
(2005) 04 GAU CK 0022

In the Gauhati High Court

Case No : Writ Petition (C) No. 202 (AP) of 2005

Tanakayatarata

APPELLANT

Vs

State of Arunachal Pradesh and Another

RESPONDENT

Date of Decision : 21-04-2005

Acts Referred:

Constitution of India, 1950 — Article 21, 309

Citation : (2005) 3 GLT 76

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Advocate : Tony Pertin, B. Loya and J. Tali, for the Appellant; A.G., for the Respondent

Final Decision : Allowed

Judgement

H.N. Sarma, J.—Heard Mr. T. Pertin, learned Counsel for the Petitioner. Also heard Mr. B.L. Singh, learned Sr. Govt. Advocate on behalf of all the State Respondents.

2. The Petitioner was transferred as Executive Engineer (Electrical) to Bomdila Electrical Division on 31.10.03 and pursuant to the said transfer order the Petitioner is serving in the said capacity at Bomdila till date. The Respondent authorities in violation of the existing policy of transfer, before completion of the normal tenure, transferred the Petitioner from Bomdila to Kurung Kumey Division vide order dated 04.01.05. The Petitioner challenged the said order of transfer in W.P.(C) No. 149 (AP) 2005. This Court after hearing the counsels for the parties thought it fit to send back the case to the Departmental Authorities for consideration of the representation filed by the Petitioner which was pending before them and accordingly, vide order dated 3.03.05 passed an order to that effect and the authorities were directed to dispose of the said representation within a period of two (2) weeks further mentioning that within the period of two (2) weeks, posting of the Petitioner should not be disturbed. Thereafter the authority passed an order on 11.04.05 by which the transfer order of the Petitioner posting him at Kurung Kumey was modified and he was posted at

Pasighat as Executive Engineer (Planning), APEC-II. On the same day an order was also passed on the representation of the Petitioner, but the said order was issued on 12.04.05. By the said order the representation of the Petitioner was rejected inter alia on the ground that the Government had to consider the case of transfer of the Petitioner from Bomdila Division on receipt of certain complaint against the Petitioner from the people of the different areas of the District. It has also been stated that three (3) elected representatives of the Kurung Kumey district also objected the posting of Petitioner at Kurung Kumey Electrical Division and on such consideration; the authority did not find it desirable to review the transfer order of the Petitioner. On passing of the aforesaid order the facts remains that the Petitioner was transferred from Bomdila as Executive Engineer (Planning) to Pasighat. The said order had been challenged by the Petitioner in this writ petition. In the writ petition the Petitioner has annexed the finding of the investigation conducted on the allegations made against the Petitioner regarding his affairs at Bomdila as referred to above which was made by the Deputy Commissioner, Bomdila. After detailed discussion on the said allegations, the Deputy Commissioner in the concluded part of the findings held as follows:

Conclusion: The complaint letter is a maliciously fictitious one written in the fictitious and non existent names of persons, with baseless allegations without any iota of truth, fabricated by a handful of disgruntled juniors who are bent on dictating and running their political and communal whims on the administration of the Bomdila Electrical Division office by transferring out the dedicated and tough disciplined Executive Engineer. It will be a big setback, if not suicidal, for the district in terms of the power scenario solution if Mr. Tara is transferred out immaturely before his tenure and before completion of the above stated very important and top priority project he has taken up by dint of his personal initiative. It will rather be more beneficial for the government to transfer out those juniors than Mr. Tara, out of the district, who are proving impediments to the normal functions and administrations of the District Head Officer, thereby blocking the progress of the development works. Those ill-minded junior officers should be posted to such place where they will have little chance to play local and communal politics.

3. While the case was listed for motion hearing on 19.04.05, this Court felt it necessary to go through the relevant records and accordingly on being directed, the learned Sr. Government Advocate has produced the relevant records today.

