

GAHC020007602023



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

Case No. : COP(C)/28/2023

SHRI M. PAPAN KHIAMNIUNGAN
NOKHU VILLAGE
P.O. NOKLAK
TUENSANG DIST- NAGALAND

VERSUS

SHRI RUPIN SHARMA
IPS AND 2 ORS
DIRECTOR GENERAL OF POLICE
NAGALAND KOHIMA

2:SHRI JOSEPH HESSO
IPS
INSPECTOR GENERAL OF POLICE(HQ)
KOHIMA NAGALAND

3:SHRI. T YANRENTHUNG NGULLIE
NPS
COMMANDANT
5TH NAP BATTALION
PHEK
NAGALANDS

Advocate for : I. IMTI LONGCHAR
Advocate for : appearing for SHRI RUPIN SHARMA
IPS AND 2 ORS

**BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

15.12.2023

Heard Mr. I. Imti Longchar, learned counsel appearing on behalf of the petitioner.

2. The instant contempt application has been filed seeking initiation of contempt proceedings against the respondent Nos. 1, 2 & 3 herein on the ground of willful and deliberate disobedience to the Orders passed by this Court on 01.06.2016 in WP(C)/88(K)/2016 and 14.03.2017 passed in WP(C)/15(K)/2017.

3. It is relevant to take note of that this Court, vide an Order dated 01.06.2016 in WP(C)/88(K)/2016 this Court had disposed of the said writ petition at the motion stage with a direction upon the respondent Nos. 4 & 5 to consider the application dated 05.12.2009 filed by the petitioner praying for appointment on compassionate grounds strictly in terms of the Office Memorandum dated 13.02.2002 within a period of three (3) months from the date of receipt of a certified copy. This Order was duly communicated to the Director General of Police as well as the Commandant, 5th NAP Battalion on 14.06.2016. As the said Order was not complied with, the petitioner again approached this Court by filing a writ petition, being WP(C)/15(K)/2017.

4. This Court, taking into account the earlier Order passed on 01.06.2016 in WP(C)/88(K)/2016 disposed of the said writ petition, i.e. WP(C)/15(K)/2017 vide the Order dated 14.03.2017. It is relevant to take note of that in the said Order dated 14.03.2017, this Court had duly taken note of the Communication dated 10.03.2016, which was produced by the learned Government Advocate wherein the list of the 5th NAP Personnel who died on active service w.e.f. 13.02.2002 to 31.12.2016 were listed. It was also stated in the said Order dated 14.03.2017 that from the said list of ninety-four (94) Personnel the petitioner's late

brother appeared at serial No. 39 and his year of death is indicated as 2009.

5. This Court had also taken note of the submission made by the learned Government Advocate in the said proceedings that out of the ninety-four (94) NAP Personnels, the compassionate appointments have already been given against serial Nos. 1 to 22 in terms with seniority and that the case of the petitioner would be considered as to when his turn comes in terms of Communication dated 10.03.2016. It is under such circumstances vide Order dated 14.03.2017 this Court had disposed of the writ petition directing the respondents to strictly follow the seniority as indicated in the Communication dated 10.03.2016 and thereafter consider the case of the petitioner as and when his turn comes.

6. It further reveals from the interlocutory application filed in the present contempt proceedings that vide an Order dated 05.11.2022, issued by the Office of the Director General of Police, Nagaland, the petitioner's application for compassionate appointment was rejected on the basis of the Office Memorandum dated 17.09.2015. Be that as it may, the petitioner, thereupon challenged the said rejection Order dated 05.11.2022 by way of a writ petition being WP(C)/307/2023. However, on 04.12.2023, the said writ petition was withdrawn with liberty to file an appropriate petition before the appropriate forum including the liberty to file a fresh writ petition. This Court, vide Order dated 04.12.2023 disposed the said writ petition on withdrawal but granted the liberty as prayed for. Thereupon, the instant contempt proceeding was filed by the petitioner on the ground of willful and deliberate violation to the Order dated 01.06.2016 in WP(C)/88(K)/2016 as well as the Order dated 14.03.2017 passed in WP(C)/15(K)/2017.

7. This Court, upon hearing the learned counsel for the petitioner is of the opinion that if the Authorities had considered the case of the petitioner in terms with the Orders passed by this Court, a case for willful and deliberate violation/disobedience passed by this Court cannot arise. May be the Order which has been passed on 05.11.2022 was not in accordance with law or even not in accordance with the Office

Memorandum in question, but the said aspect can only be challenged by way of a writ petition and not by way of a contempt proceeding. Under such circumstances, this Court, therefore, is not inclined to issue notice in the instant proceedings as prima facie no question of contempt arises in view of the Order dated 05.11.2022. Be that as it may, taking into account that the Order dated 05.11.2022, passed by the Director General of Police constitutes a separate cause of action, the petitioner herein would be at liberty to assail the same by way of a writ petition as well as seek consequential reliefs.

6. With the above, the instant petition stands dismissed.

Sd/-
JUDGE

Comparing Assistant