

**IN THE GAUHATI HIGH COURT**  
**(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**ITANAGAR PERMANENT BENCH**  
**(NAHARLAGUN)**

**WP(C)338(AP)2018**  
**with**  
**IA(C)152(AP)2018**

**Shri Ngilyang Tachang,**

S/o Ngilyang Tarang,  
Resident of Ziro, P.O & P.S Hapoli,  
District Lower Subansiri, Arunachal Pradesh.

.....*Petitioner*

**- Versus -**

- 1.** The State of Arunachal Pradesh  
represented by the Chief Secretary to the  
Government of Arunachal Pradesh, Itanagar.
- 2.** The Principal Chief Conservator of Forest  
(PCCF) & Principal Secretary Environment  
and Forest (E&F), Department of Environment  
and Forests, Govt. of Arunachal Pradesh, Itanagar.
- 3.** The Joint Secretary, Environment and Forest,  
Department of Environment and Forests,  
Govt. of Arunachal Pradesh, Itanagar.
- 4.** The Conservator of Forest(HQ),  
Department of Environment and Forests,  
Govt. of Arunachal Pradesh, Itanagar.
- 5.** The Divisional Forest Officer (DFO),  
Hapoli Forest Division, Ziro.
- 6.** Shri Reddy Bei (RFO),  
Tale Wild Life Sanctuary Range,  
Pange under Hapoli Forest Division.

.....*Respondents*

**Advocates for the petitioner:** Mr. N. Tagia (Senior counsel)  
Mr. K. Tari  
Mr. G. Kato  
Mr. T. J. Dogum  
Mr. H. Gyati  
Mr. G. Riba  
Mr. T. Don  
Mr. P. Kai  
Mr. H. Richo

**Advocates for the respondents:** Mr. R. H. Nabam, (Addl. Advocate General)  
Mr. N. Rama  
Mr. C. Modi

**B E F O R E**  
**HON'BLE MR. JUSTICE NELSON SAILO**

**Date of hearing** : **28.09.2018**

**Date of Judgment & order** : **04.10.2018**

**JUDGMENT AND ORDER(CAV)**

Heard Mr. N. Tagia, learned Sr. counsel assisted by Mr. K. Tari, learned counsel appearing for the petitioner. Also head Mr. R. H. Nabam, learned Addl. Advocate General appearing for the respondents No.1 to 5 and Mr. N. Rama, learned counsel appearing for respondent No. 6.

**2.** Facts of the case in brief may be noticed at the outset, the petitioner is a Range Forest Officer (RFO) under Hapoli Forest Division in the Lower Subansiri District of the State. Vide order dated 15.07.2016, the private respondent No. 6 who is also a RFO was transferred from Tale Wildlife Range under Hapoli Forest Division to the establishment of the Director, Arunachal Pradesh Forest Training Institute(APFTI) at Roing. However, the respondent No. 6 did not join his place of transfer and posting but continued to remain at Tale Wildlife Range on being

retained there. Again in the year 2017, vide order dated 24.10.2017, the respondent No. 6 was retained at Tale Wildlife Sanctuary Range, Pange till March 2018. By the same transfer order, the petitioner was transferred from Hapoli Range under Hapoli Forest Division to Tale Wild Life Sanctuary Range, Pange of the same Division. However, he was asked to take the charge only after March 2018. After the stipulated time was over, the petitioner on 12.04.2018 submitted an application to the Divisional Forest Officer(DFO) of Hapoli Forest Division informing the said authority that he may be allowed to take the charge at Tale Wildlife Range in terms of the transfer order dated 24.10.2017. The respondent was thereafter, released from the Hapoli Division vide order dated 30.06.2018, to enable him to report from his duty at the establishment of the Director of Arunachal Pradesh Forest Training Institute(APFTI) at Roing. Despite the said release to the surprise of the petitioner the respondent No. 6 was further retained at Tale Wildlife Sanctuary Range vide the impugned order dated 03.07.2018. Being highly aggrieved, the petitioner submitted a representation before the respondent No. 2 on 09.07.2018, expressing his grievance on the retention of the respondent No. 6 at Tale Wildlife Sanctuary Range and requested that his retention be reconsidered. Thereafter, the petitioner initiated the present writ petition.

**3.** Mr. N. Tagia, learned Sr. counsel submits that the impugned retention order dated 03.07.2018 has not been issued in public interest but in fact it has been issued at the behest of the private respondent on irrelevant grounds i.e. his children's education, old aged ailing mother and completion of ongoing project. The learned Sr. counsel submits that the Tale Wildlife Sanctuary Range at Pange is almost 35km away from Hapoli town and one has to walk for about 1 to 2 hours duration from last motorable road to reach the place and as such, the treatment of his ailing mother and hampering of his children's education as contented by the respondent No. 6 cannot be accepted under the facts and circumstance of the case. The petitioner being a master's degree holder in the field concerned is well competent to smoothly and successfully complete the ongoing project and therefore, the same also cannot be the ground for retaining the respondent No. 6 at Tale Wildlife Range.

4. The learned Sr. counsel submits that by any rate since no reason was assigned in the retention order of the respondent No. 6 and there being no element of public interest, the impugned order dated 03.07.2018 should be interfered with by this Court. In support of his submission the learned Sr. counsel relies upon the decision of a coordinate bench of this Court in the case of ***I. Moatemjen (Dr.) v. State of Nagaland, 2011 (5) GLT 513.***

5. Appearing for the State respondents Mr. R. H. Nabam the learned Addl. Advocate General submits that even without entering into the merits of the case, the writ petition not being maintainable should be rejected by this Court at the outset, as the petitioner has not come with clean hands. By referring to paragraph No.1 of the writ petition, the learned Addl. Advocate General submits that the petitioner has failed to disclose his permanent address. He submits that the petitioner in fact belongs to Lower Subansiri District and this fact has been concealed by him instead of candidly admitting to the same, since there is a restriction on home posting as per the government's policy. The learned Addl. Advocate General therefore, by referring to the case of ***K. D. Sharma v. Steel Authority of India Limited and Ors.*** reported in ***(2008) 12 SCC 481***, submits that since the jurisdiction of the Apex Court and the Supreme Court under the Article 32 and 226, respectively being extra-ordinary, equitable and discretionary, a person who approaches the writ Court should come with clean hands, otherwise, the writ petition has to be dismissed at the very threshold. The learned Addl. Advocate General also submits that the guidelines on transfer and even otherwise posting is not legally enforceable.

6. The learned Addl. Advocate General further submits that although the petitioner submitted a representation on 09.07.2018 against the impugned order of retention of the respondent No. 6, the petitioner without waiting for the outcome of the same, immediately proceeded to file the present writ petition on 12.07.2018. Therefore, the petitioner having not exhausted the alternative remedy available to him, the writ petition should be rejected on this ground as well. He further submits that the petitioner apparently claims to have taken charge on 20.07.2018, in terms of the order of posting dated 24.10.2017, but

the fact remains that the petitioner has not been released from Hapoli Forest Division. That being the position, his assumption of charge at Tale Wildlife Range is redundant and cannot be accepted. The learned Addl. Advocate General also submits that the order of retention made by the petitioner has been passed pursuant to the note made by the concerned minister. He submits that the retention of the respondent No. 6 at the behest of the minister concerned cannot be vitiated unless the same is found to be for malafide reasons. He submits that he has the records ready for perusal by this Court, as was directed and this Court upon considering the facts and circumstances of the case, may not interfere with the impugned order of retention of the respondent No. 6 vide order dated 03.07.2018.

7. The learned Addl. Advocate General in support of his submissions has also relied upon the following decisions:

**(i). *Pramath Ch. Sarma v. State of Assam & Ors., 2007(1)GLT 212.***

**(ii). *State of Assam & Ors. v. Dilip Kr. Das & Anr., 2003(1)GLT 530.***

8. Mr. N. Rama, the learned counsel appearing for the respondent No. 6 submits that he adopts the argument of the learned Addl. Advocate General and submits that the retention of the respondent No. 6 is only due to the reason that he has an old aged ailing mother to look after and his school going children's education will be hampered. Further, the respondent No. 6 is also engaged in an important project which requires him to be in consideration. He however, submits that once the period of retention is over i.e. up to March 2019, the respondent No. 6 will comply with the transfer order dated 15.07.2016, by joining the place where he is posted.

9. I have heard the submission advanced by the learned counsels for the rival parties and I have perused the materials available on record including the record produced by the learned Addl. Advocate General. The only question to be decided is as to whether retention of respondent No. 6 at Tale Wildlife Sanctuary

Range under the Hapoli Forest Division can be sustained under the given facts and circumstances of the case.

**10.** The law is well settled as regards transfer and posting of employees. Courts are required to be slow in interfering with the same. Unless there are malafide reasons for such posting and transfer, Courts will ordinarily not interfere with the same.

**11.** Without dwelling upon the claim and counter claim of the rival parties, it would therefore, be apposite to look into the records of the case as produced by the learned Addl. Advocate General. As per the records, it is seen that the respondent No. 6 has been retained at Tale Wildlife Sanctuary Range under the Hapoli Forest Division on domestic ground, since the issuance of the transfer and posting order dated 15.07.2016 (Annexure-1). The respondent No. 6 was first retained at his original place of posting till March, 2017 vide order dated 13.12.2016 and after his retention period was over, he was again retained at the same place till September, 2017 vide order dated 20.04.2017. Thereafter, when the period got over he was further retained at the same place till March, 2018 vide order dated 24.10.2017. Lastly, he has been retained till March, 2019 at the same place vide the impugned order dated 03.07.2018. The ground for his retention at Tale Wildlife Range is on domestic ground on all the occasions. The private respondent No. 6 vide his representation dated 25.11.2016 as found in the records, by addressing the same to the Parliamentary Secretary of Environment and Forest Department, prayed for his retention at Tale Wildlife Sanctuary Range for another two years for his personal or on domestic grounds. Though a period of 2(two) years was not given to him at a stretch but as may be noticed, 4(four) retention orders have been passed so far. Counting from the date of his representation i.e. 25.11.2016, it is almost 2(two) years now that he has remained posted at Tale Wildlife Range.

**12.** Considering the case in its entirety, and the submission made by the learned counsel for the respondent No. 6 that the respondent No. 6 will comply with the order of transfer and posting on completion of the retention period in the Tale Wildlife Range till March 2019, I am of the considered opinion that ends

of justice will be met if the respondent No. 6 is allowed to continue at Tale Wildlife Range, as per the impugned order dated 03.07.2018. It is however, made clear that once the retention period is over, it will be incumbent on the part of respondent No. 6 to join his new place of posting. It is ordered accordingly.

**13.** The respondent authorities in view of the above observation shall make necessary arrangements for placing the petitioner at any appropriate, place pending his transfer at Tale Wildlife Sanctuary Range.

**14.** With the above observation and direction the writ petition stands **disposed of**.

**15.** Any interim order passed earlier, shall stand vacated. No Cost.

**JUDGE**

*Victoria*