



F/R

IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNCHAL PRADESH)
ITANAGAR PERMANENT BENCH.

Appeal From
Writ Petition (Civil)

Wp (C) 203 (AP) 2018

Appellant
Petitioner.

Shri Kemo Lollen

---VERSUS---

Respondent
Opposite Party

State of A.P & S Ors.

Counsel for the Appellant

- Petitioner D. Panging G. Basar
- v. Jamoh M. Noshi
- D. Tamuk O. Tayeng
- E. Perme
- M. Dosi
- M. Gibi

Counsel for the Respondent

- Opposite Party CIA (AP)
- N. Dangsan Y. Kanga
- O. Duggong
- O. Perme
- D. Taggu
- L. Nazki

Noting by Officer or Advocate	Serial	Date	Office not, reports, orders or proceeding with signature
(1)	(2)	(3)	(4)

IN THE MATTER OF:

Shri Kemo Lollen, Deputy Commissioner,
Lower Subansiri District, Ziro,
Arunachal Pradesh.

M- 8414093041PETITIONER

-VERSUS-

1. The State of Arunachal Pradesh represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Chief Secretary, Government of Arunachal Pradesh, Itanagar.
3. The Secretary (Personnel), Government of Arunachal Pradesh, Itanagar
4. The Under Secretary (Personnel), Government of Arunachal Pradesh, Itanagar.

5. Shri Likha Saaya, MLA, 16-Yachuli
Assembly Constituency, Lower Subansiri
District, Arunachal Pradesh.

6. Shri Chukhu Takar, APCS (Admn.
Grade), Additional Deputy
Commissioner, Balijan, Papumpare
District, Arunachal Pradesh.

.....RESPONDENTS

::BEFORE::

THE HON'BLE MR JUSTICE KALYAN RAI SURANA

09.05.2018

Heard Mr. D. Panging, learned counsel for the petitioner.

2. Also heard Mr. R. H. Nabam, learned Addl. Advocate General assisted by Ms. P. Pangu, learned Junior Govt. Advocate appearing for the State respondents. No. 1, 2, 3 & 4 and Mr. P. K. Tiwari, learned Sr. Counsel assisted by Mr. L. Norbu, learned counsel appearing for respondent No. 5 and Ms. N. Danggen, learned counsel appearing for respondent No. 6.

3. By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged his transfer vide Order No. PERS-27/2015 dated 02.05.2018. By the said order, the petitioner who is an APCS (Admn. Grade) and posted as Deputy Commissioner, Lower Subansiri District Ziro, was transferred, directing him to report to the Chief Secretary, Govt. of Arunachal Pradesh, for further posting. By the same order, the respondent No. 6, namely, Shri Chukhu Takar, APCS (Admn. Grade) serving as ADC, Balijan was transferred and posted in place of the petitioner as D.C, Lower Subansiri District, Ziro. The said transfer order contained a direction that the respondent No. 6 shall move first while the petitioner shall stand relieved from the post of D.C, Ziro with effect from the afternoon of 3rd May 2018.

4. The learned counsel for the petitioner submits that initially when the writ petition was filed, he was handicapped of not having the relevant documents. He has submitted that during his tenure, a process for acquisition of land for the purpose of upgrading the existing single lane road from Joram to Koloriang (20Km to 50Km) to two lane road was initiated and several beneficiaries/land owners were identified. Thereafter, on the identification of the beneficiaries, a list

was prepared and was sent to the Government for approval. In course of time, a sum of Rs. 45,12,21,892/- was received in 2 (two) instalments to be disbursed to the beneficiaries by the D.C, Lower Subansiri District, Ziro.

5. It is submitted that the respondent No. 5 namely Shri. Likha Saaya, MLA of 16-Yachuli Assembly Constituency started exerting undue pressure upon the petitioner in connection with the disbursement of compensation amount. It is submitted that as the petitioner did not succumb to the undue pressure, he had directed his subordinate officers to go ahead with the scheduled programme of disbursement process of compensation to the various beneficiaries. After issuance of such direction on 28.04.2018, the respondent No. 5, moved an U.O. Note for transferring out the petitioner and to bring the respondent No. 6 to his post on extraneous consideration.

