

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

WP(c) 288(AP)2015

Sri S. Vijayan

S/o Late C. Sakarias,
Presently working as Assistant Engineer,
Bomdila Sub-Division, PO/PS- Bomdila
West Siang District, Arunachal Pradesh.

.....Petitioner

-Versus-

1. The Government of Arunachal Pradesh represented by the Secretary/Commissioner, PWD, Government of Arunachal Pradesh, Itanagar.
2. The Chief Engineer, PWD(WZ), Government of Arunachal Pradesh, Itanagar.
3. Ms. Yomyir Bam, Assistant Engineer, PWD Bomdila Sub-Division, PO/PS-Bomdila, West Kameng District, Arunachal Pradesh.

.....Respondents

Advocates for the Petitioner : Mr. Pritam Taffo
Ms. Bissomoti Lego
Ms. Jaya Doji
Mr. S. Tsering
Mr. T. Lamgu

Advocates for the Respondents: Mr. Kardak Ete, Addl. Advocate General,
Arunachal Pradesh

Mr. Rintu Saikia
Mr. Kemo Lollen
Mr. L. Nochi
Ms. C. D. Thongchi

**BEFORE
HON'BLE MRS.(DR.) JUSTICE INDIRA SHAH**

Date of hearing : 17.08.2015

Date of Judgment & Order : 21.08.2015

JUDGMENT & ORDER (CAV)

Heard Mr. Pritam Taffo, learned counsel for the petitioner.

Also heard Mr. Kardak Ete, learned Additional Advocate General, Arunachal Pradesh, assisted by Ms. Anima Mize, learned Government Advocate, appearing on behalf of Respondents No. 1 & 2; as well as Mr. Rintu Saikia, learned counsel, for Respondent No. 3.

2. By filing this petition, under Article 226 of the Constitution of India; the petitioner has challenged the legality and validity of transfer order dated 16.07.2015 whereby he has been transferred from Bomdila to Itanagar.

3. The petitioner was appointed as Junior Engineer(JE) in Public Works Department, under the Government of Arunachal Pradesh, on 11.06.1981. Thereafter, he was promoted to the post of Assistant Engineer(AE) on 27.07.1989. While he was thus posted at Nafra PWD Sub-Division, he was transferred to Bomdila Sub-Division, on 08.01.2014. Within 5(five) months of his joining at Bomdila Sub-Division, the respondent authorities issued the transfer order dated 19.11.2014, thereby transferring the petitioner from Bomdila to Kalaktang Division and allowed the private Respondent No. 3, to hold the charge of AE of Bomdila Sub-Division. Aggrieved by the said transfer order, the petitioner had earlier approached this Court and this Court, vide judgment & order dated 27.02.2015 passed in WP(c) 440(AP)2014, set aside and quashed the said transfer order holding it arbitrary in nature. Thereafter, the impugned transfer order dated 16.07.2015 has been issued by the authorities concerned whereby the petitioner has been transferred from Bomdila Sub-Division to the Office of the Chief Engineer, Itanagar. It is alleged that the instant transfer order has been issued just to accommodate the private Respondent No. 3 and to defy the Court's order dated 27.02.2015. Only within 4(four) months of passing of this Court's order, above-mentioned, the respondent authorities have issued the impugned transfer order dated 16.07.2015.

4. The contention of the petitioner is that during the entire service life, he has served at various remote places in the State of Arunachal Pradesh and he is going to retire from his service on 31.07.2016. He is to prepare his retirement pension documents at Bomdila.

5. As per the Circular dated 02.06.1998 issued by the Government of Arunachal Pradesh, no Government officer would be transferred one year before retirement as it may affect preparation of his pension papers, etc.. Moreover, the instant petitioner has only completed 14 months of his service, at the present place of posting.

6. The private Respondent No. 3, on the other hand, has completed 15 years at Bomdila and even after her promotion as an Assistant Engineer(AE), she has been retained at Bomdila sub-division.

7. The State Respondents No. 1 & 2, in their counter affidavit, have contended that transfer and posting is within the domain of the State Government and it is the prerogative of the Government to post any employee where it chooses. The petitioner was earlier posted at Nafra PWD Sub-Division which is under the Bomdila Sub-Division and on completion of 8(eight) years, he was transferred to Sangram as an Assistant Surveyor of Works(ASW) but the petitioner managed to retain his service at Bomdila and he accordingly joined at Bomdila on 19.05.2014.

8. The State Respondents have admitted that the earlier transfer order of the petitioner was interfered by this Court vide judgment & order dated 27.02.2015, passed in WP(c) 440(AP)2014 and therefore, the government order could not be implemented. The contention of the State Respondents is that the petitioner has been serving in Bomdila Division for more than 9 years without even changing his residence. The guidelines and circulars of the State Government does not confer any statutory right to the writ petitioner. Moreover, the instant writ petition is pre-mature since the petitioner has filed

a representation, which was submitted before the competent authority on 31.07.2015 and the same was received by the concerned Branch of the PWD Commissioner's Office only on 03.08.2015, which is yet to be considered and disposed of.

9. From a perusal of the official records so produced by the learned Government Advocate, there is nothing on record to reveal that the petitioner has, either, completed the normal tenure of 2 years posting at the present place of posting, or, anything to show that disciplinary proceeding has been initiated against him or the transfer order, impugned, has been made, in the public interest.

10. Admittedly, as per the Circular issued by the Government of Arunachal Pradesh on 19.12.2008, the normal tenure of posting of all government posts shall be 2 years w.e.f. from the date of the said circular; and as per the Circular dated 02.06.1998, the officers are not to be transferred one year before retirement as it may affect the preparation of their pension papers, etc.. However, generally officers posted in the field/works Division should be posted out to office Headquarters one year before retirement.

11. The petitioner, herein, was posted to the Office Headquarter at Bomdila and he is going to retire within a year, from today, on attaining the age of superannuation.

12. The aforesaid Circular dated 02.06.1998, prescribes the procedures to be followed while effecting transfers, which categorically speaks that the transfer/posting orders should be issued by April i.e. immediately after the financial year ends so that implementation of planned scheme and budge expenditure are not affected by such orders. It also speaks that the officers so posted/transferred shall take charge of their respective places of posting by May end i.e. before the onset of monsoon and after the school examination of their children.

13. Herein, in this case, the earlier transfer order of the petitioner, was interfered by this Court and immediately after within 4 months of the said order, the subsequent impugned transfer order has been issued by the authorities concerned, violating the guidelines/circulars of the State Government, without assigning a single reason.

14. Situated thus, the impugned transfer order dated 16.07.2015, appears to have been issued without any public interest and the same is liable to be set aside and quashed. Accordingly, the said impugned transfer order is hereby set aside and quashed.

15. With the above directions, this writ petition stands disposed of. No order as to costs.

16. Hand over the records to the learned Government Advocate, immediately.

JUDGE

Bikashi