
(2004) 02 GAU CK 0047
In the Gauhati High Court
Case No : WP (C) No. 9778 of 2003

Balendra Nath Hazarika

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-02-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 2 GLR 355

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : M. Singh and G. Singh, for the Appellant; J. Roy and B.P. Todi, for the Respondent

Judgement

Ranjan Gogoi, J.—An order dated 8.9.2003, transferring the writ petitioner from the post of Superintending Engineer (S.E.), PWD, Roads, North Lakhimpur Circle, is the subject matter of challenge in the present writ application. By the aforesaid order dated 8.9.2003, the services of the petitioner were placed at the disposal of NC Hills Autonomous Council for posting him as SE, PWD (R&B), Haflong Circle. By the same order, the respondent No. 4, who was working as Executive Engineer, PWD Roads, North Lakhimpur Circle was allowed to hold the current charge of the Office of the Superintending Engineer.

2. The arguments advanced by Mr. M. Singh, learned Counsel for the petitioner as well as by Mr. J. Roy, learned Standing Counsel, PWD have been considered. Dr. B.P. Todi, learned Counsel for the respondent No. 4, has also been heard. The records produced in original on behalf of the official respondents have been duly perused.

3. Before advertng to the facts of the present case, it will be necessary to briefly outline the contours of the writ power to interfere with the transfers of Govt. Servants made by the competent authority. Judicial pronouncements over the years have made it abundantly clear that the power to interfere with transfers made by the employer has always been understood to be limited and though the

limit imposed, it must be clarified, is self imposed, Courts always give primacy to the judgment of the employer as to how the service of any particular employee should be utilized. The role of the Court in matters relating to transfer of Govt. Servants would normally come into play if a transfer is made arbitrarily or for mala fide and collateral reasons or if a transfer is contrary to the statutory provisions or the norms in force. Broadly speaking, a transfer, which on judicial scrutiny, is not found to come within aforesaid mischiefs is to be left untouched and the decision of the Executive is to prevail.

4. In the instant case, the pleadings advanced on behalf of the writ petitioner are essentially to the effect that the transfer of the petitioner has been made to accommodate the respondent No. 4 and as the writ petitioner has served for little over a year at North Lakhimpur, the impugned transfer has been contended to be contrary to the Govt. policy in force.

5. The respondents have filed an affidavit wherein the projection made appears to be that during the visit of a Central Team to North Lakhimpur on 11th and 12th August, 2003, the writ petitioner, who is the Principal Officer of the PWD in the district did not attend the meeting held with the Central Team. He had remained absent. The Deputy Commissioner, North Lakhimpur, by a communication dated 18.8.2003, informed the Chief Engineer, PWD, (Roads), regarding the aforesaid lapse on the part of the petitioner and the Deputy Commissioner had further reported that the writ petitioner was not to be found in station whenever an occasion arose for discussions with regard to developmental matters. In the affidavit filed, it has been contended that it is on the basis of the aforesaid facts and for reasons of administrative compulsions that the petitioner was transferred and by way of an interim arrangement, the respondent No. 4 was allowed to hold current charge of the Office of the Superintending Engineer.

6. In the course of the hearing, the records in original were made available for scrutiny by the Court and as such scrutiny, inter alia, revealed that at one point of time the authority had contemplated to issue a notice to the writ petitioner to explain his absence during the visit of the Central Team, which course of action was latter abandoned and the instant transfer order was made by the Commissioner and Secretary. This Court, therefore, directed the Commissioner and Secretary to the Govt. of Assam, PWD, to file a detailed affidavit indicating the reasons which had prompted him to make the transfer order. The Commissioner and Secretary, Govt. of Assam, PWD has complied with the said order and has filed an affidavit, which has also been duly perused.

The above affidavit exhaustively enumerates the various steps and circumstances leading to the transfer order dated 8.9.2003. In the affidavit filed, the Commissioner and Secretary of the department has categorically stated that the conduct and action of the petitioner in remaining absent during the visit of the Central Team and his absence from station on other occasions had affected Govt. work in the District which is a flood prone district. The absence of the petitioner during the visit of the Central Team, it is stated in the affidavit filed, has caused

embarrassment to the department and therefore, it was decided to transfer the petitioner to a lighter station and have a more responsible officer at North Lakhimpur. In the affidavit filed, it has further been stated that though the actions of the writ petitioner could have invited departmental action, yet, having regard to the fact that the writ petitioner is to retire soon, instead of initiating a departmental proceeding against him, the Commissioner thought it proper to transfer him to a lighter station. It has been further stated in the affidavit that the aforesaid action had the prior approval of the departmental Minister and subsequently, the same has been approved by the Chief Minister on 12.1.2004.

7. The facts stated in the affidavit of the Commissioner and Secretary, PWD, has been disputed by the learned Counsel for the petitioner. According to learned Counsel, he was not aware of the visit of the Central Team and no attempt was made by the authority to ascertain the reasons for the petitioner's absence during the visit of the said Team. Learned Counsel for the petitioner has made a further argument that the facts of the case would go to show that the transfer order of the petitioner has been made by way of a punishment.

8. The limits of the Judicial Power in matters of transfer has already been noticed. The petitioner does not deny that he was absent during the visit of the Central Team. What he contends is that he was not aware of the said visit. The materials enclosed to the affidavit of the Commissioner and Secretary, PWD, having amply revealed that the visit of the Central Team was made known to all Heads of Departments of the District, it is difficult to appreciate as to how the petitioner could be in the dark with regard to the said fact. The other contention of the petitioner that the transfer has been made for reasons punitive also cannot find acceptance of the Court. Transfer is an incidence of service and if a public servant is transferred out from one station to another, on account of the lapses committed by him, it cannot be said that any punishment has been imposed. No public servant can be understood to have any legal right to remain at any one particular station for any fixed duration/length of time and a transfer made on account of lapses committed would not cease to be a transfer made for/ administrative exigencies. If the conduct and actions of the petitioner has caused embarrassment to the department and if the departmental Head has taken the view that the work in the district can be better managed by having another person in place of the petitioner, as has happened in the present case, there should be no occasion for this Court to cause any interference with the decision taken. The writ petition therefore, deserves to be dismissed which I hereby do. However, having regard to the facts and circumstances there shall be no orders as to costs.

9. Before parting with the record, this Court would like to put on record that as the holding of current charge of the Office of the SE, North Lakhimpur by the respondent No. 4 is an interim arrangement and the authority has placed on record that the petitioner has been transferred out of North Lakhimpur so as to enable the authority to post a suitable Officer in his place, it will now be

necessary for the authority to act accordingly by posting a regular SE against the post earlier held by the petitioner, if the same has not already been done.