6. Referring to the documents available on record, it is submitted that the petitioner has, later on, obtained documents which goes to show that the concerned officers were moved over-night and the transfer order was prepared on 02.05.2018, directing the petitioner to be moved out and stand relieved in the afternoon of 03.05.2018, which was made on the basis of the said U.O Note dated 30.04.2018. The learned counsel for the petitioner submits that he is aware that transferability is an incidence of service and therefore, he has categorically stated that he is not challenging that the petitioner should not be transferred. The grievance agitated by the learned counsel for the petitioner is that as the petitioner is in the midst of disbursement of compensation to the beneficiaries, as such, the action initiated during his tenure is required to be brought to a close in his presence so as to bring the entire matter to a logical conclusion.

7. It is submitted that in the present case the transfer order was made in a hurried manner and the way in which the transfer has taken place, it imputes unwritten allegation of stigma against the petitioner which will affect his future career.

8. It is further submitted that the entire transfer episode is being done at the behest of respondent No. 5, who is interested to interfere with the process of disbursement of land acquisition compensation and that the respondent No. 5 had a personal axe to grind against the petitioner for not succumbing to his demands. It is further submitted that the present order of transfer is initiated on malafide intention and that the same was not done in furtherance of any public interest and only the private interest of the respondent No. 5 was served by initiating the transfer of the petitioner.

9. It is further submitted that in the order of his transfer the concerned authorities including the respective Chief Secretary and the Secretaries of the concerned departments, in taking decision for the transfer, had mortgaged their conscience to the respondent No. 5 and they had allowed the political masters to use his office to transfer the petitioner.

10. It is further projected that in transferring out the petitioner if the allegation was that there were some anomalies, it would amount to doubting his integrity and in this connection, it is submitted that petitioner has not done any illegality during his tenure as the D.C, Lower Subansiri District and therefore, he is entitled to complete the disbursement of the compensation process. It is submitted that there are chances that the higher authorities would exercise their discretion against the interest of the petitioner as the transfer was initiated with malafide and extraneous consideration. It is further submitted that in the present case, the order of transfer was ex-facie illegal, arbitrary, malafide, unreasonable, unfair and capricious and therefore, the transfer was not done in the usual process of his tenure being over and he was ousted within a short period of time after the initiation of the U.O. Note 30.04.2018, hence, this is a fit case for interference in his transfer order.

11. It is lastly submitted that in this case, the respondents have not filed any affidavit-in-opposition and therefore, there is no allegation made against him on oath and that, only oral submissions

would be made against the petitioner for levelling allegations against him and that those allegations should not be taken note of by this Court merely on the basis of such oral submissions. It is further submitted that as the official records have not been shown to him, as such if the State authorities, intend to rely on any adverse remark on the basis of the official files, the State respondents should not be permitted to do so without bringing those allegations on record by way of affidavit-in-opposition.

12. Mr. Nabam, learned Addl. Advocate General for the State has submitted that in the present case, the normal tenure of the petitioner was already over. It is also submitted that it is not the projected case of the petitioner that if he is transferred out, there will be no other officer competent enough to disburse the land acquisition compensation due to the beneficiaries and, as such, the petitioner has no vested right to continue as the D.C. merely for the purpose of bringing the land acquisition compensation process to a logical end. It is also submitted that this Court vide an order dated 03.05.2018, had passed an order of *status quo*, the said operative part of the order, reads as follows:

"Till the returnable date status quo, as on today, shall be maintained in respect of the impugned order No. PERS-27/2015/562 dated 02.05.2018, issued by the Chief Secretary Govt. Of Arunachal Pradesh."

13. It is submitted that the State respondents have interpreted this order to be an order by virtue of which *status quo* was ordered to be maintained in respect of the order dated 02.05.2018, passed by the Chief Secretary and therefore, in the understanding of the State respondents, this order was interpreted as if the order passed by the Chief Secretary to transfer the petitioner as well as the respondent No. 5 and 6, had survived. It is submitted that the order of *status quo* was not prohibitory in nature so as to prevent the respondent No. 6 to remain as the D.C , Lower Subansiri District in his place of posting which was to be given effect to in the afternoon of 03.05.2018, and in

that context, it is further submitted that while the order was being passed by this Court on 03.05.2018, he was arguing before this Court on behalf of the State and he had apprised this Court that the new incumbent has already joined and therefore, because of such submission being made, this Court did not restore the *status quo ante* prevailing prior to the afternoon of 03.05.2018, i.e. the date and time in which the said transfer order was to be given effect to. It is submitted that the order of transfer is an incidence of service and, as such, the petitioner having ended his regular tenure, had to join a suitable posting place as per the exigency of service and as per the requirement of administration.

