
(1995) 02 GAU CK 0029
In the Gauhati High Court
Case No : Civil Rule No. 97 (K) of 1993

P. Sekhose

APPELLANT

Vs

State of Nagaland

RESPONDENT

Date of Decision : 14-02-1995

Acts Referred:

Citation : (1995) 2 GLR 52

Hon'ble Judges : H.K. Sema, J

Bench : Single Bench

Advocate : C. Jajo and L.S. Jamir, for the Appellant; Government Advocate, for the Respondent

Judgement

H.K. Sema, J.—In this writ petition, the Petitioner has assailed the order dated 17th September, 1903 keeping in abeyance of the order issued on 2nd August, 93 transferring the Petitioner from the office of Addl. Deputy Commissioner (J) Tuensang to Addl. Deputy Commissioner (J) Dimapur in public interest.

2. I have heard Ms. C. Jajo, learned Counsel for the Petitioner, Mr. R.S. Bedi learned Counsel for the 3rd Respondent, and Mr. I. Jamir, learned Sr. Govt. Advocate.

3. Mr. Jamir also made the relevant records available before this Court and the same has been perused.

4. By an order dated 2nd August, 1993, the Petitioner was transferred from Addl. Deputy Commissioner (J) Office Tuensang to A.D.C. (J) Office Dimapur, in public interest. By the aforesaid transfer order, the Petitioner was to move first. It was further directed that handing and taking over the charge should be completed within 15.8.93. It is submitted by Ms.C. Jajo that pursuant to the aforesaid order, Petitioner joins her duty on 12.8.93. It appears from Annexure-2, me Respondent No. 3 represented to the Secretary. Law Department for revoking the order of transfer for the reasons contained therein by its representation dated 12.8.93. The said representation was forwarded by the learned Deputy

Commissioner (J) Dimapur on the body of an application. From the Annexure -3, it also appears that the representation filed by the Respondent No. 3 has also been forwarded by learned A.D.C.(J). Dimapur. It also appears from Annexure -4, the letter dated 17.8.93, and the Annexure-5 letter dated 25.6.93, the Minister Forest, Government of Nagaland has put up a note to Secretary Law and to Hon''ble Chief Minister for keeping the transfer order in abeyance.

5. All these exercises culminated the passing of impugned order dated 17th September, 1993 keeping in abeyance of the transfer order dated 2.8.93 until further orders.

6. By now the law is well settled that transfer is an incident of service and who should be transferred where is the matter to be considered by a competent authority in the exigency of service. Unless the order of transfer is passed in violation of statutory rules or the order of transfer is made mala fide, Court normally does not interfere with the transfer order.

7. The question pose for determination in this writ petition is that whether the order of 17th September, 1993 keeping for abeyance of the transfer order dated 2.8.93, is passed in public interest or in arbitrary exercise of power for extraneous consideration. In order to decide this issue, this Court called for relevant files regarding the cross transfer of the Petitioner and Respondent No. 3. At the time of hearing of this petition, Mr. I Jamir, learned Sr. Govt. Advocate made the file No. LAW-159/81 the personal file of Respondent No. 3 and the File No. LAW-94/84, personal file of Petitioner before this Court, and the same has been perused. On perusal, it clearly appears from file No. LAW-159/81 at page 14 in the note sheet dated 18.8.93 that the order dated 17th September, 1993 keeping abeyance of the order dated 2.8.93 has been passed pursuant to a note of Forest Minister.

8. At this stage, it will be pertinent to refer to a note dated 25.8.93 submitted by forest Minister to the Hon''ble Chief Minister, Nagaland (Annexure -5). In the note dated 25.8.93, there is an endorsement by the Hon''ble Chief Minister, "Keep in abeyance." The note was addressed to Secretary Law.

9. No doubt, the person aggrieved by the transfer order is not debarred from submitting a representation against the transfer order stating his difficulties and grievances. When such petition is so filed, it is also the obligatory on the part of the competent authority to process the representation and pass a necessary order keeping in view of the public interest and the difficulties faced by the Government servant. Such representation also deserves to be disposed expeditiously as delay in disposing of such representation would cause the administrative chaos, and ultimately effect the public interest. However, in the instant case, it clearly appears from Annexure -5 that the order keeping in abeyance of the transfer order dated 2.8.93 and the decision there of has been taken on the body of the note. This cannot be said to be in public interest. It is more surprising that for effecting the transfer in the post of U.D.A, many high

political personalities have been brought in. In the normal practice, this would have been left to the administrative machinery to decide the matters keeping in view of the facts and circumstance and keeping in view of the public interest and the difficulties faced by the persons effected by transfer order. The method adopted in this writ proceeding for Keeping the transfer order in abeyance is highly deplorable. Such practice has to be deprecated in the interest of public. It must be remembered that judicial review is available in the decision making process even concerning with the transfer matter.

10. In view of what has been stated above, this writ petition succeeds. The order dated 17th September 1993 is hereby quashed. However, keeping in view that the Respondent No. 3 has submitted a representation dated 12.8.93 addressed to the Secretary Law and Justice, the Secretary Law, Government of Nagaland is directed to dispose of the representation within a period of one month from today taking all points into consideration raised in the representation. While disposing of the representation, the Secretary Law shall exercise his independent opinion uninfluenced by a note dated 25.8.93 and the endorsement dated 26.8.93 on the body of the note. The Secretary Law shall process the representation and shall dispose the representation within the stipulated time aforesaid afresh. Till such time, the present arrangement shall continue.

11. Before I part with the record, I shall also constrain to note that, in File No. LAW-94/84, from the note dated 30.7.93 of the Secretary Law it appears That transfer of the Petitioner has been made on compassionate ground. This aspect of the matter shall be also taken into consideration while disposing of the representation dated 12.8.93 filed by the Respondent No. 3.

With the aforesaid direction, this petition is disposed.