The term “Deputation” is also defined in the Act in Section 2(i), as under:

“2.(i) “deputation” means a period for which the services of a person belonging to any department of the Central Government are placed at the disposal of the Director General;”

15. Therefore, a person appointed on deputation to the Force is also an ‘Officer’ for purposes of Section 90 of the Act. The term “Officer” in Section 90 of the Act does not refer to only persons directly appointed as such in the Force.

16. Reliance of the learned counsel for the petitioner on Section 3(3) of the Act to contend that the „Officer” taken on deputation from Indian Army are not subject to the Act, would not make any difference to the above position. Section 3(3) of the Act merely states that any person who is employed in the Force on deputation from regular army shall himself/herself not to be subject to the Act and shall, during the period of such deputation, be deemed to be subject to the Army Act, 1950. The same, however, would not denude, while being on deputation, his position as an „officer” under the Act and to discharge functions assigned to him/her in such position.

17. Similarly, the reliance of the learned counsel for

the petitioner on certain responses given to queries raised under the Right to Information Act, 2005 to the effect that officers from Indian Army are appointed on tenure posting, also cannot come to the avail of the petitioner. Deputation is also a tenure posting. In any case, replies given under the Right to Information Act, 2005 cannot be used to explain the statutory position with respect to such officer.

18. As far as the submissions on merit of the allegations against the petitioner are concerned, it is settled law that at this stage where the inquiry has been ordered, the Court would be slow to interfere with such proceeding. The Act gives adequate remedy to the petitioner in case the findings of GARC are against the petitioner.

19. In view of the above, we find no merit in the present petition. The same is dismissed. There shall be no order as to costs.”

6. The Petitioner herein by way of the present PIL in prayer clause (iii) has made the following prayer:-

“3. To direct the Respondents to forthwith, withdraw the appointment of all such Army Officers and invalidate all disciplinary actions illegally taken against Assam Rifles personnel by the committee of Army officers violating AR Act, Rules and Regulations till date.”

7. The relief not granted by the Division Bench again forms part of the prayer clause in the present PIL. Otherwise also, in service matters, no PIL is maintainable.

8. In the considered opinion of this Court, the relief sought by the

Petitioner relates to ‘service matter’ and in light of the judgment passed by the Apex Court in Dr. Duryodhan Sahu & Ors v. Jitendra Kumar Mishra & Ors., (1998) 7 SCC 273, the present writ petition is not maintainable. However, liberty is granted to any individual, who has been posted to Assam Rifles and is aggrieved in the matter.

9. The petition is dismissed with the above observations. Pending applications, if any, stand disposed of.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

OCTOBER 17, 2022

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