

(2009) 08 GAU CK 0032

In the Gauhati High Court

Case No : Writ Petition (C) No. 315 (AP) of 2009

Yodhan Prasad Singh

APPELLANT

Vs

State of Arunachal Pradesh and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Citation : (2010) 3 GLR 7 : (2009) 5 GLT 270

Hon'ble Judges : P.K. Musahary, J

Bench : Single Bench

Advocate : P.K. Tiwari, K. Saxena and T. Pertin, for the Appellant; R.H. Nabam, R. Saikia, I. Basur, T. Wangmo and K. Tasso, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Musahary, J.—Heard Mr. T. Pertin, learned Counsel, appearing for the petitioner. Also Mr. R. H. Nabam, learned Senior Government Advocate, appearing on behalf of State respondents 1 and 2 and Mr. R. Saikia, learned Counsel appearing on behalf of private respondent No. 3.

2. The facts leading to filing of this writ petition are that the petitioner, who was working as Executive Engineer in the O/o Chief Engineer, RWD, was transferred as Executive Engineer at Khonsa vide Office Order No. SRWD-15/2004(Pt)/85 dated 11.7.2005 issued by the Principal Secretary (RWD), Government of Arunachal Pradesh, vice one Sri R. Choudhury, who was working as Executive Engineer at Khonsa. The aforesaid transfer order was resisted by Sri R. Choudhury and he did not hand-over the charge to the petitioner which compelled the petitioner to approach this Court by way of filing a writ petition being WP(C) 235(AP)/2006 wherein a direction was issued on 24.5.2006 for ensuring compliance of transfer order so that he could take charge as Executive Engineer, RWD Khonsa Division. The petitioner then took-over the charge from the said Executive Engineer Sri R. Choudhury and he has been discharging his functions as Executive Engineer at RWD Khonsa Division w.e.f. 28.4.2006. The respondent Commissioner has again issued an order under Memo No.

SRWD-15/2004 dated 7.7.2009 transferring Sri R. Choudhury, Executive Engineer, from Miao Circle to Roing Circle vice one Sri T. Kena, Executive Engineer, without involving the present writ petitioner but within about a month or so, the respondent authorities modified the aforesaid transfer order dated 7.7.2009 vide office order No. SRWD-15/2004(Pt)/126 dated 6.8.2009 whereby the petitioner has been transferred from RWD Khonsa Division to Miao Circle vice Sri T. Kena transferred from Miao Circle to RWD Khonsa Division. This order (Annexure-P/4 to the writ petition) is the subject-matter of challenge in this writ petition.

3. Mr. T. Pertin, learned Counsel for the petitioner, submits that the impugned order dated 6.8.2009 has been issued on the pressure exerted by a group of MLA's in favour of respondent No. 3 (Sri T. Kena) to transfer him to a place of his choice, i.e., at RWD Khonsa Division and no public interest is involved in the transfer of the petitioner. Moreover, the petitioner's normal tenure of posting for 3 years at RWD Khonsa Division would complete only in the month of October, 2009 but he has been transferred from the said Division to accommodate the personal interest of the private respondent No. 3. Such order made on extraneous and political consideration without any public interest and administrative exigencies, is liable to be interfered with by the court and the impugned order is liable to be quashed.

Citing the case of Roukuolhoulie Angami v. State of Nagaland and Ors. 1997 (1) GLT 140, Mr. T. Pertin, learned Counsel for the petitioner, submits that this Court, on various occasions, insisted that for cancellation/modification or keeping in abeyance of such order, must be supported by sufficient reasons, because transfer of officers are always made in public interest and after elaborate exercise as to who should be transferred where, in the exigency of administration and while processing the transfer order, various factors are to be considered like duration of the stationing of an officer in a particular station. According to him, the earlier transfer order dated 7.7.2005 posting him at RWD Khonsa Division was made in public interest and he should be allowed to complete his normal tenure of 3 years thereat and the said transfer order is now sought to be undone by way of the impugned transfer order which has been passed purportedly in partial modification of certain order which is cryptic to serve the private interest at the cost of public interest.

4. Mr. R. H. Nabam, learned Senior Government Advocate, has produced the relevant file namely SRWD-15/2004(Pt) regarding transfer and posting of Executive Engineers under the Rural Works Department.

