
(2004) 08 GAU CK 0002
In the Gauhati High Court
Case No : WP (C) No. 4987 of 2004

Rimmar Taso

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 1 GLR 1

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : K. Goswami, for the Appellant; C.K.S. Baruah and P.K. Khataniar, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The challenge in the present writ petition is against an order dated 16.6.2004 transferring the writ petitioner from Yomcha P.W.D. Division to the Office of the Chief Engineer, West Zone at Itanagar. By the aforesaid order dated 16.6.2004, the respondent No. 4 has been brought in place of the petitioner in the P.W.D. Division at Yomcha.

2. To appreciate the arguments advanced by the learned counsels for the parties, a brief recital of the facts would be necessary.

The starting point of the proposed recital of the essential facts may reasonably commence from 10.9.2003, on which date the petitioner was transferred from Yomcha Division to Mriyang Division. It may be noticed at this stage that the petitioner, prior to his transfer by order dated 10.9.2003, had served at Yomcha only for a period of 3 months. Aggrieved by the aforesaid transfer order dated 10.9.2003, the petitioner instituted a writ petition which was registered and numbered as 2003 (AP) 339 . The aforesaid writ proceeding was answered by this Court by order dated 25.5.2004 interfering with and setting aside the transfer order dated 10.9.2003. A perusal of the order dated 25.5.2004 passed

by this Court would go to show that the transfer order dated 10.9.2003 was set aside by this Court on two primary grounds. Firstly, it was held by this Court that the reasons shown by the Respondent State for passing the transfer order dated 10.9.2003 did not justify the departure made from the norms laid down in the transfer policy of the State as circulated by Office Memorandum dated 2.6.1998. Additionally, it was held by this Court that the transfer made by order dated 10.9.2003 was at the instance of the Minister-in-Charge of the Power Department and no satisfactory reasons or materials were laid before the Court to show that the aforesaid transfer was made in the public interest. After 2003 (AP) 339 was closed by this Court, as noticed above, the impugned transfer order has been passed on 16.6.2004 transferring the petitioner, this time, to the Office¹ of the Chief Engineer, west Zone at Itanagar and once again being aggrieved, the writ petitioner has instituted the present writ proceeding calling into question the aforesaid order dated 16.6.2004.

3. Mr. K. Goswami, learned counsel for the writ petitioner in support of the challenge made in the present writ petition, has contended the transfer order to be contrary to the earlier order of this Court dated 25.5.2004 passed in 2003 (AP) 339. Learned counsel has further placed before this Court Clauses (1)(b) and (f) of the transfer policy, as circulated by Office Memorandum dated 2.6.1998, to contend that the transfer order dated 16.6.2004 is contrary to the Office Memorandum dated 2.6.1998. Elaborating his arguments, learned counsel has submitted that under Clause (1)(b) of the Office Memorandum dated 2.6.1998, the normal tenure of 3 years of a Government Servant in any particular location could be departed from and a transfer could be made before the expiry of the aforesaid period of 3 years, on the grounds specified in the aforesaid Clause (1)(b) of the aforesaid Office Memorandum. In terms of the aforesaid Clause (1)(b) aforesaid Office Memorandum, the exceptions to the normal rule of a 3 years tenure of a Government Servant are when a vacancy is required to be filled up on account of the specialised skill/expertise and knowledge acquired by a Government Servant or on compassionate or health grounds. Learned counsel has argued that, on the reasons stated in the affidavit, none of the aforesaid exceptions to the normal rule of a 3 years tenure is made out and, therefore, the transfer of the petitioner made by order dated 16.6.2004 is contrary to the transfer policy. Learned counsel has argued that what have been spelt out in Clause (1)(b) of the Office Memorandum dated. 2.6.1998 are the laid down norms which constitute a self imposed limitation on the power of the authority to transfer a civil servant before the expiry of his normal tenure of 3 years and, therefore, this Court must hold that the action of the State must necessarily conform to such laid down norms which cannot be departed from. Learned counsel has further argued that in the order dated 25.5.2004 passed by this Court in 2003 (AP) 339 the above question has been answered in the affirmative by the Bench hearing the aforesaid writ petition and it has been held that there can be no departure from the exceptions spelt out in Clause (1)(b) of the Office Memorandum dated 2.6.1998. Learned counsel has further argued that

