
(1994) 03 GAU CK 0012
In the Gauhati High Court
Case No : Civil Rule No. 217 of 1994

R.K. Nabadwip Singh

APPELLANT

Vs

State of Manipur and Others

RESPONDENT

Date of Decision : 18-03-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 16, 226

Citation : (1994) 2 GLR 297

Hon'ble Judges : J. Sangma, J

Bench : Single Bench

Advocate : Ng. Kumar Singh, for the Appellant; L. Nandakumar Singh, for Respondents Nos. 1-3, for the Respondent

Final Decision : Dismissed

Judgement

J. Sangma, J.—By this petition under Article 226 of the Constitution the Petitioner has questioned the order dated 9.2.94 (Annexure-A/5) issued by the Respondent No. 1 (The Commissioner of Industries, Government of Manipur) transferring him from Thoubal, where he was holding the charge of General Manager, DIC, to Imphal as Functional Manager in the Directorate of Industries.

2. The Petitioner was holding the post of Functional Manager on adhoc basis. By order dated 15.4.87 (Annexure- A/1) the Respondent No. 1 regularised his service as Functional Manager. As Functional Manager he was holding the charge of General Manager at Senapati. By order dated 12.6.90 (Annexure-A/2) he was transferred from Senapati to Thoubal where also he continued to hold the charge of General Manager. Then by order dated 23.7.90 (Annexure-A/2-1) he was again transferred from Thoubal to Bishenpur; but there also he held the charge of General Manager. While he was holding the charge of General Manager at Bishenpur the Respondent No. 1 by order dated 25.9.91 (Annexure-A/3) appointed him to the post of General Manager on adhoc promotion for a period of six months and posted in the same place. This period of six months expired on 24.3.92 and there was no extension of the appointment. But by order dated

21.12.91 (Annexure-A/4) the Respondent No. 1 transferred the Petitioner from Bishnupur to Ukhrul as General Manager. Thereafter by another order dated 18.10.92 (Annexure A/4-I) the Respondent No. 1 again transferred the Petitioner from Bishenpur to Thoubal. This time also he was described as General Manager. Thus he functioned as General Manager for more than 2 years 4 months.

3. Though he was holding the charge of General Manager at Thoubal Respondent No. 1, by the impugned order dated 9.2.94 (Annexure A/5) transferred him to Imphul as Functional Manager in Directorate of Industries. So he now contends that after he held the charge of General Manager for more than 2 years 4 months the impugned order of transfer posting him in lower post as Functional Manager is illegal and arbitrary and it violated Article 14 and 16 of the Constitution. It is also his case that from 13.10.92 he has been at Thoubal for 1 year 4 months only; so there being no compelling reason the impugned transfer order is in breach of the instruction contained in the Memorandum dated 24.7.82 (Annexure-A/7) under which no transfer can be effected within a period of 3 years. Thirdly the Petitioner stated that he as the Member-Secretary of the Task Force Committee had questioned the selection of one Md. Kheiruddin of Haoreibi Atongkhong as beneficiary under the SEEUY Scheme in the meeting held on 30.11.93 at which the Deputy Commissioner warned him in the presence and hearing of other members whom he impleaded as Proforma Respondent Nos. 5, 6 and 7. He alleged that for that matter the Deputy Commissioner bore grudge against him; so on his initiation the impugned transfer order has been issued by way of punishment, On these grounds he prayed for quashing the transfer order.

4. On 28.2.94 this court, gave interim relief which is as follows:

Post it after 10 (ten) days as motion. If affidavit can not be filed, the learned Addl. Govt. Advocate may produce the relevant file on that day. Until further orders, the order of transfer dated 9th February, 1994 shall remain suspended.

5. Proforma Respondent No. 7 filed counter affidavit on 9.8.94. Respondent Nos. 1 and 2 and Respondent No. 3 filed counter affidavit on 10.8.94. On the same day the Respondent Nos. 1 and 2 filed also an application for vacating/modifying the stay order. The reply of Respondent Nos. 1 and 2 is that after the period of adhoc promotion for six months was over on 24.3.92 the Petitioner remained as Functional Manager and did not get the salary of General Manager. Secondly they stated that since the Petitioner became Functional Manager after the period of six months was over on 24.3.92 and he was transferred in public interest, the petition is not maintainable. The reply of Respondent No. 3 (Deputy Commissioner, Thoubal) is that the Petitioner did not object to the inclusion of Md. Kheiruddin as beneficiary of the Scheme. He stated that the Petitioner himself approved the inclusion by pulling his signature. He denied that he had malafide against the petitioner. The reply of proforma Respondent No. 7 who was present in the meeting is also that none of the Members of the Task Force raised objection to the inclusion of Md. Kheiruddin. He also stated that the Petitioner himself had signed the decision in the meeting on that day.

6. Mr. Ng. Kumar, learned Counsel argued that the Respondent Nos. 1 and 2 having described the Petitioner as General Manager in the subsequent transfer order even after the period of adhoc promotion was over, the impugned transfer order to Imphal as Functional Manager amounted to a transfer to an inferior post and the same as such is liable to be quashed. For this he relied on Smt. Lousidam Dashu v. the State of Manipur (1989) 2 GLR 279. There the transfer of an incumbent without disclosing reason to the place of an (sic) whose scale of pay is lower than his was quashed. The other case relied on for the Petitioner is an unreported decision of a Single Judge (Shishak, J) of this Court rendered on 21.1.94 in Civil Rule No. I/1994 (Shri T. Sarnie v. The State of Manipur) in which it was held that a Commandant of 5th Bn. Manipur Rifles could not be transferred to the post of Dy, Commandant as the Grade was inferior.

7. Mr. L. Nandakumar Singh, the learned Govt. Advocate appearing for Respondent Nos. 1 to 3 contended that after the petitioner's adhoc promotion to General Manager expired on 24.3.92 there was no extension of the adhoc promotion and as such the Petitioner automatically was reverted to Functional Manager and as on his own showing he did not get the salary of General Manager, there was nothing wrong in the impugned order. To support this he placed Bhikha Ram Vs. Ram Sarup and others, in which it was held that where the appointment is purely on adhoc basis and is contractual and by efflux of time, the appointment comes to an end, the person holding such post can have no right to continue in the post. The learned Govt. Advocate also contended that the petitioner's transfer having been made in public interest the fact that the transfer order was made within three years can be no ground to question before this court. For this he placed Mrs. Shilpi Bose v. State of Bihar AIR 1991 532. There it was held that even if a transfer order is passed in violation of executive instructions or orders, the Courts ordinarily should not interfere with the order; instead affected party should approach the higher authorities in the Department. Lastly he referred to the affidavit of Respondent Nos. 3 and 7 who stated that the Petitioner did not question the selection of Md. Kheiruddin for inclusion in the Scheme and that the Petitioner himself as Member-Secretary conducted and signed the proceeding in the meeting.

8. As the petitioner's adhoc promotion to General Manager expired on 24.3.92 it can not be said that the Petitioner was still a General Manager even after that, because after the expiry of the period of adhoc promotion he automatically reverted back to Functional Manager. And as he again was Functional Manager from 25.3.92 the impugned order transferring him to Directorate of Industries, Imphal, as Functional Manager can not be said to have amounted to punishment and violative of Articles 14 and 16 of the Constitution. The earlier transfers describing the Petitioner as I/C General Manager is apparently a mistake committed through inadvertence which can not enure to his benefit. The Petitioner can not also question transfer on the ground that the order was passed within three years of his posting at Thoubal. For this the remedy is to give representation to the higher authorities. Lastly the affidavit of Respondent Nos. 3

and 7 discloses that there was no malafide in the impugned transfer order. The decisions relied on by the learned Counsel for the Petitioner has no application to the case.

9. In the result I see no merit in this petition which therefore fails and is dismissed. The interim order stands vacated. No costs.