

THE HIGH COURT OF MEGHALAYA

WA No.25/2014 In WP(C) No.208/2013

1. The Union of India represented by the Secretary to the Govt. of India Ministry of Home Affairs, New Delhi-110001.

2. The Director General Assam Rifles,
C/o Assam Rifles Head Quarters, Laitkor,
Shillong, Meghalaya.

3. The Deputy Director (Records),
C/o Assam Rifles Head Quarters,
Laitkor, Shillong, Meghalaya.

4. The Commandant, Assam Rifles Training Centre & School,
Dimapur, Nagaland. :::: Appellants

-Vs-

Shri. Anil Kumar Yadav,
S/o Shri. Papu Ram Yadav,
Village – Dilawarpur, P.O. – Shahpur,
P.S. Alwar (Sadar), District – Alwar,
State of Rajasthan. :::: Respondent/Writ Petitioner

BEFORE
HON'BLE MR. JUSTICE UMA NATH SINGH, CHIEF JUSTICE (ACTING)
HON'BLE MR. JUSTICE T. NANDAKUMAR SINGH

For the Appellants : Mr. A Khan, Adv

For the Respondent/Writ Petitioner : Mr. S Chakravarty, Adv

Date of hearing : **19.02.2015**

Date of Judgment & Order : **26.02.2015**

JUDGMENT AND ORDER

(Justice T. Nandakumar Singh)

Heard Mr. A Khan, learned counsel for the appellants and Mr. S Chakravarty, learned counsel for the respondent/writ petitioner.

2. The questions call for decision in the present writ appeal are (i) is it mandatory for the recruit i.e. General Duty (Driver) of the Assam Rifles to complete the training within a period not exceeding 24 (twenty four) months under para 21 of the policy decision/administrative instruction i.e. Assam Rifles Training Centre and School, Relegation and Discharge SOP No.1.22011/14/Trg-2007 dated 09.08.2007? and (ii) whether the discharge from service is only the consequence for not completing the training within the said period of 24 (twenty four) months?. Para 21 of the said policy decision dated 09.08.2007 reads as follows:-

“21. Stay at ARTC & S Exceeding 24 months. All rects whose stay at the ARTC & S exceed 96 weeks (24 months) which caters for normal trg plus relegation will be screened by a Bd of Offrs as given below:

(a) A board of Offrs will be ordered by the respective Bn which will assess whether a rect who has already stayed at the ARTC & S for 15 months but has not completed his trg be allowed to continue the trg or not.

(b) Based on their findings the CO will give his recommendations. The recommendation of the CO will be based on the result of various tests, games and extracurricular activities Discp, state of hlth, whether absence on acct of inquiry/sickness and if former then whether it is on acct of trg or not are to be considered.

(c) This list is not exhaustive and the Bd is at liberty to bring up any other aspect which will assist taking the right decision.

(d) Extn can then be gtd on case to case basis at the discretion of Comdt ARTC & S.”

3. The learned Single Judge vide impugned judgment and order dated 13.02.2014 passed in WP(C)No.208/2013 filed by the respondent/writ petitioner held that the only consequence of not completing the training within the period mentioned in para 21 of the said policy decision will not be the mandatory discharge of the trainee from service and also further held that the said policy decision is not mandatory but a directory one. When there is

discretion, authority concerned should apply their discretion not in the arbitrary manner but in a judicious manner and also to take humanity as well as the concept of the principle of natural justice. By this intra-court appeal, the appellants are assailing the impugned judgment and order of the learned Single Judge dated 13.02.2014 only on the ground that the said policy decision for completion of the training within 24 (twenty four) months is mandatory and consequence of failure to complete the training within 24 (twenty four) months would be the mandatory discharge of the trainee from service.

