

IN THE GAUHATI HIGH COURT**(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA,
MANIPUR, TRIPURA MIZORAM AND ARUNACHAL PRADESH)*****(ITANAGAR PERMANENT BENCH AT NAHARLAGUN)*****WP(C) No. 396 (AP) of 2010****Petitioner:****Dr. Talung Tamut,**

S/o Late Tapun Tamut,

Permanent resident of PI Colony Aalo,

P.O. & P.S. – Aalo,

District – West Siang,

Arunachal Pradesh.

Presently serving as District Medical Officer,

Department of Health & FW, Govt. of A.P., Aalo,

District : West Siang,

Arunachal Pradesh.

By Advocates :

Mr. K. Ete,

Mr. D. Niri,

Mr. N. Ratan,

Mr. K. Tasso,

Mr. D. Padu.

-versus-**Respondents:**

1. **The State of Arunachal Pradesh,**
Represented by the Commissioner/Secretary,

Health & Family Welfare,
Govt. of Arunachal Pradesh, Itanagar.

2. The Director, Health Services,
Govt. of Arunachal Pradesh,
Naharlagun.
3. Mr. Bomjum Kamki,
Permanent resident of Kamki village,
P.O. & P.S. Kamba, West Siang District,
Arunachal Pradesh.

By Advocates:

Ms. G. Deka, Addl. Sr. Govt. Advocate, AP.

Mr. M. Kato,

Mr. R. Karbi.

BEFORE

THE HON'BLE MR. JUSTICE I. A. ANSARI

Date of hearing : 05.01.2011.

Date of delivery of Judgment : 05.01.2011.

JUDGMENT & ORDER

(Oral)

1. Heard Mr. K. Ete, learned counsel for the petitioner, and Ms. G. Deka, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing on behalf of respondent Nos.1

and 2. Also heard Mr. R. Saikia, learned counsel appearing on behalf of respondent No.3.

2. While the petitioner was serving as District Medical Officer at Aalo, an order was passed on 28.9.2010 directing him to report to headquarters for his further posting making it clear that he was to move first and Dr. B. Padu, the then District Medical Officer, Anjaw, was directed to take charge of the office, which the petitioner was holding.

3. By filing a writ petition under Article 226 of the Constitution of India, which gave rise to WP(C) No.370(AP)/2010, the petitioner challenged the said transfer order on the ground that the said order of transfer had not mentioned the place of posting and that he had barely two years of service left before he would retire on superannuation and he had, in this regard, filed a representation, on 8.2.2010, addressed to the Secretary, Health & Family Welfare, Govt. of Arunachal Pradesh, seeking an order allowing him to remain at his place of posting, at Aalo, till retirement, but without considering his said representation, the order, dated 28.9.2010, had been issued by the person, who was merely holding the charge of the office of the Secretary, department of Health and Family Welfare, Government of Arunachal Pradesh.

4. By order, dated 8.10.2010, the said writ petition was disposed of with the direction to the respondent No.1, namely, Secretary, Health and Family Welfare, Govt. of Arunachal Pradesh, to take up the petitioner's representation and pass appropriate order within a period of 7 days. While the petitioner's representation was still pending, the petitioner came to know that the order, dated 28.9.2010, had been modified by transferring respondent No.3, namely, Dr. Bomjum Kamki, as District Medical Officer, Aalo, in place of Dr. B. Padu. This was followed by another order, dated 7.10.2010, whereby Dr. B. Padu was retained as District Medical Officer, Anjaw. Thereafter, by an order, dated 29.10.2010, the respondent/authority concerned has rejected the petitioner's said representation. The relevant observations made therein and the directions given read as under:

“ I have perused his representation. As per records, Dr. T.Tamut ha been working as DMO Aalo since 7.12.2006. He has completed more than 3 years there which is also admitted by him. His date of birth is 13.10.55 and so retirement date will be 31.10.2013. On the other hand, Dr.Bomjum Kamki who has been posted as DMO Aalo had been working

as DMO Anini since 07.12.2005. The date of birth of Dr. Bomjum Kamki is 12.8.56 and his expected date of retirement is 31.8.2014. By the argument that as superannuation time is near, one should be allowed to continue in present place of posting, both would have continued in their respective places and it would have been unfair for someone posted in a very difficult place like Anini. This also doesn't imply in any way that Dr. Bomjum Kamki will or will not be allowed to continue as DMO Aalo for three year, perhaps that case could have re-considered on this ground. When the retirement is three years away that consideration doesn't arise. Further it is the prerogative of the Govt in public interest to effect transfer and postings. These can also be done arises especially for district Heads Offices. As regards personal problems, almost every Govt. servant has them and those cannot be a ground to continue indefinitely in a particular place especially as District Heads Offices. In the present case, Dr.T.Tamut has completed more than three 7years and is almost nearing four years as DMO Aalo; his date of superannuation is exactly three years away. Hence there is no fair and reasonable justification for him to continue in Aalo and therefore, there is need to

cancel the transfer order. He will look after GA branches of DHS Office in Naharlagun as DDHS (GA).

This disposes of the representation of Dr. T.Tamut, present DMO, Aalo.”

Close on the heels of the of the above order, dated 29.10.2010, a corrigendum has been published on 3.11.2010, which reads as under:

*“ The representation of Dr.T.Tamut, DMO Aalo for retention in Aalo disposed by the undersigned vide order of even No. dated 29.10.2010 in the previous to last line of para 3 may be read as ‘**Hence there is no fair and reasonable justification for him to continue in Aalo and therefore, there is no need to cancel the transfer order. He will look after the GA branch of the DHS office in Naharlagun as DDHS (GA)**’ in place of Hence there is no fair and reasonable justification for him to continue in Aalo and therefore, there is need to cancel the transfer order. He will look after GA branches of DHS Office in Naharlagun as DDHS (GA).” The rest of the Order stands as it is.”*

5. Aggrieved by rejection of his representation, the petitioner has , once again, impugned, by way of the present writ petition, not only the order , dated 28.9.2010, which he had impugned in his earlier writ petition, but also the order , dated 29.10.2010, whereby his representation has been rejected.

6. Upon perusal of the materials on record and upon hearing the learned counsel for the parties, what clearly transpires is that the petitioner has completed his normal tenure of posting at Aalo. In such circumstances, his transfer from his place of posting at Aalo cannot *per se* be said to be illegal. As regard the reasons, which the petitioner had assigned for the purpose of seeking his retention at Aalo, the respondent No.1 has dealt with the same in great detail and , having considered the petitioner's grievances, the representation has been rejected by a reasoned order. This Court, while exercising power under Article 226 of the Constitution of India, does not sit as an appellate Court on the administrative decision(s). Unless, therefore, the decision, reached by the respondent/authority concerned , can be shown to be a wholly irrational order, the order cannot be interfered with.

7. Considering the fact that the petitioner is still left with more than two years of service and he had already completed

long time back his normal tenure of service at Aalo, it is not unreasonable, on the part of the respondent No.1, to transfer the petitioner. In fact, at the time, when the petitioner was transferred to Aalo, the petitioner had known as to what his normal tenure of posting, at Aalo, would be ; but the petitioner waited towards the end of his normal tenure to come to end in order to make his representation for being retained at Aalo.

8. Coupled with the above, there is no material on record to indicate that the order of transfer of the petitioner is actuated by *mala fide* or is based on some extraneous considerations.

9. At the end of the hearing, it has been submitted, on behalf of the petitioner, that at the place of posting, which the order, dated 29.10.2010, mentions, there is no vacant post. To the submissions so made, Ms G.Deka, learned Addl. Senior Government Advocate, Arunachal Pradesh, responds by saying that she has been confirmed, on phone, that the post to which the petitioner has been transferred is a vacant post.

10. On considering, therefore, the matter in its entirety, this Court is clearly of the view that the petitioner has not been able to make out a case warranting this Court's interference with the

impugned order of transfer, dated 28.9.2010, and/or with the rejection of the petitioner's representation, dated 29.10.2010.

11. In the result and for the reasons discussed above, this writ petition shall stand dismissed. The interim directions, passed in this case shall accordingly stand vacated.

12. No costs.

JUDGE