

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Reserved on: October 10, 2022**
Pronounced on: October 28, 2022

+ W.P.(C) 9715/2020

BHAWAR SINGH GURJAR Petitioner
Through: Mr. R.L. Kohli, Advocate

Versus

UNION OF INDIA & ORS. Respondents
Through: Mr. Rishabh Sahu, CGSC &
Mr. Sameer Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT

SURESH KUMAR KAIT, J

1. By filing this petition, petitioner is seeking quashing of the order dated 23.09.2019, whereby he has been dismissed from service w.e.f. 01.10.2019.

2. The brief background of the case, as mentioned in the petition, is that for filling up the post of Constables (GD) in various forces i.e. BSF, CRPF, CISF, ITBP, SSB, NIA & SSF and Rifleman in Assam Rifles, respondents had notified an advertisement for conducting *Constables (GD) in CAPFs, NIA & SSF and Rifleman (GD) in Assam Rifles*

Examination 2015 , to which petitioner also applied by filling online form. According to petitioner, he had filled his first preference as “Assam Rifles” in the online form and had clearly mentioned his permanent/ domicile address of Alwar/ Rajasthan. Petitioner has averred that he had filled the online form through E-shop/ cyber cafe operator, who had inadvertently filled the State/UT of domicile code as 04, presuming it to be ‘preference of posting’ in the concerned district and border.

3. Under the schedule of selection published by respondent No.2-SSC, the applicant was required to first undergo Physical Endurance Test (PET) conducted by the CAPF i.e. CRPF followed by written examination. The qualified candidates were to be called for Detailed Medical Examination (DME) conducted by MHA coordinating CAPF i.e. CRPF and at the said time verification of the documents of the candidates was also to be done.

4. According to petitioner, it was also mentioned that if a candidate produces domicile certificate issued by a state other than the State mentioned in the application, the candidate will be considered for the State for which he has submitted the domicile certificate and will also be permitted to change the State code there and then.

5. Petitioner claims to have qualified the PET; cleared the written examination; appeared for DME and submitted all the documents for verification. The respondent No.2- SSC first issued a provisional list of selected candidates without force allocation after DME & verification of documents and thereafter, respondent No.3-MHA/CRPF prepared the final list with force allocation. The petitioner was selected for the post of

Rifleman (GD) in Assam Rifles and was issued appointment letter dated 21.04.2017. He was directed to report to Assam Rifles Training Centre Dimapur, Nagaland on 25.05.2017 at 0800 hrs for basic military training, which he successfully completed and after the Oath Parade, he was posted to 7 Assam Rifle as Rifleman (GD). However, petitioner received a Show Cause Notice dated 31.01.2019 from Colonel Commandant, 7 Assam Rifles wherein it was mentioned that though petitioner had submitted Domicile Certificate of Rajasthan, however, he was selected against the vacancies of Assam State as he had filled the State/UT Domicile Code in the application as 04. The petitioner filed a reply dated 14.02.2019 to the aforesaid Show Cause Notice and contended it as a *bona fide* mistake on the part of the operator of the cyber café while filling the online application form.

6. Petitioner thereafter received another Show Cause Notice dated 08.05.2019 stated therein that though he had submitted the domicile certificate of Rajasthan, however, he was selected against the vacancies in the State of Assam and was asked to explain as to why he should not be dismissed from service under the provisions of the Section 11 (2) of Assam Rifles Act, 2006 read with Rule 22 of Assam Rifles Rules, 2010. In the reply dated 03.06.2019 to the aforesaid Show Cause Notice dated 08.05.2019, the petitioner stated that the mistake was not deliberate and being a technologically challenged person, the form was filled by an operator of a cyber café and requested the authorities to consider his good moral character as well as family condition and prayed for continuation of service. Thereafter, petitioner received impugned order dated 23.09.2019

from Deputy Inspector General, Assam Rifles dismissing him from service w.e.f 01.10.2019 (forenoon) for furnishing false and incorrect information.

7. Pursuant to his dismissal from service, the petitioner preferred an appeal dated 29.10.2019 before the Appellate Authority, Director General Assam Rifles against the termination order dated 23.09.2019. However, since petitioner did not receive any communication on his appeal, a reminder dated 17.12.2019 was sent by him. However, vide letter dated 30.01.2020, petitioner was informed that his appeal has been dismissed.

8. At the time of hearing, learned counsel appearing on behalf of petitioner contended that all the original documents, including the Domicile Certificate, mentioned petitioner's permanent address of district Alwar (Rajasthan) and only it when petitioner received the Show Cause Notice that he got to know about wrong mention of State/UT domicile code in his application form, as being technologically challenged, petitioner had got the form filled at a cyber cafe. It was next submitted that even the Service Certificate dated 09.08.2018 issued by the Training Battalion Assam Rifles to petitioner, also mentions the permanent address of petitioner as Rajasthan. Learned counsel empathically submitted that petitioner rendered unblemish service of 02 years 04 months and 05 days under 7 Assam Rifles and thereafter, his services have been terminated, for a mistake which was not deliberate at all. Learned counsel submitted that even the appeal preferred by the petitioner against his dismissal, has been summarily disposed of by Inspector General without application of mind. Thus, it is prayed that the impugned order of the DIG, Assam Rifles dated 23.09.2019 deserves to be set aside.

9. On the other hand, learned CGSC appearing on behalf of respondents submitted that during the Recruitment Rally conducted in the year 2015-16 at Jaiselmer, Rajasthan, petitioner had joined on the vacant post of Constable (GD) in the State of Assam (i.e. State Code No 04 and Border Dist Code No 01) and subsequent upon completion of his Basic Military Training (BMT), he was posted to Assam Rifles w.e.f 28.09.2018. Vide letter dated 28.03.2018, a complaint was received that petitioner's actual domicile was Rajasthan, but his selection has been made from different State. Accordingly, after the scrutiny of documents, petitioner was issued Show Cause Notice dated 14.02.2019 for having submitted false information and another Show Cause Notice dated 08.05.2019 to cite explanation as to why his services be not terminated. Petitioner's reply dated 03.06.2019 to aforesaid Show Cause Notices, was found to be devoid of merit and unsatisfactory by the competent authority. Consequently, petitioner was dismissed from service on 01.10.2019.

10. Learned CGSC submitted that after filling of the form, the candidate is required to click on the button "I Agree" after satisfying that the details furnished are correctly filled and that no further correction shall be permitted. Petitioner also while submitting the form had accepted the 'terms and conditions' mentioned in the form and in the final print of the application form, wherein State of his domicile was mentioned as "Assam" instead of "Rajasthan". It was submitted that petitioner was duty bound to cross-check his details at the time of filling up the form and the pleas of his being technologically challenged cannot be accepted.

11. Learned CGSC also submitted that as per terms of appointment,

every candidate was required to submit valid “Domicile Certificate” and the candidate shall be considered for recruitment only if the information furnished are found to be correct during document verification. Reliance is placed upon decision dated 20.03.2019 of High Court of Meghalaya at Shillong in W.P.(C) No. 156/2017, titled as “*Chandrakant Prabhat Vs. The Union of India*” to submit that by furnishing false certificate for the purpose of recruitment or providing false details in the application form, a candidate cannot claim appointment.

12. Next submitted that under the provision of Section 11 (2) of Assam Rifles Act, 2006 read with Rule 17 and Rule 22 of Assam Rifles Rules, 2010, petitioner has been rightly dismissed from service and this petition deserves to be dismissed.

13. In the rejoinder, petitioner has pleaded that as per Note III of Clause 2 and Clause 4(c) of the Notification, if a candidates furnished Domicile Certificate of a State other than the one mentioned in his application, then he has to be considered for appointment in the State mentioned in the Domicile Certificate. Thus, the submissions of the respondents deserve to be rejected.

14. The arguments advanced by both the sides were extensively heard. Upon perusal of the material placed before us, we find that the respondents vide Appointment Letter dated 21.04.2017 had appointed petitioner to the post of Constable (GD) and was directed to report to the Assam Rifles Training Centre and School, Dimapur (Nagaland), with the requisite documents. As per Clause-2, he was considered appointed / recruited from the date of reporting to this Centre.

15. Relevantly, the Appointment Letter dated 21.04.2017 was sent to the petitioner at his Permanent Residential Address in District Alwar (Rajasthan). Even the Service Certificate dated 09.08.2018 issued by the Training Battalion Assam Rifles to petitioner, also mentions the said address of petitioner in Rajasthan. It is not disputed that petitioner had joined the training on 25.05.2017 and had also submitted all the requisite documents before the competent authority, including the Domicile Certificate of Rajasthan.

16. A perusal of application form having Registration-Id: 51137432471 filled by the petitioner for the subject post clearly shows that though in the Column No.2 of State/UT of domicile, the petitioner has mentioned Assam (4), however, in Column No. 18 of Address as well as Column No. 19 of Permanent/ Domicile Address, the petitioner has mentioned his address as Alwar (Rajasthan) only. The various communications by respondent No.3 to the petitioner like sending of Admit card for the written examination and medical test etc. were sent to his Rajasthan address only. So much so, his Appointment Letter dated 21.04.2017 was also sent at his Permanent Residential Address in Alwar (Rajasthan). Not only that, the police investigation for verifying the character of the petitioner, was also done at his Rajasthan address and the report dated 15.05.2017, clearly notes that he was residing at his parental house for the last 26 years. The Certificate of Backward Classes also mentions his Rajasthan address. The Domicile Certificate has been issued by the Tehsildar, Rajgarh, Alwar, Rajasthan. Even the Service Certificate dated 09.08.2018 issued by the Training Battalion Assam Rifles to petitioner,

also mentions the permanent address of petitioner as Rajasthan. It is not disputed that petitioner had joined the training on 25.05.2017 and had also submitted all the requisite documents before the competent authority, including the Domicile Certificate, which mentions his State as Rajasthan.

