

GAHC010189602019



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

Case No. : WP(C)/5755/2019

DIBYAJYOTI TAMULY
S/O SRI PRAFULLA KR. TAMULY, R/VILL. BOKAGAON, P.O. BALIPARA, P.S.-
CHARIDWAR, DIST.- SONITPUR, ASSAM, PIN- 784101.

VERSUS

THE UNION OF INDIA AND 5 ORS.
REP. BY THE SECRETARY TO THE MINISTRY OF HOME AFFAIRS, DEPTT.
OF HOME, GOVT. OF INDIA, NEW DELHI- 110001.

2:THE DIRECTOR GENERAL
SASHASTRA SEEMA BAL
EAST BLOCK-V
R.K. PURAM
NEW DELHI- 66.

3:THE INSPECTOR GENERAL (PERS)
SASHASTRA SEEMA BAL
FORCE HQ
EAST BLOCK-V
RK 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 HEAD QUARTER
SSB
TEZPUR

DIST.- SONITPUR
ASSAM- 784001.

6:THE INSPECTOR (ADMN)
FRONTIER HEAD QUARTER
TEZPUR
DIST- SONITPUR
ASSAM

Advocate for the Petitioner : MR. P J SAIKIA
Advocate for the Respondent : ASSTT.S.G.I.

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

19-07-2023

Heard Mr. L. N. Dihingia, learned counsel for the petitioner and Mr. S. K. Medhi, 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. Prior to June, 2017 he was posted at Sector Headquarter, Bomdila, Arunachal Pradesh and after completion of tenure at Bomdila, he was posted at FHQ, Tezpur at Tezpur.

4. Since 01.06.2017, the petitioner is serving at Tezpur on compassionate ground as Naman Tamuly, minor son of the Petitioner is suffering from Sypoxic Ischaemic injury and he needs constant medical treatment.

6. By an Office Order No.04/SSB/HQ/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.

7. Being aggrieved, the petitioner has preferred this writ petition challenging his said transfer from Frontier Headquarter, SSB Tezpur to Frontier Headquarter, SSB Siliguri.

8. The Court on 09.08.2019 while issuing notice to the respondents herein, suspended the operation of the impugned transfer order of the petitioner dated 12.07.2019 by which he was transferred from Frontier Headquarter, SSB Tezpur to Frontier Headquarter, SSB Siliguri and the said interim order dated 09.08.2019 is still in force.

9. From the revised Transfer Guidelines of the SSB issued by the Personnel Directorate, Force Headquarter, SSB dated 16.08.2016, it is seen that normal tenure of posting in normal areas is three years as provided under Clause 5 'Tenure' of said revised guidelines for the SSB as issued on 10.08.2016.

10. Clause 13 of Standard Operating Procedure (SOP, in short) regarding Revised Transfer Guidelines for the SSB personnel dated 10.08.2016 that relates to 'Disability of Family Members' reads as follows:--

"13.Disablity of family members:-

a) Personnel having disability of spouse/children would be accommodated in a Frontier near his hometown or near the place of medical treatment as far as possible and preference will be given subject to vacancy, administrative feasibility, tenure policy and severity of disability shown below:

i) Severe disabilities (Category-A) (above 60% to 100%)

ii) Moderate disabilities (Category-B) (above 40% to 60%)

iii) Mild disabilities categorized (Category-C) (upto 40% disability)

iv) Disabilities categorized below 40% shall not be considered."

11. Mr. Dihingia, learned counsel for the petitioner also brought to the notice of the Court that the Directorate General of the SSB vide No. 1/48/SSB/TRFR/Pers-V/Org/2016(35)/511-531 dated 10.02.2023 brought into force the new transfer

guidelines for the SSB personnel and accordingly, issued Standard Operating Procedure of the transfer and posting of the employees of the SSB, wherein, at Clause 13 relating to disability of family members of the employees of the SSB which stipulates as follows:--

“13. Disability of family members:

Eligibility for seeking exemption from routine transfer/rotational transfer as per DoP&TOM No.42011/3/2014-Estt.(Res) dated 08.10.2018:-

Para-3(1) A Govt. employee who is a care giver of dependent daughter/son/parents/spouse/brother/sister with Specified Disability, as certified by the certifying authority as a Person with Benchmark Disabilities as defined under Section 2(r) of the Rights of Persons with Disabilities Act, 2016 may be exempted from the routine exercise of the transfer/rotational transfer subject to the administrative constraints.

Para-3(ii) The term "Specified Disability" as defined in the Schedule to the Rights of Persons with Disability Act, 2016 covers (i) Locomotor disability including leprosy cured person, cerebral palsy, dwarfism, muscular dystrophy and Acid attack victims (ii) Blindness, (iii) Low vision (iv) Deaf, (v) Hard of hearing (vi) Speech and language disability, (vii) Intellectual disability including specific learning disabilities and autism spectrum disorder (viii) Mental illness (ix) Disability cause due to : (a) Neurological conditions such as Multiple Sclerosis and Parkinson's disease (b) Blood disorder-Haemophilia, Thalassemia and Sickle cell-disease and (x) Multiple disabilities (more than one of the above specified disabilities) including deaf blindness and any other category of disabilities as may be notified by the Central Government.

Para-3(iii) The term "Specified Disability" as defined herein is applicable as grounds only for the purpose of seeking exemption from routine transfer/rotational transfer by a Govt. employee, who is a care-giver of dependent daughter/son/parents/spouse/brother/ sister as stated in para 3(i) above."

12. It is admitted that the petitioner is at SSB Frontier Headquarter at Tezpur since 01.06.2017 as Head Constable (GD) of the SSB for more than six years.

13. The impugned transfer order of the petitioner issued by the Commandant (Pers-II), SSB dated 12.07.2019 is now more than 4 years old and by efflux of time it has become redundant and it has spent its force.

14. Accordingly, this writ petition has become infructuous as the impugned transfer

order of the petitioner was issued way back on 12.07.2019, which has elapsed more than four years, considering the fact that normal posting of SSB personnel in normal areas is 3 (three) years as provided in Clause 5 'Tenure' of said revised guidelines for the SSB issued on 10.08.2016, noted above.

15. As the minor son of the petitioner is suffering from medical ailment, needless to say that in the event of transfer of the petitioner from Frontier Headquarter SSB Tezpur to any other place of the SSB, he may apply as per the provisions of disability of family members specified in the relevant Standing Operating Procedure pertaining to transfer guidelines in the SSB personnel that is in force.

16. In the event of filing such application by the petitioner under the Disability of family members on his transfer from Frontier Headquarter SSB Tezpur, the authorities concerned in the SSB shall consider the same as per the entitlement and in accordance with law.

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

JUDGE

Comparing Assistant