

GAHC010049042026



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

Case No. : WP(C)/1502/2026

NIRANJAN DAS
SON OF LATE SONADHAR DAS, RESIDENT OF SUBHASINI ROAD NEAR
PINE WOOD HOSPITAL IN THE DISTRICT OF TINSUKIA, ASSAM. PIN-
786126.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER OF EXCISE, ASSAM, HOUSEFED
COMPLEX, DISPUR, GUWAHATI-781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
EXCISE DEPARTMENT
DISPUR
GUWAHATI-781006

3:THE UNDER SECRETARY TO THE GOVERNMENT OF ASSAM

EXCISE DEPARTMENT
DISPUR
GUWAHATI-781006.

4:SRI JANARDAN GOSWAMI
INSPECTOR OF EXCISE
LAKHIMPUR SADAR CIRCLE
LAKHIMPUR

Advocate for the Petitioner : MR. K N CHOUDHURY, MR. D J DAS,MR. TANUZ
KASHYAP,MR. R M DEKA,N GAUTAM

Advocate for the Respondent : SC, EXCISE DEPTT.,

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

18.03.2026

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. R.M. Deka, learned counsel for the petitioner and Mr. P.N. Goswami, learned Additional Advocate General appearing for the respondent Department.

2. The petitioner is aggrieved by the impugned order of transfer. According to the petitioner, he is being sought to be transferred in total violation of the norms and the guidelines which was issued in respect of transfers. Learned senior counsel for the petitioner submits that in a span of 05(five) years, he was transferred six times within the State and the impugned transfer order transferring him from Tinsukia to Gossaigaon should not have been made in terms of the Election Commission guidelines as he does not fall within the criteria specified for such transfers namely, not in home district or having spend three year in such place of posting. Under such circumstances, the learned Standing Counsel, Excise Department was permitted to complete his instructions on the last date and the matter was fixed today.

3. Today, learned Additional Advocate General, Assam appears on behalf of the Department and has placed before the Court the relevant note-sheets. In the note sheets placed before the Court, he has tried to justify that the action of the Department is not vindictive rather it is because of exigencies of service. He submits that in terms of the Office Memorandum dated 06.08.2013, the period of three years has been modified to two years and therefore, ordinarily a person, who has not completed two years, would not be transferred out of his place of posting in respect of routine transfers.

However, it does not exclude transfers required to be made for exigencies of service, even after the period of two years is not completed. He further submits that because of the Election Commission Notification, the transfers are required to be made in respect of persons who are in their home districts or who have completed more than two years. In the process, in order to accommodate those candidates who fall under the Notification or guidelines issued by the Election Commission, some other persons like the writ petitioner who although do not fall within the criteria, are also required to be transferred out. Under such circumstances, besides the writ petitioner, as many as, five other candidates have been transferred out although they do not fall within the criteria, but to meet the exigencies of service. These transfers have had the approval of the highest authority in the State as is relevant from the note-sheets placed before the Court. Under such circumstances, it is submitted that the transfer order ought not to be interfered with. In that view of the matter, the petitioner may file a representation before the authorities and the authorities may consider his prayer, however subject to the writ petitioner joining in his place of posting i.e. at Gossaigaon in terms of the impugned transfer order.

4. Mr. Goswami, learned Additonal Advocate General, Assam has placed reliance on the judgment of the Division Bench in State of Assam and others –vs- Dilip Kumar Sarma and others, to submit that in the event the guidelines are not adhered to, it gives to an enforceable action before the Court of law, more particularly, before the writ Court. He further submits that in a recent judgment rendered by the Apex Court in S.C. Saxena –vs Union of India, reported in (2006) 9 SCC 583, the Apex Court has deprecated the conduct of the employees in not complying with the transfer orders while approaching the Courts and questioning the legality of such transfer orders. He has

referred to the judgment to submit that incumbents who assail the orders of transfers before the Court are required to first go and join their place of posting. Under such circumstances, he submits that the writ petition can be disposed of directing the petitioner to file his representation, if he desires, however, subject to the fact that the writ petitioner will go and join in his place of posting.

5. Mr. K.N. Choudhury, learned senior counsel for the petitioner on the other hand submits that when the claim of the petitioner is prima-facie to decide the scope of the Election Commission guidelines and from his instructions, the relieving candidate, namely the private respondent No.4 has not joined in his place of posting, there should be no direction to the petitioner to go and join in his place of posting as by the impugned order dated 06.03.2026 and the petitioner will file a representation and unless such representation is disposed of, the petitioner should be allowed to remain in his present place of posting i.e., Tinsukia.

6. Having heard the learned counsel for the parties and upon perusal of the instructions placed by the learned Additional Advocate General before the Court and also upon perusal of the judgments relied on, this Court is of the view that in so far as the law laid down by the Division Bench in Dilip Kumar Sarma (supra) is concerned, there is no quarrel in the proposition inasmuch as, the guidelines cannot be a basis of an enforceable right. However, the fact remains that the guidelines issued by higher authorities are binding on the State Government and they are expected to comply with those guidelines unless the same are suitably amended. In so far as the guidelines dated 06.08.2013 is concerned, the policy of transfer is in respect of incumbents who satisfy the requirement that they have been posted in a place and have not completed more than two years and therefore, ordinarily they cannot be

transferred out subject to the approval of the Chief Minister of the State. In so far as the Election Commission guidelines are concerned, the guidelines laid down the following criteria in respect of candidates who are required to be transferred out:-

- (i) Posted in the home district;
- (ii) Three years as on 31.05.2026;
- (iii) Three years in the last four years;
- (iv) Either posted in the same district where the officer was posted in the last assembly election;
- (v) Was posted in the same district where the officer was posted in any bi-election held in the district after the assembly election.

It is only even a incumbent satisfy any or all of these conditions that under the Election Commission guidelines they are required to be transferred out coupled with the condition in the Office Memorandum dated 06.08.2013 that a person have completed more than two years in the same district.

7. In so far as the writ petitioner is concerned, prima-facie, it appears to the Court that he does not satisfy any of the criteria. It is also the stand of the State that his transfer is an identical transfer in order to accommodate those incumbents who are sought to be transferred out because of the Election Commission guidelines in view of the ensuing Assembly election scheduled to be held in the State of Assam.

8. Under such circumstances, upon considering the respective submissions made by the learned counsel for the parties this Court considers that ends of justice will be met if the petitioner is permitted to file his representation before the appropriate authority namely, the respondent No.2 Secretary to

the Government of Assam, Excise Department within a period of 03(three) working days from today ventilating his grievance. If such a representation is filed as permitted by the Court by the writ petitioner before the respondent No.2, the same shall be decided within a period of seven days there-from.

9. Needless to say, any such decision that is passed by the respondent No.2, the same shall be by way of a speaking order and copies thereof be served on the writ petitioner. In so far as the question as to whether the petitioner is required to join in his place of posting, in the given facts and circumstances of the case, this Court is not persuaded to issue any direction to the writ petitioner to go and join in his place of posting which is Gossaigaon in view of the directions given in this order and also in view of the fact that the petitioner claims that respondent No.4 has not joined, which however is disputed by the respondent authorities.

10. Accordingly, the writ petition stands disposed of in terms of the above.

11. The interim order, if any, will continue till 31.03.2026.

JUDGE

Comparing Assistant