

Serial No.05
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

MC (WA) No.21/2022 in
WA No.2/2023

Date of Order: 31.01.2023

Union of India & ors

Vs.

Dr. Dipankar Chakraborty

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Applicants/Appellants

: Dr. N. Mozika, DSG with
Ms. A. Pradhan, Adv

For the Respondent

: Mrs. M. Bordoloi, Adv

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

In view of the good grounds shown, the delay in preferring the appeal is condoned and the appeal is taken on record. MC (WA) No.21 of 2022 is disposed of.

2. The appeal is taken up for immediate hearing.

3. The grievance of the appellants is that the order impugned dated May 9, 2022, as left untouched by an order on a review petition passed on September 21, 2022, puts the appellants in serious embarrassment as a now disbanded committee has been required to look into the desirability of the transfer sought by the writ petitioner-respondent.

4. The writ petitioner obtained service with the Assam Rifles as a specialised medical practitioner. Medical specialists, according to the appellants, are posted at the larger hospitals that are run by the Central Armed Police Forces and, accordingly, the writ petitioner, an ophthalmologist, was posted at the Assam Rifles' composite medical facility at Sukhovi, Nagaland. The writ petitioner has been in service for 13 years.

5. In 2012, the writ petitioner applied to be transferred to a similar composite medical facility of another CAPF, namely the Border Security Force, in Patgaon near Guwahati. The basis for the request was that the writ petitioner's wife serves as a professor in a government college in Guwahati and the writ petitioner has a young daughter.

6. In accordance with the previous practice followed in such matters, in respect whereof there is no dispute, the writ petitioner's application was favourably considered by the Union Home Ministry and the writ petitioner was granted permission to obtain the transfer, subject to the concurrence of the Director-General of Assam Rifles. According to the appellants, the DGAR refused to concur in the transfer since there was no available ophthalmologist at the Sukhovi facility and the DGAR insisted that upon the Central government making arrangements for an

appropriate replacement to be deployed at Sukhovi, the writ petitioner's request could be considered or acceded to.

7. It was such decision of the DGAR made on September 29, 2019 that was carried to this Court by way of a petition under Article 226 of the Constitution. During the pendency of the writ petition, a separate practice evolved and a committee was constituted under the aegis of the Secretary to the Ministry of Home Affairs with the Directors-General of all CAPFs being members of the committee to consider the individual cases as the present. The appellants submit that the Union Ministry also rolled out a policy by which composite medical facilities put up by one or the other of the CAPFs would be accessible to all members of other CAPFs. Thus, there was a scope for transfer of personnel between the principal medical facilities set up by the CAPFs.

8. The writ petition was disposed of by directing the relevant committee comprising the Union Home Secretary and the Directors-General of the CAPFs to consider the petitioner's request and dispose of the same expeditiously.

9. The appellants submit that by the time the impugned order was passed on May 9, 2022, the Assam Rifles had requested the Union to keep the transfer committee in abeyance because of the peculiar

difficulties that Assam Rifles and some of the other CAPFs operating in remote areas faced. According to the appellants, while the Central Industrial Security Force and the Central Reserve Police Force and the like are stationed at major towns and cities, police forces such as Indo-Tibetan Border Police or the Assam Rifles or the Border Security Force are deployed in far-flung border areas, away from major towns and with little facilities around their camps. In such circumstances, according to the appellants, if there was free transferability of officials, particularly medical specialists, the composite facilities at far-flung areas like Sukhovi would suffer as fewer people would be interested in serving at such outposts rather than in major towns and cities.

10. The appellants report that following the appellants' request, in or about August, 2022, the Union Home Ministry kept the transfer committee that had then been recently constituted in abeyance and the entire matter is being looked into afresh. The appellants submit that the objection of the Assam Rifles pertaining to the constitution of the transfer committee had been made prior to the writ petition being disposed of and it was in such circumstances that the appellants carried a review petition which was dismissed by the order dated September 21, 2022.

11. The writ petitioner, however, submits that the review petition was filed only as a counter-blast to the contempt proceedings that had been instituted by then since the appellants had not taken any steps in terms of the order dated May 9, 2022. The writ petitioner contends that nothing has been brought on record by the appellants to demonstrate that the transfer committee comprising the Union Home Secretary and the Directors-General of CAPFs has been kept in abeyance. Be that as it may.

12. Since the appellants make out a positive case that the erstwhile committee for considering transfers as in the present case has been disbanded or has been kept in abeyance, such position has to be accepted. There is no doubt that a new body or a new procedure will be put in place as expeditiously as possible for the benefit of all personnel in the CAPFs. However, merely because the erstwhile procedure has been kept in abeyance or a new procedure has not yet been evolved would not imply that the writ petitioner, who had initially applied in 2012 for transfer, has to be kept in limbo or he has to wait for the months and years before a policy is firmed up by the Union or the CAPFs or a methodology is put in place in regard to transfer of key personnel.

13. Accordingly, WA No. 2 of 2023 is disposed of by directing the Union Home Ministry, under the aegis of the Home Secretary to take a reasoned decision on the application of the writ petitioner that had earlier found favour with the Union ministry and do the needful thereupon. In the event the writ petitioner's prayer for transfer is declined, adequate reasons should be indicated in support thereof. The exercise should be completed within a period of three months from date.

14. Learned Deputy Solicitor-General, appearing for Assam Rifles, should ensure that a copy of this order is reached to the Union Home Secretary in course of this week.

15. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
31.01.2023
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