

GAHC010235862022



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

Case No. : WP(C)/7380/2022

DIPAK SARMAH
S/O LATE GOPAL SARMAH, R/O SUKHANJAN, BOKAJAN, P.O.-BOKAJAN,
DIST- KARBI ANGLONG, ASSAM, PIN-782480

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, GENERAL ADMINISTRATION DEPARTMENT, ASSAM
SECRETARIAT, DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER
KARBI ANGLONG DISTRICT
DIPHU
ASSAM
PIN-782460

3:THE ADDITIONAL DEPUTY COMMISSIONER
I/C BOKAJAN SUB-DIVISION
BOKAJAN
OFFICE OF THE SUB-DIVISIONAL OFFICER (CIVIL)
DIST- KARBI ANGLONG
ASSAM
PIN-782480

4:THE DISTRICT COMMANDANT
HOME GUARDS
KARBI ANGLONG
DIPHU
DIST- KARBI ANGLONG
ASSAM
PIN-782460

5:THE ASSISTANT COMMISSIONER CUM BRANCH OFFICER
PERSONNEL BRANCH
OFFICE OF THE DEPUTY COMMISSIONER
KARBI ANGLONG DISTRICT
DIPHU
PIN-782460

6:SRI SAMPRI KRO
JUNIOR ASSISTANT
OFFICE OF THE SUB-DIVISIONAL OFFICER (CIVIL)
DIST- KARBI ANGLONG
ASSAM
PIN-78248

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 24.11.2023

Heard Mr. S. Sarma learned counsel for the petitioner. Also heard Ms. C.S. Hazarika, learned counsel for the respondent.

This petition is filed by the petitioner aggrieved by the order dated 28.10.2022, whereby the earlier order dated 14.10.2022 transferring the petitioner from his place of posting under the Office of Deputy Commissioner, Karbi Anglong to the Office of the Deputy Commissioner, Bokajan has been stayed.

It is submitted on behalf of the petitioner that the transfer was sought for by the petitioner on medical grounds as he is required to undergo medical treatment which is available in Bokajan. It is on the basis of his request that the order of transfer was issued by the competent authority on 14.10.2022. Although the petitioner was released to enable him to join in his new place of posting as per the order dated 17.10.2020 but the respondent No.3 has refused to accept the joining letter of the petitioner and did not allow him to join in his place of posting as per the transfer order. Subsequently by the order dated 28.10.2022, the earlier order

of transfer in favour of the petitioner dated 14.10.2022 was stayed.

Learned counsel for the petitioner submits that as on date, the incumbent who was to be relieved by the petitioner at Bokajan has also been transferred out of the office by the order dated 27.07.2023. It is the submission of the learned counsel for the petitioner that as on date, the said post is vacant and the petitioner can be considered for transfer and posting in the said post as he had originally requested for.

Ms. C.S. Hazarika, learned for the representing the respondent No. 2 to 5 submits that in transfer matters the constitutional Court would not like to intervene unless malafide is alleged or is apparent from the records. In the present case, there is no malafide alleged nor is it apparent from the records of the case as the petitioner was issued the transfer at his own request. However he could not join as the incumbent in his new place of posting was not released by the Additional Deputy Commissioner, Bokajan as per the communication dated 15.10.2022 (Annexure-VII) to the writ petition. Because of administrative exigencies that the said employee was not released and the petitioner could not join in the place of posting as per the transfer order and subsequently by the order dated 28.10.2022 the earlier order of transfer was stayed. There is no malafide on the part of the respondent authority and therefore, no direction is called for by this Court interfering with the order of stay of the earlier transfer order impugned in the present writ petition.

Having heard the learned counsel for the parties, it appears that the petitioner is suffering from some ailment for which he sought for transfer at his own request to Bokajan. During the course of hearing, it transpires that the place of posting to which the petitioner earlier sought for transfer on his own request, the incumbent therein has now been transferred to a different place. If that be so, the petitioner is permitted to approach the appropriate authorities by filing appropriate representation before the Deputy Commissioner, Karbi Anglong for due consideration of his prayer. The Deputy Commissioner, Karbi Anglong on facts if considered appropriate and if permitted under the Rules, the petitioner may be issued the transfer order in his place of posting that he had earlier chosen, which is under the Office of Additional Deputy Commissioner, Bokajan.

The writ petition stands disposed of in terms of the above permitting the petitioner to

approach the competent authority and file necessary representation. If such representation is filed, the concerned authority will examine the case of the petitioner and pass appropriate order as per the provision of law within a period of 30 days from the date of receipt of such representation and on receipt of certified copy of this order.

JUDGE

Comparing Assistant