

**THE HIGH COURT OF TRIPURA
AGARTALA**

WP(C) 283 OF 2012

Subedar Chaman Singh,
S/o Garib Das, Ex-Subedar of
27th Battalion, Assam Rifles, Now residing at
H.No.154, Kudda Lahora, New Colony,
Chandigarh (U.T.).

..... ***Petitioner.***

- Vrs -

- 1. Union of India,**
Represented by its Secretary,
Ministry of Home Affairs, Government of India,
North Block, Central Secretariat, New Delhi-110001.
- 2. The Assam Rifles,**
Represented by its Director General, P.O.-Shillong,
793011, Meghalaya.
- 3. The Director General,**
The Assam Rifles, P.O. Shillong,
Pin-793011, Meghalaya.
- 4. Sri Jaswant Singh, Colonel, Assam Rifles,**
Represented by its Director General, P/O-Shillong,
Pin-793011, Meghalaya.
- 5. Pay and Accounts Officer, Pay and Accounts Office,**
Assam Rifles,
Represented by its Director General,
P/o Shillong, 793011, Meghalaya.

..... ***Respondents.***

BEFORE
HON'BLE THE CHIEF JUSTICE MR. DEEPAK GUPTA
HON'BLE MR. JUSTICE S.C. DAS

For the Petitioner : **Mr. A. Bhowmik, Adv.**

For the respondents : **Mr. P.K. Biswas, Asstt. S.G.,**
Mr. P. Majumder, Adv.

Date of hearing & : **21.01.2015.**
Delivery of judgment
and order.

Whether fit for : **NO**
Reporting

JUDGMENT & ORDER (ORAL)

(Deepak Gupta, CJ.)

By means of this writ petition, the petitioner has prayed that the order dated 14th July, 2004 be set aside and quashed and the respondents be directed to release the pensionary benefits to the petitioner and continue to disburse the same to him.

2. The undisputed facts are that an inquiry was held against the petitioner for misconduct on the grounds that he had sexually exploited one lady and had made a deliberate attempt of character assassination. The Inquiry Officer had exonerated the petitioner but the Disciplinary Authority disagreed with the Inquiry Officer. Thereafter the report of the Inquiry Officer with the grounds of disagreement of the Disciplinary Authority was supplied to the petitioner. Finally an order was passed on 16th January, 1993 whereby the Disciplinary Authority imposed penalty of dismissal from service upon the petitioner. The relevant portion of the order reads as follows:-

“3. AND WHEREAS the report of the Inquiring authority and the findings of the Disciplinary authority have been supplied to the delinquent official to submit representation if any, and the said delinquent official has submitted representation vide No.CS/27 AR/009/93 dated 6.1.93.

4. AND WHEREAS on examination of the evidence on record, report of the Inquiring authority and the representation submitted by the said Sub Chaman Singh, and all other relevant aspects of the case, the undersigned is of the opinion that there is substantial and sufficient evidence on record that the said Sub Chaman Singh has acted in a manner unbecoming of a Government servant of his rank and status violating the provision of Rule 3(i) (iii) of the CCS(Conduct) Rules, 1964

and the article of charge has been proved beyond all shadow of doubt.

5. NOW, THEREFORE, the undersigned, on the above consideration and taking into account all other facts and circumstances of the case, is of the view that, the said Sub Chaman Singh is not a fit person to be retained in an uniformed disciplined force as his further retention would be detrimental to the morale of the force and as such, ends of justice would be fully met if the penalty of "Dismissal from service" is imposed on the said JC-2700021 Sub Chaman Singh of 27 Assam Rifles. The undersigned accordingly, orders that JC-2700021 Sub Chaman Singh of 27 Assam Rifles be dismissed from service with effect from the date of issue of this order."

3. The petitioner challenged this order by filing Writ Petition bearing No. Civil Rule 249 of 1993 in the Gauhati High Court and this matter was taken up by the Agartala Bench and on 3rd September, 2002, a learned Single Judge of this Court dismissed the writ petition on merits.

4. It appears that during the pendency of the writ petition a stay order was granted in favour the petitioner and therefore, he continued to remain in service.

5. The petitioner during the pendency of the writ petition had attained the age of superannuation on 31st January, 1995. He was allowed to retire and was also granted pension probably in view of the fact that the order dismissing his services had been stayed by the High Court. After the dismissal of the writ petition on 14th July, 2004 the pension of the petitioner was stopped. This order was challenged by the petitioner by filing WP(C) 83 of 2007 in this Court and the same was disposed of by a learned Single Judge of this Court holding as follows:-

*“17. In view of the above, this court holds that the petitioner was not entitled to the pension which was provided to him illegally when his service had been forfeited and mere allowing him pension due to wrong interpretation does not confer any right on him for getting the same. Hence, according to this Court the stoppage of pension by the respondents are not illegal as they did not take away any lawful right but only rectified its bonafide mistake which is permissible in view of the aforementioned decisions of the Apex Court (supra). As the authority only rectified its mistake and not take away any right of petitioner he is not entitled any opportunity to make any representation on such action of the respondent authority and also there is no violation of principles of natural justice. However, still now there is no order of recovery regarding pension amount drawn by the petitioner, only the authority stopped future pension of the petitioner. This court is of further opinion that, such action of the authority cannot be interfered with. However, as the petitioner was allowed by the authority even after his dismissal to discharge his duties leading to retirement in normal course and he, accordingly discharged the same and as the petitioner had already received salary for the period he worked and pension for the period prior to January 2006, it would not be proper to recover the said amount which was paid to him on his no representation in view of the decision of the Apex Court in **Shyam Babu Verma & Ors Vs Union of India & Ors (1994) 2 SCC 521** wherein the Apex Court stated “it shall only be just and proper not to recover any excess amount already paid to them”. If such recovery is made at this stage from the petitioner in the name of correction of mistake committed by the respondent authority that would be detrimental and amounts to work without pay, which is not permissible. However, the authority can go for correction of its mistake so far the entitlement of the prospective pension is concerned and the authority may go for recovery of the amount which had already been paid to the petitioner from the person who committed the mistake. Hence, the writ petition is dismissed being devoid of merit. No order as to costs.”*

6. Now a fresh petition has been filed claiming the petitioner is entitled to pension. The main ground raised on behalf of the petitioner is that once pension has been granted to him the same can be stopped/withheld only by taking recourse to Rule 8

and 9 of the CCS (Pension) Rules and that without taking recourse to these provisions, the pension cannot be stopped. We are not at all in agreement with this submission. Pension has been released in favour of the petitioner only because of the interim order passed by the High Court whereby the operation of the order, dismissing the petitioner from service was stayed. The petitioner got benefit of serving for almost 2 years and also got the pension for more than 7 years only because of the orders of this Court whereby the stay order was granted. Once the writ petition was dismissed, the stay order stood automatically vacated and the order of dismissal comes into force with effect from the date when it was originally passed and the petitioner having been dismissed from service, is not entitled to any pension whatsoever.

7. Rule 8 and Rule 9 of CCS (Pension) Rules have no application as far as this case is concerned. Rule 8 only provides that a pensioner shall also conduct himself properly and if after retirement the pensioner is found guilty of misconduct then his pension can be stopped. Rule 9 empowers the President to withhold a pension or gratuity in case the pensioner was found guilty of grave misconduct or negligence during the period of his service. Rule 9 will also not be applicable in this case because of the disciplinary order dismissing him from service was passed prior to his retirement and not after his retirement. Merely because the writ petition has been disposed of after the retirement will not give any right to the petitioner to claim pension. We may also add that in the earlier writ petition filed by the petitioner in this Court i.e. WP(C) 83 of 2007, the learned Single Judge had clearly held that –“*the*

petitioner was not entitled to the pension which was provided to him illegally when his service had been forfeited and mere allowing him pension due to wrong interpretation does not confer any right on him for getting the same.” This was a finding given by the learned Single Judge which was not challenged in appeal by the petitioner. We fail to understand how the second writ petition is even maintainable after such findings have been recorded in the earlier proceedings?

8. Therefore, we find no merit in the petition which is dismissed. We have refrained from imposing heavy costs on the petitioner only because of the fact that he is already dismissed from service and is in advanced stage. We however, would like to clearly state that the conduct of the petitioner in filing the second petition virtually on the same grounds is highly improper.

JUDGE

CHIEF JUSTICE