

GAHC010090322022



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

Case No. : WP(C)/3113/2022

DEBASHREE CHOUDHURY
D/O- LATE DEBABRATA CHOUDHURY, R/O- SWAMIJI ROAD, ITKHOLA,
SILCHAR TOWN, P.O. AND P.S. SILCHAR, DIST. CACHAR, ASSAM

VERSUS

THE NATIONAL INSURANCE COMPANY AND 3 ORS.
A GOVT. OF UNDERTAKING BEING REPRESENTED BY ITS CHIEF
REGIONAL MANAGER, REGIONAL OFFICE, GUWAHATI, BHANGAGARH-5.

2:THE SENIOR DIVISIONAL MANAGER
NATIONAL INSURANCE COMPANY LTD.
SILCHAR DIVISION OFFICE
SILCHAR.

3:THE CHIEF MANAGER
NATIONAL INSURANCE COMPANY LTD.
SILCHAR DIVISION OFFICE
SILCHAR.

4:THE DIVISIONAL MANAGER
SILCHAR DIVISION
NATIONAL INSURANCE COMAPNY LTD.
SILCHAR DIVISION OFFICE
SILCHA

Advocate for the Petitioner : MS. P CHAKRABORTY

Advocate for the Respondent : MR. B C DAS

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

Date : 12/05/2023

Heard Ms. P. Chakraborty, learned counsel for the writ petitioner. Also heard Mr. B.C. Das, learned senior counsel assisted by Mr. S.H. Rahman, learned counsel for the respondents.

In this writ petition, the transfer order dated 28/04/2022 issued in respect of the writ petitioner transferring her from Silchar Divisional Office to Guwahati Regional Office of the National Insurance Company Ltd., has been put under challenge on the ground that it is a clear case of punitive transfer.

It appears that some co-workers of the petitioner had made a complaint against her in respect of harassment in work place, pursuant where to, a joint Fact Finding exercise was conducted. A report was also submitted by the Committee on 04/03/2022 wherein, it has been mentioned observed that the petitioner is spoiling the work environment/ culture of the office by demoralizing other staff and officers. Based on such report of the Fact Finding Committee, the impugned transfer order has been issued. The operative part of the transfer order is reproduced herein below for ready reference :-

“Following report of indiscipline committed by Ms. Debashree Choudhury, Assistant, Employee No. 72931 of Silchar Divisional Office and the facts corroborated by GRO fact finding committee, it has been decided by the Competent Authority to transfer her services from Silchar D.O. to Guwahati Regional office with immediate effect.

Ms. Choudhury is therefore advised to report to Chief Regional Manager, Guwahati R.O. after obtaining release from her present assignment, within seven days of receipt of the Order.”

By the interim order passed on 12/05/2022, the impugned transfer order has been stayed by this Court. As such, the petitioner is still continuing in the Silchar D.O.

From a plain reading of the impugned order, it is apparent that the same is the outcome of the report of a fact finding Committee wherein, it was found that the petitioner was guilty of misconduct. There is some projection of the same in the impugned order also. However, it is not in dispute that the petitioner was not given an opportunity of being heard on the enquiry report dated 04/03/2022. That apart, submits Ms. Chakraborty, the order of transfer, on the face of it, is punitive.

Mr. B.C. Das, learned senior counsel for the respondents has fairly submitted that the order dated 28/04/2022 reflects that the same was issued on the basis of the reported indiscipline on the part of the petitioner and to that extent, she ought to have been heard in the matter. However, the said observation, according to Mr. Das, cannot come in the way of the authorities in taking appropriate action in the matter by following the due process of law.

A reading of the order dated 28/04/2022 leaves no room for doubt that the same casts an aspersion upon the petitioner of being guilty of misconduct in the form of "indiscipline". Therefore, it is clear that it is a punitive transfer order, which is not permissible in the eyes of law.

For the reasons stated herein above, the order dated 28/04/2022 is hereby set aside. The respondents would, however, be at liberty to pass a fresh order after giving an opportunity of being heard to the petitioner in the matter and by following the due process of law.

With the above observation, the writ petition stands disposed of.

JUDGE

sukhamay

Comparing Assistant