

GAHC010177552024



2026:GAU-AS:3002

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

Case No. : WA/384/2025

THE UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, NEW
DELHI-110001.

2: DEPUTY INSPECTOR GENERAL
SECTOR HEAD QUARTER
SSB
TEZPUR
DIST.- SONITPUR
ASSAM.

3: THE COMMANDANT
33 BN
SSB
KEWTI
CHATTISGARH

VERSUS

VIKRAMJEET SINGH CHIB
SON OF BAJ SINGH CHIB, RESIDENT OF VILLAGE- FLORA, POLICE
STATION- DOMANA, DIST- JAMMU, JAMMU AND KASHMIR.

Advocate for the Petitioner : MS. B SARMA,

Advocate for the Respondent : , MR A HOSSAIN,MR. J I BORBHUIYA,A B T HAQUE

BEFORE

HON'BLE THE CHIEF JUSTICE ASHUTOSH KUMAR

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Appellant : Ms. B. Sarma,
Central Govt. Counsel.

For the Respondents : Mr. J. I. Borbhuiya,
Advocate.
Mr. L. Mohan, Advocate.

Date on which Judgment is

Reserved : NA

Date of pronouncement of

Judgment : 25.02.2026

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 Ms. B. Sarma, learned Central Govt. Counsel representing the appellants. Also heard Mr. J. I. Borbhuiya, learned counsel for the respondent.
2. The intra-court appeal is directed against the Judgment and Order (CAV) dated 14.12.2023, passed in WP(C) No.30/2015 by the learned Single Judge.
3. Under the judgment impugned in the present appeal, the discharge of the respondent from service in the Sashastra Seema Bal (SSB) was set aside, and the appellants were directed to reinstate the respondent with back wages and

other consequential benefits.

4. The learned Single Judge held that the dismissal from service is a punishment under the Sashastra Seema Bal Act, 2007 (hereinafter referred to as the Act, 2007) and such a punishment can be imposed under Section 53 of the Act, 2007 in combination with the punishment prescribed under Section 51(C) of the Act, 2007 only by a Force Court under Section 76 of the Act, 2007; however, in case of the respondent, no such Force Court was constituted. It was further held that there is no provision under the Act, 2007, which empowers the Commandant to impose punishment of dismissal or removal based on a show cause notice.
5. The learned counsel for the appellant argues that the Commandant had sanction and authority under Rule 26 of the Sashastra Seema Bal Rules, 2009 (hereinafter referred to as the Rules, 2009) read with Section 10 of the Act, 2007, to discharge a member of the Force on the ground of unsuitability with a further option to the member of the Force to resign from service. However, the learned Single Judge has overlooked the aforesaid statutory position.
6. The facts are largely undisputed.
7. A show notice dated 27.12.2010 was issued to the respondent proposing the imposition of *the penalty of dismissal from service*, based on his past conduct and service record, concluding that he was not fit to be retained in the Force. The Show Cause notice specifically mentioned the subject of the notice to be "*unsuitability for service*".
8. The respondent submitted his written reply on 09.01.2011 to such show cause notice.
9. By order dated 28.02.2011, impugned in the writ petition, it was recorded that considering the conduct of the petitioner, "*led to his conviction*" as to render his further retention in government service undesirable, *warranting imposition of a major penalty*.

10. Accordingly, it was recorded that in exercise of power conferred by Rule 26 of the Rules, 2009, read with Section 10 of the Act, 2007, the petitioner is *discharged from service*.
11. The departmental appeal preferred by the respondent was also dismissed on 29.04.2023.
12. The principal issue that arises before our consideration is: (i) whether the impugned order dated 28.02.2011 is a discharge simpliciter on the ground of unsuitability under Rule 26 of the Rules, 2009 or (ii) whether, in substance, the action amounts to punitive dismissal founded on misconduct, requiring adjudication by a Force Court under the SSB Act, 2007.
13. Section 51 of the Act, 2007, enumerates punishments, including dismissal and removal from service. Section 53 of the Act, 2007, mandates that such punishment be awarded only by a Force Court.
14. Section 76 of the Act 2007 recognizes three kinds of Force Courts.
15. The Act, 2007, does not confer any adjudicatory or punitive power of dismissal from service upon a Commandant. However, Rule 26 of the Rules, 2009, empowers a Commanding Officer not below the rank of a Commandant to terminate the service of an enrolled person on the grounds of unsuitability, after informing and furnishing him with the particulars of all matters adverse to him. The said Rule further mandates that the person against whom such a termination is proposed be called upon to urge any reason he may wish to put forward in favour of his retention in service.
16. Sub Rule 2 of Rule 26 of the Rules, 2009, also empowers the Commanding Officer not below the rank of Commandant to call upon the enrolled person to retire or resign, and, on his refusal, the enrolled person may be compulsorily retired or discharged from service.
17. Thus, Rule 26 of the Rules, 2009, provides for administrative discharge on the ground of unsuitability; therefore, such discharge cannot be termed punitive,

nor does it require a finding of guilt. It is based on an overall assessment of suitability for retention in a disciplined force.

18. As recorded hereinabove, the Rule further empowers the authority to advise retirement or resignation of the enrolled to protect his financial interests. The mere fact that such advise was given does not convert the action into a disciplinary proceeding.
19. The decisive test for determining whether the action is punitive in substance is to examine the foundation of the termination, i.e., whether it is founded on misconduct or, if so, whether the misconduct is only a motive.
20. The Show Cause dated 27.12.2010, though it contains the expression "*dismissal from service*", must be read in its entirety and in the perspective warranted in the facts of the case. The substance of the notice was to call upon the respondent to explain why, in view of his overall conduct and service record enumerated in the Notice, he be not discharged from service. The reference to dismissal in the notice cannot override the statutory source of power invoked.
21. Beyond that, it is a mandate under Rule 26(1) of the Rules' 2009 to provide the adverse materials to the enrolled person.
22. In the given facts of the present case, more particularly, under the mandate of Rule 26 of the Rules, 2009, the past misconduct can at best be the motive, not the foundation of the impugned discharge.
23. The final order dated 28.02.2011 expressly records that it is passed under Rule 26 of the Rules, 2009, read with Section 10 of the Act, 2007 and directs "*discharge from service*". Although the order contains the word "*convicted*", it does not purport to record a conviction by a Force Court as contemplated under the Act, 2007. Therefore, the reference to the word "*convicted*" cannot override the statutory power invoked, particularly when no charge sheet was filed, no Force Court was convened, and no punishment under Section 51 of the Act, 2007 was imposed.

24. Further, the operative portion of the impugned order does not impose dismissal as a statutory punishment but orders administrative discharge. The stray use of the expression “convicted”, when read contextually, cannot alter the essential character of the action.
25. The appellant, by filing an affidavit, brought on record the fact that the respondent was given an opportunity as required under Rule 26 of the Rules, 2009 to tender his resignation; however, he refused to resign. Such a stand taken in the affidavit before the learned Single Judge was not denied by the respondents.
26. In the given facts, the consideration required was as to whether the authority exercised punitive jurisdiction under Section 51 of the Act, read with Section 53 of the Act, or administrative jurisdiction under Rule 26 of the Rules, 2009.
27. The absence of a Force Court, the absence of formal charges, and the invocation of Rule 26 of the Rules, 2009, clearly demonstrate that the power exercised was administrative.
28. In disciplined forces like the SSB, assessment of suitability is statutorily permitted and prescribed under Rule 26 of the Rules, 2009; such an assessment necessarily involves an evaluation of conduct and service record. Such an evaluation does not *ipso facto* amount to a finding of guilt.
29. The learned Single Judge, with respect, erred in equating discharge under Rule 26 of the Rules, 2009, with dismissal under Section 51 of the Act, 2007, and proceeded on the assumption that any discharge necessarily attracts the jurisdiction of the Force Court, overlooking the distinction between punitive dismissal and administrative severance.
30. The Commandant, being the competent authority, was mandated to consider and evaluate the conduct and service record as part of the material in forming an opinion regarding suitability. The statutory scheme emphasizes reliance on such material for administrative discharge. The learned Single judge

failed to consider this aspect of the matter and conflated the source material with the source of power.

31. An additional aspect that merits consideration is the lapse of more than a decade between the date of discharge on 28.02.2011 and the direction of reinstatement. In matters concerning uniformed & disciplined services, reinstatement after prolonged separation has significant implications for operational efficiency, beyond seniority and other factors. Therefore, reinstatement with backwages after such a time lapse should not generally be an automatic consequence and requires careful balancing of equities, which was not undertaken.
32. In view of the reasons recorded hereinabove, we are satisfied that the impugned action was taken by the Commandant in exercise of power under Rule 26 of the Rules 2009, read with Section 10 of the Act, 2007, and such an action constitutes administrative discharge on the ground of unsuitability, not punitive. Therefore, the absence of a Force Court does not vitiate the action.
33. The appeal is accordingly allowed. The Judgment and Order (CAV) dated 14.12.2023 passed in WP(C) No.30/2015 by the learned Single Judge is set aside. The Administrative power of discharge of the appellant is sustained and restored.
34. No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant