IN THE HIGH COURT OF MANIPUR : AT IMPHAL

WP(C)No. 494 of 2020

JC-356629W Rajib Kumar Sarkar ***… Petitioner***

-Versus-

The Union of India & 3 ors. ***... Respondents***

B E F O R E
HON'BLE MR. JUSTICE KH. NOBIN SINGH

10.09.2020

Heard Ms.Ayangleima, learned Advocate appearing for the petitioner and Mr. S. Suresh, learned ASG for the respondents.

[1] The validity and correctness of the notice dated 04.06.2020 issued in respect of the Court of Inquiry to be composed/ initiated by the Respondent No.3 against the petitioner's husband is under challenge in this writ petition. Two more prayers have been made in the writ petition-one, for issuing a direction to the respondents No.3 to release the petitioner's husband in terms of the transfer order dated 27.11.2019 issued by the Directorate General of Assam Rifles, Shillong transferring the petitioner's husband from the present place of posting to Agartala and two, for issuing a direction to the respondents to hand over the case of the petitioner's husband to an Independent Agency like CBI or any other authority under the Ministry of Home Affairs, Govt. of India other than the Assam Rifles for investigation.

[2.1] According to the petitioner, her husband is presently serving as a Subedar (Cipher) and is posted at 18 Assam Rifles at

Chandel District, Manipur. While the petitioner's husband was being posted at 38 Assam Rifles at Teliamura, Tripura some time ago, he was assigned the duty of looking after the sale of CSD items, ration items etc. from the official Canteen for about 1(one) month and while he was discharging his duties, he found some illegalities in selling the CSD items, ration items and Liquor. Under the command of the then Commandant, 38 Assam Rifles, Shri G.V. Raghavan, the concerned staff illegally sold the CSD items and ration to the civilian, because of which the petitioner's husband made a complaint to the Chief of the Army, Government of India. The said complaint of the petitioner's husband was duly registered at the Grievance Cell and the Staff Court of Inquiry was composed for investigation into the circumstances and after the enquiry being completed, a convening order dated 18.06.2018 was issued. Surprisingly, after about a year from the date of the said convening order being issued, the office of the Director General of Assam Rifles issued a letter dated 27.11.2019 enclosing therewith a copy of the Court of Inquiry, which was held at 34 Assam Rifles, along with certain documents including the tentative charge-sheet issued against the petitioner's husband. Being aggrieved by the said tentative charge-sheet dated 27.11.2019, the petitioner's husband approached this High Court challenging it by way of a writ petition being WP(C) No.27 of 2020 wherein this Court passed an interim order dated 28.01.2020 suspending the disciplinary proceeding initiated against him till the disposal of the writ petition. The respondent No.3 verbally asked the petitioner's husband to withdraw the case but when he refused to do so, the respondent No.3 started harassing him.

[2.2] On the same day i.e. 27.11.2019, the Directorate of Assaim Rifles, Shillong issued an order of transfer wherein the petitioner's husband was shown to have been transferred to Loc Agartala but the petitioner's husband was/ has not been released for joining his duty at Agartala. On 19.02.2020, the petitioner's husband submitted an application for grant of leave of 45 days but the said leave was also not granted by the respondents.

[2.3] On 27.04.2020, the petitioner's husband went to the Unit Hospital for regular Annual Medical Examination (AME) and the Unit Doctor, the respondent No.4 herein told the petitioner's husband that his heart was blocked and as such, the petitioner's husband was required to get himself admitted at the Unit Hospital immediately. To learn it, the petitioner's husband was shocked as he was not having any illness. The petitioner's husband suspected the medical reports of the blood sample which was taken on 23.04.2020 and ECG being carried out at the Unit Hospital for the reason that the reports of the tests were not furnished to him and moreover, there was no Pathologist, Microbiologist etc. in the Unit Hospital. As the petitioner's husband refused to get himself admitted in the Unit Hospital, the Doctor of the Unit Hospital, the respondent No.4 asked him to submit a self-declaration letter to the effect that in the event of any complicacy arose/ occurred in future, the petitioner's husband himself would be solely responsible for it. Having no alternative, the petitioner's husband submitted the self-declaration on 27.04.2020 itself. On the next day i.e. 28.04.2020 after the said self-declaration having been submitted by the petitioner's husband, a show cause notice was issued him to explain as to why he had refused to admit in the Unit Hospital and the reply was to be submitted within 24

hours from the date of receipt of the said show-cause notice. Before the petitioner's husband could submit his reply, another show-cause notice date 29.04.2020 was issued directing him to explain the reason why he did not reply within the time mentioned therein. On his failure to get himself admitted and to give reply to the show cause notice, a letter dated 02.05.2020 was issued to the petitioner's husband directing him to hand over all the classified cipher documents of crypto centre to the next immediate junior and also to forward the completion report to the Commandant by the same day ie., 02-05-2020 without any delay otherwise necessary disciplinary action would be initiated against him. It was impossible for the petitioner's husband to do that in few hours and according to him, it was done deliberately by the concerned official with ill motive.

[2.4] On 08.05.2020, the petitioner's husband was referred to Assam Rifles Multi-speciality Hospital, Mantripukhri for evaluation and after a thorough examination, the Multi-speciality Hospital found no health issue but based on the report of the Unit Hospital, the petitioner's husband was advised to report to the Unit Hospital for monitoring his BP every six hour for 15(fifteen) days with the further advice that he be escorted/ guarded by two guards, as if he were a psychiatric patient and accordingly, the petitioner's husband was admitted to the Unit Hospital from 10.05.2020 to 25.05.2020.

[2.5] On 04.06.2020, a notice was issued to him for composing a Court of Inquiry on the ground that the petitioner's husband misbehaved and used threatening language with the unit RMO, Captain Ankita Dhiman, the respondent No.4 herein while he was in the Unit Hospital. By the said notice, the petitioner's husband was

directed to report to the Presiding Officer at KLP Modi on or before 05.06.2020 and that he was informed that an opportunity of being heard was also being given to him. A warning dated 08-06-2020 was issued to the petitioner's husband stating that since he had failed to obey the command, he should report to the Presiding Officer by 09-06-2020 failing which a disciplinary action would be initiated against him. On 09.06.2020, although the petitioner's husband was in his good health, he was referred to the Assam Rifles Multi-speciality Hospital, Maniptripukhri by the respondent No.4 and accordingly, his health condition was reviewed there and it was certified by it that the petitioner's husband did not have any health issue making it clear that the medical report dated 27-04-2020 was false and unreliable.

[2.6] It is learnt by the petitioner's husband from a reliable source that the HQ DGAR (Rec. Branch) had issued message to the concerned officials whereby directing them to release all due out sigs and although other officials had been allowed to move from one place to another through the official convoy, the petitioner's husband was and is yet not released till date.

[3] Being aggrieved by the said notice for the composition of a Court of Inquiry against the petitioner's husband, the instant writ petition has been filed by the petitioner questioning it on the inter-alia grounds that all the aforesaid actions were taken by the respondent authorities in order to harass the petitioner's husband for the reason that the said writ petition being WP(C) No. 27 of 2020 was filed by him and that the behaviour of the superior officers harassing their juniors in the work place is against the rule of law and unconstitutional.

[4] The averments made in the writ petition, if found to be true and correct, can be said to be serious ones but this Court is not inclined to entertain the writ petition for the reason that it was filed after three months from the date of the notice of Court of Inquiry dated 04.06.2020 being issued directing the petitioner's husband to report to the Presiding Officer at KLP Modi on or before 05.06.2020. Failure on the part of the petitioner's husband to report to the Presiding Officer, a warning dated 08-06-2020 was issued directing him to report by 09-06-2020, failing which a disciplinary action would be initiated against him. No material has been place on record by the petitioner to show as to what happened, thereafter, pursuant to the said notice dated 04-06-2020. In the absence of any material to know what happened during the last three months, it may not be appropriate for this Court to entertain the writ petition and pass any order which might affect or have a bearing on the actions, if already taken, by the respondents pursuant to the said notice dated 04-06-2020. But it may be noted that the respondents being the institutional authorities, ought to act fairly and reasonably. Any action taken by the respondents which is found to be unreasonable, arbitrary etc. will be rendered violative of Article 14 of the Constitution of India. In view of the above, this Court is of the view that the end of justice will be met, if the petitioner's husband is granted an opportunity to submit a representation on the issue.

[5] The instant writ petition stands, accordingly, disposed of with the direction that the petitioner's husband may submit a detailed representation to the Director General of Assam Rifles, Shillong, the respondent No.2 herein within a period of two weeks from today either through e-mail/ WhatsApp or by hand or by speed post and in

the event of such a representation being submitted by the petitioner's husband, the Director General of Assam Rifles, Shillong shall consider it and dispose of within a month from the date of receipt of the representation by issuing a reasoned and speaking order. As the petitioner's husband is not permitted to move out of the camp as alleged in the writ petition, he shall be granted permission by the respondent No.3 to meet his advocate or his advocate may be permitted to meet him in the camp so that the petitioner's husband may be able to submit his representation, if so advised, in time. If the petitioner's husband is aggrieved by such an order to be issued by the respondent No.2 as regards the representation, it is open to him to approach any appropriate forum for redressal of his grievances. Any penal or coercive action, if not already taken, shall not be taken against the petitioner's husband till the disposal of his representation. It is made clear that this order shall not preclude the respondents and in particular, the respondent No.3 from releasing the petitioner's husband to join his duties at the new place of posting at Agartala in terms of the transfer order dated 27-11-2010.

Copies of this order shall be sent to the learned counsels appearing for the parties through their WhatsApp/e-mail.

JUDGE

Dhakesheri

Yumkham Rother

Digitally signed by Yumkham Rother
Date: 2020.09.14 13:56:52 +05'30'