

**THE HIGH COURT OF TRIPURA
AGARTALA**

W. P.(C) No.400 of 2015

Sri Om Dutt Sharma,
Deputy Commandant,
Head Quarter 21 Sector Assam Rifles,
Kunjaban, P.S. New Capital Complex, Agartala,
Pin-799 006

.....**Petitioner**

- Vs -

1. The Union of India,
represented by the Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block, New Delhi - 110 017
2. Director General,
Assam Rifles, (D.G. Sectt),
HQ DGAR,
Laitkor, Shillong - 793 010
3. Colonel M.S.,
Military Secretariat,
HQ DGAR,
Laitkor, Shillong-793 010
4. Commander HQ 21 Sector,
Assam Rifles, Kunjaban,
PS-New Capital Complex,
Pin-799 006
5. Commandant Assam Rifles,
Filed Intelligence Unit (ARFIU),
Laitumkhrah, Shillong,
Meghalaya-793 010

.....**Respondents**

B E F O R E

THE HON'BLE MR. JUSTICE S. TALAPATRA

For the petitioner	: Mr. P. K. Ghosh, Advocate
For the respondents	: Mr. A. Roy Barman, CGC
Date of hearing and delivery of Judgment and order	: 29.09.2015
Whether fit for reporting	: NO

Judgment and Order (Oral)

Heard Mr. P. K. Ghosh, learned counsel appearing for the petitioner as well as Mr. A. Roy Barman, learned CGC appearing for the respondents.

02. This writ petition is encompassed by a short issue. The petitioner has been serving as the Deputy Commandant of Assam Rifles in the Field Intelligence Unit. According to the petitioner, by virtue of the order dated 30.07.2010, the usual tenure in the Field Intelligence Unit would be five years. However, the petitioner has also asserted that by a letter dated 26.11.2014 certain amendments have been carried out in the said policy and now the tenure has been reduced from five years to three years. The petitioner has been posted in the Field Intelligence Unit on 29.03.2013 and as such according to the petitioner in view of the posting policy he is entitled to be in the Field Intelligence Unit at least till March 2016.

03. The petitioner has asserted that his action to stop irregularities in the purchases has invited ire from various quarters. In this regard, he has referred to a communication dated 13.04.2014, Annexure-8 to the writ petition, addressed to the Maj. Gen. Pankaj Sachdeva, the officiating Director General of Assam Rifles. The said communication is however marked confidential. The petitioner has stated that for such action particularly for not preparing the false absent report, he has been subjected to harassment in various forms. The petitioner though had not directly hinted at that, the impugned posting order dated 03.08.2015,

Annexure-9 to the writ petition, is suspected to be the product of malice. However, he has referred to the situation and to his apprehension that the impugned posting order has been issued before completion of the usual tenure.

04. Mr. P. K. Ghosh, learned counsel appearing for the petitioner has submitted that if his posting order is given effect to, the studies of his children who are now studying at Class-IX and Class-XII would be seriously jeopardised. The petitioner has also urged on the basis of the posting policy that he shall be permitted to continue in the present place of posting till his elder son, who is now studying at Class-XII, appeared in the final examination. The petitioner has submitted representations for his retention on 05.08.2015 and 06.08.2015. He has also enclosed the certificate from the Principal of the Assam Rifles Public School showing that the final examination of the petitioner's elder son would commence in the month of March 2016, whereas it has been shown by the study certificate that the younger son of the petitioner namely Jai Sharma is studying in the Kendriya Vidyalaya ONGC, Agartala. No doubt, the posting order may affect the studies of two children of the petitioner.

05. At this juncture, Mr. A. Roy Barman, learned CGC has fairly submitted that since no *mala fide* has been pleaded against anyone nor breach of statutory rules has been alleged, and as the policy has not conferred any enforceable right in favour of the petitioner, this writ petition may be disposed of by giving appropriate direction to the competent authority, the Director

General of Assam Rifles, to consider the representation of the petitioner and on due consideration to pass the appropriate order.

06. While appreciating the fairness of Mr. Roy Barman, learned CGC, this Court has come across one communication dated 17.09.2015 whereby the petitioner has been asked to move out for the new place of posting i.e. 11, Assam Rifles on 30.09.2015. The said communication has been issued by the Director General, Assam Rifles (MS). On scrutiny of that communication, it appears that there is no reference whether those representations were considered by the competent authority or not. Having regard to that, the Director General, Assam Rifles (MS) is directed to consider the representations of the petitioner seeking retention in the Field Intelligence Unit till he completed his ordinary tenure, having particular regard to the studies of the children of the petitioner. It is expected that the said exercise be taken expeditiously by the Director General, Assam Rifles, (MS). Till such consideration is made by the Director General, Assam Rifles (MS), the posting order dated 03.08.2015 and the releasing order dated 19.09.2015, respectively Annexures-9 and 11 to the writ petition, shall not be given any further effect.

With this observation and direction, this writ petition is allowed to the limited extent as indicated above. There shall be no order as to costs.

Since the order has been passed in presence of Mr. A. Roy Barman, learned CGC, this Court requests Mr. Roy Barman,

learned CGC to communicate the crux of this order to the competent authority in the course of the day.

JUDGE

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