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**(2006) 03 GAU CK 0086**  
**In the Gauhati High Court**

W.Birkumar

APPELLANT

Vs

State of Manipur and Ors.

RESPONDENT

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**Date of Decision :** 08-03-2006

**Acts Referred:**

**Citation :** (2006) 03 GAU CK 0086

**Hon'ble Judges :** T.Nanda Kumar Singh, J

**Bench :** Single Bench

**Advocate :** Th.Ibohal Singh, Kh.Tarun kumar Singh, L.Romita Devi, Advocates  
appearing for Parties

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## Judgement

1. Heard Mr. Kh. Tarunkumar Singh, learned counsel for the petitioner as well as Mr. Th. Ibohal Singh, learned GA appearing on behalf of the respondents 1, 2, 3 and 4 and Ms. L. Romita Devi, learned counsel appearing on behalf of respondent no.5.

2. The learned counsels for the respondents pray for further 2(two) weeks" time for filing affidavitinopposition.

3. Taking into consideration of the nature of this case and also the pitiable condition of the petitioner who is not getting his pensionary benefits since the date of his retirement on invalid pension on 30.4.1997, the prayers of the learned counsel for the respondents are not entertained. 4. The case of the petitioner in the present writ petition is short and simple. The petitioner entered the service in the year 1987 as Rifleman in the Manipur Rifles 5th Bn. and by an order dated 1.5.1996 petitioner was transferred from the 5th Bn. Manipur Rifles and posted at the 11th Bn. Manipur Rifles (1st IRB). Unfortunately, while the petitioner was serving as Rifleman his health condition became deteriorated and the Commandant, 11th Bn. Manipur Rifles (1st IRB) under his letter dated 22.4.1997 requested the State Medical Board to examine the health condition of the petitioner. As requested by the Commandant, 11th Bn. M.R. (i.e. 1st IRB), the State Medical Board examined the health condition of the petitioner and

issued order/memorandum being No.292/MB/FW/89 dated 22.4.1997 requesting the Pathologist, J.N. Hospital, Porompat/RIMS Hospital Lamphel to examine Urine (RE), vision and eye of the present writ petitioner and also for examination of his health condition by the State Medical Board on 24.4.97. Ultimately, the State Medical Board in its meeting held on 24.4.1997 made the findings that the present writ petitioner is completely unfit for further service of any kind in the department, a copy of the said findings is available at AnnexureA/7 to the present writ petition. Thereafter in pursuance of the said findings of the State Medical Board, the Commandant, 11th Bn. Manipur Rifles (i.e. 1st IRB, Kanglafort) in pursuance of Rule 38 (2) of C.C.S. (Pension) Rules 1972 ordered to retire the petitioner from service on invalid pension w.e.f. 1.5.1997 vide order of the Commandant 11th Bn. MR (IRB), Kanglafort, dated 30.4.97, a copy of which is available at AnnexureA/6 in the present writ petition.

5. Even though the petitioner retired from service on invalid pension under the said order of the Commandant, 11th Bn. M.R.(i.e. 1st IRB) Kangla Fort dated 30.4.1997, the petitioner was not allowed to enjoy the pensionary benefits vide order of the Govt. of Manipur being No.15/3/2005 Case/PC(Home)Pt, dated 17.12.2005 only on the ground that the petitioner had not completed the qualifying service of 10 years. Hence this writ petition challenging the order of the Govt. of Manipur dated 17.12.2005.

6. The learned counsel for the petitioner by referring to Rule 49(2)(c) of the Central Civil Services (Pension) Rules, 1972 which has been adopted by the State Government of Manipur in the name and style of Manipur Civil Service (Pension) Rules 1977, submits that no particular qualifying year is mentioned in the said Rule 49 of the Civil Service (Pension) Rules for the purpose of enjoyment of the invalid pension. For easy reference, Regulation Rule 49(2) is quoted hereunder:

?(2) (a) In the case of a Govt. servant retiring in accordance with the provisions of these rules after completing qualifying service of not less than thirtythree years, the amount of pension shall be calculated at fifty percent of average emoluments, subject to a maximum of four thousand and five hundred rupees per mensem.

(b) In the case of a Govt. servant retiring in accordance with the provisions of these rules before completing qualifying service of 33 years, but after completing qualifying service of 10 years, amount of pension shall be proportionate to the amount of pension admissible under clause (a) and in no case the amount of pension shall be less than Rupees three thousand and seventyfive per mension.

(c) Notwithstanding anything contained in Clause (a) and clause (b), the amount of invalid pension shall not be less than the amount of family pension admissible under subrule (2) of Rule 54.?

7. The learned counsel appearing for the petitioner submits that the question as to whether or not the members of the Manipur Rifles who retired from service on invalid pension before completion of 10 years is entitled to get the invalid

pension had already been considered and decided by the Division Bench of this court in judgment and order dated 26.9.1996 passed in W.A. No.87 of 1996 and held that the case of the members of the Manipur Rifles who retired from service on invalid pension before completing the 10 years is covered by Rule 49(2)(c) of the C.C.S. Rules 1972 and the members of the Manipur Rifles who retired on invalid pension before completing 10 years is entitled to enjoy the invalid pension, the amount of which shall not be less than the amount of family pension admissible under Subrule (2) of Rule 54 of the CCS Rules 1972. For easy reference, the operative portion of the judgment and order of the Division Bench of this court dated 26.9.1996 passed in W.A. No.87 of 1996 are quoted hereunder:

¶4. At the outset, Mr. Jagatchandra Singh, Id. Counsel for the appellant submits that the petitioner could not be entitled the pension under Rule 49(1) of C.C.S. Pension Rule. Rule 49(1) provides that govt. servant retiring before completing qualifying service of 10 years, the amount of service gratuity shall be calculate at the rate of half month's emoluments for every completed six monthly period of qualifying service. Referring to the Subrule 1 of Rule 49, it is contended by Mr. A. Jagatchandra Singh that since the petitioner did not complete qualifying service of 10 years, he is entitled only the service gratuity and not the pension. This submission, in our view, is thoroughly misconstrued reading of the Rules.

5. In our view, rule 49(2) (C) is applicable in the facts of the case at hand. Rule 49(2) (C) deals with the invalid pension and it reads:

¶Notwithstanding anything contained in clause (a) and clause (b) the amount of invalid pension shall not less than the amount of family pension admissible under subrule (2) of Rules 54?.

6. A cursory reading of Rule 49(2) (C) it clearly appeared that the amount of invalid pension shall be calculated as admissible under subrule 2 of Rule 54. It is, however, contended by Mr. Jagatchandra Singh that subrule (C) did not cover Rule 49(1). This submission cannot also be accepted because Rule 49(1) is with regard to the person who has not completed qualifying service of 10 years. But Rule 49(2) (a) and (b) deals with the situation where the government servant retires after completing qualifying service of not less than 33 years and the Government servant retiring before completing qualifying service of 33 years but after completing qualifying service of 10 years. A reading of the Rule 49 as a whole it will be noticed that invalid pension has been exclusively dealt with Rule 49(2) (c) as quoted above. Therefore, there is no confusion with regard to the provision of the Rules. We have not doubt, in our mind that the writ petitioner would be entitled to invalid pension as enjoined under Rule 49(2)(c) of the Rules.

7. In view of our reasons aforesaid, there is no merit in this writ appeal and the same is dismissed. Respondents are directed to pay the pensionary benefit of the petitioner as admissible under Subrule (2) of Rule 54. It appears that the petitioner has already submitted the Pension Papers as far as back on 20.7.92.

Therefore, respondents are directed to pay the pension within a period of two months with interest @ 12 per cent as directed by the Id. Single Judge.

With the aforesaid direction this writ appeal is dismissed.?

It is said that the judgment and order of the Division Bench of this court dated 26.9.1996 passed in W.A. No. 87 of 1996 is still hold good.

8. After meticulously examining the case of the present petitioner and after careful application of my mind, the judgment and order of the Division Bench of this Court dated 26.9.1996 passed in W.A.No.87 of 1996, I am of the considered view that the present writ petition is squarely covered by the said judgment and order of the Division Bench of this Court dated 26.9.1996 passed in W.A. No.87 of 1996. Accordingly, the benefits of the judgment and order of the Division Bench of this court dated 26.9.1996 passed in W.A. No.87 of 1996 shall also be extended to the present petitioner. In other words, the petitioner is entitled to get the invalid pension, the amount of which shall not be less than the amount of family pension admissible under subrule (2) of Rule 54 of the CCS (Pension) Rules 1972, and therefore the respondents are directed to pay pension within a period of 4(four) months from the date of receipt of the certified copy of this judgment and order and if not paid with the said period of 4 months, interest at the rate of 6(six) per cent per annum shall be paid by the respondents. The result being that the order of the Govt. of Manipur dated 17.12.2005 (AnnexureA/10 to the writ petition) is hereby quashed and set aside.

8. With the above observations and directions the writ petition is allowed. Parties to bear their own costs.