

GAHC010156412023



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

**Case No. : WP(C)/4134/2023**

DILIP KUMAR DEKA  
S/O- SHANTI RAM KEOT, VILL.- KONWARPARA, P.O. AND P.S.  
MANGALDOI, DIST. DARRANG, ASSAM, PIN- 784125.

VERSUS

DIRECTOR, DIRECTORATE OF SAINIK WELFARE  
ASSAM, HOUSE NO. 74, SAINIK BHAWAN, LACHIT NAGAR, GUWAHATI-7,  
KAMRUP(M), ASSAM

**Advocate for the Petitioner : MR. A K SHARMA**

**Advocate for the Respondent :**

**BEFORE**

**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**ORDER**

**28-07-2023**

Heard Mr. A. K. Sarma, learned counsel for the petitioner and Mr. C.S.Hazarika, learned Government Advocate, Assam for the respondent Nos. 1, 3 & 4. Also heard Mr. B. Gogoi, learned Standing counsel, General Administrative Department of the State for the respondent No. 2.

**2.** In view of the order passed today in the connected I.A.(C) No. 2115/2023, (i) the Principal Secretary, General Administration Department, Assam Secretariat, Dispur, Guwahati, (ii) the Zila Sainik Welfare Officer, Darrang Zila Sainik Welfare Office, Darrang, Mangaldoi and (iii) the District Commissioner, Darrang, Mangaldoi be impleaded as party respondent Nos. 2, 3 & 4, respectively, in the present proceeding.

- 3.** Registry shall correct the cause title accordingly.
- 4.** The petitioner is serving as a Lower Division Assistant under the Directorate of Sainik Welfare, Assam, Guwahati and posted at Zila Sainik Welfare Office, Darrang, Mangaldai.
- 5.** The petitioner is having 40% locomotor disability in relation to his left leg. Earlier, the respondent authorities in the Directorate of Sainik Welfare, Assam sought his willingness for his promotion from the post of Lower Division Assistant (LDA) to the post of Upper Division Assistant (UDA). On 07.02.2023, he expressed his willingness for his promotion from the post of LDA to the post of UDA in the Office of the Zila Sainik Welfare, Darrang, Mangaldai after physically claiming such benefits as per Article 16(4) of the Constitution of India, Section 47 of the Disability Act, 1995 and Sections 20(3) and 20(4) of the Rights of Persons with Disabilities Act, 2016 being a physically handicapped employee.
- 6.** By office order No. DSW.129/PROM/III/113 dated 03.07.2023, the Director of Sainik Welfare, Assam, Guwahati, promoted the petitioner from the post of LDA to the post of UDA along with two others and posted him at the Zila Sainik Welfare Office, District-Kokrajhar.
- 7.** Hence, the petitioner has preferred this writ petition praying amongst others to set aside and quash the said order dated 03.07.2023 of the Director of Sainik Welfare, Assam, Guwahati promoting him to the post of UDA from the post of LDA and posting him in the office of the Zila Sainik Welfare Office at Kokrajhar.
- 8.** In that regard, the petitioner has placed before the Court a copy of the Office Memorandum dated 10.05.1990 issued by the Ministry of Personnel, Public Grievances and Pensions Department, Government of India, wherein the physically handicapped employees belonging to Group-A or Group-B who have all India transfer liability should be posted near their native places. However, in the case of the holders of Group-C or Group-D posts who have been recruited on regional basis and who are physically handicapped, such persons may be given posting, as far as possible, subject to administrative constraints, near their native places within the region.
- 9.** Mr. Sarma, learned counsel for the petitioner by placing the impugned order dated 03.07.2023 of the Director of Sainik Welfare, Assam, Guwahati, submitted that by the said order dated 03.07.2023, the petitioner was promoted from the post of LDA to the post of UDA at the Zila Sainik Welfare Office, Kokrajhar and reposted him at the Zila Sainik Welfare Office, Kokrajhar against the sanctioned vacant post. Since there was no such vacancy in the office of the Zila Sainik Welfare,

Darrang, Mangaldai, his promotion from the post of LDA to the post of UDA at the said office could not be considered. However, after obtaining his consent on 07.02.2023, the petitioner was promoted to the post of UDA and was posted at Kokrajhar in terms of the said office order dated 03.07.2023 of the Director of Sainik Welfare, Assam.

**10.** Mr. Gogoi, learned Standing counsel, General Administrative Department placed before the Court that the order dated 03.07.2023 issued by the Director of Sainik Welfare, Assam is not mere a transfer order but it is a promotional order whereby the petitioner on his promotion was posted at the Zila Sainik Welfare Office, Kokrajhar.

**11.** The impugned Office order No. DSW.129/PROM/III/113 dated 03.07.2023 of the Director of Sainik Welfare, Assam clearly reflects that the petitioner was promoted from the post of LDA who was serving at Zila Sainik Welfare, Darrang, Mangaldai and on his promotion as an UDA has been posted at the office of the Zila Sainik Welfare, Kokrajhar and the direction was issued to him to report at new destination on 01.08.2023.

**12.** Further, such promotion of the petitioner to the post of UDA is against sanctioned vacant post in the revised pay and allowances as per the Government Rules w.e.f. 01.08.2023 as Upper Division Assistant. Since the petitioner is not interested and has challenged the said order of transfer dated 03.07.2023 of the Director of Sainik Welfare, Assam, it is up to the respondent authorities in the Sainik Welfare, Assam to give such benefit to the petitioner if he fails to join in terms of the said promotional order dated 03.07.2023 within the time so specified in the said order dated 03.07.2023.

**13.** Since the said Office order No. DSW.129/PROM/III/113 dated 03.07.2023 is a promotional order and not a transfer order, the Court did not find any merit, accordingly, this writ petition stands dismissed.

**14.** Subject to availability of vacancy of the post of UDA in the Zila Sainik Welfare, Darrang, Mangaldai, the respondent authorities in the Sainik Welfare, Assam shall consider the case of the petitioner.

**JUDGE**

**Comparing Assistant**