

GAHC010131362021



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

Case No. : WP(C)/4196/2021

CHANDRA BHANU SHARMA
S/O- SHRI SHIV PRASAD SHARMA, R/O- LANKESWAR, DIST.- KAMRUP (M),
ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY THE SECY., MINISTRY OF DEFENSE SOUTH BLOCK, NEW DELHI-
110001

2:THE SECRETARY
BORDER ROADS DEVELOPMENT BOARD
B WING
4TH FLOOR
SENA BHAWAN
NEW DELHI- 110001

3:THE ADGBR (EAST)
C/O 47 TF LANKESWAR
GHY

4:THE GREF RECORDS
DIGHI CAMP
PUN

Advocate for the Petitioner : MS. P BARUAH

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

BEFORE

HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 02-02-2023

Heard Mr. T. Das, learned counsel for the writ petitioner. Also heard Mr. B. Chakraborty, learned CGC appearing for the respondents.

The writ petitioner herein is serving as Cook under the General Reserve Engineer Force (GREF) and is presently posted at Silapathar, Assam. Earlier, in the year 2020 the petitioner was sent on an overseas assignment to Tajikistan in project EYE DAT-2 as a Cook. However, while rendering his services as a Cook, it appears that there was some incident which had invited the ire of the authorities therein. It was felt that the petitioner's conduct was unsatisfactory. It also appears that an enquiry was conducted by one-man committee where-after, the petitioner was repatriated back to India by the impugned order dated 25-05-2021. The grievance of the petitioner is to the following effects:-

Firstly, if there was actually a case of misconduct, then the authorities ought to have taken disciplinary action against him by following the disciplinary rules applicable, which has not been done in this case.

Secondly, the transfer/ repatriation of the petitioner from Tajikistan to India on the basis of the one-man committee report is nothing but a punitive transfer which casts a stigma on the writ petitioner. Therefore, the same is untenable in the eye of law.

By referring to a decision of the Hon'ble Supreme Court rendered in the case of

Somesh Tiwari Vs. UoI & Ors. reported in ***(2009) 2 SCC 592***, Mr. Das submits that a penal transfer is wholly impermissible in the eye of law. On the aforesaid two grounds the writ petitioner is seeking an order from this Court directing the authorities to send him back to Tajikistan so as to enable him to complete his tenure thereof.

Responding to the above, Mr. Chakraborty, learned CGC submits that the petitioner has already been replaced at Tajikistan by another competent Cook. Therefore, at this stage, he cannot be sent back to Tajikistan. The learned CGC has also produced a copy of the written undertaking given by the petitioner at the time of commencement of the assignment at Tajikistan, whereby he had agreed that if his performance is found to be unsatisfactory, then he would be liable to be repatriated back to India. Insofar as the other arguments advanced by the petitioner's counsel is concerned, Mr. Chakaraborty submits that an order of transfer in an overseas assignment would not be subject to similar nature of scrutiny as in the case of an order imposing penalty and therefore, the submissions made by the learned counsel for the petitioner were untenable in the eye of law. According to Mr. Chakraborty since the conduct and the performance of the petitioner was found to be unsatisfactory, he has been repatriated back to India. The learned CGC further submits that the petitioner is still in service and he is drawing his regular pay and allowances. Therefore, there is no violation of his terms and conditions of service.

I have taken note of the submissions made by the learned counsel for the parties. There can be no doubt about the fact that in case of an overseas assignment, a completely different procedure, as compared to a normal tenure transfer, is to be followed. Moreover, when an employee is discharging his duties overseas, he may be

required to follow stringent norms of discipline and performance, which only the superior authorities will be in the best position to assess. In the present case, it appears that the authorities superior to the petitioner were not satisfied with his performance. Hence, he was repatriated. Since there is no violation of conditions of services, hence, this Court is of the opinion that the petitioner cannot raise a grievance against such action.

The grievance of the petitioner can, however, be maintained if it turns out to be a case of malafide exercise of power or where the transfer turns out to be stigmatic. Since there are materials to suggest that there are observations as regards the conduct of the petitioner leading to his repatriation and considering the fact that the representation dated 01-08-2021 submitted by the petitioner before the Director General of Border Roads (DGBR) has not yet been disposed of by a reasoned order, without expressing any opinion on the merit of the claims and counter claims of the parties, I dispose of this writ petition by providing that the grievance of the petitioner, as highlighted in the representation dated 01-08-2021, be looked into by the DGBR or any other competent officer nominated by him and the same be disposed of by a speaking order within a period of 90 (ninety) days from the date of receipt of a certified copy of this order, after giving an opportunity of being heard to the petitioner.

If it is found that the observations and remarks available in the record are stigmatic and would tend to cause prejudice to the interest of the petitioner, necessary steps be taken for expunging the same from the record.

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

JUDGE

GS

Comparing Assistant