

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

ITANAGAR PERMANENT BENCH

WP(C) 54(AP)/2018

SHRI TARU TALO

.....Petitioner

-Versus-

THE STATE OF ARUNACHAL PRADESH & 2 ORS.

.....Respondents

BEFORE

HON'BLE MR. JUSTICE KALYAN RAI SURANA

Advocates for the Petitioners	: Mr. R. Sonar.
Advocates for the Respondents	: Mr. R.H. Nabam, AAG, : Ms. Pubi Pangu (R-1 & 2) : Mr. T. Tapak (R-5)
Date of hearing	: 27.03.2018.
Date of judgment and order	: 29.03.2018.

JUDGMENT AND ORDER (CAV)

Heard Mr. R. Sonar, the learned counsel for the petitioner. Also heard Mr. R.H. Nabam, the learned Addl. Advocate General for the State, assisted by Ms. Pubi Pangu, learned Government Advocate, appearing on behalf of the State respondents No. 1 and 2 as well as Mr. T. Tapak, the learned counsel appearing for the respondent No. 5.

2. The challenge in this writ petition is the order of transfer of the petitioner. He is presently working as the Director of Industries, Government of Arunachal Pradesh and in the public interest, the Chief Secretary of the Government of Arunachal Pradesh had transferred the petitioner to take over the new assignment as the Director, (DoTCL) and Registrar (CIC). Against the said transfer order, the petitioner moved the

Chief Secretary to the Government of Arunachal Pradesh by his representation dated 05.02.2018 for reviewing/modifying the transfer/posting order. Thereafter, the present writ petition was filed before this Court to challenge the transfer order with a prayer for setting aside and quashing the said transfer/posting order dated 25.01.2018 issued on 01.02.2018 and for alternatively directing the respondent authorities to allow the petitioner to continue his tenure as a Director of Industries till 31.03.2018 as well as for a direction to the respondent authorities for disposing of his pending representation dated 05.02.2018.

3. The petitioner's case in brief is that while he is serving as a Director of Industries, Government of Arunachal Pradesh, he was transferred and posted as the Director (DoTCL) and Registrar (CIC) by office order No. PERS-04/2018 dated 25.01.2018 which was passed by the Chief Secretary to the Government of Arunachal Pradesh. Thereafter, the petitioner had submitted a representation before the Chief Secretary to the Government of Arunachal Pradesh for reviewing/modifying the transfer/posting order.

4. The learned counsel for the petitioner submits that the order of transfer, though dated 25.01.2018, was actually issued on 01.02.2018, by which he was to relieve Shri C.N. Longphai from the additional charge of Director (DoTCL) and by relieving Shri Remo Kamki, APCS (AG) from the additional charge of Registrar (CIC) but by another order bearing No. DoTCL/DIR/Estt.27/2017 dated 31.01.2018 issued by the Secretary, DoTCL, one Shri Wangton Lowang, Deputy Director, DoTCL was appointed to the post of Director, DoTCL on officiating basis to look after the charge of Director, DoTCL until further orders. It is further submitted that as now a new incumbent had taken over the charge as the Director, (DoTCL), he

would not be able to comply with the direction contained in transfer order dated 25.01.2018, issued on 01.02.2018 because his relieving officer for the post of Director, (DoTCL) was now not available as he was already replaced by another incumbent. It is submitted that in the representation submitted before the Chief Secretary to the Government of Arunachal Pradesh, it was projected that the petitioner was working on a crucial stage of preparing of final draft of new industrial policy and therefore, having visited many places, he may be permitted to finish his job of drafting a new industrial policy. It is further projected that now as there is another incumbent posted as Director, (DoTCL), there was no scope for joining the said office and once he hands over his present charge, he would be reduced to the status of an officer without any work and without any office. The learned counsel for the petitioner submits that the writ petition should not be constituted as if the petitioner is not ready for accepting his transfer and therefore, if the Chief Secretary to the Government of Arunachal Pradesh be directed to dispose of his representation, that would clear his way to be appointed to any post where he is transferred.

5. The learned Addl. Advocate General for the State has submitted that there is no real grievance and that the grievance raised in the writ petition was an artificial creation. By referring to the transfer order dated 25.01.2018 as issued on 01.02.2018, it is submitted that the petitioner was required to hold two posts, one as the Director, (DoTCL) and the second as Registrar (CIC), however, it would be evident from the transfer order itself that he would be relieving the then incumbent who was holding only an additional charge of the said post. Therefore, there was no difficulty in taking over the charge from the present incumbent who

was only officiating in his own pay and not on the pay of a regular Director of (DoTCL) and said appointment was made because the post could not be kept vacant for want of the petitioner joining the said office as a full-fledged Director (DoTCL) and the Registrar (CIC). It is submitted that the petitioner could have a valid grievance only if he goes to the new place of posting and he is not permitted to join and therefore, by filing the present writ petition, the petitioner has been successful in postponing his transfer and to not comply with the order of transfer. It is further submitted that the Government Officer does not have a vested right to choose his own place of posting and therefore, it is submitted that as public interest is suffering, the writ petition be dismissed so as to pave way for the petitioner to join his place of posting.

6. The learned counsel for the respondent No. 5 has referred to his affidavit-in-opposition and has submitted that the respondent No. 3 was transferred and posted as the Director of Industries, Arunachal Pradesh. He was earlier posted as the Deputy Commissioner of East Kameng District, Seppa and thereafter, he was transferred to his present place of posting. Accordingly, pursuant to his order of transfer and posting, he was released as the Deputy Commissioner of East Kameng District, Seppa w.e.f. 19.01.2018 and thereafter, he had reported before the Commissioner, Department of Industries, Government of Arunachal Pradesh about his joining as the Director of Industries in the forenoon (F/N) on 02.02.2018. However, he was not allowed to work as the Director of Industries and in the meanwhile, the petitioner had approached this Court by filing this writ petition and this Court by order dated 15.02.2018, directed that the petitioner should be allowed to

continue as the Director of (DoTCL), Government of Arunachal Pradesh, if he has not been released as on the said date of the order.

7. It is submitted that there was a mistake in the order of this Court by referring the petitioner as the Director of (DoTCL), which ought to have been Director of Industries, as such, the said error in the order was corrected by this Court by order dated 19.02.2018. Accordingly, the respondent No. 3 was now without any office or work as he has been relieved of his office at his earlier place on posting and though he has reported about his joining, the petitioner has not allowed the respondent No. 3 to work in his transferred post as Director of Industries.

8. The question for consideration in this writ petition is whether on the facts and circumstances of the case, the transfer of the petitioner from the post of Director of Industries to the office of Director (DoTCL) warrants interference of this Court.

9. It is a trite law that transfer is an inescapable incident of service and that the petitioner has no right to claim a particular place of posting and that he can be transferred anywhere in the exigency of public service. In this context, this Court would like to refer to the case of *N.K. Singh Vs. Union of India, (1994) 6 SCC 98*. The relevant passage of paragraph 23 thereof is quoted below:

"23. ...Transfer of a government servant in a transferable service is a necessary incident of the service career. Assessment of the quality of men is to be made by the superiors taking into account several factors including suitability of the person for a particular post and exigencies of administration. Several imponderables requiring formation of a

subjective opinion in that sphere maybe involved, at times. The only realistic approach is to leave it to the wisdom of the hierarchical superiors to make that decision. Unless the decision is vitiated by mala fides or infraction of any professed norm of principle governing the transfer, which alone can be scrutinized judicially, there are no judicially manageable standards for scrutinizing all transfers and the courts lack the necessary expertise for personnel management of all government departments. This must be left, in public interest, to the departmental heads subject to the limited judicial scrutiny indicated.”

10. On revisiting the impugned order of transfer, it is seen that the order of transfer is dated 25.01.2018 and the same has been issued by the Chief Secretary to the Government of Arunachal Pradesh. It is mentioned in the said order that the said transfer order was issued with the approval of the competent authority. By the said order, the petitioner was to relieve Shri C.N. Longphai from the additional charge of Director (DoTCL) and he was also to relieve Shri Remo Kamki from the additional charge of Registrar (CIC). From the order dated 31.01.2018, by which Shri Wangton Lowang, Deputy Director, DoTCL was allowed to hold the post of Director, DoTCL on officiating basis on his own pay scale. Therefore, this Court is of the opinion that the said arrangement was temporary in nature and was only for the purpose of looking after charge of the Director of DoTCL, Government of Arunachal Pradesh until further orders. Therefore, the said order, having been passed by the Secretary, DoTCL would stand superseded by the order passed by the Chief Secretary to the Government of Arunachal Pradesh, transferring the petitioner as the full-fledged Director of DoTCL and the Registrar of CIC. Having found that the

appointment of the incumbent, namely, Shri Wangton Lowang was only on officiating basis, it cannot be said that the said officer was allowed to work as a full-fledged Director as he was not given the pay of a Director. Moreover, it is seen that notwithstanding the existence of order dated 31.01.2018 of appointing Shri Wangton Lowang on officiating basis, there was no impediment for the petitioner to take charge as the Registrar of CIC. Moreover, as the petitioner did not go to join as the Director of DoTCL, it is not the case that he was not allowed to join by the new incumbent. Therefore, unless the petitioner goes and makes an attempt to join the new place of posting, it cannot be said that any right had accrued on him to agitate his alleged grievance. The present challenge appears to be based on mere apprehension and conjunctures. It cannot be accepted that the orders passed by the Secretary of a Department would override the orders of transfer of the petitioner, passed by the Chief Secretary to the Government of Arunachal Pradesh to the substantive post of Director of DoTCL because the Secretary, DoTCL had only permitted an officer to officiate as the Director.

11. This Court is also conscious about fact that for all practical purposes, the Director, DoTCL is the head of the Department and hence, in the absence of a regular Director, the Government has to appoint someone as an officiating Director because a Department cannot be allowed to remain without the departmental head, which may gives rise to various complications.

12. In this context, it would be relevant to refer to the case of *State of MP Vs. S.S. Kourav, (1995) 3 SCC 270*, wherein 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."

13. In the present case, the challenge is not made to the transfer order on the ground that it is vitiated either by malice in fact or malice in law or it cannot be stated that the order of transfer was not for public interest or that it was passed in lieu of any punishment. This Court does not find that the order of transfer was either passed on any irrelevant ground or on an anonymous complaint or on extraneous consideration, but as per the contents of the said transfer order dated 25.01.2018 (issued on 01.02.2018), the same was issued with approval from competent authority.

14. The petitioner cannot claim to hold the post of Director of Industries merely because he was doing an assignment of drafting industrial policy, etc. The Government is the best authority to decide which work should be assigned to which officer. Therefore, it appears that no case is made out for interference with the order of transfer impugned herein. Having found that the transfer order is not vitiated, it is not open

for this Court to substitute its view in the matter of transfer because in the present case the order of transfer is not found to be vitiated by mala fides or by violation of any statutory provisions or that the authority which passed the order of transfer was not the competent authority.

15. Under such circumstances, the petitioner may now report before the competent authority for joining at his transferred place of posting and, if the petitioner is not allowed to join his new place of posting, the same can be remedied by reporting before the Chief Secretary to the Government of Arunachal Pradesh that he had appeared for joining in the new post as per his transfer order dated 25.01.2018 and therefore, the responsibility would then shift on the Chief Secretary to the Government of Arunachal Pradesh to comply with his own direction vide the impugned order dated 25.01.2018.

16. It is made clear that this order shall not be construed as a bar to the Chief Secretary, Government of Arunachal Pradesh to dispose of the representation submitted by the petitioner.

17. For the reasons indicated above, no infirmity is found in the order of transfer and therefore, this writ petition fails. Accordingly, this petition stands dismissed. The interim order dated 15.02.2018, as extended from time to time stands vacated.

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

JUDGE

Mkumar