4. The succinct fact sufficient for deciding the questions call for decision in the present writ appeal is noted. The respondent/writ petitioner was recruited as General Duty (Driver) personnel with the Assam Rifles and enlisted for training w.e.f. 10.12.2008 and his identification number was AR No. G/5016889P Recruit/General Duty (Driver). When the respondent/writ petitioner was undergoing training, he was taken ill and had to be hospitalized for treatment w.e.f. 19.05.2009 to 05.12.2009 and upon completion of the treatment, he was discharged from Military Hospital at Namkum, Ranchi, on the basis of the case summary; and opinion of Doctor Major Vikas Marwah dated 20.11.2009 was that the respondent/writ petitioner was fit for retention of service. After his discharge from Military Hospital, Namkum, Ranchi, the respondent/writ petitioner duly reported back for training and thereafter, he was not taken ill anymore. By the impugned discharge certificate dated 07.07.2010, the respondent/writ petitioner was discharged from service in the Assam Rifles only on the ground that his stay at the Assam Rifles Training Centre and School for training would be exceeding 24 (twenty four) months. The respondent/writ petitioner also issued legal notice through his counsel to the appellants. In response to his legal notice, Major Adjutant for Commandant sent the reply dated 13.10.2011

stating that during the 16th week of Basic Training at 39 Gorkha Training Centre, he (respondent/writ petitioner) got admitted to Military Hospital, Varanasi on 19.05.2009 as a case of FUC of Pulmonary Tuberculosis and was placed in low medical category P2 (T-24) w.e.f. 20.11.2009. He was discharged on 02.12.2009 from Military Hospital, Namkum and reported to Assam Rifles Composite Hospital, Shokhuvi on 05.12.2009 and discharged on the same day. The respondent/writ petitioner underwent treatment at various hospitals w.e.f. 19.05.2009 to 05.12.2009 and stayed at No.1 Training Battalion w.e.f. 06.12.2009 to 02.05.2010 since he was placed in medical category P2 (T-24). On 03.05.2010, the respondent/writ petitioner was sent to the Assam Rifles Composite Hospital for medical review and was declared as SHAPE-1 w.e.f. 19.05.2010. Finally, the respondent/writ petitioner was discharged from the Assam Rifles Composite Hospital on 22.05.2010. Since, the respondent/writ petitioner had missed training for 369 days and as per Assam Rifles Training Centre and School Training, Relegation and Discharge SOP No. 1.22011/14/Trg-2007 dated 09.08.2007, he was required to be relegated to the bottom of that block or the lowest available platoon i.e. 13th week. Accordingly, a board of officers was constituted on 26.05.2010 to ascertain whether the respondent/writ petitioner could complete his training within 24 (twenty four) months. According to the findings of the board, the respondent/writ petitioner had already stayed at Assam Rifles Training Centre and School for 17 and ½ months till May 2010, therefore he would not be able to complete his training within the stipulated period of 24 (twenty four) months. Based on the recommendations of the board, the respondent/writ petitioner was discharged from service w.e.f. 31.07.2010 (afternoon) on the grounds “stay at ARTC & S exceeding 24 (twenty four) months” as per the provisions of para 21 of the Assam Rifles Training Centre and School Training, Relegation and Discharge SOP No.1.22011/14/Trg-2007 dated 09.08.2007, as the respondent/writ petitioner

was unlikely to complete his training within 24 (twenty four) months since the recruit (respondent/writ petitioner) had already stayed at the Assam Rifles Training Centre and School for 17 and ½ months. If further relegated, the respondent/writ petitioner would have to complete the balance training of 31 weeks, thereby exceeding the stipulated period of 24 (twenty four) months. Therefore, the respondent/writ petitioner was discharged from service under the provisions of the said policy. After his (respondent/writ petitioner) discharge from Assam Rifles, he neither reported to the office nor was any correspondence received from him. As per the existing Training Relegation and Discharge policy in vogue, there is no provision to reinstate the recruits who have been discharged from service. The respondent/writ petitioner being aggrieved by the impugned discharge order dated 07.07.2010, had approached the High Court by filing the writ petition being WP(C)No.208/2013.

