
(2016) 06 GAU CK 0056

In the Gauhati High Court

Case No : WP(C) Nos. 1250, 1573, 2740, 7680, 3029, 4516, 2400, 3030, 3031, 3097, 7702 and 7077 of 2015 and 48, 412, 2021, 2019, 2020, 2018, 1524, 1567 of 2016

Sunil Kumar Shahi

APPELLANT

Vs

The Union of India

RESPONDENT

Date of Decision : 15-06-2016

Acts Referred:

Assam Rifles Rules, 2010 — Rule 26
Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLJ 723 : (2016) 5 GauLR 313

Hon'ble Judges : Mr. Ujjal Bhuyan, J.

Bench : Single Bench

Advocate : Mr. R. Mazumdar, Mr. H. Bezbaruah, Ms. R. Dutta, Mr. V. Sharma, Mr. T.N. Srinivasan, Mr. B. Pathak and Mrs. S. Bora, Advocates, for the Petitioner; Mr. M. Phukan, Mrs. A. Gayan, Ms. B. Sarma, Mr. S.S. Roy, Mr. K.K. Parasar, Ms. R. Devi, Ms. A. Das and Mr.

Final Decision : Allowed

Judgement

Mr. Ujjal Bhuyan, J.—This order will dispose of the above bunch of cases.

2. Subject matter of all the writ petitions being identical, those were clubbed and heard together.

3. Heard Mr. R Mazumdar, Mr. TN Srinivasan, Mr. B Pathak and Mrs. S Bora, learned counsel for the petitioners and a host of learned Central Govt. Counsel, namely, Mr. M Phukan, Mrs. A Gayan, Ms. B Sarma, Mr. SS Roy, Mr. KK Parasar, Ms. R Devi and Ms. A Das. In course of the hearing, Mr. SC Keyal, learned Assistant Solicitor General had also made submissions.

4. Matter relates to premature retirement of personnel belonging to the Assam Rifles.

5. For the sake of convenience, pleadings made in WP(C) No.1250/2015 are

being referred to. In fact, Mr. SC Keyal, learned Assistant Solicitor General had submitted on 06.05.2016, as recorded in the order sheet of WP(C) No.1250/2015, that counter-affidavit filed by the respondents in WP(C) No.1250/2015 may be treated as the lead affidavit covering all the cases.

6. Petitioner in WP(C) No.1250/2015 (referred to as the petitioner hereinafter) had joined service in the Assam Rifles as Rifleman/Nursing Assistant on 04.03.1985. In the course of his service, he had risen through the ranks and at the relevant point of time was serving as Havildar. By the impugned order dated 15.10.2014, issued by the Commandant, 12th Assam Rifles, petitioner was permitted to retire from service on retiring pension w.e.f. 31.03.2015 under provisions of Rule 56 of the Fundamental Rules (FR)/Rule 48(1) of the Central Civil Services (Pension) Rules, 1972 (Pension Rules).

7. This order came to be challenged by the petitioner before this Court by filing WP(C) No.1250/2015.

8. Notice was issued on 09.03.2015 and thereafter, an interim order was passed on 26.03.2015 staying the impugned order dated 15.10.2014. Since a somewhat detailed order was passed, relevant portion of the order dated 26.03.2015 is extracted hereunder:-

"2. Notice in this case was issued on 09.03.2015 and the case is taken up today for consideration of the interim prayer.

3. Petitioner is a Havildar in the Assam Rifles. He is aggrieved by the impugned order dated 15.10.2014, issued by the Commandant, 12 Assam Rifles, permitting him to retire from service on retiring pension with effect from 31.03.2015.

4. Learned counsel for the petitioner submits that the present age of the petitioner is about 49 years and he has about 11 years of service left in the normal course. He did not seek permission of the higher authority to go on premature retirement. Impugned order is untenable and unjust.

5. The impugned order dated 15.10.2014, reads as under:

"Under the provision of Rule 56 of FR/Rule 48 (1) of CCS (Pension) Rules, 1972 No. M/370704A Rank Hav/NA Name Sunil Kumar Shahi of this unit is hereby permitted to retire from service on retiring pension with effect from 31st March, 2015 (AN) and SOS/SORS wef 01st April, 2015 (FN)"

6. From a perusal of the impugned order it is seen that it has been issued under the provisions of FR 56/Rule 48(1) of the CCS (Pension) Rules, 1972, permitting the petitioner to retire from service.

7. FR 56 deals with retirement of Government servant. FR 56 (j) has some relevance. It says that if the appropriate authority is of the opinion that it is in the public interest, to retire any Government servant he has the absolute right to do so either by giving 3 (three) months notice or by paying salary of 3 (three) months in lieu of such notice. If the Government servant does not belong to

Grade-A or Grade-B service, he can be retired under this provision if he has attained the age of 55 years. It is submitted at the bar that the post of Havildar is a Grade-C post. Therefore, under this provision, the exercise of power has to be in the public interest and the concerned Government servant in Grade-C must have attained the age of 55 years. Admittedly, petitioner has not attained the age of 55 years. The impugned order also does not disclose any element of public interest.

8. The use of the expression "permitted to retire from service" in the impugned order would imply permission being sought for by the Government servant, which has been granted by the authority. A categorical statement has been made by the petitioner that no such permission was sought for by the petitioner prior to 15.10.2014.

9. Rule 48(1) of the Central Civil Services (Pension) Rules, 1972, provides that at any time if a Government servant has completed 30 years of qualifying service the appointing authority may retire him in the public interest.

10. Here also, retirement of the Government servant by the appointing authority can only be in the public interest, which as already noticed above is conspicuously absent in the impugned order.

11. Ms. B. Das, learned CGC submits on the basis of written instructions that petitioner was subjected to medical examination on 18th of June, 2014. Medical Board has opined that petitioner does not have the medical fitness to be retained in the service of Assam Rifles. On the basis of such opinion of the medical board, the impugned order has been issued. She also submits that the petitioner had submitted an application on 27.12.2014, seeking voluntary retirement on personal grounds.

12. Since the validity of the order dated 15.10.2014 is being examined, the same will have to be judged on the basis of the materials which were available on that day and not subsequent materials.

13. Since a stand has been taken by the respondents that because of medical reasons petitioner has been retired from service, it would be apposite to refer to the relevant provisions contained in the Assam Rifles Rules, 2010. Rule 26 deals with retirement or discharge of subordinate officer and enrolled persons on grounds of physical unfitness. It provides that if a Commandant is satisfied that a subordinate officer or an enrolled person is unable to perform his duties by reason of his physical disability, he may be brought before the medical board. If he is found by the medical board to be unfit for further service in the Assam Rifles, and if the Commandant agrees with the findings of the medical board, such findings should be communicated to the person concerned, enabling him to make a representation within a period of 30 days from such communication. If the finding of the medical board is contested, the representation should be supported by prima facie evidence of error of judgment in the opinion expressed by the medical board through a Government doctor not below the status of civil

surgeon. If such representation is made, the case of the concerned subordinate officer or the enrolled person shall be reviewed by a fresh medical board. Depending upon the outcome of the medical review, consequential decision shall be taken.

14. Prima facie, the above procedure mandated by Rule 26 does not appear to have been followed in the case of the petitioner.

15. Having regard to the above and since it is a case of premature retirement, Court will have to strike a balance. Therefore, Court is of the view that if an interim protection is granted to the petitioner by allowing him to continue in his service in the Assam Rifles, till the case is finally decided, it will meet the ends of justice.

16. Accordingly and in view of above, impugned order dated 15.10.2014 is hereby stayed."

9. Respondents have filed a common affidavit. It is stated that petitioner was permanently posted to 12 Assam Rifles from 46 Assam Rifles on 31.07.2013. As per Medical Board proceedings, he was placed in Low Medical Category A2 (Permanent), P2 (Permanent), P2 (Temporary-24). Petitioner would have completed 30 years of service on 04.03.2015, therefore, he was due to be screened by a Service Review Board as to whether he should be retained in service beyond 30 years. Service Review Board proceedings in respect of the petitioner were carried out on 16.09.2014. Service Review Board found the petitioner to be unfit for retention in service beyond 30 years for being placed in Low Medical Category suffering from three medical disabilities, viz., i) Type 2 Diabetes Mellitus, ii) Obesity and iii) Osteo Arthrosis (left knee). As such he was not recommended for retention in service beyond 30 years in the public interest. Consequently, retiring notice was issued by the Commandant to the petitioner on 15.10.2014. Having regard to the ensuing retirement, petitioner himself submitted an application on 27.12.2014 seeking retiring pension. In his application, he had stated that because of domestic problems requiring his personal attention and involvement, he would be unable to discharge his duties and, therefore, sought voluntary retirement.

10. It is asserted in the counter-affidavit that case of the petitioner is covered by Rule 56 (j) of the FR, which confers absolute power on the appropriate authority to retire any Government servant in the public interest. In the instant case, petitioner was found to be unfit for rendering military service due to his Low Medical Category and accordingly, he was retired from service on retiring pension. Since petitioner had himself made a representation seeking voluntary retirement, it is not open to the petitioner to question the impugned order whereby petitioner was retired from service on retiring pension. Reference has also been made to Rule 48 of the Pension Rules to contend that there is no infirmity or illegality in the impugned decision of the respondents. Referring to the use of the expression "permitted to retire from service on retiring pension",

as per prescribed format followed by the respondents, appearing in the impugned order, it is stated that the said expression has been used in view of the request of the petitioner. It is further stated that impugned order dated 15.10.2014 was the retirement notice whereby three months' notice period was given to the petitioner prior to taking effect of the impugned order. Petitioner had full knowledge of the findings of the Review Medical Board dated 28.06.2014 and his signature is also available in the Review Medical Board proceedings; thus findings of the Review Medical Board proceedings were communicated to the petitioner as per Rule 26 of the Assam Rifles Rules, 2010 (Assam Rifles Rules). Finally, it is stated that keeping any person in service with questionable medical fitness would jeopardise the operational preparedness of the Assam Rifles and, therefore, it was in the public interest that the impugned decision was taken.

11. Leading the arguments on behalf of the petitioners, Mr. R. Mazumdar, learned counsel submits that it is evident that petitioner has been prematurely retired from service on the ground of Low Medical Categorization as per report of the Review Medical Board. If that be so, provisions of Rule 26 of the Assam Rifles Rules would be attracted. He has referred to the said provision and then contends that the procedure prescribed under the said Rules was not complied with by the respondents, thereby vitiating the impugned decision. Referring to FR 56(j) and Rule 48 of the Pension Rules, learned counsel for the petitioner submits that impugned decision was neither in the public interest, nor the procedure prescribed was followed. No notice was issued to the petitioner informing him about the intended decision. As a result, petitioner was deprived from making representation before the authority for revocation of the impugned order. He submits that impugned order is dated 15.10.2014 and the same would have to be adjudged on the basis of materials that were available on record as on 15.10.2014. It would not be open to the respondents to rely on subsequent materials to justify the impugned order. He, however, strongly argues that the so called letter of the petitioner dated 27.12.2014, seeking voluntary retirement, was obtained from the petitioner under duress and, therefore, no reliance can be placed on the said document. In any case, the said document is post 25.10.2014 and cannot be the foundation to justify the impugned order. He finally submits that though there is no dispute to the availability of the power vested on the part of the appropriate authority to prematurely retire personnel from the Assam Rifles, but at the same time, the appropriate authority is bound by the standards by which it professes. Departure from the professed standards would vitiate the decision making process and the consequential decision. In this connection he has placed reliance on a judgment of the Supreme Court in the case of *Union of India v. Rajpal Singh*, reported in (2009) 1 SCC 216.

12. Supporting the submissions made by Mr. Mazumdar, Mr. TN Srinivasan, learned counsel submits that in the case of his clients, there is no question of Low Medical Categorization as all throughout, they were in SHAPE-I i.e., in a state of combat readiness, which otherwise denotes peak physical fitness. He submits that in so far as his clients are concerned, it would be a case covered by

Rule 48 of the Pension Rules for which entire service records of the petitioners were required to be considered and due notices were required to be given; but neither the service records were considered nor notices were given to the petitioners rendering the impugned decision untenable in law. Additionally Mr. Srinivasan submits that the impugned orders passed in respect of his clients were vitiated by mala-fides as the Commandant had personal dislike towards the petitioners for approaching this Court on an earlier occasion in a matter relating to promotion. Modicum of fairness necessary in administrative decision making is found wanting in these cases, he submits.

13. Similar submissions have been made by Mrs. S Bora, learned counsel for some of the petitioners and Mr. B. Pathak, learned counsel for the petitioner in WP(C) No.2740/2015. Mr. Pathak, learned counsel submits that though initially his client had Low Medical Categorization because he was suffering from tuberculosis, he had subsequently recovered leading to improved physical fitness which would not justify premature retirement.

