



2024: DHC: 2564-02



IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: April 02, 2024

+ W.P.(C) 14987/2023 & CM APPL. 59873/2023

RAKESH KUMAR

..... Petitioner

Through: Mr. Sahil Chandra, Advocate

versus

UNION OF INDIA THROUGH THE SECRETARY,
MINISTRY OF HOME AFFAIRS & ORS.

..... Respondents

Through: Mr. Himanshu Pathak, SPC with
Mr. Chetanya Puri, Mr. M. Bhardwaj,
GP alongwith Mr. Samman Kr. Singh
and Ms. Nisha Puri, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MR. JUSTICE SAURABH BANERJEE

J U D G M E N T

V. KAMESWAR RAO, J

1. The present petition has been filed by the petitioner with the following prayers:-

“In view of the foregoing facts and circumstances, this Hon'ble Court may graciously be pleased to:

a. Issue writ(s)/order(s)/direction(s) in the nature of Certiorari setting-aside the Orders dated 24.05.2023, 28.09.2023 and 30.09.2023 and Memorandum bearing Ref. No. 14/SSB/PERSI/ 20121(17)/20346 dated 18.10.2023; and



- b. Issue writ(s)/order(s)/direction(s) in the nature of Mandamus against the Respondent Nos. 1 and 2 directing them to take steps to regularize the residential accommodation in New Delhi in favour of the Petitioner at the earliest; and/or*
- c. Issue writ(s)/order(s)/direction(s) in the nature of Mandamus directing that the Petitioner be allowed to retain his current accommodation being H-71, Nivedita Kunj, Sector-IO, R K Puram, New Delhi-110022 upon payment of normal licence fees; and/or*
- d. Pass interim/ad-interim ex-parte directions in terms of prayers (a) and (b)*
- e. Pass any other/ further order(s) or direction(s) as this Hon'ble Court may deem fit and proper in the interest of justice.*

2. The facts which can be noted from the record are that the petitioner joined Sashastra Seema Bal ('SSB') on December 18, 1998 and is currently posted as DIG (GD), Sector Headquarters ('SHQ'), SSB, Bezpara.
3. It is stated that the respondent No.2 i.e., Director General, SSB, issued the standard operating procedure on 'Transfer Posting Guidelines' dated August 10, 2016, ('Transfer Guidelines'), which provided for posting and transfer on compassionate grounds, *inter alia* on the basis of education of children and continued disruption of their studies.
4. It is the case of the petitioner and so contended by Mr. Sahil Chandra, learned counsel appearing for the petitioner that in 2017 certain allegations were levelled against him on which a Court of Inquiry was conducted which found the case to be false. It is stated that the petitioner has never been communicated the copy of the proceedings and/or has been called upon to answer charges against



him, if any. Thereafter, in 2022, i.e., after about seven years, the petitioner while being posted as DIG, at Force Head Quarters, SSB ('FHQ') came to know that an enquiry is being reopened against him in relation to the same allegations. As against this, the petitioner on October 29, 2022, sent a representation to the Additional Director General, FHQ, New Delhi, SSB, *inter alia* stating the biased and mala fide approach of the vigilance department headed by the Chief Vigilance Officer.

5. Within a span of two weeks of making the said complaint, vide Order dated November 11, 2022, ('Transfer Order-I'), the petitioner was directed to hold additional charge of SHQ, Jalpaiguri, while continuing to remain posted at FHQ as DIG (Org.) till March 31, 2023. The said Order stated that the petitioner would be relieved on transfer for SHQ, Jalpaiguri on April 01, 2023. As such the transfer of the petitioner to SHQ Jalpaiguri was to be effectuated on April 01, 2023, till which date, the petitioner was posted at FHQ, New Delhi, SSB.

6. On account of his two sons appearing in competitive examinations, specially, with the petitioner's younger son also appearing in his 12th Board examinations, and as there was a possibility that the petitioner would have the requirement of a residence in New Delhi in 2024 also, the petitioner vide his Letter dated November 16, 2022 ('Representation-I', for short) requested the Director General, SSB for change in the place of posting to any location where the petitioner would be permitted to retain his government accommodation.



7. Hence, the petitioner vide his Representation-I, requested for a suitable transfer to any location where the petitioner could retain his government accommodation in New Delhi post March 31, 2023, till which date he was already posted at FHQ, New Delhi.

8. It is stated that vide letter dated November 22, 2022, the petitioner was informed the Transfer Order-I was to be effectuated by November 30, 2022 and that the petitioner's request would be considered in due course. Thereafter, on November 25, 2022, the petitioner sent a communication to the ADG bringing forth certain facts which revealed gross misconduct on the part of the LG. (Pers.), SSB who was also the CVO, SSB in relation to certain policy matters pertaining to cases of unnatural deaths. Since no response was received by the petitioner on his Representation-I, the petitioner was under the impression that the same is still under consideration. Being under the impression that the request of the petitioner would be duly considered, the petitioner took charge as DIG, SHQ, Jalpaiguri as directed vide the Transfer Order-I.

9. It is further stated that in 2022, the respondent No. 2 also issued a communication dated December 30, 2022, eliciting views on the amendments to the existing Transfer Guidelines. The said proposed amendments also contained provisions for posting and transfer of personnel on compassionate grounds which take into account the transfer/posting/deferment on account of education of children.

10. It is the case of the petitioner that subsequent to the petitioner making the complaint against the LG. (Pers.), SSB who was also the CVO, SSB, the petitioner was physically removed from FHQ, New



Delhi, SSB and as such, he took the additional charge of SHQ, Jalpaiguri on December 04, 2022 and this was further formalized vide Order dated January 18, 2023. In the said Order, it was stated that the petitioner would be physically stationed at SHQ, Jalpaiguri.

11. It is also the case of the petitioner that the Transfer Order-I, which directed the petitioner to hold the additional charge of DIG, SHQ, Jalpaiguri was issued on November 11, 2022 and it was only after the petitioner made another complaint against the LG. (Pers.), SSB, who was also the CVO, SSB, that the petitioner was directed to remain physically present at SHQ, Jalpaiguri, while retaining the post at FHQ, New Delhi, SSB.

12. Since it was represented to the petitioner that his concerns would be addressed in due course and that he is posted at FHQ, New Delhi, SSB only till March 31, 2023, the petitioner on March 15, 2023, sent another representation to the respondent No. 2 ('Representation-II', for short) stating that not only did the circumstances mentioned in the Representation-I remain unchanged but also the petitioner's mother apart from having suffered an accident leading to fractures and consequent surgery, would also be requiring medical treatment at AIIMS, Delhi for which too, the petitioner would be requiring a place of residence in Delhi. As such, the petitioner requested for a transfer to any location which enabled the petitioner to retain his accommodation in Delhi in cancellation to his transfer to SHQ, Jalpaiguri. However, no response was received by the petitioner and thus, he took the charge of the post of DIG at SHQ, Jalpaiguri.



13. It is stated that the respondent No. 2 vide its Order dated May 24, 2023 ('Transfer Order-II', for short), posted the petitioner to SHQ, Bezpara, Assam, upon the superannuation of the concerned officer holding the post therein, on September 30, 2023. It is the case of the petitioner that in such circumstances, the petitioner was given to believe that there has been an acceptance of the petitioner's request made vide Representation-I and Representation-II and the same was also evident from the fact that his transfer was done without any Travel Travelling Allowance ('TTA') and Joining Time ('JT') as the transfer without TTA/JT, is given only where the transfer has been at the request of the personnel concerned/petitioner herein. However, vide Transfer Order-II, the last place of posting was shown to be SHQ, Jalpaiguri and as such, there has been a complete non-application of mind in issuing the Transfer Order-II, which, as per the petitioner, had to take into account the fact that the transfer of the petitioner to SHQ, Bezpara, was made at his request and that the petitioner's request was to effectuate a transfer in a manner which would enable the petitioner to retain his government accommodation in New Delhi.

14. Consequently, the petitioner vide his letter dated July 11, 2023 ('Representation-III') sent to the respondent No. 2, stated that the retention of the residential accommodation in New Delhi has to be regularized as he was posted to Bezpara (Assam), which was in the North-Eastern Region and for such regularization, he needed to be posted at FHQ, New Delhi, prior to being relieved for Bezpara. However, no response was received by the petitioner and as such he



was kept under the impression that his request is still under consideration.

15. Meanwhile, on September 20, 2023, the Frontier Headquarters, Siliguri, also sought instructions from FHQ, SSB, in relation to the release of the petitioner on transfer. As such, the petitioner was relieved from SHQ, Jalpaiguri for joining SHQ, Bezpara vide Office Order dated September 28, 2023 ('Relieving Order').

16. It is the case of the petitioner that on the following day on which the petitioner was relieved, the following events took place:-

- i. The Message dated September 29, 2023 was issued by the DIG, Frontier Headquarters, Siliguri stating that on the basis of telephonic directions from FHQ, the petitioner would not be relieved under order of transfer to SHQ, Bezpara till further directions and consequently, a Corrigendum dated September 29, 2023 ('Corrigendum') was issued in respect of cancelling the Relieving Order and the petitioner was directed to resume his duties at SHQ, Jalpaiguri.
- ii. The petitioner being in New Delhi at that time, met with the ADG, SSB and was conveyed that subsequent to discussions with the Director General, SSB, the petitioner's transfer order to SHQ, Bezpara has been stayed.
- iii. Thereafter, the ADG, SSB again called the petitioner and directed him to join at SHQ, Bezpara and as such, message dated September 29, 2023 was issued by Frontier Headquarters, Siliguri to SHQ, Jalpaiguri, to direct the petitioner to report to SHQ, Bezpara directly from SHQ, Jalpaiguri. Thus, vide



message dated September 30, 2023, the message dated September 29, 2023 was cancelled and again a new Corrigendum dated September 30, 2023, was issued to effectuate the Relieving Order.

17. Resultantly, the petitioner joined at SHQ, Bezpara w.e.f. October 03, 2023 and vide Memorandum dated October 18, 2023, it was communicated to him that his Representation-III has been rejected. Thus, the petitioner on November 02, 2023, made the representation to the respondent No.1, pertaining to the harassment being meted out to him on account of the complaints being made by him against the then IG (Pers.) cum CVO, SSB.

18. Thereafter on November 03, 2023, the petitioner made another representation to the respondent No. 2 ('Representation-IV') for reconsidering the posting of the petitioner at New Delhi. However, no communication was received by the petitioner on his request, except a verbal refusal without any reasons having been assigned.

19. It is stated that on November 13, 2023, the petitioner also sent an e-mail to the respondent No. 1 detailing the mala fide of the respondent No.2 and the arbitrary actions being faced by the petitioner and thus, requested the respondent No.1, for immediate intervention.

20. It is the case of the petitioner that his family is supposed to vacate his residential premises in New Delhi on December 02, 2023 and since the posting to the North-Eastern region is a 'non-family posting', the petitioner ought to be allowed to retain his accommodation in New Delhi, as the facts and circumstances stated in the preceding



paragraphs clearly demonstrate that the Transfer Order-II, was made on the basis of the request of the petitioner on November 16, 2022 itself.

21. It is further the case of the petitioner that because of the following reasons, it could be said that the Memorandum dated October 18, 2023 has been issued in wholly arbitrary manner and thus, *non-est* in law:-

- a. The request of the petitioner made vide Representation-II was accepted and consequently, he was posted to SHQ Bezpara w.e.f. October 01, 2023, vide the Transfer Order-II, without TTA/JT;
- b. The petitioner was led to believe that his Representation-III was under consideration and that the Transfer Order-II, would be modified accordingly, however, no response was received by the petitioner for more than five months from the date of the Transfer Order-II, accepting the request of the petitioner;
- c. After the petitioner joined at SHQ Bezpara on October 03, 2023, the petitioner was informed on October 18, 2023 that his request had not been acceded to.

22. It is stated that the Transfer Order-II, having been made at the request of the petitioner, is arbitrary, insofar as, it states the last place of posting as SHQ, Bezpara, whereas the petitioner had requested for a posting at any place where he would be able to retain his government accommodation in New Delhi.

23. It is the case of the petitioner that had it not been for the whimsical arbitrary and lackadaisical manner in which the petitioner's requests were being entertained, and had the respondent Nos. 2 acted in



a timely manner by issuing the Transfer Order-II on or before March 31, 2023 with the posting of the petitioner at FHQ, SSB till September 30, 2023, the petitioner would have been able to retain his government accommodation in New Delhi as the last place of posting would have been FHQ, New Delhi, thereby, entitling the petitioner the benefit of Rule 41 (1) of the Central Government General Pool Residential Accommodation Rules, 2017 ('Rules', for short) read with Office Memorandum bearing Ref. No. 12035/4/2015-Pol.II dated April 8, 2021. He submits that the Office Memorandum April 8, 2021 extends the concessional retention of the General Pool Residential Accommodation ('GPRA') as per the Rules till June 30, 2024.

24. It is also the case of the petitioner that he and his family are currently residing in current accommodation at H-71, Nivedita Kunj, Sector-10, R K Puram, New Delhi-110022, which has been allotted to the petitioner on account of his posting at FHQ, New Delhi SSB. The petitioner and his family are supposed to vacate the said premises by December 02, 2023 and such an occasion would not have arisen had the respondents acted in a fair, unbiased and rational manner.

25. Therefore, the petitioner has sought the prayers as reproduced in paragraph 1 above, *inter alia* on the following grounds:-

- i. The petitioner is entitled to have his requests made vide the Representations-I,II,III and IV be considered in a fair and unbiased manner;
- ii. The requests of the petitioner in no manner harm the organizational interests of SSB;



- iii. The Standard Operating Procedure on Transfer Posting Guidelines do provide for posting on compassionate grounds;
- iv. The transfer on compassionate grounds is permissible in the event the education of the children or medical reason is a factor;
- v. The petitioner in any case had to be transferred in due course and as such did not make any preference as to the place of posting except that he be posted to any location which entitles him to retain his residential premises in New Delhi;
- vi. The petitioner has been victimized on account of the vindictiveness shown towards the petitioner by the officials of SSB since the petitioner had been making complaints against the then LG (Pers.) cum CVO, SSB;
- vii. No meaningful consideration has been given to the petitioner's requests even though transfer/deferment is permissible in law and has been provided for taking into account compassionate and humanitarian grounds which are to be considered in a fair and unbiased manner bereft of any irrationality;
- viii. Prior to being relieved from FHQ, New Delhi, the petitioner sent the Representation-II, which clearly stated the necessity of the petitioner in retaining the government accommodation in New Delhi and the petitioner's request that the transfer to SHQ, Jalpaiguri had to be cancelled in the event the petitioner's request was to be considered favorably;