5. The appellants/respondents had filed joint affidavit-in-opposition wherein, the appellants/respondents are not denying that the respondent/writ petitioner could not complete the training within 24 (twenty four) months due to illness. In the joint affidavit-in-opposition filed by the appellants/respondents in the writ petition stated clearly the materials fact regarding the illness of the respondent/writ petitioner, for which the respondent/writ petitioner could not complete the training within 24 (twenty four) months. The said materials fact mentioned in the joint affidavit-in-opposition filed by the appellants/respondents in the writ petition are that the respondent/writ petitioner was detailed to undergo Basic Military Training in No.1 Training Battalion where his pre-basic Military Training commenced w.e.f. 31.12.2008. After completion of pre-basic training, the respondent/writ petitioner was dispatched to 39 Gorkha Training Centre (GTC) for Basic Military Training in lieu of basic Training at Assam Rifles Training Centre and

School. During the 16th week of Basic Military Training at 39 Gorkha Training Centre, he was diagnosed to be having FUC of Pulmonary Tuberculosis and was admitted to Military Hospital Varanasi on 19.05.2009 where he was placed in low medical category P2 (T-24) w.e.f. 20.11.2009. As a result of which, the respondent/writ petitioner was not able to attend the recruit training from 19.05.2009 to 19.05.2010 for a period of 365 days till he was finally upgraded to Shape-I on 19.05.2010. The respondent/writ petitioner was discharged from Military Hospital, Namkum, Ranchi on 02.12.2009 and reported to Assam Rifles Composite Hospital (ARCH), Shokhuvi on 05.12.2009 and discharged from the hospital on the same day. The appellants/respondents also stated in their affidavit-in-opposition that the respondent/writ petitioner underwent treatment at various hospitals w.e.f. 19.05.2009 to 05.12.2009 and stayed at No.1 Training Battalion of Assam Rifles Training Centre and School w.e.f. 06.12.2009 to 02.05.2010 since he was placed in medical category P2 (T-24). On 03.05.2010, the respondent/writ petitioner was sent to the Assam Rifles Composite Hospital for medical review and was declared as Shape-I w.e.f. 19.05.2010. Finally, the respondent/writ petitioner was discharged from the Assam Rifles Composite Hospital (ARCH) on 22.05.2010. The respondent/writ petitioner had completed only 16 weeks of Basic Military Training at 39 Gorkha Training Centre at Varanasi, till he was admitted to the Military Hospital Varanasi due to FUC of Pulmonary Tuberculosis on 19.05.2009 and missed 365 days of Basic Military Training and required to undergo the balance of 31 weeks of Military Training. As per the regulations in vogue every recruit has to complete his Basic Military Training within 24 (twenty four) months. Therefore a Board of Officers was constituted on 26.05.2010 to ascertain whether the respondent/writ petitioner could complete his Basis Training within the stipulated time frame of 24 (twenty four) months. Accordingly, in the findings of the Board, the respondent/writ petitioner had already stayed at

Assam Rifles Training Centre and School for 17 and ½ months till May, 2010 and was to undergo 7 and ½ months of training which would come to a total duration of 25 months. Therefore, the respondent/writ petitioner would not be able to complete his training within the stipulated period of 24 (twenty four) months.

6. The appellants/respondents in their joint affidavit-in-opposition also stated that the respondent/writ petitioner had approached the Directorate through Ministry of Home Affairs vide their Dy No. 35/13500 PS to MOS (H-S)/2013 dated 24.01.2013 for reinstatement into Assam Rifles Service. The Headquarters Directorate General Assam Rifles (HQ DGAR) vide minute sheet dated 17.06.2013 had forwarded reply to the Ministry and also informed the respondent/writ petitioner vide Headquarters Directorate General Assam Rifles (HQ DGAR) letter No.I.12016/Rect Branch/2013/200 dated 17.06.2013. In reply, Ministry of Home Affairs vide their noting sheet dated 23.07.2013 rejected the claim of the respondent/writ petitioner. The appellants/respondents also stated in their joint affidavit-in-opposition that during the 16th week of Basic Military Training at 39 Gorkha Training Centre, he was diagnosed to be having FUC of Pulmonary Tuberculosis and was admitted to Military Hospital Varanasi on 19.05.2009 where he was placed in low medical category P2 (T-24) w.e.f. 20.11.2009. As a result of which, the respondent/writ petitioner was not able to attend the recruit training from 19.05.2009 to 19.05.2010 thereby missing for a period of 365 days till he was finally upgraded to Shape-I on 19.05.2010. The respondent/writ petitioner was discharged from Military Hospital, Namkum, Ranchi on 02.12.2009 and reported to Assam Rifles Composite Hospital (ARCH), Shokhuvi on 05.12.2009 and discharged from the hospital on the same day. In their joint affidavit-in-opposition, the appellants/respondents also stated that the respondent/writ petitioner underwent treatment at various hospitals w.e.f.

19.05.2009 to 05.12.2010 and stayed at No.1 Training Battalion of Assam Rifles Training Centre and School w.e.f. 06.12.2009 to 02.05.2010 since the respondent/writ petitioner was placed medical category P2 (T-24). On 03.05.2010, the respondent/writ petitioner was sent to the Assam Rifles Composite Hospital for medical review and was declared as Shape-I w.e.f. 19.05.2010. Finally, the respondent/writ petitioner was discharged from the Assam Rifles Composite Hospital (ARCH) on 22.05.2010. The appellants/respondents also stated in their joint affidavit-in-opposition that the respondent/writ petitioner had completed only 16 weeks of Basic Military Training at 39 Gorkha Training Centre at Varanasi till he was admitted to the Military Hospital Varanasi due to FUC of Pulmonary Tuberculosis on 19.05.2009 and missed 365 days of Basic Military Training and required to undergo the balance of 31 weeks of Military Training. As per the regulations in vogue every recruit has to complete his Basic Military Training within 24 (twenty four) months. Therefore a Board of Officers was constituted on 26.05.2010 to ascertain whether the petitioner could complete his Basic Military Training within the stipulated time frame of 24 (twenty four) months. Accordingly, in the findings of the Board, the respondent/writ petitioner had already stayed at Assam Rifles Training Centre and School for 17 and ½ months till May, 2010 and was to undergo 7 and ½ months of training which would come to a total duration of 25 months. Therefore, the respondent/writ petitioner would not be able to complete his training within the stipulated period of 24 (twenty four) months. Based on the recommendation of the Board, the respondent/writ petitioner was discharged from service w.e.f. 31.07.2010 (afternoon) due to "Stay at Assam Rifles Training Centre and School exceeding 24 months," as per the provisions of para 21 of Assam Rifles Training Centre and School, Regulation and Discharge SOP No. I.22011/14/Trg-2007 dated 09.08.2007 vide Assam Rifles Training Centre and School letter dated 07.07.2010. In the joint affidavit-in-opposition of the

appellants/respondents it is also stated that the respondent/writ petitioner had approached the HQ DGAR through Ministry of Home Affairs vide their Dy No. 35/13500 PS to MOS (H-S)/2013 dated 24.01.2013 for reinstatement into Assam Rifles Service. The Headquarters Directorate General Assam Rifles (HQ DGAR) vide minute sheet dated 17.06.2013 had forwarded reply to the Ministry and also informed the respondent/writ petitioner vide Headquarters Directorate General Assam Rifles (HQ DGAR) letter No. I.12016/Rect Branch/2013/200 dated 17.06.2013. In reply, the Ministry of Home Affairs vide their noting sheet dated 23.07.2013 rejected the claim of the respondent/writ petitioner. The said note dated 17.06.2013 mentioned in the joint affidavit-in-opposition filed by the appellants/respondents in the writ petition reads as follows:-

“RE-EMPLOYMENT OF RECRUIT

1. Reference Ministry of Home Affairs Dy No. 35/13500 PS to MOS (H-S)/2013 dated 24 Jan 2013.

2. It is submitted that Ex-G/5016889P Rect/GD(Dvr) Anil Kumar Yadav was enrolled on 10. Dec. 2008. The individual was detailed to undergo Basic Military Training in No.1 Training Battalion where his pre-basic Military Training commenced with effect from 31 Dec 2008. Thereafter the individual was referred to 39 Gorkha Training Centre (GTC) for Basic Military Training on 01 Jan 2009. Individual was admitted to Military Hospital Varanasi on 19 May 2009 as diagnosed FUC of Pulmonary Tuberculosis and he was placed in Low Medical Category P-2 (T-24) with effect from 20 Nov 2009. The individual was discharged from MH on 02 Dec 2009 and reported to Assam Rifles Composite Hospital (ARCH), Shokhuvi on 05 Dec 2009 and was discharged on the same day.

3. The individual stayed at No.1 Training Battalion with effect from 06 Dec 2009 to 02 May 2010. Since he was placed in medical category P-2 (T-24) on 03 May 2010, he was sent to the Assam Rifles Composite Hospital for medical review and was declared as SHAPE-1 with effect from 19 May 2010 and individual was discharged from the Assam Rifles Composite Hospital on 22 May 2010.

4. Since Ex No.G/5016889P Rect/GD (Dvr) Anil Kumar Yadav had missed Training from 19 May 2009 to 22 May 2010, total 369 days. As per Training, Relegation and Discharge Policy of ARTC & S, an individual should complete his Basic Military

Training within 46 weeks or 24 months if individual delegated three-four times to lowest available platoon. Individual could have completed remaining 30 weeks Basic Military Training in laid down 46 weeks. Accordingly, a board of officers was constituted on 26 May 2010 to ascertain whether the individual could complete his training within 24 months. According to the findings of the board, the individual had already stayed at ARTC & S for 17 and ½ months till May 2010, therefore he would not be able to complete his training with the stipulated period of 24 months.

5. Based on the recommendation of the board No. Ex No. G/5016889P Rect/GD(Dvr) Anil Kumar Yadav was discharged from service with effect from 31 Jul 2010 (AN) on the ground “stayed at ARTC & S exceeding 24 months” under the provision of ARTC & S Training Relegation and Discharge policy.

5. Suitable reply has already been fwd to individual vide our letter No. I.12016/Rect Branch/2013/200 dated 17 Jun 2013.

Sd/-
(S Rajendran)
Second-in-Command
Staff Officer-I (Recruitment)
for Brigadier (Personnel)
17 Jun 2013

Section Officer
Govt. of India
Ministry of Home Affairs (Pers-III)
New Delhi
(Through LOAR, New Delhi)”

7. The Apex Court in **Roshan Deen v. Preeti Lal: (2002) 1 SCC 100** held that:

“12. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide **State of U.P. v. District Judge, Unnao: (1984) 2 SCC 673: AIR 1984 SC 1401**). The very purpose of such constitutional powers being conferred on the High Courts is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.”

8. It is fairly settled law that the guidelines are issued for compliance and not for disobedience. No doubt, there should be substantial compliance looking into the type of the instruction or executive order. But it is also well settled that the points require to be considered and decided when determining for a particular guideline or executive instruction is mandatory or directory are (i) whether the guidelines involve the penal provisions or not?; (ii) whether the consequence of the failure to comply with the guidelines are mentioned in the guidelines itself or not?; (iii) is the guidelines itself mentioned that the failure of compliance would amount to invalidating the action taken or would have the penal consequences; (iv) whether the guidelines or policy decision is taken by the statutory authority in exercise of the statutory powers; (v) whether the guidelines or policy decision or executive order can be taken as the law in a given case? and; (vi) whether the executive instruction is mandatory or directory depends upon the purpose which the Govt. intend to achieve as disclosed by the object, purpose and scope of the order. We may refer to the decisions of the Apex Court in ***M/s Rubber House v. M/s Excelsior Needle Industries Pvt. Ltd.: (1989) 2 SCC 413*** and ***P.T. Ranjan v. T.P.M. Sahir & Ors: (2003) 8 SCC 498***. Para 31 of the SCC in ***M/s Rubber House's*** case (*Supra*) read as follows:-

“31. The word “shall” in its ordinary import is obligatory. Nevertheless, the word “shall” need not be given that connotation in each and every case and the provisions can be interpreted as directory instead of mandatory depending upon the purpose which the legislature intended to achieve as disclosed by the object, design, purpose and scope of the statute. While interpreting the concerned provisions, regard must be had to the context, subject matter and object of the statute in question.”

Para 50 of the SCC in ***P.T. Ranjan's*** case (*Supra*) read as follows:-

*“50. The Court cannot, it is trite, supply casus omissus. Reference in this regard may be made to **Balram Waman Hiray (Dr.) v. Justice B. Lentin: (1988) 4 SCC 419**, wherein it was observed: (SCC p.443, para 27)*

“27. Law must be definite, and certain. If any of the features of the law can usefully be regarded as normative, it is such basic postulates as the requirement of consistency in judicial decision-making. It is this requirement of consistency that gives to the law much of its rigour. At the same time, there is need for flexibility. Professor H.L.A. Hart regarded as one of the leading thinkers of our time observes in his influential book ‘The Concept of Law’, depicting the difficult task of a Judge to strike a balance between certainty and flexibility:

‘Where there is obscurity in the language of a statute, it results in confusion and disorder. No doubt the Courts so frame their judgments as to give the impression that their decisions are the necessary consequence of predetermined rules. In very simple cases it may be so; but in the vast majority of cases that trouble the Courts, neither statute nor precedents in which the rules are legitimately contained allow of only one result. In most important cases there is always a choice. The judge has to choose between alternative meanings to be given to the words of a statute or between rival interpretations of what a precedent amounts to. It is only the tradition that judges ‘find’ and do not ‘make’ law that conceals this, and presents their decisions as if they were deductions smoothly made from clear pre-existing rules without intrusion of the judges’ choice.”

9. The executive instruction or executive order is mandatory or not is to be ascertained looking into the subject matter and the object to be achieved. If penal consequences of non-compliance is not provided by the executive instruction or order itself, requirement may be treated as directory. This principle is also applied to the statutory rules. Now the important question to be decided in the present case is what is the consequences of non-compliance of the period for completing the training in para 21 of the executive instruction or policy decision in-question. The consequence of non-compliance of the said period of 24 (twenty four) months is not mandatory discharge of the trainee from service. In the given case consequence on the failure to complete the training within the period of 24 months, is that the

disciplinary authority has to see whether the absence was on account of inquiry or sickness or not? The Apex Court in ***Ram Deen Maurya (Dr) v. State of Uttar Pradesh & Ors: (2009) 6 SCC 735*** held that the executive instruction or executive action or statutory rules is mandatory or not is to be decided looking into the consequences of non-compliance and if penal consequences of non-compliance is not provided by the executive instruction or order or statutes, it may be treated as directory. Para 47 of the SCC in ***Ram Deen Maurya's (Dr) case (Supra)*** read as follows:-

“47. The third part of the Rules says that the Director (Higher Education) shall submit his recommendation within one month to the State Government; if there is any delay in making the recommendation, the Rules do not provide that the recommendations so made, will not be considered by the State Government nor the Rules says, if the recommendations are not received within the stipulated time, the State Govt. would ignore the recommendation and proceed to decide the request of the applicant independently. Therefore, this requirement of this part of the Rule is only directory and not mandatory, the non-compliance therewith will not make the application invalid.”

10. Normally, if the statute or executive instruction specifies a time for completion of a certain thing without any penal consequences, it will be treated as directory where a statutory functionary is asked to perform duty within the time prescribed. The Apex Court in ***P.T. Rajan's*** case (*Supra*) held that:

*“48. Furthermore, even if the statute specifies a time for publication of the electoral roll, the same by itself could not have been held to be mandatory. Such a provision would be directory in nature. It is a well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See ***Shiveshwar Prasad Sinha v. District Magistrate of Monghyr: AIR 1966 Pat 144: ILR 45 Pat 436 (FB)***, ***Nomita Chowdhury v. State of W.B.: (1999) 2 Cal LJ 21*** and ***Garbari Union Coop. Agricultural Credit Society Ltd. v. Swapan Kumar Jana: (1997) 1 CHN 189***).*

49. Furthermore, a provision in a statute which is procedural in nature although employs the word “shall” may not be held to be mandatory if thereby no prejudice is caused. (See **Raza Buland Sugar Co. Ltd. v Municipal Board, Rampur**: AIR 1965 SC 895: (1965) 1 SCR 970, **State Bank of Patiala v. S.K. Sharma**: (1996) 3 SCC 364: 1996 SCC (L&S) 717, **Venkataswamappa v. Special Dy. Commr. (Revenue)**: (1997) 9 SCC 128 and **Rai Vimal Krishna v. State of Bihar**: (2003) 6 SCC 401).”

The Apex Court in **Sudhir Shantilal Mehta v. Central Bureau of Investigation**: (2009) 8 SCC 1 held that:

“58. Whether a circular letter issued by a statutory authority would be binding or not or whether the same has a statutory force, would depend upon the nature of the statute. For the said purpose, the intention of the legislature must be considered. Having regard to the fact that the Reserve Bank of India exercises control over the Banking Companies, we are of the opinion that the said Circular letter was binding on the Banking Companies. The officials of UCO Bank were, therefore, bound by the said circular letter.”

