
(2000) 02 GAU CK 0045
In the Gauhati High Court
Case No : Civil Rule No. 173 of 1995

Bhajan Chandra Debnath

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 25-02-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 2 GLT 102

Hon'ble Judges : P.C. Phukan, J

Bench : Single Bench

Advocate : A.K. Bhowmik, I. Chakraborty and T.K. Dey, for the Appellant; U.B. Saha, for the Respondent

Final Decision : Dismissed

Judgement

P.C. Phukan, J.—This writ petition under Article 226 of the Constitution is directed against the order 9.2.95 (Annexure-8) transferring the Petitioner from his present place of posting issued by the Respondent No. 2 Principal Chief Conservator of Forest, Government of Tripura.

2. I have heard Mr. A.K. Bhowmik, learned senior counsel for the Petitioner as well as Mr. U.B. Saha, learned Govt. Advocate, Tripura appearing for the State-Respondents, I have also considered the records of the case including the affidavit-in-Opposition by the State-Respondents, affidavit-in-reply by the Petitioner, additional affidavit-in-opposition by the State-Respondents and additional affidavit-in-reply by the Petitioner.

3. The Petitioner was appointed as Lower Division Clerk in the Forest Department on 7.10.1974 and promoted to the post of Upper Division Clerk w.e.f. 6.4.1981. According to the Petitioner, he has been the General Secretary of the State Level Central Executive Committee of Forest Employees Association, a Constituent of Tripura Sramik Shikshak Karmachari Morcha since 1987 and that he has also been the General Secretary of the State Level Central Executive Committee of

Tripura Nationalist Employees Federation Since 1992. The Nationalist Employees Federation along with its constituent Apex Body Tripura Sramik Shikshak Karmachari Morcha was recognised by the Government of Tripura vide Memorandum dated 11.1.1990 (Annexure-1). It is alleged that the Respondents started treating the Petitioner with hostile attitude since last part of 1993. It is further alleged that the Respondent No. 2 Principal Chief Conservator of Forest issued the impugned order dated 9.2.95 (Annexure-8) transferring him from the office of the Divisional Forest Officer, Working Plan Division No. II at Agartala to the Office of the Conservator of Forest, Northern Circle Kumarghat in violation of the Tripura Government Memorandum dated 28.2.94 (Annexure-9) allowing special privilege in the matter of transfer to three State Level Office bearers of recognised employees Association or its constituent Unit. The relevant portion thereof reads as under.

Dated, the 28th Feb."94. "MEMORANDUM"

The undersigned is directed to state that henceforth, 3(three) state level office bearers, by designation and 2 (two) Sub-Division level office bearers, by designation of any recognised employees" association or its constituent unit shall be given special privilege in the matter of transfer to the extent that the transfers, when warranted by administrative requirements, shall be issued only with the approval of the departmental Minister concerned.

It is also clarified that administrative requirements shall be paramount and the privilege conferred on certain categories of office bearers by this memorandum shall not over-ride the prerogative of the Government to transfer any of its employees.

It is also clarified that the reference to State level committee shall not include State level Office bearers in every Directorate or Department but a total of three office bearers, by designation of each Association/constituent unit based at Agartala. It is also clarified that the total number of office bearers of each recognised Association/Constituent unit at the Sub-Division level for the purpose of this Memorandum shall be 2(two) at each Sub-Division and not 2(two) in each office located at the same time at Sub-Division.

Explanation(1) : For the purpose of this memorandum 3 (three) State Level Office Bearers by designation of any recognised Employee"s Association or its constituent unit based at Agartala shall mean the following, namely:

- (a) President or Chairman or by any other designation,
- (b) Secretary General or General Secretary or Secretary or by any other designation,
- (c) Treasurer, Cashier or by any other destination.

4. The Petitioner submitted a representation dated 18.2.1995 (Annexure-10) to the Respondent No. 2 praying that his transfer order be cancelled claiming

privilege allowed vide the above mentioned memorandum dated 28.2.84, but to no avail. Hence, the Petitioner has approached this Court in the instant Civil Rule.

5. In the affidavit-in-opposition filed on behalf of the State-Respondents, it is stated that the Respondents have no knowledge as to whether or not the Petitioner has been elected as General Secretary of the Forest Employees Association and that they have not received any communication in this regard. The Respondents have denied that the Petitioner has been office bearer of any recognised Employees Association or its constituent Unit. It is asserted that the Forest Employees Association is not a recognised or registered Association by the Tripura Government. It is submitted that the impugned order transferring the Petitioner from Agartala after he served there for last 10(ten) years was issued in exigencies of public service and not as a measure of punishment. It has been asserted that there was no malafide or vindictiveness on the part of the Respondents behind the said transfer order.

6. The Joint Secretary to the Government of Tripura Forest Department filed an additional affidavit-in-opposition. In paragraph 3 thereof it has been categorically stated that the Petitioner was transferred with the approval of the Minister of Forest as is evident from the note 112 of File No. F. 4(3)/For/Estt-73/Part (Annexure-R-2 to this additional affidavit-in-opposition). The relevant portion is extracted below:

Following adjustment may be made:

Sd/- (Payzur Rahman) Minister Government of Tripura

7. Now paragraph 1 of the Government Memorandum dated 28.2.94 (Annexure-9) says:

The undersigned is directed to state that henceforth 3(three) State level office bearers, by designation and 2(two) Sub-Division level office bearers, by designation of any recognised employees' association of its constituent unit shall be given special privilege in the matter of transfer to the extent that their transfers, when warranted by administrative requirements, shall be issued only with the approval of the departmental Minister concerned.

8. In the facts and circumstances of the case, I am inclined to hold that the Petitioner's transfer was warranted by administrative requirement, and it is on record that the impugned transfer order was issued with the approval of the departmental Minister concerned. Hence, the impugned transfer order cannot be said to have been issued in violation of the Government Memorandum dated 28.2.94 (Annexure-9) even if the Petitioner was a State Level Office Bearer of any recognised Employees Association referred to in the said Memorandum during the relevant time.

9. There is, therefore, no merit in this Writ Petition. This Civil rule is dismissed.

10. This Court's order dated 23.3.95 staying the impugned transfer order stands

vacated.

There shall be no order as to costs.