the impugned transfer order would be bad in law, inasmuch as, the Respondent No. 4 has been posted in his home station and also on account of the fact that the impugned transfer has been made during the mid season, both of which are in violation of the terms of the Office Memorandum dated 26.1.1998. Lastly, Mr. Goswami, learned counsel for the petitioner, on perusal of the records placed before the Court by the learned Government Advocate, Arunachal Pradesh, has submitted that the transfer having been made on account of certain complaints stated to have been received against the writ petitioner, the impugned order of transfer dated 16.6.2004 is contrary to Clause (1)(f) of the transfer policy, which stipulates that all such complaints should be proceeded against departmentally and an officer should not be transferred on the basis of a complaint received, inasmuch as, such a transfer enables the officer to carry the "evil" from his earlier place of posting to the new place of posting as may have been ordered.

4. The submissions advanced on behalf of the writ petitioner have met with the stiff resistance of the learned Advocate General of the State, who has defended the impugned order dated 16.6.2004. According to the learned Advocate General, the earlier order passed by this Court on 25.5.2004 disposing of 2003 (AP) 339 cannot be construed to have put any embargo on the State with regard to the future transfer of the writ petitioner. The transfer order dated 10.9.2003 has been set aside in the proceeding registered and numbered as 2003 (AP) 339 on its own merit and after disposal of the aforesaid case, there was no legal bar for the State to take an appropriate decision in the matter of further transfer of the petitioner. This is what has been precisely done by the order dated 16.6.2004. Learned Advocate General submits that there is sufficient basis for passing the impugned order dated 16.6.2004 and, therefore, the validity of the same must be examined on the basis of the facts of the present case. The learned Advocate General has further submitted that the restrictions mentioned in Clause (1)(b) of the Office Memorandum dated 2.6.1998 must be understood to be merely illustrative and not exhaustive of the exceptional situations where a transfer can be made before the expiration of the normal tenure of 3 years. In fact, the learned Advocate General has argued, by referring to several cases of the Apex Court, details of which need not be mentioned in the present order in view of the clear position in law, that a transfer policy framed by the State has all along been construed by the Courts to be in the nature of mere guidelines and such a policy does not confer on an Affected person any legally enforceable right. The learned Advocate General has further submitted that the power of judicial review in matters relating to transfer of a Government Servant is extremely limited and there being no vested right in any incumbent not to be transferred from one station to another and transfer being an incidence of service, the parameters of the exercise of the powers of judicial review would be limited to situations where the power has been exercised for reasons mala fide or in an arbitrary manner. None of the aforesaid pre-conditions exist in the present case to justify exercise in the writ power, the learned Advocate General contends. By referring to the records produced before the Court, the Advocate General has

further submitted that the order dated 16.6.2004, in so far as the writ petitioner is concerned, was issued by the authority as there were several complaints with regard to the discharge of duties by the writ petitioner in the Yomcha Division. In view of the aforesaid complaints, the authority thought it proper to transfer the petitioner to the Headquarters at Itanagar in the interest of administration. No interference, therefore, ought to be made with the impugned order dated 16.6.2004, argues the learned Advocate General.

Mr. PK Khataniar, learned counsel for the Respondent No. 4 while supporting the arguments advanced by the learned Advocate General, has submitted that in the facts of the present case, the transfer of the writ petitioner from Yomcha Division and the posting of the Respondent No. 4 in place of the writ petitioner being guided by reasons of administrative exigencies, the transfer order dated 16.6.2004 should not be interfered with.

5. The rival submissions advanced on behalf of the contesting parties have received due consideration of the Court. The power to transfer of a Government Servant from one location to another has all along been recognised by the Courts to be the exclusive power of the State. It is the employer - State, who would be the best judge as to how the service of a Government Servant should be utilised in the interest of administration. The broad and wide powers vested in the State have definitely not been free from abuse and that is why approaches are made to the Court from time to time. The State in its wisdom has also thought it appropriate to frame policies regulating the transfer of Government Servants in order to avoid any heart burning and misuse of powers. However, the terms of such a transfer policy, as framed by the State, have been held by numerous judicial pronouncements to be in the nature of guidelines which should normally guide the action of the State. The terms of the transfer policy framed by the State itself are normally to be followed and cannot be departed from arbitrarily, But keeping in mind the paramount power of the State to transfer its employees and also having regard to the fact that there is no vested right in any employee not to be transferred, departures from the laid down norms can be made by the State provided such departures are justified by placing before the Court the reasons for such departures. The terms of such a policy have, therefore, been held not to be conferring any vested right in an incumbent to have the said terms enforced in his favour by the Court. The power of the Court to cause interference with the transfer order must be viewed from the aforesaid context and if the said power is so viewed, the result that emanates is that the power of interference under Article 226 of the Constitution must be held to be an extremely limited and circumscribed power, which has been evolved by the Court, primarily, to check arbitrariness and misuse. A transfer made within the four corners of the policy can, naturally, invite no objection. A transfer made in departure to the laid down norms, if the reasons for such departure are satisfactory, must be construed in favour of the State in view of the fact that the State must be acknowledged to be the best judge of how the administration is to be run. This is the backdrop against which the reasons assigned for the impugned order must be examined to

determine the question as to whether the transfer of the petitioner, though in departure of Clause (1Kb) and 1(f) of the Office Memorandum dated 2.6.1998, can be, recognised by the Court to be legally valid.

6. The arguments advanced on behalf of the petitioner that this Court in the order dated 25.5.2004 passed in 2003 (AP) 339 had laid down the exceptions/restrictions contained in Clause (1)(b) of the transfer policy dated 2.6.1998 to be exhaustive, cannot be accepted. A mere reading of the judgment dated 25.5.2004 passed in the aforesaid case would go to show that what was held by the Court in the aforesaid case is that the transfer order dated 10.9.2003, impugned in the said case, is prima facie contrary to Clause (1)(b) of the transfer policy dated 2.6.1998 and no reason whatsoever had been assigned justifying the transfer made in departure to the laid down norms. In the present case, the records produced would go to show that the transfer of the petitioner made by order dated 16.6.2004 was ordered in the file by the Minister of the concerned department and there is a reason recited in the order passed in the file which is to the effect that the transfer is being made on account of serious public complaints lodged against the writ petitioner as appearing in page 3 of the linked file. The linked file being placed before the Court, has been duly perused and it appears from the notings at page 3 of the aforesaid linked file that public complaints were received with regard to the performance of duties by the writ petitioner at Yomcha Division specifically pertaining to unauthorised payments out of public funds and also with regard to unauthorised absence of the petitioner from duties giving rise to serious public inconveniences. On the basis of the aforesaid complaint, an order was passed by the Minister, Power (not the departmental Minister) that the petitioner should be put under suspension and proceeded against departmentally. Two significant facts must be taken note of at this stage. Firstly the complaints received were in the month of September-October, 2003 and at that point of time 2003 (AP) 339 filed by the petitioner was pending before this Court. However, it appears that after the matter was processed departmentally, no final order with regard to the suspension of the petitioner was passed and the matter appears to have been abandoned. Thereafter, after the disposal of the writ petition earlier filed by the petitioner i.e. 2003 (AP) 339 the matter was once again taken up by the Departmental Minister, who though it fit to order the transfer of the petitioner. Under the transfer policy, what should have been ordinarily done is that the petitioner should have been proceeded against departmentally. Such a process though initiated did not reach its finality. Thereafter, the pending litigation came to an end and the departmental Minister thought it proper that on the same reasons the petitioner should be transferred. Ex facie the reasons cited cannot be held to be not in the interest of the administration. A transfer policy has already been held by this Court not to be an inflexible document laying down norms not knowing or recognising any exception beyond what is expressly provided. Departures can be made provided the reasons for such departures from the laid down norms are for satisfactory and good reasons. Departures from the terms of the policy being

permissible, and in the instant case such a departure having been made, on what appears to be a reason connected with good administration, this Court is of the considered view that the action of the Minister in ordering for the transfer of the petitioner and the consequential order dated 16.6.2004 must have the approval of the Court.

7. For the aforesaid reasons, I decline to interfere with the transfer order dated 16.6.2004 and on an overall consideration of the facts and circumstances of the case, I take the view that the writ petition merits an order of dismissal. Accordingly, the writ petition shall stand dismissed. Having regard to the facts and circumstances of the case, there shall, however, be no order as to cost.