Mr. R. H. Nabam, learned Senior Government Advocate submits that the impugned transfer order was passed mainly on the ground that the petitioner has completed 3 years of service at Khonsa. The State Government has modified the earlier notification allowing an official to serve for a period of 3 years at a place of posting and at present, it has been reduced to a period of 2 years only. Considered on the basis of the present Government policy of posting of the

officials, the petitioner, according to him, Mr. R.H. Nabam, learned Senior Government Advocate, has exceeded his normal period of posting at RWD Khonsa Division and his transfer to Miao is a routine transfer made in the public interest and there is no vested interest or mala fide intention as alleged by the petitioner.

5. Mr. R. Saikia, learned Counsel appearing for respondent No. 3, submits that the private respondent No. 3 Sri T. Kena has joined his duty as Executive Engineer at RWD Khonsa Division on 7.8.2009 (FN). He has produced a copy of the joining report addressed to the Superintending Engineer, Rural Works Circle, Miao, but he could not take charge from the petitioner. He, therefore, vide his letter No. 10.13/ 2008-09 dated 12.8.2009 informed the Superintending Engineer, Rural Works Circle, Miao, about the same and requested him to inform the incumbent Executive Engineer Sri Y.P. Singh (petitioner) to report at Khonsa for handing-over the charge before 15.8.2009. But, before 15.8.2009, the respondent No. 3 has taken-over the full charge of RWD Khonsa Division unilaterally (ex-parte) on 13.8.2009 (FN) vide Memo No. 10.13/ ESTT/99-2000/463-77 with due information to all concerned. The copies of the aforesaid correspondences had been produced by Mr. Saikia, learned Counsel appearing on behalf of respondent No. 3, for perusal of this Court which shall be kept on record. According to him, the present writ petition has become in fruituous inasmuch as private respondent No. 3 has already joined at his transferred place of posting and had taken-over the full charge unilaterally in terms of Government circular/notification and as such, the petition deserves to be dismissed.

6. I have carefully gone through the aforesaid record placed before this Court. No notice of motion or rule has been issued in this writ proceeding. This Court, however, vide order dated 13.8.2009 directed the State counsel to produce the relevant records relating to transfer of the petitioner and respondent No. 3 on 17.8.2009. The same was accordingly produced on 17.8.2009 and as agreed upon by the learned Counsel appearing for the parties, this matter is taken-up for hearing on 18.8.2009 since it was considered not necessary to exchange responses between the parties as the relevant record has been received and the matter can be disposed of on perusal of the same.

7. From the record, it is found that the petitioner submitted a representation on 6.8.2009 before the respondent commissioner for retaining him as Executive Engineer in the aforesaid RWD Khonsa Division up to December 2009, so as to enable him to complete the ongoing projects like PMGSY/Bharat Nirman Phase-IV, V and VII and to discharge the pending liabilities and commitments with public and also to close the accounts of the said Division in all respects. On the other hand, a letter was received from respondent No. 3 (Sri T. Kena) informing that the petitioner is absenting from the concerned Headquarter and his where about is also not known for which the incumbent respondent could not take over the charge of the RWD Khonsa Division. From the record, it is also revealed that

Sri K.K. Hazarika, Executive Engineer, who was serving as Executive Engineer (Plg), submitted a representation for his transfer and posting at Changlang Division but the prayer was not accepted as he joined in the Office of Chief Engineer, RWD, only on 9.5.2008 and he has not completed the normal tenure of posting. The respondent authorities, thereafter, took the decision to transfer the respondent No. 3 (Sri T. Kena) to the Superintending Engineer's Office as Executive Engineer, P&D Miao Circle, vice Sri Y.R. Singh, Executive Engineer.

8. The said representation, as it appears from the record, could not be considered and disposed of, since the respondent No. 3 has already submitted his joining report, as stated earlier, on 7.8.2009 and look-over the full charge unilaterally on 13.8.2009.

9. The record clearly shows that the petitioner has completed 3 years of posting at Khonsa and there was a representation from Sri K.K. Hazarika, Executive Engineer, for his posting at RWD Khonsa Division in place of the petitioner but the authorities concerned, with all fairness, turned down his request for posting at RWD Khonsa Division as he was not due for transfer as per the existing government policy guidelines. This necessitated the posting of respondent No. 3 at RWD Khonsa Division transferring the present petitioner to Miao in place of the said respondent. There is nothing to presume that the transfer and posting of petitioner and respondent No. 3 is a result of extraneous and political consideration and it has nothing to do with public interest and administrative exigencies. The petitioner has no legal right to claim posting or continuation at a particular place for an indefinite period or for an extended period after completion of his normal tenure of posting. The accepted law is that an order of transfer of an employee is a part of service condition and as such, an order of transfer is not to be interfered with by a court of law in exercise of its discretionary jurisdiction unless the court finds that either the order is mala fide or the service rules prohibit such transfer or that the authorities who issued the order, is not competent to pass such order. From amongst the catena of decisions in this regard, it would be appropriate to refer to State Bank of India Vs. Anjan Sanyal and Others, This position has been reiterated by the Apex Court in Mohd. Masood Ahmad Vs. State of U.P. and Others, In the latter case, it is further held that even if the allegation that a particular officer was transferred on the recommendation of an MLA, that by itself, would not vitiate the transfer order inasmuch as it is the duty of the representatives of the people in the Legislature to express the grievances of the people and there cannot be any hard-and-fast rule that every transfer at the instance of an MP or MLA would be vitiated. It all depend on the facts and circumstances of an individual case. In the present case, from the record, it is found that there was a request from the Deputy Speaker of the State Legislative Assembly for posting of respondent No. 3, either at Bomdila RWD Division or at Khonsa RWD Division. Similarly, there was a request from the Minister of Environment & Forest, Government of Arunachal Pradesh, for transfer and posting of aforementioned official Sri K. K. Hazarika, Executive Engineer, from Itanagar to RWD Khonsa Division. I find nothing wrong in such request

from public representatives inasmuch as the impugned transfer and posting order was, ultimately, issued on consideration of the fact that the petitioner has completed 3 years of posting at Khonsa Division and he is due for normal transfer and posting.

10. In the present case, the learned Counsel for the petitioner could not establish that a particular rule prohibiting transfer of the petitioner, after completing the normal tenure of posting, has been violated by the respondent authorities or that the impugned order has been passed by an incompetent authority. The petitioner's case is that he has completed 3 years of posting at RWD Khonsa Division and he wants to continue thereat till December, 2009 to complete pending liabilities and ongoing schemes/projects as well as accounts. This, in my considered view, cannot be a valid ground for cancelling or setting aside the impugned transfer order. It is not claimed, rather, it cannot be claimed by any government servant that his posting at a particular place is so indispensable and without him the ongoing projects/schemes cannot be completed or that, there is none, except him, in the department to carry-out and complete the projects/schemes left by the petitioner. Any government servant assigned with public duty is to carry-out and complete the projects/schemes which, in most cases, continue for a long period.

11. The facts and circumstances in Angami's case (*supra*) are quite different from the ones in the present case and the said decision, in my considered view, are not applicable to the present case. In Angami's case (*supra*), the petitioner was transferred 3 times, within a span of almost 4 (four) months, without assigning any reason and the court came to a conclusion that it cannot be said to have been made in the public interest. Besides this, the Apex Court has been reminding us that the transfer and posting are ordinarily incidents of service and ordinarily, any transfer or posting is presumed to have been made to satisfy the administrative exigencies of service and merely because a government servant happens to be posted twice at a particular station within a short range of time would not be a matter of interference by the court. This has been held so in *Jeet Mohinder Singh Vs. Harminder Singh Jassi*,

12. At the time of hearing, the learned Counsel appearing for respondent No. 3, has placed a copy of order under Memo No. PERS-126/2004 dated 19712.2004, issued by the Chief Secretary to the Government of Arunachal Pradesh, wherein it is ordered that the tenure of posting in all the government posts shall be 2 (two) years instead of 3 (three) years with immediate effect. This was stated to have been done in partial modification of earlier Government Circular issued under Memo No. PERS-35/98(Pt) dated 2.6.1998 pertaining to the policy guidelines on transfer and posting of all categories of officers and staff in the State of Arunachal Pradesh. The aforesaid modification is still in force and it is not challenged before the court.

13. The writ court is not supposed to review the transfer and posting order of officials passed by the authorities like a court sitting in appeal over the decision

of the Government in the matter of transfer of one officer from one place to another. It is the power and discretion of the authority concerned to decide the same. A Division Bench of this Court has settled this position in *Nirhandra Thaosen v. State of Assam and Anr.* (2007) 4 GLR 782.

14. Under the aforesaid facts and circumstances of the present case, I find that the petitioner has not been successful in establishing a case for interference with the impugned transfer order dated 6.8.2009 by this Court and grant relief as sought for by him.

15. Considered in the light of the above discussions and decisions of the Apex Court as well as this Court, as mentioned above, I am disinclined to interfere with the impugned transfer order dated 6.8.2009. This writ petition is devoid of any merit and the same is liable to be dismissed, which I accordingly do. There would be, however, no order as to costs.