
(2013) 06 GAU CK 0005
In the Gauhati High Court
Case No : WP(C) No. 124 (AP) of 2013

K.K. Hazarika

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 25-06-2013

Acts Referred:

Citation : (2014) 2 GLT 514

Hon'ble Judges : B.D. Agarwal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.D. Agarwal, J.—This writ petition under Article 226 of the Constitution of India has been filed by an Executive Engineer in Rural Works Department (RWD), Changlang so as to challenge the Order dated 11.4.2013 issued by the Secretary, RWD, Government of Arunachal Pradesh. By this impugned order the writ petitioner has been transferred from Changlang Division to Pasighat. He has been posted in the Office of Superintending Engineer, RWD at Pasighat and the respondent No. 3 has been appointed as Executive Engineer on promotion at Changlang. Heard Mr. K. Jini, learned counsel for the petitioner, Mr. R.H. Nabam, learned Sr. Govt Advocate for the respondents No. 1 and 2 and Mr. J. Hussain, learned counsel for the respondent No. 3. Respondent Nos. 4 and 5 are the Hon'ble MLA and Minister respectively at whose instance the transfer order has been issued. However, these respondents preferred to remain silent and did not file any affidavit to deny the allegation of malafide transfer of the petitioner. I have also perused the relevant file, produced by the learned Sr. Govt. counsel.

2. The writ petitioner's case is that he was posted at Changlang as Executive Engineer in the month of July, 2012 on transfer from Khonsa. Since it was a premature transfer (within 32 days) the transfer order was challenged in the High Court. However, after an amicable settlement and with an assurance by the concerned authorities that the writ petitioner will be allowed to complete his tenure at Changlang he withdrew the writ petition. Finally, the writ petitioner

joined the post of Executive Engineer at Changlang on 31.8.2012. According to the learned counsel for the writ petitioner the impugned transfer order has been passed within a period of less than 8(eight) months and that too at the behest of an MLA and a Minister to facilitate posting of respondent No. 3 at Changlang. Mr. Jini, the learned counsel for the petitioner pointed out certain recommendations of the MLA (R-4) to award contract work to various persons and contended that since the writ petitioner did not oblige to the recommendations of the MLA he has been transferred pre-maturely on political pressure of the MLA. In support of his submissions, the learned counsel relied upon various authorities, viz judgment of the Hon"ble Supreme Court, rendered in the in the case of Tarlochan Dev Sharma Vs. State of Punjab and Others, , Sarvesh Kumar Awasthi Vs. U.P Jal Nigam & Ors.; reported in (2003) 11 SCC 740 and the judgment of Gauhati High Court rendered in the case of Ruokuolhoulie Angami Vs. State of Nagaland and Others, .

3. Per contra, the learned Sr. Govt. Advocate submitted that there was no malafide on the part of the State respondents in effecting the inter-se transfer. According to the learned counsel the transfer was effected on the basis of the recommendation made by the local MLA and a Minister since the services of R-3 were required at Changlang. Referring to the judgment of this Court, rendered in the case of Kalyan Kumar Sarkar Vs. Alok Kanti Paul Choudhury and Others, , the learned Government counsel submitted that the impugned transfer order need not be interfered with since there is no violation of any statutory provision. According to the learned counsel the transfer policy has no statutory backing and arc merely instructions and cannot be enforced in the Court of law.

4. Defending the impugned transfer order Mr. J. Hussain, learned counsel for the respondent No. 3 submitted that the writ petitioner has been transferred basically on receipt of complaint about his inefficiency and misconduct in the office, which was backed by Notes of local MLA and a Minister. The learned counsel also submitted that public representatives can play a role in the transfer of employees and officers and transfer orders cannot be interfered with just because there was a request by an MLA or a Minister. In support of this submission, the learned counsel referred to the judgment of the Hon"ble Supreme Court in the case of Mohd. Masood Ahmad Vs. State of U.P. and Others, and Rajendra Singh Vs. State of U.P. and Others, as well as a judgment of this Court given in the case of Pojom Padu Vs. State of Arunachal Pradesh and Others, . Referring to a Division Bench judgment of this Court in the case of The State of Assam Vs. Shri Dilip Kumar Sarma and Others, to which I was also a party the learned counsel submitted that a transfer order cannot be branded as malafide just because there is a recommendation by the concerned Minister even if the transfer order is effected before completion of normal tenure. The learned counsel also cited the authorities of this Court rendered in the case of Pares Choudhury Vs. State of Assam and Others, and K. Solo (Dr.) Vs. State of Nagaland and Others, .

5. It has been observed in the case of Dilip Kr. Sarma (supra) that the order of transfer is not justiciable unless it is issued by an authority not competent to do so; there is violation of statutory rule; there is gross discrimination between the writ petitioner vis-a-vis similarly situated officers and/or the transfer order is actuated by any malafide. In the case of Rajendra Singh (supra) the Apex Court also held that the Courts should be reluctant in interfering with a transfer order unless such transfer is vitiated by violation of some statutory provision or suffers from malafide. In this way, judicial review of a transfer order is permissible only in exceptional cases where the parameters of judicial review are made out and I am not oblivious to this legal position.

6. Coming to the case at hand, the learned counsel for the writ petitioner submitted that Changlang Division of RWD has three Subdivisions. Since the writ petitioner was already holding the post of Executive Engineer his office was situated in the main division at Changlang whereas the respondent No. 3 was working as Asstt. Engineer in a Subdivision since about 12 years. The fact of long posting of the R-3 in Changlang Division was not disputed by the respondent No. 3 himself and this fact is also evident from other documents as well. In this way, it is a case of transfer of respondent No. 3 from a Subdivision to the Divisional office in the same division whereas the petitioner has been transferred from one Division to another Division.

7. It is true that a transfer policy issued by a State Government would not come within the purview of the statutory rule. At the same time, in the absence of any statutory rule, guidelines and circulars regarding transfer should be followed to maintain uniformity and fairness and to rule out discrimination in the matter of transfer of Government Officers. In my opinion, arbitrary, discriminatory, tainted or politically coloured transfer of civil servants would offend Article 14 of the Constitution of India and, as a corollary, such orders are amenable to writ jurisdiction in the High Courts. In this regard it would be profitable to quote the relevant observations of the Hon''ble Supreme Court given in the case of Sarvesh Kumar Awasthi (supra), which are follows:

In our view, transfer of officers is required to be effected on the basis of set norms or guidelines. The power of transferring an officer cannot be wielded arbitrarily, mala fide or an exercise against efficient and independent officer or at the instance of politicians whose work is not done by the officer concerned. For better administration the officers concerned must have freedom from fear of being harassed by repeated transfers or transfers ordered at the instance of someone who has nothing to do with the business of administration.

8. I have already noted earlier that the writ petitioner was transferred within a period of 8(eight) months and that too after an amicable settlement in the previous writ proceeding in the High Court. Some notes given in the official file, placed by the learned Sr. Government Advocate, also indicate that the Government of Arunachal Pradesh is following two years posting as normal tenure. As per the office notes dated 26.3.2013 and 1.4.2013 the Joint Secretary

and Commissioner (RWD) respectively had put up a note to the concerned Minister with an opinion that since the writ petitioner was posted at Changlang (RWD) Division only 8(eight) months ago and since he had not completed the tenure of 2(two) years he should not be disturbed at this point of time. However, the opinion recorded by senior officers of RWD was totally ignored by the Hon''ble Minister, RWD and ordered the petitioner's transfer to Pasighat and also directed that the respondent No. 3 should be posted at Changlang on promotion. In view of this position it appears to me that it is not a clear case of transfer of the writ petitioner in public interest.

9. Now I shall examine the main contention of the writ petitioner that the transfer order has been issued with malafide intention. I find from the writ petition that a good number of representations of different contractors were forwarded by the MLA (R-4) to the writ petitioner for allotment of work orders. According to the learned counsel for the petitioner since the request of the MLA was not acceded to by him the punitive action has been taken at the behest of the MLA.

10. There was no dispute from the respondents'' side that the impugned transfer order has been issued at the behest of the MLA and a Minister, not connected with the affairs of RWD. However, it was contended. that the recommendation for transfer was made by the local MLA and a Minister in view of several complaints against the writ petitioner. To appreciate this contention it is also necessary to reproduce one of the two Notes submitted to the Hon''ble Minister, RWD by the MLA and the Minister of Agriculture etc, which is as below:

It is learnt that DPC has approved the name of Shri N. Ahmed, Assistant Engineer (RWD), Manmao Sub-Division for promotion to the post of Executive Engineer on 16.10.2012. Shri Ahmed is very sincere, dedicated and diligent engineer with very good caliber, Since he is well acquainted with the people of Changlang District, he would be able to maintain a very good rapport with the denizen of the area, that would be helpful in implementing of various development scheme very smoothly. Hence, we want his posting at Cltlanglang Division as EE.

In the above context, we would request the Hon''ble Minister (RWD) to kindly consider his posting as Executive Engineer in Rural Works Division, Changlang in the interest of public service. This supersedes earlier joint note initiated in favour of Shri H. Rekhung, EE.

(Setong Sena) Minister, Agri, Horti etc.) Arunachal Pradesh.

(Thinghaap Taiju) Parliamentary Secretary (WRD, Research & Protocol) Arunachal Pradesh

11. The aforesaid Note dated 22.11.2012, signed by the Respondents No. 4 and 5 was followed by another Note by respondent No. 5 on 14.3.2013 and thereafter the transfer order was approved in the 1st week of April and issued on

11.4.2013.

12. In the office Note dated 22.11.2012 there is no whisper about any inefficiency or about any misconduct on the part of the writ petitioner. Contrary to that it was proposed to bring respondent No. 3 at Changlang only on the ground that he was very sincere and dedicated engineer and "well acquainted with the people of Changlang District".

13. This is a classic case wherein an officer has been transferred to accommodate a blue-eyed junior officer solely on political considerations. It is true that political executives and public representatives can put forward their views to the concerned controlling authorities of an officer but they can not rule the roost. Public representatives' role in the matter of appointment, transfer, disciplinary action of Govt. employees is very limited. In strict sense, public representatives should have no say in these matters, unless they are members of any such committee. At best they can draw the attention of the concerned superior officers about any dishonest practice and misconduct of their subordinate officers or even their good performance and these feedback can be taken care of by the superior authorities, while assessing the performance of the officers for the purpose of their promotion or transfer. In my considered opinion, except this limited role the political executives can not issue any writ or mandatory order to transfer an officer to a particular place or give a specific posting to another officer, as has been done in this case. If such practice is approved by the judiciary it would result in arbitrary and malafide transfers and postings on extraneous consideration and Govt. officers will not be able to do their duties fearlessly and faithfully as the sword of transfer would always hover over their head. It is high time that the Government ensure and posting of Govt. officers strictly on the basis of set norms and guidelines.

14. In the case of Roukuoloulre Angami (supra) this Court has observed that it is not desirable that an officer should be allowed to continue at a particular place for a long duration in the following words:

...While processing the transfer order, various factors are taken into consideration. One such factors being the duration of the stationing of one officer in a particular station for a long time. If an officer is posted in a particular station for a long time, no doubt, that he also acquire a considerable knowledge about the administration of the area, but at the same time he also often establishes vested interest in the area because of his long association and to avoid such eventualities, timely posting is always called for.....

15. In the case at hand the R-3 was working in Changlang Division for about 12 years and this long tenure at the same place is evidently clear from the Ministerial Note dated 22.11.2012. Hence it was not desirable by the State respondents to keep R-3 in the same division and more so on a promotion posting.

16. The learned counsel for the respondents also pressed into service a

complaint dated 19.12.2012 as well as the Deputy Commission's Order dated 16.4.2013 and show cause notice dated 19.4.2013 to make out a case that the services of the writ petitioner were not satisfactory at Changlang. According to Mr. Jini, the learned counsel for the writ petitioner, the complaint dated 19.12.2012 was subsequently prepared to justify the transfer. I find that his objection is based on sound footing. Though the complaint is dated 19.12.2012 it is strange that the office of the Chief Minister received the complaint only on 29.6.2013. There is clear interpolation in the receipt date. It appears to me that originally the complaint was shown to have been received in the office of the Chief Minister on 29.7.2013 and subsequently it was manipulated to show the receipt date as on 29.6.2013 or vice-versa. Till date we are yet to reach even 29.6.2013. Besides this, in the complaint dated 19.12.2012 there is a mention of show cause by the Deputy Commissioner which, in fact, was issued by the Deputy Commissioner only on 19.4.2013. Hence, there could not have any mention of show cause notice to the writ petitioner in the complaint dated 19.12.2012. On this ground also it can be held that the complaint petition to the Hon"ble Chief Minister dated 19.12.2012 is a manufactured document or at least a back dated complaint.

17. With regard to the order dated 6.4.2013, issued by the Deputy Commissioner, Changlang, alleging certain misconduct on the part of the writ petitioner, for abstaining from duties, albeit on medical ground, without obtaining any leave, the learned counsel for the petitioner submitted that this order has also been passed by the Deputy Commissioner to reinforce the transfer order at the behest of the MLA or a Minister. The learned counsel also submitted that the Deputy Commissioner had no authority to issue order dated 16.4.2013 or the show cause notice dated 19.4.2013 since the Deputy Commissioner is not the superior authority of the writ petitioner.

18. In the case of Tarlochand Dev Sarma (supra), the Hon"ble Supreme Court issued wise advices to the bureaucrats to behave fairly and not to mortgage their discretion and integrity in the following trend-setting words:

In the system of Indian democratic governance as contemplated by the Constitution, senior officers occupying key positions such as Secretaries are not supposed to mortgage their own discretion, volition and decision making authority and be prepared to give away or being pushed back or pressed ahead at the behest of politicians for carrying out commands having no sanctity in law. The Conduct Rules of Central Government Services command the civil servants to maintain at all times absolute integrity and devotion to duty and do nothing which is unbecoming of a Government servant. No Government servant shall in the performance of his official duties, or in the exercise of power conferred on him, act otherwise than in his best judgment except when he is acting under the direction of his official superior.....

19. In the case at hand the Deputy Commissioner is apparently not the superior authority of the writ petitioner. Despite that she directed the writ petitioner to

hand over the charge to R-3 by 17.4.2013 and also issued a show cause notice regarding violation of certain norms in the construction of Anganwadi buildings. At least the show cause notice was issued after the stay order from the High Court. Even otherwise, the Deputy Commissioner has only implicated the writ petitioner in the alleged anomalies in the construction works though Asstt. Engineers are also directly involved in executing the works and practically the execution sites are supervised by the Asstt. Engineers. In other words, if there was any irregularity in the construction works the respondent No. 3 was equally responsible for the same but he was not given any identical show cause notice. This fact also smacks of mala fide action on the part of the respondents.

20. Before advertng to the authorities cited on behalf of the respondent No. 3 I would like to put on record that there must have been some attempt to manipulate the official record inasmuch as three pages of File No. SRWD-15/04 were found pasted. In these three pages there were some notings regarding the transfer/retention of the writ petitioner. Had there been any mistake in the office notes those could have been clearly deleted by way of scoring out the notes with signature of the concerned staff. Instead of doing that three relevant pages were pasted in such a way that it was not possible on the part of this Court to retrieve anything. Hence, I hold that hiding of few Notes in the file is also an indication of malafide action against the writ petitioner.

21. One more aspect is relevant to discuss in this judgment. Admittedly, the impugned transfer order was issued from the Secretariat at Itanagar. It is not clear from the pleadings of the parties as to on which date and at what time the transfer order reached the office of the Superintending Engineer at Miao or in the office of the Executive Engineer at Changiang. It is true that one copy of the order was marked to the person concerned. Even then, an officer has to comply with the transfer order only after receiving an authenticated copy thereof from his/her superior authority and not on the basis of a FAX message. Copies of transfer order, annexed with writ the petition and the Misc. Case, do not indicate that the transfer order was served upon the respondent No. 3 by his superior authority since there is no official seal or any endorsement by any superior authority thereon. Despite that R-3 suo motu handed over the charge of Assistant Engineer in the Sub-division at Manmao and reported at Changiang on 12.04.2013 itself. The speed with which respondent No. 3 attempted to take charge of Executive Engineer at Changiang gives sufficient indication that he was prompted by persons with vested interest to join at Changiang to frustrate any move of the writ petitioner to challenge the transfer order. This conduct of the respondent No. 3 is also reprehensible.

22. All the judgments and authorities relied upon by the learned counsel for the respondent No. 3 are distinguishable on facts. Some of the authorities regarding the role of public representatives in the matter of transfer have already been discussed earlier. In the case of Paresh Choudhury (*supra*) the transfer was effected on the ground of un-satisfactory performance and the requirement of

the officer's services at a different station. In the case before me, the impugned transfer order was basically issued on the ground that respondent No. 3 was working in the same division for a fairly long period and well acquainted with people of this area. In other words, the petitioner was not transferred due to any unsatisfactory performance and, in my opinion, this ground was subsequently developed. Similarly, in the case of K. Solo (*supra*), the transfer order was not interfered with since the writ petitioner was transferred on promotion as well as on his own request. In the case of Dilip Kumar Sarma (*supra*) I was also a party to the Division Bench. In the said case, transfer order was not disturbed in view of the fact that writ petitioner was transferred from one office to another office in the same city i.e. Guwahati and also considering his past conduct. In the case at hand, the writ petitioner has been shifted from one division to another division and that too within a period of eight months of his service coupled with withdrawal of his earlier writ petition on the basis of negotiation and settlement with the concerned department.

23. For the foregoing reasons, I hold that the impugned transfer order is vitiated by mala fide and arbitrariness. I also hold that the transfer of the writ petitioner was not in public interest. Resultantly, the impugned order dated 11.04.2013 stands set aside. The stay order dated 18.04.2013 is hereby made absolute.

24. In the result, writ petition stands allowed. However, I refrain from imposing any cost upon the respondents. The Registry is directed to forward a copy of this judgment to the Chief Secretary, Government of Arunachal Pradesh, who shall circulate this judgment all the Ministries and head of the departments for their guidance in future.