

GAHC010083462025



2025:GAU-AS:15605

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

**Case No. : WP(C)/2108/2025**

MAJOR NIKLESH KUMAR LOHANI  
S/O SHRI RAMESH CHANDRA LOHANI,  
PRESENTLY POSTED AT 30 ASSAM BATTALION NCC,  
GUWAHATI, KAMRUP (METRO), ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS  
THE SECRETARY, MINISTRY OF DEFENCE, SOUTH BLOCK, DHQ P.O, NEW  
DELHI-110011.

2:THE CHIEF OF THE ARMY STAFF  
INTEGRATED HQ OF MINISTRY OF DEFENCE (ARMY)  
SOUTH BLOCK  
DHQ PO  
NEW DELHI-110011

3:THE MILITARY SECRETARY INTEGRATED HQ OF MINISTRY OF  
DEFENCE (ARMY)

SOUTH BLOCK  
DHQ P.O  
NEW DELHI- 110011.

4:THE COMMANDING OFFICER

30 ASSAM BATTALION  
NCC  
C/O 99 APO  
900828  
NARENGI MILITARY STATION  
GUWAHATI

KAMRUP (M).

5:THE COMMANDING OFFICER

24 MECHANISED INFANTRY

C/O 56 APO

911724

**Advocate for the Petitioner** : MR. R MAZUMDAR, S BORPUJARI,MR. R DEKA,MS T  
WAPANGLA,MRS P RAI

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

**:::BEFORE:::**

**HON'BLE MR. JUSTICE KARDAK ETE**

Date on which judgment is reserved : 11.11.2025

Date of pronouncement of judgment : 18.11.2025

Whether the pronouncement is of  
the operative of the judgment? : No

Whether the full judgment has been  
pronounced? : Yes

**JUDGMENT & ORDER (CAV)**

Heard Mr. N. J. Khataniar, learned counsel for the petitioner. Also heard Mr. R. K. D. Choudhury, learned Deputy Solicitor General of India for the respondents/Union of India.

**2.** By filing this writ petition, the petitioner has put to challenge the impugned order dated 10.01.2025, issued by the Military Secretary, Integrated Headquarter, Ministry of Defence (Army), whereby the petitioner has been posted out of 30 Battalion, National Cadet Corps (NCC), Guwahati, to Mech. Infantry, Jaisalmer, Rajasthan; the order/communication dated 11.04.2025 rejecting the representation of the petitioner and the consequential order/communication dated 17.04.2025 directing him to comply with the posting order dated 10.01.2025.

**3.** The petitioner is serving as Major in the Indian Army and presently posted at the 30 Battalion, National Cadet Corps (NCC), Guwahati, Assam. By the posting order dated 10.01.2025, issued by the Military Secretary, Integrated Headquarter, Ministry of Defence (Army), the petitioner has been transferred from 30 Assam Bn NCC, Guwahati, to Mech. Infantry, Jaisalmer, Rajasthan. The wife of the petitioner is also serving in the same organization in the rank of Lieutenant Colonel and is presently posted at Headquarters 51 Sub Area, Guwahati.

**4.** The 4 (four) year old son of the petitioner is diagnosed with Moderate Autism Spectrum Disorder, Attention Deficit Hyper Activity Disorder, Echolalia, Delayed Speech & Language, Poor Socialization with 80% disability which requires specialized medical treatment and therapy, necessitating the presence of both the parents. The disease is said to be a lifelong disease that requires early intervention and continuous care, particularly during first 4 to 8 years of birth of the child. The child of the petitioner has also been assessed by the Associate Professor and Head of Department of Clinical Psychology, Guwahati Medical College & Hospital, who confirmed the aforesaid disorder. It was during this period that the impugned posting order dated 10.01.2025 was issued.

**5.** Under such circumstances, the petitioner submitted a representation on 24.01.2025 with a request that both he and his spouse, who are serving in the same organization, be considered for registration under provisions of Posting Policy dated 15.12.2014, for posting both of them to a station where adequate medical facilities for treatment and therapy as well as education of their child are available as the interventions are required to be continued at home under the care and guidance of both the parents. The said representation was duly recommended by the Commanding Officer, 30 Bn, NCC, the Group Commander, NCC Group Headquarters, Guwahati as well as the NCC Directorate NER.

**6.** By the impugned order/communication dated 11.04.2025, the Military Secretary had informed the petitioner that the request of the petitioner for posting under the category of Differently Abled Dependent had been examined and though the Branch expressed empathy for his circumstances, the competent authority, owing to policy constraints, was unable to accede to the request and thereby rejected the representation of the petitioner. Thereafter, the respondent authority issued the impugned order/letter dated 17.04.2025 by directing the petitioner to move in terms of the posting order dated 10.01.2025.

**7.** The wife of the petitioner had also submitted a representation praying for posting of herself and the petitioner to a station where their son could avail appropriate medical treatment and therapy, which has been accepted by the competent authority in respect of her only vide communication dated 07.04.2025.

**8.** After rejection of his representation dated 11.04.2025, the petitioner submitted another representation on 12.04.2025 requesting an interview with the Military Secretary and Chief of Army Staff so that he could personally

apprise the competent authorities of his situation and seek appropriate relief, particularly to ensure that his dependent son does not suffer the absence of a caregiver parents. It is brought on record that the said representation was also rejected with a direction to the petitioner to proceed to the place of posting as his wife having been permitted to continue at Guwahati to look after their child with an further observation that it is not always feasible to post both spouses of the military cadre at the same station.

**9.** Mr. N. J. Khataniar, learned counsel for the petitioner, at the outset, submits that present petition is filed to espouse the cause of the child of the petitioner who has been medically diagnosed with a disease with 80% disability which requires constant need of therapeutic intervention, medical supervision and the emotional presence of both the parents to aid his cognitive, social and emotional development.

**10.** Mr. Khataniar, learned counsel, while referring to the Policy dated 05.12.2014 which regulates the posting of Differently Abled Dependents, submits that the disease/disability of the petitioner's 4 (four) year old son falls under the category of Priority II (P-II), which covers dependents requiring parental/family support, occasional specialist medical attention and ASHA/special school facilities and under this category, the posting management is required to aim at providing stability to the officer's family in close proximity to the medical/educational facilities required by the differently abled dependent, commensurate to his/her classification.

**11.** He submits that while planning the posting of an officer registered under this policy, the authorities must shortlist stations that cater to the medical/educational needs of the differently abled dependent. The shortlisted

stations are to be intimated to the officer, who may then indicate his order of preference and may also suggest additional choices and if he so desires, the authorities shall make an endeavour to post the officer at one of the suggested stations keeping in mind his order of preference.

**12.** Mr. Khataniar, learned counsel submits that in case the officer is due for posting at the time of registration, his registration/ classification as well as posting will be decided by the Advisory Board. In such case, the latest medical documents and fresh medical opinion will be obtained from the officer at the time of posting. He submits that there is a written guideline for the treating specialist that the certificate be issued to the officer only where the requirement of intervention of officer is inescapable. Accordingly, he submits that the treating specialist of 151 Army Base Hospital Guwahati issued the certificate to both the parents separately due to inescapable requirement of both the petitioner and his wife for holistic treatment and development of their child. Therefore, the rejection of the prayer of the petitioner for joint posting for the treatment and care of their 4 (four) year old child is in violation of the provisions of the posting policy, which deserves to be interfered with by this Court.

**13.** Mr. Khataniar, learned counsel, further referring to the Office Memorandum dated 06.06.2014, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and Training, Government of India, in respect of posting of government employees who have differently abled dependents, submits that the said Office Memorandum provides that a government servant, who is also a caregiver of a disabled child, may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. Although the said Office Memorandum dated 06.06.2014 is issued by the Ministry of Personnel, Public Grievances and

Pensions, Department of Personnel and Training, Government of India, same would also apply to the Army. More so, the posting policy for Army Officers with differently abled dependents dated 05.12.2014 is in consonance with the said policy of the Government of India.

**14.** He submits that in view of the acceptance of the representation of the wife of the petitioner and the rejection of the representation of the petitioner, a situation has arisen where on one hand the request of one parent for posting together with the other parent for differently abled dependent has been accepted and on the other hand the request of the other parent of the same dependent has been rejected, which clearly reflects that the respondents have mechanically rejected the request of the petitioner. He submits that as per the policy, the normal tenure of the officers with differently abled dependents is 3 (three) years, whereas the petitioner has completed tenure of only 2 (two) years in the present place of posting. Therefore, the respondent authorities ought to have considered the grievance of the petitioner for joint posting at a station where the facilities for medical treatment/education of their son are available in the nearest service hospital and if the impugned orders dated 10.01.2025 & 11.04.2025, along with the consequential order, are allowed to take effect, the differently abled dependent child of the petitioner would be denied the care of his father, despite the specialist doctors have insisted on the presence of both the parents during interactive sessions.

**15.** He further submits that the respondent authorities, being a model employer, ought to have considered the fact that the petitioner's son, who has been diagnosed with a lifelong disease, requires continuous medical attention and cannot be cured or minimized if not treated within first 4 to 8 years and proper care of both the parents, who are caregivers of the child, is utmost

essential in such circumstances. He submits that the action of the respondents are contrary to the intent of the posting policy dated 05.12.2014 and Office Memorandum dated 06.06.2014 governing the issue of transfer and posting of caregivers of differently abled dependent. Therefore, the impugned order dated 10.01.2025, and orders/communications dated 11.04.2025 and 17.04.2025 may be set aside and the respondent authorities be directed to reconsider the grievance of the petitioner in accordance with law.

**16.** In support of his submissions, Mr. Khataniar, learned counsel, has relied on the following Judgments:

- (i) **Balan C. vs. Union of India, represented by Secretary,** reported in **2023 SCC OnLine Ker 10390,**
- (ii) **Padma Kanta Borah Vs. State of Assam, represented by the Secretary & Anr.,** reported in **2023 SCC OnLine Gau 5213,**
- (iii) **Laishram Manoranjan Singh Vs. Union of India, represented by the Secretary & Ors.,** reported in **2022 SCC OnLine Mani 455,**
- (iv) **Assistant Sub Inspector Malati Devi Vs. Union of India & Ors.,** in **WP(C) No. 1239/2025,** decided on **28.03.2025.**

**17.** On the other hand, Mr. R.K.D. Choudhury, learned Deputy Solicitor General of India for the respondents, submits that the case of the petitioner was processed and considered as per the Posting Policy dated 05.12.2014 for Officers with Differently Abled Dependents. Based on the medical opinion rendered by the Director General Medical Services (Army), the case of the petitioner was classified as Priority-II. As per the said medical opinion, the

presence of both the parents was not considered essential for management of child and accordingly, it has been decided by the Differently Abled Dependent Board that the posting of the petitioner be carried out as per the posting order dated 10.01.2025, while the spouse of the petitioner would be posted to a medically complaint station where the requirement of the child, as per the medical opinion, could be adequately met.

**18.** He submits that since the Director General Medical Services (Army) in its opinion did not opined the specified requirement of presence of both the parents for the treatment of the child or developmental management, it was decided by the Differently Abled Dependent Board to maintain status quo in respect of the posting order of the petitioner. At the same time, the request of the petitioner's spouse for posting of her choice in a medically complaint station where the requirement of the child can be taken care of was accepted. Therefore, the request of the petitioner for joint posting is not possible and allegation of violation of posting policy is not correct.

**19.** Mr. Choudhury, learned DSGI, submits that it is well settled that the Court should be reluctant to interfere in the matters of transfer in the interest of smooth administration unless a very strong case is made out for interference to such order on the ground of proven arbitrariness or *mala fide*. The question as to where a person should be posted is well within the discretion of the competent authority and the Court/Tribunal will not be competent to order his transfer to any other place.

