

GAHC010095622025



2025:GAU-AS:13159

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

Case No. : WP(C)/2435/2025

DR DAKJI DULOM
D/O LATE TADAK DULOM, PRESENTLY TRANSFERRED AND POSTED AT
COMPOSITE HOSPITAL, BSF, AGARTALA, P/R/A HOUSE NO. 2, HOME
SWEET HOME, S.O.S ROAD, BORJHAR, GUWAHATI-781015

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY, MINISTRY OF HOME AFFAIRS, GOI,
NEW DELHI- 110003

2:THE DIRECTOR GENERAL
BSF
CGO COMPLEX
LODHI ROAD
NEW DELHI-110003

3:THE DEPUTY INSPECTOR GENERAL (MEDICAL)
MS CAPFS CH BSF
PATGAON
GUWAHATI (ASSAM)

4:THE DEPUTY INSPECTOR GENERAL (MEDICAL)
MS CAPFS CH BSF
AGARTALA
TRIPUR

Advocate for the Petitioner : MR. R MAZUMDAR, MR. D GOGOI, MR. R DEKA, MS T
WAPANGLA, MRS P RAI

Advocate for the Respondent : DY.S.G.I., MR. B SHARMA (C.G.C.)

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER**

24.09.2025

Heard Mr. D. Gogoi, learned counsel for the petitioner and Ms. B. Sharma, learned Central Government Counsel (CGC) for all the respondents.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has:-

(i) Challenged the transfer order dated 24.03.2025 and also the communication dated 29.04.2025, by which her representation was rejected and

(ii) Prayed for issuing direction to the respondent authorities, more particularly respondent Nos. 1 & 2, to reconsider her representation for retention at Composite Hospital, BSF Patgaon, Guwahati for a period of one year and/or in the alternative, in case of retention is not feasible, then to direct the respondent No. 3 to consider her application dated 30.04.2025, for granting her 365 days of Child Care Leave (CCL hereinafter).

3. Mr. Gogoi, learned counsel for the petitioner submits that the petitioner had joined the Border Security Force (BSF hereinafter), on 28.10.2014, as Deputy Commandant/Specialist Medical Officer and presently, she has discharged her duties sincerely as Commandant/Specialist Grade – I in the Composite Hospital, BSF, Patgaon, Guwahati (Patgaon Hospital hereinafter).

3.1. Further submission of Mr. Gogoi is that having come to know that the petitioner was being considered to be placed under Annual Posting/Transfer – 2025, she had filed a representation on 14.12.2023, before the respondent

authorities praying for retention at Patgaon Hospital for a period of one year. But, without affording her any opportunity of being heard, the said representation was rejected and she was transferred from Patgaon Hospital to Composite Hospital, BSF, Agartala (Agartala Hospital hereinafter), vide order dated 24.03.2025, under Annual Posting/Transfer – 2025. Being aggrieved, the petitioner had filed representation on 26.03.2025, on the ground that both her minor daughters are in their crucial year of academic sessions and changing of their schools in their mid-year of academic sessions, would cause immense disturbance to their studies. But, the respondent authorities had rejected the said representation, by issuing Movement order dated 30.04.2025, without granting her request for availing Child Care Leave (CCL hereinafter).

3.2. Mr. Gogoi, referring to a decision of Hon'ble Supreme Court in the case of **Director of School Education Madras and Others vs. O. Karuppa Thevan**, reported in **MANU/SC/1731/1994**, submits that no law requires an employee to be heard before his transfer when the authorities make the transfer for the exigencies of administration and in view of the fact that the children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent and as the authority is unable to point out that there was such urgency that the employee could not have been accommodated till the end of the current academic year, while setting aside the impugned order of the Tribunal, direct that the authority should not effect the transfer till the end of the current academic year.

3.3. Mr. Gogoi has also referred to the decisions of **Shalini Dharmani vs. The State of Himachal Pradesh and Others**, reported in

MANU/SCOR/58584/2024 and Santona Thakuria vs. State of Assam and Others, reported in **MANU/GH/0326/2016** and also referred to the Notification, dated 28.07.2023, issued by the Department of Personnel and Training, which relates to CCL.

3.4. It is further submitted by Mr. Gogoi that the husband of the petitioner is serving in the NEIGRIHMS, Shillong, as a Professor and HOD, Ophthalmology and her daughters are studying in Guwahati and they are in their mid-year of academic sessions and unless the CCL is granted to her, she will suffer serious prejudice. Under such circumstances, Mr. Gogoi has contended to allow this petition.

4. Per-contra, Ms. Sharma, learned CGC submits that this writ petition becomes infructuous, inasmuch as the petitioner has been released by issuing movement order and she is neither in Agartala nor in Guwahati.

4.1. However, during the course of the deliberation, Ms. Sharma was asked to obtain instructions as to whether the authority is in a position to grant CCL to the petitioner or not. Ms. Sharma, on instructions, submits that if the petitioner join the new place of posting, i.e. the Agartala Hospital and thereafter, file a representation for CCL, then the authority will definitely consider the same in accordance with law.

4.2. Ms. Sharma further submits that the petitioner is the Anesthesia Specialist and there is only one Anesthetist in Agartala Hospital and in view of the transfer order of the petitioner, she has already been released from Patgaon Hospital and in absence of Anesthetist in the Agartala Hospital, the respondent authorities are facing difficulties in managing the service of Anesthetist. Therefore, it is submitted that this writ petition may be disposed of by directing

the petitioner to report in her new place of posting and thereafter, to file a representation for granting CCL and in the event of filing such a representation, Ms. Sharma has assured this Court that the authority will consider the same in accordance with law.

5. The respondent Nos. 1 – 4 have filed their affidavit-in-opposition, wherein a stand has been taken that the petitioner was appointed as Deputy Commandant/Specialist (Anesthesiology) Grade – II (Junior Scale) in BSF, on 28.10.2014. After joining the service, she was in Shillong from 28.10.2014 to 23.08.2021 and in Guwahati from 24.08.2021 to 30.04.2025 and on completion of her tenure at Patgaon Hospital, she was transferred to Agartala Hospital with a direction to report at new place of posting by 30.04.2025.

5.1. It is further stated that in her representation, dated 26.03.2025, she has stated that her husband is serving in the NEIGRIHMS, Shillong, as a Professor and HOD, Ophthalmology and as per DoP&T guidelines, if both the spouses are in Central Government Service, then they should be posted together or nearly station for the family stability and children's welfare and the said representation was examined by the competent authority, but the same could not be acceded by the competent authority.

5.2. It is also stated that as per para 5 (e) of the policy issued by FHQ BSF (Pers Dte) vide L/No. 9/100/200-Pers/BSF/18223-47, dated 18.05.2010, the officer with school going children or whose wards are to appear in Board Examinations (12th Std.) may not be disturbed in middle of the academic session as far as possible and that there is no such provision to retain the office at a place whose children or wards are appearing for Board Exams (10th Std.) and the decision of the competent authority in respect of the representation of

the petitioner was conveyed to CH BSF Patgaon, vide FHQ Pers Dte (GOs P&T Desk) Signal No. R/3224, dated 29.04.2025, with a direction that the petitioner shall join her new place of posting as per schedule.

5.3. Further stand of the respondent authorities is that on being relieved from CH BSF, Patgaon, the petitioner submitted an application on 30.04.2025, requesting to grant 365 days CCL as per Rule 43 of the Central Civil Services (Leave) Rules to take care of her daughters, who are studying at 10th standard at Guwahati. But, the CCL cannot be demanded as a matter of right and under no circumstances can any employee proceed on CCL without prior proper approval of the leave by the leave sanctioning authority and that there are 10 Composite Hospitals in BSF and only one Anesthesia Specialist is authorized in each Composite Hospital.

5.4. It is also stated that, since the petitioner is an Anesthetist, her duties and expertise involves critical care during surgeries and in the event of absence of the Anesthetist, for a long period, will adversely affect the medical facilities to the personnel and dependents of BSF and other Force as well as the affected civilians.

5.5. Another stand taken by the respondent authorities is that in the case of **Mrs. Shilpi Bose and Others vs. State of Bihar and Others**, reported in **AIR 1991 SC 532**, Hon'ble Supreme Court has held that the Courts should not interfere with a transfer order which are made in public interest and for administrative reasons unless the transfer order are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has not vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer

orders issued by the competent authority do not violate any of his legal rights.

6. Having heard the submissions of learned counsel for both the parties, I have carefully gone through the petition as well as the documents placed on record and also perused the impugned transfer order dated 24.03.2025 and release order dated 29.04.2025.

7. It is to be noted here that vide order dated 06.05.2025, this Court was pleased to issue direction to the respondent authorities no to interfere with the movement order in respect of the petitioner.

8. It is not in dispute that the petitioner has already been released from the Patgaon Hospital, but she has not reported in her new place of posting, i.e. the Agartala Hospital, in view of the order of this Court dated 06.05.2025.

9. Taking note of the submissions of learned counsel for both the parties and also considering the fact that there is no Anesthetist in the Agartala Hospital, this Court is inclined to dispose of this petition by directing the petitioner to join her new place of posting, i.e. Agartala Hospital and thereafter, to prefer a representation before the respondent authorities for granting her CCL till the end of academic sessions of her two daughters, who are pursuing studies at Guwahati and on such representation being filed, the respondent authorities shall consider the same in accordance with law, especially keeping in mind that two daughters of the petitioner are pursuing studies at Guwahati and the husband of the petitioner is working in NEIGRIHMS Shillong.

10. If it is not possible to grant CCL continuously till the end of the academic sessions, then the respondent authorities may consider the same at first for 3 (three) months and thereafter, till the end of the academic sessions, in the month of March.

11. In terms of above, this writ petition stands disposed of.

Comparing Assistant

JUDGE