

IN THE GAUHATI HIGH COURT

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

ITANAGAR BENCH.

WRIT PETITION (C) NO. 344 (AP) / 2014

Shri Konam Bayor, S/o Lt. Tapor Bayor,
Assistant Engineer, PWD,
Baririjo Sub-Division under
PWD Division Dumporijo,
Upper Subansiri District,
Arunachal Pradesh

.....**Petitioner.**

By Advocates:

Mr. T. Leriak,
Mr. P.G. Tamin,

-Versus-

1. **The State of Arunachal Pradesh**
represented through Chief Secretary,
Govt. of Arunachal Pradesh,
2. **The Commissioner,**
Public Works Department,
Govt. of Arunachal Pradesh,
Naharlagun
3. **The Secretary, Public Works Department,** Govt.
of Arunachal Pradesh,
Itanagar.
4. The Executive Engineer, PWD, Dumporijo
Dumporijo Division, PO & PS-Dumporijo,
Upper Subansiri District,
Arunachal Pradesh
5. Shri Takum Nalo, Assistant Engineer,
C/o Chief Engineer, Public Works Department,
Govt. of Arunachal Pradesh,
Itanagar.
6. Shri Paknga Bage, MLA 26th (ST) Assembly
Constituency, Dumporijo,
PO & PS-Dumporijo, Upper Subansiri District,
Arunachal Pradesh and C/o Secretary,
State Legislative Assembly, Naharlagun.

.....**Respondents.**

By Advocates:

Ms. G. Deka, Addl. Sr. GA for resp Nos. 1 to 4.
Mr. P. Bui for respondent No.5.

BEFORE
THE HON'BLE JUSTICE Dr. (MRS.) INDIRA SHAH

Date of hearing : 13-11-2014

Date of Judgment & Order : 18-11-2014

JUDGMENT & ORDER (CAV)

Heard Mr. T. Leriak, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Addl. Sr. Govt. Advocate appearing for State respondent Nos. 1 to 4 and Mr. P. Bui, learned counsel appearing for private respondent No.5. None has appeared on behalf of the respondent No.6.

2]. The petitioner is serving as Assistant Engineer, PWD, Baririjo Sub-Division, Dumporijo. By filing this writ petition, the petitioner has approached this Court for second time challenging the impugned order dated 11-07-2014 passed by the Commissioner, PWD, Govt. of Arunachal Pradesh, Itanagar, whereby, he has been transferred from Baririjo PWD Sub-Division to Dumporijo Division as ASW. The petitioner was posted to Baririjo Sub-Division as Assistant Engineer from Assistant Engineer (Planning) Boleng Circle vide order dated 17-06-2013. Again vide impugned order dated 11-07-2014, he has been transferred from Baririjo Sub-Division to Dumporijo Division in violation of the guidelines and policy adopted by the Govt. of Arunachal Pradesh with regard to the transfer and posting of the officers serving in the State.

3]. As per the guidelines and policy of the State Government with regard to the transfer and posting of the officers serving in the State, the normal tenure of posting of an officer is 2(two) years. The petitioner earlier approached this Court and this Court vide order dated 27-08-2014 passed in WP(C) 236 (AP) 2014, disposed of the matter and directing the respondent authorities, more particularly, respondent No.2 viz. Commissioner, Public Works Department, Govt. of Arunachal Pradesh to consider and dispose of the representation filed by the petitioner, on 18-07-2014, in accordance with law, within a period of 15 days from the date of receipt of a certified copy of the order. Accordingly, the respondent No.2, considered the representation of the petitioner, as well as the private respondent and vide order dated 17-09-2014, declined to interfere with the transfer order of the petitioner.

4]. The petitioner, in his representation to the respondent authority requested for his retention at his original posting place at Baririjo PWD Sub-Division till completion of his tenure. The private respondent No.5, in his representation, stated that he was posted at Raga PWD Sub-Division vide order dated 19-06-2013. Within a period of less than a year, he was again transferred to Baririjo PWD Sub-Division vide order dated 11-07-2014. He had stated that he handed over the charge of Raga PWD Sub-Division and joined Dumporijo PWD Division as per the direction of the Executive Engineer, Dumporijo and the petitioner was released on 25-08-2014. He requested that since he has already assumed the charge of Assistant Engineer, Baririjo Sub-Division, he should be retained and allowed to continue his service at Baririjo PWD Sub-Division.

5]. While observing that the whole problem has arisen from transferring the officers as per recommendation of political parties without following the guidelines formulated for such transfer and posting, thereby causing hardship to all concerned, the representation of the petitioner was rejected on the ground that the private respondent No.5 has, in the meanwhile, joined at Baririjo as Assistant Engineer and has taken over the charge of Assistant Engineer, Baririjo PWD Sub-Division and also that the private respondent is from Dumporijo having his dwelling house there, the representation of the petitioner was rejected.

6]. It is alleged by the petitioner that the transfer of the private respondent to his place and his transfer by the impugned order was not on public interest. The private respondent No.5 and the private respondent No.6 are cousin brothers. Private respondent No.5 is also a local MLA and therefore, this transfer order has been issued on the behest of MLA. The joining of the private respondent No.5 to his place is also disputed by the petitioner. The petitioner claimed that he has not handed over the charge of Assistant Engineer, Baririjo PWD Sub-Division. According to the petitioner, the date of joining of the private respondent No.5 at Baririjo, cannot be accepted as 29-07-2014 was a national holiday for Idh.

7]. Ms. Deka, learned Addl. Sr. Govt. Advocate, has placed the relevant records as called for. On perusal of the records, it appears that the private respondent No.5 has assumed his charge as Assistant Engineer, Baririjo PWD Sub-Division on 21-07-2014 and accordingly the petitioner was relieved from Baririjo Sub-Division and was directed by the Executive Engineer, Dumporijo to assume charge as Assistant Surveyor of Works to the Dumporijo PWD Division. It also appears from

the office record that transfer and posting of as many as 45 Assistant Engineers including the petitioner and the private respondent No.5 was approved by the concerned Minister of PWD on 20-06-2014. Although, the transfer of the private respondent No.5 was initiated on the basis of the note of MLA, there is nothing to suggest in the note that MLA recommended the transfer of the petitioner from his present place of posting.

8]. In the case of **Poonam Verma & Others Vs. Delhi Development Authority**, reported in **AIR 2008 SC 870**, it was held that “guidelines per se do not partake to the character of statute. Such guidelines in absence of the statutory backdrop are advisory in nature and non adherence to or deviation from them is necessarily and implicitly permissible if the circumstances of any particular fact or law situation warrants the same. Judicial control takes over only where the deviation either involves arbitrariness or discrimination or is so fundamental as to undermine a basic public purpose which the guidelines and the statute under which they are issued are intended to achieve.”

9]. In the Case of **Mohd Masood Ahmad Vs. State of U.P. and Others**, reported in **(2007) 8 SCC 150**, it was observed that “after all it is 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 an officer, the State Government is certainly within its jurisdiction to transfer such an employee. There can be no hard and fast rule that every transfer at the instance of an MP or MLA would be vitiated and it will all depend on the facts and circumstances of individual case.” It was further observed that “since the petitioner was on a transferable post, the High Court has rightly dismissed his writ petition because transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. It repeatedly held in several decisions of the Supreme Court, transfer is an exigency of service, it should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226, unless the court finds that either the order is *mala fide* or that the service rules prohibit such transfer, or that the authorities who issued the orders were not competent to pass the orders.

10]. Here in this case, there is nothing to suggest that the transfer order of the petitioner was *mala fide* or it was issued by not a competent authority. Only the allegation is that before completion of tenure of his service at a particular place, he has been transferred. It also appears that the private respondent No.5 has been similarly

transferred from one place to another before completion of his tenure at a particular place. Therefore, this Court declines to interfere with the impugned transfer order passed by the respondent authorities.

11]. In view of the above, this writ petition fails and accordingly, it is dismissed. There shall be no order as to costs. Return the records to Ms. G. Deka, learned Addl. Sr. Govt. Advocate forthwith.

JUDGE

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