
(2016) 05 MEG CK 0002
In the Meghalaya High Court
Case No : Writ Petition (C) No. 30 Of 2016

Joginder Prasad

APPELLANT

Vs

Union Of India

RESPONDENT

Date of Decision : 04-05-2016

Acts Referred:

Central Civil Service (Pension) Rules, 1972 — Rule 48(1), Rule 56
Constitution of India, 1950 — Article 226

Citation : (2016) 5 NEJ 71

Hon'ble Judges : Mr. Sr Sen, J.

Bench : Single Bench

Advocate : Ms. R. Paul, Advocate, for the Respondent; Mr. B. Deb, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

S. R. Sen, J. (Oral) - The petitioner's case in a nutshell is that:

"The petitioner is preferring the present writ petition under Article 226 of the Constitution of India being aggrieved by the order dated 07/11/2015, (Annexure 1, Page No. 17) issued by the respondent No. 3 whereby the petitioner has been sought to be retired on completion of 30 years of qualifying service. On 31/12/2014 the doctors of the Assam Rifles Composite Hospital who was working under the respondent authority examine the health condition of the petitioner and thereafter the petitioner was categorized as P-2, (perm). The petitioner further begs to state that his permanent disability was recorded as Immune surveillance and Primary Hypertension. The order dated 07/11/2015 was issued under the provisions of Fundamental Rule 56 and Rule 48 (1) of the CCS (Pension) Rules, 1972. The rule 48 (1)(a) of the Central Civil Services (Pension) Rules provide that any anytime a Government servant has completed 30 years of qualifying service he may retired. The entire exercise is an apparent case of the colorable exercise of power and discretion and is based on the medical categorization of the petitioner. The impugned order is not the based on any

element of the public interest. The respondent authority have not followed the due procedure laid down by the law while ordering that the petitioner shall stand retire prior to his attaining the age of superannuation. The petitioner is HAV/GD, serving in the office of the Directorate General, Assam Rifles at present. On 30th day of April 2016 the age of the petitioner will be 19 days 8 moths 48 years. The post of the petitioner is a group "C" post. The Rule 56 (j) provides that he can be retired after he attained the age of 55 years. The Rule 48 (1) of the Central Civil Services (Pension) Rules, 1972 provides that at any time a Government servant has completed 30 years of qualifying service the appointing authority may retire him in public interest. The respondents have not followed the due procedure laid down by law while ordering that the petitioner shall stand retired on due date. The respondents in face have not even taken up the process of "service review" of the petitioner, under true prospect of law, as required under the relevant Rules and the entire exercise is an apparent case of colorable exercise of power and discretion. The petitioner is also praying for interim protection from this Hon"ble Court by filing a separate Miscellaneous Application".

2. Heard Mr. B. Deb, learned counsel appearing on behalf of the petitioner as well as Ms. R. Paul, learned counsel appearing for the respondents. Both the learned counsels submit that, this instant writ petition is covered by a common judgment and order passed by this court in WP(C) No. 12 of 2015 and others dated 15.03.2016 and further contended that, similar judgment and order can be passed in this instant writ petition.

3. For ready reference the contents of the said common judgment and order passed by this court in WP(C) No. 12 of 2015 and others dated 15.03.2016 is reproduced herein below:

"5. To answer the issues raised by the petitioners as well as the respondents, let me first look into Rule 48 (1) (a) and Rule 48 (1) (b) under the heading of "Regulation of Amounts of Pensions" at Chapter-VII or otherwise, it may be called the Central Civil Services (Pension) Rules, 1972. Rule 48 (1) (a) and Rule 48 (1) (b) made a provision for retirement on completion of 30(thirty) years of qualifying service. For easy reference the said Rule 48 (1) (a) and Rule 48 (1) (b) is reproduced herein as under:

"48. Retirement on completion of 30 years" qualifying service

(1) At any time after a Government servant has completed thirty years" qualifying service ?

(a) he may retire from service, or

(b) he may be required by the Appointing Authority to retire in the public interest and in the case of such retirement the Government servant shall be entitled to a retiring pension :

Provided that ?

- (a) a Government servant shall give a notice in writing to the Appointing Authority at least three months before the date on which he wishes to retire; and
- (b) the Appointing Authority may also give a notice in writing to a Government servant at least three months before the date on which he is required to retire in the public interest or three months' pay and allowances in lieu of such notice :

Provided further that where the Government servant giving notice under clause

(a) of the preceding proviso is under suspension, it shall be open to the Appointing Authority to withhold permission to such Government servant to retire under this rule:

Provided further that the provisions of clause (a) of this sub-rule shall not apply to a Government servant, including scientist or technical expert who is ?

(i) on assignments under the Indian Technical and Economic Cooperation (ITEC) Programme of the Ministry of External Affairs and other aid programmes,

(II) posted abroad in foreign based offices of the Ministries/Departments.

(III) on a specific contract assignment to a foreign Government, unless, after having been transferred to India, he has resumed the charge of the post in India and served for a period of not less than one year.

(1-A) (a) A Government servant referred to in Clause (a) of the first proviso to sub-rule (1) may make a request in writing to the Appointing Authority to accept notice of less than three months giving reasons therefor.

(b) On receipt of a request under Clause (a), the Appointing Authority may consider such request for the curtailment of the period of notice of three months on merits and if it is satisfied that the curtailment of the period of notice will not cause any administrative inconvenience, Appointing Authority may relax the requirement of notice of three months on the condition that the Government servant shall not apply for commutation of a part of his pension before the expiry of the period of notice of three months".

6. On perusal of Rule 48 (1) (a) and Rule 48 (1) (b) it appears to me that a Government Servant can retire on completion of 30(thirty) years of qualifying service. Firstly, he may retire from service on his own which is called voluntary retirement and secondly, he may be required by the Appointing Authority to retire in the public interest i.e. compulsory retirement. Of course, this bunch of writ petitions is against the compulsory retirement. Further more, on perusal of the petition and grounds of retirement taking into consideration their physical condition or SHAPE, in my opinion it falls definitely within the public interest, because all the petitioners are serving in the Assam Rifles which is a Para-military force and they are being used to protect our national border to maintain law and order and to combat against insurgency. So, in such circumstances whoever serves in the military or Para-military force they are required to be physically fit, otherwise it may cause immense damage to the national interest

as well as to the public interest.

7. The Hon"ble Supreme Court in the case of State of Gujarat v. Umedbhai M. Patel: (2001) 3 SCC Page 314 Para 11 Clause (i) was pleased to observe that:

"11 (i) Whenever the service of a public servant are no longer useful to the general administration, the officer can be compulsorily retired for the sake of public interest".

Similarly, in this bunch of writ petitions, it is observed that all the petitioners are not totally physically fit; they are suffering from different illness. But the diseases may be common among the general civilians and the nature of job serving the Para-military force is quite different than a public servant in Secretariat. In Para-military force no doubt, they will have to work in the midst of all the adverse situations and circumstances where a person will have to be completely physically fit, otherwise he/she may be a burden to the organization.

8. The Hon"ble Supreme Court in the case of Abdul Ghani v. The State of Jammu and Kashmir: 1970 (3) SCC Page 525 Para 9 was pleased to observe that:

"9. The seventh and the last point urged was that, under the proviso to Section 8 of the Act, non-communication of the grounds of detention is permissible if communication of grounds is against public interest, while, in the direction made by the District Magistrate, he has stated that it is against the interests of the security of the State. This is mere quibbling. Any action in the interest of the security of the State is clearly in public interest, so that the direction was fully covered by the proviso to Section 8".

In my foregoing discussions, I have already mentioned that, service in the Para-military force is different from other civil service and in my considered view to serve in the Para-military force or military force, physical fitness is a must and no one can serve the Para-military force with ailment. The question is whether the petitioners are working as a Cobbler, Cook, Tailor or Helper do not make any difference when they are serving in the Para-military force. In case of emergency or war any member of the Para-military organization can be deputed on duty. So, he/she, if not physically fit cannot do the job in a better manner.

9. The Hon"ble Supreme Court in the case Union of India & Others v. Rajpal Singh: (2009) 1 SCC Page 216 Para 17 was pleased to observe that:

"17. It needs little emphasis that fitness of the personnel of Armed Forces at all levels is of paramount consideration and there cannot be any compromise on that score. It is with this object in view, the Legislature has enacted the Army Act, 1950; the Armed Forces Medical Services Act, 1983 and framed the Army Rules. Army Orders are also issued from time to time in order to give effect to these statutory provisions in letter and spirit. As per the procedure detailed in the written submissions, filed on behalf of the appellants, annual or periodic medical examination of the army personnel is done on certain specific norms. The medical status of an army personnel is fixed on the basis of these norms,

containing five components viz. (a) psychology (b) hearing (c) appendarist (d) physical, and (e) eye -- which are collectively known as SHAPE. The medical status SHAPE is again characterised in five components known as:--

Shape I - physically fit for all purposes.

Shape II & Shape III - not fit for certain duties and are required not to undertake strain,

Shape IV - those who are in hospital for certain ailments, and SHAPE V--unfit for further service of the Army"

10. On perusal of the observations made by Hon"ble the Apex Court above, it is clear that physical fitness is a paramount consideration and there cannot be any compromise on that issue. Besides that, it is an admitted fact that the petitioners are getting their full benefit of retirement after completion of 30(thirty) years of qualifying service and physical fitness is not a stigma of oneself. Moreover, by compulsory retirement they will not be debarred for any future employment. Therefore, I do not see any reason in which manner the petitioners will be a loser on their compulsory retirement, rather in my considered view their compulsory retirement is required for the interest of the public as well as the nation as their nature of service is different and harder than an employee working in a civil organization. Since law is clear that a person can be ordered for public interest as mentioned under Rule 48 (1) b of the Central Civil Service (Pension), Rules, 1972 which was discussed elaborately above and on that ground the petitioners are liable for compulsory retirement. A further discussion on other issues in my view is immaterial.

11. The submissions advanced by the learned counsel is that; if they are allowed to continue to do more service they will be benefitted by the 7th Pay Commission pay structure and they will get their regular salaries, which in my view has no relevancy when they were found to be medically unfit. We must remember that national interest as well as public interest is much higher than individual interest. I cannot allow to keep deadwood employees and thereby weakening the forces.

12. For the reasons discussed above and after giving my conscious thought and on perusal of the petitions, counter affidavit, etc, I do not find anything wrong on the part of the respondents to decide an order for compulsory retirement of the petitioners taking into account their medical condition and nature of service. So, I did not find any scope to record reasons to interfere with the decision of the respondents - authority.

13. By this common judgment and order this batch of writ petitions (60 Nos.) mentioned above are found to be devoid of merit and accordingly stands dismissed and disposed of".

4. Since this instant writ petition is similarly situated and covered by the principle of a common judgment and order dated 15.03.2016 passed by this court in WP(C) No. 12 of 2015 and others, this instant writ petition is also considered and

decided in the same parameter and accordingly, this writ petition stands dismissed and disposed of.