**20.** Mr. Choudhury, relying on the judgment of Hon'ble Supreme Court in the case of **Major General J. K. Bansal Vs. Union of India**, reported in **(2005) 7 SCC 227**, submits that the scope of interference by the Courts in regard to

members of armed forces is far more limited and narrow than in the matter of civilian employees. 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. Therefore, he submits that the petitioner has failed to make out a case for interference and as such, the writ petition may be dismissed.

**21.** Due consideration has been extended to the submissions of learned counsel for the parties and also perused the materials available on record.

**22.** The petitioner, who is serving as Major in the Indian Army and presently posted at 30 Battalion, National Cadet Corps (NCC), Guwahati, is aggrieved by the impugned posting order dated 10.01.2025 as well as the rejection of his representation for joint posting dated 11.04.2025 on the ground that the respondent authorities have ignored and overlooked the fact that his 4 (four) year old son has been diagnosed with Moderate Autism Spectrum Disorder, Attention Deficit Hyper Activity Disorder, Echolalia, Delayed Speech & Language, Poor Socialization with 80% disability, and also ignored the fact that the child required specialized medical treatment and therapy in the presence of both the parents, who are serving in the same organization.

**23.** Admittedly, the petitioner's 4 (four) year old child has been diagnosed with Moderate Autism Spectrum Disorder, Attention Deficit Hyper Activity Disorder, Echolalia, Delayed Speech & Language, Poor Socialization with 80% disability which requires specialized medical treatment and therapy.

**24.** The Office Memorandum dated 06.06.2024, issued by the Ministry of Personnel, Public Grievances and Pensions, Department of Personnel and

Training, Government of India, relating to posting of government employees who have differently abled dependents, provides that the government employee who has disabled child and serving as a main caregiver to such child, any displacement of such government employee will have a bearing on the systemic rehabilitation of the disabled child since the new environment/set up could prove to be hindrance for the rehabilitation process of child and therefore, a government servant who is also a caregiver of disabled child may be exempted from the routine exercise of transfer/rotational transfer subject to the administrative constraints. Perusal of the same shows that the policy appears to be general in its application for the Govt. employees.

**25.** For Army Personnel/officer, there is a separate posting policy for officers with differently abled dependents which has been published vide Policy dated 05.12.2014. The said policy intends to further refine the existing policy and extend its benefits to all the differently abled dependents of the officer by streamlining the management of such officers besides substantially contributing towards the cause of differently abled children. Since the case of the petitioner is hinges on the posting policy as the learned counsel for the petitioner has heavily bank on the said policy, it would be apposite to refer and consider the same which is reproduced herein under:

*"POSTING POLICY FOR OFFICERS WITH DIFFERENTLY ABLED DEPENDENTS"*

*General*

*1. Please refer to MS Branch letter No 04521/MS Policy dated 28 Mar 13.*

*2 The policy for posting management of officers who have differently abled children*

*requiring specialised medical treatment was enunciated vide MS Branch letter at reference. The policy has considerably streamlined management of such officers, besides substantially contributing towards the cause of differently abled children. It is now intended to further refine the policy as also extend its benefits to all differently abled dependents of officers. The revised policy is covered in succeeding paragraphs.*

### *Classification of Differently Abled Dependents*

*3. A dependent will be considered to be differently abled if he/she has been certified by a medical specialist to be suffering from more than 40% of any of the disabilities stated at Appendix 'A'. In order to ensure suitable career management of affected officers and optimal utilisation of available medical/educational facilities, the differently abled dependents will be classified as under:-*

*(a) Priority I/IA (P-I/P-IA). Differently abled dependents requiring parental/family support as well as constant specialist medical attention. Those requiring constant presence of the officer besides other family members as well as constant specialist medical attention will be classified as P-IA.*

*(b) Priority II (P-II). Those requiring parental/family support, occasional Specialist medical attention and ASHA/special school facilities.*

*(c) Priority III (P-III). Those requiring parental/family support and ASHA/special school facilities only.*

*(d) Priority IV (P-IV). All other cases. Dependents who are differently abled primarily due to age factor will preferably be placed in this category.*

*(e) Peculiar cases of any other nature will be granted suitable classification based on their requirements.*

### *Registration of Cases*

*4. An officer having a differently abled dependent will forward his/her application as per format at Appendix 'B' through proper channel to the concerned Controlling Group in MS Branch. The application will be duly supported by the latest medical documents and opinion of the medical specialist at Command/RR Hospital as per Appendices 'C' and 'D'.*

5. On receipt of application from the officer, MS Branch will seek comments from DGMS (Army), which will scrutinise the case and forward its comments. In case of difference of opinion from the lower medical authority, the decision/opinion of DGMS (Army) shall prevail.

6. An Advisory Board, under Addi MS (A), will assemble once in every three months at MS Branch to screen applications of officers of the rank of Colonel and below. Composition of the Advisory Board will be same as that of CG Posting Advisory Board with an added member as nominated by DGMS (Army). The Advisory Board, duly considering the opinion of DGMS (Army), will categorise the differently abled dependents as per classifications given at Para 3 above.

7. Cases of Brigadiers and above will be dealt with by MS(Brigs)/MS(X), as applicable. MS(Brigs)/MS(X) will directly process their cases for approval of the Military Secretary after obtaining recommendations of DGMS(Army).

8. Once approved by the competent authority, MS Branch will inform the concerned officer regarding his registration under the provisions of this policy. MS branch will maintain a database of such officers for subsequent management.

9 Any change in the medical opinion/status of the differently abled dependent will be intimated to MS Branch by the concerned officer at the earliest. Such cases will be reconsidered by the Advisory Board for allocation of revised classification. The officer will be required to forward the latest medical documents and fresh Appendices 'C' and 'D' for the same.

### Posting Management

10. Posting management will be aimed at providing stability to the officer's family in close proximity to the medical/educational facilities required by the differently abled dependent commensurate to his/her classification. The following guidelines will apply for posting management of officers with differently abled dependents:-

(a) Officers having differently abled dependents classified as P-I/IA will be given preference for posting to stations with specialist medical facilities.

(b) Officers having differently abled dependents classified as P-II shall be posted to stations which have requisite ASHA/special school facilities and are in

*reasonable proximity to suitable specialist medical facilities.*

*(c) Officers having differently abled dependents classified as P-III shall be posted to stations with requisite ASHA/special school facilities or nearby stations.*

*(d) Cases classified as P-IV will be forwarded to CG Posting Advisory Board for necessary disposal. Further management of such cases will be governed by CG posting policy.*

*11. The concerned Controlling Group at MS Branch, while planning posting of an officer registered under this policy, will shortlist stations which cater to the medical/educational needs of the differently abled dependent and also have a suitable appointment for the officer. The shortlisted stations would be intimated to the officer who will then indicate his order of preference among these, as per Appendix 'E'. The officer can also suggest additional choices, if he so desires. MS Branch will endeavour to post the officer at one of the suggested stations keeping in mind his order of preference.*

*12 In case the officer is due for posting at the time of registration, his registration/classification as well as posting will be decided by the same Advisory Board. In case the officer is not due for posting, a subsequent Advisory Board will decide upon his posting. In such cases, the latest medical documents and fresh medical opinion as per Appendices 'C' and 'D' will be obtained from the officer by the Controlling Group at the time of his posting.*

*13. Normal tenure for officers managed under this policy will be three years. One extension of two years in the same station may be granted by the Military Secretary. Exceptionally deserving cases may be forwarded by the Military Secretary to COAS for grant of further extension. An officer applying for extension will be required to forward a personal application duly recommended by Initiating Officer and Reviewing Officer, along with the latest medical documents and fresh Appendices 'C' and 'D'. Cases for extension of tenures will also be processed through the Advisory Board.*

*14. On completion of an officer's tenure in a suitable station under the provisions of this policy, MS Branch, after due interaction, will post him as per his profile keeping in view the classification/requirements of his dependent, less P-IA cases wherein officer's constant availability to the differently abled dependent will be endeavoured. A detailed policy for allotment of separated family accommodation/ retention of accommodation by officer's family in the last duty station is being promulgated by QMG's Branch separately. Till such time the above policy is issued, officers may avail benefits as*

*permitted under the extant policies on the subject.*

*Miscellaneous Instructions*

*15. Implications on Career Progression of the Officer. It must be appreciated that the changed posting management of officers with differently abled dependents may adversely affect their career progression due to the following:*

*(a) Disproportionate peace/field profile.*

*(b) Inadequate regimental service or Staff/ERE/Instructional exposures*

*(c) Ineligibility for Foreign Assignments.*

*(d) Non-placement/delay in placement on Criteria Appointments.*

*16. MS Branch may, at any stage, curtail tenure of an officer governed by this policy keeping in view interest of the officer or the organisation.*

*17. This policy letter supersedes MS Branch letter No 04521/MS Policy or 28 Mar 2013. Officers who are presently being managed under the above policy will re-apply to be governed by the provisions of the revised policy. Other eligible officers, who are presently on normal/CG postings, may also apply. However, the tenure will be considered in continuation if the requested station is same as the one to which the officer is presently posted.*

*18. Provisions of the policy letter will be applicable from the date of promulgation.*

*19. Contents of this letter may be disseminated to unit level."*

**26.** A bare reading of the above policy reflects that the differently abled dependents are classified which includes, *inter alia*, Priority II, those requiring parental/family support, occasional specialist medical attention and ASHA/special school facilities. It shows that the officers having differently abled

dependents as P-II shall be posted to stations which have requisite ASHA/special school facilities and are in reasonable proximity to suitable specialist medical facilities.

**27.** It shows that while planning the posting of an officer, the authorities shall shortlist stations that cater to the medical/educational needs of the differently abled dependent and also have a suitable appointment for the officer. The shortlisted stations are required to be intimated to the officer, who may then indicate his order of preference and may also suggest additional choices, if he so desires. The authorities would endeavour to post the officer at one of the suggested stations keeping in mind his order of preference. It further reflects that in case the officer is due for posting at the time of registration, his registration/ classification as well as posting will be decided by the Advisory Board. In case the officer is not due for posting, a subsequent Advisory Board will decide upon his posting. In such case, the latest medial documents and fresh medical opinion will be obtained from the officer at the time of posting. The normal tenure for officers managed under the policy is provided for 3 (three) years with one extension of another 2 (two) years in the same station.

**28.** A careful perusal of the policy shows that it provides provisions relating to posting management for officers with differently abled dependents. In the present case, there is no dispute that the petitioner's 4 (four) year old son falls under Priority II, who requires the parental/family support, occasional specialist medical attention and special school facilities. It is an admitted position, as admitted by the petitioner that the impugned transfer and posting order dated 10.01.2025, whereby he is sought to be transferred from 30 Battalion, National Cadet Corps (NCC), Guwahati, to Mech Infantry, Jaisalmer, Rajasthan, was issued without the knowledge of the fact that his child was a differently abled

dependent.

**29.** The petitioner, having been faced with situation on being diagnosed of his child with 80% disability which requires specialized medical treatment and therapy in the presence of both parents, approached the respondent authorities seeking consideration of his case for joint posting with his spouse to a place where appropriate medical and school facilities are available. The spouse of the petitioner, who is serving as Lieutenant Colonel in the Indian Army and presently posted at Headquarters 51 Sub Area, Guwahati, has also submitted a representation for consideration of joint posting to a place where adequate medical and education facilities are available for specialized medical treatment and therapy of their child.

**30.** Perusal of the records reveals that the respondent authorities, after considering the representations of the petitioner and his spouse, have accepted the representation of the spouse of the petitioner vide communication dated 07.04.2025. However, the representation of the petitioner was rejected by observing that the Branch empathizes with compassion, however, owing to policy constraints, the competent authority was constrained to regret the request thereby eventually, the prayer of the petitioner was rejected vide the impugned communication dated 11.04.2025.

