

(2006) 02 GAU CK 0008
Gauhati High Court (Shillong Bench)
Case No: None

P.P. Singh Rajput

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

Date of Decision: Feb. 22, 2006

Acts Referred:

- Constitution of India, 1950 - Article 12, 14, 226

Citation: (2007) 1 GLR 205 : (2006) 2 GLT 303

Hon'ble Judges: A. Hazarika, J

Bench: Single Bench

Final Decision: Allowed

Judgement

A. Hazarika, J.

The tenure of service of the writ petitioner has been axed on attaining the age of 51 years 9 months, instead of his full term of service of 60 years, by way of compulsory retirement in purported exercise of power under Fundamental Rule 56 (hereinafter to be referred to as FR), read with Rule 48(1)(b) of the Central Civil Services (Pension) Rules, 1972 (hereinafter to be referred to as CCS. (Pension Rules)), vide order dated 27.3.2000, is the question to be determined by this court, in exercise of power under Article 226 of the Constitution of India, as to whether the power, so exercised, under the Rules as mentioned hereinabove has been made in public interest and whether there is any public element present in order to sustain the order of compulsory retirement and if not, whether the petitioner is entitled to continue in service till his normal superannuation, with all consequential benefits.

2. In order to resolve the controversy in regard to compulsory retirement, certain basic facts are required to be narrated.

3. The petitioner was enrolled in the Assam Rifles on 29.6.1966 as Rifleman Operator in the signal category and posted at Shillong. The Assam Rifles under whom the petitioner was absorbed is a paramilitary force of the Government of India. After

serving of about 17 years as Rifleman Operator, he became a Naib Subedar on 11th February, 1983 and he became a Subedar in the year 1990 and was promoted to the rank of Subedar Major in 1994.

4. While serving as Subedar Major, he had received an order issued by the Director General, Assam Rifles on 17.10.1997, communicating him that, on completion of 50 years 3 months on 30.9.1998 and on completion of 4 years service tenure as Subedar Major, he shall retire from service on the afternoon of 30.9.1998. The said order dated 17.10.1997 would show that, the order was passed in public interest and in purported exercise of power under FR 56 and Rule 48(1)(b) of CCS (Pension) Rules, 1972. However, the petitioner had applied to add some years for his qualifying service in order to get his voluntary pension under Rule 48(A) of the CCS (Pension) Rules, 1972. The respondent authority after due consideration had acceded to his request, vide order dated 19.2.1998 cancelling the order dated 17.10.1997.

5. The Central Government in the meantime accepted the recommendations of the 5th Pay Commission relating to the age of retirement under FR 56 enhancing the age of retirement from 58 years to 60 years. In pursuance to the said recommendation the Government of India, Department of Home Affairs had enhanced the age of retirement of Central Para Military Forces from 58 years to 60 years requesting the Central Para Military Forces to amend the respective Acts and the Rules accordingly vide communication dated 14.5.1998.

6. The Directorate of Assam Rifles, vide communication on dated 28.7.1999 issued an order enhancing the age of retirement of Assam Rifles JCO to 60 years including Sub-Majors instead of existing 57 years, of age and 4/6 years tenure as Sub-Majors. In the said communication it was specifically stated that all the instructions issued earlier on the subject was treated to be cancelled. But the respondent authorities vide communication dated 24.3.2000 has clarified the retirement age of Sub-Major. It has been stated in the said communication that Subedar promoted Sub-Major prior to 31.5.1998 will retire on completion of 6 years of tenure as Sub-Major or 60 years of age whichever is earlier and/or Subedar promoted Subedar Major on 1st June 1998 and thereafter, will retire on completion of 4 years tenure as Subedar Major on 60 years of age whichever is earlier and consequently thereon, vide order dated 27.3.2000 the respondent authorities issued an order in purported exercise of power under Rule 56 of FR/Rule 18(1)(b) of CCS (Pension) Rule 1972 holding that since the petitioner will complete 51 years 9 months of age on 30.9.2000 and on completion of 6 years tenure as Sub-Major shall retire from service on the afternoon of 30.9.2000. These two orders, viz., 24.3.2000 and 27.3.2000 are under challenge before this court.

7. Addressing the court the following arguments have been advanced by the counsel of the petitioner, viz.:

(a) Whether the power invoked under Rule 56 of FR/Rule 48(1)(b) of CCS (Pension) Rules, 1972 in retiring the petitioner involves any public interest.

(b) Whether the Directorate, Assam Rifles has been empowered to curtail the age of superannuation of the writ petitioner in violation of the Office Memorandum dated 14.5.1998 wherein it has been specifically spelt out enhancing the age of retirement to 60 years.

(c) Whether the Clause 4/6 years of tenure of service as Subedar Major can be the determining factor of age of superannuation.

8. The counsel appearing for the respondents, on the other hand has argued the following points in supports of their case, viz.:

(a) The writ petitioner having accepted the terms and conditions of his promotion as Subedar Major, he cannot resile from his own terms and conditions which he has accepted on 16.7.1994 to the effect that on his promotion to the post of Sub-Major he will retire on completion of 4 years tenure as Subedar Major or on attaining 55 years of age whichever earlier.

(b) The service conditions of the Assam Rifles employees is regulated under the Assam Rifles Act, 1941 and the Rules 1985 framed thereunder and under Rule 4 of the Assam Rifles Rules, 1985, the Director General is empowered to issue such direction as required in the functioning of the Force.

(c) The promotional avenue of the Assam Rifles employees being limited the order dated 24.3.2000 and 27.3.2000 have to be taken recourse to, in order to facilitate the promotional avenues of other employees of the Directorate.

9. This Court considered the pleadings of the parties, including affidavit-in-opposition, affidavit-in-reply, the documents relied upon by the parties and the argument advanced. Admittedly, the power has been exercised under FR 56/Rule 48(1)(b) of the CCS (Pension) Rules, 1972 while issuing the order under challenge. Rule 56 of FR casts a mandatory duty on the competent authority to satisfy certain ingredients before exercising the aforesaid power. The said power, apart from certain ingredients must be exercised in public interest. There must be some public element while exercising the power. The service records and the affidavit filed in support and against would show that there is no adverse entry in the entire career of service of the petitioner. In order to exercise the aforesaid power, there must be objective satisfaction of the competent authority in regard to public interest, when an order is challenged and its validity depends on its being supporter by public interest the respondent must disclose the material so that the court may be satisfied that the order are not bad for want of any material in order to sustain the grounds of public interest, justifying forced retirement of the petitioner. Except the lack of promotional avenues, no other argument is advanced by the respondents in order to sustain the public interest. The lack of promotional avenues

in the hierarchy of the Assam Rifles, cannot be a ground of axing the tenure of service and it cannot be termed as public interest. Therefore, this Court holds that, there is no public interest in curtailing the age of superannuation.

10. In regard to the power exercised by the respondent authority curtailing the age of the tenure of service, whether can be sustainable in law is the next question to be decided in the case. The Government of India, Ministry of Home Affairs issued an Office Memorandum dated 14.5.1998 raising 60 years as superannuation age for the persons who, before the recommendation so made by the 5th Central Pay Commission were to retire at the age of 58 years. The said recommendations have been accepted and all trades of Assam Rifles Personnel including the JCO/Subedar Major were to retire at the age of 60 years, by virtue of Office Memorandum dated 14.5.1998. Rule 48(1)(b) of the CCS (Pension) Rules, 1972 provides that on completion of 30 years of qualifying service, a Government servant may retire from service either of his own or he may be retired from service in the interest of public. The reading of Office Memorandum vis-a-vis Rule 48(1)(b) would reveal that if a person is found on review of his service career, fit for retention in service beyond the qualifying period of service of 30 years, such a person shall normally retire from service on superannuation at the age of 60 years. Once a person has been allowed to continue after the review of his service career in terms of Rule 48(1)(b) of CCS (Pension) Rule 1972, his service cannot be terminated by, once again invoking the provisions of rule 48(1)(b) of CCS (Pension) Rules, 1972. Therefore, the argument advanced has no leg to stand in absence of specific pleadings in regard to review of service career of the petitioner in terms of Rule 48(1)(b) of CCS (Pension) Rules, 1972.

11. In regard to applicability of Clause 4/6 of tenure of service as Subedar Major as communicated on 24.3.2000 would show that Subedar promoted to Subedar Major prior to 31.5.1998 will retire on completion of 6 years of service as Sub-Major or 60 years of age whichever is earlier. The facts pleaded and established would show that the writ petitioner was promoted to the post of Subedar Major on 1.10.1994 and a policy decision was taken by the Directorate Assam Rifles that, who were promoted prior to 31.5.1998 to the post of Subedar Major will retire on completion of 6 years of tenure or on completion of 60 years of age whichever is earlier. The personnel promoted to the post of Subedar Major earlier were allowed to serve for a period of 4 years from the date of appointment on attaining the age of superannuation. The stipulation of 6 years, of tenure as Subedar Major is not applicable to the writ petitioner and he has been forced to retire from service and the said policy decision cannot override the age of superannuation as amended in the service rules in pursuance of the recommendations of 5th Pay Commission. Moreover, the Directorate, Assam Rifles has not been empowered to make a policy decision in regard to the age of superannuation of the personnel, which is a substantive right to continue till the personnel attain the age of 60 years. Therefore, this Court holds that the applicability of Clause 4/6 of tenure of service to the Subedar Major is not sustainable under the law being violative of Article 14 of the Constitution of India.

12. It has been pointed out to the court by the learned Counsel appearing on behalf of the respondents that the petitioner himself had given an undertaking on 16.7.1994, while he was promoted to the rank of Subedar Major on 1.10.1994, that he would retire on completion of 4 years tenure as Subedar Major or 55 years of age, whichever is earlier. The impugned order dated 27.3.2000 is silent in this regard. That apart, no government servant can be retired on the strength of such an undertaking by invoking the provisions of Rule 56 of FR and/or Rule 48(1)(b) of CCS (Pension) Rules, 1972. Such an undertaking is contrary to all canons of law governing service conditions of the Government servant. The Assam Rifles personnel on rendering 30 years of satisfactory service, if found fit for retention, has to be allowed to continue until he retires on superannuation and, hence, such a protective provisions cannot be set at naught by taking recourse to the provisions of Rule 56 of FR and/or Rule 48(1)(b) of CCS (Pension) Rules, 1972, as aforesaid. It may be pertinent to mention that the respondents have failed to show any provisions of any rule and/or Notification to the court, to show that by giving in undertaking, an Assam Rifles personnel can give up his right to retire on superannuation in accordance with law. This apart, such an undertaking, even if given, is contrary to law and the same being against public policy cannot, be treated as enforceable.

13. This Court has considered the Government policy as well as, the instructions issued by the respondents, making the age of superannuation of all traces of Assam Rifles personnel to 60 years, and undertaking of the kind as aforesaid by the petitioner will be contrary to law and will not debar him to continue in service upto the age of 60 years. The Assam Rifles is an authority under Article 12 of the Constitution of India and the said authority cannot force any of its employees to give an undertaking which is contrary to its own instructions. Moreover, the instructions contained in the O.M. dated 13.5.1998 and 14.5.1998 enhancing the age of superannuation to 60 years cannot be taken away by signal dated 24.3.2000 and 27.3.2000 issued by the respondents. The source of power of invoking the order dated 24.3.2000 and 27.3.2000 being absent in the instant case, this Court has no hesitation to set aside the orders dated 24.3.2000 and 27.3.2000 issued by the respondents. The reference to Rule 56 and/or Rule 48(1)(b) of CCS (Pension) Rules, 1972 at the same time is not sustainable under the law and the service of the writ petitioner cannot be curtailed under the guise of Rule 56 FR and/or Rule 48(1)(b) of CCS (Pension) Rules, 1972.

14. During the course of argument, a decision on the similar cause of action has been brought to the notice of the court, rendered in WP(C) No. 1431 of 2003 *Shri Sharda Nand Misra v. Union of India and Ors.* on 10.2.2004 by this court, setting aside and quashing the impugned order dated 11.10.2002 by which the petitioner in that case was retired from service invoking power under Rule 56 of FR and/or Rule 48(1)(b) of CCS (Pension) Rules, 1972 and, therefore, this case is wholly covered by the decision rendered as aforesaid.

In addition to the decision referred to above, the counsel appearing for the petitioner has also referred the following decisions in support of his case-

(a) (1998) 3 SCC156, Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguly.

(b) [Secretary-cum-Chief Engineer, Chandigarh Vs. Hari Om Sharma and Others,](#)

Secretary-cum-Chief Engineer, Chandigarh v. Hari Om Sharma and Anr.

Kiron Chandra Bora v. State of Assam and Ors.

The cases referred to by the learned Counsel of the petitioner have been considered and found relevant in deciding the instant case.

15. In the result and for the reasons stated hereinabove, the writ petition succeeds. The impugned orders dated 24.3.2000 and 27.3.2000 are hereby set aside and quashed. However, the authority will consider the financial benefits which shall accrue to the petitioner in terms of this order.

16. No order as to costs.