

GAHC010159862022



2024:GAU-AS:10139-DB

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

Case No. : WA/277/2022

JEEWAN SINGH
S/O MAHANT RAM, VILLAGE MANJHOT, DIST HAMIRPUR, HIMACHAL
PRADESH, PRESENTLY SERVING AS HAVILDAR/GD (GENERAL DUTY) AT
33 ASSAM RIFLES, C/O 99 APO, 932033

VERSUS

UNION OF INDIA AND 2 ORS.
REPRESENTED BY THE SECRETARY THE GOVT. INDIA, MINISTRY OF
HOME AFFAIR, NEW DELHI

2:THE DIRECTOR GENERAL
ASSAM RIFLES. HEADQUARTER DIRECTORATE GENERAL
ASSAM RIFLES SHILLONG 11

3:THE COMMANDANT 33 ASSAM RIFLES C/O 99 APO 93203

Advocate for the Petitioner : MR V KUMAR, MR. R THADANI,MR B HAZARIKA,MR. B
PATHAK

Advocate for the Respondent : ASSTT.S.G.I., MS. B SARMA

Linked Case : I.A.(Civil)/2574/2022

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S/O MAHANT RAM
VILLAGE MANJHOT
DIST HAMIRPUR
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Advocate for : MR V KUMAR
Advocate for : ASSTT.S.G.I. appearing for UNION OF INDIA AND 2 ORS.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of hearing : 26.09.2024

Date of Judgment & Order : 04.10.2024

JUDGMENT & ORDER(CAV)

(N. Unni Krishnan Nair, J.)

Heard Mr. B. Pathak, learned counsel for the appellant. Also heard Ms. B. Sarma, learned CGC, appearing on behalf of all the respondents.

2. The present intra-Court appeal has been so instituted by the appellant, herein, presenting a challenge to an order, dated 25.07.2022, passed by the learned single Judge in WP(c)6257/2017.

3. As projected in the writ appeal; the appellant, herein, was recruited as a Rifleman/GD on 20.12.1987, in the Assam Rifles. Thereafter, he was promoted to the Havildar/GD w.e.f. 16.12.2009. While he was so working

as Havildar/GD and he having completed a period of 30 years of service; a review was undertaken by the authorities of the Assam Rifles to ascertain as to whether the appellant is fit to be retained in the Force beyond 30 years of qualifying service and/or unfit for further retention.

4. The Service Review Board(SRB) so constituted in the matter, proceeded to consider the entire service records of the appellant with special reference to the last 5(five) Annual Confidential Reports(ACRs) of the appellant, herein, and on such consideration, in view of the provisions of the Record Office Instruction(ROI) 01/2004; the said Service Review Board(SRB) proceeded to recommend that the further retention of the appellant, herein, beyond 30 years of qualifying service was not mandated.

5. Accordingly, vide communication, dated 08.08.2017; the Commandant, 33 Assam Rifles, by holding that the appellant, herein, would be proceeding on retiring pension w.e.f. 01.01.2018; had required the production of the documents so mentioned therein. Thereafter, the Commandant, 33 Assam Rifles, vide order, dated 11.08.2017, proceeded to issue notice to the appellant, herein, under the provisions of Rule 48(1)(b) of the Central Civil Service(Pension) Rules, 1972, to the effect that he would retire from his service on the forenoon on 01.01.2018, on completion of 30 years of qualifying service for pension on 20.12.2017.

6. Being aggrieved; the appellant, herein, as petitioner, had assailed the said order, dated 11.08.2017, issued by the Commandant, 33 Assam Rifles, on various grounds by way of instituting a writ petition being WP(c)6256/2017 before this Court. The learned Single Judge on

consideration of the matter and after hearing the learned counsels appearing for the parties and also on perusal of the materials coming on record, proceeded vide judgment & order, dated 25.07.2022, to dismiss the said writ petition so instituted by the appellant and thereby, upheld the order, dated 11.08.2017.

7. Being aggrieved, the appellant has instituted the present proceeding before this Court.

8. Mr. Pathak, learned counsel for the appellant, by referring to the affidavit-in-opposition so filed before the writ Court by the respondents, has contended that the consideration so made by the Service Review Board(SRB) pertained only to the 5(five) Annual Confidential Reports (ACRs) preceding the date on which the appellant was decided to be released from service on compulsory retirement and the entire service records of the appellant, herein, as mandated, was not considered.

9. Mr. Pathak, learned counsel for the appellant, has further contended that the consideration so made and the opinion formed that out of the last 5(five) Annual Confidential Reports(ACRs) of the appellant, herein; remarks of 3(three) Annual Confidential Reports(ACRs) were adverse in-as-much as the same had "Average" reports, would be of no consequence in-as-much as the said Annual Confidential Reports(ACRs) were never communicated to the appellant, herein, and as such, the adverse entries/gradings so contained therein, could not have been so considered by the respondent authorities for the purpose of arriving at a satisfaction that the further retention of the appellant, herein, on completion of 30 years of qualifying

service for pension, was not mandated.

10. Mr. Pathak, learned counsel, by referring to the decisions of the Hon'ble Supreme Court rendered in the case of: (i). ***Dev Dutt v. Union of India***, reported in **(2008) 8 SCC 725**; (ii). ***Abhijit Ghosh Dastidar v. Union of India & Ors.***, reported in **(2009) 16 SCC 146**; and (iii). ***Sukhdev Singh v. Union of India & Ors.***, reported in **(2013) 9 SCC 566**; has contended that it is a settled position of law as on date that every entry in an Annual Confidential Report(ACR) is now mandated to be so communicated to the employee concerned. The adverse Annual Confidential Reports (ACRs) of the appellant, herein, now taken note of by the Service Review Board(SRB) for arriving at a satisfaction that he was not mandated to be continued in his service on completion of 30 years of qualifying service for pension; not being communicated to the appellant; in view of the said decisions of the Hon'ble Supreme Court, the conclusions so drawn by the authorities in the matter basing on the said Annual Confidential Reports(ACRs) of the appellant, herein, would mandate an interference from this Court.

11. In support of his submissions, Mr. Pathak, learned counsel, has further relied upon a decision of the Hon'ble High Court of Meghalaya rendered in the case of ***Union of India v. Joseph K.S.***, reported in **2022 SCC OnLine Megh 68**.

12. In the above premises, Mr. Pathak, learned counsel for the appellant, has submitted that the impugned judgment & order, dated 25.07.2022, as passed by the learned Single Judge in WP(c)6256/2017, along with the order, dated 11.08.2017, issued by the Commandant, 33 Assam Rifles;

would require an interference by this Court.

13. Per contra, Ms. Sarma, learned CGC, by referring to the decisions of the Hon'ble Supreme Court rendered in the case of ***Baikunta Nath Das & anr. v. Chief District Medical Officer, Baripada, & anr.***, reported in **(1992) 2 SCC 299**; and ***Rajasthan State Road Transport Corporation & ors., v. Babu Lal Jangir***, reported in **(2013) 10 SCC 551**; has contended that the it is a settled position of law that while considering the case of an employee for the purpose of retiring him compulsorily from his service on completion of the prescribed qualifying service for pension and/or on attaining the age so mandated; it is permissible to also take into consideration, the adverse entries made in the un-communicated Annual Confidential Reports(ACRs).

14. Dealing with the reliance so placed by Mr. Pathak, learned counsel for the appellant, in the case of ***Joseph K.S.***(supra); Ms. Sarma, learned CGC, has contended that the said decision so rendered by the Hon'ble High Court of Meghalaya, was rendered in ignorance of the earlier decision of the same very High Court rendered in the case of ***Tikendra Singh v. Union of India & ors.*** [judgment & order, dated 22.07.2015, in Writ Appeal No. 12/2014]; wherein, it was categorically held that the un-communicated adverse remarks in the Annual Confidential Reports(ACRs), can be considered while passing an order of compulsory retirement.

15. Ms. Sarma, learned CGC, has further submitted that in the case of the appellant, herein; the Service Review Board (SRB) had examined his entire service records with special reference to the last 5(five) Annual Confidential Reports (ACRs) in accordance with the Record Office Instruction(ROI)

01/2004, and thereafter, on a due consideration being so made; a conclusion was reached that the appellant, herein, was not entitled for retention in the Force on completion of 30 years of qualifying service for pension and accordingly, he was recommended to be so released from the Force on compulsory retirement.

