

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

**ITANAGAR BENCH**

**WP(C) No. 202(AP) of 2018**

Er. Kipa Rinia,  
Executive Engineer,  
RWD, Poma Division, Yupia,  
District - Papumpare, Arunachal Pradesh.

..... Petitioner.

**– VERSUS –**

1. State of Arunachal Pradesh represented through the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Secretary, Rural Works Department(RW), Government of Arunachal Pradesh, Itanagar.
3. The Chief Engineer (W/Z), Rural Works Department, Government of Arunachal Pradesh, Itanagar.
4. The Superintending Engineer, Rural Works Circle, Itanagar.
5. Shri Tech Jobae, Executive Engineer (P&D), O/o:-- Chief Engineer, RWD (P&D), Itanagar.

..... Respondents.

Advocates for the Petitioner : Mr. Dilip Mazumdar, Sr. Advocate.  
Mr. Kipa Posi,  
Mr. Lissing Perme,  
Mr. G. Maya,  
Mr. Doba Tamut,  
Mr. D Jumi, Advocates.

Advocates for the Respondents : Mr. R. H. Nabam, Addl. Advocate, General,  
Arunachal Pradesh,  
For Respondent Nos. 1 to 4.

Mr. Ninnong Ratan,  
Mr. K. Loya,  
Mr. T. Taggu,  
Mr. R. Ngomk,  
Mr. N. Ete,  
Mr. M. Nimu,  
Mr. B. Tajik,  
Mr. O. Sitek, Advocates  
For Respondent No. 5.

**BEFORE**  
**HON'BLE MR. JUSTICE MANASH RANJAN PATHAK**

**Date of Hearing : 04-06-2018**

**Date of Judgment : 07.06.2018**

**JUDGMENT AND ORDER (CAV)**

Heard Mr. Dilip Mazumdar, learned senior counsel assisted by Mr. Kipa Posi, learned counsel appearing for the petitioner. Also heard Mr. R.H. Nabam, learned Additional Advocate General of the State, for respondent Nos. 1 to 4 and Mr. Ninnong Ratan, learned counsel for the respondent No. 5.

**2.** The Secretary to the Government of Arunachal Pradesh in the Rural Works Department (RWD, in short) by Order No. SRWD-15/2004(PT) dated 26.04.2018 (Annexure-10 to the writ petition), modified his earlier Order No. SRWD-166/2017 dated 12.01.2018 (Annexure-1 to the writ petition) as well as the Order No. SRWD-15/2004(PT) dated 21.02.2018 (Annexure-4 to the writ petition) and retained the respondent No. 5 as the Executive Engineer of RWD Poma Division, Yupia with immediate effect, reposting the petitioner, Executive Engineer, RWD

Poma Division, Yupia to the Office of the Chief Engineer, RWD (Planning & Design) Itanagar, until further order.

**3.** Being aggrieved with said action of the respondents in the RWD, the petitioner has preferred this writ petition stating that the impugned order dated 26.04.2018 (Annexure-10 to the writ petition) of the State Respondents in the RWD, re-posting him in the Office of the Chief Engineer, RWD (P&D) at Itanagar has been issued on extraneous consideration only to accommodate the respondent No. 5, inspite of the fact that the said respondent has already completed the tenure of posting as an Executive Engineer at RWD Poma Division, Yupia and whereas, as per the Orders dated 12.01.2018 and 21.02.2018 of the respondents in the RWD, the petitioner has already joined as Executive Engineer of RWD Poma Division, Yupia on 02.04.2018 and taken over the ex-parte charge of the said post on 06.04.2018 with due knowledge of the said respondents

**4.** Issue involved in this writ petition is whether the Order No. SRWD-15/2004(PT) dated 26.04.2018 (Annexure-10 to the writ petition) is malafide, bias and has been issued on extraneous consideration as alleged?

**5.** The brief facts of the case is that the State Respondents in the RWD, in exigencies of works, by its order No.SRWD-166/2017 dated 12.01.2018 (Annexure-1 to the writ petition) allowed the petitioner, Assistant Engineer (AE) (Civil) of RWD to hold the post of Executive Engineer (Civil) on officiating basis in the Scale of Pay of Pay Band 3 @ Rs. 15,600/- - Rs. 39,000/- with Grade Pay of Rs. 6,600/- (pre-revised) plus other allowance as admissible under the Rules from time to time against 3% quota of Persons with Disabilities (PWD) w.e.f. the date of his joining in the said post with the conditions that the petitioner's said officiating appointment – (i) is made purely on temporary basis due to exigencies of works in the department and (ii) shall not confer him any right to claim continuation and seniority in the post unless his service is regularized by the constituted Departmental Promotion Committee as per the provisions of the Recruitment Rules attached to the post where the officiating appointment may be terminated at any time without assigning any reasons and notice, observing that other terms and conditions which are not specified in the said order shall be

governed by the rules and regulation of the Government in force from time to time.

**6.** In the said order dated 12.01.2018, it is also observed that on his appointment to the post of Executive Engineer (EE), the State Respondents in the RWD in the interest of public service is further pleased to order for posting of the petitioner as EE at RWD Poma Division, Yupia in place of the respondent No. 5, EE, who is transferred and posted as EE (P&D) in the Office of the Chief Engineer (CE, in short) (RWD), Eastern Zone vice one Sri Hage Duyu, EE transferred with immediate effect and until further order.

**7.** Pursuant to the said order dated 12.01.2018, the petitioner submitted his joining report before the Superintending Engineer RWD, Itanagar. As the respondent No. 5 did not handover charge to the petitioner, the Superintending Engineer, RWD Circle Itanagar on 24.01.2018 directed the respondent No. 5 to handover full and final charges of RWD Poma Division, Yupia within 3 days from the said order.

**8.** However, by an order dated under No.SRWD-15/2004(PT) dated 21.02.2018 (Annexure-4 to the writ petition), the Secretary, RWD, Government of Arunachal Pradesh as a temporary arrangement and in the interest of public service allowed the respondent No. 5 to hold the charge of EE at RWD Poma Division till 31.03.2018 specifying in the same that the petitioner will take over charge of EE, RWD Poma Division from the said respondent No. 5 after 31.03.2018 in compliance of the earlier Government order dated 12.01.2018. In the said order dated 21.02.2018 it is also observed that for the time being the petitioner who is under order of posting to RWD Poma will join in the Office of the CE, RWD (P&D).

**9.** In terms of said order dated 21.02.2018 noted above, the CE (P&D), RWD in the forenoon of 02.04.2018 released the petitioner from his establishment, enabling him to join as EE at Yupia. Accordingly, the petitioner on 02.04.2018 submitted his joining report as EE, RWD, Poma Division, Yupia before the Superintending Engineer, Itanagar.

**10.** As the respondent No. 5 in terms of the order dated 21.02.2018, did not handover charge of EE of RWD, Poma Division, Yupia to him, the petitioner on 04.05.2018 submitted an application (Annexure-7 to the writ petition), before the CE (West Zone), RWD Government of Arunachal Pradesh, requesting him to allow the petitioner to assume ex-parte charge of RWD, Poma Division, Yupia as per the Office Memorandum (O.M.) of the State Government in the Administrative Reforms Department dated 13.02.2007 as well as the order dated 21.02.2018 of the Government in the RWD. The CE, RWD (West Zone) by his communication dated 05.04.2018 (Annexure-8 to the writ petition), allowed the petitioner to assume ex-parte charge of the Office of the EE, RWD, Poma Division, Yupia and accordingly, on 06.04.2018 the petitioner took ex-parte charge of the EE, RWD Poma Division, Yupia.

**11.** Within a few days of taking charge of the EE, RWD Poma Division Yupia, in terms of the orders of the State respondents in the RWD dated 12.01.2018 and 21.02.2018, respectively (Annexures – 1 & 4 to the writ petition), the State respondents in the RWD by the impugned order dated 26.04.2018 partially modified the aforesaid two orders and re-posted the petitioner as the EE in the Office of the CE, RWD (P&D) and retained the respondent No. 5 as EE, RWD Poma Division Yupia.

**12.** On 01.05.2018, the petitioner submitted a representation before the Secretary to the Government of Arunachal Pradesh in the RWD for redressal of his grievances, which according to the petitioner has not yet been disposed off.

