

GAHC010128622023



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

**Case No. : WP(C)/3399/2023**

MAIMOM ASHA LATA DEVI  
W/O- SH. SURESH KUMAR SINGHA, PRESENTLY SERVING AS NO.  
11050065, INSPECTOR (SISTER IN CHARGE) AT SASHAstra SEEMA BAL  
COMPOSITE HOSPITAL, TEZPUR AT SALONIBARI, DIST. SONITPUR,  
ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS  
REPRESENTED THROUGH ITS HOME SECRETARY, MINISTRY OF HOME  
AFFAIRS, GOVERNMENT OF INDIA, NORTH BLOCK, NEW DELHI-110001.

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

3:THE INSPECTOR GENERAL

FRONTIER HEAD QUARTER  
SASHASTRA SEEMA BAL  
TEZPUR  
DIST. SONITPUR  
ASSAM

4:THE DEPUTY INSPECTOR GENERAL  
(MEDICAL)  
COMPOSITE HOSPITAL  
SSB

TEZPUR AT SALONIBARI  
DIST. SONITPUR  
ASSA

**Advocate for the Petitioner** : MS. S BORA

**Advocate for the Respondent** : DY.S.G.I.

**BEFORE**  
**HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**23.06.2023.**

1. Heard Ms. S. Bora, learned counsel for the petitioner. Also heard Mr. S. K. Medhi, learned CGC representing the Union of India.
2. Pursuant to order dated 15.06.2023 passed by this Court, Mr. Medhi, learned CGC has obtained instruction and the produced the same before this Court.
3. The basic ground of challenge to the impugned Transfer order dated 15.04.2023, firstly, is that the petitioner has only completed two years in the present place and in terms of the SOP of transfer of the department, the tenure of posting is 3+1+1 years. The second ground is that the petitioner is having two minor children aged five years and one year and therefore, serious prejudice shall be caused to the petitioner and her children. The third ground is that the petitioner is presently hospitalized due to her serious ailment. Yet another ground of challenge is that while with a representation in term of the SOP, her prayer for cancellation of the transfer order has been rejected summarily without assigning any reason thereof.

4. This Court under its order dated 15.06.2023 had stayed the impugned transfer order dated 15.04.2023 till furnishing of instruction with a prima facie view that the representation of the petitioner has been rejected without assigning any reason. This Court was also of the view that the aggrieved employee was not informed the reason of rejecting of her prayer as the provision of appeal was given in the transfer policy itself.

5. From the pleadings of the petition as well as the instruction furnished by Mr. Medhi, learned CGC, the following admitted position emerges.

I. The petitioner was posted at Composite Hospital, Tezpur, Salonibari, Assam on 02.07.2021 as Sub Inspector (Staff Nurse).

II. Thereafter, on 13.01.2023, the petitioner was promoted to the post of Inspector (Sister In-charge) by an office order dated 13.01.2023.

III. The office order dated 13.01.2023 reflects that the promoted officers were allowed to take over the charge of promoted post i.e. Inspector (Sister In-Charge) at their present place of posting and their posting on promotion will be decided separately.

IV. There are other two posts of Inspector (Sister In-Charge), at Composite Hospital, Tezpur, Salonibari, Assam, where the petitioner is posted and already two persons were occupying the said post.

V. The petitioner is the junior most among this three Inspector as she has recently been promoted as there are two post of Inspector at Composite Hospital, Tezpur, Salonibari, Assam and there are three

incumbents, and in terms of the promotion order, the petitioner has been transferred to the Centralized Training Centre, Srinagar, Uttarakhand.

6. In the aforesaid backdrop, this Court is of the view that the transfer of the petitioner was on promotion.
7. This Court in exercise of the writ jurisdiction cannot direct the respondent authorities to keep the petitioner posted at Composite Hospital, Tezpur, Salonibari, Assam inasmuch as there are no posts to accommodate the petitioner. At the same time, to keep the petitioner at Composite Hospital, Tezpur, Salonibari, Assam, any other of the officers who are posted against the two posts at Composite Hospital, Tezpur, Salonibari, Assam, is to be disturbed.
8. Such course of action cannot be taken or directed by this Court in exercise of its power of judicial review inasmuch as the transfer is an incidence of service. When a transfer order is issued on promotion, this Court cannot exercise its power of judicial review to interfere with such administrative action of the authorities in exigencies of service.
9. So far coming to the rejection order, from the record it is clear that, prayer of the petitioner has been rejected on the ground as discussed hereinabove. Therefore, such reason cannot be said to be unreasonable or result of mala fide exercise of power.
10. In that view of the matter, the writ petition stands dismissed. Interim order passed earlier stands vacated.

11. As the petitioner has raised an issue that she is under hospitalization and therefore, she is not able to join in the transferred place of posting, can very well be considered by the respondent authorities and the same is left to the wisdom of the employer and to decide such prayer to give her time to join.
12. A copy of the instruction dated 19.06.2023 received by Mr. S. K. Medhi, learned CGC representing the Union of India, is kept on record and marked as document "X".

**JUDGE**

**Comparing Assistant**