16. Ms. Sarma, learned CGC, has submitted that the appellant, herein, was given (three) months notice prior to the date of his actual compulsory retirement from service and accordingly, it is submitted that the provision of Rule 48(1)(b) of the Central Civil Service(Pension) Rules, 1972, was duly complied with by the respondent authorities in the matter.

17. Ms. Sarma, learned CGC, in the above premises, has submitted that the decision of the learned Single Judge, impugned herein, in the present proceeding; would not call for any interference.

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

19. It is an admitted position that the case of the appellant, herein, was taken-up for consideration in terms of the provisions of Rule 48(1)(b) of the Central Civil Service (Pension) Rules, 1972, on completion of 30 years of qualifying service for pension, to ascertain as to whether, it would be mandated to continue him in his service further. The Service Review Board(SRB) on an examination of the entire service records as well as the Annual Confidential Reports(ACRs) of the appellant, herein, with special reference to the Annual Confidential Reports(ACRs) pertaining to the last

5(five) years in terms of the Record Office Instruction(ROI) 01/2004; proceeded to draw a satisfaction to the effect that the appellant, herein, was not liable to be recommended for further retention in the Force.

20. In terms of the said decision of the Service Review Board(SRB); the Commandant, 33 Assam Rifles, vide the order, dated 11.08.2017, proceeded to issue notice to the appellant, herein, that he, on completion of 30 years of qualifying service for pension, on 20.12.2017; shall be retired from his service on the forenoon of 01.01.2018.

21. The basic premises of challenge to the said order, dated 11.08.2017, is to the effect that the Service Review Board (SRB) while examining the case of the appellant, herein, for retention in the Force, on completion of 30 years of qualifying service for pension; had relied upon the entries deemed to be adverse, recorded in the Annual Confidential Reports(ACRs) of the appellant for the last 5(five) years, preceding such date of consideration.

22. It was contended by the appellant, herein, that the Annual Confidential Reports(ACRs), in question, being deemed to be adverse; could not have been taken into consideration by the respondent authorities, more particularly, the Service Review Board(SRB) for arriving at a satisfaction that the appellant was not fit for retention in the Force on completion of 30 years of qualifying service for pension.

23. The said contention of the appellant, herein, would not be acceptable in view of the fact that it is a settled position of law in view of the decisions

of the Hon'ble Supreme Court that for the purpose of determining as to whether a person is to be further retained in service and/or released from service on completion of a particular period of qualifying service and/or upon attaining the prescribed age; even the un-communicated adverse remarks/entries in an Annual Confidential Report (ACR) can also be taken into consideration.

24. The Hon'ble Supreme Court in the case of ***Baikunta Nath Das***(supra); had held that the order of compulsory retirement, is not a punishment. It implies neither stigma, nor, any suggestion of misbehavior. The order of compulsory retirement is in public interest and is passed on a subjective satisfaction of the authorities and is not liable to be quashed by a Court merely for the reason that un-communicated adverse remarks in an Annual Confidential Report(ACR) were taken into consideration.

25. The Hon'ble Supreme Court in the case of ***Union of India v. M.E. Reddy & anr.***, reported in ***(1980) 2 SCC 15***; had concluded in the matter, as follows:

“12. An order of compulsory retirement on one hand causes no prejudice to the government servant who is made to lead a restful life enjoying full pensionary and other benefits and on the other gives a new animation and equanimity to the Services. The employees should try to understand the true spirit behind the rule which is not to penalise them but amounts just to a fruitful incident of the Service made in the larger interest of the country. Even if the employee feels that he has suffered, he should derive sufficient solace and consolation from the fact that this is his small contribution to his country, for every good cause claims its martyr.”

26. The Hon'ble Supreme Court in the case of ***Ram Murti Yadav v. State of U.P.***, reported in ***(2020) 1 SCC 801***, had concluded that the scope for judicial review of an order of a compulsory retirement based on the subjective satisfaction of an employer, is extremely narrow and restricted.