- ix. On May 24, 2023, the petitioner's request was accepted in principle vide Transfer Order-II but the said order stated the petitioner's last place of posting as SHQ, Jalpaiguri and consequent to the acceptance of the petitioner's request, the last place of posting had to be changed to FHQ, New Delhi;
- x. The Transfer Order-II was without any TTA and JT, which implies that the transfer was at the request of the petitioner. In other words, no other reason for the transfer of the petitioner in such a short span of time on September 30, 2023 from SHQ, Jalpaiguri by issuing the order on May 24, 2023 itself after having been posted there w.e.f. April 01, 2023 exists apart from the fact that the said transfer was made at the request of the petitioner;
- xi. Once the petitioner's request to be posted to any location where the petitioner could retain his residential accommodation had been accepted, as evidenced by his transfer without TTA/JT, the respondent No. 2 ought to have taken steps to effectuate the transfer of the petitioner to SHQ, Bezpara in a manner which entitled the petitioner to retain his accommodation in New Delhi;
- xii. No timely action was taken on the Representation-III dated July 11, 2023 by the respondent No. 2;
- xiii. The petitioner's Relieving Order from SHQ, Jalpaiguri was first cancelled on September 29, 2023 by issuing the Corrigendum and thereafter for inexplicable reasons, the same was ordered to be effectuated almost contemporaneously and as



such, the petitioner having left with no option had to join at SHQ, Bezpara directly from SHQ, Jalpaiguri;

xiv. The Memorandum dated October 18, 2023 is clearly an afterthought by the respondent No. 2 to cover up its own lapses and omissions in not posting the petitioner to FHQ, New Delhi immediately prior to posting the petitioner to SHQ, Bezpara;

xv. Immense prejudice and harm would be caused to the petitioner and his family including his children in the event the petitioner's request to be posted to FHQ, New Delhi is not considered in a favorable manner;

xvi. The petitioner requires to continue with his residential premises being H-71, Nivedita Kunj, Sector-IO, R K Puram, New Delhi-110022 for the purposes of his son's education and is required to provide stable place of residence to his sons who are appearing for competitive exams and any change in the place of residence would hamper their results, careers and life as such;

xvii. Rule 41 (1) of the Rules read with Office Memorandum dated April 08, 2021 entitle the petitioner to retain the accommodation at his last place of posting in the event the petitioner is posted at a non-family location;

xviii. The objective of granting the benefit of retention of government accommodation at the last place of posting is that while the CAPF employees such as the petitioner serve in the remotest corners of the country in harsh environment and onerous conditions and most of the time in insurgency areas,



their families are safe and secure and their children/dependents have access to education and medical facilities at the family stations;

xix. Non-consideration of the relevant material and consideration of the extraneous material would come into the realm of irrationality. An action which is arbitrary, irrational and unreasonable would be hit by Article 14 of the Constitution of India.

xx. The transfer of the petitioner to SHQ, Bezpara, Assam on the one hand at his request and on the other hand without actually considering his representations to retain the accommodation at New Delhi is based on irrelevant and extraneous considerations and such an arbitrary and unfair action by the respondent No. 2 violates Article 14 of the Constitution apart from Article 21 and other legal rights. It is trite that arbitrariness in any form or manner is antithesis to equality.

26. It is also stated that the cause of action arose only on May 24, 2023, September 28, 2023, September 30, 2023 and October 18, 2023 and still continuing, since the legitimate representations of the petitioner have not been considered on lawful grounds and as such the present petition is not barred by delay and laches.

SUBMISSIONS ON BEHALF OF THE RESPONDENTS

27. It is the case of the respondents and so contended by Mr. Himanshu Pathak, learned Sr. Panel Counsel appearing for the



respondents that vide order dated May 24, 2023, Director General SSB had approved transfer of 10 officers in the rank of DIG, including the petitioner mentioned at Sl No. 10, who was transferred from SHQ Jalpaiguri to SHQ Bezpara without TTA/JT from prospective effect of September 30, 2023 when the present incumbent of SHQ Bezpara superannuated and the said transfer was made on the request of the petitioner.

28. He submitted that in the representation dated November 16, 2022, the petitioner requested for posting of one tenure at such a location where he could retain his quarter at Delhi at least till the end of 2023 because his younger son was in class 12th Boards and both his sons would be appearing in the competitive examinations for professional courses in the year 2023 and, in the event of their re-appearing in the exams in the year 2024, and even then if they did not perform well to give them further opportunity to adopt a different path.

29. It is his case that the elder son of the petitioner passed class 12th Board Examination from Delhi under the supervision of the petitioner in the year 2022 and got admission to MBBS course through NEET UG 2023 Examination and to contend this, he has relied upon admission order of the petitioner's elder son. Whereas, the younger son of the petitioner had appeared in class 12th Board Examination in February-March 2023 and has passed the same in the year 2023.

30. He submitted that vide order No. 21876-22037 dated November 11, 2022, the DG SSB had approved transfer of 05 DIGs in public interest with immediate effect, including the petitioner at Sl. No 04, who was transferred from FHQ SSB, New Delhi to SHQ Jalpaiguri.



The Competent Authority allowed him to continue at FHQ as DIG (Org) with additional charge of SHQ Jalpaiguri till March 31, 2023, after considering the verbal request of the petitioner that his younger son was due to appear in 12th Board examination from Delhi in February-March, 2023. This action on the part of respondent No.02 was taken as per the SOP on Transfer Guidelines for the SSB Personnel dated August 10, 2016, wherein deferment of transfer/posting on account of education of children who were due to appear in Board Examination of 10th and 12th is one of the grounds for compassionate consideration. This order enabled him to retain his GPRA in Delhi till December 02, 2023, as per MoHUA guidelines.

31. He submitted that the petitioner was promoted to the rank of DIG and posted as DIG (Org) at FHQ Delhi vide order No. 17893-17970 dated November 10, 2021. Therefore, the posting of petitioner as DIG (Org) at FHQ from November 10, 2021 to April 03, 2023 facilitated the petitioner, while being at Delhi, to continuously supervise education of both his sons during their academic sessions until class 12th.

32. It is his case that the petitioner had completed more than 5 years at FHQ SSB New Delhi. He joined FHQ on March 05, 2018 and was posted as Staff Officer ('SO') to DG on the same date. Thereafter the petitioner was promoted to the rank of DIG on November 03, 2021 i.e. while he had already completed 3 years and 8 months at FHQ. The petitioner was posted as DIG (Org) on promotion while he continued to function as Staff Officer to DG.



33. It is his case that MHA approved SSB Cadre Rules permit the post of SO to DG authorized for Commandant only. The continuation of the petitioner in the capacity of SO to DG, while being a DIG, was an aberration. The posting of the petitioner as DIG (Org) at FHQ with additional charge of SHQ Jalpaiguri was to complete on March 31, 2023 and thereafter, his charge of SHQ Jalpaiguri was to continue in pursuance of the relevant order. The SHQ Jalpaiguri being a sensitive location, it was not possible to keep the post of DIG vacant for long, therefore, the petitioner was ordered to be physically stationed at SHQ Jalpaiguri on January 18, 2023, while his posting still remained at FHQ till March 31, 2023, thereby, enabling him to retain GPRA at New Delhi till December 02, 2023. The petitioner was relieved from FHQ New Delhi to SHQ Jalpaiguri on April 03, 2023.

34. He further submitted that the petitioner was sent to SHQ Jalpaiguri on January 18, 2023, being an operational area. However, he did not remain stationed there continuously and made frequent and unnecessary tours to Delhi at the cost of public exchequer by bending TA/DA rules to his advantage. As per relevant rules, DIGs are mandated to submit tour diaries for the entire month rather than on as-and-when basis, which the petitioner has done. There was no prior approval of competent authority at FHQ for his travelling from SHQ Jalpaiguri to Delhi. Prior to the order dated January 18, 2023, the petitioner had submitted his tour diary for the period December 05, 2022 to December 21, 2022 to IG (Pers), FHQ for visiting SHQ Jalpaiguri that was duly approved as starting and culminating points of the instant tour was Delhi. However, subsequently the petitioner



submitted his tour diaries for the period January 04, 2023 to January 25, 2023, February 06, 2023 to February 24, 2023 and March 13, 2023 to March 29, 2023 to IG, Ftr. Siliguri for approval; whereas, starting and culminating point for all these tours was also Delhi. Similarly, he availed five day E/L w.e.f January 30, 2023 to February 03, 2023 to utilize home town LTC for block year 2020-21 under approval of IG, Ftr. Siliguri; whereas, starting and culmination point was Delhi, which called for approval by competent authority vested in IG (Pers), FHQ, for a DIG posted in FHQ, SSB. This indicates the scheming conduct of the petitioner, who despite being conversant with rules (being SO to DG for around 5 years), manipulated them to his advantage. He acted in blatant disregard to the order dated January 18, 2023, whereby he was directed to remain physically stationed at SHQ Jalpaiguri, and chose to serve his personal agenda.

35. He further submitted that the representation of the petitioner dated November 16, 2022 was considered by DG, SSB and not acceded to in the light of the SOP on Transfer Guidelines for SSB Personnel dated August 10, 2016. This SOP stipulates "transfer/posting/deferment on account of education of children may not generally be considered unless the personnel is able to substantiate cogently that transfer would disrupt further continuation of studies, particularly where the wards of personnel are studying in class 9th /10th or 11th /12th at the time of transfer" and "deferment on grounds of education will be up to the month of April of succeeding year". The petitioner was to be relieved from FHQ New Delhi to SHQ Jalpaiguri after March 31, 2023. By this time the younger son of the petitioner had already appeared in class 12th



Board Examination. There is no ground of admission of children to professional colleges in the extant SOP for considering deferment or new posting as requested by the petitioner. His representation was not acceded to and the petitioner was informed vide OM dated November 22, 2022.

36. The SOP on Transfer Guidelines for SSB Personnel dated August 10, 2016 also stipulates that -"if the request of the individual is not accepted or his/her transfer place modified, the individual should be relieved. No further representation shall be entertained". Still the petitioner made a second representation on the same grounds as his earlier representation. By this time new SOP on Transfer Guidelines for SSB Personnel dated February 10, 2023 and Instructions for its implementation dated February 24, 2023 had been published. The new guidelines also stipulate posting and transfer on compassionate ground of education of children who were due to appear in Board Examination of 10th and 12th and not on the ground of preparation of competitive examinations for admission to professional courses. The petitioner did not cite any fresh concerns in his second representation, except for his mother's fracture, which was not a life threatening disease, nor a special need. Hence, the second representation of the petitioner was also not acceded to and the petitioner was informed about the said decision by OM dated April 24, 2023.

37. It is his case that the transfer order enabled the officer to stay at GPRA in Delhi until December 02, 2023 as per MoHUA guidelines and as such, the same has already fulfilled the petitioner's requirement to retain the GPRA at New Delhi till the end of 2023 as requested by



him in his representation dated November 16, 2022 addressed to DG, SSB. He submitted that the petitioner, in a scheming manner, has kept his request open dated saying that if his child is unable to make it through the relevant competitive exam, his posting can be so regulated so that his child can re-appear in exam in the year 2024 and even then, if he did not perform well to give him a further opportunity to adopt a different path. The petitioner's demand is against the extant transfer guidelines and instructions wherein the education of children at the level of 10th or 12th Board is the only ground. The petitioner's demand for posting of his choice just for retention of GPRA is no ground for deferment or change of posting and the cannot go on till perpetuity.

38. He submitted that the petitioner belongs to Jharkhand (erstwhile Bihar) and in his service span of 25 years he has remained posted at units either under Frontier Patna or at FHQ or at such places from where the GPRA at Delhi could be retained. It can be seen from his posting profile that the petitioner has practically retained the GPRA continuously for last around 14 years. The petitioner has retained a Government accommodation in Delhi since he was posted to FHQ in 2009 and will retain it until December 02, 2023 (as per MoHUA guidelines). The petitioner has in fact completed two full tenures at FHQ i.e. more than 4 years (2009-2013) and more than 5 years (2018-23). He retained GPRA while he was transferred from 55th NCR/Delhi to 27th Bn. Narkatiaganj and subsequently to 44th Bn until October 20, 2016, (being SRE districts, even though they were family stations). Further, the petitioner retained GPRA during his posting at 42nd Bn and 7th Bn in Jammu until March 06, 2018 (being CI Ops area) and from



there, when he was posted at FHQ again. In the entire service span of 25 years, barring the initial probation period and 16 months of posting in Jammu region, the petitioner has not served in locations other than in Bihar or Delhi/NCR. Now being posted out from FHQ and ordered to serve at other location of SSB, he is pressurizing for a temporary posting at FHQ or at a location of his choice for retention of GPRA. Acceding to his irrational request will set a wrong precedent not only in SSB but in all Armed Police Forces of the Union as everyone will ask for temporary posting at their HQs or at places whereby, they could retain GPRA.

39. He submitted that the petitioner had made repeated verbal requests to be posted to SHQ Bezpara under Frontier Tezpur where the incumbent of that time DIG Shri Anthony Thanmi was about to superannuate on September 30, 2023. The petitioner in his plea also submits that his transfer from SHQ Jalpaiguri under Frontier Siliguri to SHQ Bezpara has been done on his request. The relevant order was issued on May 24, 2023 and he was given a direction to join SHQ Bezpara on September 30, 2023. The officer never represented against this order of transfer, nor did he object to his transfer without TTA/JT, during the 5 months period since the order was issued. However, he made a representation on July 11, 2023 that on his posting to Bezpara, which is in North-Eastern region, it is necessary that he be posted at FHQ New Delhi and from there he be relieved to Bezpara in order to regularize the retention of GPRA at New Delhi.

40. He submitted that in terms of MoHUA OM dated October 06, 2022, no fresh retention at the last place of posting shall be granted to



Group-A officers with immediate effect in case of their posting to North Eastern Region including Sikkim and the retention already granted to such officers who have earlier been posted to North Eastern regions would be withdrawn. The petitioner had full knowledge of MoHUA rules, including this OM which was circulated at the time he was posted at FHQ as DIG (Org) and also functioned in the capacity of SO to DG. Hence, it was his scheme to mislead the decision making authority to secure a third posting at FHQ New Delhi only for the purpose of retention of GPRA. The petitioner had in fact made a third representation to modify his first transfer order from FHQ to Jalpaiguri, only for the purpose of retention of GPRA, by taking a new route, whereas, the SOP dated February 10, 2023 at Para-03, Clause-k, SI No.- 4 necessitates the cooling off period of 06 years for the second tenure at the same station.

41. He further submitted that the representations of the petitioner have been directly submitted to the DG, whereas, SOP dated February 10, 2023 at Para 15 (a) prescribes representations against transfer to be submitted to FHQ only through proper channel. The Competent Authority still considered the third request of the petitioner for posting to FHQ for a short period and did not accede to it and the same was communicated to him vide memorandum dated October 18, 2023.

42. It is his case that the Frontier Siliguri vide WAN Message dated September 20, 2023 sought direction/instructions from FHQ on releasing the officer from SHQ Jalpaiguri to SHQ Bezpara for compliance of the FHQ order May 24, 2023. Subsequently on September 26, 2023 Frontier Siliguri informed that the officer was



pressing hard to get himself released. So much so, the petitioner, on his own, released himself from the charge of SHQ Jalpaiguri on September 28, 2023 without having received any clarification or instructions from Force Headquarters. Not stopping, even after getting relieved the petitioner availed the E/L of 01 day on September 29, 2023 on domestic ground but officially met the authorities at FHQ for modifying his transfer order. His request (fourth now) was not acceded to and his action of *suo moto* relinquishing the charge of a sensitive location of SHQ Jalpaiguri was also not appreciated. As such the petitioner was then and there directed to join SHQ Bezpara directly from SHQ Jalpaiguri which was also confirmed vide fax message dated September 29, 2023. The petitioner finally joined SHQ Bezpara on October 03, 2023. The petitioner was further conveyed, in no uncertain terms, that his request for posting to FHQ for a short period has not been acceded to by the Competent Authority vide Memo dated October 18, 2023.

43. He submitted that the transfer of the petitioner to SHQ Bezpara was made at his own request. However, he has now agitated the issue of transfer without TTA/JT. In his representation dated July 11, 2023, the petitioner had requested for relieving him on transfer from New Delhi to Bezpara. This would have enabled him to claim HRA at enhanced rate of 27% of basic pay, whereas, transfer directly from Jalpaiguri (in West Bengal) to Bezpara (in Assam) would have entitled him for HRA of 9% of basic pay only. When the petitioner came for personal interview and repeated the same request before IG Pers, he



was advised to submit a requisition for claim of the TTA/JT from SHQ Jalpaiguri to SHQ Bezpara but his written requisition is still awaited.

44. It is his submission that the petitioner having realized that his irrational, illogical and illegal demands were repeatedly not acceded to by DG SSB, wrote a confidential letter to the Union Home Secretary, therein, alleging a conspiracy theory against him at the behest of the authorities of SSB and projected that refusal of his posting at FHQ New Delhi for the third time was done in furtherance to his continuous harassment. The date of this confidential letter is November 02, 2023, whereas, on the very next day, i.e. on November 03, 2023, the petitioner made yet another (fifth now) request to DG SSB for his transfer to FHQ for a short period for regularizing his GPRA retention at Delhi. Herein, he backtracked from his previously admitted request of transfer to SHQ Bezpara and falsely wrote that he never asked for SHQ Bezpara in particular. This shows that the petitioner was bent down for misleading the authority to secure a third tenure at FHQ although there were no fresh grounds for consideration of his request.

45. He submitted that the extension of GPRA entitlement beyond December 02, 2023 is outside the purview of SSB. There is no vacancy in the rank of DIG at FHQ and acceding to such a demand will tantamount to creating a supernumerary post of DIG which is done only in extraordinary circumstances. In any event, the same is not within the competence of the DG. Also, there is no such rule that permits posting of officers at FHQ for short duration.

46. It is his case that the petitioner has been posted to SHQ Bezpara on his repetitive verbal request. The request was considered as per the



laid down procedure taking into account his past posting and the requirement of the Force. SHQ Bezpara, operational from 37 Bn Mangaldoi, is a family location. As DIG, he is heading 3 Bns / 3000 plus personnel and is responsible for close supervision of the units, which are deployed for guarding the porous and sensitive Indo-Bhutan border. Hence, the post of DIG cannot be left vacant at the Sector headquarters by allowing the officer to be posted at FHQ for short duration. The petitioner has been allotted a Type-5 Quarter at 37th Mangaldoi. The Distance from Guwahati to Mangaldoi is 68 Kms. It is an administrative headquarters of Darrang District. The officers' wives of the unit, as head of Sandiksha, are responsible to ensure well-being of the family members of all personnel posted in the unit even when they are posted to far flung BOPs while their families remain at allotted quarters in the unit Headquarters and as such, the demand to retain GPRA even though he is posted at a Family location is utterly irrational.

47. He submitted that the petitioner has misconceived his transfer being resultant to his writing a letter to ADG on October 29, 2022. While the posting order was issued on November 11, 2022, the petitioner had already completed his tenure at FHQ on March 05, 2021. In the year 2021, his retention was made as an exception, despite having been promoted to the rank of DIG on November 3, 2021. He continued to hold the post of SO, though it was the post of the Commandant rank, and given charge of DIG (Org). Vide posting order of November 11, 2022, the officer was retained at FHQ as DIG (Org) and was given additional charge of SHQ Jalpaiguri only with intent that



he could supervise his son's education who was appearing for 12th Board Exam in Feb/March 2023 and that why his posting was to be effectuated from March 31, 2023. By this time his elder son had secured admission in medical college and the younger son had appeared at class 12th Board Examination in the year 2023. The petitioner never objected to his transfer and never represented against it. He was further ordered to be physically present at SHQ Jalpaiguri on January 18, 2023 while his posting remained at FHQ to justify his entitlement of GPRA.

48. He submitted that having compassion and considering his request for his sons' future even after their passing class 12th in 2022 and 2023, he was allowed to be posted at FHQ till April 03, 2023 so that he could retain his GPRA quarters till the end of the year 2023. As per MOHUA guidelines the petitioner is supposed to vacate his allotted GPRA on December 02, 2023, which the petitioner has already accepted in his plea. Retention of GPRA Accommodation does not fall under jurisdiction of DG, SSB. The petitioner's demand is against the existing transfer guidelines i.e., February 10, 2023 and February 24, 2023.

49. He submitted that the petitioner submitted a request for posting at Delhi for regularization of his GPRA on July 11, 2023. He appeared before IG (Pers) and ADG, SSB in this regard. There is no rule/guideline for temporary posting for regularization of GPRA at Delhi, without 06 year cooling-off period. His request was not acceded to by the DG, SSB. The officer was informed about the same vide FHQ OM dated October 18, 2023.



50. It is his case that the transfer to SHQ Jalpaiguri was ordered in public interest with TTA/JT. Subsequently, his request for transfer to Bezpara was duly considered by the Departmental Transfer Committee who recommended transfer of officer to SHQ Bezpara on the request of the Officer, without TTA/JT, that shall take effect immediately before superannuation of Shri Anthony Thanmi. Hence, his transfer was done in view of the petitioner's own request while considering operational, functional and administrative requirement of the Force. The procedure for granting TT A/JT is applicable only in such cases where transfer is done in public interest and not in cases where transfer is done at the request of the official.

51. He submitted that FHQ has never issued any express direction for cancellation of petitioner's transfer from SHQ Jalpaiguri to SHQ Bezpara. Moreover, Frontier Siliguri has also informed that the officer had been pressing hard for his release vide Ftr/SLG/23/Estt.9528 dated September 26, 2023 and that he was sanctioned one day EL on September 29, 2023, thereby, granting him five day-continuous leave on domestic ground. In the leave sanctioning order the petitioner was instructed to comply with his transfer dated May 24, 2023 scrupulously. In transfer order dated May 24, 2023, FHQ direction for the petitioner to join at SHQ Bezpara on September 30, 2023 was inherent. He being Head of SHQ Jalpaiguri, instead of complying to the standing direction to join SHQ Bezpara on September 30, 2023, relinquished his charge in the forenoon of September 28, 2023, without any express direction from FHQ or Frontier Siliguri. His so-called



Relieving Order was issued under the signature of his subordinate as he was not succeeded by any DIG in that location.

52. He further submitted that the petitioner utilized his one day EL on September 29, 2023 that was sanctioned to him on domestic ground to pursue his official work at FHQ i.e. to get his transfer order amended in furtherance to his vested interest of retaining GPRA at New Delhi. This clearly shows his intention of defying FHQ Order through a clandestine design. After his visit to FHQ, direction to join SHQ Bezpara directly from SHQ Jalpaiguri was communicated to the petitioner in unambiguous terms and thereafter, the so-called Relieving Order from SHQ Jalpaiguri was cancelled on September 29, 2023. The officer joined SHQ Bezpara on October 03, 2023 after utilizing his five days leave.

53. It is his case that the contention of the petitioner that the North-Eastern region is a "non-family posting" is false and misleading since SHQ Bezpara is operating from 33 Bn SSB, Mangaldoi, which is a family station. Therefore, he submitted that the petitioner is not entitled to any of the relief as prayed for in the present petition and the same is, as such, liable to be dismissed.

REJOINDER SUBMISSIONS

54. In his rejoinder submissions, it was submitted by Mr. Chandra that the petitioner never sought a transfer to SHQ Bezpara, and the only request of the petitioner was that he be transferred to any location which would enable him to retain his residential accommodation for the purposes of his son's education. The petitioner's request was a transfer



which would entitle him to retain his quarters in New Delhi and not for a tenure at New Delhi.

55. He submitted that petitioner made his request for being transferred to any location where he would be able to retain his quarters at New Delhi for the first time on November 16, 2022, subsequent to being transferred to SHQ Jalpaiguri on November 11, 2022 w.e.f. March 31, 2023. Therefore, any averment that the petitioner at his request was posted to FHQ, New Delhi till March 31, 2023 is false.

56. He submitted that SHQ Bezpara is in Assam falling in the North-eastern Region and as such is a non-family posting which entitles the petitioner to retain his quarters in New Delhi as per the rules. The request of the petitioner to be posted at any location where he would be able to retain his quarters in New Delhi was accepted vide the Order dated May 25, 2023, however the same was not given effect to and requisite correction/clarification in the records was not done by the respondent No.2. Therefore, the petitioner was constrained to approach this Court.

57. He submitted that post Transfer Order-I on November 11, 2022 of the petitioner to SHQ Jalpaiguri, the petitioner made a request on November 16, 2022, and as such any averment that the petitioner made any request verbal or otherwise prior to being transferred to SHQ Jalpaiguri is wholly denied. Moreover, continuation of the post of the petitioner as DIG (Org.) subsequent to being promoted was at the discretion of the respondent No. 2 and it cannot be said that the same formed a part of the petitioner's request to being transferred to any location where he would be able to retain his quarters in New Delhi



post March 31, 2023 when he was to be transferred from FHQ New Delhi.

58. He further submitted that the continuation of the petitioner as SO to DG was also at the discretion of the DG, and the same was done in light of shortage of personnel in the rank of Commandant and also in light of the fact that the petitioner was soon to be transferred. As such the same cannot be said to be an aberration. Pertinently, the petitioner took additional charge at SHQ Jalpaiguri while being posted to FHQ New Delhi on December 05, 2022 itself and was physically present at SHQ Jalpaiguri. Also, the petitioner was verbally asked not to deal with the files at FHQ New Delhi post taking additional charge at SHQ Bezpara.

59. He submitted that requisite clarifications can be made so as to read the last place of posting of the petitioner at FHQ New Delhi in the peculiar facts and circumstances of this instant case where his representation dated March 15, 2023 made when the petitioner was posted at FHQ New Delhi, was accepted vide the order dated May 24, 2023 on which date, the petitioner, on account of delayed action of the respondent No. 2 was constrained to be posted at SHQ Jalpaiguri. It is his case that for such posting, supernumerary post is not created as being submitted by the respondent No.2. More so, the petitioner verily believes that in place of 6 IGs, there have been occasions when 7 IGs were posted, and at present instead of the sanctioned posts of 10 DIGs, 11 have been posted. In both such cases, supernumerary posts were not created. Moreover, there have been recent examples where such transfers to suit the needs of Force personnel have been done as is



evident from the transfer/posting of a Commandant vide orders dated June 22, 2023 and July 04, 2023. As such, the petitioner is being discriminated and thus the actions of respondent No. 2 are violative of the fundamental and legal rights of the petitioner including Article 14 of the Constitution of India.

60. He submitted that the petitioner is entitled to have his request considered in a fair and unbiased manner. The respondent No. 2 after accepting his request vide the Order dated May 24, 2023 cannot be permitted to take advantage of its own laxity in taking such decision and thereafter creating a fanciful narrative which jeopardizes the interests of the petitioner.

61. He submitted that Transfer Order-I dated November 11, 2022 was made as a consequence to the Representation dated October 29, 2022 and the same is also evident from the fact that the person holding the post at SHQ Jalpaiguri was transferred out from SHQ Jalpaiguri with immediate effect vide the same order so as to place the petitioner out of New Delhi. Thereafter, after the petitioner made his representation dated November 25, 2022 alleging misconduct on the part of the then I.G. (Pers.), SSB who was also the CVO, SSB, the petitioner was asked to take charge at SHQ Jalpaiguri, which the petitioner took on December 05, 2022 itself and thereafter, a formal direction to the petitioner to remain stationed there under the administrative control of IG Ftr. Siliguri was issued on January 18, 2023.

62. He submitted that the respondents have failed to explain as to why the transfer of the petitioner to SHQ Bezpara was done without



TTA/JT. However, as per the submission made before this Court, after referring to the official records, it was stated that the same was done as per the own request of the petitioner. Moreover, no material has been brought on record to state that the petitioner specifically asked to be posted at SHQ Bezpara.

63. He submitted that the reliving orders/joining orders are generally signed by the person dealing with administrative matters and as such the signing of the Relieving Order by the petitioner's subordinate is no exception.

ANALYSIS

64. Having heard the learned counsel for the parties and perused the record, the fact which emerges is that the petitioner has retained a Government accommodation i.e., H-71, Nivedita Kunj, Sector-10, R.K. Puram, New Delhi, since he was posted to FHQ in 2009.

65. On November 11, 2022, the petitioner was transferred from FHQ SSB, New Delhi to SHQ, Jalpaiguri. The said posting was deferred till March 31, 2023 and the petitioner was allowed to continue at FHQ as DIG (Org) with additional charge of SHQ, Jalpaiguri, to enable his youngest son to write the 12th Board Examination during the period February-March 2023.

66. During the interregnum, the petitioner had made a representation dated November 16, 2022, wherein it was requested that he be posted at such a location where he could retain his quarter at Delhi in order to provide best education to his sons who were due to appear in the competitive examinations in the year 2023, instead of



SHQ, Jalpaiguri. The said representation was rejected by the respondents on November 22, 2022.

67. It may also be stated here that vide communication dated January 18, 2023, the petitioner was called upon to be physically stationed at SHQ, Jalpaiguri, though his posting remained at FHQ, New Delhi till March 31, 2023. Thereafter, vide order dated April 3, 2023, the petitioner was relieved from FHQ, New Delhi and struck off from the strength of FHQ, New Delhi and transferred to SHQ, Jalpaiguri. Subsequently on April 17, 2023, the petitioner was taken on the strength of SHQ, Jalpaiguri. Suffice to state, the continuous posting of the petitioner at FHQ, New Delhi till March 31, 2023 also enabled him to retain the GPRA at New Delhi till December 02, 2023.

68. The basic challenge in this petition is with regard to order dated May 24, 2023, which is an order issued by the respondents posting the petitioner from SHQ, Jalpaiguri to SHQ, Bezpara without TTA/JT on superannuation of the officer already posted there; to the order dated September 28, 2023, which is an order relieving the petitioner from SHQ, Jalpaiguri to enable him to join his duties at SHQ, Bezpara; to the 'Corrigendum' dated September 30, 2023, whereby, SHQ's Jalpaiguri order No. 4/SSB/SHQJPG/T &P-SHQ/. /2022/7919-36, dated September 28, 2023, whereby the petitioner was ordered to be relieved from SHQ, Jalpaiguri to SHQ, Bezpara, was upheld and the earlier 'Corrigendum' dated September 29, 2023 was cancelled and to 'Memorandum' dated October 18, 2023, whereby the request of the petitioner for posting to FHQ, for a short period was rejected by the respondents.



69. Apart from aforementioned challenge, it has also been prayed that the respondents be also directed to take steps to regularize the residential accommodation of the petitioner at H-71, Nivedita Kunj, Sector-10, R.K. Puram, New Delhi.

70. It is the case of Mr. Chandra that in view of OM dated April 08, 2021, by which the applicability of Directorate of Estate's order dated September 7, 1998, allowing the benefit of retention of GPRA posted in Non-family stations, was extended till June 30, 2024, the petitioner having been posted at SHQ, Bezpara (Non-Family station) from FHQ, New Delhi, he needs to be allowed to retain the FHQ, at New Delhi.

71. At this stage, it may be necessary to state here that vide 'Office Memorandum' dated October 6, 2022, issued by the Directorate of Estates, the benefit of retention of GPRA on posting to North-Eastern Region (including Sikkim) treating the region as non-family station, has been withdrawn. It is also necessary to state here that the said Office Memorandum has been challenged in writ petitions bearing nos. W.P.(C) 925/2023, W.P.(C) 1960/2023, W.P.(C) 2118/2023 and W.P.(C) 2112/2023 before the Gauhati High Court which has stayed the operation of the Office Memorandum dated October 6, 2022. It may also be necessary to state here that similar petitions which have been filed before this Court bearing nos. W.P.(C) 272/2023 and W.P.(C) 1859/2023 have been transferred to Gauhati High Court by the Supreme Court vide order dated January 2, 2024 in the case of ***Union of India and Ors. Etc. v. Brijesh Yadav & Ors., ETC., Transfer Petition (s) (Civil) No (s) 1317-1322/2023*** with connected matter to be heard along with the petitions filed before the Gauhati High Court.