The Apex Court in **Jayantilal Amratlal Shodhan v F. N. Rana**: AIR 1964 SC 648 held that:

“17. ... This is not to say that every order issued by an executive authority has the force of law. If the order is purely administrative, or is not issued in exercise of any statutory authority it may not have the force of law. But where a general order is issued even by an executive authority which confers power exercisable under a statute, and which thereby in substance modifies or adds to the statute, such conferment of powers must be regarded as having the force of law.”

11. The Constitution does not contain any generic definition of law, it defines ‘law’ for purposes of Article 13 to include ‘any Ordinance, order, bye-law, rule, regulation, notification, custom or usage having in the territory of India the force of law’. Article 366 (10) of the Constitution also defines the expression ‘existing law’ to mean ‘any law, Ordinance, Order, bye-law, rule or

regulation passed or made before the commencement of this Constitution by any legislature authority or person having power to make such law, Ordinance, order, bye-law, rule or regulation'. Another definition which is relevant here is the definition of the expression 'Indian law' in the General Clauses Act, 1897. Section 3(29) of this Act defines 'Indian Law' to mean 'any Act, Ordinance, regulation, rule, order or bye-law, which before the commencement of the Constitution had the force of law in any Province of India or part thereof and hereafter has the force of law in any Part A State or Part C State or part thereof, but does not include any Act of Parliament of the United Kingdom or any Order in Council, rule or other instrument made under such Act'. These definitions go to confirm that under our legal order 'law' it also includes rules, orders, notifications etc. made or issued by the Government or any subordinate authority in the exercise of delegated legislative power.

12. The Apex Court in Paras 32 & 33 of the SCC in ***M/s Rubber House's*** case (*Supra*) read as follows:-

"32. On a close scrutiny of the relevant rules referred supra in the light of the above principles of statutory interpretation, we are of the view that the non-compliance of Rule 4 (c) i.e. the non-mentioning of the quantum of arrears of rent, does involve no invalidating consequence and also does not visit any penalty.

33. From the above discussion we hold that the Rule 4 (c), 5 (1) and 6 are not mandatory but only directory. In that view, we see no force in the contention of the learned counsel that the non-mentioning of the amount of arrears of rent due in the application for ejectment has adversely affected the proceedings of this case and as such the application for ejectment is liable to be dismissed on that score. Accordingly, we reject this contention also."

13. The Apex Court in ***Mahadev Govind Gharge & Ors v. Special Land Acquisition Officer, Upper Krishna Project, Jamkhandi, Karnataka: (2011) 6 SCC 321*** held that:

*“32. The learned author while referring to the judgment of this Court in **Sangram Singh v. Election Tribunal: AIR 1955 SC 425: (1995) 2 SCR 1** recorded (at p.384) that:*

“While considering the non-compliance with a procedural requirement, it has to be kept in view that such a requirement is designed to facilitate justice and further its end and therefore, if the consequence of non-compliance is not provided, the requirement may be held to be directory....”

34. The consistent view taken by this Court is that the provisions of a statute are normally construed to achieve the ends of justice, advance the interest of public and to avoid multiplicity of litigation.”

14. We had given our anxious consideration to the object to be achieved in issuing the said executive instruction/policy decision i.e. more particularly para 21, which had been quoted above in extenso keeping in view of the ratio laid down by the Apex Court in the cases aforementioned and we are of the considered view that “the case of the appellants/respondents in the present writ appeal that the period of 24 (twenty four) months for completing the training is rigid and should be followed mandatorily in all the cases and consequences of failure to complete the training within the said period of 24 (twenty four) months would be mandatory discharge of the trainee from service” is not sustainable. Accordingly, the only ground for assailing the impugned judgment and order of the learned Single Judge dated 13.02.2014 is not entertained. Hence the writ appeal is devoid of merit.

- 15. For the foregoing discussions, this writ appeal is dismissed.
- 16. Parties are to bear their own costs.

JUDGE

CHIEF JUSTICE (ACTING)

Lam