17. At the time of issuance of impugned termination order dated 23.09.2019, petitioner had served 07 Assam Rifles for 02 years 04 months and 05 days. Respondents have placed reliance upon provisions of Section 11(2) of the Assam Rifles Act, 2006 read with Rule 22 of Assam Rifles Rules, 2010.

18. Section 11(2) of the Assam Rifles Act, 2006 reads as under:-

“(2) An officer not below the rank of Deputy Inspector-General may dismiss or remove from the service any person under his command other than an officer or a subordinate officer of such rank or the ranks as may be prescribed.”

19. Also, Rule 22 of Assam Rifles Rules, 2010, reads as under:-

“22. Termination of service on grounds of furnishing false or incorrect information at the time of appointment or enrolment.—The Central Government or the authority as the case may be, as specified in rule 17, may terminate the service of a person subject to the Act on grounds of furnishing false or incorrect information at the time of appointment or enrolment of that person in the service: Provided that action under this rule shall not be taken without the competent authority giving the person concerned a show cause notice giving one month time to urge grounds, if any, in his defence, and his explanation being found unsatisfactory.”

20. Apparently, in terms of afore-noted Rule 22, we find that a person can be terminated only if false or incorrect information at the time of appointment or enrolment in service has been given, however, in the present case, the information with regard to petitioner's domicile has been corrected given from initial stage.

21. A perusal of the Note-III of Clause-2 of Notice F. No.31112014-P&P-1 (vol-II) issued by the SSB , reads as under:-

“Note III: As the vacancies have been allotted to the concerned States/UTs, candidates are required to submit domicile certificates of the states indicated by them in the application at the time of medical examination/documents verification failing which his/her candidature will be cancelled forthright and the candidate will not be allowed to undergo medical examination. If a candidate produces domicile certificate issued by a state other than the state mentioned in his application he will be allowed to change the state code at the time of verification of documents.”

22. It is the case of petitioner that he gained knowledge of his wrong mentioning of domicile in his online application form only when he received Show Cause Notice from the respondents; whereas respondents have pleaded that the factum of petitioner's wrong mentioning of domicile was complained on 28.03.2018. In fact, in terms of Appointment Letter dated 21.04.2017, petitioner had joined the training on 25.05.2017. As the Appointment Letter was issued after verifying the documents furnished by the petitioner at the time of his medical examination, if at all there was an error or discrepancy in mentioning the domicile, it could have been

corrected at the time of verification of documents in terms of Note-III of Clause-2 of the Notice. It is not the case of respondents that Domicile Certificate was not furnished at the prescribed time or that the records pertaining to the permanent address of petitioner mentioned was other than given in the Domicile Certificate. It is also not the case of respondents that petitioner was not able to complete his training program successfully. Rather, upon his successful completion of training, the petitioner was issued Service Certificate dated 09.08.2018 by the Training Battalion Assam Rifles.

23. The reliance by the respondents upon the decision in ***Chandrakant Prabhat (Supra)*** in support of their case is misplaced, as allegations against the petitioner in the said case were of furnishing fake residential certificates, which culminated into an inquiry and resulted into dismissal from service. Such is not the case before this Court as there is no such allegation by the respondents.

24. Moreover, on this aspect, Punjab and Haryana High Court, in a case decided on 30.08.2019, being CWP No. 10407 OF 2019, titled as ***Kaptan Singh Vs. Union of India & Ors***, wherein petitioner had applied for the post of Constable by filling an online application from a cyber café and the cyber café operator had wrongly filled gender as “male” instead of female, directed the respondents to carry out the necessary corrections, observing as under:-

“14.Given the prevailing socio-economic conditions in our country, it is safe to assume that every citizen does not have the financial

capacity to own his own computer or a laptop and has to, therefore, necessarily depend either on cyber-café or any other third person having access to computer for filling up such like online forms. Specially, in the case of petitioners, who are admittedly residents of rural villages/ areas in the remote part of Haryana. In such cases, an inadvertent mistake on the part of third person whose services were perforce utilized by a candidate, cannot be construed as an intentional mistake on the part of a candidate. A candidate cannot, therefore, be made to suffer for the bonafide mistake in the present case in filling up the wrong gender while filling up the form by the cyber-café person.