14. Learned Addl. Advocate General for the State has produced the relevant records pertaining to transfer of the petitioner. In support of his submission, the learned Advocate General has placed reliance on the case of, ***Kalian Kr. Sarkar Vs. Alok Kanti Paul Choudhury & Ors, 2006 (3) GLT 624, Taru Talo Vs The State of Arunachal Pradesh & 2 Ors, WP(C)54(AP)2018 decided on 29.03.2018, as well as Mohd. Masood Ahmad Vs. State of U.P. and others, (2007) 8 SCC 150.***

15. Mr. P. K. Tiwari, learned Sr. Counsel appearing for respondent No. 5 has categorically admitted that he had put up a note for the transfer of the petitioner. He submits that he is the peoples representative and has access to the general public and therefore, he is aware of the fact situation prevailing at the ground level and hence, it is in course of his public duty as a politician and a sitting MLA of the area, to voice his grievance on the public complaints that he has received and therefore, he has admitted that he had initiated and has pursued the process of transfer of the petitioner. It is further submitted that it is the duty of the representative of the public to voice the grievance of his people living within his constituency before the competent authority, and therefore no malafide can be imputed against him and he had the right to express his views before the competent authorities seeking transfer of the petitioner. He also relies on the case of ***Mohd. Masood Ahmad*** (supra) .

16. Ms. N. Danggen, learned counsel appearing for respondent 6 has also made her submission in support of the impugned order. She submits that pursuant to the transfer order, the respondent No. 6 has already handed over the charge and had joined as the D.C Lower Subansiri District and therefore at this stage, on incorrectly interpreting the interim order passed by this Court on 03.05.2018, the petitioner illegally continued to function as the D.C. and therefore, the respondent No. 6 had to write to the concerned Banks not to entertain any cheques to the beneficiaries without his consent. It is asserted that the respondent No. 6 has joined as the D.C. Ziro in the afternoon of 03.05.2018 and after that point of time, the petitioner was not allowed to function as the D.C. and to issue cheques towards payment for land acquisition compensation to any of the beneficiaries, but there are reports that the petitioner is even now issuing cheques to certain beneficiaries.

17. Having considered the submissions made by the learned counsels of all sides, this Court has also perused the records so produced by the learned Addl. Advocate General for the State. It is seen that as was admitted by the learned Sr. Counsel for respondent No. 5, the transfer order was initiated in terms of the representation made by the respondent No. 5 vide his U.O. Note dated 30.04.2018. The Note, which is also annexed to the Additional Affidavit filed by the petitioner on 09.05.2018, was signed by the respondent No. 6 as well as by one Mr. Tage Taki, Parliamentary Secretary, Food & Civil Supplies, Govt. of Arunachal Pradesh, which was also signed on 30.04.2018 and thereafter, the Note was placed before the Chief Minister of the State, who had entrusted the Note to the Chief Secretary to process the file. Thereafter, the impugned transfer order was issued on 02.05.2018 directing the petitioner to be relieved w.e.f. afternoon 03.05.2018. In terms of the said note dated 30.04.2018, this Court does not find that there is any allegation against the petitioner which can constitute the transfer to be stigmatic. Therefore, there cannot be any ground of any malafide or any form of stigma against the petitioner. Merely because in the present case, the Govt.

has acted within the period of 3 days from the date of receipt of the Note for transfer of the petitioner, this in itself does not constitute a ground to presume malafide against the concerned authorities in transferring the petitioner because of the fact that there is no dispute that the petitioner has completed his tenure as D.C of the Lower Subansiri District.

18. The learned Addl. Advocate General for the State has produced the transfer policy guidelines for all categories and officers and staffs in Arunachal Pradesh vide order No. PERS-126/2004 dated 19.12.2008, issued by the Chief Secretary of the State. By the said order, the tenure of posting in all Govt. posts was made 2 (two) years. Therefore, it appears that the normal tenure of the petitioner is over.

19. In the present case, the grievance of the petitioner is basically based on the fact that the land acquisition compensation is required to be disbursed to various beneficiaries. It is the considered opinion of this Court that the land acquisition compensation money is sanctioned on the basis of individual payments due to be made to the identified beneficiaries. Therefore, this Court does not find that the presence of the petitioner is required to ensure that the compensation is distributed in accordance with the list so prepared. If any identified beneficiary does not get his due compensation, he would obviously write to the administration or approach the Court for his due compensation and these are not the matters which are required to be brought to a logical conclusion by any particular officer. If the Court accepts the proposition as advanced by the learned counsel for the petitioner then if any ^{work} issue is initiated under any particular Govt. Servant, he would insist that he only can bring the matter to a logical conclusion and if such an approach is accepted by the Court, it would lead to total failure of the administration. Therefore, in the considered opinion of this Court if any work is initiated during the tenure of a particular officer it does not necessarily require that he only will be required to bring the issue to a logical conclusion.

20. It has been laid down by this Court as well as the Hon'ble Apex Court that transfer is an incident of service, it has been further laid down in the case of State of **M.P Vs. SS. Kourav, (1995) 3 SSC 270**, where in the Hon'ble Apex Court had made the following observation:

"4. ...The Courts or Tribunals are not appellate forums to decide on transfer of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the Courts and Tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by mala fides or by extraneous consideration without any factual background foundation. In this case we have seen that the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place."

21. On the perusal of the records as produced by the learned Advocate General of the State, it is seen that the transfer order is neither stigmatic to the petitioner nor on the face of the record, this Court can arrive at the findings that the transfer is initiated with malice. It also does not appear that the transfer of the petitioner was issued as a punishment to the said officer.

22. On the query made to the learned Addl. Advocate General, has submitted that at present, commensurate to the post held by the petitioner, there exist two vacancies under the State Govt., being the posts of two Directors in two departments, which are available to be filled up and the petitioner can easily be accommodated in one of such posts, which is equal to the present post held by him.

23. The Hon'ble Apex Court in the case of **Mohd. Masood Ahmad** (Supra) has held that even if one is transferred on the

recommendation of an MLA that by itself will not vitiate the transfer so made and it was also held that it was the duty of the representative of the people in the legislature to express the grievance of the people and if there is any complaint against any official the state Govt. it is certainly within its jurisdiction, to transfer such an employee and it is also held that there can be no hard and fast rule that every transfer at the instance of M.P or M.L.A could be vitiated with arbitrariness.

24. Therefore, in the light of the said ratio as laid down by the Hon'ble Apex Court, this Court finds no material to interfere with the transfer order of the petitioner merely on the ground that the same was initiated at the behest of respondent No. 5, the local MLA of the area concerned. Having found that the transfer of the petitioner is not stigmatic, this Court is not inclined to interfere with the transfer order No. PERS-27/2015/562 dated 02.05.2018 issued by the chief Secretary Govt. of Arunachal Pradesh.

25. Under these circumstances, the petitioner may now report to the Chief Secretary for seeking his next posting.

26. It is made clear that this order shall not be construed as a bar to the petitioner to submit a fresh representation before the Chief Secretary of the State of Arunachal Pradesh and the said authority upon receipt of such a representation, shall consider and dispose of the same within a period of 3 (three) days from the date of receipt of a certified copy of this order along with the said representation. As the petitioner has alleged that the office of the Chief Secretary did not receive his earlier representation dated 02.05.2018, the Chief Secretary shall ensure that if the fresh representation is submitted by the petitioner, the same shall be received and entertained. The petitioner is at liberty to submit his representation through email to the Chief Secretary, if so advised.

27. Having allowed the liberty to the petitioner to approach the Chief Secretary with a fresh representation, this Court having not

found any infirmities in the order of transfer as indicated above, this writ petition stands closed.

28. The parties are left to bear their own cost.

JUDGE

Victoria