14. Mr. Phukan, learned Central Govt. Counsel representing all the Central Govt. Counsel, however, supports the impugned decisions of premature retirement. Referring to Rule 8 of the Assam Rifles Rules, he submits that personnel belonging to the Assam Rifles are required to be in peak physical fitness and it would be against public interest to retain unfit personnel in the Assam Rifles. Because of poor medical categorisation assessment carried out by the Review Medical Board, a conscious decision was taken to release the petitioner from service in the Assam Rifles by way of premature retirement. He submits that premature retirement under Rule 48 of the Pension Rules or other FR 56 (j) does not constitute any punishment and, therefore, principles of natural justice are excluded from such a course of action. Petitioners would be entitled to continued pension as if they had retired on superannuation. Learned Central Govt. Counsel has placed reliance on the following decisions: -

Union of India v. Rajpal Singh, (2009) 1 SCC 216,

Pramod Kumar William v. Union of India, 2009 (1) GLT 761,

Vijay Pal Singh v. Union of India, 2014 Legal Eagle (Utt) 3476,

WA No.36/2014 (Meghalaya), (Union of India v. Shri Radha Mohan Yadav).

In addition to the above, learned Central Govt. Counsel has also placed reliance on the following decisions:-

1970 (2) SCC 458 (Union of India v. Col. JN Sinha & Anr.)

1970 (3) SCC 525 (Abdul Ghani v. State of Jammu & Kashmir)

AIR 1976 SC 632 (Gur Pratap Singh Bedi v. State of Punjab & Anr.)

AIR 1976 SC 2581 (Mayengbam Radhamohan Singh v. Chief Commissioner (Administrator) Manipur & Ors.)

(1977) 4 SCC 345 (Union of India v. Chandra Mohan Nigam & Ors.)

1980 (2) SCC 15 (Union of India v. ME Reddy & Anr.)

(1992) 2 SCC 299 (Baikuntha Nath Das & Anr. v. Chief District Medical Officer, Baripada & Anr.)

1995 Supp. (3) SCC 202 (Registrar, High Court of MP v. Rajabai Gorkar)

(2001) 3 SCC 314 (State of Gujrat v. Umedbhai M Patel)

(2003) 4 SCC 59 (Jugal Chandra Saikia v. State of Assam)

(2009) 1 SCC 2016 (Union of India v. Rajpal Singh)

15. Additionally, he submits that on identical issue, a Division Bench of the Meghalaya High Court in WA No.12/2014, (Tikendra Singh v. Union of India), disposed of on 22.07.2015 has held that in matters relating to compulsory retirement rule of audi alteram partem would not be applicable and dismissal of the writ petitions by the learned Single Judge where orders of compulsory retirement were put to challenge was upheld. Following the Division Bench judgment, a Single Bench of Meghalaya High Court in WP(C) No.12/2015 (Ravi R. v. Union of India), passed order dated 15.03.2016 dismissing identical writ petitions by holding that unfit employees cannot be retained in the service of Assam Rifles as it would weaken the force. He, therefore, seeks dismissal of the writ petitions.

16. In reply, Mr. Mazumdar submits that orders of the Meghalaya High Court are distinguishable inasmuch as what was argued before the Meghalaya High Court was violation of the principles of nature justice while discharging personnel on voluntary retirement. He submits that the issue as to whether procedure prescribed under FR 56(j) or Rule 48 of the Pension Rules or Rule 26 of the Assam Rifles Rules were required to be followed and if not, the impact on the decision taken was neither canvassed before the Meghalaya High Court nor decided by the said Court. Therefore, he submits that this Court may independently examine the challenge made in this bunch of writ petitions.

17. Submissions made by learned counsel for the parties have received the due consideration of the Court.

18. While a perusal of the impugned order would go to show that it was passed in exercise of powers conferred by FR 56 and Rule 48 of the Pension Rules, it is the categorical stand of the respondents that case of the petitioner is covered by FR 56(j). However, from the counter-affidavit filed by the respondents, it is also evident that the impugned decision was preceded by medical examination of the petitioner which assessed him as of Low Medical Categorization. In that view of the matter, it would be apposite to briefly refer to the relevant provisions as noticed above.

