

WP(C) No. 4/2015

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

Learned counsel appearing for the petitioner submits at the Bar that legible typed copy of Annexure '1' to the writ petition had already been filed.

Mr. S. Sen Gupta, learned GA prays for further 3 (three) weeks' time for filing affidavit-in-opposition.

Prayer is granted.

List this case on 09.04.2015.

**JUDGE**

*Sylvana*

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

As ordered earlier, this writ petition is taken up for consideration of the interim prayer. The respondents had already filed their affidavit-in-opposition. After hearing the submission of the learned counsel appearing for the petitioner as well as on perusal of the writ petition and the counter affidavit, it appears that the authority issued the impugned order dated 26.10.2014 by exercising the powers conferred by Rule 48 (1) (b) of the CCS (Pension Rules) for compulsory retirement of the petitioner from service w.e.f. 31.03.2015 (AN) on completion of 30 years 1 month and 19 days. At the time of filing the present writ petition, the age of the petitioner was only 49 years 9 months and 13 days. Under FR 56, the Govt. servant shall retire from service on the afternoon of the last day of the month in which he attains the age of 60 years. Further FR 56 (j) provides that notwithstanding anything contained in this rule, the appropriate authority shall, if it is of the opinion that it is for the public interest so to do, have the absolute right to retire any govt. servant by giving him notice of not less than 3 (three) months in writing or 3 (three) months' pay.

It is the further submission of the learned counsel for the petitioner that the appointing authority in this wisdom cannot unreasonably force the govt. servant to retire. Learned counsel for the petitioner further contended that the power of the authority under the Rule aforesaid shall not be exercised arbitrarily. He further contended that the Govt. of India, Ministry of Personnel, Public Grievances and Pension Department of Personnel Training had already issued guidelines for exercising the said power of the authority under FR 56 (j) vide office memorandum being No. 25013/2/2013-Estt (A) North New Delhi, dated 31.03.2014. The relevant portion of the said guidelines of the Office Memorandum is quoted here under:

*“4. In order to ensure that the powers vested in the appropriate authority are exercised fairly and impartially and not arbitrarily, following procedures and guidelines have been prescribed for reviewing the cases of government employees covered under the aforesaid rules:*

- The cases of Government servants covered by FR 56(j) or FR 56 (i) or Rules 48 (1) (b) of the CSS (Pension) Rules should be reviewed six months before they attain the age of 50/55 years or complete 30 years service/30 years of qualifying service, whichever occurs earlier.*

- *Committees shall be constituted in each Ministry/Department/Office, to which all such cases shall be referred for recommendation as to whether the Officer concerned should be retained in service or retired from service in the public interest.*

5. *The criteria to be followed by the Committee in making their recommendations would be as follows:-*

*(a) Government employees whose integrity is doubtful, will be retired.*

*(b) Government employees who are found to be ineffective will also be retired. The basic consideration in identifying such employee should be the fitness/competence of the employee to continue in the post which he/she is holding.*

*(c) While the entire service record of an Officer should be considered at the time of review, no employee should ordinarily be retired on grounds of ineffectiveness if his service during the preceding 5 years or where he has been promoted to a higher post during that 5 year period, his service in the highest post, has been found satisfactory.*

*Consideration is ordinarily to be confined to the preceding 5 years or to the period in the higher post, in case of promotion within the period of 5 years, only when retirement is sought to be made on grounds of ineffectiveness. There is no such stipulation, however where the employee is to be retired on grounds of doubtful integrity.*

*(d) No employee should ordinarily be retired on ground of ineffectiveness, if, in any event, he would be retiring on superannuation within a period of one year from the date of consideration of his case.*

*Ordinarily no employee should be retire on grounds of ineffectiveness if he is retiring on superannuation within a period of one year from the date of consideration of the case. It is clarified that in a case where there is a sudden and steep fall in the competence, efficiency or effectiveness of an officer, it would be open to review his case for premature retirement.*

*The above instruction is relevant only when an employee is proposed to be retired on the ground of ineffectiveness, but not on the ground of doubtful integrity. The damage to public interest could be marginal if an old employee, in the last year of service, is found ineffective; but the damage may be incalculable if he is found corrupt and demands or obtains illegal gratification during the said period for the tasks he is duty bound to perform.*

6. *The Supreme Court had not only upheld the validity of FR 56(j) but also held that no show-cause notice need be issued to any Government servant before a notice of retirement is issued to him under the aforesaid provisions. The appropriate authority defined in Note 1 below FR 56*

*should bonafide form an opinion that is in the public interest to retire the Government servant in exercise of the powers conferred by that provision and this decision should not be arbitrary decision or should not be based on collateral grounds. Accordingly, in every case where it is proposed to retire a Government servant in exercise of the powers conferred by the said rule, the appropriate authority should record in the file its opinion that it is necessary to retire the Government servant in pursuance of the aforesaid rule in the public interest. The order to be served of the Government servant would of course be on the form prescribed for the purpose.”*

It is the submission of the learned counsel for the petitioner that the fitness/competence mentioned in the said memorandum is to be decided according to the relevant rule and memorandum on the facts and circumstance of each case. Learned counsel for the petitioner by referring to the Assam Rifles Order, Medical Branch, Assam Rifles Medical Examination (Categorization and Invalidation) Rules – 1988 contended that the Annual Medical Board had given the opinion that the medical category of the petitioner is only P2. Under the said rule, that Assam Rifles Personnel having the medical category of P2 is not to be retired from service. Under the said Rule, P2 means one who had moderate physical capacity and stamina. Suffered from constitutional/metabolic/effective disease/operative procedure but now well stabilized.

Mr. K. Khan, learned counsel appearing for the respondents No. 2, 3 & 4 contended that the petitioner himself had accepted his medical condition and also even filed the representation to the authority for allowing him to continue his service up to 31.03.2016. Be that as it may, 31.03.2016 is yet to come.

This Court is of the considered view that there is a prima facie material for passing an ad-interim order. As an ad-interim measure, it is provided that the impugned order dated 26.10.2014, shall remain suspended.

Exchange of pleadings is complete.

List this case for final disposal on 09.04.2015.

**JUDGE**

*Sylvana*

**WP(C) No. 191/2014**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

As prayed for by the learned CGC appearing for the respondent, list this case on 02.04.2015.

**JUDGE**

*Sylvana*

**WP(C) No. 282/2014**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

Learned counsel for the petitioner prays for 3 (three) weeks' time for filing rejoinder affidavit.

Prayer is granted.

List this case on 09.04.2015.

**JUDGE**

*Sylvana*

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

Learned counsel appearing for the respondents No. 1, 2 & 3 submits at the Bar that the affidavit-in-opposition on behalf of the respondents are filing in the course of the day and also stated that the copy of the affidavit-in-opposition had already been furnished to the learned counsel for the petitioner.

Learned counsel for the petitioner prays for 3 (three) weeks' time for filing rejoinder affidavit.

Prayer is granted.

List this case on 09.04.2015.

**JUDGE**

*Sylvana*

**WP(C) No. 345/2014**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

As prayed for by the learned counsel appearing for the petitioner, further 3 (three) weeks' time is granted for filing rejoinder affidavit to the affidavit-in-opposition filed by the respondents.

**JUDGE**

*Sylvana*



**WP(C) No. 348/2014**

**BEFORE  
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH**

**19.03.2015**

As prayed for by the learned counsel appearing for the petitioner, 3 (three) weeks' time is granted for filing rejoinder affidavit to the affidavit-in-opposition filed by the respondents.

List this case on 09.04.2015.

**JUDGE**

*Sylvana*