

GAHC010010722015



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

Case No. : WP(C)/1655/2015

SHANTA SINHA
S/O LT. LALOPATA SINHA R/O MOHANPUR P.O. BHUBANESWAR NAGAR,
P.S. BEHARA BAZAR DIST. CACHAR, ASSAM.

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY COMMISSIONER AND SECRETARY, MINISTRY OF DEFENSE, NEW
DELHI-110001.

2:THE DIRECTOR GENERAL ASSAM RIFLES
MAHANIDESHALAY ASSAM RIFLES SHILLONG PIN - 79300

3:THE COMMANDANT 45 ASSAM RIFLE C/O 99 APO

Advocate for the Petitioner : MS.B GOGOI

Advocate for the Respondent : C.G.C.

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 11.06.2024

Date of Judgment : 11.06.2024

Judgment & order(Oral)

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Heard Mr. P. J. Saikia, learned counsel, appearing on behalf of the petitioner. Also heard Mr. K. Gogoi, learned CGC, appearing on behalf of all the respondents.

2. The petitioner by way of instituting the present proceeding, has presented a challenge to an order, dated 13.10.2012, by which the petitioner, herein, was retired from his service on completion of 30 years of his service w.e.f. 15.07.2013, in exercise of the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972.

3. The petitioner, herein, was enrolled as a member of the Assam Rifles on 15.07.1983 and was attached as a Rifleman (GD) w.e.f. 11.06.1984 with 45 Assam Rifles.

4. It is the contention of the petitioner that while he was serving as such, the Commandant, 45 Assam Rifles, vide order, dated 13.10.2012, in exercise of the powers conferred under the provisions of Rule 48(1)(a) of the Central Civil Services (Pension) Rules, 1972, issued a notice to the petitioner, herein, that on completion of 30 years of his service as on 15.07.2013, shall retire from his service in the afternoon of 31.07.2013.

5. It is stated that along with the said order, dated 13.10.2012, necessary consequential orders were also issued and the petitioner was retired from his service w.e.f. 31.07.2013. Vide the Pension Payment Order(PPO), dated 29.07.2013, the pension was authorized to the petitioner w.e.f. 01.08.2013.

6. It is contended by the petitioner, herein, that the action on the part of the respondent authorities in proceeding to retire from his service, prematurely, was not so done on a correct estimation of his service records in-as-much as it is

contended that he had a distinguished service career and was conferred with various medals. Accordingly, being aggrieved by the said order, dated 13.10.2012, it is contended that the petitioner, on a wrong advice, had instituted proceedings before the learned Central Administrative Tribunal(CAT), Guwahati Bench, Guwahati, in the matter, by way of filing an application being O.A. No. 373/2013 which was thereafter dismissed on the ground of lack of jurisdiction, vide order, dated 05.12.2013, and thereafter, the petitioner has instituted the present proceeding on 03.03.2015.

7. It is contended in the writ petition that the petitioner was forcefully retired from his service in-as-much as the requirements to attract the provisions of Rule 48(1)(a) of the Central Civil Services (Pension) Rules, 1972, was clearly absent in his case.

8. Mr. Saikia, learned counsel for the petitioner, has submitted that while proceeding to decide that the petitioner was required to retire from his service on completion of 30 years of his service; the respondent authorities had not carried-out a due examination of his service records in-as-much as such an examination would have revealed that he was entitled to be continued in his service and it is contended that in the absence of a detailed examination of his service records which is mandatorily required to be done; the issuance of the notice and the consequential orders retiring the petitioner from his service on completion of 30 years of his service, cannot stand the scrutiny of law and requires to be interfered with by this Court.

9. It is contended by the petitioner that the ACRs, purportedly adverse, as relied upon by the respondent authorities for arriving at the decision to retire the petitioner from his service, were never communicated to him.

10. Per contra, Mr. Gogoi, learned CGC, has submitted that the present proceeding has been so instituted after about 3(three) years from the date of the petitioner's retirement and even if the period when the proceeding was pending before the learned Central Administrative Tribunal(CAT), Guwahati Bench, Guwahati, is considered; still there exists a delay of around 2(two) years in instituting the present proceeding which has not explained by the petitioner in the present proceeding.