27. The Hon'ble Supreme Court in the case of ***State of U.P. & anr. v. Lalsa Ram***, reported in **(2001) 3 SCC 389**; had concluded as under:

“13. Rule 56(c) of the U.P. Fundamental Rules read with Explanation (2) as noted hereinbefore provides an authority to the Board with an absolute right to retire an employee on the date on which he attains the age of 50 years. The option for the government servant to voluntarily retire, however, has been attributed to the employee concerned at any time after attaining the age of 45 years or after he has completed qualifying service of 20 years. The Fundamental Rules thus confer a right absolute to retire an employee on the happening of certain event namely the latter attains 50 years of age the right being absolute and in the event the same is not contra to the conditions as embodied in Rule 56 of the Fundamental Rules, question of violation of any legal right of the respondent herein does not and cannot arise. The factum of the doctrine of natural justice being not available to an employee so retired compulsorily stands well settled and we need not dilate thereon.

14. Rule 56(c) seems to be in pari materia with Rule 3 of the Punjab Civil Services (Premature Retirement) Rules, 1975 and this Court while considering the same in the case of Gurdas Singh in para 6 observed: (SCC p. 95)

"6. It will be thus seen that these Rules give absolute right to retire any government employee on the date on which he completes 25 years of qualifying service or attains fifty years of age or as on any date thereafter to be specified in the notice by giving that employee prior notice of three months in writing. This right has to be exercised if in the opinion of the appropriate authority it is in public interest to retire any employee under the Rules."

15. Incidentally, the five guiding principles as laid down in Baikuntha Nath case by this Court stand accepted in another three-Judge Bench's judgment of this Court in Posts and Telegraphs Board v. C.S.N. Murthy wherein this Court observed that whether the conduct of the employee is such as to justify a conclusion of compulsory retirement but the same is primarily for the departmental authorities to decide. The nature of the delinquency and whether it is of such a degree as to require the compulsory retirement, the courts have no authority or jurisdiction to interfere with the exercise of power if arrived at bona fide on the basis of the material available on record: Usurpation of authority is not only unwarranted but contrary to all norms of service jurisprudence.

16. This Court on the basis as above in Gurdas Singh case observed that it is on this perspective the matter shall have to be considered as to whether it is in public interest to retain him in the service and the whole record of the service of the employee shall have to be considered including any uncommunicated adverse entry as well, provided however, the service conditions/regulations do not run counter thereto. We also do record our concurrence therewith and record that the same holds good excepting however the issue of mala fides. The issue of mala fides has not been or even raised in the pleadings of the matter in issue and, as such, we are not called upon to delve into the same. The appointing authority upon consideration of the entire service record as required under the Rules and having formed its opinion that the compulsory retirement of the respondent being in public interest issued the order

and in the wake of the aforesaid, question of any interference of this Court does not and cannot arise. Interference in these matters by the courts in exercise of their jurisdiction under the constitutional mandate is very restricted and the courts shall have to tread on the issue with utmost care and caution by reason of very limited scope of interference. The High Court has, in fact, ignored this aspect of the matter. and proceeded solely on the basis of the factum of there being no adverse entry in the recent past. Needless to state that adverse entries did not stand extinguished by mere lapse of time but they continued to be on record and it is for the employer to act and rely thereon in the event of there being a rule permitting an order of compulsory retirement.”

28. The Hon'ble Supreme Court in the case of ***Central Industrial Security Force v. HC(GD) Om Prakash***, reported in **(2022) 5 SCC 100**; after discussing its earlier decisions on the issue, proceeded to conclude that the order of pre-mature retirement is required to be passed on the basis of the entire service records, though the recent reports would carry their own weight.

29. In view of the above decisions of the Hon'ble Supreme Court pertaining to the issue of compulsory retirement under the provision of Rule 48(1)(b) of the Central Civil Service (Pension) Rules, 1972; it is clear that the decision to retire a government servant is solely based on the subjective satisfaction of the employer and the principles of natural justice, would have no place in the context of an order of compulsory retirement. Further, the un-communicated adverse remarks can also be taken into consideration for the purpose.

30. It is a further settled position of law that this Court, in exercise of its power of judicial review, would be entitled to interfere with an order of compulsory retirement if a satisfaction is so drawn, is vitiated on account of *mala fide*, or, that, it was based on no evidence, or, that it is arbitrary in the sense that no reasonable person would form the requisite opinion on the given material; in short, if it is found to be a perverse order.

31. We have thoroughly examined the materials as placed before us and it is not disputed that the Service Review Board(SRB) has examined the entire service records of the appellant. The Service Review Board(SRB) had also considered the last 5(five) Annual Confidential Reports(ACRs) of the appellant. Admittedly, out of the 5(five) Annual Confidential Reports(ACRs); 3(three) Annual Confidential Reports(ACRs) i.e. Annual Confidential Reports(ACRs) for the years 2011-12; 2013-14; and 2014-15, were graded as "Average". Accordingly, it is to be held that the conclusion as arrived at by the Service Review Board(SRB) was so arrived at basing on a proper examination of the service records of the appellant and the same is not arbitrary in any manner. Further, the provisions of Rule 48 of the Central Civil Service (Pension) Rules, 1972, as applicable to the present proceeding, was duly complied with by the respondent authorities in the matter.

32. The instructions holding the field having also mandated that for the purpose of retention beyond 30 years of qualifying service, a member of the Force must have, out of the last 5(five) Annual Confidential Reports(ACRs); minimum 3(three) Annual Confidential Reports(ACRs) which should be so graded as "high average" and the rest 2(two) Annual Confidential Reports(ACRs) should not be below "Average", the appellant, herein, admittedly having earned 3(three) "Average" Annual Confidential Reports(ACRs) during the 5(five) years period, under consideration, the decision so arrived at by the Service Review Board(SRB) to the extent that the appellant, herein, was not fit for retention in the Force beyond 30 years on completion of the prescribed qualifying service for pension; would not call for any interference.

33. Having drawn the above conclusions; the reliance placed by Mr. Pathak, learned counsel for the appellant, on the decision of the Hon'ble High Court of Meghalaya in the case of **Joseph K.S.**(supra); is being considered.

34. We have perused the decision of the Hon'ble High Court of Meghalaya in the case of **Joseph K.S.**(supra) and we find that the same was so passed without taking into consideration, the decision of the same very High Court rendered earlier in the case of **Tikendra Singh**(supra). The decision of the Hon'ble High Court of Meghalaya in the case of **Tikendra Singh**(supra) had taken into account the decisions of the Hon'ble Supreme Court pertaining to the issue of compulsory retirement of an employee after completion of a particular length of qualifying service and/or upon attaining the prescribed age.

35. In view of the above position, as well as the decision on the issue of the Hon'ble Supreme Court; the decision of the Hon'ble High Court of Meghalaya in the case of **Joseph K.S.** (supra); in our considered view, would not advance the case of the appellant, herein.

36. The learned Single Judge vide judgment & order, dated 25.07.2022, has examined the issue arising in the matter, strictly, in accordance with the law laid down by the Hon'ble Supreme Court in its various decisions so noted in the judgment & order, under appeal and accordingly, we are of the considered view that the judgment & order, dated 25.07.2022, passed by the learned Single Judge in WP(c)6256/2017, would not call for any interference.

37. At this stage, it is to be noted that in terms of the interim direction passed by the learned Single Judge, vide order, dated 15.11.2017, in WP(c)6256/2017; the appellant, herein, continued to remain in his service till the said interim direction was so vacated by the learned Single Judge, vide judgment & order, dated 25.07.2022, passed in the above-noted writ petition. In view of the continuance of the service of the appellant, herein, in terms of the protection granted by the learned Single Judge; the respondent authorities shall not recover the salaries so drawn by the appellant on account of his such continuance in his service. However, the pension and pensionary benefits shall be so computed with effect from the date of his retirement in terms of the order, dated 11.08.2017. The arrears of pension of the appellant shall be so released, upon computation in the above manner, with effect from the date of passing of the judgment & order, dated 25.07.2022, by the learned Single Judge in WP(c)6256/2017.

38. In view of the above position; subject to the directions passed by us in the preceding paragraph; the writ appeal is held to be devoid of any merit and the same, accordingly, stands dismissed. However, there shall be no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant