

GAHC010009442018



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

Case No. : WP(C)/264/2018

GOLAP BISWAKARMA
VILL- NO 2 BAIJAYANTIPUR, P.O. JAIRAMPUR

VERSUS

THE UNION OF INDIA
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF HOME AFFAIRS, NEW DELHI-110001

2:THE DIRECTOR GENERAL
ASSAM RIFLES
DIRECTORATE GENERAL OF ASSAM RIFLES
SHIONG-11

3:THE INSPECTOR GENERAL OF POLICE (EAST)
ASSAM RIFLES
C/O-99 AP

Advocate for the Petitioner : MR. R ALI

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 18-07-2022

Heard Mr. R. Ali, learned counsel for the petitioner and Mr. S.S. Roy, learned

CGC for all the respondents.

The petitioner, who was serving as a Havildar (GD) in the 42 Assam Rifles Battalion is aggrieved by the order dated 15.10.2017, whereby the petitioner had been made to prematurely retire with effect from 01.02.2018, on completion of 30 years of qualifying service, by invoking Rule 48 (1) (b) of the Central Civil Service (Pension) Rules, 1972, herein after referred to as the 1972 Rules.

The petitioner's counsel submits that the petitioner had been made to retire on the ground that he was lacking in Medical Fitness, i.e. he was not having the required SHAPE – 1 and not for any other reason. He submits that in terms of the judgment of this Court in ***Prodip Kumar Haloi, No. G/56702 & Ors. Vs. Union of India & Ors.*** reported in ***2012 (2) GLT 520***, the petitioner could not have been prematurely retired from service on the ground of not having the required medical fitness, by invoking Rule 48 (1) (b) of the 1972 Rules, as Rule 26 of the Assam Rifles Rules, 2010 specifically dealt with retirement or discharge of Subordinate Officers and enrolled persons on grounds of medical fitness.

Mr. S.S. Roy, learned CGC fairly submits that the present case is covered by the judgment of this Court in ***Prodip Kumar Haloi, No. G/56702 & Ors. Vs. Union of India & Ors.*** (supra).

I have heard the learned counsels for the parties.

The petitioner has been made to retire from service on having completed 30 years of qualifying service on 01.02.2018, by invoking Rule 48 (1) (b) of the 1972 Rules vide order dated 15.10.2017. A perusal of the averments made in the affidavit-in-opposition filed by the State respondents clearly show that the petitioner has not been prematurely retired on the ground that the Government Servant's integrity was doubtful or that he was found to be ineffective in service. Paragraph Nos. 3.5, 3.6, 5, 6, 8 & 10 clearly show that the petitioner has been prematurely retired on account of not having the required medical fitness i.e., SHAPE – 1.

In the case of ***Prodip Kumar Haloi, No. G/56702 & Ors. Vs. Union of India & Ors.*** (supra), this Court had dealt with a similar issue wherein, the Assam

Rifles personnel had been prematurely retired by invoking Rule 48 (1) (b) of the 1972 Rules, on the ground that the petitioners therein did not have the required Medical Fitness SHAPE – 1. This Court in the case of ***Prodip Kumar Haloi, No. G/56702 & Ors. Vs. Union of India & Ors.*** (supra) has held that Rule 26 of the Assam Rifles Rules, 2010 would have to be followed prior to applying Rule 48 (1) (b) of the pension Rules/FR 56 (j), for prematurely retiring a Government Servant due to his low medical category. This Court further held that the State respondents, in the guise of applying Rule 48 (1) (b) of the Rules of 1972 or 56 (j) cannot retire a person due to low medical categorization, without first following the procedure prescribed under Rule 26 of the Assam Rifles Rules, 2010. In the present case, the petitioner has been prematurely retired from service on the ground of his low medical categorization by applying Rule 48 (1) (b) of the 1972 Rules, without first applying the procedure prescribed under Rule 26 of the Assam Rifles Rules, 2010, which is not sustainable as per the decision of this Court in ***Prodip Kumar Haloi, No. G/56702 & Ors. Vs. Union of India & Ors.*** (supra).

In view of the above reason, the impugned order dated 15.10.2017 is not sustainable and is accordingly set aside. The petitioner would have to be reinstated into service immediately. However, liberty is given to the State respondents to examine the medical fitness of the petitioner and take further steps, if necessary by applying Rule 26 of the Assam Rifles Rules, 2010.

Writ petition is accordingly disposed of.

JUDGE

Comparing Assistant