11. Mr. Gogoi, learned CGC, has further submitted that the retention in service of an enrolled member of a force, is dependent on his fitness and satisfactory performance. It is contended that the review Board of the respondent authorities which had examined the fitness of the petitioner, herein, had graded him "Average" in 3(three) ACRs, out of the last 5(five) years i.e. for the years 2007, 2010 and 2012.

12. As per the procedure followed for retention in service beyond 30 years, a Non Commissioned Officer(NCO) must have minimum 3(three) high average ACRs and balance 2(two) ACRs should not below average. However, the petitioner had earned only 2(two) high average gradings as against the requirement of 3(high) high average gradings and therefore, the review Board as constituted in the matter, found him unfit for retention beyond 30 years of

service and thereafter, consequential actions were so taken basing on the recommendations of the said Board.

13. It was also contended that the petitioner, herein, was graded as average in 3(three) ACRs out of the last 5(five) ACRs and accordingly, he having not met the benchmark for retention in service, the consequential action towards retiring him from service with all consequential benefits were so taken by the respondent authorities.

14. Mr. Gogoi, learned CGC, in support of his submissions, has placed reliance on a decision rendered by a coordinate Bench of this Court in the case of **Nawal Kishore Thakur v. Union of India & ors.** [WP(c)1088/2017, disposed of vide judgment & order, dated 25.07.2022] and has contended that the coordinate Bench of this Court after examining all the relevant decisions of the Hon'ble Supreme Court in this connection as well as the provisions so involved, had proceeded to dismiss the said writ petition upholding the retirement as ordered in the case of the petitioner, therein. It is contended that the facts of the present case is squarely covered by the decision of the coordinate Bench of this Court in the case of **Nawal Kishore Thakur**(supra) and accordingly, it is submitted that the writ petition is required to be dismissed.

15. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

16. On a perusal of the materials on record; it is seen that the petitioner was

vide order, dated 13.10.2012, issued with a notice that he would be retired from his service w.e.f. 31.07.2013, on his completion of 30 years of service on 15.07.2013. The said notice was so issued under the provisions of Rule 48(1)(a) of the Central Civil Services (Pension) Rules, 1972.

17. The petitioner, herein, has not brought on record any material to demonstrate that he, in pursuance of the said order, dated 13.10.2012, approached the respondent authorities and by submission of the requisite materials, highlighted that the conclusion as arrived in his case to retire from his service on completion of 30 years of his service was so arrived at without a proper and due examination of his service records.

18. It is seen that the petitioner had accepted the said decision as arrived in his case and it is only after he was retired from his service w.e.f. 31.07.2013, that the proceedings in the matter came to be instituted by him before the learned Central Administrative Tribunal(CAT), Guwahati Bench, Guwahati, and thereafter, the present proceeding before this Court after a lapse of around 3(three) years.

19. In view of the issue arising in the present proceeding; it is deemed appropriate to extract hereinbelow, the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972:

“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.

(2) A Government servant, who has elected to retire under this rule and has given the necessary intimation to that effect to the appointing authority, shall be precluded from withdrawing his election subsequently except with the specific approval of such authority: Provided that the request for withdrawal shall be within the intended date of his retirement.

(3) For the purpose of this rule the expression 'appointing authority' shall mean the

authority which is competent to make appointments to the service or post from which the Government servant retires."

20. A perusal of the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972, would bring to the forefront that a government servant may be required to retire in public interest. Such retirement effected in the case of the petitioner, herein, in terms of the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972, is accompanied by a retiring pension and can be so effected only after a notice is given in writing to the person concerned prior to 3 months from the date on which he is held to now require to retire from his service.

21. It is seen that by issuance of the order, dated 13.10.2012, notice of the retirement of the petitioner was so issued on him much prior to 3 months from the date of his completion of 30 years of service and accordingly, it is seen that the petitioner, herein, was issued with a notice strictly in accordance with the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972, and the other provisions of the said Rules, was also so complied with.

22. The materials brought on record and the contentions raised by the respondent authorities in the affidavit-in-opposition filed in the matter; would go to reveal that the decision to retire the petitioner exercising the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972, was so arrived at on an examination of his service records and the same indicates that the petitioner was retired from his service on completion of his 30 years in public interest.

23. The petitioner, herein, has not brought on record any material to counter such categorical contentions raised in the matter by the respondent authorities and accordingly, in the absence of any material to counter the contentions so raised by the respondent authorities; this Court is not in a position to negate such categorical contentions brought on record by the respondents, herein.

24. The only contention raised by the petitioner is to the extent that the ACRs as considered in his case, were not placed before him. The said contention would not advance the case of the petitioner in-as-much as for the purpose of determining whether a person is to be retained in service upon completion of 30 years of his service; even an uncommunicated adverse ACR on record can be taken into consideration and an order of retirement passed under such circumstances, cannot be set aside only for the reason that such uncommunicated adverse entry in the ACRs was taken into consideration.

25. In this connection, a reference is made to the decision of the Hon'ble Supreme Court in the case of ***Rajendra Singh Verma(dead) from LRs. & ors. v. Union of India & ors.***, reported in ***(2011) 10 SCC 1***. The relevant conclusions of the Hon'ble Supreme Court in the above-noted case, being pertinent to the present proceeding, is extracted hereinbelow:

"143. Compulsory retirement from service is not considered to be a punishment. Under the relevant rules, an order of dismissal is a punishment laid on a Government servant when it is found that he has been guilty of misconduct or the like. It is penal in character because it involves loss of pension which under the Rules have accrued in respect of the service already put in. An order of removal also stands on the same footing as an order of dismissal and involves the same consequences, the only difference between them being that while a servant who is dismissed is not eligible for re-appointment, one who is removed is. A compulsory retirement is neither dismissal nor removal and differs from both of them, in that it is not a form of punishment prescribed by the rules and involves no penal consequences, in as much as the person retired is entitled to pension and other retiral benefits, proportionate to the period of service standing to his credit.

144. As explained by a Bench of three Hon'ble Judges of this Court in *State of U.P. v. Shyam Lal Sharma*, (1971) 2 SCC 514,

"13. in ascertaining, whether the order of compulsory retirement is one of punishment, it has to be ascertained, whether in the order of compulsory retirement there was any element of charge or stigma or imputation or any implication of misbehaviour or incapacity against the officer concerned. Secondly, the order of compulsory retirement will be indicative of punishment or penalty if the order will involve loss of benefits already earned. Thirdly, as order of compulsory retirement on the completion of 25 years of service or an order of compulsory retirement made in the public interest to dispense with further service will not amount to an order for dismissal or removal as there is no element of punishment. Fourthly, an order of compulsory retirement will not be held to be an order in the nature of punishment or penalty on the ground that there is possibility of loss of future prospects, namely, that the officer will not get his pay till he attains the age of superannuation, or will not get an enhanced pension for not being allowed to remain a few years in service and being compulsorily retired.

145. So far as the present cases is concerned, this Court finds that there is no words in the orders of compulsory retirement, which throw any stigma against the two appellants and the deceased officer. Therefore, it is not necessary for this Court to make inquiry into the Government files to discover whether any remark amounting to stigma could be found in the files. The reason is that it is the order of compulsory retirement, which alone is for examination. If the order itself does not contain any imputation or charge against the two appellants and the deceased officer, the fact that considerations of misconduct or misbehaviour weighed with the High Court in coming to its conclusion to retire them compulsorily does not amount to any imputation or charge against them. It is not established from the order of compulsory retirement itself that the charge or imputation against the appellants was made a condition for exercise of the power. Therefore, the orders of retirement cannot be considered to be one for dismissal or removal in the nature of penalty or punishment.

