

THE GAUHATI HIGH COURT

(The High Court of Assam : Nagaland: Mizoram and Arunachal Pradesh)

ITANAGAR PERMANENT BENCH

WA 5 (AP)/2017

Shri Bajum Taba, ADCF,
Presently serving as the DFO, Likabali,
P.O.- Likabali, West Siang, Arunachal Pradesh.

.....***Appellant***

-Versus-

1. Sri Bitem Darang, S/o. Late Takit Darang, Resident of Pashighat, PO & PS- Pashighat, East Siang District, Arunachal Pradesh.

(*Writ petitioner*)

2. The State of Arunachal Pradesh, represented by the Chief Secretary to the Government of Arunachal Pradesh, Civil Secretariat, Itanagar-791111.
3. The Principal Chief Conservator of Forest-cum-Secretary (Environment & Forest), Government of Arunachal Pradesh- 791111.
4. Sri Jomde Kena, MLA, 28 Likabali Constituency, Arunachal Pradesh, PO & PS – Likabali, District- West Siang, A.P.

.....***Respondents***

BEFORE

**THE HON'BLE MR. JUSTICE SUMAN SHYAM
THE HON'BLE MR. JUSTICE KALYAN RAI SURANA**

For the Appellant : Mr. K.N. Choudhury, Sr. Advocate.
Mr. M. Mahanta, Adv.

For the respondents : Mr. A. Apang, Sr. Advocate (R/1),
Dr. D. Soki, GA, AP.

Date of hearing and judgement: 17/05/2017.

JUDGEMENT AND ORDER (ORAL)

Suman Shyam, J

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. M. Mahanta, learned counsel for the appellant. Also heard Mr. A. Apang, learned senior counsel appearing for the respondent no. 1 as well as Mr. D. Soki, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing for the State respondent nos. 2 and 3. None appears for the respondent no. 4.

1. This intra-Court appeal is directed against the judgment and order dated 27/09/2016 passed in WP(C) 368(AP)/2016, whereby the learned Single Judge had allowed the writ petition filed by the respondent no.1 by interfering with the impugned order dated 07/07/2016 by means of which, the order of transfer dated 20/05/2016, in so far as the appellant and the respondent no.1 herein are concerned, had been modified.

2. The brief facts necessary for disposal of the appeal may be noticed as follows :-

a) By the order dated 27/07/2015, the writ appellant, who was serving as Additional Deputy Conservator of Forest (ADCF), Banderdewa, was transferred and posted as Divisional Forest Officer (DFO), Likabali Forest Division, pursuant where to he had joined in the said post on 12/11/2015. While the appellant was serving at Likabali, by issuing the order dated 20/05/2016, as many as 19 officers of the Forest Department were transferred including the writ appellant and the respondent no. 1. As per the order dated 20/05/2016, the respondent no.1 who was serving as DFO, Khonsa Forest Division was transferred and posted as DFO, Likabali Forest

Division and the appellant, who was holding the said post was transferred and posted as Deputy Conservator of Forest (DCF), NRS Division, Kamengbari.

- b) The appellant had joined as DFO, Likabali only on 12/11/2015 and, therefore, the transfer order dated 20/05/2016 posting him out of Likabali had been passed within 6 (six) months of his joining in the said post. Aggrieved thereby the appellant had submitted a representation dated 20/05/2016 addressed to the Principal Chief Conservator of Forest seeking cancellation of his transfer, inter-alia, on the ground that he had completed only six months in the said place of posting and his children were pursuing their studies at Likabali. A request was made that he be permitted to complete his normal tenure at Likabali.
- c) The appellant had also approached this Court by filing WP(C) 295(AP)/2016 assailing the order dated 20/05/2016. In the meantime, the fact that the appellant was being transferred out of Likabali before completion of his normal tenure was brought to the notice of the Chief Minister, Arunachal Pradesh, who had issued an instruction dated 07/06/2016, directing the authorities that the appellant be allowed to continue at Likabali till completion of his normal tenure of posting in the interest of public service.
- d) Following the aforesaid note of the Chief Minister, the Department had issued order dated 07/07/2016, partially modifying the earlier transfer order dated 20/05/2016, thereby retaining the appellant at Likabali Forest Division as DFO. The affect of the order dated 07/07/2016 was that the

respondent no.1 had to continue at his original place of posting at Khonsa Forest Division.

e) Aggrieved by the order dated 07/07/2016, the respondent no. 1 as writ petitioner had approached this Court by filing WP(C) 368(AP)/2016, which was allowed by the learned Single Judge by the impugned order dated 27/09/2016.

3. The learned Single Judge had interfered with the order dated 07/07/2016 primarily on two grounds. Firstly, that under the *Arunachal Pradesh Forest Service Rules, 1999*, as amended up-to-date, (herein after referred to as **The Rules**), the post of Division Forest Officer, Likabali Forest Division is a Group "B" post in the capacity of Deputy Conservator of Forest (Selection Grade). So is the post of Divisional Forest Officer, Khonsa Forest Division. However, the appellant was holding the substantive post of Additional Deputy Conservator of Forest, which post under the Rules, was a Group-C post. Since the appellant was holding a substantive post falling under the Group-C category, hence, according to the learned Single Judge, he ought not to have been posted as DFO, Likabali Forest Division, which is a Group-B post. Secondly, the learned Single Judge was also of the view that the retention order dated 07/07/2016 was obtained by the appellant under political influence and, therefore, the same cannot stand the scrutiny of law.

4. Assailing the impugned judgement and order dated 27/09/2016, Mr. K.N.Choudhury, learned senior counsel appearing for the appellant submits that although it is a fact that the appellant is holding a substantive post falling in the Group-C category, yet, due to shortage of officers in the department, it has been the prevalent practice to post officers holding the posts in a lower grade to temporarily officiate in a higher category post and the respondent no.1/ writ

petitioner himself has been the beneficiary of such transfer policy of the department on a number of occasion in the past. As such, submits Mr. Choudhury, the respondent no.1 cannot assail the transfer order by seeking refuge under the Rules on the aforesaid count.

5. The learned senior counsel further submits that the impugned order dated 07/07/2016 was issued on the sole ground that the appellant had completed merely six months in his present place of posting at Likabali and, therefore, the transfer was pre-mature as per the standing Government circulars. The mere fact that the Chief Minister of the State had issued an instruction cannot have a vitiating effect on the order dated 07/07/2016 since the Chief Minister was also the Forest Minister of the State. Mr. Choudhury also submits that even assuming that the plea taken by the respondent no.1 by referring to the category of posts under the Rules was to be accepted, yet, the learned Single Judge failed to consider the fact that by the order dated 20/05/2016 the appellant had been transferred and posted as DCF, NRS Division, Kamengbari, which was also a post of even higher category i.e. belonging to the category of Deputy Conservator of Forest, Administrative Grade (Group 'A'). Therefore, submits Mr. Choudhury, viewed from that angle as well, the decision of the learned Single Judge is flawed and, hence, calls for interference by this Court.

6. Resisting the arguments made by the learned counsel for the appellant, Mr. Apang, learned Senior counsel appearing for the respondent no. 1 has vehemently submitted that the order dated 07/07/2016 permitting the writ appellant to continue at Likabali was in utter violation of the scheme of the Rules of 1999, inasmuch as, the claim of a senior officer has been sidelined by the department while issuing the said order. Mr. Apang submits that the appellant had joined at Khonsa on 21/06/2013 and had completed his normal tenure in the said place. Since the

appellant has an ailing mother to look after, hence, he had submitted a representation dated 23/03/2016 addressed to the respondent no.3, requesting a transfer either as DFO, Likabali Forest Division or as DFO, Daporijo Forest Division, so as to permit him to be close to his ailing mother. Taking note of such representation of the respondent no.1, he was assigned a posting at Likabali by the impugned order dated 20/05/2016 in place of the appellant. However, by using political clout, the appellant got the aforesaid order of transfer suspended by the impugned order dated 07/07/2016, thereby compelling the respondent no.1 to continue at Khonsa despite having completed his normal tenure of posting.

7. The learned senior counsel further submitted that submission of representation before the departmental higher authorities expressing the personal difficulties of an officer is a normal recourse permissible under the Rules and if the authorities have passed the transfer order dated 20/05/2016, posting the respondent no.1 at Likabali by taking note of his aforesaid representation, the same ought not to have been interfered with by the authorities at the instance of political representative.

8. We have also heard Mr. D. Soki, learned Additional Senior Government Advocate, Arunachal Pradesh, appearing for the official respondents.

9. It is not in dispute that as per the Rules of 1999 framed under the Proviso to Article 309 of the Constitution of India, which was amended in the year 2010 by bringing in the *Arunachal Pradesh Forest Service (Amendment) Rules, 2010*, 4 (four) categories of Arunachal Pradesh Forest Service Post have been envisaged.

The four categories are :-

- i) Deputy Conservator of Forest (Administrative Grade) (Group-A),
- ii) Deputy Conservator of Forest (Selection Grade) (Group-B),

- iii) Additional Deputy Chief Conservator of Forest (Group-C), and
- iv) Assistant Conservator of Forest (Group-D).

10. It is also not in dispute that the respondent no.1 is holding a substantive post falling in the category of Deputy Conservator of Forest (Selection Grade), whereas the appellant is holding a substantive post in the category of Addl. Deputy Conservator of Forest, which is a grade junior to that of the respondent no.1. Although, the respondent no.1 had assailed the order dated 07/07/2016 on the ground that the appellant could not have been allowed to hold the post of DFO, Likabali Forest Division since he was holding the substantive post in the grade of Additional Deputy Conservator of Forest. Yet, we find from the record that the respondent no.1/ writ petitioner had not challenged the order dated 27/07/2015 by means of which, the appellant was initially posted as DFO, Likabali Forest Division.

11. That apart, we also find from the record that there had been a few occasions in the past when officers belonging to the junior grade have been allowed to hold a post belonging to the higher grade. As a matter of fact, the respondent No. 1/ writ petitioner himself was posted as DFO, Pasighat Forest Division, Pasighat, when he was holding the substantive post of Assistant Conservator of Forest, which is a Group-D post. While serving as DFO, Pasighat, the respondent no.1 was again posted as DFO, Khonsa while he was holding the substantive post of ADCF, which is a Group-C post. The respondent no.1 had joined in the aforesaid higher grade posts without raising any protest. From the records, we also find that there is a note of the Additional Principal Chief Conservator of Forest dated 02/03/2016, wherein it has been recorded that there is an acute shortage of officers in the State Forest Service Cadre as a result of which, senior Forest Service Officers of ADCF level are also given officiating charge of DCF. This, in our view, goes to show that there has

been a prevalent practice in the department of permitting junior grade officers to hold officiating charge of higher category post and that is because of shortage of officers in the State Forest Service.

12. In the case in hand, we find that the respondent no.1 has not only availed the benefit of such postings to a higher grade post but has also not challenged the order dated 27/07/2015, by means of which the appellant was posted as DFO, Likabali. The order dated 07/07/2016 had merely suspended the operation of the impugned order dated 20/05/2016, by means of which the appellant was transferred to another post, which itself belongs to the Group-B category. The order dated 07/07/2016 may not be strictly in terms of the letter and spirit of the hierarchy envisaged by the Rules but the same does not in any way violate the conditions of service of the respondent no. 1, who was himself the beneficiary of such departmental practice in the past. When there is shortage of officers in the department some leeway may be permitted to the departmental authorities to rotate its officers as per the exigencies of public service. As long as such policy is applied in an uniform and non-discriminatory manner, without violating the rights of the officers, the Court would not interfere with such internal policy matters of the department.

13. Coming to the next question of political interference, we find from the record that pursuant to the representation dated 23/03/2016 filed by the respondent no.1, a note was put up in the file recommending his posting as DFO, Daporijo Forest Division, since the incumbent in the said post was due for retirement with effect from 20/08/2016. Accordingly, a note was put up on 20/04/2016 in the file, posting the respondent no. 1 as the DFO, Daporijo Forest Division and Shri Samkim Mosang, DCF, was posted in the Khonsa Forest Division to

replace the respondent no.1. However, it appears that the said position was subsequently changed while issuing the transfer order dated 20/05/2016. There is nothing on record to indicate as to under what circumstances, the departmental note put up on 20/04/2016 posting the respondent no.1 at Daporijo Forest Division was altered.

14. We have also noticed that immediately after the order dated 20/05/2016 was issued, the appellant had submitted a representation on the same day ventilating his grievances against the pre-mature transfer order citing personal reasons. It is no-doubt true that the Parliamentary Secretary (Transport and STS), Arunachal Pradesh had earlier made a request to the Chief Minister to transfer the appellant to the Likabali Forest Division in place of Shri A. Boli, by citing various reasons as to why such a transfer was necessary. Save and Except the note of the Chief Minister dated 07/06/2016, there is nothing on record to indicate any political interference behind the order dated 07/07/2016. Since the challenge made to the writ petition is only to the order dated 07/07/2016, hence, the finding recorded by the learned Single Judge that that the impugned order dated 07/07/2016 was passed under political interference cannot be accepted for the simple reason that the Chief Minister, being the Executive Head of the State, cannot be denied the authority to pass instruction requiring compliance with the Government instructions in the matter of transfer of public servants before the completion of their normal tenure. Since, the order dated 07/07/2016 is merely aimed at permitting the appellant to complete his normal tenure of posting at Likabali, no fault can be found with the said order on the grounds urged by the respondent no.1/writ petitioner.

15. We have also noticed that the Division Bench, while issuing notice in this appeal had passed an order dated 04/10/2016 suspending the operation of the

judgement and order dated 27/09/2016. It has been submitted at the bar that on the strength of the interim order dated 04/10/2016, the appellant is continuing as DFO, Likabali, whereas the respondent no. 1 is still at Khonsa.

16. For the reasons stated hereinabove, we are of the considered opinion that the learned Single Judge was not correct in interfering with the order dated 07/07/2016. In such view of the matter, the impugned order dated 27/09/2016 is hereby set aside and quashed. The writ appeal is accordingly allowed. However, considering the fact that the respondent no. 1 has submitted a representation expressing his personal difficulties seeking a posting closure to his home, the official respondents are granted liberty to issue appropriate order granting a suitable posting to the respondent no. 1, bearing in mind the exigencies of public service.

There would be no order as to costs.

JUDGE

JUDGE

Sukhamay