

THE HIGH COURT OF MEGHALAYA

WP(C) No. 147 of 2015

1. ARMC 6000036Y Dr. Shyam Sunder Shah
S/O : Mr. Bishnu Prasad Shah
Second-in-Command (Chief Medical Officer)
36 Assam Rifles
C/O : 99 APO, Pin : 932036.

... **Petitioner**

-Versus-

1. The Union of India, represented by the
Secretary to the Government of India,
Ministry of Home Affairs, North Block,
New Delhi – 110001.
2. The Director General Assam Rifles
Mahanideshalaya
(The Directorate General Assam Rifles)
Meghalaya, Shillong, Pin : 793011.
3. The Director (Medical)
Mahanideshalaya
(The Directorate General Assam Rifles)
Meghalaya, Shillong, Pin – 793010.
4. The Deputy Inspector General Assam Rifles
22 Sector Assam Rifles, Haflong,
Assam, Pin – 788819.
5. The Commandant, 36 Assam Rifles
C/O : 99 APO, Pin 932036.

....**Respondents**

BEFORE
THE HON'BLE MR JUSTICE T NANDAKUMAR SINGH

For the petitioner : Mr. H.G.Boruah, Adv.

For the respondents : Mr. K.Paul, Adv.
Ms. H.Kristazi, Adv.

Date of hearing : 26-06-2015

Date of Judgment : 26-06-2015

JUDGMENT AND ORDER (ORAL)

Heard Mr. H.G.Boruah, learned counsel appearing for the petitioner and also Mr. K.Paul, learned CGC appearing for the respondents.

2. By this writ petition, the petitioner is assailing the impugned transfer and posting order i.e. the impugned Massage Unclas A 1520, dated the 1st June, 2015 under which the petitioner has been transferred from 36AR (Charduar) to 28AR (Lunglei) as Second-in-Command (Chief Medical Officer). One of the grounds for assailing the transfer order is that the Commandant (Medical) Composite Hospital SSB TZP at Salonibari issued a Medical Certificate dated 04-06-2015 that the present petitioner is in LMC A2 (Personnel) w.e.f. 28/05/2014 for 02 years and he has implants in situ and has some clinical and functional deficits and as such he should not be posted in hilly terrain. For easy reference, the said Medical Certificate dated 04-06-2015 (Annexure - VI to the writ petition) is quoted as under:

“GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS
SASHASTRA SEEMA BAL (SSB)
O/O THE DEPUTY INSPECTOR
GENERAL(MEDICAL)
COMPOSITE HOSPITAL SSB,
SALONABARI,

PO-SALONIBARI,
DISTRICT – SONITPUR-784104(ASSAM)

TO WHOM IT MAY CONCERN

DR. S.S Shah 21/C (CMO) ARMO 36 Assam Rifles is a case of operated bimalleolar fracture with ankle dislocation. Presently he is in LMC A2 (Permanent) w.e.f. 28/05/2014 for 02 years and he has implants in situ and has some clinical and functional deficits. As he is in category A2 which gives limitation as – “fit for all duties not involving crawling, running, jumping, long marching, hill climbing, and handling weapons” as per M.H.A. U.O No. 1.45024/3/2004-Pers-II dated-31/07/2007, para 23.3.

He is in constant supervision under Orthopaedic Surgeons (both from 151 BH Guwahati and from C.H SSB TEZPUR). As per his clinical state and as per his low medical category of A2 (Permanent), he should get restriction in activities as stated above and he should not be posted in hilly terrain, he should be posted where there will be minimal walking and services of Orthopaedic Surgeons and Physiotherapists are available.

Yours faithfully

Sd/-
Dr. P. Latsaheb Singh, DNB (Ortho), MNAMS
Commandant(Medical)
Composite Hospital SSB TZP at Salonibari.”

3. As the petitioner is in Category A2 as indicated in the said Certificate, he is fit for all duties not involving crawling, running, jumping, long marching, hill climbing and handling weapons. Mr. K.Paul, learned counsel appearing for the respondents contended that as the petitioner is to be transferred as Chief Medical Officer, he may not require crawling, running, jumping, long marching and hill climbing.

4. Another ground for assailing the transfer order under the ROI 06/2012 Posting, is that his case shall be considered for Compassionate Ground Posting (CGP). Para 25 of the said ROI 06/2012 Posting read as follows:

“Compassionate Ground Posting (CGP)

25. An indl can avail compassionate ground posting only once in his entire service career incl the last leg posting. However request for second compassionate posting may be considered in case of pers who have completed 30 years of service and availed the previous compassionate ground posting seven years prior to the present request. Request for compassionate posting received after issue of normal posting will not be entertained. Tenure of compassionate ground posting will be of two years which will not be extended under any circumstance”.

5. Another ground for challenging the impugned transfer order is that the petitioner’s son is reading at Class II at Assam Rifles School and therefore, he should not be transferred during mid-academic term. To the contra, Mr. K.Paul, learned counsel appearing for the respondents contended that the petitioner’s son is reading only at Class II in the Assam Rifles School and the place where the petitioner is to be posted, facilities for education is also available inasmuch as there is the Assam Rifles School there also. Mr. H.G.Boruah, learned counsel appearing for the petitioner by referring to the decision of the Apex Court in ***Director of School Education, Madras and Others vrs O.Karuppa Thevan and Another (1994) Supp (2) SCC 666***, contended that the petitioner should not be transferred during mid-

academic term as his son is studying at Class II in the said School of the Assam Rifles where the petitioner is, at present, posted. It is well settled law that the ratio laid down in a case is to be understood in light of the fact of that case. In the present case, the petitioner's son shall have all facilities to study at Class II at the place where the petitioner is to be posted. Therefore, the decision of the Apex Court in ***Director of School Education, Madras and Others vrs O.Karuppa Thevan and Another 1994 Supp (2) SCC 666*** shall not help the case of the petitioner.

6. The Court, normally, shall not invoke the power of judicial review in the transfer and posting of an employee except where it is absolutely necessary on account of violation of any fundamental or other legal right. In the case of ***State of Haryana and Others vrs Kashmir Singh and Another (2010) 13 SCC 306***, the Apex Court held that there should not be any judicial review in the matter of pure administrative matters like transfer and postings of except where it is absolutely necessary on account of violation of any fundamental or other legal right. Paras 12 and 14 of the ***State of Haryana and Others case (Supra)*** read as follows:

“12. Transfer ordinarily is an incidence of service, and the courts should be very reluctant to interfere in transfer orders as long as they are not clearly illegal. In particular, we are of the opinion that transfer and postings of policemen must be left in the discretion of the State authorities concerned which are in the best position to assess the necessities of the administrative requirements of the situation. The administrative authorities concerned may be

of the opinion that more policemen are required in any particular district and/or another range than in another, depending upon their assessment of the law and order situation and/or other considerations. These are purely administrative matters, and it is well settled that courts must not ordinarily interfere in administrative matters and should maintain judicial restraint, vide Tata Cellular v. Union of India: (1994) 6 SCC 651: AIR 1996 SC 11.

14. In our opinion, the High Court has taken a totally impractical view of the matter. If the view of the High Court is to prevail, great difficulties will be created for the State administration since it will not be able to transfer/deploy its police force from one place where there may be relative peace to another district or region/range in the State where there may be disturbed law and order situation and hence requirement of more police. Courts should not, in our opinion, interfere with purely administrative matters except where absolutely necessary on account of violation of any fundamental or other legal right of the citizen. After all, the State administration cannot function with its hands tied by judiciary behind its back. As Holmes, J. of the US Supreme Court pointed out, there must be some free play of the joints provided to the executive authorities.”

7. The Apex Court in **Rajendra Singh and Others vrs State of Uttar Pradesh and Others (2009) 15 SCC 178**, further held that the Government servant has no vested right to remain posted at a place of his choice, nor can he insist that he must be posted at one place or the other. It is also fairly settled law that the transfer and posting of an employee is an incident inherent in the terms of appointment and also implicit as an essential condition of service in the absence of any specific indication to the contrary. Paras 8, 9 and 10 of

the **Rajendra Singh and Others case (Supra)** read as follows:

“8. A Government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. (see **State of U.P. v. Gobardhan Lall : (2004) 11 SCC 402: 2005 SCC (L&S) 55, SCC p. 406, para 7).**

9. The Courts are always reluctant in interfering with the transfer of an employee under such transfer is vitiated by violation of some statutory provisions or suffers from mali fides. In **Shilpi Bose v. State of Bihar: 1991 Supp (2) SCC 659: 1992 SCC (L&S) 127: AIR 1991 SC 532**, this Court held : (SCC p.661, para 4).

“4. In our opinion the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the Courts continue to interfere with day-to-day transfer orders issued by the Government and

its Subordinates Authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders”.

10. In **N.K.Singh v. Union of India: (1994) 6 SCC 98: 1994 SCC (L&S) 1304: (1994) 28 ATC 246** this Court reiterated that: (SCC p.103, Para 6)

“6.....The scope of judicial review in matters of transfer of a Government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fide and violation of any specific provision....”

8. In the present case, Mr. H.G.Boruah, learned counsel appearing for the petitioner in support of the case of the petitioner could not mention provision of the rules which have been violated in issuing the impugned transfer and posting order i.e. the impugned Massage Unclas A 1520, dated the 1st June, 2015.

9. As stated above, the Apex Court in Kashmir Singh’s case (Supra); Rajendra Singh’s case (Supra) and N.K.Singh’s case (Supra) held that transfer is an incident of service and the Court should not interfere with pure administrative matters like transfer and postings orders except in the case where the transfer and posting order is mala fide and in clear violation of the rules.

10. After considering the submissions of the learned counsel appearing for the parties, it appears that there is no violation of the rules and mala fide in issuing the impugned transfer and posting order i.e. the impugned Massage Unclassified A 1520, dated the 1st June, 2015. There is no material for interfering with the impugned transfer and posting order i.e. the impugned Massage Unclassified A 1520, dated the 1st June, 2015.

11. Hence, the writ petition is dismissed.

JUDGE

S.Rynjah