

**(1993) 03 GAU CK 0005**

**In the Gauhati High Court**

**Case No :** Civil Rule No. 2416 of 1992 and Miscellaneous Case No. 116 of 1993

Dr. Nurul Islam

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

**Date of Decision :** 31-03-1993

**Acts Referred:**

Assam Financial Rules — Rule 145  
Constitution of India, 1950 — Article 226

**Citation :** (1993) 2 GLR 164

**Hon'ble Judges :** S.K. Hom Choudhury, J

**Bench :** Single Bench

**Advocate :** D.N. Choudhury, H.N. Sarma and B.D. Goswami, for the Appellant;  
S.A. Laskar, Sr. Govt. Advocate, R.P. Sarma, H.K. Baishya and I.B. Das, for the Respondent

## Judgement

S.K. Homchaudhuri, J.—This petition is directed against the order dated 14.10.92 passed by the Govt. purporting to transfer the Petitioner from Krishnai to Manikpur.

2. Petitioner's case is that while he was working as Veterinary Assistant Surgeon (in short VAS) at Chapar Veterinary Dispensary by order dated 22.5.92 he was transferred and posted to Kazigaon vice Dr. R. Islam, VAS, Kazigaon transferred to Chapar. The Petitioner handed over the charge of Chapar Veterinary Dispensary on 9.6.92 to Dr. R. Islam in pursuant to the order of transfer dated 22.5.92. However, by order dated 10.6.92, the order of transfer dated 22.5.92 was modified and the Petitioner was posted as Extension Officer, Veterinary at Rangjuli vice Dr. S.R. Paul. VAS, Rangjuli was transferred and posted at Kazigaon, Dr. S.R. Paul having refused to handover charge, by order dated 18.6.92 Petitioner was transferred and posted as VAS, Krishnai Veterinary Dispensary vice Dr. S.R. Choudhury, VAS, Krishnai transferred and posted as VAS, Goalpara. The Petitioner reported for duties at Krishnai, but as Dr. S.R. Choudhury did not handover charge to him the Petitioner had to take charge unilaterally on 29.6.92 of the Krishnai Veterinary Dispensary. By order dated

6.7.92, the Govt. extended the joining time of the Petitioner for a period of 9 days with effect from 10.6.92 to 28.6.92. Again on 14.10.92 in partial modification of the earlier order dated 18.6.92, the Petitioner has been transferred to Manikpuri Veterinary Dispensary. The Petitioner's representation before the Respondent No. 2, the Commissioner & Secretary, Veterinary & Animal Husbandry Department, Govt. of Assam to reconsider the order of transfer dated 14.10.92 having been rejected by order dated 5.11.92, the Petitioner has approached this Court in this writ petition.

3. While issuing Rule on 10.11.92, this Court passed ad-interim order directing that the impugned order dated 14.10.92 transferring the Petitioner to Manikpur and the order dated 5.11.92 rejecting the representation should not be given effect to, if not already given effect to.

4. After receipt of the notice, the Respondent No. 5 has filed an application for modification/alteration and/or variation of the interim order which has been registered as Misc. Case No. 116/92 in this petition. In the application for modification, the Respondent No. 5 has stated that while he was working as Extension Officer, Veterinary Department at Balijana, he was transferred as VAS at Krishnai Veterinary Dispensary by order dated 10.6.92 vice Dr. S.R. Choudhury, VAS, Krishnai Veterinary Dispensary transferred to Goalpara. In pursuant to the transfer order, the Respondent No. 5 reported for duties at Krishnai on 19.6.92 and took over charge from Dr. S.R. Choudhury. After he joined at Krishnai he received the notification dated 18.6.92 on 23.6.92 purporting to transfer him to Manikpur Veterinary Dispensary. Against the order of transfer to Manikpur and Respondent No. 5 made a representation to the Govt. and thereafter the Govt. by another notification dated 14.7.92, transferred the Respondent No. 5 Dudnoi Veterinary Dispensary Vice Dr. Sarat Nath, VAS, Dudnoi, transferred. Dr. Sarat Nath obtained a stay order from the Govt. and the Respondent No. 5 could not join at Dudnoi. Under the circumstances, the Respondent No. 5 filed a writ petition in this Court with the prayer for issuance of a direction to allow him to continue to work at Krishnai. The said writ petition was registered as Civil Rule No. 1643/92. During the pendency of the writ petition, the Govt. by order dated 14.10.92 modified the earlier order dated 18.6.92 and posted the Respondent No. 5 at Krishnai. According to Respondent No. 5 he reported for duties on 15.10.92 and also submitted a form of reporting and taking over charge as provided under Rule 145 of the Assam Financial Rules, but the relieving officer, namely, the Petitioner, refused to sign in the form and thereafter kept himself away from the office at Krishnai for about a month and that after reporting for duties, on 15.10.92 he has been discharging his duties as VAS at Krishnai. In view of passing of the impugned order dated 14.10.92 restoring his place of posting at Krishnai, the Respondent No. 5 moved in application in Civil Rule No. 1643/92 praying for withdrawal of the petition and this Court by order dated 26.10.92 dismissed the writ petition with the following order:

Mr. R.P. Sarma, learned Counsel for the Petitioner produces a copy of the order cancelling the transfer order which has been challenged in this writ petition and states that the petition has become infructuous. The order has been placed on record. Accordingly, the petition is dismissed as infructuous. No costs.

5. The Respondents No. 5 has further stated that the Govt. by letter dated 5.11.92 ordered that the Petitioner would handover charge to the Respondent No. 5 and failing which the District Animal Husbandary & Veterinary Officer, Goalpara would release the Petitioner on or before 11.11.92 and that in pursuant to the Govt. order dated 5.11.92, the District Animal Husbandary & Veterinary Officer, Goalpara released the Petitioner on 11.11.92 before interim order dated 10.12.92 passed by this Court was communicated.

6. I have heard Mr. D.N. Choudhury, learned Counsel for the Petitioner, Mr. S.A. Laskar, Sr. Govt. Advocate, Assam, Mr. R.P. Sarma, learned Counsel for Respondents No. 5.

7. The aforesaid facts disclose a very sorry state of affairs as regards transfer of both the officers from one place to another. Frequent change of decision by passing one order after another subjecting them to move from one place to another like shuttle-cock, within the short period of 4 months is arbitrary and unjust. A Govt. servant having the transfer liability is bound to carry out the order of transfer and to join the place of posting and that in an exceptional case Govt. may reconsider the order. In the instant case, the Petitioner was posted by order dated 22.5.92 at Kazigaon from Chapar after he worked at Chapar for more than 3 years vice Dr. R. Islam transferred from Kazigaon to Chapar Veterinary Dispensary to Dr. R. Islam on 9-6-92. Apparently that transfer order dated 22-5-92 did not cause inconvenience either to the Petitioner or to Dr. R. Islam. After Dr. R. Islam had left Kazigaon and took over charge from the Petitioner at Chapar, the Petitioner would have joined at Kazigaon as usual, had the order of transfer dated 22-5-92 was not modified by the subsequent order dated 10-6-92. The modified order transferring the Petitioner at Rongjuli having not been given effect to obviate the difficulty, the order dated 18-6-92 was passed posting the Petitioner at Krishnai and transferring Respondent No. 5 to Manikpur. But the Respondent No. 5 who had been transferred to Krishnai Veterinary Dispensary from Balijana by order dated 10-6-92 in pursuant to the order, took over charge from Dr. S.R. Choudhury on 19.6.92 before the order dated 18.6.92 was communicated to him. In consideration of his representation, Respondent No. 5 was again transferred to Dudnoi But the incumbent working at Dudnoi got a stay order from the Govt. All these frequent transfer order having created a complications and suffering. Respondent No. 5 approached this Court in Writ petition registered as Civil Rule No. 1643 of 1992. The Respondent No. 5 withdrew the petition because of passing of the order dated 14.10.92 restoring his posting at Krishnai. The Petitioner who assumed charge on 29.6.92 at Krishnai got an interim order of stay from this Court on 10.11.92 directing that no effect be given to the order dated 14.10.92 and the

appellate order dated 5.11.92, if these orders had not already been given effect to. Technically so far the Petitioner is concerned, the order dated 14-10-92 and appellate order dated 5-11-92, were not given effect to on 10-11-92. But so far the Respondent No. 5 is concerned, he reported for duty on 15-10-92 and according to him since then he has been discharging his duties. The Petitioner was released on 11.11.92.

8. In view of the interim order passed on 10.11.92 in this petition, the Petitioner deemed to be working at Krishnai. On the other hand, the Respondent No. 2 also reported for duties at Krishnai on 15.10.92 by submitting his joining report under Rule 145 of the Assam Financial Rules and also assumed formal charge of Krishnai Veterinary Dispensary on 11.11.92 before the order of this Court dated 10.11.92 was communicated. Respondent No. 1 to 4 have not disputed the fact that after the Respondent No. 5 was transferred from Baliyan to Krishnai by order dated 10.6.92, he reported for duties at Krishnai and took over charge from Dr. S.R. Choudhury, VAS, Krishnai on 19.6.92 before the order dated 18.6.92 was communicated to him. It is apparent that just to obviate difficulty created for not giving effect to the order of transfer of the Petitioner to Rongjuli the order dated 10.6.92 was modified to accommodate the Petitioner. Again when the Respondent No. 5 was posted at Dudnoi afterwards that order was also (sic), could not be given effect to. Besides Respondent No. 5 having withdrawn his Writ Petition (Civil Rule No. 1643/92 after the impugned order dated 14.10.92 was passed, restoring his original posting at Krishnai, it will be unjust to dislodge him from Krishnai.

9. Learned Counsel for the Petitioner as well as learned Counsel for the Respondent No. 5 submit that because of the aforesaid complication and stalemate neither the Petitioner nor the Respondent No. 5 are paid their monthly salaries and they are suffering immensely. But for the stalemate arisen due to frequent modification of order of posting by order after order, the Petitioner and Respondent No. 5 would not have suffered. Both of them have been subjected to suffering for no fault of them.

10. No doubt Govt. servant having transfer liability may be transferred and posted from one place to another in the interest of public service by the competent authority and this Court in the exercise of jurisdiction under Article 226 of the Constitution would not interfere with such administrative order. But the order transferring Govt. servant from one place to another should not be passed arbitrarily and capriciously and the order of transfer must not appear to be tainted by favouritism and nepotism and/or corruption. I do not suggest that act of favouritism and nepotism and or corruption has occurred in the instant case, but what I like to point out is that the Govt. or the competent authorities must not exercise discretion in ordering transfer of Govt. servant arbitrarily which may give rise to misgivings in the minds of a section of Govt. servants that act of nepotism and favouritism and/or corruption occurred in passing the order of transfer.

11. To eliminate any act of favouritism and nepotism and/or corruption, even in the remotest sense, in the matter of transfer of a Govt. servants from one place to another, an uniform policy of transferring of Govt. servants having transfer liability, should ordinarily be followed. No doubt, a Govt. servant is bound to carry out the order of transfer from the place of posting in the interest of public service. But frequent transfer caused immense sufferings to Govt. servant by adversely affecting his family life, particularly education of his children. It is not disputed that to follow an uniform policy in the matter of transfer of Govt. servants from one place to another, Govt. made a policy decisions and issued administrative instructions from time to time, laying down guidelines. The latest instruction in this connection was issued under office Memorandum No. APP 40/91/117 dated 19-9-92. According to that policy decisions made from time to time a Govt. servant having transfer liability should not ordinarily be transferred from his place of posting before expiry of 3 years. In other words, a Govt. servant having transfer liability is liable to be transferred from one place to another place after he complete 3 years of service in a particular station. Keeping some Govt. servants at particular places of posting for more than 3 years while subjecting others to be transferred from one place to another at frequent intervals before completion of 3 years service at the place of posting, is contrary to the aforesaid policy decision of the Govt. Policy decision of the Govt. as regards transfer may not confer statutory right to Govt. servant to enforce the same in a court of law, but the policy decision based on equity of justice, should be followed by all appointing authorities fairly and impartially and should not be disregarded and flouted at sweet will, inasmuch as, arbitrary exercise of power of transfer to a Govt. servant ignoring the Govt. instruction (sic. is) likely to frustrate and demoralise the Govt. servant and may give rise to misgivings that act of nepotism and favouritism and/or corruption occurred in the matter of transfer.

12. In the instant case, as discussed above, there was apparently no reason for not sticking to the original transfer order dated 22.5.92 passed in consistent with the policy decision of the Govt. Subsequent modification dated 10.6.92 so far transfer of the Petitioner to Kazigaon was concerned, gave rise to chain of transfer orders which resulted in the present stalemate causing immense suffering to Petitioner and Respondent No. 5. But for want of correct information, as to whether the post VAS. Veterinary Extension Officer at Kazigaon is still lying vacant, I would have disposed of the petition with direction to the Respondent No. 2 to restore the order of transfer dated 22-5-92 so far as the Petitioner is concerned.

13. With a view to resolving the complication arising out of passing frequent order of transfer one after another, I dispose of the petition with the following directions to Respondent No. 2. the Commissioner and Secretary to the Govt. of Assam, Veterinary Department:

(i) to consider the impugned order dated 14-10-92 so far it purports transfer of

the Petitioner to Manikpur and to see whether first order of transfer so far the Petitioner is concerned can be restored or not and if not, whether the Petitioner can be posted either at Rongjuli or a Dudnoi, if the incumbents holding posts in those stations have already completed 3 years service in the same station;

(ii) the Petitioner may also file a representation afresh to the Respondent No. 2 within 15 days from today.

(iii) to pass appropriate order by treating the Petitioner attached to Krishnai Veterinary dispensary as Additional VAS, so as to facilitate payment of salary to the Petitioner during period from November, 1992 to the date of passing appropriate order of posting as directed above;

(iv) The Respondent No. 2 shall pass appropriate orders in the light of the aforesaid direction within a period of one month from the date of receipt of the order.

It is made clear that Respondent No. 5 shall be entitled to his duty pay on and from the date he reported duties at Krishnai. I make no order to cost.