

GAHC010117822024



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

Case No. : WP(C)/3050/2024

SUSHANTA DEBNATH
S/O- LT. SHYAMA PADA DEBNATH, R/O- REST CAMP, HATATH COLONY, P.O.
PANDU, P.S. JALUKBARI, DISTRICT- KAMRUP (M), ASSAM, PIN- 781012

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EXCISE DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-6

3:THE SUPERINTENDENT OF EXCISE
KAMRUP
P.O. AND P.S. AND DIST- KAMRUP (ASSAM)

4:THE SUPERINTENDENT OF EXCISE
LAKHIMPUR
P.O. AND P.S. LAKHIMPUR
DIST.- LAKHIMPUR (ASSAM)

5:ANISH KALAM
S/O- ABDUL KALAM
R/O- LOHARPATTY
P.O. AND P.S.- DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM
PIN- 78600

Advocate for the Petitioner : MR. I H SAIKIA, MS L HMAR,MR K KASHYAB,MR. M R CHOUDHURY,MR. K KALITA

Advocate for the Respondent : SC, EXCISE DEPTT.,

WP(C)/3023/2024

ANISH KALAM
S/O- ABDUL KALAM

R/O- LOHARIPATTY

P.O. AND P.S.- DIBRUGARH

DIST.- DIBRUGARH (ASSAM)

PIN- 786001.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY

GOVERNMENT OF ASSAM

EXCISE DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX
DISPUR
GHY-6.

3:THE SUPERINTENDENT OF EXCISE
LAKHIMPUR
P.O. AND P.S.- LAKHIMPUR

DIST.- LAKHIMPUR
PIN- 787001.

4:SUSHANTA DEBNATH

S/O- LATE SYAMAPADA DEBNATH

R/O- REST CAMP HATATH COLONEY

P.O.- PANDU
GUWAHATI

DIST.- KAMRUP(M)
ASSAM

PIN- 781012.

Advocate for : MR R ISLAM

Advocate for : SC

EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 3 ORS

WP(C)/3045/2024

ZAMALUDDIN AHMED
S/O- LATE ABDUL MANNAM SIDDIQUE
R/O- VILL.- KENDUGURI
P.O. HERAPATI
P.S. NAGAON SADAR
DIST. NAGAON
ASSAM
PIN- 782002.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER OF EXCISE

ASSAM HOUSEFED COMPLEX
DISPUR
GUWAHATI-6.

3:THE SUPERINTENDENT OF EXCISE
DHEKIAJULI CIRCLE
ASSAM

4:THE SUPERINTENDENT OF EXCISE

SADIYA TINSUKIA
ASSAM

5:DIPJYOTI ADHIKARY
ASSISTANT INSPECTOR OF EXCISE
SON OF NARAYAN ADHIKARY
R/O- VILL.- HABIGAON
P.S. MAZBAT
UDALGURI
ASSAM
PIN- 784507.

Advocate for : MR. I H SAIKIA
Advocate for : SC
EXCISE DEPTT. appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE

HON'NBLE MR. JUSTICE SANJAY KUMAR MEDHI

For the Petitioners : Shri IH Saikia, Advocate,
Shri R Islam, Advocate.

For the Respondents : Shri KP Pathak, Sc, Excise Deptt.,
Shri MR Adhikari, Advocate, R/5.

Date of Hearing : 30.08.2024.

Date of Judgment : 30.08.2024.

JUDGMENT & ORDER

All these three writ petitions being connected are heard analogously and are being disposed of by this common order.

2. The petitioners are serving as Assistant Excise Inspectors. The subject matter involved is frequent transfer of the petitioners.

3. Before going to the issue, the brief facts of each of the cases are required to be put on record. The challenge in all these three cases pertains to an order dated 06.06.2024 passed by the Commissioner of Excise, Assam.

The petitioner, Anish Kalam in WP(C)/3023/2024 was initially serving at Dhubri when he was transferred to Dhakuakhana vide an order dated 12.02.2024. Vide the impugned order dated 06.06.2024, he has been transferred from Dhakuakhana to Hajo.

The petitioner, Zamaluddin Ahmed in WP(C)/3045/2024 was earlier posted at Chapormukh and was transferred to Dhekiajuli on 12.02.2024. Vide the impugned order dated 06.06.2024, he has been transferred from Dhekiajuli to Sadiya vice the respondent no. 5, Shri Dipjyoti Adhikary.

The petitioner, Sushanta Debnath in WP(C)/3050/2024 was earlier serving at Guwahati and was transferred to Hajo on 12.02.2024. Vide the impugned order dated 06.06.2024, he has again been transferred from Hajo to Dhakuakhana vice the incumbent Anish Kalam {the petitioner in WP(C)/3023/2024}.

