

GAHC010189602019



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

Case No. : WP(C)/2558/2023

DIBYAJYOTI TAMULI
UID 12120265
S/O- PRAFULLA KR TAMULI
R/O- VILLAGE BOKAGAON
P.O- BALIPARA
P.S- CHARIDWAR
DIST- SONITPUR
ASSAM
PIN-784101

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY
TO THE MINISTRY OF HOME AFFAIRS
GOVT. OF INDIA
NEW DELHI-110001.

2:THE DIRECTOR GENERAL
SASHASTRA SEEMA BAL
FORCE HEADQUARTERS
EAST BLOCK-V
R.K. PURAM
NEW DELHI- 110066

3:THE INSPECTOR GENERAL (PERS)
OFFICE OF THE DIRECTORATE GENERAL
SASHASTRA SEEMA BAL
FORCE HEADQUARTERS
EAST BLOCK-V
R.K. PURAM
NEW DELHI- 110066.

4:THE COMMANDANT (PERS-II)

FHQ
SSB

EAST BLOCK-V
R.K. PURAM
NEW DELHI- 110066.
5:THE INSPECTOR GENERAL
FRONTIER HEADQUARTERS
SSB
TEZPUR

P.O AND P.S- TEZPUR
DIST- SONITPUR
ASSAM
PIN-784001

Advocate for : MR. P J SAIKIA
Advocate for : DY.S.G.I. appearing for THE UNION OF INDIA AND 4 ORS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-07-2023

Heard Mr. L. N. Dihingia, learned counsel for the petitioner and Ms. B. Sarma, learned Central Government Counsel for all the respondent Nos.1 to 5.

2. Petitioner is serving as Head Constable of General Duty (GD, in short) in the office of the Inspector General, Sashastra Seema Bal (SSB in short) Frontier Headquarter, Tezpur in the district of Sonitpur, Assam.

3. Since 01.06.2017, the petitioner is serving at Tezpur under compassionate ground. Petitioner's minor son, namely, Naman Tamuly is suffering from Syptoxic Ischaemic injury and he needs constant medical treatment.

- 4.** By an Office Order No.04/SSB/HC/Pers-II/2019/10435-545 dated 12.07.2019 issued by the Commandant (Pers-II) of the SSB, Government of India, Ministry of Home Affairs transferred the petitioner along with 580 employees of the SSB throughout the country, whereby the petitioner was transferred from the Frontier Headquarter, SSB Tezpur to Frontier Headquarter, SSB Siliguri.
- 5.** As the minor son of the petitioner is suffering from Syptoxic Ischaemic injury, the petitioner filed the connected writ petition, being WP(C) No. 5755/2019 challenging his said transfer order dated 12.07.2019 transferring him from Frontier Headquarter, SSB Tezpur to Frontier Headquarter, SSB Siliguri and the Court by order dated 09.08.2019 while issuing notice to the respondents authorities in the SSB therein, stayed the said transfer order dated 12.07.2019 of the petitioner transferring him from Frontier Headquarter, SSB Tezpur to Frontier Headquarter, SSB Siliguri, which is still in force.
- 6.** While said WP(C) No. 5755/2019, noted above, was pending for adjudication and the operation of order of stay of the transfer order dated 09.08.2019 transferring the petitioner from Frontier Headquarter, SSB Tezpur to Frontier Headquarter, SSB Siliguri was in force, without taking any leave or without obtaining any prior permission from the Court, the respondent authorities in the SSB, again transferred the petitioner by the impugned Order No. IV/18/ SSB/Pers-II/AP/2023/11196-11316 dated 26.04.2023 from the SSB Frontier Headquarter, SSB Tezpur to 55th Battalion of the SSB at Pithoragarh, Uttarakhand.
- 7.** Being aggrieved, the petitioner has preferred this writ petition challenging his said transfer order dated 26.04.2023.
- 8.** The Court earlier by order dated 12.05.2023 directed the respondent authorities in the SSB, to apprise the Court as to how the impugned transfer order dated 26.04.2023 could have been issued by the authority concerned in the SSB during the pendency of said WP(C) No. 5755/2019, where there is a stay order in operation. But

the respondent authorities neither filed any affidavit in that regard, nor placed any written instruction before the Court.

9. However, Ms. B. Sarma, learned CGC, appearing on behalf of the respondent SSB authorities on instruction submitted that since the impugned transfer order of the petitioner dated 26.04.2023 that was issued by the Commandant (Pers-II), SSB, Government of India, Ministry of Home Affairs during pendency of the earlier writ petition, WP(C) No. 5755/2019 preferred by the petitioner, where there is a stay order is in force regarding his transfer, the authorities concerned in the SSB kept the said Officer Order 26.04.2023 transferring the petitioner from Frontier Headquarter, SSB Tezpur to 55th Battalion of the SSB at Pithoragarh, Uttarakhand in abeyance.

10. It is seen that the Officer Order dated 26.04.2023 issued by the Commandant (Pers-II), SSB, Government of India, Ministry of Home Affairs transferring the petitioner from Frontier Headquarter, SSB Tezpur to 55th Battalion of the SSB at Pithoragarh, Uttarakhand was without taking leave from the Court while the connected WP(C) No. 5755/2019 of the petitioner is still pending for adjudication, and where there is a stay order operating till date regarding the transfer of the petitioner from Frontier Headquarter, SSB Tezpur.

11. Accordingly, this Court is of the view that the impugned transfer of the petitioner No.IV/18/SSB/Pers-II/AT/2023/11196-11316 dated 26.04.2023 issued by the Commandant (Pers-II) of the SSB, Government of India, Ministry of Home Affairs transferring the petitioner from the Frontier Headquarter, SSB Tezpur to 55th Battalion of the SSB at Pithoragarh, Uttarakhand is not in conformity with law since it was issued without taking prior leave from the Court.

12. Accordingly the impugned transfer order No.IV/18/SSB/Pers-II/AT/2023/11196-11316 dated 26.04.2023 issued by the Commandant (Pers-II) of the SSB, Government of India, Ministry of Home Affairs so far it relates to the transferring the petitioner from the Frontier Headquarter, SSB Tezpur to 55th Battalion of the SSB at Pithoragarh,

Uttarakhand is of the petitioner dated 26.04.2023 being not sustainable under the law, as noted above, the same is hereby set aside and quashed, observing that the same will relate only with the case of the petitioner.

13. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant