
(2016) 09 GAU CK 0066
In the Gauhati High Court
Case No : W.P.(C) No. 429 (AP) of 2016

Tagong Ketan

APPELLANT

Vs

State of Arunachal Pradesh

RESPONDENT

Date of Decision : 16-09-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2017) 2 GauLR 670 : (2016) 5 GauLT 403

Hon'ble Judges : Manojit Bhuyan, J.

Bench : Single Bench

Advocate : Mr. K. Ete, Addl. AG and Mr. P. Taffo, Advocate, for the Respondent; Mr. S.S. Dey, Sr. Advocate, Mr. K. Jini. Mr. T. Gadi. Mr. D. Loyi, Mr. G. Bam and Mr. S. Ketan Advocates, for the Petitioner

Final Decision : Dismissed

Judgement

Manojit Bhuyan, J. - The petitioner Sri Tagong Ketan, in his capacity as the Chief Engineer, East Zone, Public Health Engineering & Water Supply Department, Government of Arunachal Pradesh (in short, PHE & WS) was transferred and posted as Chief Engineer, Design and Planning, by order dated 5.8.2016 issued under the hand of the Commissioner (PHE & WS). The private respondent nos. 3, 4 and 5, in their capacity as Chief Engineer, had also been transferred to respective divisions/assignments. The said order in respect of the petitioner is put to challenge as being passed in contravention of the transfer guidelines contained in the Circular dated 2.6.1998 of the Government of Arunachal Pradesh in the Department of Personnel.

2. Mr. S.S. Dey, senior counsel, representing the petitioner strenuously contends that the said order has not been passed in the public interest, albeit, by manipulating the relevant records and without any cogent reasons being assigned for effecting the transfer. Allegation is also made that the said order had been passed clandestinely and in a hush hush manner, so much so, that it had been issued on a Sunday. According to the petitioner, he was earlier transferred

and posted as Chief Engineer, East Zone by order dated 19.2.16, to which post he took charge on 29.2.16. Within a period less than six months he is again sought to be transferred and posted from his capacity as Chief Engineer, East Zone to the post of Chief Engineer, Design and Planning. The present transfer being effected within such a short time, the petitioner contends that it is in blatant violation of the policy guidelines contained in the aforesaid Circular dated 2.6.1998. Mr. Dey, also submits that besides the transfer order being contrary to the Circular dated 2.6.1998, the same also stands vitiated in the absence of any public interest requiring transfer of the petitioner. Qualifying his arguments, Mr. Dey submits that the Circular of 2.6.1998 lays down that all postings in the Office of the Heads of Department are to be normally for a period of three years (now two years after modification) for the sake of continuity in the respective post. Exceptions carved out in the Circular is in respect of transfer on promotion, for filling up a crucial vacancy based on specialization and on compassionate and health grounds. To effect transfer by resorting to the exceptions, it can only be made with the approval of the competent authority. Whether the transfer of the petitioner within a period of two years can be held to be an exercise by invoking the exception clause, Mr. Dey refers to the basis upon which said transfer and posting was made. Reference is made to the Note of the Commissioner (PHE & WS), as available in Annexure-3 to the affidavit-in-opposition filed by the respondent nos. 1 and 2, to say that the contents of the Note have absolutely no relevance/nexus with the exceptions engrafted in the Circular dated 2.6.1998. According to Mr. Dey, the Note of the Commissioner apparently goes to show the reasons for issuing the transfer order dated 5.8.2016, in that, the same was made only to undo the earlier transfer order dated 19.2.2016 that had been issued as per order of the Governor of Arunachal Pradesh on the last day of the President's Rule in Arunachal Pradesh. The reason being such, it is contended that the transfer order had been rendered on extraneous considerations and without any semblance of public interest or in tune with the policy guidelines under the Circular dated 2.6.1998. Further contention of Mr. Dey is that the surreptitious issuance of the transfer order finds established in the fact that the same had been issued on a holiday i.e. Sunday, as it is apparent that the Deputy Secretary (PHE & WS) had circulated the order on 7.8.2016, which is a Sunday. According to Mr. Dey, the said irregularity had been rectified by manipulating records and by inserting the Note dated 9.8.2016 in the concerned Office File. To substantiate the allegation, Mr. Dey submits that the petitioner had sought for information of the details of the nothings in the Office File through an application under the Right to Information Act and the relevant documents so made available, particularly page 29 of the Office File No. Sectt./PHE-36/99, the Note dated 9.8.2016 was singularly missing. These facts, according to Mr. Dey, points to the fact that the impugned transfer order dated 5.8.16 had been issued for reasons other than bona fide.

3. Referring to the affidavit-in-opposition filed by the respondent no. 1, Mr. Dey submits that the explanation given to justify the transfer order cannot stand for

consideration as the same are not traceable to any office records. The reason highlighted in the affidavit-in-opposition is only by way of developing a case shorn of any basis or foundation. To be precise, Mr. Dey refers to paragraph 11 of the affidavit-in-opposition to say that while the State respondents have taken a ground that the petitioner had been transferred to the parent body of the Department as Chief Engineer, Design and Planning, for being the senior-most and in the interest of the work and administrative exigency, the said reason do not find mention in the office records.

4. On the above facts, the petitioner alleges malice in law on the part of the State respondents. Mr. Dey also argues that mere insertion of the expression "in the interest of public service", cannot clothe the order as being actually issued in public interest. Submission made is that the basis of the order and reasons assigned requiring issuance of the order necessarily requires to be examined, which is the Note of the Commissioner (PHE & WS) dated 5.8.2016.

5. To buttress his arguments on the point that the State respondents cannot qualify upon a public order, publicly made, in the light of explanations subsequently given in the affidavit-in-opposition, reliance is placed in the case of *Mohinder Singh Gill v. Chief Election Commissioner*, reported in (1978) 1 SCC 405. For the proposition that the recitation in the transfer order of being issued in the interest of public, ipso facto, would not mean that it was passed in public interest, more so, in the face of the facts revealed from records, reliance is placed in the case of *Ramjan Ali Ahmed v. Tayab Ali Ahmed*, reported in 1998 (2) GLT 242. In the same vein, Mr. Dey also places reliance in the case of *Ramadhar Pandey v. State of U.P.*, reported in 1993 Supp. (3) SCC 35.

6. Mr. K. Ete, learned Addl. Advocate General, State of Arunachal Pradesh representing the State respondents opens by saying that although the transfer order dated 5.8.2016 uses the expression "transfer/posting", the said order is, in fact, an assignment of charter of duties of the respective Chief Engineers under the Public Health Engineering and Water Supply Department. According to Mr. Ete, the movement of the petitioner as well as the private respondent nos.3,4 & 5 are not from one place to another or from one station to another but within the same Block/premises with only a change in the nature of their duties. It being so, the exceptions in the policy guidelines contained in Circular dated 2.6.1998 do not come into play, notwithstanding the fact that even otherwise the said guidelines do not create any enforceable right on the petitioner. It is submitted that a similar process of assignment of duties was issued by an earlier order dated 19.2.2016 by which the petitioner was entrusted with the duty of Chief Engineer, East Zone. The said order according to Mr. Ete, was never put to challenge despite the same having been issued under similar circumstances and under similar process, as in the case of the transfer order dated 5.8.2016 under challenge. Mr. Ete attributes human error as regards the date indicated by the Deputy Secretary i.e. 7.8.2016 and submits that immediately on the next date i.e. on 9.8.2016, a Corrigendum had been issued rectifying the error pursuant to

the Note dated 9.8.2016 in the concerned Office File. It is submitted that the allegation of manipulation of records is utterly misconceived and inconsequential, inasmuch as, the State respondents have brought on record a copy of the Note dated 9.8.2016 in its affidavit-in-opposition, which is derived from the office records. As regards the reasons for effecting transfer/assignment, Mr. Ete contends that the Note of the Commissioner dated 5.8.2016 clearly gives out the reason that the same had been issued to streamline the Department for which reshuffle of the Chief Engineers became necessary. Mr. Ete also submits that clear reasons being discernible from records, the statement made in paragraph 11 of the affidavit-in-opposition is by way of complementing the said reasons and not by way of assigning new explanations to justify the transfer order. In the absence of any allegation of mala fide and/or violation of statutory rules and norms, Mr. Ete submits that having regard to the power of this Court of judicial review, the order dated 5.8.2016 do not warrant interference. For the proposition that the Court must exercise judicial restraint and to allow free play in the joints in the exigencies of administration, reliance is placed in the case of *State of Haryana v. Kashmir Singh*, reported in 2010 (13) SCC 306; *Union of India v. S.L. Abbas*, reported in 1993 (4) SCC 357 and in the case of *State of M.P. v. S.S. Kourav*, reported in 1995 (3) SCC 270. The case of *S.L. Abbas (supra)* is also cited for the proposition that executive instructions/guidelines do not have statutory force and does not confer a legally enforceable right.

7. Mr. P. Taffo, learned counsel representing the respondent no.4 submits that although the case of the petitioner is limited to the challenge on his own transfer as Chief Engineer, Design and Planning, any interference of the order dated 5.8.2016 will certainly have a cascading effect and cause a chain reaction to the transfer of the other three Chief Engineers, including the respondent no.4, who figures in the order dated 5.8.2016. In addition, Mr. Taffo submits that having regard to the case laid out by the petitioner and the parameters of judicial review, the writ petition stands to be dismissed.

8. I have heard the learned counsel for the parties and have also perused the materials on record. Records in original produced by the State in Office File No. PHE/Sectt.-36/99 is also perused.

9. Without any doubt, the transfer of a Government employee remains in the realm of the Executive. The exceptions to it for the Court to interfere is too well recognised in law. On this note, the facts of the instant case are being looked into. Indeed, the transfer guidelines contained in the Circular dated 2.6.1998 propounds that posting in the Office of the Heads of Department are normally to be for a period of two years for the sake of continuity, with exception to make transfer within the stipulated period on grounds mentioned therein. Apparently, the said Circular of 2.6.1998 is in the nature of guidelines and do not have statutory force. Without dilating on this aspect any further, suffice to say that in view of the Apex Court's decision in *S.L. Abbas (Supra)*, the executive instructions/circular relating to transfer of Government servant being in the

nature of guidelines, do not confer a legally enforceable right on the petitioner. The allegation of manipulation of relevant records is a serious imputation made on the State respondents. The said allegation is in respect of alleged concealment of the Note dated 9.8.2016 appearing in the Office File. No such noting was made available to the petitioner upon an application made under the Right to Information Act. This action by itself cannot be construed as an exercise done surreptitiously, this alone cannot be as high to establish allegation of manipulation on records. The said Note of 9.8.2016 is part of the affidavit-in-opposition filed by the respondents and also forms a part of the office records. On a perusal of the same, this Court is unable to conclude that the said Note had been subsequently inserted in the Office File to remedy the error/shortcoming on the part of the State respondents. To this end, the allegation of manipulation of relevant records do not find approval of this Court.

10. Whether the order dated 5.8.2016 was passed in public interest by attributing cogent reasons, notice is had to the Office Note dated 5.8.2016. which is the basis for effecting the transfer. Importantly, the said note has been approved by the Chief Minister of Arunachal Pradesh and various authorities in the hierarchy. The Note indicates to the effect that the earlier transfer order dated 19.2.2016 was made as per order of the Governor of Arunachal Pradesh on the last day of the President's Rule in Arunachal Pradesh. Now that streamlining of the department was required by way of reshuffling the Chief Engineers, therefore, proposal was made for transfers/postings of the Chief Engineers under the PHE & WS. The said Note, as indicated above, received approval of the competent authority. A perusal of the said Note clearly indicates the reason for effecting the transfer. Streamlining of the department by reshuffling the Chief Engineers is in the domain of the Executive and does not call for expert opinion of the Court as to how the affairs of the administration should be carried on. The four Chief Engineers, including the petitioner and the respondent no. 4, have been assigned new duties which, in the estimation of the State respondents, are necessary for streamlining and/or smooth functioning of the department. In so far as public interest is concerned, it is true that mere use of the expression cannot, ipso facto, clothe the order as being rendered in public interest. However, on a perusal of the records so made available together with the statements made in the affidavit-in-opposition, this Court is left with no option than to conclude with the said order of 5.8.2016 was issued in the interest of public service. It is for the State to make a determination regarding efficiency, competency of an officer in assigning a particular role in the department. It is not for the Court to sit on the decision taken by the State respondents unless there is conspicuous presence of illegality and arbitrariness. There is no mala fide alleged in respect of the actions taken by the State respondents, nor any of the officers involved in the issuance of the transfer order dated 5.8.2016 have been made party respondents by name. No element of arbitrariness is discernible from the impugned order dated 5.8.2016 as well as from the office records so made available. Neither the order suffers from the vice of being rendered contrary to

any statutory rule/norms. It is for the petitioner to establish the element of arbitrariness and the order being passed contrary to public interest. The case as laid out, the petitioner have failed to establish the aforesaid elements to the satisfaction of this Court. Pertinent to note that the present writ petition and the submission so made is fashioned in a manner disclosing grievance raised only against the respondent no. 4, who has been posted as Chief Engineer, West Zone. It cannot be comprehended as to how the petitioner is aggrieved by the transfer of the said respondent no. 4, inasmuch as, it is not a case where the said respondent no. 4 has been posted in place of the petitioner and/or vice versa.

11. It is well settled that transfer of a public servant from a significant post can be prejudicial to public interest only if a transfer was avoidable and the replacement is made by a person not suitable for the post. To introduce this element as a vitiating factor of the transfer, there has to be pleadings and proof that the replacement was by a person not suitable in the important post. In the instant case, no material/pleadings have been brought on record that the transfer of the petitioner as a Chief Engineer, Design and Planning and the replacement to his earlier post as Chief Engineer, East Zone is by a person not suitable for the post. In addition, there is no material/pleadings on record that the transfer of the petitioner have affected his career prospects, his official status including his seniority, pay scale and secured emoluments. No grounds have been placed requiring this Court to interfere with the order dated 5.8.2016. This Court is not an appellate forum to decide transfer made on administrative grounds, that too, in the absence of any allegations of mala fide, arbitrariness and/or without the petitioner being able to establish that the transfer order dated 5.8.2016 is prejudicial to public interest. In the absence of the well known parameters for making interference, this Court is not expected to intervene in the working of the administrative system by interfering with transfers of officers. It is not for this Court to go into the expediency of posting of officer at a particular place.

12. The decisions placed by the parties have been perused and this judgment is rendered on the basis of the law laid down by the Apex Court on transfer matters. Therefore, each of the cases so relied upon, are not gone into in details.

13. From the discussions and findings above, I find no merit in this writ petition and the same stands accordingly dismissed. The interim order passed earlier stands vacated/recalled. As no interference is made to the order dated 5.8.2016, therefore, the private respondent nos. 3 and 5 are not prejudiced for not being heard.

14. Before parting with this case, it would be apposite to note that while hearing this petition, reference was made to another writ petition i.e. WP(C) 497 (AP)/2016, where challenge has been made to the order dated 5.8.2016 to the limited extent where the respondent no. 4 has also been given coordination charge. It is made clear that the petitioner in WP(C) 497 (AP)/2016 shall not be

non-suited to pursue his case against the respondent no. 4 only to the limited extent whereby the said respondent no. 4 has been given coordination charge.

15. In view of the above, the present writ petition stands dismissed and the parties are left to bear their own cost. Records so produced by the State are returned forthwith.