

GAHC010276192023



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

Case No. : WP(C)/7249/2023

5370043 SUNATI DEBNATH AYA
W/O- PRAFULLA KUMAR MISHRA NO. 38 ASSAM RIFLES, PHEK,
(NAGALAND), C/O-99 APO, PIN- 932038 PERMANENT RESIDENT OF C/O
NILIMA DEBNATH, VILL AND P.O. DURJOYNAGAR, P.S. AIRPORT, DIST.-
WEST TRIPURA (TRIPURA), PIN- 799009

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF HOME AFFAIRS, NORTH BLOCK, NEW DELHI, PIN- 110001

2:THE DIRECTOR GENERAL ASSAM RIFLES
MAHANIDESHALAYA (THE DIRECTORATE GENERAL ASSAM RIFLES)
LAITKORE
SHILLONG
MEGHALAYA
PIN- 793011

3:THE LIEUTENANT COLONEL
SO-2 (ADM) RECORD BRANCH (ADM-IV
CIVIL)
ASSAM RIFLES
SHILLONG 793011

4:THE COMMANDANT
38 ASSAM RIFLES
PHEK
NAGALAND
C/O 99 APO
PIN- 93203

Advocate for the Petitioner : MR S DEKA

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

**BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE KARDAK ETE**

ORDER

Date : 24.01.2024

(L.S. Jamir, CJ (Acting))

Heard Mr. S. Deka, learned counsel for the petitioner. Also heard Mr. H. Gupta, learned CGC appearing on behalf of all the respondents.

2. The petitioner was appointed as AYA in the Assam Rifles in the year 1996 and her first posting was at Agartala.

3. The petitioner got married on 14.02.2009 while she was posted in Agartala at 9 DUAR (Dental Unit Assam Rifles). By an order dated 22nd May, 2023 issued by the Directorate General (Assam Rifles), Recorded Branch (Adm-IV,Civil), Shillong, the petitioner was transferred to 38 AR (Phek/Nagaland/Hard). The petitioner thereafter made a representation for spouse posting where the husband was posted at HQ, IGAR, East Silchar. After considering the representation, the respondents by an order dated 4th October, 2023 rejected the request for spouse posting with further advice to apply after completion of normal tenure at present unit, for consideration by the competent authority on merits.

4. Being aggrieved with the order dated 4th October, 2023, the petitioner approached the Central Administrative Tribunal, Guwahati Bench by way of OA No.046/00338/2023 which was disposed of by an order dated 20.11.2023 by making an observation that the petitioner had approached the tribunal

challenging the posting orders on different occasions i.e. at least three times basically on spouse ground. However, she was retained in the earlier posting either by interim order or orders of the respondents.

5. The learned Tribunal further came to the conclusion that as the transfer is an incidence of service and one cannot enjoy same posting on spouse ground beyond the provisions of rules, there was no merit in her application and accordingly, the said OA was dismissed.

6. Being aggrieved with the order dated 20.11.2023 passed by the Central Administrative Tribunal, Guwahati Bench, the petitioner is before this Court by way of the present writ petition.

7. When the matter was taken up, this Court directed the learned CGC to apprise the Court whether the petitioner can be accommodated for spouse posting considering the fact that the petitioner is serving as AYA, which is a Grade-IV post.

8. Today when the matter is taken up, the learned CGC has produced the instruction dated 03.01.2024 and the same reads as under:-

“RECORD BRANCH: ADM-IV (CIV)

WRIT PETITION(C) NO. 7249 OF 2023 FIELD BY NO 6370043 MRS SUNATI DEBNATH, AYA VS UOI & 03 OTHERS BEFORE THE HON'BLE GAUHATI HIGH COURT, GUWAHATI

Pl ref two:-

(a) Your ION No.11018/2491/Law-2023/496 dt 26 Dec 2023

(b) Pen/NE (Legal Cell) ION No S Debnath/Rec-Legal/1610/2024/468 dt 20 Dec 2024.

2. As per para 27 of ROI 01/2016, premature posting may be considered after mandatory 18 months of tenure in org interest, whereas, the petitioner

has completed only six months tenure at new place of posting as on dt. Further, the petitioner has already been given assurance to apply spouse posting after completion of tenure at present unit.

3. As per para 15 of ROI 01/2016, tenure of regular posting is of maximum three years, whereas 366663 Rin/DR PK Mishra, husband of the petitioner is already posted with HQ IGAR(E) w.e.f. 13 May 2022 and likely to be completed his normal tenure by May 2025. Therefore, consideration of spouse posting in the mid of the tenure and also the vac of Aya at HQ IGAR(E) is not avlb at present, hence not feasible due to administrative constraints.

4. However, it is suggested that, spouse posting of the petitioner may be considered prematurely on completion of normal tenure of her husband at HQ IGAR(E) to such loo where both posts i.e. (Dark Runner and Aya cat) are available so that they can available spouse posting concurrently.

(DK Rathore)

Lt Col

So-2(Adm)''

9. While taking up this matter, we are informed that the petitioner had already availed two postings on compassionate ground and three spouse posting. As per paragraph-46 of the ROI 01/16 an individual can avail compassionate ground posting only once in his/her entire service career including the Last Leg posting (LLP), whereas, requests for two compassionate ground posting may be considered in case of persons who has completed 30 years of service and availed the previous compassionate ground posting seven years prior to the present request. Accordingly, request for 4th spouse posting at Headquarter HQ IGAR(E) is not feasible due to policy as well as administrative constraints.

10. Learned counsel for the petitioner at this stage submits that the petitioner is suffering from Spondylitis and thereafter as per the advice of the Medical Officer, District Hospital, Dimapur, Nagaland, the petitioner is required to stay in hot and warm place and therefore, a direction may be issued to the respondents

to consider the same. We are unable to grant the prayer made by the learned counsel for the petitioner and as the petitioner had already availed two compassionate ground posting and three spouse posting, we see no reason to interfere with the order dated 20.11.2023 passed by the learned Central Administrative Tribunal, Guwahati Bench.

11. Accordingly, the writ petition stands dismissed. However, liberty is given to the petitioner to file appropriate application on medical ground before the competent authority, if so advised.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant