

GAHC010257282024



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

Case No. : WP(C)/6438/2024

DEBADUTTA BARMAN
S/O- LATE DHIRENDRA KUMAR BARMAN,
RESEARCH OFFICER ,
O/O THE BRAHMAPUTRA BASIN ORGANISATION, MIDDLE
BRAHMAPUTRA DIVISION (MBD), CENTRAL WATER COMMISSION,
ADABARI, GUWAHATI-26

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF JAL SHAKTI,
DEPARTMENT OF WATER RESOURCES, RD AND GR (ESTABLISHMENT XI),
NEW DELHI- 110011.

2:THE UNDER SECRETARY

MINISTRY OF JAL SHAKTI
DEPARTMENT OF WATER RESOURCES
RD AND GR (ESTABLISHMENT XI)
ROOM NO. 725 (N)
SEWA BHAWAN
R.K. PURAM
NEW DELHI- 110066.

3:THE CHIEF ENGINEER

BRAHMAPUTRA BASIN ORGANISATION (BBO)
CWC
ADABARI
GUWAHATI- 26.

4:THE EXECUTIVE ENGINEER

MIDDLE BRAHMAPUTRA DIVISION (MBD)
CENTRAL WATER COMMISSION
ADABARI
GUWAHATI- 26

Advocate for the Petitioner : MR. S BANIK, MR. A R TAHBILDAR

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

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO

ORDER

03.12.2024

Heard Mr. S. Banik, learned counsel for the petitioner and Mr. H. Gupta, learned counsel for the respondents. Having regard to the nature of case projected by the petitioner, the writ petition is taken up for disposal at the motion stage itself.

[2.] This is the second time the petitioner is before this Court. The earlier writ petition being WP(C) No. 5210/2024 was disposed of vide Order dated 03.10.2024. Grievance projected by the petitioner in that case was that he has been transferred to Patna from Guwahati vide order dated 23.09.2024. This Court taking note of the fact that there was a pending representation disposed of the writ petition by allowing the petitioner to file a fresh representation before the authority concerned and the authority was directed to dispose of the representation within a time frame and till such time, the petitioner was directed not be disturbed from his place of posting.

[3.] The petitioner submitted his representation on 08.10.2024, which was considered and disposed of by the authority concerned vide order dated 29.11.2024 by rejecting the representation of the petitioner and directing him to join his place of posting as was ordered earlier. Aggrieved with the same, the petitioner is again before this Court.

[4.] At the outset, Mr. S. Banik, the learned counsel has projected that there has been gross miscalculation on the part of the authority concerned by projecting that he has been staying in Guwahati for a long time. On the other hand, he submits that the petitioner has been posted in Naharlagun in the State of Arunachal Pradesh since 04.10.2004 upto October, 2019 for 15 long years and he has never complaint about his posting. It is only some time in 2020 that he has been brought down to Guwahati and now he has been posted out from Guwahati to Patna by the impugned order. The learned counsel submits that the petitioner's wife is also working in the State Government and she is posted in Raha in the district of Nagaon. Out of wedlock, they have a son of about two (2) years who requires constant care in view of the slow development of the child. Therefore, the child requires constant care giver and if the petitioner is posted out of Guwahati while the wife remains in Assam, proper care cannot be given to the child.

[5.] The learned counsel submits that such consideration can be given in terms of the provisions of the Office Memorandum dated 08.10.2018 issued by the Govt. of

India in the Ministry of Personnel, Public Grievances & Pensions, Department of Personnel and Training. He submits that though such submission was made by the petitioner in his representation but the respondent authority concerned failed to give any consideration on this aspect. The learned counsel further submits that there is still one (1) more vacancy against which the petitioner can be adjusted in Guwahati in view of the fact that one Smt. Synjukta Lyndem, a fellow Research Officer has been accommodated in Shillong against the transfer vacancy post in Bhubaneswar. Also, one Sh. Jakir Hussain, a Research Officer who is supposed to be transferred in Guwahati has been allowed to continue his stay in New Delhi where he has been posted currently upto 31.03.2025, which is against the vacancy of RO & BBO, Guwahati.

[6.] The learned counsel submits that the petitioner has nothing against the two (2) officers concerned but considerations as has been given to them may also be given to the case of the petitioner as his 2 year old son needs a care giver. He therefore submits that the respondent authorities may be directed to re-consider the case of the petitioner in the light of the facts projected in the instant writ petition. In support of his submission, the learned counsel has relied upon the Order passed by a coordinate Bench of this Court on 23.11.2023 in WP(C) No. 6714/2023 (*Padma Kanta Borah –Vs- The State of Assam & Anr*) and also, the decision of the Delhi High Court dated 03.11.2023 passed in WP(C) No. 4163/2023

& CM Appln. No. 16133/2023 (*Central Bank of India –Vs- Smt. Shakuntala Devi & Anr.*)

[7.] Therefore upon considering the submissions made and upon perusal of the materials available on record, this Court is of the view that the respondent authority concerned should reconsider posting of the petitioner to Patna in the light of the provisions provided vide Office Memorandum dated 08.10.2018 as referred to herein above, the medical condition of the child of the petitioner and the fact of there still being a vacant post available in Guwahati to accommodate the petitioner. The respondent authority concerned therefore shall re-consider the transfer and posting of the petitioner within a period of four (4) weeks from the date of receipt of a certified copy of this Order. Till such consideration is done and a decision taken by way of a speaking order, the status quo as on today shall be maintained with regard to the posting of the petitioner in Guwahati. In other words, the transfer and posting of the petitioner in terms of the office orders dated 26.07.2024, 23.09.2024 and 29.2024 is hereby stayed till the re-consideration of the transfer and posting of the petitioner is done and a speaking order passed as directed herein above.

[8.] The writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant