

GAHC010150762023



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

Case No. : WP(C)/4008/2023

DWIPJYOTI TALUKDAR
S/O SRI AKAN TALUKDAR, R/O VILL-PURAN BURKA SATRA, P.O.-
KSHUDRADIMU, P.S.-RANGIYA, DIST-KAMRUP (R), ASSAM, PIN-781382

VERSUS

THE UNION OF INDIA AND 5 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF DEFENCE, NEW DELHI

2:THE CHIEF OF AIR FORCE STAFF
AIR HEADQUARTERS
VAYU BHAWAN NEW DELHI-110011

3:THE AIR OFFICER-IN-CHARGE PERSONNEL
AIR HEADQUARTERS
VAYU BHAWAN NEW DELHI-110011

4:THE AIR OFFICER COMMANDING-IN-CHIEF
HQ MAINTENANCE COMMAND
IAF
INDIAN AIR FORCE
VAYUSENA NAGAR NAGPUR-440007

5:AIR FORCE RECORD OFFICE
NANDA MARG
SUBROTO PARK
DELHI CANTONMENT NEW DELHI-110057

6:AIR OFFICER COMMANDING
11 BRD
AIR FORCE STATION OJHAR
NASIK MAHARASHTRA-42222

Advocate for the Petitioner : MR. S BANIK, MR. D. BORAH

Advocate for the Respondent : DY.S.G.I., MR. S K MEDHI

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. S. Banik, Advocate.

For the Respondents : Mr. S. K. Medhi, CGC.

Date on which Judgment is Reserved : NA

Date of pronouncement of Judgment : 10.03.2026.

Whether the pronouncement is of the operative part of the Judgment : NA.

Whether the full Judgment has been pronounced : Yes.

JUDGMENT & ORDER (ORAL)

(A.D.Choudhury, J)

1. We have heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned Central Government Counsel, representing the Union of India/respondents.
2. The present writ petition is directed against the Order dated 06.04.2023 passed

by the Armed Forces Tribunal, Regional Bench, Guwahati, in Original Application No. 56/2019.

3. Under the order impugned in the present writ petition, the discharge of the petitioner from the service in the Indian Air Force was negated by the learned Tribunal.
4. The facts are largely undisputed.
5. The petitioner joined the Indian Air Force as a trainee on 28.12.2011. He was awarded 1st Red-Ink entry on 04.11.2016, 2nd on 24.05.2017, and 3rd on 20.08.2018.
6. Though on 01.07.2018 the authorities proposed to promote him to the rank of Corporal, the promotion was not effected due to the pendency of a departmental inquiry.
7. Thereafter, on 19-08-2018, while the petitioner was under Quick Reaction Team (QRT) duty, he was found severely intoxicated at Air Force Dhaba in the domestic area, and accordingly, the 4th Red-Ink Entry was awarded to him on the very same date, i.e. on 19.08.2018, for this offence. Subsequently, he was summarily tried on 10-09-2018 under Section 82 of the Air Force Act, 1950, and was awarded 7 days' detention.
8. Subsequently, on 06.12.2018, the petitioner was issued a show cause notice under Rule 15(2)(g)(ii) of the Air Force Rules, 1969 to show cause as to why he should not be discharged from service. The petitioner filed his reply to such show cause notice on 24.12.2018.
9. The petitioner contended in his reply that he was an innocent Airman and that he was not aware of the consequences of the outcomes of those charges. Beyond that, he also requested that his case be considered sympathetically, and he may be allowed to serve the organisation with high morale and full motivation.
10. On the fateful day, according to him, he felt weak in the afternoon after a long

duty, as he had not taken lunch and was scheduled to join the night QRT duty again. Accordingly, he ordered for some dinner at the Air Force Dhaba, and when the packaging of the dinner was delayed, he went to the Airman Bar, took only 2 pegs of Rum as authorised, and returned to the Dhaba immediately.