19. FR 56 deals with retirement of Government servant at the age of 60 years.

As per FR 56 (j), notwithstanding anything contained therein, the appropriate authority shall, if it is of the opinion that it is in the public interest so to do, have the absolute right to retire any Government servant by giving him notice of not less than three months in writing or three months' pay and allowances in lieu of such notice. As per Clause (i), in respect of Group-A and Group-B personnel, such retirement can be effected after attaining the age of 50 years and as per Clause (ii) in any other case after attaining the age of 55 years. Thus, from an analysis of FR 56(j) what can be deduced is that the appropriate authority must first form an opinion that it would be in the public interest to prematurely retire a Govt. servant. Once such opinion is formed, the appropriate authority would have the absolute right to retire such Government servant; but, before doing so, the Government servant must be given notice in writing of not less than three months or three months' pay and allowances in lieu of such notice. FR 56 (jj) provides that if on a review of the case either on a representation from the Government servant retired prematurely or otherwise, it is decided to reinstate the Government servant in service, the authority ordering reinstatement may regulate the intervening period between the date of premature retirement and the date of reinstatement by treating the intervening period as a period spent on duty for all purposes, including pay and allowances if it is held that premature retirement was not justified or if such premature retirement is set aside by a Court of law.

20. From a cumulative reading of FR(j) and FR(jj) what transpires is that prior to taking a decision to retire a Government servant prematurely, three months notice is required to be given to the Government servant or in lieu thereof, three months' pay and allowances. This is so to enable the Government servant to make a representation against his premature retirement. If such a representation is submitted, the same is required to be considered by the appropriate authority who may even direct reinstatement, if he comes to the conclusion that premature retirement was not justified.

21. Rule 48 of the Pension Rules provides for retirement on completion of 30 years' qualifying service. As per Clause-1, at any time after a Government servant has completed thirty years' qualifying service, he may retire from service or he may be required by the appointing authority to retire in the public interest and in case of such retirement, a Government servant would be entitled to a retiring pension. As per the first proviso (b), the appointing authority may give a notice in writing to the Government servant at least three months before the date on which he is required to retire in the public interest or to provide 3 months' pay and allowance in lieu of such notice.

22. Thus from a careful reading of Rule 48 of the Pension Rules, it is evident that a Government servant may be retired by the appointing authority on completion of thirty years' of qualifying service in the public interest provided a notice in writing is given to the Government servant at least three months before the date on which he is required to go on retirement in public interest or to provide three

months" pay and allowances in lieu of such notice. The instructions relating to implementation of Rule 48 of the Pension Rules are laid down in Appendix-9 to the Pension Rules. While Part-1 deals with the rules position, Part-II deals with criteria, procedure and guidelines. On the other hand, Part-III deals with procedure for consideration of representation and Part-IV lays down the time-schedule for review. In the rules position reference has been made to FR 56 (j) and Rule 48 of the Pension Rules.

23. In so far criteria, procedure and guidelines are concerned, it is stated that in order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, procedures and guidelines have been laid down to review the cases of Government servants being considered for premature retirement. As per Clause (1), case of a Government servant covered by FR 56 (j) or Rule 48 of the Pension Rules should be reviewed six months before attaining the age of 50 or 55 years or on completion of 30 years of qualifying service, whichever is earlier. Clause (2) provides for constitution of committees to recommend whether the Government servant should be retired from service in the public interest or whether he should be retained in service. Clause (3) lays down the criteria to be followed by the committee while making the recommendation. Government employees whose integrity is doubtful, should be retired. Government employees, who are found to be ineffective should also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he is holding. At the time of review, the entire service record of the Government servant should be considered. No Government servant should ordinarily be retired on the ground of ineffectiveness, if his service during the preceding 5 years has been found to be satisfactory or where he has been promoted to a higher post during the preceding 5 years. No employees should ordinarily be retired on ground of ineffectiveness if in any event he would be retiring on superannuation within a period of one year from the date of consideration. Clause (4) provides that such decision to prematurely retire a Government servant must strictly be in public interest and should not be an arbitrary decision or decision based on collateral grounds. The appropriate authority should record in the file that it has formed its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rules in the public interest. The rules relating to premature retirement should not be used to retire a Government servant on grounds of specific acts of misconduct as a short cut to initiating formal disciplinary proceeding or as a measure of reduction of surplus staff without following the rules and instructions relating to retrenchment.

24. Clause (8) provides that when the appropriate authority has come to the conclusion that the Government servant may be prematurely retired, the three months" notice may be given before the Government servant attains the specified age or completes 30 years of service, as the case may be. While notice of such retirement could be given before the Government servant actually completes 30 years of service qualifying for pension, the date of expiry of the

notice on which the Government servant's retirement would be effective should be one falling on or after the date of his completing 30 years of service qualifying for pension.

25. Part-III deals with procedure for consideration of representation. It says that a Government servant who has been served with a notice/order of premature retirement may submit a representation within 3 weeks from the date of service of such notice. Thereafter how the representation is to be considered is laid down. However, it is mentioned that as and when representations are received, those should be examined by the appropriate committee.

26. Petitioner has placed on record a copy of instructions regarding premature retirement of Central Government servants as contained in the Government of India, Ministry of Home Affairs Office Memorandum dated 05.01.1978 which are almost *pari materia* to the provisions contained in Appendix 9 to the Pension Rules. Additionally, it is however mentioned that if the Government servant is not found fit to continue in his present post, his fitness/competence to continue in the lower post from where he had been previously promoted, should be considered. In the part dealing with procedure for consideration of representations, it is mentioned that the appropriate "Representation Committee" should take special care to see that over-rigorous standards were not applied at the time of original review in the matter of judging ineffectiveness of the employee on account of mistaken sense of over-zealousness and that premature retirement was not resorted to as a means of political or personal victimization. It also provides that review of cases of the employees prematurely retired be conducted by a committee of officers of appropriate status unconnected with the original decision to retire the employee prematurely.

27. Having noticed and discussed the above, relevant provisions of the Assam Rifles Rules may now be adverted to.

28. The Assam Rifles Rules have been framed by the Central Government in exercise of powers conferred by section 165 of the Assam Rifles Act, 2006. Rule 26 is relevant and the same is extracted hereunder:-

"26. Retirement or discharge of subordinate officers and enrolled persons on grounds of physical unfitness - (1) Where a Commandant is satisfied that a subordinate officer or an enrolled person is unable to perform his duties by reason of his physical disability, he may direct that the said subordinate officer or enrolled person, as the case may be, be brought before a medical board.

(2) The medical board shall consist of such officers and shall be constituted in such manner as may, from time to time, be laid down by the Director-General.

(3) Where the said subordinate officer or the enrolled person is found by the medical board to be unfit for further service in the Force, as the case may be, the authority as specified in Rule 17 shall, if it agrees with the findings of the medical board, communicate to the said person the findings of the medical board and

thereupon, within a period of thirty days of such communication, the person may make a representation against it to the competent authority supported by a prima-facie evidence of error of judgment in the opinion expressed by the medical board such an evidence should be from a Government doctor not below the status of civil surgeon and should contain specific mention that he has taken into consideration the findings of the medical board before giving his opinion.

(4) Where the person declared to be unfit for further service makes representation under sub-rule (3), the same shall be forwarded to the next superior officer, who shall have the case reviewed by a fresh medical board constituted for the purpose and order the retirement/discharge of the said person, if the decision of the fresh medical board is adverse to him.

(5) Where no representation is made against the decision of the medical board under sub-rule (3), the authority as specified in Rule 17, as the case may be, may (if he agrees with the findings of the medical board) order the retirement or discharge of the person concerned."

29. A perusal of Rule 26 as extracted above would go to show that in a case where the Commandant is satisfied that a sub-ordinate officer or an enrolled person is unable to perform his duties by reason of physical inability, such an officer or enrolled person may be brought before a medical board to be constituted in the prescribed manner. If the medical board finds such officer or enrolled person to be medically unfit for further service in the Assam Rifles and if the Commandant agrees with the findings of the medical board, the same shall be communicated to the person concerned where after the affected person may make a representation within 30 days of such communication supported by prima-facie evidence of error of judgment in the opinion expressed by the medical board; such evidence being from a Government doctor not below the status of a civil surgeon. When such a representation is received, the same shall be forwarded to the next superior officer, who shall have the case reviewed by a fresh medical board constituted for the purpose.

30. What, therefore, emerges from the above is that whether it is a case covered by FR 56(j) or Rule 48 of the Pension Rules or Rule 26 of the Assam Rifles Rules, a detailed procedure is prescribed if the authority desires to prematurely retire a Government servant.

31. The Supreme Court in the case of Rajpal Singh (supra), which was also a case of premature discharge of an Army personnel under the Army Act and the Rules on the ground of low medical categorization, held that it is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. Otherwise also, it is a salutary principle of administrative law well recognised and applied by the constitutional courts of the country that if a law provides for a thing to be done in a particular manner, then it must be done in

that particular manner and in no other way.

32. On a thorough consideration of the matter, Court is of the view that the procedures laid down in any of the situations as mentioned above, be it under FR 56 (j) or under Rule 48 of the Pension Rules or under Rule 26 of the Assam Rifles Rules, have not been followed in the present case. In fact, in some of the cases, there is clear mention in the impugned order that the concerned petitioner was being prematurely retired on account of Low Medical Categorization, in some cases the three months' period was not even made available and in some cases notice was given without mentioning the right of the concerned petitioner to take remedial steps. No doubt, as observed by the Apex Court in Rajpal Singh (*supra*), fitness of armed forces personnel at all levels is of paramount consideration and there cannot be any compromise on that score, but at the same time rules and procedure prescribed providing for checks and balances cannot be given a go-bye. Premature retirement without following the rules and procedure may dent the morale of the personnel which would certainly not be in the public interest.

33. In the course of the hearing, a faint argument was advanced by the learned Central Govt. Counsel that the impugned order dated 15.10.2014 was in the nature of a notice. To appreciate this contention, the impugned order dated 15.10.2014 is extracted hereunder:-

"Under the provision of Rule 56 of FR/Rule 48 (I) of CCS (Pension) Rules 1972 No.M/370704A Rank Hav/NA Name Sunil Kumar Shahi of this unit is hereby permitted to retire from service on retiring pension with effect from 31 Mar 2015 (AN) and SOS/SORS wef 01 Apr 2015 (FN)."

34. A bare perusal of the impugned order would go to show that it was the final decision of the authority to prematurely retire the petitioner from service which was communicated to the petitioner. There is a fundamental difference between a notice and an order. The Supreme Court in *Commissioner of Sales Tax & Ors. v. Subhash & Co.*, reported in (2003) 3 SCC 454 had examined in detail as to what would constitute a notice. Without elaborate dilation on this aspect, it can safely be said that a notice would mean an information or an intimation to the person addressed about the proposed action or decision intended to be taken or bring it to the knowledge of the addressee about certain document or incident or proceeding to make him aware of the same. As per Black's Law Dictionary, Sixth Edition, notice in its legal sense is information concerning a fact, actually communicated to a person by an authorised person, or actually derived by him from a proper source and is regarded in law as "actual" when the person sought to be affected by it knows thereby of the existence of the particular fact in question. In another sense, "notice" means information, an advice or written warning in more or less formal shape, intended to apprise a person of some proceeding in which his interests are involved or informing him of some fact which it is his right to know and the duty of the notifying party to communicate. Therefore, notice would be at a stage prior to issuance of the order. In

contradistinction, the order following the notice would denote finality of the decision taken which would not be the case at the stage when notice was issued. The contention that impugned order is in the nature of notice would also stand refuted by the procedure laid down by the Central Government as adverted to above detailing as to how cases of premature retirement are required to be dealt with, providing for opportunity to the Government servant to make representation on receipt of retirement notice.

35. The expression "permitted to retire from service" appearing in the impugned order has been dealt with while passing the interim order dated 26.03.2015 which has been extracted in the initial stage of this order. Therefore, it may not be necessary for further dilation on this aspect.

36. All the decisions cited at the bar by the learned Central Govt. Counsel have been perused and on due consideration, Court is of the view that while there can be no dispute to the ratio laid down in those decisions, however, those decisions would not be attracted to the facts and circumstances of the present bunch of cases.

37. The decisions rendered by the Meghalaya High Court have also been carefully perused, but with utmost respect, having regard to the discussions made above which were not canvassed before the Meghalaya High Court, this Court is unable to accept the view taken in those decisions.

38. In view of the above, this Court is of the unhesitant view that impugned order of premature retirement cannot be legally sustained.

39. Accordingly and in the light of the above, order dated 15.10.2014 impugned in WP(C) No.1250/2015 and all other orders impugned in the connected writ petitions forming part of this bunch are hereby set aside and quashed.

40. Writ petitions are allowed, but without any order as to costs.