
(2016) 05 GAU CK 0070
In the Gauhati High Court
Case No : WP(C) No.229(AP) of 2016

Takir Taloh	Vs	APPELLANT
State of Arunachal Pradesh		RESPONDENT

Date of Decision : 26-05-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2016) 5 GauLR 353

Hon'ble Judges : Rumi Kumari Phukan, J.

Bench : Single Bench

Advocate : Mr. Kardak Ete, Mr. Ninnong Ratan, Mr. K. Loya, Mr. R. Vijay, Mr. R. Ngomle, Mr. T. Taggu, Mr. T. Norbu and Mr. M. Erte, Advocates, for the Petitioner; Mr. T.T. Tara, Mr. Ojing Pada, Ms. M. Jonnom, Ms. G. Loyi, Mr. V. Jamoh and Mr. Dugmar Kamduk, Advocate

Final Decision : Allowed

Judgement

Rumi Kumari Phukan, J.— Heard Mr. Kardak Ete, learned senior counsel, assisted by Mr. Ninnong Ratan, learned counsel, appearing on behalf of the petitioner. Also heard Mr. T.T. Tara, learned Additional Advocate General, Arunachal Pradesh, assisted by Ms. Pubi Pangu, learned Government advocate, for the State Respondents, Mr. Ojing Pada, learned counsel, appearing on behalf of private respondent No. 3, as well as Mr. Tamar Gadi, learned counsel, appearing on behalf of private respondent No. 4.

2. The question which falls for consideration in the present writ petition is whether on the facts and circumstances of the case, the transfer order of the petitioner within a period of 4 months from the date of his joining to the post, is in complete violation of transfer and posting guidelines?

3. The case of the petitioner is that he is serving as a SE under the PHE & WS Circle, Pangin, Siang District. The petitioner was transferred to Bene under the West Siang District, by order dated 28.5.2015 and after serving a period of 6 months, he was again transferred to Pangin by another order dated 14.12.2015.

The petitioner joined accordingly at Pangin as on 5.01.2016 and while working sincerely, the petitioner was again transferred to Itanagar, within a period of 4 months by the impugned transfer order dated 2.5.2016. According to the petitioner, the impugned transfer order dated 2.5.2016 is illegal, arbitrary and there was neither any public interest nor any administrative exigency warranting untimely transfer of the petitioner. The entire action of the respondent authorities in issuing the transfer order is actuated by mala fide purely under the behest of respondent No. 4, local MLA, Rumgong Constituency, Siang District. It has also been contended that the petitioner was discharging his duties with utmost sincerity and dedication and there was no any public complaint, whatsoever, from any corner questioning his performance and efficiency. In the facts and circumstances of the case, it has been urged That the impugned order being unfair, arbitrary and mala fide, is liable to be set aside and quashed. It is the categorical statement of the petitioner that his reliever/respondent No. 3 has not yet joined in his place at Pangin and he has hurriedly filed this petition and also filed a representation before the respondent authorities to re-consider the matter of transfer and posting. The petitioner has submitted the relevant transfer order, as mentioned above, and a copy of the representation, a copy of U.O. Note, whereby the respondent No. 4 has suggested for transfer and posting of another person, as against his place of posting. That apart, the relevant Circular regarding policy guidelines to be followed on the transfer and posting of all categories of officers and staff in Arunachal Pradesh, dated 22.6.1998 under Memo. No. APTT-19/90 dated Itanagar 01.6.1998 and subsequent order dated 19.12.2008 under Memo. No. PERS-126/2004, has been filed.

4. By filing an additional affidavit, the petitioner has brought on record, certain documents regarding disposal of representation so filed by the petitioner before the respondent authorities vide copy of order No. SETT/PHE/75/2016 dated 12.5.2016 passed by the Commissioner (PHE & WS), Itanagar. It has been contended that the aforesaid order does not reflect that there was no administrative exigency or public interest involved while issuing such impugned transfer order. That apart, the petitioner has obtained certain information like 2 nos. of U.O. Notes to the PHE & WS Department, whereby, the respondent No. 4 has addressed to the Department concerned, for transferring one Sri Oyuk Padun in place of the petitioner at Pangin and the other Sri Tamuli Takoh, viz., respondent No. 3, herein, as SE (Coord.). The Office Note reveals that said Padun did not complete his tenure so he could not be posted at Pangin, and one Sri Tayum Tok, was already transferred from Tezu, PHE & WS Circle and posted as SE (Coord.). Thus, the private respondent No. 3 was posted at Pangin, in place of the present petitioner by the concerned Minister despite the fact that the petitioner has not completed his normal tenure. The said action of the respondent authorities amounts to mortgaging its discretion to the political bosses. As such, the aforesaid transfer and posting order is liable to be interfered with, by this court, as has been prayed for.