146. Now, the policy underlying Article 311(2) of the Constitution is that when it is proposed to take action against the servant by way of punishment and that will entail forfeiture of benefits already earned by him, he should be heard and given an opportunity to show cause against the order. The confidential reports provide the basic and vital inputs for assessing the performance of an officer and his advancement in his career as also to serve the data for judging his comparative merits when the questions arise for his confirmation, promotion, grant of selection grade, crossing E.B., retention in service beyond the age of 50 years etc. Maintenance of such records is ordinarily regulated by administrative rules or instructions. Writing the confidential report is primarily and essentially an administrative function.

147. Normally tribunals/Courts is loath to interfere in cases of complaints against adverse remarks and to substitute his own judgment for that of the reporting or reviewing officers. It is because these officers alone is best suited to judge the qualities of officials working under them and about his competence in the performance of official duties entrusted to them. Despite fear of abuse of power by prejudiced superior officers in certain cases, the service record contained in the confidential reports, by and large, reflects the real personality of the officer.

148. The object of writing confidential reports and making entries therein is to give an opportunity to the public servant to improve excellence. Article 51-A(j) of the Constitution enjoins upon every citizen the primary duty to constantly endeavour to prove excellence, individually and collectively, as a member of the group. Therefore, the officer entrusted with the duty to write CR has a public responsibility and trust to write the CR objectively, fairly and dispassionately while giving, as accurately as possible the statement of facts on an overall assessment of performance of the subordinate officer. Opportunity of hearing is not necessary before adverse remarks because adverse remarks by themselves do not constitute a penalty. However, when the order of compulsory retirement is passed, the authority concerned has to take into consideration the whole service record of the officer concerned which would include non-communicated adverse remarks also. Thus it is settled by several reported decisions of this Court that un-communicated adverse remarks can be taken into consideration while deciding the question whether an official should be made to retire compulsorily or not.

149. In State of U.P. & Anr. v. Bihari Lal, (1994) Supp (3) SCC 593, this Court has taken the view that even an adverse entry which has been set aside in appeal on technical grounds could also be taken into consideration. The plea that since the last entry, i.e., 'C-Integrity Doubtful' for the year 2000 was communicated almost around the same time when the order of compulsory retirement was communicated and as the appellants had no opportunity to represent against the same, it ought not to have been taken into consideration and that the consideration of the said last adverse entry vitiates the order of compulsory retirement has no merits.

150. This Court has consistently taken the view that an order of compulsory retirement is not a punishment and does not have adverse consequence and, therefore, the principles of natural justice is not attracted. What is relevant to notice is that this Court has held that an un-communicated adverse ACR on record can be taken into consideration and an order of compulsory retirement cannot be set aside only for the reason that such un-communicated adverse entry was taken into consideration. If that be so, the fact that the adverse ACR was communicated but none of the appellants had an opportunity to represent against the same, before the same was taken into consideration for passing order of compulsory retirement, cannot at all vitiate the order of compulsory retirement.(emphasis added)”

26. Applying the decision of the **Rajendra Singh Verma (dead)**(supra) to the facts of the present case, it is seen that the respondent authorities had proceeded to examine the case of the petitioner strictly in accordance with the provisions of Rule 48(1)(a) of the Central Civil Services(Pension) Rules, 1972, and on examination of the service records of the petitioner, herein, a conclusion having been drawn that he was not fit for retention in service beyond 30 years; the retirement as effected in the case of the petitioner, herein, does not call for any interference from this Court. The consideration by the respondents of the

ACRs having adverse entries which remained uncommunicated, also would not vitiate the consideration so made.

27. It is to be noted that in the present proceeding, the petitioner has not brought on record any material to counter the consideration as made and disclosed in the affidavit-in-opposition filed by the respondent authorities in the matter towards arriving at a conclusion with regard to the contention of the petitioner that his service is required to be extended beyond 30 years of service. As such, no stigma being attached to the petitioner in the matter and the order of compulsory retirement as passed in the matter being not vitiated and it not being penal in nature; this Court finds no error in the decision as arrived at in the matter concerning the petitioner. The order, dated 13.10.2012, accordingly, is upheld.

28. In view of the conclusions reached by this Court hereinabove, the writ petition is held to be devoid of any merit and the same accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant