



Serial No.53

Supp. List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C). No. 56 of 2023

Date of Decision : 24.09.2024

No.M/371214 Hav/NA Vipin Upadhyay.

...Petitioner

-Versus-

1. The Union of India represented by the
Secretary, Ministry of Home Affairs,
Government of India, New Delhi.
2. The Directorate General of Assam Rifles,
Laitkor, Shillong,
Meghalaya – 793 010.
3. SO1 Record Branch, DGAR,
Laitumkhrah, Shillong – 793 011.
4. Commandant (CMO), NFSG,
AR Hospital, Happy Valley, Shillong-07.

...Respondents

Coram:

Hon'ble Mr. Justice H.S.Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner/Applicant(s) : Mr. R.Jha, Adv.

For the Respondent(s) : Dr. N.Mozika, DSGI with
Ms. K.Gurung, Adv.

i) Whether approved for reporting in Yes/No



Law journals etc:

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| ii) | Whether approved for publication
in press:_ | Yes/No |
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JUDGMENT AND ORDER (ORAL)

1. The petitioner who is serving as Havildar/ Nursing Assistant by the instant writ petition, has prayed for quashing of the impugned posting order dated 27-12-2022, whereby orders have been issued transferring him from Assam Rifles Administrative Support Unit (ARASU) Shillong to 21 Assam Rifles Unit. The ground for challenge is that there are pending Court of Inquiry (COI) proceedings pending against the petitioner, and that he has a pending case before the Court of the Magistrate at Shillong. This Court then by order dated 28-03-2023, while awaiting instructions to be received by the respondents, ordered that status quo be maintained with regard to the movement of the petitioner. As such, by orders of this Court the transfer order has not been given effect to till date.

2. Mr. R.Jha, learned counsel for the petitioner has submitted that though the Court of Inquiry proceedings have since been concluded, a copy of the report is yet to be furnished which is highly prejudicial to the petitioner. He further submits that a complaint case filed by him against one Neeraj Kumar, is pending in the Court of the Judicial Magistrate First



Class at Shillong which needs his attention and as such, it is necessary for the time being that his services be retained in Shillong.

3. Dr. N. Mozika, learned DSGI assisted by Ms. K.Gurung, learned counsel for the respondents has submitted that the writ petitioner had been posted to ARASU Shillong from Kohima Nagaland since 09-04-2017 and has remained in this station though the usual tenure is only of three years. He also submits that vide transfer order dated 29-04-2020, the petitioner was posted to Manipur but was not released at that point of time as the Court of Inquiry was pending, which however, is not the situation today as the Court of Inquiry has since concluded and closed on 03-05-2021. With regard to the C.R. Case before the Court of the Judicial Magistrate, the learned DSGI submits that the same was filed in the petitioner's personal capacity and that even the accused Neeraj Kumar, has since been posted to Mokokchung Nagaland and is attending court hearings from there. He therefore submits no ground has been made out for the petitioner's further retention in Shillong, as apart from the fact that he has already remained in one place for over seven and a half years, transfer is an incidence of service.

4. Having heard learned counsel for the parties, it is noted that the retention of the petitioner's services in Shillong was basically due to the pendency of the Court of Inquiry which however, has been concluded since



03-05-2021. A perusal of the findings thereof, shows that the case was disposed of by the said order and no disciplinary action was initiated against the writ petitioner based on the findings of the Court of Inquiry. As such, the report not being adverse to the writ petitioner, the non-supply of a copy of the same as alleged, is of no relevance and has not prejudiced him in any manner. On the other consideration, i.e. the pendency of the complaint case, this ground or excuse, in the given circumstances is inconsequential, more so, the petitioner being the complainant himself.

5. In view of the discussions and submissions as made herein above, no interference is called for with the impugned order dated 27-12-2022 and the writ petition accordingly stands dismissed.

Chief Justice (Acting)