**31.** No doubt, the posting policy for officer with differently abled dependents provides that such dependents require specialized medical treatment by providing posting to the officer's family in close proximity to the medical/educational facilities required by the differently abled dependent, commensurate to his/her classification, which in the present case classified as Priority II be posted to station which have requisite ASHA/special school

facilities and are in the reasonable proximity to the specialist medical facilities, there is no provision for joint posting. It is true that for specialized treatment and therapy to such a disabled child requires both the parents, it may not be mandatory that both the parents should be posted jointly if the administrative exigency demands that the other parent be posted in a different place of posting. On its own wisdom, the authorities, after consideration of the disease of the child of the petitioner which falls under Priority II of the posting policy requiring parental and family support and occasional specialist medical attention and special school facilities, accepted the representation of the spouse of the petitioner and thereby allowed her to be stationed at the place where the medical and educational facilities are available at Guwahati. Thus, it cannot be held that the respondent authorities have violated the policy of posting as such.

**32.** Although, the child of the petitioner would require a care and support of both the parents, it may not be obligatory on the part of the authorities to grant a joint posting to the officers if the requirement of medical treatment and therapy can be taken care of by the spouse of the petitioner. Therefore, it is difficult for this court to interfere with the impugned transfer and posting, as it is well settled proposition of law that transfer is an incidence of service and who should be transferred where and when, is the matter for the appropriate authority to decide unless the order of transfer is vitiated by *mala fide* or is made in violation of any statutory provision. However, the Hon'ble Supreme Court has also observed that while issuing an order of transfer, the authority must keep in mind the guidelines issued by the authority on the subject and similarly if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of the administration.

**33.** On perusal of the materials and upon due consideration, it is seen that the respondent authorities have duly examined the grievance of the petitioner and have acted fairly and in accordance with the posting policy governing the officers with differently abled dependents. Thus, there is no illegality in posting of the petitioner vide dated 10.01.2025. The petitioner, being the officer serving in the Indian Army, cannot be equated with other civilian government employees for the purpose of posting. More so, considering the hardship and difficulties projected by the petitioner and keeping in view the best interest of the child requiring specialized medical treatment and therapy, the respondent authorities have accepted the representation of the spouse of the petitioner and allowed her to continue at Guwahati to facilitate the child's treatment and educational needs.

**34.** This Court has perused the case laws relied upon by the learned counsel for the petitioner. On perusal, this Court finds that the said decisions are distinguishable and would not be applied to the facts of the present case, as those were rendered in entirely different contextual facts.

**35.** Ordinarily, this Court would not interfere with the posting order unless same is in violation of statutory provision and actuated with *mala fides* or glaringly arbitrary. In the present case, having considered that the 4 (four) years old child of the petitioner is diagnosed with lifelong disease of autism and the treatment of such disease requires proper care and attention requiring the presence of both the parents and considering the legal right of the differently abled child to have the caregiver parents near him and not a legal right of the parents to have a joint posting of their choices, in my considered view, the representation of the petitioner requires reconsideration not for the point of view of the principles that may be applicable while consider the case of joint

posting but on the principles of the legal right of a differently abled child to have the caregiver parents for the treatment. Thus, the representation of the petitioner and his spouse deserved reconsideration.

**36.** In view of above, though no ground is made out for interference with the impugned orders, considering that the 4 (four) years old child of the petitioner is admittedly diagnosed with the disease which requires regular medical treatment and therapy and it would be desirable, in the interest of the child, to have the presence of both the parents for such care, I deem it appropriate to direct the respondent authorities to reconsider the grievance of the petitioner for joint posting at a place having the medical and educational facilities for the best interest of the child vis-à-vis administrative exigency. It is hereby directed, accordingly.

**37.** Writ petition stands disposed of in terms above. No order as to cost(s).

Records be returned.

**JUDGE**

**Comparing Assistant**