4. I have heard Shri IH Saikia, learned counsel for the petitioners in WP(C)/3050 & 3045/2024 and Shri R Islam, learned counsel for the petitioner in WP(C)/3023/2024 in which the private respondent is represented by Shri IH Saikia, learned counsel. I have also heard Shri KP Pathak, learned Standing Counsel, Excise Department, Assam as well as Shri MR Adhikari, learned counsel for the respondent no. 5 in WP(C)/3045/2024.

5. The learned counsel for the petitioners have submitted that frequent transfers, as such, are not to be taken recourse to unless and until there is serious exigency. In this regard, reference has been made to Office Memoranda dated 12.11.2009, 06.08.2013 and earlier notification holding the field. It is submitted that hardly 4 months prior to the impugned order of transfer dated 06.06.2024, the petitioners were already transferred and therefore, there is no public interest involved at all for again transferring them. It is submitted that though a stand has been taken by the Department that the earlier transfer order dated 12.02.2024 was due to a directive of the Election Commission of India (ECI), the fact remains that the petitioners were made to move from one location to another. It is submitted that frequent transfers, apart from causing inconvenience and harassment would also adversely affect the morale of the Government servant.

6. On the other hand, Shri Pathak, learned Standing Counsel for the Department has, however, submitted that there are cogent reasons for effecting the transfer. It is submitted that it is not only the three petitioners who were transferred by the order dated 06.06.2024 but a total of 39 officers and the other officers are also involved who are not aggrieved by the same. By referring to Annexure-A of the affidavit-in-opposition filed on 24.06.2024, the learned Standing Counsel submits that the consideration for the impugned transfer is revealed from the note sheet. It is submitted that due to certain change in the rate of ad-valorem levy, there is a surge of inflow of liquor from the neighbouring States and only to place the "right official at the right place", the transfer has been effected. It is submitted that there is no *mala fide* alleged or involved and the transfer has been made in the public interest. The learned Standing Counsel has also submitted that the post concerned, namely, Assistant Excise Inspector is not covered under the Office Memoranda referred to by the learned counsel for the petitioners. He accordingly submits that the writ petitions be dismissed.

7. Shri Adhikari, learned counsel appearing for the private respondent no. 5 in WP(C)/3045/2024 submits that he was earlier working at Hojai subsequent to his transfer from Dhekiajuli on 12.02.2024 and vide the impugned order dated 06.06.2024, he has been brought back to Hojai. The learned counsel has also raised the grievance of frequent transfer and has submitted that in the last 4 years, his client has been transferred five times.

8. The rival submissions have been duly considered and the materials placed before this Court have also been carefully examined.

9. Transfer is an exigency of service and normally, this Court will be loath to interfere with such exercise of powers which are exclusively within the domain of the employer. At the same time, the aspect involved in this case is frequent transfer which has to be examined in connection with the reasons projected to defend such transfer. The earlier transfers of the incumbent involved in this litigation were of 12.02.2024 and within a period of less than 4 months, the impugned transfer order dated 06.06.2024 has been issued. Though it is the contention of the Department that the earlier transfer order dated 12.02.2024 had to be issued on the instructions of the ECI which were on account of the General Elections, it is a matter of fact that the incumbents had to move from one location to the other. This Court has also looked into the reasons cited in the note sheet, as would reveal from Annexure-A. It has been stated that due to certain change of the rates of the ad-valorem levy w.e.f. 01.04.2024, transfers had to be effected to put the "right officials at the right" place to stop the inflow of liquor from the neighbouring States. The reason cited cannot be held to be justified at all as all Government servants in a particular cadre have to be treated at par. That apart, the transfers which are involved in the present three cases are not from locations which were in a neighbouring area of the State of Assam. As

noted above, the impugned transfer order involves place of posting, like Hajo and Dhekiajuli and many other locations concerning 39 personnel which are not border areas of the State. The reasons cited do not appear to be justified, more so when the petitioners involved had to move within less than 4 months from the earlier place of postings.

10. A submission was made on behalf of the Department that the Office Memoranda relies upon by the petitioners are not applicable in the instant case. Even accepting for argument sake the said submission, the aspect of frequent transfer cannot be overlooked. Though there is no manner of doubt that the posts involved are transferable which may be done in public interest and following the due process of law, frequent transfer of the present nature cannot be endorsed by this Court in the interest of justice.

11. In view of the above, the writ petitions are allowed and the transfers of the petitioners in these cases stand interfered with and are set aside. It is, however, made clear that interference is only with regard to the petitioners who have approached this Court and would not affect the incumbents whose names appear in the impugned order dated 06.06.2024.

12. The writ petitions accordingly stand disposed of.

JUDGE

Comparing Assistant