

**(2020) 02 GAU CK 0031**  
**In the Gauhati High Court**  
**Case No : Writ Petition (C) No. 255 Of 2020**

|                                         |            |
|-----------------------------------------|------------|
| Irla No. 7066 Rajeev Ranjan Kumar Singh | APPELLANT  |
| Vs                                      |            |
| Union Of India And 6 Ors                | RESPONDENT |

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**Date of Decision :** 27-02-2020

**Acts Referred:**

**Citation :** (2020) 02 GAU CK 0031

**Hon'ble Judges :** Achintya Malla Bujor Barua, J

**Bench :** Single Bench

**Advocate :** R Mazumdar

**Final Decision :** Disposed Off

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## Judgement

1. Heard Mr. R. Mazumdar, learned counsel for the petitioner and Mr. K. Gogoi, learned CGC for the respondent authorities.
2. The petitioner, who was posted at 210 Cobra Battalion as Deputy Commandant, was transferred requiring him to join a unit which was located at Jammu and accordingly, on 19.11.2017, he joined the 43rd Battalion, CRPF at Budgam, (Jammu and Kashmir). After serving the 43rd Battalion for 08(eight) months, he was again directed to join the 34th Battalion of the CRPF by an order dated 25.07.2018. It is stated that the 34th Battalion is stationed at Nagaon in Assam. While he was stationed at Nagaon in the 34th Battalion, the order dated 26.12.2019 was issued transferring him to the 53rd Battalion of the CRPF. It is stated that the 53rd Battalion of the CRPF is presently located at Baramulla in Jammu and Kashmir. The order of transfer dated 26.12.2019 is assailed in this writ petition.
3. While admitting the writ petition, an interim order dated 10.01.2020 was passed, by which the order of transfer was suspended till the next

returnable date i.e. 27.01.2020. On 27.01.2020, the interim order was extended up to 18.02.2020 and on 18.02.2020, on the prayer of the petitioner, it was again extended till today i.e. 27.02.2020.

4. Mr. R Mazumdar, learned counsel for the petitioner raises the core contention that as per the standing order No.07/2014 dated 24.11.2014 of the

Director General, CRPF, in Clause 2(iii), the normal tenure from Assistant Commandant to Deputy Inspector General is provided to be three years.

As the petitioner was posted in the 34th Battalion at Nagaon as per the order dated 25.07.2018 and as he had not completed a tenure of three years, a

contention is raised that the order of transfer is vitiated for having been passed in violation of clause 2(iii) of the standing order No.07/2014. Another

contention raised is that under clause 2(xi) of the standing order No.07/2014, if an officer is posted to a static/peace area after completion of the field

tenure in a category-A unit location, he would be allowed to remain in the same area till completion of the normal tenure and therefore as the

petitioner was posted in the 34th Battalion at Nagaon by the order of 25.07.2018 and prior to it he had completed a tenure in Category A unit location,

therefore, he should be allowed to remain in the static/peace area till the completion of the normal tenure. The provisions of Clause 2(iii) and 2(iv) of

the Standing Order No.07/2014 dated 24.04.2014 is as follows:-

2(iii) Normal tenure from Asstt Comdt to DIG would be 03 years. No officer should be allowed to continue for more than a period of 03

years at a stretch except Training Institution/Intelligence Set-up/Parliament Duty Group/Special Duty Group/ Signal/Legal Cells and

CoBRA. The tenure of officer posted in Training Institution/ Intelligence Set-up/ Parliament Duty Group/Special Duty Group/ Signal/Legal

Cells and CoBRA would be 04 years.

2(iv) Officers who are posted in locations at Category-A shall be given posting at soft/choices location only after completion of

normal tenure. The officers posted in locations at Category B shall be considered for soft/choice posting only after accommodating

officers posted in locations at Category-A i.e. preference for choices/soft posting shall be given to officers posted in locations at

Category-A.

5. We have considered the provisions of clause 2(iii) of the standing order

No.07/2014 and have taken note of that the said clause provides that the normal tenure from Assistant Commandant to Deputy Inspector General would be three years, which is also an indication that there may be a tenure other than a normal tenure of three years. The said provision is further fortified by the subsequent provision of clause 2(iii) that no officer should be allowed to continue for more than three years at a stretch except Training Institution/Intelligence Set-up/Parliament Duty Group/ Special Duty Group/ Signals/Legal Cells and CoBRA. The subsequent provision clarifies that the tenure of three years is a maximum tenure provided and is not an indication of a minimum tenure of three years.

6. As regards clause 2(xi), it is taken note of that the said provision is applicable in respect of all officers up to the rank of Commandant, which provides that on promotion the officer should compulsorily be posted to duty in a Battalion in order to complete the mandatory field service, so as to become eligible for the next promotion. But, however, if an officer was posted at a static/peace area after completion of a full tenure in category A postings, he would be allowed to remain in the same area even after promotion till completion of the normal tenure as far as possible subject to availability of vacancy. In other words, it is explicitly clear that the provision of clause 2(xi) are applicable only in respect of allowing an officer to remain in the static/peace area upon completing the full tenure in category A posting after he is being promoted, meaning thereby that the exception from the mandatory requirement of being posted in a battalion duty would be applicable after an officer is promoted.

7. But, however, Mr. Mazumdar, learned counsel for the petitioner also raises a contention that in the affidavit in opposition of the respondent authorities a stand was taken wherein certain factual incidents had been depicted, which is also an indication that the transfer was effected as a measure of punishment. By raising such contention, Mr. Mazumdar, learned counsel for the petitioner relies upon a pronouncement of the Supreme Court in *Somesh Tiwari vs- Union of India and others*, reported in (2009) 2 SCC 592, wherein in paragraph-16, it had been held as follows:-

“The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against

the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.â??

8. The core contention of Mr. Mazumdar, learned counsel for the petitioner by referring to the said pronouncement of the Supreme Court is that as the respondents had admitted that the transfer of the petitioner was effected as a measure of punishment, therefore, it would be a case where the transfer order was issued in lieu of punishment and therefore as held by the Supreme Court, such order of transfer is liable to be interfered to be illegal.

9. In order to appreciate the contention of Mr. Mazumdar, learned counsel for the petitioner, we go through the affidavit in opposition filed by the Deputy Inspector General of Police (in short DIGP), CRPF, Guwahati, Assam, wherein in paragraph-6 certain incidents that had taken place in the 34th Battalion of the CRPF where the petitioner was posted had been detailed. But in the affidavit, we do not find any admission on the part of the DIGP that the order of transfer against the petitioner was effected as a measure of punishment. In fact, in paragraph-9 of the affidavit, it is stated as follows:-

â??The Deponent further begs to state that, based on the complaint and allegation leveled against the Petitioner a P.E is under progress against the Petitioner. The presence of the Petitioner will affect the probe. After examining the case competent authority has transferred the Petitioner from 34 BN to 53 BN on Administrative ground which is in order and there is no violation of the laid down instructions/standing order. Therefore, in principle transfer is an incidence of service. Therefore, the instant Writ Petition is liable to be dismissed.â??

10. The stand of the DIGP in paragraph-9 is an unequivocal reflection that the reason for transfer of the petitioner is that the presence of the petitioner would affect the probe and therefore after examining the case, the competent authority was of the view that for administrative reason, the petitioner is required to be transferred from the 34th Battalion to 54th Battalion and as such, there is no violation of any laid down instruction/standing

order. From the said stand in the affidavit, it is discernible that it is not an admission of the respondent authorities that the transfer order was effected on the petitioner in lieu of a punishment. From such point of view, the law laid down by the Supreme Court in its pronouncement in *Somesh Tiwari* (supra) would be inapplicable in the present case on the contention that it is an admission of the respondents that the transfer was effected in lieu of punishment.

11. Mr. K. Gogoi, learned CGC appearing for the respondent authorities on the other hand relies upon the pronouncement of the Supreme Court in *Registrar General, High Court of Judicature of Madras vs- R. Perachi and others*, reported in (2011) 12 SCC 13,7 wherein in paragraph 31, it was held as follows:-

“As seen above, the transfer was purely on the administrative ground in view of the pending complaint and departmental enquiry against the first respondent. When a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned.”

12. Further reliance has been placed on the pronouncement of the Supreme Court in *Major General J.K Bansal vs- Union of India and others*, reported in (2005) 7 SCC 227, wherein in paragraph 12, it had been held as follows:-

“It will be noticed that these decisions have been rendered in the case of civilian employees or those who are working in public sector undertakings. The scope of interference by the courts in regard to members of armed forces is far more limited and narrow. It is for the higher authorities to decide when and where a member of the armed forces should be posted. The courts should be extremely slow in interfering with an order of transfer of such category of persons and unless an exceptionally strong case is made out, no interference should be made.”

13. The pronouncement of the Supreme Court in *R. Perachi and others* (Supra) provides that when a complaint against the integrity of an employee is being investigated, very often he is transferred outside the unit concerned, but such transfer would have to be seen to be a transfer purely on administrative ground in view of the pending complaint and departmental

proceeding that may be initiated. In the instant case, it is also the stand of the respondent authorities in the affidavit that a preliminary enquiry is presently being conducted against the petitioner, which may also result in a disciplinary proceeding and further that the presence of the petitioner would affect the enquiry. From the said point of view, we do not find any infirmity in the order of transfer against the petitioner.

14. But, however, we also take note of that the petitioner is serving in a disciplined force being the CRPF and from the said point of view, the grievance raised by the petitioner against the order of transfer would also have to be viewed and established in a manner other than what could have been viewed in respect of a civilian employee and that the scope of interference by a Court with regard to transfer of the members of the Armed forces is much more limited and narrow. From the said point of view also, we are not inclined to judicially interfere with the order of transfer of the petitioner dated 26.12.2019.

15. But, however, we have also taken note of that one of the reasons leading to the preliminary enquiry being conducted against the petitioner relates to the incidents that are narrated in paragraph 6 of the affidavit in opposition and in that respect, the petitioner has submitted a representation requesting the authorities to give him an opportunity of being heard as regards the incidents that the authorities deemed are to be related to the preliminary enquiry conducted against the petitioner.

16. As the order of transfer is admittedly issued by the respondent authorities for the reason that the presence of the petitioner may affect the probe against him, therefore, the petitioner is also entitled to an opportunity to present his case before the authorities as regards the subject matter of the probe. For the limited purpose, we require the Director General of CRPF before whom such representation had been filed to give a hearing to the petitioner and thereafter pass a reasoned order on the same. If the Director General of CRPF after giving a hearing to the petitioner is of the view that the order of transfer is required to be modified in any manner, he would be at liberty to do so.

17. In view of the urgency expressed by Mr. K. Gogoi, learned CGC that the continuance of the interim order by the Court is hampering the functioning of the 34th Battalion where the petitioner was posted, we accordingly

require the Director General of CRPF to give the hearing to the petitioner in respect of his representation on or before 01.03.2020. The time frame for the consideration is provided on the statement of the learned CGC upon instruction from the authorities of the CRPF. The Director General of CRPF shall accordingly notify the petitioner as regards the date, time and place of the hearing to be given to him and thereafter pass a reasoned order on his representation.

18. It is stated that the representation submitted by the petitioner may not be available on record. If it is so, the petitioner shall provide a fresh copy of the representation to the learned CGC for onward transmission to the Director General of CRPF for doing the needful. The learned CGC may also transmit a copy of the writ petition containing such representation for the purpose of its consideration. We provide that considering the balance of convenience of the parties and also the irreparable loss that may be suffered by the petitioner as well as by the respondent authorities, the interim order shall continue up to the date of passing the reasoned order by the Director General of CRPF. Further continuance of the interim order would merge with the reasoned order to be passed by the Director General of CRPF.

19. While fixing the date and time of the hearing to be given to the petitioner, the Director General of CRPF shall also take note of that at present the petitioner is stationed at a place called Khatkhati in the Assam-Nagaland border and ensure that adequate time is available to him to go and reach the place where the hearing will take place.

The writ petition stands disposed of in the above terms.