

GAHC010059422021



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

Case No. : WP(C)/2211/2021

CISF NO. 962295344 SRI SUNANDA SAIKIA
S/O LATE NABIN SAIKIA
RESIDENT OF CISF UNIT BGTPP/NTPC, SALAKATI, QUARTER NO. B/58,
DIST KOKRAJHAR, ASSAM, 783369

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS,
NORTH BLOCK, NEW DELHI 785685

2:THE DIRECTOR GENERAL
CISF (MINISTRY OF HOME AFFAIRS) BLOCK NO. 13
CGO COMPLEX
LODHI ROAD
NEW DELHI 110003

3:THE ASSISTANT INSPECTOR GENERAL
CISF EASTERN SECTORS HQRS
CISF OFFICE COMPLEX
DHURWA RANCH
834004
JHARKHAND
INDIA

4:THE COMMANDANT
CISF UNIT
BTPP
BONGAIGAON
PO SALAKATI
783369

DIST KOKRAJHAR
ASSAM

5:THE ASSISTANT COMMANDANT
CISF UNIT
BTPP
BONGAIGAON
PO SALAKATI
783369
DIST KOKRAJHAR
ASSA

Advocate for the Petitioner : MS D BORGOHAIN, MS. M SARMAH,MR. P GOHAIN,MS. K BARUAH

Advocate for the Respondent : ASSTT.S.G.I., MR. K K PARASAR

BEFORE
HONOURABLE MR. JUSTICE KARDAK ETE

ORDER

Date : 29-10-2024

Heard Ms. D. Borgohain, learned counsel for the petitioner. Also heard Mr. K.K. Parasar, learned CGC appearing for the respondents.

2. This petition has been instituted challenging the order dated 16.03.2021 passed by the Director General, CISG, by which the representation of the petitioner for retaining him in the present unit at Bongaigaon, Assam (Home Sector) in the rank of Constable for remaining part of his service has been rejected.

3. The case of the petitioner, shorn of unnecessary details, is that he was appointed as Constable (Fire) in the CISF vide order dated 08.05.1996. He has been posted in different places in the country from time to time and finally the petitioner was posted on 06.06.2016 at BGTPP, Bongaigaon, Assam (home sector) of the petitioner. While the petitioner was serving at Bongaigaon as Constable (Fire), the respondent authorities vide order dated 18.12.2020 has sought the petitioner to be transferred on promotion from Constable (Fire) to the rank of Head Constable (Fire) on regular basis, from Bongaigaon to Eastern Sector BRBCL Nabinnagar in the State of Bihar. The petitioner has filed representation to the respondent authorities that he is willing to forgo the promotion from the post of Constable to the rank of Head Constable (Fire) on condition that he be retained in his home sector at

Bongaigaon. When no consideration was initiated, the petitioner has approached this Court by filing WP(C) 429/2021 challenging the transfer and promotion dated 18.12.2020.

4. This Court vide order dated 10.02.2021 disposed of the writ petition (supra) and considering the submission of the learned counsel for the petitioner had directed the petitioner to file a representation that he will forgo all his future promotion-cum-seniority subject to the condition that he is allowed to continue in the same post of Constable (Fire) in the same station at BGTPP, Bongaigaon, Assam for the remaining part of his service.

5. The petitioner filed a representation pursuant to the order of this Court on 16.02.2021. The respondent authority particularly, the Director General, CISF had considered and disposed of the representation of the petitioner as directed by this Court in the writ petition (supra) vide impugned order dated 16.03.2021 and rejected the request of the petitioner to retain him in the present unit at BGTPP, Bongaigaon in rank of Constable (Fire) for remaining part of his service. Hence, this petition.

6. Ms. D. Buragohain, learned counsel for the petitioner submits that the respondent authorities have not considered the grievance of the petitioner objectively as the petitioner is entitled to be posted at his home sector after completion of 25 years as per the guidelines for posting and transfer of CISF Personnel i.e. Circular dated 22.05.2017.

7. While referring to Clause 12 of the Circular, which provides the tenure of posting, Ms. D. Borgohain, learned counsel submits that the first tenure is for 7(seven) years in units in out of home sector; second tenure is 12 (twelve) years in units in home sector; third tenure is 6 (six) years in out of home sector and 4th tenure (remaining service) is in the home sector. Therefore, since the petitioner has been posted only in the year 2016, and by now he has completed more than 25 years in and out of home sector, the petitioner is entitled to be posted in the home sector in the State of Assam for his remaining service. She further submits that since the petitioner is willing to forgo promotion and seniority, the grievance of the petitioner ought to have been considered objectively in terms of the circular, which regulates the transfer and posting of the CISF personnel.

8. Mr. K.K. Parasar, learned CGC on the other hand, submits that at the relevant point of time when the petitioner was transferred and posted on promotion, he had not completed the 25 years, even then he has been allowed to serve in the home sector at Bongaigaon in the year 2016. The respondent authority has rightly rejected the claim of the petitioner to the effect that he is willing to forgo the promotion subject to the condition that he is retained at Bongaigaon, Assam which is in accordance with the relevant guidelines and the manual which regulates the transfer and posting etc. of the

personnel of CISF. He further submits that there cannot be a willingness to forgo the promotion on condition as the same is not in accordance with the relevant provision of guidelines or the Rules. The petitioner may forgo his promotion but he cannot have put a condition to retain him in the home sector at Bongaigaon. Therefore, he submits that the writ petition is liable to be dismissed.

9. Due consideration has been extended to the submissions of learned counsel for the parties and I have also perused the materials available on record.

10. Admittedly, the petitioner is sought to be transferred on promotion from the rank of Constable (Fire) to Head Constable (Fire). It is also seen that the petitioner is willing to forgo the promotion subject to a condition that he is retain in BGTPP, Bongaigaon, Assam, which is the home sector of the petitioner.

11. The circular dated 25.09.2017 which regulates the transfer and posting of CISF personnel , inter alia, provides that out of home sector and home sector tenure for postings in respect of personnel in the CISF are subject to availability of vacancies, operational and administrative needs and new induction. The details are quoted herein below:-

12. TENURE OF POSTING

The Out of Home Sector(OHS) and Home Sector(HS) tenure for posting in respect of NGOs are subject to availability of vacancies, operational and administrative needs and new inductions. The details are as follows:

OUT OF HOME SECTOR/HOME SECTOR TENURE FOR CONSTABLES, HCs, ASIs, Sis & INSPECTORS OF ALL SECTORS EXCEPT FOR EXCEPTIONS MENTIONED IN THIS CIRCULAR

BASIC TRAINING PERIOD: NEITHER TO BE COUNTED IN HOME SECTOR NOR OUT OF HOME SECTOR

- a) 1 Tenure -07 Years in Units in Out of Home Sector (excluding basic training)
- b) 2nd Tenure -12 Years in Units in Home Sector
- c) 3d Tenure -06 years in Out of Home Sector
- d) 4th Tenure (Remaining Service)- Home Sector

Note:

1. During the Inter Sector Transfer for 3rd tenure the Individuals shall be asked their choice of Out of Home Sector(OHS) from among the existing OHSs by giving their preference for the OHSs in the order of priority and efforts shall be made to accommodate their Out of Home Sector(OHS) choices on merit subject to availability of vacancies.

Explanation

- i) Merit shall be based on the duration of OHS (in months) already served

ii) In case of tie, preference would be given to those having higher age. If there is still tie between two or more personnel, the preference will be given to those who have joined CISF earlier (Date of joining)

2 Home Sector posting will be considered subject to vacancies in Home Sector (Vacancies would be calculated with stipulation availability of that the Sector should not have more than 60% of HS personnel). This shall be applicable for both HS tenures (2nd and 4th tenures)

3 During Inter Sector Transfer if an individual has become eligible for HS Posting from OHS, he/she can also give his preference for maximum of two OHS (other than where he/she is presently posted) where he can be posted in the event he is not posted to his HS on account of his low merit. However, once posted to OHS as per his preference, he will have to complete the full tenure of 02/03 years as applicable, depending upon the location of unit, before he is again considered for HS posting. But such OHS posting shall not be counted against HS posting even though he had given preference for the same, as he could not be accommodated in his HS despite being due for HS posting. This shall be applicable to postings for both the HS tenures (2nd and 4th) tenure.

12. A bare reading of the aforesaid provision of the transfer and posting guidelines goes to show that the personnel in CISF is entitled to be posted in the 4th tenure (remaining service) in the respective home sector. The first tenure being 7 (seven) years in the units in out of home sector and second tenure being 12 (twelve) years in units in home sector and the 3rd tenure being 6 (six) years in out of home sector, the personnel has to complete 25 years for posting in the home sector in the 4th tenure. Admittedly, by now, the petitioner has completed more than 25 years in the service. Thus, this Court is of the view that the petitioner is now entitled to be posted in his home sector.

13. Having considered the circular which regulates the transfer and posting of the personnel in the CISF, I find that the personnel in CISF is entitled to be posted in the home sector in the 4th tenure i.e. remaining service.

14. It is settled position of law that transfer order is not to be interfered unless same is vitiated by malafide or is made in violation of statutory provisions. Guideline does not have statutory force and are not enforceable. However it may be interfered in case of infraction of professed norms or career prospects. Although the petitioner may not have an indefeasible right to claim for transfer and posting in the home sector, in terms of the guidelines, as the same provides that out of home sector and home sector tenure for posting in respect of the personnel, subject to the availability of vacancies, operational and administration needs and new induction, the authorities have followed the circular dated 25.09.2017 in effecting transfer and posting and relied in the impugned order, which appears to be professed norms, this Court is of the view that the grievance of the petitioner requires to be revisited, as

by lapse of time by now, the petitioner has completed 25 years of service.

15. In view of the foregoing discussion, this Court is of the considered view that the grievance of the petitioner needs a relook by the respondent authorities.

16. Accordingly, I deem it appropriate to dispose of the present writ petition directing the petitioner to file a detail representation before the respondent authorities particularly the Director General, CISF, so that the respondent authority may consider the same. Thus, it is directed that the petitioner shall file a representation within 20 (twenty) days from today. Thereafter, the respondent authorities, particularly, the Director General, CISF to consider and dispose of the representation of the petitioner by taking into account the provision of the Circular dated 25.09.2017 within a period of 30 (thirty) days.

17. Till the representation to be filed by the petitioner is disposed of, the petitioner shall be allowed to continue at BGTPP, Bongaigaon Assam.

18. In terms of the above direction and observation, the writ petition stands disposed of. No order as to costs.

JUDGE

Comparing Assistant