

GAHC010093982024



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

Case No. : WP(C)/2482/2024

ASI/MIN 025130404 SWARAJ SINHA
S/O- NANI SINHA,
R/O- VILL- KACHUBARI,
P.O.- TINOKHAL,
P.S.- PATHERKANDI,
DIST- KARIMGANJ, ASSAM- 788724.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF HOME AFFAIRS,
NEW DELHI- 110003.

2:THE DIRECTOR GENERAL
CENTRAL RESERVE POLICE FORCE
CENTRAL GOVERNMENT OFFICE COMPLEX

NEW DELHI-110001.

3:THE DEPUTY INSPECTOR GENERAL
(ESTABLISHMENT)
OFFICE OF THE DIRECTORATE GENERAL

CENTRAL RESERVE POLICE FORCE

CENTRAL GOVERNMENT OFFICE COMPLEX

NEW DELHI-110001.

4:THE INSPECTOR GENERAL OF POLICE
NORTH EASTERN SECTOR

C.R.P.F.
SHILLONG
MEGHALAYA
PIN- 793001.

5:THE DY. INSPECTOR GENERAL OF POLICE (MEDICAL)
COMPOSITE HOSPITAL
C.R.P.F.
SILCHAR
PIN- 788031.

6:THE COMMANDANT
140 BATTALION
AT LOCATION THROUGH RESPONDENT NO. 3

Advocate for the Petitioner : MR. R MAZUMDAR

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18.07.2024

Heard Mr. R. Mazumdar, learned counsel for the petitioner. Also heard Mrs. R. Devi, learned CGC along with Mr. Rakesh Kumar, Assistant Commandant (Legal).

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner, who is presently working as Assistant Sub Inspector (Ministerial), in Composite Hospital, CRPF, Silchar has prayed for a direction upon the respondent authorities to consider retention of the petitioner at the present place of posting for 1 (one) year.

3. The petitioner projects that on 02.03.2024, the competent authority of the respondent had issued Transfer Order - SCT2024, by which the petitioner

has been transferred and posted at 140 Bn. CRPF.

4. The learned counsel for the petitioner has submitted that against the transfer order dated 02.03.2024, the petitioner had submitted a representation on 04.03.2024 to the respondent authorities for reconsidering his transfer and to allow him to be retained in Silchar for a year on the ground that his wife was pregnant, for which she was required to be attended and he is also required to take care of his visually impaired father, who is 87 years of age. It is submitted that by passage of time, the pregnancy is terminated with the birth of a child. However, the wife of the petitioner is suspected to have Deep Vein Thrombosis (DVT for short) and that she is required to be under supervision for next 6 (six) months. It is also projected that the petitioner is in service of the force since 2002 and this is the first occasion in 22 years of service he is praying for his retention in Silchar for a year.

5. The learned counsel for the petitioner has also submitted that as per the standing orders issued by the CRPF, before the prescribed cutoff date, a personnel is given an option to give a choice of 25 (twenty five) places where he would prefer to be posted. It is submitted that the said choice is also given to the respondents by way of a software called "System for Annual Transfer Over Software" (SANTOS for short). It is submitted that the said app is so designed that it provides limited option to the personnel and therefore, it is not an App where a free choice of the CRPF personnel can be posted.

6. Upon instructions, the learned counsel for the petitioner has submitted that the software is so designed that if a CRPF personnel has served in a particular unit, re-posting to the said unit may not be permissible.

7. The challenge to the transfer is opposed by the respondents by filing an affidavit-in-opposition and a stand is taken that the member of the force is transferable throughout the Country for operational and administrative requirement.

8. The learned CGC has also submitted that from the date of appointment of the petitioner, he has served in the home State of Assam for more than 12 (twelve) years, having served at Silchar between 21.05.2012 to 18.05.2015, at Joysagar between 18.05.2015 to 25.06.2015, at Silchar between 25.06.2015 to 20.07.2019, at Guwahati between 20.07.2019 to 18.11.2020; and at Silchar from 18.11.2020 to till date. It is also submitted that the competent respondent authorities had examined the representation of the petitioner dated 04.03.2024 and on due consideration of all the materials, the prayer for retention at Silchar was rejected and it is also projected that as the petitioner has given a second choice of being posted at 140 Bn., the interference with the transfer order is not called for.

9. The learned CGC has also submitted that while in Guwahati, the wife of the petitioner did not avail medical facilities of the government hospital, but she took a private treatment. The learned CGC has also submitted that the place where the petitioner is posted, there is a District Government Hospital, Kulai (Tripura) as well Agartala Government Medical College, Agartala, which is disputed by the learned counsel for the petitioner that the said hospitals are nearly 80 kms. away from the place of posting.

10. With the permission of the Court, the Assistant Commandant (Legal) has submitted that if a chain of transfer is broken, it lead to many administrative issues in the establishment and would affect the general administration.

11. Considered the submissions of both sides and also perused the materials available on record.

12. It is observed from the pleadings made by the petitioner that in the meanwhile, the wife of the petitioner has given birth to a child. Insofar as the wife is concerned, there is no immediate medical emergency. Insofar as the disease of the DVT is concerned, which is not yet a diagnosed condition. The wife of the petitioner is merely suspected of having the DVT disorder. This leaves the Court to deal with the issue regarding the care to be given to his father, who is 87 years of age. In this regard, the Court is of the considered opinion that if the transfer policy of the respondents do not permit the retention of the CRPF personnel at a particular station on the ground to enable the force personnel to take care of the aged parents, the Court would be slow to interfere with the transfer on said ground, which is not covered by the policy of the respondents.

13. Paragraph 6 of case of *S.C. Saxena Vs. Union of India & Ors., (2006) 9 SCC 583*, decided by the Supreme Court of India is quoted below:

“6. We have perused the record with the help of the learned counsel and heard the learned counsel very patiently. We find that no case for our interference whatsoever has been made out. In the first place, a government servant cannot disobey a transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and make a representation as to what may be his personal problems. This tendency of not reporting at the place of posting and indulging in litigation needs to be curbed. Apart there from, if the appellant really had some genuine difficulty in reporting for work at Tezpur, he could have reported for duty at Amritsar where he was so posted. We too decline to believe the story of his remaining sick. Assuming there was some sickness, we are not satisfied that it prevented him from joining duty either at Tezpur or at Amritsar. The medical certificate issued by Dr. Ram Manohar Lohia Hospital proves this point. In the circumstances, we too are of the opinion that the appellant was guilty of

the misconduct of unauthorisedly remaining absent from duty.”

14. We also find force in the submission made by the learned CGC that if one person from the transfer order does not join his place of posting, it would have a tendency to effect the chain, which is not in public interest.

15. Accordingly, insofar as the order of transfer of the petitioner, the Court is not inclined to interfere with the Transfer Order - SCT2024, bearing Order No. 794/2024-ORG-DTE-P3DA7-PER-DG-SNTS, dated 02.03.2024.

16. Nonetheless, notwithstanding that the representation of the petitioner which was submitted on 05.03.2024, without interfering with the order of transfer, the Court is inclined to grant leave to the petitioner to submit a fresh representation to the competent authorities, who would take a call on the said representation without being influenced by this order, preferably within 1 (one) month from the date the certified copy of this order and a fresh representation is submitted before the competent authority.

17. Accordingly, with liberty to the petitioner to submit a fresh representation, the challenge to the transfer order referred above is negated and the writ petition is dismissed.

JUDGE

Comparing Assistant