Serial Nos. 01-17
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 62 of 2015 with
WP(C) No. 65 of 2015
WP(C) No. 79 of 2015
WP(C) No. 102 of 2015
WP(C) No. 123 of 2015
WP(C) No. 158 of 2015
WP(C) No. 159 of 2015
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WP(C) No. 242 of 2015
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WP(C) No. 335 of 2015
WP(C) No. 15 of 2016
WP(C) No. 66 of 2016
WP(C) No. 68 of 2016
WP(C) No. 69 of 2016

Date of Decision: 31.08.2022

Sub/GD Ramesh Lal Tomta	Vs	The Union of India
Nb. Sub, Narendra Singh Bhandari	Vs	The Union of India
Shri Banki Bihari	Vs	The Union of India
Shri Sanatan Kalita	Vs	The Union of India
Shri Sarku Gurung	Vs	The Union of India
Shri Dharam Bir Lal	Vs	The Union of India
Shri Chandra Kanta Das	Vs	The Union of India
Shri Suchan Handique	Vs	The Union of India
Shri Raghunath Singh	Vs	The Union of India
Shri Dinesh Mishra	Vs	The Union of India
Shri Paokhohang Khongsai	Vs	The Union of India
Shri Chandra Shekhar Singh	Vs	The Union of India
Shri Layk Singh	Vs	The Union of India
Shri Chandrika Thakur	Vs	The Union of India

Hav/NA Madhu M.	Vs	The Union of India
Hav/Orl. Pawan Kumar	Vs	The Union of India
Hav/Orl. Dinesh Prasad	Vs	The Union of India

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. R. Mazumdar, Adv
Mr. M. Chanda, Adv.
Mr. S. D. Upadhaya, Adv.
Ms. P. Agarwal, Adv.
Mr. D. Sarmah, Adv.

For the Respondent(s) : Dr. N. Mozika, ASG, with
Ms. A. Pradhan, Adv.

i) Whether approved for reporting in Law journals etc. Yes/No

ii) Whether approved for publication in press: Yes/No

COMMON JUDGMENT AND ORDER

1. This Court vide order dated 15.03.2016, 02.05.2016 and 04.05.2016 vide a common order in related cases being similar and identical in nature, had disposed of the same accordingly.

2. Not being satisfied with the orders of this Court mentioned above, some of the petitioners had approached the Division Bench of this Court by way of appeal and this Court in the Division Bench vide a common order

dated 23.10.2017 had disposed of 21 related appeals by remanding the same for reconsideration by this Court.

3. Accordingly, this Court on remand had taken up the case of Ramesh Lal Tomta and 16 others which were pursued by the parties herein.

4. Again, the contentious issue being similar and almost identical inasmuch as it involves the impugned orders passed by the respondent authority whereby the petitioners herein were compulsorily retired from service on completion of 30 (thirty) years of qualifying service in public interest apparently on the ground of being placed in low medical category. The respondent authority has resorted to application of Rule 56(j) of the Fundamental Rules and Rule 48(1) (b) of the Central Civil Services (Pension Rules), 1972 while affecting the said impugned orders.

5. The petitioners being aggrieved, as pointed above have approached this Court in the first round of litigation and this Court has rejected their prayer. Again, as pointed out above, on appeal, the Division Bench of this Court have thought it fit to remand the matter for reconsideration by this Court and accordingly the contentions raised by the parties is required to be looked into afresh. Therefore, a common order is found convenient to be passed herein.

6. At this juncture, it would be proper to bring out the extract of Rule 48 (1) (b) of the Central Civil Service (Pension) Rules 1972 as well as FR 56(j) to be able to understand the stand taken by the respondent authority on the action taken against the petitioners by compelling them to retire prematurely.

> "***48. Retirement on completion of 30 years' qualifying service***.
> *(1) At any time after a Government servant has completed thirty years' qualifying service–*
> *(a) ...*
> *(b) he may be required by the Appointing Authority to retire in the public interest."*

Rule 56(j) reads as follows:

> *"(j). Notwithstanding anything contained in this rule, 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:*
>
> *(i) If he is, in Group 'A' or Group 'B' service or post in a substantive, quasi-permanent or temporary capacity and had entered Government service before attaining the age of 35 years, after he has attained the age of 50 years;*
>
> *(ii) in any other case after he has attained the age of fifty-five years;"*

7. As seen from the above, the petitioners were sought to be compulsorily retired in public interest on the ground that they are assessed as 'low medical category' following a medical examination conducted by the authorities.

8. The fact that the petitioners can be directed to retire on completion of the said qualifying service of thirty years for the reasons stated by the authorities, cannot be a ground for agitation before the writ court as the relevant rules would not prohibit the authorities to take recourse to such action in public interest. However, the grievance of the petitioners herein is that the proper procedure has not been followed.

9. The petitioners being members of the Assam Rifles, they are therefore governed by the provisions of the Assam Rifles Rules, 2010 as notified. In case of retirement or discharge of subordinate officers on grounds of physical unfitness, the relevant rule would be Rule 26 of the said Assam Rifles Rules. In the impugned orders respectively, nothing has been mentioned that the said Rule 26 was followed at the time of issuance of the same.

10. At this point, it would be relevant to quote Rule 26 of the Assam Rifles Rules, 2010 which reads as follows: -

> *"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."

11. Mr. R. Majumdar, Mr. M. Chanda, Mr. S.D. Upadhaya and Ms. P. Agarwal, are the learned counsels who have appeared on behalf of the petitioners combined. Nothing distinguishable could be discerned from the submission of the said counsels since a common thread of argument has been advanced on behalf of the petitioners which sum and substance are almost identical. Suffice it to say that the cause of the petitioners has been sufficiently espoused by the said learned counsels.

12. What has been pressed by the learned counsels for the petitioners is that the impugned orders whereby the petitioners, individually and collectively have been directed to be compulsorily retired were proceeded by the respondent authority taking recourse to Rule 48(1)(b) of the Central Civil Services (Pension) Rules and Clause 56(j) of the Fundamental Rules, (supra). However, as pointed out if at all a personnel of the Assam Rifles is to be retired compulsorily on grounds of deficiency in medical conditions for which the said personnel is categorised under 'low medical category', then the relevant rules would be Rule 26 of the Assam Rifles Rules, 2010 (supra) which has not been resorted to in the case of petitioners herein.

13. The learned counsels for the petitioners have also submitted that under similar and identical facts and circumstances, the Hon'ble Gauhati High Court in the case of Sunil Kumar Shahi and Others v. The Union of India and Others: (2016) GLR 313, at para 29 & 30 has expounded on the provisions of Rule 26 of the Assam Rifles Rules, 2010, the same reads as follows: -

> "*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 of 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 whereafter 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"

14. The law laid down in Sunil Kumar Shahi, was followed with approval by a coordinate bench of the Hon'ble Gauhati High Court in the case of Prodip Kumar Haloi v. Union of India and Others, wherein vide order dated 12.02.2021, while examining the relevance of application of Rule 26 of the Assam Rifles Rules to the case under scrutiny, the Court has come to a finding that the issue of premature retirement of the Government servant on medical ground would necessarily require that the procedure enumerated in Rule 26 should be strictly followed which has not been done. Accordingly, the termination of the petitioner's service was found to be unsustainable and was set aside.

15. The learned counsels for the petitioners have submitted that the facts and circumstances of these cases called upon to be decided by this

Court are similar and identical to the cases decided by the Hon'ble Gauhati High Court mentioned above, therefore, the same ratio may be applied and the impugned order be set aside accordingly.

16. Dr N. Mozika, learned ASG replying on behalf of the respondent Union of India has, at the outset submitted that if the applicability of the case of Sunil Kumar Shahi (supra) to the facts of these cases is not disputed and that the relevant rules and procedure have not been followed when the petitioners were compulsorily retired from service, for which henceforth, in cases of this kind, Rule 26 of the Assam Rifles Rules 2010 will be taken recourse to, the question that begs answer is the entitlement of the petitioners to the arrears of back wages.

17. With regard to the payment of back wages or arrear salary and other allowances for the period the petitioners were out of service, since admittedly they have not rendered any services to the respondent department, the principle of '*no work, no pay'* will apply. However, even if this Court decides that the petitioners be reinstated in service, it is submitted that liberty may be given to the respondent authority to decide on the aspect of payment of back wages and the quantum thereof, based on individual cases.

18. Another submission made by the learned ASG is that nowhere in the writ petitions did the petitioner denied the fact that they are not having ailments or that they are not sick for which they have been place in the 'low medical category'. Therefore, even if they are reinstated, this Court may allow the department to proceed against them under the relevant rule(s).

19. Again, since the core issue of whether it is justified to place the petitioners in 'low medical category' in this regard, instead of reinstating them, this Court may allow the department to proceed against them under the relevant rules till the issue is resolved.

20. The learned ASG has also submitted that as far as payment of the arrears of salaries and allowances or back wages is concerned, the provisions of Rule 54-A of the FRSR would be applicable. In sub-rule 1 of the said Rule 54-A, it is provided that where the dismissal, removal or compulsory retirement of a Government servant is set aside by a court of law and such Government servant is reinstated without holding any further inquiry, the period of absence from duty shall be regularised and the Government servant shall be paid pay and allowances in accordance with the provisions of sub-rule (2) or (3). In the case of the petitioners herein, it is not a case of complete exoneration as further inquiry is contemplated,

albeit under the relevant rules and as such, under the circumstances the provision of sub-rule 2 and 5 of Rule 54-A would be applicable.

21. Sub-rule 2(i) and 5 of FR 54-A reads as follows: -

> *"(2) (i). Where the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court solely on the ground of non-compliance with the requirements of Clause(1) or Clause(2) of Article 311 of the Constitution, and where he is not exonerated on merits, the Government servant shall, subject to the provisions of sub-rule (7) of Rule 54, be paid such amount (not being the whole) of the pay and allowances to which he would have been entitled had he not been dismissed, removed or compulsorily retired, or suspended prior to such dismissal, removal or compulsory retirement, as the case may be, as the competent authority may determine, after giving notice to the Government servant of the quantum proposed and after considering the representation, if any, submitted by him, in that connection within such period (which in no case shall exceed sixty days from the date on which the notice has been served) as may be specified in the notice*:
>
> *(5) Any payment made under this rule to a Government servant on his reinstatement shall be subject to adjustment of the amount, if any, earned by him through an employment during the period between the date of dismissal, removal or compulsory retirement and the date of reinstatement. Where the emoluments admissible under this rule are equal to or less than those earned during the employment elsewhere, nothing shall be paid to the Government servant."*

22. In support of his contention, the learned ASG has cited the case of **M.A. Ravoof v. Senior Divisional Signal Telecommunication Engineer & Anr: (1998) 9 SCC 466, para 5 & 6** and also the case of **Shri Satya Narayan Roy v. State of Meghalaya, WP(C) No. 146 of 2015, para 37**.

23. In reply, the learned counsel for the petitioners have submitted that the reliance of the learned ASG on the applicability of sub-rule 2(i) and 5 of Rule 54-A is not well founded when infact, the appropriate rule applicable to the case of the petitioners is sub-rule 3 of Rule 54-A which reads as follows: -

> *"(3) If the dismissal, removal or compulsory retirement of a Government servant is set aside by the Court on the merits of the case, the period intervening between the date of dismissal, removal or compulsory retirement including the period of suspension preceding such dismissal, removal or compulsory retirement, as the case may be, and the date of reinstatement shall be treated as duty for all purposes and he shall be paid the full pay and allowances for the period, to which he would have been entitled, had he not been dismissed, removed or compulsorily retired or suspended prior to such dismissal, removal or compulsory retirement, as the case may be."*

24. In this regard, the petitioners have cited the following cases: -

> (i) **Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors: (2013) 10 SCC 324, para 22, 23 & 24**
> (ii) **Union of India & Ors. v. Ram Sukhpal Singh: (2015) 3 NEJ 143 (Meg.), para 9 & 14.**
> (iii) **State of Uttar Pradesh v. Dayanand Chakrawarty and Ors: (2013) 7 SCC 595, para 48, 49.1.**

25. Having heard the learned counsels for the parties, at the outset, the fact that the petitioners are members of the Assam Rifles, the premiere Para Military Force operating in the North Eastern part of India is not disputed. Generally, being a member thereof, it is expected that a personnel of the

Assam Rifles should be fit physically whether he is a combatant or non-combatant personnel. It is for this reason that the authorities in the Assam Rifles would conduct annual medical tests on all personnel and place them in different categories. To be considered fit for duty, a personnel should be placed in SHAPE-1, which indicates fitness in hearing, appendages, physical capacity and eyesight. On the basis of the medical examination conducted, a personnel may also be placed in 'low medical category' which could be temporary, P3 being a temporary state for 24 weeks.

26. It appears that the petitioners herein after the mandatory medical examination, were categorised in the 'low medical category' for which the authorities have thought it fit, upon ensuring or enquiring that they are likely to complete 30 years of qualifying service, to recommend that they be retired compulsorily following Rule 48(1)(b) of the Central Civil Service (Pension) Rules, 1972 and Rule 56(j) of the Fundamental Rules. Accordingly, vide the impugned order the petitioners were directed to be compulsorily retired. Hence these petitions.

27. The grievance of the petitioners placed before this Court is that while compulsorily retiring them, the proper procedure was not followed and in the process a wrong procedure was followed which has deprived the petitioners of the opportunity to represent against the same before the

authorities concerned. It was also urged that nothing in Rule 48 or Rule 56 mentioned above provides for termination or causing compulsory retirement of a personnel of the Assam Rifles on the ground of medical fitness (unfitness). The proper procedure would have been the application of Rule 26 of the Assam Rifles Rules, 2010 which has not been employed in the case of the petitioners and as such, the impugned order is liable to be set at naught.

28. In this regard, the contention of the petitioners is found believable since the rules which governs the service condition of the petitioners have not been followed when the respective impugned order was passed and fortified by the court's interpretation of this aspect of the matter in the case of Sunil Kumar Shahi (supra), this Court is in respectful agreement with the proposition of law set out in this case, which was also followed by a similar pronouncement in the case of Prodip Kumar Haloi (supra), both decisions rendered by the Hon'ble Gauhati High Court. Therefore, in application of the same to the case of the petitioners herein, this Court can only come to one conclusion, that is, that since the proper procedure was not followed, the impugned order cannot stand the test of legal scrutiny.

29. Incidentally at this juncture, a communication being number 1.11018/Retiring Pension/Law-2021/961. Dated 6th Sep 2021 was issued

by the Government of India, Ministry of Home Affairs, Assam Rifles, Directorate General, Assam Rifles through the Deputy Chief Law Officer which is captioned "Policy letter on retiring pension" wherein, the Assam Rifles relying upon order dated 15.06.2016 in Sunil Kumar Shahi v. Union of India & 3 Ors. have reiterated that henceforth, on the issue of premature retirement of the Government servant on medical ground, the procedure enumerated in Rule 26 of Assam Rifles Rules, 2010 would be strictly followed and that the policy of retiring the 'low medical category' personnel under the CCS(Pension) Rules was discontinued. This communication has therefore, justified the case of the petitioners herein. Accordingly, this Court has no hesitation in finding that the petitioners have made out a case for setting aside and quashing of the impugned orders. The same is hereby done so. The prayer of the respondents to allow the department to proceed against the petitioners herein in accordance with the prescribed rules and procedures irrespective of the outcome of these petitions, cannot be specifically allowed, however it stands to reason that it is open to the respondent authority to take necessary steps in accordance with law if so desired.

30. The next question that arises is the issue of whether the petitioners, on their case being successful are entitled to back wages or arrears of salary

and allowances for the period they have been out of service by virtue of the impugned orders.

31. The petitioners would say that since their case have been decided on merits, inasmuch as once the impugned orders have been found not applicable, they are therefore put in a position where they are entitled and required to perform their duties, but for the fact that the said impugned orders have cut short their inclination for performing their duties at the relevant time and as such, for the fault of the employer or the authorities concerned they should not suffer pecuniary loss and are, therefore, entitled to all back wages.

32. The learned ASG has also urged that as far as payment of back wages or arrears of salary and allowances is concerned, if this Court decides to direct payment of the same, it would involve a huge amount which would cause a huge dent to the State Exchequer. However, considering the fact that even if the impugned orders are set aside, the fact remains that the department could still proceed against the petitioners on the ground of their medical fitness and as such, it cannot be said that the case was decided on merits and therefore, as contemplated under sub-rule 2(1) of Rule 54-A FR, it may be left open to the department to decide on the quantum after giving due notice to the Government servant.

33. In the case of Deepali Gundu Surwase (supra), at para 22, the Hon'ble Supreme Court has observed as follows: -

> *"22. The very idea of restoring an employee to the position which he held before dismissal or removal or termination of service implies that the employee will be put in the same position in which he would have been but for the illegal action taken by the employer. The injury suffered by a person, who is dismissed or removed or is otherwise terminated from service cannot easily be measured in terms of money. With the passing of an order which has the effect of severing the employer employee relationship, the latter's source of income gets dried up. Not only the concerned employee, but his entire family suffers grave adversities. They are deprived of the source of sustenance. The children are deprived of nutritious food and all opportunities of education and advancement in life. At times, the family has to borrow from the relatives and other acquaintance to avoid starvation. These sufferings continue till the competent adjudicatory forum decides on the legality of the action taken by the employer. The reinstatement of such an employee, which is preceded by a finding of the competent judicial/quasi-judicial body or Court that the action taken by the employer is ultra vires the relevant statutory provisions or the principles of natural justice, entitles the employee to claim full back wages. If the employer wants to deny back wages to the employee or contest his entitlement to get consequential benefits, then it is for him/her to specifically plead and prove that during the intervening period the employee was gainfully employed and was getting the same emoluments. Denial of back wages to an employee, who has suffered due to an illegal act of the employer would amount to indirectly punishing the concerned employee and rewarding the employer by relieving him of the obligation to pay back wages including the emoluments."*

34. Again, at para 24 of the Deepali Gundu Surwase case, the Hon'ble Supreme Court have cited the case of Surendra Kumar Verma v. Central

Govt. Industrial Tribunal-cum-Labour Court [(1980) 4 SCC 443] at para 6 which reads as follows: -

> *"24. Another three Judge Bench considered the same issue in Surendra Kumar Verma v. Central Government Industrial Tribunal-cum-Labour Court, New Delhi (supra) and observed:*
> *"6. ...Plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement of the services of the workmen. It is as if the order has never been, and so it must ordinarily lead to back wages too. But there may be exceptional circumstances which make it impossible or wholly inequitable vis-à-vis the employer and workmen to direct reinstatement with full back wages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the court to make appropriate consequential orders. The court may deny the relief of reinstatement where reinstatement is impossible because the industry has closed down. The court may deny the relief of award of full back wages where that would place an impossible burden on the employer. In such and other exceptional cases the court may mould the relief, but, ordinarily the relief to be awarded must be reinstatement with full back wages. That relief must be awarded where no special impediment in the way of awarding the relief is clearly shown. True, occasional hardship may be caused to an employer but we must remember that, more often than not, comparatively far greater hardship is certain to be caused to the workmen if the relief is denied than to the employer if the relief is granted. (emphasis supplied)"*

35. From the above authorities, the principles found therein being applicable to the case in hand, this Court is convinced that the petitioners are entitled to full back wages. It was submitted at the bar that at the inception of these cases, this Court has suspended the operation of the

impugned orders but after the passing of the orders dated 15.03.2016, 02.05.2016 and 04.05.2016 respectively, the interim orders stood vacated. It is, therefore, evident that whatever arrears of salary due and payable to the petitioners would be counted only after the abovementioned dates.

36. At para 24 of the Deepali Gundu Surwase case, the Hon'ble Supreme Court on the issue of payment of back wages has observed that the court may deny the relief of award of full back wages if the same would result in an impossible burden on the employer. However, even in such a situation the court may mould the relief, but ordinarily the relief to be awarded must be reinstatement with full back wages. In this context, one aspect of the matter that has to be considered is whether during the intervening period the petitioners are without employment or are gainfully employed elsewhere. To this extent, it would be open to the respondent authority to ascertain this position and to recalculate the final dues payable to the petitioners.

37. In line with the provision of sub-rule 5 of FR 54-A, as has been admitted by the petitioners that the pensionary benefits have been received by them, therefore on being reinstated and on arrears of salary and allowances due and entitled to them being given, it stands to reason that the

final amount would be the difference between the amount received and the amount due and payable to them.

38. Without discussing the other cited cases which will not materially affect the outcome of this case, for the purpose of these matters, the authorities relied and discussed and found applicable would be sufficient to enable this Court to come to a just finding.

39. In view of the above, it is reiterated that the impugned order(s) are hereby set aside and quashed. The petitioners are directed to be reinstated forthwith. The payment of arrears of salary and allowances due and payable to them is to be made preferably within 6(six) months from the date of this order.

40. Petition disposed of. No costs.

Judge

Meghalaya
31.08.2022
"N. Swer–Stenographer"