15. Having gone through the record of the case, this Court is satisfied that the mistake committed in filling up the gender is indeed a bonafide mistake and given the fact that the difficulty level of CBT is same regardless of being a male or female candidate and the petitioners did not earn any undue benefit by giving the erroneous information in respect of their gender.”

25. In the present case, the documentary evidence, especially the Domicile Certificate, provided by the petitioner is true and correct and has not been disputed by the respondents. According to petitioner, it is a human error while applying from a web cafe. There is no doubt that while finally submitting a form, the applicant is required to click on “I Agree”, and has to accept the “terms and conditions” that no corrections thereafter on the online portal shall be permitted, however, it is reiterated that in terms of Note-III of Clause-2 of the Notice dated 24.01.2015, inviting applications for Constables (GD) in CAPFs. NIA & SSF and Rifleman (GO) in Assam Rifles Examination, 2015 *if a candidate produces domicile*

certificate issued by a state other than the state mentioned in his application he will be allowed to change the state code at the time of verification of documents. In terms thereof, the petitioner should have been given an opportunity to correct the mistake in terms of Note-III of Clause-2 of the Notice. It is not the case of respondents that they had asked the petitioner at the time of verification of documents to correct the records and he did not do it.

26. Further, sub-clause (C) of Clause 4 of the said Notice mentions as under:-

“4(c): PROCESS OF CERTIFICATION AND FORMAT OF CERTIFICATES:

XXXXX

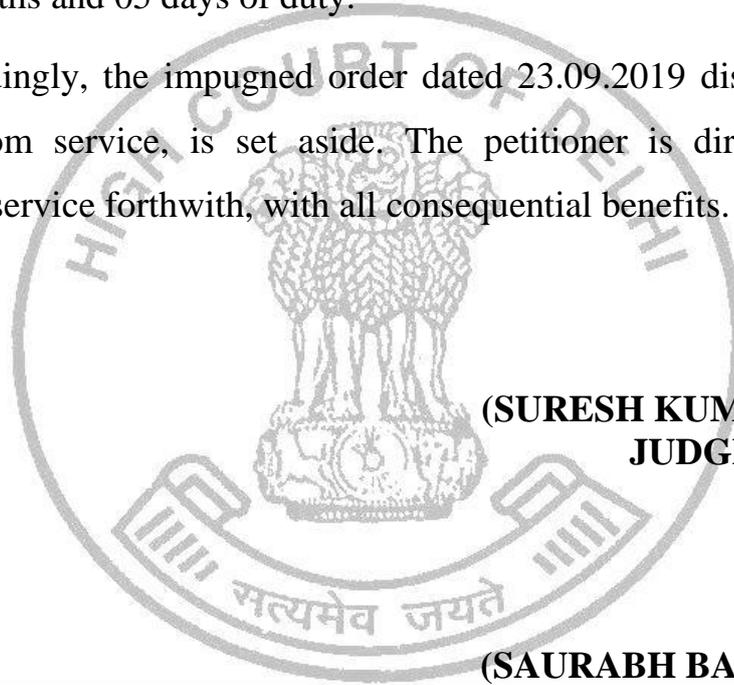
Since the State of Assam is not issuing Domicile Certificate/PRC, candidates belonging to the state of Assam are not required to submit the same. However, their selection will be subject to verification of residential status from the concerned District Authorities. West Pakistani refugees who have settled in J & K but have not been given the status of citizens of the State will be recruited without the condition of having a domicile certificate from the designated authority of the J&K State.”

27. Thus, reading of the aforesaid shows that candidates belonging to the State of Assam are not required to submit Domicile Certificate, since the State of Assam is not issuing it. Even if petitioner had made an error in mentioning the wrong code (04) that of the State of Assam instead of the State of Rajasthan while filling the online application, it had escaped the notice of respondents at the time of verification of the original documents,

as all the documents submitted by the petitioner mentioned Rajasthan as his permanent address.

28. In the light of aforesaid, we find that the error of wrong mentioning of “State/UT of domicile code as 04” in the application form was inadvertent and the petitioner cannot be made to suffer having been technological unfriendly, especially whence no objection was raised by the respondents at the time of his joining service and till completion of 02 years 04 months and 05 days of duty.

29. Accordingly, the impugned order dated 23.09.2019 dismissing the petitioner from service, is set aside. The petitioner is directed to be reinstated in service forthwith, with all consequential benefits.



(SURESH KUMAR KAIT)
JUDGE

(SAURABH BANERJEE)
JUDGE

OCTOBER 28, 2022

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