5. The private respondent No. 3 filed the affidavit-in-opposition in the case,

raising objection regarding maintainability of the writ petition and it has been contended that the whole petition is misconceived and the petitioner has suppressed material aspect that the private respondent No. 3 has already joined at his new place of posting as on 4.5.2016 after the impugned order dated 2.5.2016 and subsequently, he was relieved from his earlier establishment as on 5.5.2016. In the meantime, the respondent authorities have also directed the petitioner, as on 5.5.2016, to handover the charge. Over and above, it is contended that the transfer and posting of a Government servant is a part of service condition and even if the transfer order was made on the recommendation of private respondent No. 3(MLA), that would not vitiate the transfer order. After all, it is the duty of the representative of the people, in the Legislature, to protect the grievances and interest of the people. It has been pointed-out, that, even the promotion and subsequent transfer of the petitioner, to Bene as SE, PHE & WS, dated 28.5.2015, was effected, on the basis of U.O. Note initiated by the Minister(Education), Government of Arunachal Pradesh, and also by virtue of U.O. Note dated 14.12.2015, the petitioner was transferred. As such, the petitioner cannot challenge the directions so given by the private respondent No. 4, for his transfer, from the present place of posting.

6. Pointing to the U.O. Note dated 4.4.2016, given by the private respondent No. 4, it has been submitted that there was a recommendation for posting of one Sri Oyup Padun and nothing was suggested against the present petitioner and the same was issued in administrative exigency and public interest. Regarding the standing Government Guidelines and Rules referred by the petitioner, it has been submitted that the same are not statutory rules and, hence, not mandatory, in nature. Thus, it has been contended that the private respondent No. 3 has already joined at his new place of posting, therefore, there is nothing to adjudicate on the matter, and the writ petition is liable to be dismissed, at the threshold.

7. In support of the contention, the private respondent No. 3 has submitted a copy of his joining report at Pangin, release order, U.O. Notes dated 8.7.2014 and 26.9.2015, given by the Minister (Education), Government of Arunachal Pradesh, order directing the petitioner to hand-over the charge, taking-over of charge by the private respondent No. 3, and other documents referred in this affidavit.

8. On the other hand, the State respondent Nos. 1 and 2 and the private respondent No. 4/MLA, submitted no such affidavit and simply made their verbal submissions during the course of hearing.

9. Mr. Ete, learned senior counsel, initiating his argument, for and on behalf of the petitioner, has vehemently argued that such a transfer order is actuated by malice in law as well as facts, which would reflect in the given background of the case. By drawing attention to the Standing Government Circular, which prescribed the guidelines to be followed, at the time of transfer of a Government employee, it has been urged by the learned senior counsel that an employee can

be transferred only after completion of his normal tenure of 2 years in his place of posting and while admittedly, the petitioner has not completed his normal tenure of 2 years, his transfer, is premature at this stage, that too, to accommodate the private respondent No. 3, is bad in law as it is against the prescribed norms for transfer and posting of an employee.

10. On the other hand, there is nothing to show that transfer of the petitioner was necessitated on account of his inefficiency, or any other public; complaint. It has been vehemently argued that the contention of the private respondent No. 3 that the Government Circular has no force of law, is really unfortunate and not at all sustainable. A public Department is not supposed to discharge its duties at the behest of political leaders, it contends.

11. Referring to the U.O. Note dated 4.4.2016 (internal pp.12 to 15, to the additional affidavit), it has been assailed by the learned senior counsel for the petitioner that the same is more than enough to show the political interference into the domain of public Department, for transfer of a public servant, from one place to another, without there being any genuine ground being assigned. For better appreciation, let the U.O. Notes be extracted, as under :

"2 Nos. of U.O. Note has been received from MLA, 32- Rumgong, Shri Tamiyo Taga, which is :

(1) Transfer/posting of Shri Oyup Padung, SSW O/o CE (W&P) to newly created functional SE & PHE Circle, Pangin, as SE.

(2) Transfer/posting of Shri Tamoli Takoh, SE to Itanagr, PHE & WS Circle, Nahariagun, as SE (Coord.).

In connection with the Sli. No. 02, above, it is worth mentioning here that Shri Tayum Tok, SE, has already been transferred from Tezu, PHE & WS Circle, and posted to Itanagar PHE & WS Circle, Nahariagun, as SE(Coord) vide Government Order No. Sectt/PHE(ESTT)-80/2011 dated 15.04.2016(copy placed at Flag "A").