11. Thereafter, his application for revision and a waiver of the award of 7 days' detention was rejected on 30.01.2019. Subsequently, his revision application for removal of the Red-Ink Entries was also rejected by an order dated 22.04.2019. Subsequently, on 26.08.2019, the impugned order of discharge was issued.
12. Mr. Banik, learned counsel for the petitioner, argues that discharging the petitioner from service in the given facts of the present case amounts to a punishment and such punishment cannot be imposed in the manner that has been done.
13. According to him, while discharging, the grounds taken by the petitioner in his reply were not even dealt with, violating the principles of natural justice.
14. Alternatively, referring to the discharge order, Mr. Banik, learned counsel for the petitioner, argues that the discharge order itself records the good character, exceptional proficiency and general ability of the petitioner in trade. Therefore, the award of the extreme punishment of discharge from service is disproportionate.
15. Per contra, Mr. S. K. Medhi, learned Central Government Counsel, argues that the order has rightly been passed and such discharge cannot be termed as a punishment; rather, such discharge is for the reason of unsuitability, and the certification of good character and exceptional proficiency and general ability in trade is recorded for the reason that the discharge was not a punishment so that the petitioner may get future engagement elsewhere.
16. Having given our anxious consideration to the rival submissions and upon perusal of the material placed on record, we find no infirmity in the order passed by the Armed Forces Tribunal, warranting any interference in the

exercise of the power of writ jurisdiction.

17. We are unable to accept the principal contention of Mr. Banik, learned counsel, that the order of discharge is in substance punitive in nature and therefore, could not have been imposed without adherence to the procedural safeguards applicable to disciplinary punishment.
18. The power of discharge contemplated under Rule 15(2)(g)(ii) of the Air Force Rules, 1969, is distinct from the imposition of a punishment under disciplinary provisions.
19. The purpose of such discharge is to enable the competent authority to discontinue the service of an airman whose overall record renders him unsuitable for further retention in the force.
20. In the present case, the petitioner had accumulated four Red-Ink Entries, the last of which pertained to a serious act of indiscipline involving intoxication while detailed for operational duty as part of a Quick Reaction Team.
21. The Armed Forces operate in a strict disciplinary regime, and repeated infraction of this nature may legitimately give rise to a conclusion that the individual is not fit for continued service.
22. The issuance of show notice and opportunity afforded to the petitioner to submit his reply demonstrate that requirements of fairness were duly observed, though no prescription of issuance of such notices is mandated under Column 4 of Rule 15(1)(g)(ii) of the Air Force Rules, 1969.
23. The reply submitted by the petitioner primarily sought indulgence on sympathetic grounds and did not offer any convincing explanation that would displace the previous recorded conduct leading to the award of four Red-Ink Entries. The competent authority, therefore, in our opinion, was justified in taking into account the cumulative service record of the petitioner, arriving at the conclusion that his further retention would not be in the interest of service discipline.

24. The reference in the discharge order to the appellant's good character, exceptional proficiency and general ability in the trade does not, in our considered view, render the decision inconsistent or arbitrary.
25. Such remarks are ordinarily recorded to indicate that the discharge is not by way of stigma or punishment, but is based upon an assessment of overall suitability for continued service. As rightly contended on behalf of the Union of India, such certification shall indeed ensure that the discharged individual is not prejudiced in seeking employment elsewhere.
26. Another aspect of the matter is that, in matters concerning discipline within the armed forces, the scope of judicial review is necessarily limited unless the decision is shown to be arbitrary, malafide or vitiated by procedural impropriety, which is not available in the present case. Therefore, the court would be slow to substitute its own assessment for that of the competent military authorities.
27. The tribunal, after examining the materials on record, has found that the decision to discharge the petitioner was taken in accordance with the applicable rules and upon due consideration of the relevant factors. We find no reason to take a different view.
28. Consequently, the writ petition is dismissed for lack of merit.
29. Order dated 06.04.2023 passed by the Armed Forces Tribunal, Regional Bench, Guwahati, in Original Application No. 56/2019 stands affirmed.
30. No order is to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant