

**THE HIGH COURT OF MEGHALAYA AT  
SHILLONG**

**: ORDER :**

**(1)           WA NO. 6 OF 2016**

**The Union of India and Others           :           Appellants**

**Versus**

**AR-282K Ram Bahadur Sunar           :           Respondent**

**(2)           CONT. CAS (C) NO. 17 OF 2015**

**AR-282K Ram Bahadur Sunar           :           Petitioner**

**Versus**

**Mr. L.C. Goyal and Others           :           Respondents**

**Date of Order                           :           30.08.2017**

**HON'BLE THE CHIEF JUSTICE SHRI DINESH MAHESHWARI**

**HON'BLE SHRI JUSTICE S.R. SEN**

Shri K Paul CGC, for the appellants in WA No. 6/2017 and respondents in Cont. Cas (C) No. 17 of 2015.

Shri HL Shangreiso, for the respondent in WA No. 6/2017 and petitioner in Cont. Cas (C) No. 17 of 2015.

**BY THE COURT: (per Hon'ble the Chief Justice) (Oral)**

After having taken note of the relevant subsequent events and having heard the learned counsel for the parties, we are clearly of the view that the writ petitioner (respondent herein) having applied for voluntary retirement and his prayer having been accepted by the appellants, the cause as taken up by him in the writ petition cannot be considered surviving and hence, this appeal deserves to be disposed of while annulling the order impugned with further necessary observations.

Shorn of details, suffice it to notice for the present purpose that the respondent, who was serving with the appellants in the Directorate General, Assam Rifles preferred a writ petition in this Court stating grievance against

the impugned orders passed by the appellants and seeking directions for inclusion of his name in the Departmental Promotion Committee for promotion to the rank of Deputy Commandant with effect from the date of promotion of his juniors.

By the impugned order dated 10.03.2015, the learned Single Judge of this Court quashed the impugned orders issued by the appellants and directed the appellants to give promotion to the respondent w.e.f. 01.04.2014, the date of promotion of his juniors on the ground that the Medical Board for re-categorisation of AR pers/Cadre Officers held on 25.10.2013 as also the Annual Medical Board held on 08.11.2013, re-categorising the respondent as Shape-1 w.e.f. 24.10.2013, were required to be accepted.

The appellants have challenged the order so passed by the learned Single Judge, inter alia, on the ground that the respondent was in a low medical category permanently and the medical reports sought to be relied upon by him were not accepted by the authorities concerned for want of the requisite investigation and examination of the relevant past history. This intra-court appeal was considered and admitted by this Court on 26.04.2016 and the directions issued by the learned Single Judge, for promotion of the respondent to the rank of Deputy Commandant w.e.f. 01.04.2014 were kept in abeyance until further orders.

Thereafter, when this intra-court appeal came up for hearing on 12.04.2017, the learned counsel for the appellants pointed out that even otherwise, the respondent (writ petitioner) had failed to get his Annual Medical Examination [‘AME’] completed since the year 2013 despite several reminders, including the last reminder dated 02.03.2017. At request, the learned counsel for the respondent was granted time to respond to the

submissions so made on behalf of the appellants. Thereafter, on 19.04.2017, learned counsel for the respondent submitted that as per his instructions, the respondent had been willing to cooperate for the AME but the authorities of the appellants had refused to carry out such examination. At request, learned counsel for the respondent was granted time to file specific affidavit. Thereafter, on 04.05.2017, an additional affidavit of the respondent was filed seeking to allege that the authorities did not allow his medical examination by the concerned Board for one reason or the other and, therefore, he got his medical examination conducted for the year 2014 at Shillong Civil Hospital, for the year 2015 at Tezpur Medical College and Hospital, Assam, and for the year 2016 allegedly at his Unit. After giving out such details, the respondent has summed up his case in the said affidavit as under:

*“.....It is only due to the concerted and sincere effort made by the deponent, his AME 2014 and 15 have been conducted in Shillong Civil Hospital, Shillong and Tezpur Medical College and Hospital, Assam for the year 2014 and 15 and lastly at his Unit Hospital 36 AR Jalukie, Peren District, Nagaland for 2016. Hence, it is humbly submits that there is no willful negligence or deliberate attempt on his part to avoid for smooth conduct of his AME for 2014, 2015 and 2016 and thus, the allegation of the appellants against the deponent in this regard is absolutely uncalled for, incorrect and the same is not sustainable.....”*

It is an admitted position that after filing of the aforesaid affidavit, the respondent presented himself for the requisite AME on 29.05.2017 wherein, he was ultimately placed in P2 (Permanent). The relevant factual aspect of the matter is that after the said medical examination, putting him in P2 (Permanent) category, the respondent chose the course of seeking voluntary retirement w.e.f. 31.08.2017; and made a request in that regard under Rule 48 (1-A) of the CCS Pension Rules on 10.07.2017, inter alia, with the following submissions:

*“I was enrolled in Assam Rifles on 22 Apr 1985. Some of my acute domestic problems as my health do not allow me to continue in service*

*further. I am willing to proceed on retiring pension wef 31 Aug 2017 (AN) as per **CCS Pension Rules – 48 (1-A)**.”*

The prayer so made by the respondent was recommended by the Commandant, 36 Assam Rifles on 11.07.2017. Accordingly, the Directorate General Assam Rifles has issued an order on 23.08.2017 whereby, the respondent would stand retired w.e.f. the afternoon of 31.08.2017. The appellants have filed an affidavit on 29.08.2017 specifying the facts aforesaid while annexing therewith the application moved by the respondent on 10.07.2017 and the final order issued on 23.08.2017.

After having noticed such subsequent events where the respondent (writ petitioner) had been placed in the low medical category in the medical examination carried out after the observations of this Court; and then, the respondent had applied for voluntary retirement without reserving any right or without even making prior submissions before this Court, it is difficult to accept that any cause for seeking any relief as regards promotion is left open by him. On the contrary, it appears that instead of entering into the contentious issues involved in this appeal, after duly accepting report of the medical examination carried out on 29.05.2017 and for having put in the requisite years of service, the respondent chose the course of seeking voluntary retirement. Such an act, being of the own violation of the respondent and such a prayer having already been accepted, we find no reason to now adjudicate on the issues raised by the respondent in the writ petition.

Therefore, it appears to be in the interest of justice that without any other comments, the impugned order dated 10.03.2015 as passed by the learned Single Judge in WP(C) No. 74 of 2014 be annulled for want of survival of cause of action and this appeal be disposed of accordingly.

However, while parting with the matter, we deem it appropriate to observe that when the respondent has chosen to seek voluntary retirement and such a prayer has been accepted and the respondent shall be retiring w.e.f. 31.08.2017, it would be expected of the appellants to settle his pension case expeditiously while ignoring any other aspect of the matter, which may not of any bearing or relevance now; and it would be expected of the appellants to release all the retiral dues of the respondent at the earliest, while avoiding the necessity of any other litigation in the matter.

With the observations foregoing, this appeal stands disposed of while taking note of the subsequent events and while annulling the order passed by the learned Single Judge.

No costs.

For what has been discussed hereinabove and for the subsequent events, we find no reason to continue with the contempt case either.

Cont. Cas (C) No. 17 of 2015 also stands dismissed.

**JUDGE**

**CHIEF JUSTICE**

*Sylvana*

**Item No. SL-1**