"In this connection it is to inform here that SE, Tezu PHE & WS Circle is lying vacant after transfer of Shri Tayum Tok, SE.

Competent authority may suggest for posting of any one of the SE to PHE & WS Circle, Tezu.

Hence, file is submitted for further necessary action and order please.

SO, PHE Sd/-

25.4.2015

May kindly like to endorse the file to the Government for perusal and further order as deem fit and proper please.

OS

Sd/-

25/2004

Transfer/posting order copy of Er. Tuba Angu & Takir as SE Bene & Pangin may also be place in the file.

SO

Likar 25.4.2016

please attend

Sd/-

Sd/-

26/2004

As directed a copy of transfer and posting order in respect of Er. Tuba Angu & Takir Taloh as SE Bene and Pangin is placed below at flag "C" for reference please.

SO.PHE

OS

Sd/-

26.4.2016

Sd/-

26.2004

As per deployment list of SEs/SSW's, it is seem that Shri Takir Taloh, present SE(Pagin Circle) has just completing 4 months at his present place of posting and Shri Tuba Angu, present SE(Bene) has also just completing 4 months at his present place of posting. None of them have completed the normal tenure. It may not proper to suggest to transfer out before tenure is/are over. It may perhaps, invite litigation of department.

At present PHE & WS, Tezu Circle is lying vacant. Er. Tamu/i Takoh, SE O/o CE (W /Z) can be transferred to Tezu Circle, as the officer has completed his tenure at this present place of posting.

Er. Oyuk Padung, SSW O/o CE (E/Z) has also not completed his tenure.

Submitted for the decision of Government.

Deployment list at flagged "A"

Commr/PHE

Sd/-

26.4.2016

Submitted for a suitable decision as deem fit and proper.

HM(PHE & WS)

Sd/-

26.4.2016.

The case of Er. Tamuli Takoh, SE may be considered for posting at PagLn Circle. The present incumbent Er. Takir Taloh SE has almost completed his normal tenure of field posting.

HM (PHE)

Approved

Sd/-

2014

Sd/-

27.4.2016

"May kindly, refer the approved of HM dated 3.4.2016. As per its original proposal Er. Takoh SE is transfer/posted at Pagin in place of Er. Takir Taloh, SE (whose place of posting is not indicated)

It is request to kindly indicate his posting place to avoid legal complicity.

HM(PHE & WS)

Sd/-

02.05.2016

As approved by ITCM at pre page 22N Er. Taloh may be posted in place of Er. Tamuli Takoh in CE's Office Eastern Zone.

Lombo Tayeng

Sd/-

Commr (PHE & WS)

Minister

Public Health Engineering and Water

Supplies, Libraries,

Arunachal Pradesh,

Itanagar.

Pc Issue Order

OS (PHE & WS)

Sd/-

02/05/16

SO(AOL)

Likar, ASO

Sd/-

2.5.2016."

12. The next contention of the learned senior counsel for the petitioner is that time and again, the honorable Apex Court has firmly declared that a transfer and posting at the behest of politician without following any guidelines provided therefor, is arbitrary and mala fide. According to the learned senior counsel for the petitioner, the present transfer and posting of the petitioner is apparently made at the behest of the private respondent No. 4/political person, viz., local MLA and nothing is discernible that it was made in administrative exigency and public interest. Such an order is liable to be set aside. To fortify his contention, learned senior counsel has relied upon the following decisions :

1. Tariochan Dev Sharma v. State of Punjab, (2001) 6 SCC 260 (Para 16)
2. Sarvesh Kumar Aivasthi v. U.P. Jal Nigam and Ors., (2003) 11 SCC. 740 (Para 3)
3. Kapil Kumar Sinha v. State of Tripura, (2009) 1 GLR 563; 2007 (3) GLT 944
4. Mohd. Masood Ahmed v. State of U.P., (2007) 8 SCC 150 (Para 7)
5. Somesh Tiwari v. Union of India, (2009) 2 SCC 592 (Para 16)
6. Toheli Sumi v. State of Nagaland, 2009 (2) GLT 956 (Paras 7,11,12,14,16 to 19)
7. Sunit Kumar Bardoloi v. State of Assam, 2010(2) GLT 786 (Paras 10 to 27)
8. Rubu Opo v. State of Arunachal Pradesh, 2011 (3) GLT 544 (Paras 26 to 31)
9. Kh. Kaminibabu Singh (Dr.) v. State of Manipur, 2012 (3) GLT 508 (Para 10)
10. Khagen Borgohain v. State of Assam and Ors., (2014) 2 GLR 401; 2014 (1) GLT 343 (Para 11)
11. Jiten Bora v. State of Assam, (2015) 4 GLR 609; 2015 (4) GLT 773 (Paras 20 to 22)

13. Refuting the submissions of the learned senior counsel for the petitioner, Mr. Tara, learned Addl. Advocate General, Arunachal Pradesh, contends that there is

no illegality in the aforesaid transfer order and the recommendation of the local MLA cannot always be discarded in the given facts and circumstances of the case. By referring to the General Financial Rules of 1998 (supra), it has been submitted by the learned Addl. Advocate General, Arunachal Pradesh, that the said recommendation was made by the local MLA considering the efficiency/expertise of the respondent No. 3 on the subject-matter as he was appointed to the newly created PHE & WS Circle at Pangin. As per the Circular dated 2.6.1998, vide clause 1(b), refers that normally, transfer and posting should be made for 3 years for the sake of continuity but in exceptional circumstances, such a transfer can be made on promotion, 1 for filling-up of a crucial vacancy based on specialisation and on compassionate ground or health ground.

14. In support of the contention that the transfer order has been made in regular manner, without being actuated by malice and the fact that this ? writ court has limited jurisdiction in invoking judicial review in the matter of transfer under article 226 of the constitution, learned Addl. Advocate General, Arunachal Pradesh, has referred to the Md. Masood Ahmed v. State of U.P. (2007) 8 SCC 150 and Commissioner K.V.S. and Ors. v. Tapan Kr. Chakraborty, 2002 (3) GLT 639 and has submitted that the order of transfer is a part of service condition of an employee which should not be 1 interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under article 226 unless the court finds that either the order is mala fide or that the service rules prohibits such transfer or that the authorities who issued such orders were not competent to pass the orders. It is needless to emphasise that a Government employee or any servant of public undertaking has no legal right to insist for being posted in any particular place.

15. Before advertng to the submission made above, let us also appreciate the above referred first U.O. Note given by the private respondent No. 4 which reads as follows :

"Subject: transfer and posting of new SE at Pangin, PHE & WS Circle, Siang District.

This is regarding effecting the transfer and posting of SE, Pangin PHE & WS Division, Siang District, Pangin PHE & WS Circle is a newly created circle. It needs energetic and dedicated officer for full set-up of circle. Er. Oyup Padun, SE (Design and Planning) is a very competent and dedicated officer. He may be transferred from SE(D& P), Itanagar, and posted as SE, PHE Pangin Circle, Siang District, in the interest of public service.

Hon"ble Minister, Arunachal Pradesh, is requested to look into the matter for effecting the transfer and posting of the officer, as stated above, on priority basis.

Sd/-

Tamiyo Taga MLA,

32-Rumgong Arunachal Pradesh

Dated 4.4.2016."

16. The record further reveals that the said MLA has given another 2 U.O. Notes dated 25.4.2016 apart from what has been mentioned above, for transfer and posting of Sri Tamuli Takoh, private respondent No. 3, PHE & WS Circle, Nahariagun, on the basis of which, private respondent No. 3 has been posted at Pangin, by the impugned transfer order, under challenge. So far as the first as well as the second U.O. Notes are concerned, nothing is discernible that it was issued in administrative exigency. There is nothing to show that the private respondent No. 3 was specialised on the subject that has been assigned to and the present petitioner was not suitable to continue in the said post at Pingin. So the impugned transfer order apparently based on the sudden request of the private respondent No. 4, to accommodate the private respondent No. 3 Sri Takoh.

17. Now, the name of the petitioner was not mentioned in the first U.O. Note but it was intended that the service of the petitioner will be effected for such purpose. The second U.O. Note has been issued clearly dictating for posting of the private respondent No. 3 against the post of SE i.e. the post held by the present petitioner and it is to be noted with great concern that in spite of office note given in the File (at internal page-14 as mentioned above), that the petitioner has not completed the normal tenure at his present place of posting so it would not be proper to transfer him out before the tenure is over and it may invite litigation of the Department and Er. Takoh (private respondent No. 3) can be transferred to Tezu Circle as he has completed his tenure at his place of posting, the Commissioner refrained himself from giving any decision and left the matter to the Minister, PHE & WS Department, who finally approved the transfer and posting of private respondent No. 3 to the post of SE at Pangin (the post held by the petitioner). Such an affair conducted by the officials from the PHE & WS Department, Government of Arunachal Pradesh, is nothing but to surrender his official duties to be regulated by political whims, which cannot be treated as a healthy practise and affair in the public domain.

18. In this context, the Hon"ble Apex Court in the case of Tarlochan Dev Sharma (supra), it has been observed, thus :

"In the system of Indian democratic governance as contemplated by the constitution, the senior officers occupying key positions such as Secretaries are not suppose 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 the Central Government services command the civil servants to maintain at all times absolute integrity and devotion to the duties 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 discretion of his official superior."

19. I have gone through the records produced by the learned state counsel in this regard. On perusal of the same, no public interest is discernible towards issuance of impugned order of transfer. The personal desire of a political figure, cannot be said, to be the public interest. The concept of public interest so well cherished in the matter of transfer, has been put to oblivion with the use of its form and not the content.

20. In *Sarvesh Kr. Aivasthi (supra)*, it has been categorically dealt with the matter of transfer of an employee and it has been held that the transfer of officers is required to be effected on the basis of set of 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. The same principle was reiterated in the aforesaid judgments so referred by the petitioner.

21. Turning to the submissions of the learned counsel for respondent Nos. 1 and 4, it is to be noted that their submissions is inconsistent with each other. The learned counsel for the State respondents, Mr. Tara, tried to justify the impugned order as well as U.O. Note given by the private respondent No. 4 on the grounds that the said U.O. Note was issued by the respondent considering the special capability of the private respondent No. 3 to discharge the functions so assigned which is permissible as per the Government Circular as mentioned above. But what we find from the submissions of the learned counsel of the private respondent No. 4 that they have come up with a different story for justifying the U.O. Note so given by the respondent No. 4. By producing a copy of a complaint, stated to have received by the private respondent No. 4 as against the present petitioner, it has been submitted that only because of receipt of complaint as against the petitioner, he has put-forward the aforesaid U.O. Note to the Department concerned. But surprisingly, the said U.O. Note did not reveal any such aspect about the complaint against the petitioner, hence, such a submission at the later stage of hearing, without being brought on record, by way of reply/affidavit, perhaps, cannot be admitted to be the true version of the respondent No. 4. Accordingly, I prefer not to accept such submission which is beyond record. Obviously, such a submission is quite contradictory to the stand taken by the respondent No. 1 as has been mentioned above. Resultantly, I found no substance in the submissions of learned counsel for respondent No. 1.

22. Now, turning to the case of private respondent No. 3, it is to be found that he has taken a stand that he has already joined in his new place of posting after two days of the passing of the impugned transfer order. It is to be noted that he has joined so hurriedly even prior to his release from the Department concerned. There appears no justification for such hurried action of the private respondent No. 3 whereas the petitioner was not yet released from the establishment. However, a direction was issued to the petitioner to hand-over the charge as on 5.5.2016. Such a joining of the private respondent No. 4 without being any refusal on the part of the respondent to hand-over the charge coupled with the

fact that the petitioner was not released, is inconsequential.

23. Lastly, we need to address the reply of respondent No. 3 that the petitioner himself has availed the promotion, on the basis of the U.O. Note of the Education Minister, Government of Arunachal Pradesh. In this context, I have gone through the U.O. Note so annexed by the private respondent No. 3 vide Annexures "C" and "D" along with the affidavit. But it is to be noted that at that time, the petitioner was the senior-most candidate to the said post meaning thereby he was eligible for the said post, so such a recommendation even though made, was not prima facie illegal. But, the present time, in view of the Office Note in the establishment of the respondent, there is apparent objection raised by the office concerned for transfer of the petitioner while his normal tenure is not yet completed, the action of the respondent No. 2 cannot be termed as an act of public interest.

24. In view of such matters on record, the submissions of the learned counsel for the respondent, holds no good that the impugned order was issued for the public interest and in administrative exigency. The impugned transfer order was issued primarily on the consideration of the request made by the respondent No. 4 only to accommodate the private respondent No. 3.

25. For the above reasons and discussions, I have no hesitation to hold that the impugned transfer order dated 2.5.2016 has been issued not in public interest but in private interest so as to accommodate the person of his choice by political move and in the process of doing so, the aforesaid transfer and posting guidelines though it may not have statutory force, was violated. So the question 1 falls for consideration as mentioned in point No. 2 is answered accordingly.

26. Consequently, the entire exercise so carried-out by the State Respondents being arbitrary and irregular, the impugned transfer order dated 2.5.2016, stands set aside and quashed. However, it is made clear that the interference in the aforesaid transfer order will not preclude the State Respondents from taking a fresh decision in the matter strictly in accordance with law and consistent to the observations made above.

27. Subject to the above observations, the writ petition stands allowed. No order as to costs.