

**IN THE HIGH COURT OF MANIPUR
AT IMPHAL**

WA No.22 of 2024

Shri Y S Sandhu, aged about 76 years, then serving as Inspector in the 27th Bn. CRPF, a permanent resident of village Hashupur, PO Simbhaoli, District Ghaziabad, Uttar Pradesh, at present residing at Gurudwara, Imphal, Thangal Bazar, Imphal West District, Manipur

Appellant

Vs.

The Union of India, represented by the Secretary(Home), Ministry of Home Affairs, Government of India, New Delhi & **2 ors.**

Respondents

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. D. KRISHNAKUMAR
HON'BLE MR. JUSTICE A.GUNESHWAR SHARMA**

**ORDER
(Oral)**

07.04.2025

D. Krishnakumar, C.J. :

[1] Mrs. G Pushpa, learned counsel, appears for the appellant and Mr. Boboy Potsangbam, learned CGSC, appears for the Union of India.

[2] According to the appellant, he joined service as HC on 31.12.1969 in CRPF and he was posted in 26th Battalion, CRPF in the year 1997 as Inspector. The appellant while he was posted in 26 Bn, CRPF a Departmental Enquiry was ordered by the DIGP, CRPF, Imphal vide their office order No.P.

VIII.4/95-Estt.3 dated 07.08.1995 for his misconduct disobedience of order as he was absenting from duty without permission and without handing over the charge of Officer Commanding and key of Cash box and carried one 9 mm Pistol and 24 Rounds of 9 mm of D/26 Bn. CRPF unauthorized. Therefore, he had violated all security instructions and hence, Departmental Enquiry was conducted against him and based on the aforesaid Department Enquiry, he was terminated from service. The statutory appeal filed by the petitioner against his dismissal order was also rejected as being devoid of merit by an order dated 16.06.1998 issued by the IGP, M & N Sector, who was the appellate authority. Challenging the said dismissal order, the appellant had filed a writ petition being Civil Rule No.859 of 1998 before the Gauhati High Court, Imphal Bench and the aforesaid writ petition came to be allowed on 04.12.2003 by quashing and setting aside the impugned dismissal order dated 06.02.1998 as well as the appellate order. Thereafter, challenging the said order dated 04.12.2003 passed in C.R No.895 of 1998, the respondents department preferred an appeal in WA No. 45 of 2005 along with condone delay application for filing the said appeal before the Division Bench, Gauhati High Court, and the aforesaid writ appeal came to be dismissed on 08.12.2006. Challenging the said order dated 08.12.2006 passed by the Hon'ble Division Bench, the respondents/department thereafter preferred an SLP before the Hon'ble Supreme Court of India by filing Civil Appeal No.5771 of 2008 and the Hon'ble Supreme, after hearing the parties, disposed of the said SLP on 22.09.2008.

[3] Pursuance to the aforesaid order, the appellant had filed contempt petition before the Gauhati High Court and the aforesaid contempt petition was closed and approached the authority concerned for consideration the representation in the light of the observations made in the Hon'ble Supreme Court. Subsequently, respondent authority had passed an order by rejecting the said representation for consideration of compulsory retirement on 22.08.2015. Being aggrieved with the order of rejection of his representation dated 12.12.2014, the appellant/writ petitioner had filed Writ petition(Civil) No.58 of 2018 before the Hon'ble High Court of Manipur at Imphal by raising ground that the respondent department had not considered in its proper perspective for granting the relief of compulsory retirement to the writ petitioner/appellant. Further, the learned counsel appearing for the petitioner also contended before the writ Court that paragraph 7 of the Hon'ble Supreme Court's order dated 22.09.2008 stated that there shall not be any reinstatement, but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced. Therefore, the respondent department while rejecting the said representation of the petitioner, has not passed any final order in the disciplinary proceeding and hence, the dismissal order passed by the respondent authority has not become final and hence, the petitioner is not in a position to get any relief or pensionary benefits in accordance with law but the respondents authority has simply passed cryptic order. The writ court, without appreciating the submission of the writ petitioner, has passed an order stating

that there is no order of retirement of the petitioner from service, either compulsory retirement or retirement simplicitor, the writ court is of the view that the petitioner is not entitled to get any pensionary/retiral benefits in terms of the observations made in para 3 of the aforesaid judgement and order dated 16.11.2010 in Cont. Case(C)No.79 of 2009.

[4] According to the appellant, the entire order has been passed by relying upon the order passed in the contempt petition and the order passed in the contempt petition that liberty is granted to the respondents to consider the petitioner's representation and take appropriate decisions in the light of the Hon'ble Supreme Court.

[5] The learned counsel for the respondent department has relied upon the order passed by the writ court by stating that the learned Single Judge has considered in para 11 where it has been observed that para 8 of the said judgment of the Apex Court, it is clearly revealed that the counsel for the petitioner submitted before the Apex Court that the petitioner had already retired and, therefore, he was not interested in pursuing the remedy as ordered by the Apex Court and made a prayer for giving the petitioner a chance for moving the authorities for varying the order of termination to one compulsory retirement. In view of the said submission made on behalf of the petitioner before the Hon'ble Apex Court, there is no escaping from the fact that the petitioner was aware and accepted the fact that he was already dismissed from

service and no question of his retirement from service arises. Therefore, the contention of the petitioner was not accepted by the Writ Court.

[6] We have heard the submissions made by the learned counsel appearing for the parties and perused the materials available on record and on perusal of the order passed by the writ court by relying upon the order passed in the contempt petition in Cont.Cas(C)No.79 of 2009 wherein in the contempt petition, order has been passed that if the order for retirement(compulsory retirement) is retirement simplicitor, the petitioner shall get all the pensionary/retirement benefits. As ordered by the Apex Court in para No.8 of the said judgement. Therefore, the petitioner may approach the concerned authority by filing application for varying the order of the termination of the service of the petitioner and not for compulsory retirement by way of punishment. But in paras 6, 7 and 8 of the judgment of the Hon'ble Supreme Court is held as follows:

“6. Similarly, in U.P. State Spinning Co. Ltd. Vs. R.S. Pandey and Anr. (2005 (8) SCC 264), it was noted as follows:

"The residual question is what would the appropriate direction in such a case. Stand of the employer is that it could have justified the order of termination by adducing any evidence even if it was held that there was some defect in the departmental proceedings. The solution is found in what was stated by this Court in Managing Director, ECIL v. B. Karunakar, [1993] 4 SCC 737. In paragraph 31, it was observed as follows:

"In all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the

aggrieved employee if he has not already secured it before coming to the Court/Tribunal and give the employee an opportunity to show how his or her case was prejudiced because of non-supply of the report. If the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment. The Court/Tribunal should not mechanically set aside the order of punishment on the ground that the report was not furnished as is regrettably being done at present. The courts should avoid resorting to short cuts. Since it is the Courts/Tribunals which will apply their judicial mind to the question and give their reasons for setting aside or not setting aside the order of punishment, (and not any internal appellate or revisional authority), there would be neither a breach of the principles of natural justice nor a denial of the reasonable opportunity. It is only if the Court/Tribunal finds that the furnishing of the report would have made a difference to the result in the case that it should set aside the order of punishment. Where after following the above procedure, the Court/Tribunal sets aside the order of punishment, the proper relief that should be granted is to direct re-instatement of the employee with liberty to the authority/management to proceed with the inquiry, by placing the employee under suspension and continuing the inquiry from the stage of furnishing him with the report. The question whether the employee would be entitled to the back wages and other benefits from the date of his dismissal to the date of his re-instatement if ultimately ordered, should invariably be left to be decided by the authority concerned according to law, after the culmination of the proceedings and depending on the final outcome. If the employee succeeds in the fresh inquiry and is directed to be re-instated, the authority should be at liberty to decide according to law how it will treat the period from the date of dismissal till the re-instatement and to what benefits, if any and the extent of the benefits, he will be entitled. The re-instatement made as a result of the setting aside the inquiry for failure to furnish the report, should be treated as a re-instatement for the purpose of holding the fresh inquiry from the stage of furnishing the report and no more, where such fresh inquiry is held. That will also be the correct position in law." In view of above, we set aside the order of learned Single Judge as affirmed by the Division Bench by the

impugned judgment and direct that within a period of four months, the enquiry shall be completed by starting from the stage of service of show cause notice and consideration of the reply, if any, filed in accordance with the standing orders holding the field. The respondent No. 1 shall be re-instated to service but without any back wages and other service benefits and his re-instatement shall be solely for the purpose of completing the departmental proceedings. His entitlements, if any, would be adjudicated by the authorities depending upon the result of the disciplinary proceedings."

"7. Keeping in view the aforesaid position of law indicated in the aforesaid decisions, we are of the view that the course adopted in the two cases above, is to be followed. There shall not be any reinstatement but the proceedings shall continue from the stage where it stood before the alleged vulnerability surfaced."

"8. Learned counsel for the writ petitioner-respondent submitted that he has already retired and, therefore, he is not interested in pursuing the remedy. He may be given the chance of moving the authorities for varying the order of termination to one of compulsory retirement. If any representation in this regard is made to the concerned authority, the same shall be considered in its proper perspective. We express no opinion in that regard."

[7] In the light of the earlier decisions of the Hon'ble Supreme Court that there shall not be any reinstatement but the proceedings shall continue from the state where it stood before the alleged vulnerability surfaced but at this juncture the learned counsel appearing for appellant has informed this Court that the appellant has already retired and therefore, he is interested in pursuing the remedy. He may be given the chance of moving the authorities for varying the order of termination to one of compulsory retirement and seeking before the Hon'ble Supreme Court to make an application for modifying to compulsory

retirement. On this circumstances, the Hon'ble Supreme Court has given such liberty that the authority shall consider in proper perspective without expressing any opinion but as seen from the rejection impugned order passed by the respondent department, the said order has not been considered the claim of the petitioner in the light of the order passed by the Hon'ble Supreme Court for modification to compulsory retirement. On this circumstances, the observation of the Hon'ble Supreme in para 7 is concerned that the disciplinary proceedings may be proceeded from the stage where it stood before the alleged vulnerability surfaced but there is no final order being passed in the aforesaid. Therefore, there is no final order being passed as per the observation made in para 7 of the order of the Hon'ble Supreme Court. As far as the compulsory retirement is concerned, the authority has also not passed a reasonable order but only a cryptic order has been passed by relying upon the earlier order passed. Considering the charges levelled against the appellant, we are of the viewed that no prejudice will be caused to the respondents if the termination order is modified to compulsory retirement.

[8] Considering the fact that the aforesaid disciplinary proceedings initiated in the year 1995 for absenting without permission and without handing over charge of officers commanding and other related charges. Since more than 30(thirty) years has been lapsed, therefore, we are not inclined to remitted back to the authority to consider afresh.

[9] In view of the above, we are inclined to interfere with order of the writ court and the petitioner is entitled for the relief of compulsory retirement. However, as agreed the appellant is not claiming for monetary benefits in terms of arrears from the respondents. In such circumstances, we have no hesitation to pass the following orders as follows:

(a) the Impugned rejection order dated 22.08.2015 is quashed and consequently the order dated 24.07.2023 of the writ court is also set aside.

(b) the respondents are directed to pass appropriate order modifying the order of punishment to compulsory retirement in accordance with law, without monetary benefits in terms of arrears.

(c) the said exercise shall be completed within a period of 8(eight) weeks from the date of receipt of a copy of this order. We make it clear that if any monetary benefits the appellant is entitled, the same will be only from the date of order passed by the respondents.

[10] With the above observations, writ appeal stands disposed of.

JUDGE

CHIEF JUSTICE

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