

Serial No.30
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 442 of 2022

Date of Order :10.08.2023

No.G/5016886F Rifleman/GD Ram Kumar Vs. Union of India & Ors.

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Judge.

Appearance:

For the Petitioner/Applicant(s) : Mr. V.Kumar, Adv.

For the Respondent(s) : Dr. N.Mozika, DSGI with
Ms. S.Rumthao, Adv. for R 1-4.
Mr. S.Panthi, Adv. for R 5.

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| i) | Whether approved for reporting in Law journals etc: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

(ORAL)

1. Heard learned counsel for the parties.
2. The writ petitioner is before this Court being aggrieved with an order dated 17-09-2022, whereby the respondent Nos. 1-4, in exercise of powers conferred under Section 69 (i) of the Assam Rifles Act, 2006, has directed for payment of interim maintenance to the wife and children of the

petitioner amounting to 33% per month from the pay and allowances of the petitioner.

3. Mr. V.Kumar, learned counsel for the petitioner submits that the order for grant of maintenance has been made without affording adequate opportunity to the petitioner and moreover, no reasons have been attributed in the impugned order to arrive at the quantum so fixed. His prayer at this stage is that the respondents be directed to consider the matter in accordance with law by affording an opportunity to be heard.

4. Dr. N.Mozika, learned DSGI assisted by Ms. S.Rumthao, learned counsel for the respondent Nos. 1-4, submits that the deduction so made is as per the stipulation of the Assam Rifles Act and Policy dated 27-09-2011, which deals with the payment of maintenance allowance to wife and children of Assam Rifles Combatant personnel under the Assam Rifles Act, 2006. Learned DSGI submits that at para 9 (h), it has been provided that the amount of maintenance sanctioned will not exceed 33% and as such, same has been adhered to by the respondents. He further submits that pursuant to the show cause dated 29th July, 2022, the petitioner had replied on 13th August, 2022 and the impugned order was rendered on 17th September, 2022. He therefore submits that the impugned order was a culmination of the proceedings whereby the petitioner had been given a

chance to reply. He submits that there being no illegality, the writ petition does not deserve any consideration.

5. Mr. S.Panthi, learned counsel for the respondent No. 5 submits that as per the relevant rules, the action of the respondents can in no way be described as being arbitrary, inasmuch as, the respondent has two school going children and requires maintenance. He therefore submits that no interference is called for by this Court in the instant matter.

6. Having heard learned counsel for the parties and considered the materials on record, it is firstly noted that the maintenance which had been granted vide the impugned order dated 17-09-2022 is with effect from 02-02-2019, the date on which the respondent No. 5 had submitted an application for maintenance. However, it is also noted that though the application for maintenance was made on 02-02-2019, the show cause notice was issued only on 29-07-2022, after a lapse of considerable time. An examination of the impugned order does not substantiate the arguments made by the learned DSGI, inasmuch as, there has been no discussion or any finding with regard to the reply of the writ petitioner or with regard to the manner in which the quantum had been fixed at the maximum.

7. Considering the entire facts and circumstances of the case, it is in the considered view of this Court that limited interference is called for in the matter. Therefore, it is accordingly directed that the respondents shall

afford an opportunity of hearing to the writ petitioner on the quantum of maintenance that has been allowed, and to other facts and circumstances that may be relevant for the purpose of disposal of the matter. It is further directed that as the payment has been made with retrospective effect and as submitted by the learned counsel for the petitioner, that additional deductions are being made to satisfy the arrear amounts, apart from the 33% which is being deducted as per the order, it is directed that till the matter is disposed of by the respondents, there shall be no additional deduction from the pay and allowances of the writ petitioner towards the arrears from February, 2019 to September, 2022. With regard to the 33% deduction, as the same is continuing, until the matter is disposed of by the respondents, same shall not be disturbed.

8. However, in considering the nature of the case, the writ petitioner is allowed to submit a fresh representation before the respondents, who shall consider the same within a period of 6 weeks of receipt thereof. It is made clear that the respondents, if it is deemed necessary, shall also hear the complainant.

9. With the above directions, writ petition stands closed and disposed of.

Judge

Meghalaya
10.08.2023
"Samantha PS"