



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA. No. 59 of 2025

Date of Decision: 09.10.2025

Shri. Sunil Kumar Savita,
Son of Shri. Nandu Lal Sharma,
R/o 67 BN, Polo Ground
Shillong, East Khasi Hills,
Meghalaya.

.....Appellant

Vs.

1. Union of India,
Through the Secretary,
Ministry of Home Affairs,
North-Block, Government of India,
New Delhi- 110001.
2. Director General,
Central Reserve Police Force (CRPF),
Director General, Block-1, CRPF
CGO Complex, Lodhi Road,
New Delhi-11000.
3. Inspector General, CRPF
North East Sector, Shillong,
Meghalaya.

.....Respondents

Coram:

Hon'ble Mr. Justice W. Diengdoh, Judge

Hon'ble Mr. Justice B. Bhattacharjee, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. K. Paul, Sr. Adv. with



Mr. S. Thapa, Adv.
 Mr. B. Snaitang, Adv.
 Mr. S. Khyriem, Adv.
 For the Respondent(s) : Dr. N. Mozika, DSGI with
 Ms. R. Fancon, Adv.

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

Per W. Diengdoh, J:

1. The appellant was posted as the Commandant, 67 BN CRPF, East Khasi Hills, Shillong since 31.01.2024. In course of his tenure, he was served with an order being No. 70/2025-PERS-1/P1DA1-PER-DG dated 28.08.2025, by which he was transferred to serve at the Recruits Training Centre, Jodhpur, Rajasthan.

2. Being aggrieved thereof, the appellant has approached this Court with a writ petition being W.P.(C) No. 379 of 2025 detailing therein the reasons why the said order of transfer is not tenable in law and the prayer made is that a writ of certiorari or any other appropriate writ be issued to quash the said transfer order and further for a mandamus to be issued requiring the authority concerned to retain him till completion of his tenure.

3. This Court in a Single Bench, after hearing the parties, has, vide



Judgment and Order dated 09.09.2025 dismissed the said writ petition on the ground that no case for interference with the impugned transfer order has been made out. Hence this appeal.

4. Heard Mr. K. Paul, learned Sr. counsel along with Mr. S. Thapa, learned counsel for the appellant, who has submitted that the appellant has yet to complete his regular tenure in the post, but before such period, he was transferred out, apparently on the ground of administrative exigency, but in the same breath, the respondent authority has placed on record that the reason for the said transfer was on account of an inter-personal conflict the appellant had with the 2nd In Command (2IC) for which a preliminary enquiry was initiated.

5. It is the further submission of the learned Sr. counsel that the reasons cited for affecting the said transfer do not qualify as administrative reasons, as the cause for such transfer was the alleged inter-personal conflict between the appellant and the 2IC, the same can only be termed as punitive and stigmatic in nature, without affording any opportunity to the appellant to be heard in the matter. It is therefore an imposition of punishment without due process being followed, submits the learned Sr. counsel.

6. The learned Sr. counsel has also submitted that another aspect of the matter lost sight of by the learned Single Judge in the impugned order is that the transfer, though not a harsh posting, nevertheless, the fact that the



appellant is occupying the post of a Commanding Officer/Head of a Unit, is now posted to serve under a superior Officer/DIG of a Recruits Training Centre which amounts to reversion and change of service conditions.

7. To further elaborate on his contention, the learned Sr. counsel has led this Court to the provisions of the Central Civil Services (Conduct) Rules, 1964 to say that at Rule 3 under the heading ‘GENERAL’, it is directed that every Government Servant shall do nothing which is unbecoming of a Government Servant (clause iii) and that he shall maintain discipline in the discharge of his duties and be liable to implement the lawful orders duly communicated to him (clause xix) Violation of any of these rule will render the employee to be subjected to disciplinary proceedings as laid down under ‘The Central Civil Services (Classification, Control and Appeal) Rules, 1965’, Rule 11 of which provides for imposition of penalties, both minor and major.

8. Citing the law in this respect, the case of **Somesh Tiwari v. Union of India & Ors, (2009) 2 SCC 592, para 16** was referred to by the learned Sr. counsel, the same which reads as follows:

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds – one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant



ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.”

9. On the contention that the said impugned order of transfer was issued, reflecting the duplicity of the respondent authority, wherein it was said that the same was done due to administrative reasons, but was later qualified as one being the outcome of an inter-personal conflict between the appellant and the 2IC resulting in a preliminary enquiry, the principle of approbate and reprobate would then be applied, submits the learned Sr. counsel for which reliance has been placed in the case of **Nagubai Ammal & Ors v. B. Shama Rao & Ors, 1956(1) SCC 698, para 9.12 to 9.15, para 9.15** of which reads as follows:

“9.15. The observations of Scrutton. L.J. on which the appellants rely are as follows: (Verschures Creameries Ltd. v. Hull & Netherlands Steamship Co. Ltd., (1921) 2 KB 608 (CA), KB pp. 611-12)

“...A plaintiff is not permitted to "approbate and reprobate". The phrase is apparently borrowed from the Scotch law, where it is used to express the principle embodied in our doctrine of election – namely, that no party can accept and reject the same instrument: Ker v. Wauchope, (1819) 1 Bli PC 1 at p. 21 : 4 ER 1, Douglas-Menzies v. Umphelby, 1908 AC 224 at p. 232 (PC). The doctrine of election is not however confined to instruments. A person cannot say at one time that a transaction is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round



and say it is void for the purpose of securing some other advantage. That is to approbate and reprobate the transaction.”

It is clear from the above observations that the maxim that a person cannot “approbate and reprobate” is only one application of the doctrine of election, and that its operation must be confined to reliefs claimed in respect of the same transaction and to the persons who are parties thereto. The law is thus stated in Halsbury’s Laws of England, Vol. XIII, p. 454, Para 512:

“On the principle that a person may not approbate and reprobate, a species of estoppel has arisen which seems to be intermediate between estoppel by record and estoppel in pais, and may conveniently be referred to here. Thus a party cannot, after taking advantage under an order (e.g. payment of costs), be heard to say that it is invalid and ask to set it aside, or to set up to the prejudice of persons who have relied upon it a case inconsistent with that upon which it was founded, nor will he be allowed to go behind an order made in ignorance of the true facts to the prejudice of third parties who have acted on it.”

The plaintiff obtained no advantage against the appellants by pleading in OS No. 92 of 1938-39 that the proceedings in OS No. 100 of 1919-20 were collusive; nor did they acting on those pleadings acquire rights to the suit properties. Nor is there any question of election, because the only relief which the plaintiff claimed in OS No. 92 of 1938-39 and which he now claims is that he is entitled to the suit properties. Only, the ground on which that relief is claimed is different and, it is true, inconsistent. But the principle of election does not forbid it, and there being no question of estoppel, the plea that the proceedings in OS No. 100 of 1919-20 are not collusive is open to the plaintiff.”

10. The learned Sr. counsel has again submitted that under such circumstances, the impugned order of transfer does not qualify as one issued for administrative reasons, the case of **Dr. A. Jayachitra v. Principal Secretary, Sports Development Authority of Tamil Nadu, 2020 SCC OnLine Mad 5635, para 33** was also cited in support of this contention,



wherein the Madras High Court has held as follows:

“33. In the absence of any administrative requirement or exigencies, any transfer order issued in such situation and terming the same as being issued on the ruse of administrative requirement, may have to ultimately pass the test of judicial review. Merely because the transfer order is couched in such hackneyed, oft repeated and routine administrative terminology, unless the reason set forth in the transfer order when questioned, is established factually to the satisfaction of this Court, a ritualistic and cliched expression “administrative reasons” in the transfer order, cannot be taken at its face value and the relief refused to the affected individuals. In this case, though the petitioner failed in other fronts of attack, ultimately, this Court finds that the transfer of the petitioner is not based on administrative requirement, but, for an extraneous reason and therefore, the transfer order is liable to be set aside only on that ground. As stated above, this Court perused the relevant files and did not discover a modicum of material supporting the respondent's plea of administrative requirement for transferring the petitioner to Tiruvannamalai. It is well within the power of the Court to pierce the veil of the fig leaf behind the transfer order and to hold that the impugned action of the respondent authority stemmed from a colourful exercise of power on his part and hence, liable to be interfered solely on the well established legal premise namely the transfer is hit by malice in law”.

11. Per contra, Dr. N. Mozika, learned DSGI assisted by Ms. R. Fancon, learned counsel appearing for the respondent/Union of India, while refuting the contention made by the appellant and in support of the impugned judgment, has reiterated that the impugned transfer order was issued on account of administrative exigencies and in public interest, more particularly to maintain discipline and harmony in the 67 BN CRPF.

12. Admittedly, there is evidence of an inter-personal conflict between



the appellant as Commandant of the Battalion and the 2IC, Shri Sanjeev Kumar for which, inspite of counselling by the DIG(Ops/Intelligence & Training), Northeastern Sector, Guwahati & IG, Northeastern Sector, there is no improvement in the situation, as such, on the recommendation of the IG, Northeastern Sector, both the Officers involved are transferred out, submits the learned DSGI.

13. Another counter advanced by the learned DSGI is that the contention of the appellant that the said transfer is punitive in nature and harsh, carrying with it a stigma on his career record, is unfounded, inasmuch as, a transfer order is not punitive in nature, but one which is an incident of service and transfers being carried out in a routine manner, there is no semblance of penalty attached to it as the reason stated for the said transfer is on account of administrative reasons. Even the case of Somesh Tiwari (supra) relied upon by the appellant is not applicable to his case as at para 17 of the same, the Court has further clarified that as far as the case of the appellant therein is concerned, there was an anonymous letter of allegations against which was proved untrue and secondly, he was posted to a harsh station, which is not the case with the appellant herein, submits the learned DSGI.

14. The learned DSGI has reiterated that transfer is an incident of service, and it does not create any right upon the incumbent to seek a particular



posting at any point of time, further, according to the Transfer Policy vide Standing Order-05/2022, at para 5 under the heading ‘Tenure of Posting’, it has been clearly provided that “...*any officer may be posted to any Unit or office at any point of time...*”.

15. The law in this regard is very specific, wherein the Supreme Court has in a series of judgments held that the scope of judicial review in transfer matters is very limited, submits the learned DSGI. The case of **Pubi Lombi v. State of Arunachal Pradesh & Ors, (2024) 12 SCC 292, para 15** as well as the case of **Major General J.K. Bansal v. Union of India & Ors, (2005) 7 SCC 227, para 12** and the case of **State of U.P & Anr v. Siya Ram & Anr, (2004) 7 SCC 405, para 5** has been cited to support this contention.

16. We have perused the impugned judgment and order dated 09.09.2025, and have also taken into consideration the contention raised by the rival parties herein in support of their respective cause. Facts as indicated above, involved the order of transfer dated 28.08.2025 passed by the competent Authority, whereby the appellant, posted as the Commandant 67 BN CRPF, Shillong, has now been posted to RTC, Jodhpur, Rajasthan. The same was resisted by way of filing of a writ petition before this Court, the prayer made therein was then rejected by the learned Single Judge vide the impugned judgment and order.



17. The appellant now coming before this Division Bench on an intra-court appeal, has assailed the said impugned judgment and order, on the ground that the same was passed inter alia, without considering the fact that the impugned order of transfer was issued while the appellant was yet to complete his tenure of three years in the post, ostensibly in the garb of administrative reasons, but which, in all probability smacks of punitive action taken against the appellant, apparently in the face of an alleged preliminary enquiry conducted on complaint of an inter-personal conflict between the appellant and his second in command.

18. The appellant has also stressed that even, if the reason for such transfer was due to the fact that the preliminary enquiry is going on, yet such proceedings not made known to him, he is prejudiced, inasmuch as, he could not put up his defence against any imputation of misconduct or the like against him, thus rendering the said impugned transfer order punitive in nature and is therefore illegal.

19. We are made to understand that the said transfer order was attacked on the ground that it was borne by malafide, arbitrariness and punitive in nature. It is therefore necessary for this Court to carefully look into the circumstances surrounding the same.

20. The contention of the appellant that the impugned order of transfer



was bad in law, the same being issued without waiting for the appellant to complete his present tenure, is negated by the fact that in the transfer guidelines as per Standing Order-05/2022 (supra), it has been clearly stated that, though, the normal tenure of officers under the policy will be 03 years, the same is subjected to the provision found at para 5(b), wherein it has been stipulated, inter alia, that in view of administrative requirements, *any officer may be posted to any Unit or office at any point of time(emphasis laid)*.

21. As has been reiterated, it is well settled that transfer of an employee in any Government establishment, including the Armed or Para-Military Forces, is an incident of service, as such, no vested right is inherent upon the employee seeking to resist such an action, if directed. To clarify this proposition the Hon'ble Supreme Court in the case of **State of U.P. and others v. Gobardhan Lal, (2004) 11 SCC 402 at para 7** has observed as follows:

“7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned



to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision.”

22. In the case of Somesh Tiwari (supra) at para 16 relied upon by the appellant, the Hon’ble Supreme Court has emphasized on the exception to an order of transfer in contradistinction to the requirement of administrative exigency, it being the presence of malafide found in such order which will give a handle to the courts to interfere with such order. However, the facts of the case are not applicable to the case of the appellant herein, since his transfer was apparently issued on grounds of administrative reasons, but in course of proceedings before this Court, was qualified to be because of the said inter-personal conflict he had with his 2IC, resulting in the said preliminary enquiry initiated.

23. On appreciation of the case of the appellant, prima facie, what is evident is that firstly, his transfer affected before the completion of his tenure is not beyond the provision of the relevant rules, 5(b) of the guidelines in the tenure of posting being the said rule, secondly, there are no specific instructions or order that his rank and pay etc. be reduced by such transfer and thirdly, his



posting to Jodhpur, Rajasthan cannot be said to be harsh posting, no malafide in such action is therefore seen.

24. The fact that he was transferred on account of administrative reasons, apparently for the authorities to conduct the preliminary enquiry is also based on sound logic, since a fair enquiry may not be possible to be conducted in his presence, more so, as he is the head of the Unit or Battalion. It may not be out of place to say that even the 2IC was also transferred out, though the appellant would maintain that the same was effectuated due to the expiry of his tenure, but no such indication is found present in the order of transfer.

25. It is the opinion of this Court that no formal disciplinary proceedings have been initiated against the appellant, the provisions of the CCS (Conduct) Rules, 1964 and the CCS (CCA) Rules 1965 cited by the appellant, would not come into play at this point of time as far as his case is concerned. The appellant has also not been able to produce authorities which say that Government employee or Officer cannot be transfer out in the midst of a preliminary enquiry involving him.

26. We have also tested and weighed the authorities relied upon by the appellant, and found that they are not relevant to the context herein, while the authorities cited by the respondent/Union of India, though, not discussed in details, the proposition found therein have been dealt with by this Court herein.



27. In view of the above observations, we are unable to agree with the argument advanced on behalf of the appellant, and we find that the learned Single Judge has rightly passed the order under the circumstances. The same deserves no interference by this Court.

28. In the event, this appeal is found to be devoid of merits, the same is hereby dismissed as such.

29. Appeal disposed of. No costs.

(B. Bhattacharjee)
Judge

(W. Diengdoh)
Judge