

GAHC010065412024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1760/2024

BIKASH KUMAR PATAR AND 16 ORS
S/O LATE RATNESWAWR PATAR,
RESIDENT OF RUPAHI BORI, PO DIGHALI BORI, DIST MORIGAON, ASSAM
782105

2: ASHIM AICH
S/O GOPAL AICH

RESIDENT OF SANTIR BAZAR
SOUTH TRIPURA
TRIPURA

3: ANUP KUMAR DEY
S/O SRI NAREN BARUAH
RESIDENT OF SOUTH HILL COLONY
LUMDING ASSAM

4: SUBHASH BARMAN
S/O LATE PRABHA RAM BARMAN
RESIDENT OF PAIKARKUCHI
PO SONDHA
DIST NALBARI
ASSAM 781337

5: SATYABRATA GOSWAMI
S/O PURNENDA GOSWAMI

RESIDENT OF HARERKHOLA
PO KAMALPUR
DIST DHALAI
TRIPURA

6: AJIT PASHI
S/O PANNALAL PASHI

RESIDENT OF VILLAGE ADAMTILLA
PO KALKALIGHAT
DIST KARIMGANJ
ASSAM

7: BHARAT CH. DAS

S/O LATE BISHAY RAM DAS
RESIDENT OF VILLAGE TOKRADIA
PO TOKRADIA DIST KAMRUP ASSAM 781102

8: CHITTARANJAN DAS
S/O LATE MATILAL DAS
RESIDENT OF VILLAGE PANCHAI
PO SIRGIBIL
DIST DHALI
TRIPURA
799284

9: RAJIB MEDHI
S/O LATE KAMALESWAWR MEDHI

RESIDENT OF PUB TUPAKUCHI
RAHA
NAGAON
ASSAM

10: BABUL DAS
S/O RUP RAM DAS
RESIDENT OF NEW BONGAIGAON
B.G COLONY
RLY QTR NO. 156/C
PO NEW BONGAIGAON
DIST BONGAIGAON
ASSAM

11: R ZONUN SANGA
S/O LATE R. LALHMUA KALIANA
RESIDENT OF VAIRENGTE
DIST KOLASIB
MIZORAM 796101

12: LITON NAMA
S/O LALMOHAN NAMA
RESIDENT OF RAGBER
PO KALAM CHOWRA
DIST SEPAHIJALA

TRIPURA
794102

13: SEROZA NARO
S/O PUSIINE NARO
RESIDENT OF VILLAGE DZIHA
PO AND PS CHOZUBA
DIST PHEK
NAGALAND
79104

14: AK SURCHANDU SINGH
S/O AK NIMAI SINGH

RESIDENT OF THOUBAL
DIST THOUBAL MANIPUR

15: MD. DAWLAT KHAN
S/O IBOCHA KHAN
RESIDENT OF SANGAIYUMPHAM
PO WANGHING
DIST TIWAR
MANIPUR
295148

16: SAYBUR RAHMAN BARBHUYAN
S/O LATE A.J BARBHUYAN
VILLAGE APINLART 2 PS LALA
DIST HAILAKANDI
ASSAM 788161

17: PRASANTA ROY
C/O JAYANTA KR. ROY
AHUNIK RESIDENCY
FLAT NO. 207
BLOCK NO. PANDU PORT ROAD
ADABARI
PO PANDU
DIST KAMRUP M ASSAM 78101

VERSUS

THE UNION OF INDIA AND 6 ORS
TO BE REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA,
MINISTRY OF RAILWAYS, RAIL BHAWAN RAISINA ROAD, NEW DELHI
110001

2:THE DIG (ESTABLISHMENT) RAILWAY BOARD

RAIL BHAVAN
RAISINA ROAD
NEW DELHI 110001

3:THE DIRECTOR GENERAL OF RAILWAY PROTECTION FORCE
RAIL BHAWAN
RAISINA ROAD
NEW DELHI 110001

4:THE PRINCIPAL CHIEF SECURITY COMMISSIONER

NF RAILWAY
MALIGAON GUWAHATI 781011 ASSAM

5:THE SENIOR DIVISIONAL SECURITY COMMISSIONER/RPF

NF RAILWAY
LUMDING ASSAM 782447

6:THE DIVISIONAL SECURITY CAOMMISSIONER/RPF
NF RAILWAY
LUMDING
ASSAM 782447

7:THE DIVISIONAL SECURITY CAOMMISSIONER/RPF
NF RAILWAY
TINSUKIA
ASSAM 78612

Advocate for the Petitioner : MR I RAFIQUE

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

14.05.2024

Heard Mr. I. Rafique, learned counsel for the petitioners. Also heard Ms. B. Sarma, learned Central Government Counsel (CGC) for the respondents.

2] These writ petitioners are employed as Railway Head Constables and

Constables in the Railway Protection Force (RPF) under the Northeast Frontier Railway Zone. The writ petitioners have approached this Court challenging the transfer order dated 21.07.2023 and subsequent orders dated 15.03.2024 & 20.03.2024 issued to them transferring them to various places of postings. Earlier the writ petitioners had approached this Court by filing WP(C) no.4405/2023 challenging their transfer order dated 21.07.2023 issued by the Principal Chief Security Commissioner, Northeast Frontier Railway. During the pendency of the writ petition, an exemption order was issued by the Competent Authority of the Railways that the date of start of their tenure shall be deemed to be from 31.03.2024 only for the purpose of tenure transfer. This communication was issued on 31.07.2023. In view of this communication, the writ petition was closed on the ground that it has become infructuous. During the pendency of the earlier writ petition, interim orders were granted in the respect of the transfer orders issued which, however, according to the writ petitioners was not given effect to by the Railway Authorities and release orders were issued. This compels the writ petitioners to approach this Court again by filing another writ petition, which is, WP(C) no.4744/2023. The subsequent writ petition also came to be closed as infructuous in view of the communication dated 31.07.2023, whereby the tenure transfer was given effect to from 31.03.2024.

3] The present writ petition has been filed seeking orders from this Court that with effect from 18.03.2024 a set of new directives being the Directive no.58 (Revised) came to be issued. The petitioners have urged before this Court that the benefits granted under the Directive no.58 (Revised) including the offer of 3 (three) choices of posting and consideration of personal difficulty in respect of RPF Personnel's was considered in respect of other similarly situated personnel. Accordingly, the writ petitioners are before this Court praying for issuance of a direction for reconsideration of their transfer orders issued on 21.07.2023 and subsequent orders dated 15.03.2024 and 20.03.2024. The petitioners have prayed for setting aside of the transfer orders on the ground that the transfer orders are violative of the provisions of the Directive no.58 as well as the Directive no.58 (Revised).

4] Notice in the matter was issued on 08.05.2024. However, before issuance of notice, on 03.04.2024 this Court had passed interim order in favour of the petitioners and stayed the impugned transfer order dated 21.07.2023 and subsequent orders dated 15.03.2024 & 20.03.2024. The interim order was extended from time to time. The respondent Railway Authorities filed their counter affidavit challenging the claim of the writ petitioners.

5] The learned counsel for the petitioners submits that the petitioners were

required to be offered 3 (three) choices of posting as per the Directive No.58 as well as the Directive No.58 (Revised). It was obligatory on the part of the Railway Authorities to call for the choices of posting. The same, however, was not done. That apart, similarly situated RPF Personnel, who were also covered under the earlier transfer order issued on 21.07.2023, were considered on the basis of representation furnished by them and their transfer orders were revised. It is submitted that the Railway Authorities are duty bound to consider the prayer of the writ petitioners and allow them to offer 3 (three) choices of postings and thereafter, pass necessary orders.

6] The submissions of the learned counsel for the petitioners are opposed by the learned counsel for the respondents. Learned CGC strongly opposes the submissions made by the learned counsel for the petitioners and contends that the transfer order was issued on 21.07.2023 and a challenge made by the writ petitioners by virtue of 2 (two) writ petitions being WP(C) no.4405/2023 and WP(C) no.4744/2023 came to be closed as infructuous. This Court did not interfere with the transfer order issued on 21.07.2023 and therefore, the transfer Order remained in force and consequently, pursuant to the expiry of the extension period, the transfer order was required to be given effect to with effect from 01.04.2024 and the petitioners were required to join their places of postings as per the transfer order. It is submitted that the Railway Personnel,

whose cases have been reconsidered, had applied under the Directive No.58 on the criteria prescribed under the Clause-C (xvi) and on such grounds being urged before the Railway Authorities, the case of the concerned RPF personnel were considered. It is submitted that in so far as the writ petitioners are concerned, there cases do not fall under the Clause-C (xvi). However, if the writ petitioners feel that their cases are required to be considered under Clause-C (xvi), they may file suitable application before the competent authority and the authority may consider the same. However, since the transfer order was never interfered with by the Co-ordinate Bench of this Court earlier and the extension period having been expired, they are now bound to join their places of postings in view of the transfer order dated 21.07.2023.

7] Learned counsel for the parties have been heard. Pleadings on records have been carefully perused.

8)i] The Directive No.58 contains a clause that the offering choice of posting to the concerned Railway Personnel in respect of the tenure postings. The Clause (C) xvi, xvii and xviii are read as under:

The members of the force due to transfers would be able to mark all the options available in a ranking of choice, so as the best possible welfare of the staff could be taken into consideration. However, any filling of the choices shall not give any right on the part of the staff to be posted in any particular

place or unit. The new place of posting shall be allotted objectively on the basis of the administrative requirements, vacancy positions, previous postings, length of service etc. as per approved guidelines.

However, when eligible staff, more than the notified vacancies, opt for the same division/unit, priority shall be given to the following in descending order:

1. Suffering from a terminal illness him/herself

2. Being a care giver to a disabled child

3. Having a dependent with a terminal illness

4. Children studying in 9th /11th and not eligible for retention

5. Spouse working

6. Never served in concerned geographical category or served there in lesser period than others

7. Never served in concerned functional category or served there in lesser period than others

8. Better APAR in last 5 years

9. Extreme compassionate ground

10. Being higher in the seniority list

Option of staff with more than one below average APAR, facing

major penalty charge-sheet or involved in cases of moral turpitude in last 5 years, need not be considered.

Provided further that, Inspectors will less than "Very Good" APAR in any of the last 5 years will not be considered for RPF posts falling in Metro and Urban area and categories "A" and "B",

(xvii) All the officer / staff under "zone of consideration" for transfer will have to submit option of all units where they are eligible to be posted in descending order of choice. For example, if Shyam Kumar, Constable is to be transferred from LJV div to some other div of NER, he has to give option in descending order of choice of all units of LJV div and BSB div of NER. The TMM will, by default, give choice in alphabetical order, which the concerned staff can change while submitting option. However, say if the staff concerned gives only five choices, all other units will be assigned choices from Srl No 6 onwards based on alphabetical order.

(xviii) All the Officers & Staff shall be required to fill up their choices of postings within One month (or less with approval of DG RPF) of freezing & posting of such data for their perusal. After the expiry of such period, no further modifications would be permitted. The Tech Cell/RPF shall make necessary configurations in the TMM application and mobile App in accordance with the provisions mentioned above.

ii] The Clause D (vii) of the Directive No. 58 (Revised) also contains similar directive which are quoted herein below:

D.

(vii) Enrolled members of the Force who have been transferred from a Station upon completing either 10 years in a continuous spell or 15 years in broken spells at the Station will be legible for posting back to that Station solely on criteria of their last posting or on extreme compassionate ground which is to be scrutinized based on merit and approved by the Transferring Authority on case to case basis. They shall be given a posting in a Unit/Post/Outpost out of first three choices sought by them as far as possible."

9] A careful perusal of the Clauses reveal that both under the Directive No.58 and the Directive No.58 (Revised), there are provisions for offering the choice of postings which are to be considered by the competent authority on the criteria prescribed under the same Clauses. In so far as the Clause No.C (xvi) as provided under the Directive No.58, it is seen that there are specific grounds on which any application forwarded by the RPF personnel can be considered.

10] The grievance of the petitioners essentially is that while the grievances of similarly situated persons were considered, while the petitioners had not been given any opportunity to avail the procedure prescribed under the Revised Directive No.58. 2 (two) such specific instance is in respect of Railway Protection Force Personnel Shri Sarbeswar Das and Shri Ramesh Chandra Roy have been pointed out by the learned counsel for the petitioners and it is submitted that

their cases had been considered in spite of they being covered by the same transfer order dated 21.07.2023. This contention of the writ petitioners, however, is disputed by the learned CGC who submits that Shri Ramesh Chandra Roy case was not considered and he was released in terms of the earlier transfer order dated 21.07.2023 and he joined his place of posting on 12.04.2024 at Rangia Division. However, she fairly submits that Shri Sarbeswar Das was considered as he had applied under Clause C (xvi) of the Directive No.58.

11] The perusal of the Directive no.58 and the Directive No.58 (Revised) reveal that there are provisions for the Railway Authorities to consider the hardship and difficulties faced by the RPFs in respect of the tenure transfer. These directives clearly laid down the procedure prescribed for issuance of the transfer in respect of the Railway Protection Force Personnel. This directive reveals that competent Railway Authorities are vested with sufficient powers to reconsider any such application/representation that may be preferred by the concerned RPF personnel expressing the hardship and the difficulties in respect of the tenure transfers issued. While Clause-C (xvii) under the Directive No.58 provides for specific grounds on which the priority should be given for absorption in the notified vacancies by the Railway Authorities. Clause-C (vii) of the Directive No.58 (Revised) provides for submission of options by the

concerned RPF personnel towards cases of their posting. These options upon being submitted will have to be considered by the competent authority and thereafter, appropriate orders are required to be passed. Having noticed such provisions available in these Directives, this Court is of the view that at this stage the writ petition can be disposed of with a direction to the petitioners to file new representations individually before the Principal Chief Security Commissioner, Northeast Frontier Railway Authority, namely, the respondent no.4 expressing their hardships in reference to the provisions of Directive No.58 read with Directive No.58 (Revised). Upon such representation being filed, the competent Authority will individually consider each of the representations and pass necessary orders thereon. Since the petitioners transfer orders have been stayed by this Court, this Court is of the considered view that the benefit of interim order should be extended till the representations are disposed of by the Railway Authorities. The writ petitioners will file their representations within 7 (seven) days from the date of receipt of certified copy of this order and thereafter, within 2 (two) weeks thereof the Railway Authorities will consider and dispose of the representations which may be filed by the petitioners passing appropriate order thereon. Any orders are passed in those representations, copies thereof shall be served to the writ petitioners.

12] It is further submitted that the salaries of the petitioners (RPF personnel)

have not been released. The concerned respondent(s) will forthwith release their regular salaries and all other financial benefits.

13] With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant