

28.02.2023
DL-3
(PP)

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE

WPA 3638 of 2023

Sri Shashikant Thakur
Vs.
Union of India & Ors.

Mr. Kazi Safiullah

....for the petitioner.

Mr. Sauvik Nandy,
Mr. Kalidas Saha

....for Union of India.

Pursuant to an order dated December 20, 2022, passed in a previous writ petition, being WPA 27679 of 2022, the petitioner was given a hearing on January 18, 2023 by the Lieutenant General, Director General, Assam Rifles. By the said order dated December 20, 2022, this Court directed the respondent no.3/Director General, Assam Rifles to consider the representation dated September 5, 2022 made by the petitioner in terms of the policies regarding posting as stipulated in clause 5 (b) and clause 8 thereof.

After consideration of the representation dated September 5, 2022 and the submissions made by the petitioner, the competent authority held that the petitioner has been posted at the Assam Rifles Cadre Officers Transit Camp at Kolkata since March 17, 2021. The Kolkata location is the most sought after

posting by Assam Rifles cadre officers specially on compassionate ground for treatment of family and children as better medical facilities are available in Kolkata compared to various locations in North Eastern region where most of the units of Assam Rifles are deployed. It was found that out of a total service period of 17 years, the petitioner has only served 5 years and 7 months in the battalion and more than 11 years in staff appointment. Such a service profile of the petitioner was held to be disproportionate. After considering the entirety of the postings made to the petitioner, it has been found that the petitioner has served in Class 'A'/'B' location for more than 67% of his service tenure and in Class 'C'/'D' location for the rest. Class 'A' and 'B' are considered to be very good locations and moderate locations. Class 'C' and 'D' are categorised to be hard locations and very hard locations respectively.

The person who was directed to be transferred in place and stead of the petitioner has prayed for compassionate posting in Kolkata for the treatment of his wife and only one post is available in Kolkata in the said cadre. Therefore, the impugned transfer orders dated November 29, 2022 and January 31, 2023 were passed.

The petitioner's representation dated September 5, 2022 was rejected on merit being devoid of substance.

By a communication dated February 1, 2023, the petitioner himself acknowledged the fact that he received the reasoned order dated January 18, 2023 on January 27, 2023 from his learned advocate. The learned advocate of the petitioner by a communication dated February 6, 2023 by the DG, Assam Rifles was informed that a reasoned order was passed on January 18, 2023 and a fresh order of the posting dated January 31, 2023 was made. Since the previous order of posting dated November 2022 was kept in abeyance, till such time the reasoned order was communicated to the petitioner the same was revived by a fresh order on January 31, 2023.

Mr. Kazi Safiullah, learned counsel appears on behalf of the petitioner and submits that no reasoned order has been passed pursuant to the order dated December 20, 2022 passed by this Court. Since this Court directed the representation dated September 5, 2022 made by the petitioner to be considered in the light of the policies regarding posting as stipulated in clause 5(b) and clause 8 to be considered, the reasoned order dated January 18, 2023 cannot be held to be a reasoned order at all since only those 2

Clauses should have been considered and not the entirety of applicable policies.

Mr. Nandy, learned counsel appears on behalf of the respondents/Union of India and submits that not only the reasoned order has been passed on January 18, 2023, the same was duly communicated to the petitioner and his learned advocate and the said fact has been acknowledged by the petitioner. Instructions handed over in Court today by Mr. Nandy is retained with the records.

Considering the rival submissions of the parties and the materials placed on record, this Court finds that the reasoned order dated January 18, 2023 has been communicated to the petitioner. Such a fact was not brought to the notice of this Court when this matter was mentioned repeatedly for early consideration. In fact, it has been submitted before this Court that no reasoned order has been passed in accordance with the order dated December 20, 2022. Furthermore, it has not been brought to the notice of this Court that the said reasoned order along with the subsequent order of posting was also communicated to the learned advocate appearing on behalf of the petitioner. Such suppression of the material facts during submissions before this Court is not at all appreciated.

This Court finds that the reasoned order dated January 18, 2023 has been passed after due consideration of the entirety extant rules, policies, guidelines applicable for transfer and posting of the members of the force. There is no arbitrariness or perversity in the reasoning given while passing of the reasoned order dated January 18, 2023. After duly considering all the material facts, rules, guidelines the said reasoned order has been passed. It was never the intention of this Court to direct the Director General to only consider clause 5 (b) and clause 8 of the policies regarding transfer and not the entirety of the policies/guidelines applicable for the transfer/posting to be effected. The intention of this Court was only for the D. G. to keep in mind clauses 5(b) and 8 while considering the representation. The petitioner cannot seek to rely on such a twisted/restricted interpretation of the order dated December 20, 2022.

In the light of the discussions above, this Court holds that there is no mala fide intention, arbitrariness or perversity in the passing of the reasoned order. Hence, there is no reason to interfere with the reasoned order.

In the circumstances, **WPA 3638 of 2023 is dismissed.**

It is made clear that the conduct of the petitioner has not been appreciated by this Court.

Since no affidavits have been directed to be exchanged in the writ petition, the allegations contained therein are deemed not to have been admitted by the parties

All parties shall act on the server copies of this order duly downloaded from the official *website* of this Hon'ble Court.

(Lapita Banerji, J.)