72. Be that as it may, the issue which falls for consideration in this case is, whether the petitioner shall be entitled to the benefit of retention of GPRA at New Delhi, on the strength of Office Memorandum dated April 8, 2021, more particularly, when the Office Memorandum dated October 06, 2022, has been stayed by the Gauhati High Court and also when the petitioner has been directly posted from SHQ, Jalpaiguri to SHQ, Bezpara. The case of the petitioner in support of his contention is that the place of posting has been changed from SHQ, Jalpaiguri to SHQ, Bezpara on the strength of the representations given by him on November 16, 2022, March 15, 2023, July 11, 2023 and November 3, 2023. Whereas the case of the respondents is, the petitioner having been transferred from SHQ, Jalpaiguri to SHQ, Bezpara vide order dated May 24, 2023 and he being struck off from the strength of SHQ, Jalpaiguri on September 28, 2023, the same has no connection with retention of GPRA at FHQ, New Delhi, as being the last station of posting.

73. This plea of the respondents is appealing. This we say so, for the reason that the order dated May 24, 2023, transferring the petitioner from SHQ, Jalpaiguri to SHQ, Bezpara and order dated September 28, 2023, whereby the petitioner was struck off from the strength of SHQ, Jalpaiguri, read as under:-

“Order dated May 24, 2023

“The Director General, SSB has approved transfer / posting of under mentioned Deputy Inspectors General in public interest except Sr. No. 6 & 10 with immediate effect:

Sl. No	Name of DIsGs (S/Shri)	From	To	Remarks
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1	<i>Sudhir Verma</i>	<i>FHQ, New Delhi</i>	<i>SHQ Jammu</i>	-
2	<i>S.K. Dhyani</i>	<i>SHQ Bettiah</i>	<i>SHQ Pilibhit</i>	-
3	<i>S.K. Sarangi</i>	<i>SHQ Purnea</i>	<i>FHQ as DIG (Int)</i>	-
4	<i>Rajesh Tikku</i>	<i>SHQ Jammu</i>	<i>SHQ Purnea</i>	-
5	<i>Rajneesh Lamba</i>	<i>RTC Gorakhpur</i>	<i>Ftr. Hqrs. Lucknow</i>	-
6	<i>Ajay Kumar</i>	<i>SHQ Pilibhit</i>	<i>FHQ as DIG (Prov)</i>	<i>Without TTA/JT</i>
7	<i>Suresh Subaramaiaam</i>	<i>FHQ New Delhi</i>	<i>SHQ Bettiah</i>	
8	<i>Manoj Kumar</i>	<i>Ftr. Hqs. Patna</i>	<i>FHQ as DIG (Admn.)</i>	
9	<i>K. Rajit</i>	<i>SHQ Muzaffargarh</i>	<i>Ftr Hqr Patna</i>	<i>He may be relieved on hearing from FHQ.</i>
10	<i>Rakesh Kumar</i>	<i>SHQ Jalpaiguri</i>	<i>SHQ Bezpara</i>	<i>Without TTA/JT. On superannuation of Shri Anthony Thanmi on 30.09.2023</i>

2. In addition to above, DG, SSB has also approved posting of Shri Asem Hemochandra, Commandant from Ist Bn SSB, Sonapur to RTC, SSB Gorakhpur in public interest.



3. The above officers should join their respective place of posting latest by 5th June 2023 after availing usual joining time. The officer must be relieved accordingly, after handing over the charge to the next available officer.”

“In pursuance of Force Hqrs, SSB, New Delhi Order No.4/SSB/Pers-I/2012(1)/21876-22037 dated 11.11.2022, Shri Rakesh Kumar, Deputy Inspector General (UIN-10030001), after having been relieved on 03.04.2023 (AN) from Force Hqrs, SSB, New Delhi. Vide order No. 14/SSB/Per-I/2021(12)3/5576-5636 dated 03.04.2023 on permanent transfer in the same capacity on public interest has reported at Sector Hqrs, SSB, Jalpaiguri on 17.04.2023 (FN) after availing usual joining time.

Accordingly, officer has been taken into the strength of Sector Hqrs, SSB, Jalpaiguri from the same date i.e. w.e.f. 17.04.2023 (FN).”

XXX

XXX

XXX

Order dated September 28, 2023

OFFICE ORDER

In pursuance of FHQ SSB New Delhi office order No.4/SSB/Pers-/2022(2)/9311-9387 dated 24.05.2023, UIN-10030001 Shri Rakesh Kumar, Deputy Inspector General of Sector Hqrs, SSB, Jalpaiguri is hereby relieved from his duties in the forenoon of **28.09.2023** for SHQ, SSB, Bezpara in the same capacity without TTA/JT.

Accordingly, officer has been struck off from the strength of Sector Hqrs., SSB, Jalpaiguri on the same date i.e. **28.09.2023 (F/N)**”

74. Whereas, the petitioner having relieved from SHQ, Jalpaiguri to SHQ Bezpara, reported at SHQ, Bezpara on October 04, 2023. The



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office order dated October 04, 2023, depicting the said factum is reproduced as under:-

*“In pursuance of FHQ, SSB, New Delhi Order No. 4/SSB/Pers-I/2022(2)/9311-9387 dated 24.05.2023, **Shri Rakesh Kumar, Dy. Inspector General (UIN-10030001)**, after having been relieved on transfer in the same capacity **without TTA/JT** from SHQ SSB, Jalpaiguri on **28.09.2023 (FN)** vide Office Order No. 4/SSB/SHQ-JPG/T&P/I/2022/7919-36 (U/7011) dated 28.09.2023 and No. 4/SSB/SHQ-JPG/T&P/I/2022/U/7068 dated 30.08.2023, has reported his arrival at Sector Hqrs SSB Bezpara at Mangaldoi on **02.10.2023 (AN)** after availing 01 days E/L on 29.09.2023 with permission to prefix on GH -28.09.2023 and Suffix on 30.09.2023, 01.10.2023 & 02.10.2023 being (weekend Holidays & GH) sanctioned by FTR Hqrs SSB, Siliguri.*

*Accordingly, the officer has been taken into the strength of Sector Headquarters, SSB, Bezpara w.e.f **03.10.2023 (FN)**.”*

75. It is the plea of Mr. Chandra that the posting of the petitioner at SHQ, Bezpara was done at the request of the petitioner himself as the same has been acceded by the respondents while issuing the order dated May 24, 2023, from where it can be seen that the transfer of the petitioner from SHQ, Jalpaiguri to SHQ Bezpara, was done without TTA/JT.

76. This plea of Mr. Chandra, though looks appealing on a first blush, but on a deeper consideration and on perusal of the representation of the petitioner dated July 11, 2023, it can be ascertained that it is the understanding of the petitioner as well that if he is posted directly from SHQ, Jalpaiguri to SHQ, Bezpara, he may not be able to retain the GPRA at FHQ, New Delhi and it is for that



reason that the petitioner had made a request that in order to regularize his accommodation at FHQ, New Delhi, he may be posted at FHQ, New Delhi without TTA/JT and from there, he may be relieved for SHQ, Bezpara. The said representation of the petitioner is reproduced as under:-

“Please refer to FHQ order No. 4/SSB/Pers-I/2022(2)/9311-9387 dated 24.05.2023 vide which I have been transferred to SHQ Bezpara from SHQ Jalpaiguri without TTA/JT.

In this regard, it is submitted that I am presently retaining Govt. General Pool Residential Accommodation at New Delhi. In order to regularize that retention, on my posting to Bezpara (Assam), which is in North-Eastern Region, it is necessary that I have to be posted at FHQ, New Delhi and from here I have to be relieved for Bezpara.

It is, therefore, requested that for regularizing my Govt. Accommodation at New Delhi, I may be posted at FHQ, New Delhi without TTA/JT.

Submitted for your kind perusal and sympathetic consideration please.”

(emphasis supplied)

77. In other words, he himself was clear that as his posting was from SHQ, Jalpaiguri to SHQ, Bezpara, he may not be able to retain GPRA at FHQ, New Delhi. There is no dispute to the fact that the petitioner was not posted from SHQ, Jalpaiguri to FHQ, New Delhi and then from FHQ, New Delhi to SHQ, Bezpara. Whereas, it is clear that the petitioner was posted directly to SHQ, Bezpara from SHQ, Jalpaiguri. In that sense, the transfer being from SHQ, Jalpaiguri to SHQ, Bezpara, the privilege of retaining an accommodation at FHQ,



New Delhi, as the last place of posting, shall not be available to the petitioner. So, it follows that the posting of the petitioner from SHQ, Jalpaiguri to SHQ, Bezpara was in exigencies of service.

78. In any case, the plea of the petitioner for being posted from SHQ, Jalpaiguri to FHQ, New Delhi and thereafter to SHQ, Bezpara, to enable him to retain the accommodation at FHQ, New Delhi is not a matter of right. It is a privilege granted to those officers, who are posted at North-East areas to retain an accommodation at their last place of posting.

79. In the present facts and circumstances, it is the case of the respondents that the petitioner was allotted the accommodation at FHQ, New Delhi in 2009 and has been ordered to retain it until December, 2023 on compassionate grounds. In fact, the petitioner has completed two full tenures at FHQ, New Delhi i.e., more than 4 years during (2009-2013) and more than 5 years during (2018-23). He joined FHQ, New Delhi on March 5, 2018 and was posted as SO to DG on the same date. Thereafter, the petitioner was promoted to the rank of DIG on November 3, 2021, i.e., while he had already completed 3 years and 8 months at FHQ. The petitioner was posted as DIG (Org) on promotion while he continued to function as SO to DG. The petitioner also retained the GPRA at New Delhi, while he was transferred from 55th NCR/Delhi to 27th Bn. Narkatiaganj and subsequently to 44th Bn until October 20, 2016 (being SRE districts, even though they were family stations). Further, the petitioner retained GPRA during his posting at 42nd Bn and 7th Bn in Jammu until March 6, 2028 (being CI Ops area), and from there, he was posted at FHQ, New Delhi again. Moreover, in



the entire service span of 25 years, barring the initial probation period and 16 months of posting in Jammu region, the petitioner has not served in locations other than in Bihar or Delhi/NCR.

80. We must state here that the intent of the petitioner to retain GPRA at FHQ, New Delhi was only on the compassionate ground of competitive examinations of the children in the year 2023, which are not 9th/10th or 11th/12th, Board Examinations, as stipulated in the Standard Operating Procedure dated August 10, 2016, which we reproduce as under:

“10. Posting and Transfer on compassionate grounds:-

- a) Normally the cases of compassionate grounds will be considered by respective Departmental Transfer Committees during the Annual Transfers. The cases will be given preference over the other cases.*
- b) However, in exceptional cases, compassionate applications may also be considered other than during Annual Transfer cases. The unit head will forward the application through proper channel to the Competent Authority with specific recommendations and supported with relevant documents.*
- c) Personnel applying for transfer on self medical problem should also annex their Annual Medical Examination (AME) report and the unit controlling officer should mention about his AME report while forwarding the application.*
- d) Second Medical opinion/verification may be sought if considered desirable by the Competent Authority before considering an application on medical grounds. Only cases found genuine upon verification of facts will be considered for transfer. Ho, ever it will be subject to availability of vacancies.*
- e) The compassionate grounds may include serious or life threatening illness or disease to an immediate family member or a tragedy that seriously impacts the domestic*



circumstances to the extent that such personnel's presence at a particular place is considered necessary.

f) Request for Transfer/posting/deferment on a count of education of children may not generally be considered unless the personnel is able to substantiate cogently that the transfer would disrupt the further continuation of studies, particularly where the wards of personnel are studying in class 9th / 10th or 11th / 12th at the time transfer.

g) The tenure in cases in relating to transfer on compassionate ground will be maximum of three years or less. Deferment on medical or other compassionate ground will be for a maximum of one year, and on grounds of education, up to the month of April of succeeding year.

(emphasis supplied)

81. As can be seen from above, there is hardly any scope of interference left for us as the compassionate ground of children getting appeared in the competitive examinations does not find mentioned in the Standard Operating Procedure of August 10, 2016. In other words, the petitioner wants to retain the accommodation at FHQ, New Delhi only on the ground of competitive examination of the children and not on the privilege of retention of accommodation at the last place on posting to North-East areas. This fact also finds mentioned in his representation dated November 16, 2022 which is reproduced as under:

“Kindly refer to FHQ Order No. 4/SSB/Pers-I/2022(1)/21876-22037 dated 11th November, 2022 vide which I have been transferred to SHQ Jalpaiguri. In this regard I wish to submit that transfer/posting is an integral and inherent part of service but we do have responsibilities and obligations towards our family also and this transfer of



mine is going to affect my family immensely as well as adversely.

2. Sir, I have two sons and both will be appearing in the Competitive Examinations in the year 2023. My elder son will be appearing in various Medical Entrance Exams and the younger son in the class 12th Boards as along with various Engineering Competitive Examinations. Hence, I need to retain my house at Delhi in case of my transfer.

3. At such a life and career defining moment when my sons will be appearing for the Competitive Examinations it is very important that they are provided with stability and continuity. If their environment or setting is changed at this stage then. it will definitely affect their mental and psychological stability which will adversely affect their performance in the Competitive Examinations and our efforts and sacrifices made till date will go in vain.

4. Though I have been permitted to continue as DIG(Org) at FHQ till 31.03.2023 but it does not meet the requirement of my family commitment. Generally, all kind of competitive examinations takes place in between the month of May to August and that is not the end. If everything goes right then after successfully completing the Exam one has to go for Counselling Session which goes on till the end of the year and sometimes, gets rollover to the next year. Here it is submitted that the Counselling of NEET 2021 continued till 2022 and of NEET 2022, only the first round of Counselling



has take place till date. Hence, even if everything goes right, even then I need to keep my family at Delhi at least till the end of 2023.

5. Here it is further submitted that in such competitive exams one can not be sure of the results. Though we are expecting for the best but, God forbid, it may happen that they may not perform that well this year and they may have to re-appear in the Exams in 2024. Under such situation, as a parent, even I would like to give them, one more opportunity and even then if they do not perform well then they will have to adopt a different path.

6. In view of the above, I require 01 tenure at a location where I can retain my quarter at Delhi. Till date I have performed my duty with full sincerity and to the best of my abilities. I am also thankful to the Department that it gave me the opportunity to serve in FHQ at Delhi thereby enabling me to provide best education to my sons. Now this is the crucial stage of their career and life defining moment for my sons where I need and seek the help of the Department.

7. My request in no way is detrimental to the organisational interest. Without compromising the organisational interests, my pressing needs which is because of my obligations and responsibilities towards my family, can be easily looked into. It is, therefore, my humble and sincere submission that instead of SHQ Jalpaiguri I may be posted and given one



tenure to any location where I can retain my quarter at Delhi and fulfill my responsibilities towards my family.

Submitted for sympathetic and favourable consideration please.”

(emphasis supplied)

82. In any case, we have already held that the petitioner shall not be entitled to the benefit of Office Memorandum dated September 7, 1998 as extended by Office Memorandum dated April 8, 2021, the benefits thereof, though withdrawn on October 6, 2022, the same has been stayed by the Gauhati High Court, in view of the fact that the petitioner was transferred directly from SHQ, Jalpaiguri to SHO, Bezpara and not from FHQ, New Delhi to SHQ, Bezpara.

83. In view of our aforesaid discussion, we are of the view that the petition is without any merit. The same is dismissed.

84. No costs.

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Dismissed as infructuous.

V. KAMESWAR RAO, J

SAURABH BANERJEE, J

APRIL 02, 2024/jg