

(2016) 03 MEG CK 0003
In the Meghalaya High Court
Case No : Writ Petition (C) No. 12 of 2015

Ravi R, Service No. G/2201010M

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 15-03-2016

Acts Referred:

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

Citation : (2016) 4 GauLT 724 : (2016) 4 NEJ 44

Hon'ble Judges : Mr. S.R. Sen, J.

Bench : Single Bench

Advocate : Mr. B.C. Das, Mr. S. Banik, Mr. R. Mazumdar, Mr. H.G. Boruah, Mr. D. Thabab, Advocates, for the Petitioners; Mr. K. Khan, Mr. K. Paul and Mr. N. Mozika, CGC's, for the Respondents

Final Decision : Disposed Off

Judgement

Mr. S.R. Sen, J.—The brief facts of the case in a nutshell are that:

"The common issues involve in this batch of writ petitions (60 Nos.) involve common issues challenging the issuance of order of discharge on medical grounds after completion of 30(thirty) years of qualifying service.

In W.P. (C) No. 12 of 2015 Hav/GD Ravi, 22 AR the petitioner was enrolled on 12.02.1985 and was diagnosed with "Type-II Diabetes Mellitus" with effect from 23.01.2013 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 26.10.2014 retiring from service on 01.04.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Khan, learned CGC appears for the Union of India and Shri H. Gupta, learned counsel appears for the petitioner.

In W.P. (C) No. 13/2015 Ex Hav/Ciph Narayanan M, 22 AR the petitioner was enrolled on 16.10.1984 and was diagnosed with "PRIMARY HYPERTENSION" with effect from 14.12.2012 and placed in P2 (P) and as such, was issued an order of

discharge on medical grounds on 14.03.2014 retiring from service on 01.11.2014 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Khan, learned CGC appears for the Union of India and Shri H. Gupta, learned counsel appears for the petitioner.

In W.P. (C) No. 26 of 2015 Ex Hav/SKT Ramjee Ram the petitioner was enrolled on 16.10.1984 and was diagnosed with "ESSENTIAL TREMOR" with effect from 23.12.2013 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 22.04.2014 retiring from service on 31.10.2014 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri B.C. Das, learned counsel appears for the petitioner.

In W.P. (C) No. 42 of 2015 Hav/GD Dhan Bahadur Damai, 43 AR the petitioner was enrolled on 04.05.1984 and was diagnosed with "COMPRESSION FRACTURE LVI" with effect from 08.08.2011 and placed in A2 (P) and as such, was issued an order of discharge on medical grounds on 10.02.2015 retiring from service on 31.05.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri H. Gupta, learned counsel appears for the petitioner.

In W.P. (C) No. 59 of 2015 Hav/GD Prasad TR, 40 AR the petitioner was enrolled on 15.12.1984 and was diagnosed with "Primary Hypertension" with effect from 27.01.2012 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 19.06.2014 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 60 of 2015 Nb Sub (GD) Govind Ram, 20 AR the petitioner was enrolled on 23.04.1985 and was diagnosed with "Primary Hypertension" with effect from 23.03.2015 and placed in P2 (T) and as such, was issued an order of discharge on medical grounds on 18.02.2015 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 61 of 2015 Hav/GD Devinder Kumar, 26 AR the petitioner was enrolled on 16.07.1985 and was diagnosed with "Primary Hypertension" with effect from 24.10.2013 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 17.03.2015 retiring from service on 01.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 62 of 2015 Sub (GD) Ramesh Lal, 35 AR the petitioner was enrolled on 04.05.1985 and was diagnosed with "CAD (INFERO-LAT WALL STEMI)-SVD-LCX-PTCA TO OMI Done With Normal Lv Function And Hypothyroidis

(Post Radioactive Iodine Ablated)" with effect from 05.12.2014 and placed in P3 (T) and as such, was issued an order of discharge on medical grounds on 18.02.2015 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 65 of 2015 Nb Sub (GD) Narendra Singh, 10 AR & 08 others the petitioner was enrolled on 15.05.1985 and was diagnosed with "Primary Hypertension, CVA And Lacunars Infarct Rt Post Limb Of Internal" with effect from 15.09.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 18.11.2014 retiring from service on 31.05.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 79 of 2015 Rfn/Cook Banki Bihari, ARTC&S the petitioner was enrolled on 16.04.1985 and was diagnosed with "Primary Hypertension" with effect from 19.09.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 15.04.2015 retiring from service on 01.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 80 of 2015 Rfn/WC Dhan Bahadur Lohar, 6 AR the petitioner was enrolled on 26.11.1985 and was diagnosed with "Tubercular Pleural Effusion (Rt) With (Rt) LI Fibrosis Consolidation" with effect from 07.12.2013 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 10.03.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 81 of 2015 Rfn/EBR Shatrughan Ram, ARTC&S the petitioner was enrolled on 11.05.1985 and was diagnosed with "Immune Surveillance & Metabolic Syndrome" with effect from 20.02.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 27.05.2015 retiring from service on 01.09.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 87 of 2015 Rfn/GD Ram Prasad Sharma, 23 AR the petitioner was enrolled on 17.04.1985 and was diagnosed with "Fracture Neck Of Femur (Lt) (OPTD) With Avascular Necrosis Head Of Femur (Lt) THR Done" with effect from 18.06.2014 and placed in A3 (P) and as such, was issued an order of discharge on medical grounds on 20.11.2014 retiring from service on 30.04.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri A. Ahmed, learned counsel appears for the petitioner.

In W.P. (C) No. 100 of 2015 Hav/NA Sathyan G, 29 AR the petitioner was enrolled on 28.05.1985 and was diagnosed with "Type-II Diabetes Mellitus And Bronchial Asthma" with effect from 16.01.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 10.12.2014 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 101 of 2015 Rfn/Cook Dharambir Singh, 11 AR the petitioner was enrolled on 28.05.1985 and was diagnosed with "Primary Hypertension And Obesity" with effect from 19.03.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 11.08.2014 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 102 of 2015 Hav/NA Sanatan Kalita, 40 AR the petitioner was enrolled on 05.05.1985 and was diagnosed with "Type-II Diabetes Mellitus" with effect from 08.01.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 12.12.2014 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 103 of 2015 Hav/GD Prayag Singh, 26 AR the petitioner was enrolled on 05.11.1985 and was diagnosed with "Immune Surveillance Disseminated Tuberculosis And Type-II Diabetes Mellitus" with effect from 25.09.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 27.03.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 104 of 2015 Hav/GD Karan Singh Bhandari, 26 AR & 02 others the petitioner was enrolled on 09.11.1985 and was diagnosed with "PRIMARY HYPERTENSION" with effect from 18.03.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 27.03.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 104 of 2015 Hav/GD Karan Singh Bhandari, 26 AR & 02 others the petitioner was enrolled on 09.11.1985 and was diagnosed with "Primary Hypertension" with effect from 18.03.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 27.03.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik,

learned counsel appears for the petitioner.

In W.P. (C) No. 105 of 2015 Hav/GD Diwan Singh, 29 AR the petitioner was enrolled on 29.06.1985 and was diagnosed with "Chronic HBV Infection & Immune Surveillance" with effect from 05.03.2014 and placed in P3 (P) and as such, was issued an order of discharge on medical grounds on 10.12.2014 retiring from service on 01.07.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 106 of 2015 Hav/Amr Kuldeep Chand Sharma, 9 AR the petitioner was enrolled on 30.12.1985 and was diagnosed with "Miniere's Disease" with effect from 23.03.2015 and placed in H2 (P) and as such, was issued an order of discharge on medical grounds on 14.01.2015 retiring from service on 31.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 107 of 2015 Rfn/EBR Lalan Ram, 23 AR the petitioner was enrolled on 02.05.1985 and was diagnosed "Primary Hypertension" with effect from 22.10.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 10.01.2015 retiring from service on 01.05.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 108 of 2015 Nb Sub (GD) Dulal Moy Barman, 1 AR the petitioner was enrolled on 16.05.1985 and was diagnosed with "Primary Hypertension" with effect from 29.08.2013 and as such, was issued an order of discharge on medical grounds on 18.02.2015 retiring from service on 16.05.2015. However, during pendency of the writ petition, on review of the case of the petitioner he was upgraded to SHAPE-I Medical category and as such, the order of discharge was cancelled vide Order No. HQIGAR (S)/HQ 25 Sect AR dated 29.05.2015 and as such, nothing survives for consideration (Infructuous). Shri K. Paul, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 123 of 2015 Hav/Ciph Sarku Gurung, 44 AR the petitioner was enrolled on 08.05.1985 and was diagnosed "Primary Hypertension" with effect from 15.05.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 31.12.2014 retiring from service on 01.06.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 158 of 2015 Nb Sub/Clk Dharambir Lal, 8 AR the petitioner was enrolled on 27.07.1985 and was diagnosed "Cataract Both Eyes" with effect from 28.09.2013 and placed in P3 (T) and as such, was issued an order of discharge

on medical grounds on 18.02.2015 retiring from service on 01.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 159 of 2015 Nb Sub/GD Chandra Kanta Das, 34 AR the petitioner was enrolled on 15.05.1985 and was diagnosed "Primary Hypertension" with effect from 13.06.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 01.12.2014 retiring from service on 01.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 171 of 2015 Hav/GD Prafulla Konwar, 44 AR the petitioner was enrolled on 28.08.1985 and was diagnosed with "Comminuted Fracture Radius Ulna Rt Optd" with effect from 10.02.2014 and placed in A2 (P) and as such, was issued an order of discharge on medical grounds on 16.08.2014 retiring from service on 01.09.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 172 of 2015 Hav/GD Rajendra Singh of 29 AR the petitioner was enrolled on 09.09.1985 and was diagnosed with "Primary Hypertension And Obesity" with effect 12.05.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 10.12.2014 retiring from service on 01.10.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 173 of 2015 WO/GD Raghu Kumar KC, 40 AR the petitioner was enrolled on 28.08.1985 and was diagnosed with "Primary Hypertension" with effect from 11.07.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 12.12.2014 retiring from service on 01.10.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 174 of 2015 Hav/GD Prem Singh, 46 AR the petitioner was enrolled on 07.08.1985 and was diagnosed with "Coronary Artery Disease Anterior Wall MI (STK-Negative) And SVD PTCA-LAD" with effect from 17.07.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 13.04.2015 retiring from service on 31.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 175 of 2015 Rfn/WM Khalil Mohammad, 26 AR the petitioner was enrolled on 12.12.1985 and was diagnosed with "Dyslipidaemia, Diabetes

Mellitus Type-II And Obesity" with effect from 23.08.2013 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 18.05.2015 retiring from service on 12.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 181 of 2015 Hav/GD Abhorik Yadav, 38 AR the petitioner was enrolled on 16.09.1985 and was diagnosed with "Immune Surveillance & Tb Lymphacientis (Cervical)" with effect from 15.12.2014 and placed in P3 (P) and as such, was issued an order of discharge on medical grounds on 28.06.2015 retiring from service on 30.09.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 182 of 2015 Hav/Clk Anujan CN, HQ DGAR the petitioner was enrolled on 27.08.1985 and was diagnosed with "Diabetes Mellitus Type-II, Primary Hypertension & Dyslipidaemia" with effect from 21.05.2014 and placed in P3 (P) and as such, was issued an order of discharge on medical grounds on 10.09.2014 retiring from service on 31.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 185 of 2015 Hav/GD Kishan Singh Rawat, 30 AR the petitioner was enrolled on 02.09.1981 and was diagnosed with "B/L Tubercular Pleural Effusion With Fibrosis (L) LUNG" with effect from 18.05.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 21.02.2015 retiring from service on 01.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

W.P. (C) No. 210 of 2015 Hav/GD Arjun Singh of 14 AR and another the petitioner was enrolled on 08.08.1985 and was diagnosed with "Fracture Neck Of Femur With Subtrochanteric Fracture (L) (OPTD)" with effect from 15.04.2010 and placed in A2 (P) and as such, was issued an order of discharge on medical grounds on 20.05.2015 retiring from service on 31.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 212 of 2015 Hav/GD Suchan Handique of 37 AR the petitioner was enrolled on 27.08.1985 and was diagnosed with "Primary Hypertension And Type-II Diabetes Mellitus" with effect from 24.03.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 18.12.2014 retiring from service on 31.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri H.G Baruah, learned counsel appears for the petitioner.

In W.P. (C) No. 240 of 2014 Rfn/GD Athui Kamei the petitioner was enrolled on 21.09.1985 and was diagnosed with "Penetrating Injury Left Eye (Old)" with

effect from 22.09.2015 and placed in E2 (P) and as such, was issued an order of discharge on medical grounds on 18.03.2015 retiring from service on 01.10.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 242 of 2015 Hav/GD Raghunath Singh the petitioner was enrolled on 21.09.1985 and was diagnosed with "CAD Asmi And Primary Hypertension" with effect from 18.07.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 30.04.2015 retiring from service on 01.10.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Ms. P. Yadav, learned counsel appears for the petitioner.

In W.P. (C) No. 251 of 2015 Rfn/GD Jai Bhagawan Singh the petitioner was enrolled on 23.11.1985 and was diagnosed with "Primary Hypertension" with effect from 21.01.2012 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 20.03.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 252 of 2015 Hav/GD Balbir Singh Bisht the petitioner was enrolled on 07.11.1985 and was diagnosed with "Type-II Diabetes Mellitus" with effect from 19.12.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 27.03.2015 retiring from service on 01.01.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 253 of 2015 WO/GD Dinesh Mishra the petitioner was enrolled on 21.12.1985 and was diagnosed with "Primary Hypertension" with effect from 17.06.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 29.04.2015 retiring from service on 01.01.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 254 of 2015 Hav/Ciph Sateesh Kumar the petitioner was enrolled on 18.11.1985 and was diagnosed with "Right Parieto-Temporal AVM (OPTD)" with effect from 13.05.2013 and placed in Medical category P3 (P) and as such, was issued an order of discharge on medical grounds on 26.09.2015 retiring him from service Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 255 of 2015 Hav/ORL Jacob Mathew the petitioner was enrolled on 26.11.1985 and was diagnosed with "CAD (Coronary Artery Disease)

(Steiwmi) POST THOMBOLYSIS WITH RECANALIZED RCA)" with effect from 29.12.2013 and placed in P3 (P) and as such, was issued an order of discharge on medical grounds on 25.08.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 266 of 2015 Hav/GD Bhim Bahadur Chhetri the petitioner was enrolled on 26.11.1985 and was diagnosed with "Bilateral Ililac Artery Aneurysm" with effect from 20.08.2013 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 27.03.2015 retiring from service on 01.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 267 of 2015 Sub/GD Paokhohang Khongsai & Another the petitioners were enrolled on 23.04.1985 and was diagnosed with "LOCULATED EMPYEMA THORACIS (RT) TUBERCULAR (OPTD)" with effect from 14.03.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 07.07.2015 retiring from service on 01.01.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri. S. Banik, learned counsel appears for the petitioner.

In W.P. (C) No. 268 of 2015 Rfn/GD Yuidhavir Chhetri the petitioner was enrolled on 23.04.1986 and was diagnosed with "Multi Noduler Goiter With Hyperthyroidism" with effect from 07.12.2006 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 08.08.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 269 of 2015 Hav/ORL Karthikeyan B the petitioner was enrolled on 30.04.1986 and was diagnosed with "Anterior Wall Mi Coronary Artery Disease (SVD-LAD CTO)" with effect from 02.03.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 07.08.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 270 of 2015 Hav/ORL Chandra Sekhar Singh the petitioner was enrolled on 16.04.1986 and was diagnosed with "Obesity And Primary Hypertension" with effect from 20.06.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 13.07.2015 retiring from service on 30.04.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 271 of 2015 Hav/GD Narendra Singh the petitioner was enrolled

on 16.04.1986 and was diagnosed with "Generalized Tonic Seizures" with effect from 09.02.2015 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 14.08.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri. R. Mazumdar, learned counsel appears for the petitioner.

In W.P. (C) No. 272 of 2015 Nb/Sub(Clk) Thyaga Rajan V the petitioner was enrolled on 31.12.1985 and was diagnosed with "Primary Hypertension And Diabetes Mellitus Type-II And Dyslipidemia" with effect from 20.09.2014 and placed in P2 (P) and as such, was issued an order of discharge on medical grounds on 07.07.2015 retiring from service on 01.01.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri. R. Mazumdar, learned counsel appears for the petitioner.

In 282/2015 Hav/GD Ravindra Ray the petitioner was enrolled on 16.04.1986 and was diagnosed with P2 (P) with effect from 19th August 2015 for "IMMUNE SURVEILLANCE WITH CHRONIC HBV INFECTION" and as such, was issued an order of discharge on medical grounds on 14.08.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri R, Mazumdar, learned counsel appears for the petitioner.

In 283/2015 Nb Sub(Clk) Jai Nath Sah the petitioner was enrolled on 05.12.1985 and was diagnosed with S3 (T_24) with effect from 10.08.2015 for "Ads With Coronary Artery Disease, Hypertension And Type-II Diabetes". and as such, was issued an order of discharge on medical grounds on 07.09.2015 retiring from service on 01.01.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri H.G.Boruah, learned counsel appears for the petitioner.

In 316/2015 Rfn/WC Matadin Sharma the petitioner was enrolled on 10.12.1985 and was diagnosed P2 (P) with effect from 18.06.2015 for "BELL'S PALSY AND IMMUNE SURVEILLANCE" and as such, was issued an order of discharge on medical grounds on 31.03.2015 retiring from service on 31.12.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri D. Thabah, learned counsel appears for the petitioner.

In 333/2015 Hav/GD Nikhil Chandra Das the petitioner was enrolled on 05.07.1986 and was diagnosed P2 (P) with effect from 14.07.2014 for "PRIMARY HYPERTENSION" and as such, was issued an order of discharge on medical grounds on 14.08.2015 retiring from service on 01.08.2015 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri Himangsu Bezbarua, learned counsel appears for the petitioner.

In 335/2015 Hav/GD Layk Singh the petitioner was enrolled on 19.04.1986 and

was diagnosed P2 (P) with effect from 15.08.2015 for "CAD-(CSA) NSTEMI-(ASMI) WITH (N) LV Function-POST PTCA, LADX2, RCAX1 (DES)" and as such, was issued an order of discharge on medical grounds on 13.10.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In 336/2015 Rfn/GD Sam Kutty Steephen the petitioner was enrolled on 20.05.1986 and was diagnosed P2 (P) with effect from 24.05.2014 for "PIVD L4-5 WITH LUMBAR CANAL STENOSIS (OPTD)" and as such, was issued an order of discharge on medical grounds on 23.11.2015 retiring from service on 31.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In 337/2015 Hav/GD Durga Bahadur Darjee the petitioner was enrolled on 28.04.1986 and was diagnosed A2 (P) with effect from 10.04.2015 for "ACL Tear Knee And Tear Lateral And Medial Meniscus Knee (Rt) & Primary Hypertension and as such, was issued an order of discharge on medical grounds on 08.08.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In 338/2015 Hav/GD Surendra Singh Yadav the petitioner was enrolled on 20.05.1986 and was diagnosed E2 (P) with effect from 27.03.2014 for "Bilateral Pseudophakia" and as such, was issued an order of discharge on medical grounds on 23.11.2015 retiring from service on 31.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In 339/2015 Rfn/GD Jit Bahadur Chhetri the petitioner was enrolled on 01.04.1986 and was diagnosed P2 (P) with effect from 05.09.2014 for "PRIMARY HYPERTENSION" and as such, was issued an order of discharge on medical grounds on 19.11.2015 retiring from service on 30.06.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In 340/2015 Hav/GD Sanjib Kumar Ray the petitioner was enrolled on 16.04.1986 and was diagnosed P2 (P) with effect from 25.08.2014 "Primary Hypertension" and as such, was issued an order of discharge on medical grounds on 14.08.2015 retiring from service on 01.05.2016 Under Rule 48 (1) b of the CCS (Pension) Rules of 1972. Shri N. Mozika, learned CGC appears for the Union of India and Shri R. Mazumdar, learned counsel appears for the petitioner.

In 346/2015 Rfn/BB Prem Kumar Sharma the petitioner was enrolled on 18.04.1986 and was diagnosed P2 (P) with effect from 12.02.2015 "Type-II Diabetes Mellitus" and as such, was issued an order of discharge on medical grounds on 12-10-2015 retiring from service on 01-05-2016 Under Rule 48 (1) b

of the CCS (Pension) Rules of 1972. Shri K. Paul, learned CGC appears for the Union of India and Shri S. Banik, learned counsel appears for the petitioner".

2. Heard Mr. B.C. Das, Mr. S. Banik, Mr. R. Mazumdar, Mr. H.G. Boruah and Mr. D. Thabah, learned counsels for the petitioners who submitted that the power of the Appointing Authority to retire a Government Servant in public interest on completion of 30(thirty) years of service is exercised under Rule 48 (1) b of the Central Civil Service (Pension), Rules, 1972. This power is never to be exercised for removing a person on medical grounds. In the course of argument, the learned counsels also relied on Section 47 of the person with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995. The learned counsels also pointed out the Assam Rifles Medical (Categorization and Invalidation) Rules-1988 specifically to Rule 26 of the Assam Rifles Rules, 2010 and Rule 12(1) and Rule 12(2) of the Assam Rifles Medical (Categorization and Invalidation) Rules-1988 as well as Rule 16 of the Assam Rifles Medical (Categorization and Invalidation) Rules-1988 and Rule 11 of the Assam Rifles Medical (Categorization and Invalidation) Rules-1988.

The learned counsels further contended that, whether a combatant or non-combatant who is not keeping the best of health should be retained in the Assam Rifles considering the nature of duties and the importance of physical fitness required for performing such duties or should he be removed from service by way of compulsory retirement? Depends upon the categorisation under the Assam Rifles Medical (Categorization and Invalidation) Rules-1988 by way of "SHAPE" for cadre officers or by way of "A, B, C, D, E" indicating medical category in respect of personnel. The learned counsels further contended that, whether the procedure for removing a combatant or non-combatant by way of compulsory retirement from his services under the Assam Rifles on medical grounds is the procedure prescribed under Rule 48 (1)(b) of the Central Civil Services (Pension) Rules, 1972? No, Rule 26 of the Assam Rifles Rules, 2010 has to be conjointly applied with "SHAPE" for cadre officers or by way of "A, B, C, D, E" indicating medical category in respect of personnel as provided under Assam Rifles Medical (Categorization and Invalidation) Rules-1988 and whether the procedure for removing a combatant or non-combatant from his services by way of compulsory retirement under the Assam Rifles on medical grounds is prescribed in specific Rules holding the field and if yes, what are the Rules? Yes, the Assam Rifles Rules, 2010 conjointly with the Assam Rifles Medical (Categorization and Invalidation) Rules-1988.

The learned counsels further submit that, termination or compulsory retirement is within the domain of the Administrative Authority, but it should not be Arbitrary.

3. On the other hand, Mr. K. Khan, Mr. K. Paul and Mr. N. Mozika, learned CGC's appearing for the respondents submitted that the petitioners named above were asked to go on compulsory retirement after fulfilling all the procedures, norms and rules and also contended that, compulsory retirement in these instant cases

the petitioners are getting full benefit after completion of 30(thirty) years of their service and they are eligible also for re-employment. As such, they should not have any grievances against the compulsory retirement.

4. Mr. K. Paul, learned CGC in support of his submission relied on: (i) State of Gujarat v. Umedbhai M. Patel: (2001) 3 SCC Page 314 Para 11, (ii) Abdul Ghani v. The State of Jammu and Kashmir: 1970 (3) SCC Page 525 Para 9 and (iii) Union of India & Others v. Rajpal Singh: (2009) 1 SCC Page 216 Para 17 and prayed that these bunch of writ petitions may be dismissed.

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 organisation 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 benefited 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.