4. I have perused the connected record contained in file No. PWRS/49/95-96/VOL- II/pt. After receipt of the representation of the Petitioner against the impugned order of transfer filed on 14.03.05, a process was initiated to dispose the same in the aforesaid file. In the said process the Secretary, Power has disclosed his findings and views against transfer of the Petitioner from Bomdila prematurely suggesting to keep him at Bomdila for the normal tenure. The aforesaid contention of the secretary, Power was fully agreed by the departmental Minister. However, in view of the complaint against the Petitioner,

the Departmental Minister agreed to the transfer, which is reflected in his note dated 04.04.05. The findings of the Deputy Commissioner, which was made after necessary inquiry absolving the Petitioner from the complaint holding it as fictitious and false, was not placed before the said authority. It thus appears from the record that the approval for transfer of the Petitioner out of Bomdila was given without considering the relevant materials and without proper application of mind, and irrelevant and non-existent ground and not on public interest. In fact, the Departmental Secretary is not happy with the impugned transfer order and had expressly recorded his finding in the official note. Without delving further into the matter. I am satisfied on perusal of the connected records that the impugned order of transfer has not been passed on public interest, and it was passed only to put the Petitioner out of Bomdila at the instance of persons with vested interest.

5. Mr. Pertin has referred to the decision of the Apex Court in the case of " Arvind Dattatraya Dhande Vs. State of Maharashtra and others, which also arises out of transfer matter. At Para 3 of the said decision, the Apex Court observed as follows:

It is most unfortunate that the Government demoralizes the officers who discharge their duties honestly and diligently and brings to book the persons including in black marketing and contrabanding liquor. This is one of the eloquent cases where such a sorry state of affairs has come to light.

In the instant case also the allegations made against the Petitioner was duly inquired by the authority through the Deputy Commissioner, who by a detailed enquiry found nothing against him, rather he commended the function of the Petitioner at Bomdila. If an officer is transferred on such allegations made by some strangers or fictitious persons which proved to be incorrect and baseless on proper inquiry, the officer is bound to demoralize. In the instant case, on perusal of the records, I am satisfied that the transfer of the Petitioner was not made on exigency of public service, rather it has been made for collateral purposes.

6. Records also do not disclose, as to on what basis the elected representatives objected the posting of the Petitioner at Pasighat. It reminds me to the observation of the Apex Court passed in the case of Capt. M. Paul Anthony Vs. Bharat Gold Mines Ltd. and Another, of the said case the Apex Court observed as follows:

31. On joining government service, a person does not mortgage or barter away his basic rights as a human being, including his fundamental rights, in favour of the Government. The Government, only because it has the power to appoint does not become the master of the body and soul of the employee. The Government by providing job opportunities to its citizens only fulfils its obligations under the Constitution, including the Directive Principles of State policy. The employee, on taking up an employment only agrees to subject himself to the regulatory measures concerning his service. His association with

the Government or any other employer, like instrumentalities of the Government or statutory or autonomous corporations, etc., is regulated by the terms of contract of service or service rules made by the Central or the State Government under the proviso to Article 309 of the Constitution or other statutory rules including certified standing orders. The fundamental rights, including the right to life under Article 21 of the Constitution or the basic human rights are not surrendered by the employee.

7. Although that is a case of suspension of an employee and non payment of subsistence allowance, the observation of the Apex Court is applicable to the Government Servant placed with a situation as in the instant case.

8. Yet there is Anr. aspect of the matter. The impugned order of transfer has been passed in violation of the guidelines and norms fixed by the Government itself. Mr. B.L. Singh, learned Sr. Govt. Advocate in his usual fairness has not controverted the contents of the record referred to above and the findings of the Secretary, Power.

9. In view of the aforesaid discussions, the impugned orders of transfer No. P WRS/E-49/95-96/VOL-II/Pt-II/A 57-67 dated 05.01.05 and No. PWRS/E-49/95-96/ VOL-II/Pt/729-37 dated 11.04.05 respectively stands quashed so far it relates to the Petitioner, and the Petitioner shall be allowed to continue in his post at Bomdila, till his normal tenure or till such time as his posting there is required to be changed on certain legally valid grounds.

10. The writ petition is accordingly allowed.