**13.** Hence, this writ petition by the petitioner praying for setting aside and quash the said order dated 26.04.2018 (Annexure-10 to the writ petition) of the respondents in the RWD Department stating that the same has been issued on extraneous consideration by the State respondents as they succumbed under the caprice and whims of political bosses, i.e. the Hon'ble Minister in the U.D., T.P., ULB, Housing, Law & Justice and Land Management of Government of Arunachal Pradesh and the Parliamentary Secretary in the UD, Housing, PWD etc. and also the President of BJP, Arunachal Pradesh.

**14.** The Court while issuing notice to the respondents in this case on 03.05.2018, in the interim issued an order of *status quo* as on the said date with regard to the impugned order dated 26.04.2018 issued on 27.04.2018 (Annexure-10 to the writ petition), which is still in force.

**15.** The petitioner though stated the impugned order dated 26.04.2018 is malafide and bias and has been issued at the behest of the Minister in the U.D., T.P., ULB, Housing, Law & Justice and Land Management of Government of Arunachal Pradesh and the Parliamentary Secretary in the UD, Housing, PWD etc, Arunachal Pradesh as well as the President of BJP, Arunachal Pradesh; but he has not made those persons as party respondents in the present proceeding.

**16.** The respondent No. 5 has filed his affidavit in the matter to which the petitioner has also filed his reply. Though the State respondents received the records and the Court on earlier occasions directed them to file their affidavit in the matter and fixed today for admission hearing but, the official respondent Nos. 1 to 4 did not file any affidavit in the matter inspite of Court's order. However, the said respondents have placed the relevant records in original before the Court pertaining to the orders involved in this case.

**17.** The petitioner stated that Minister in the UD, TP, ULB, Housing, Law & Justice and LM of Government of Arunachal Pradesh, the Parliamentary Secretary in the UD, Housing, PWD and the President of BJP, Arunachal Pradesh by their communications under UO notes dated 06.03.2018, 05.03.2018 and 30.01.2018 respectively requested the concerned Departmental Minister of RWD of the State to retain the respondent No. 5 as EE, RWD, Poma Division for Socio Economic Development since it might hamper the speedy implementation of the ongoing projects at Poma Division and further requested the Chief Minister of the State to retain the said respondent at Poma Division by interfering his transfer order.

**18.** The petitioner has also placed before the Court that as per the O.M. of the State Government, a Government employee can remain at a place of posting for a maximum of 2 (two) years and the Arunachal Pradesh Rules of Executive Business, 1987 framed under Clauses 2 and 3 of Article 223 of the Constitution of India, amongst others, provides that –

*proposals for the appointment and posting of the officers of all Group 'A' and equivalent officers including the non officials treated at par with Group 'A' officers and proposal for award of any penalties for such officers is required to be submitted to the Chief Minister before the issuance of the order.*

**19.** It is also stated by the petitioner that in compliance of the orders dated 12.01.2018 and 21.02.2018, noted above, he was already released from the Office of the CE, RWD (P&D), Itanagar and in compliance of the same he has already joined as EE, RWD Poma Division, Yupia and had taken over charge of the said post, prior to the impugned order dated 26.04.2018 issued on 27.04.2018 and therefore, by the impugned order dated 26.04.2018 issued on 27.04.2018, the earlier orders dated 12.01.2018 and 21.02.2018 cannot be modified, after giving effect of the same, so as to retain the respondent No. 5 that too on extraneous consideration at the behest of the political bosses. Further, it is also submitted by the petitioner that the said order of re-posting him as EE in the Office of the CE, RWD (P&D), Itanagar as reflected in the impugned order dated 26.04.2018 issued on 27.04.2018 is without the approval of the Chief Minister of the State, as provided in the Rules of Executive Business, 1987 of the State.

**20.** The respondent No. 5 by filing his affidavit contended that the petitioner is only an Assistant Engineer and only allowed to hold the post of EE on officiating basis, which is only a stop gap arrangement, that cannot be said to have been given on promotion, as the substantive post of the petitioner is only an AE and not an EE. The respondent No. 5 also stated that it is only on the joint note dated 10.10.2017 of the same set of Minister in the U.D., T.P., ULB, Housing, Law & Justice and Land Management and the Parliamentary Secretary in the UD, Housing, PWD of the State of Arunachal Pradesh to the Departmental Minister of the RWD of the State, posting order of the petitioner dated 12.01.2018 was passed, by which he was posted as an EE, RWD Poma Division, Yupia in the place of said answering respondent No. 5 and therefore, it does not lie on the mouth of the petitioner to state that the impugned order dated 26.04.2018 issued on 27.04.2018 had been issued on extraneous consideration at the behest of those political persons.

**21.** The said respondent further submitted that as per the information obtained through RTI, it is not only that the petitioner by the order dated 12.01.2018 obtained his place of posting as EE, RWD Poma Division in the place of said respondent No. 5 on the recommendation of the Hon'ble Minister in the U.D., T.P., ULB, Housing, Law & Justice and Land Management as well as the Parliamentary Secretary in the UD, Housing, PWD etc., of the Government of Arunachal Pradesh; but the same is also without any approval of the Chief Minister of the State as required. The respondent No. 5 further contended that he is a regular EE in the Department of RWD and he cannot be replaced by the petitioner, who is only an AE in the RWD and the order dated 12.01.2018 pertaining to the posting of the petitioner as an EE at RWD, Poma Division, Yupia in his place was not in the interest of public service, but the same was issued only to accommodate the writ petitioner.

**22.** The respondent No. 5 further submitted that the Office of the CE, RWD (P&D), Itanagar and that of EE, RWD Poma Division, Yupia are within the jurisdiction of Itanagar only and by the impugned order dated 26.04.2018 there is no actual change of station, but merely shifting of the Office building within the jurisdiction of Itanagar itself and therefore, the impugned order dated 26.04.2018 cannot be termed as a transfer order in strict sense. It is also stated by the respondent No. 5 that though the petitioner has claimed malafide with regard to the issuance of the impugned order dated 26.04.2018, but same is not tenable since these are the same political persons, whom the petitioner approached for his order of posting as EE, RWD Poma Division, i.e. the order dated 12.01.2018 by which the petitioner tried to replace the said respondent No. 5.

**23.** Relying on a judgment dated 28.09.2016 passed by a Single Bench of this Court in WP(C) No.257(AP)2016 (*Sri Niapung Konia -Vs- Sate of AP and 3 other*) the respondent No.5 stated that in the said case this Court has held that –

*"The post of Assistant Engineer is subordinate to the post of Executive Engineer in the service hierarchy and as such, an Assistant Engineer can be transferred to a substantive post of Assistant Engineer only and only after taking over charge in his substantive post of Assistant Engineer, the incumbent would be able to hold the additional charge of Executive Engineer, if the exigencies of service so*

*required and an Assistant Engineer could not have been and cannot be transferred to the post of Executive Engineer."*

**24.** It is also stated by the respondent No. 5 that a Division Bench of this Court vide order dated 04.09.2017, passed in WA No. 247/2017 (*Sri Nyakpu Yangfo -Vs- Sate of AP and 3 other*) have held that –

*"on the basis of UO note dated 26.04.2015 of a MLA and a Parliamentary Secretary when the appellant came to be posted as an EE of PWD at Seppa Division, the beneficiary of the said process cannot question the legality and validity of a process initiated by the same Political persons in favour of another person as EE of PWD at Seppa Division, replacing the former by a transfer order and it would not lie in the mouth of the appellant to allege arbitrariness on the part of those politician and or to allege any illegality in the transfer order."*

**25.** Mr. Ratan, learned counsel for the respondent No. 5 also submitted that the respondent No. 5 has filed a writ petition being WP(C) No. 235/2018 challenging the Order dated 12.01.2018 by which the petitioner an Assistant Engineer of RWD has been allowed to hold the post of Executive Engineer on officiating basis against the 3% quota of Persons with Disabilities, on the basis of which he has been allowed to be an Executive Engineer in the RWD Poma Division, Yupia transferring the said respondent No. 5 from the said Division and stated that the same is yet to be listed for motion. It is also submitted by the respondent that the appointment of the petitioner as an Executive Engineer under the 3% quota under the provisions of Persons with Disabilities has not been approved by the concerned authority concerned including the Chief Minister of the State as per the information obtained through RTI and has also placed the communication dated 17.01.2018 of the authorities of the RWD obtained through RTI regarding the promotion and posting of the petitioner issued vide order dated 12.01.2018 along with the notes of the Minister and Parliamentary Secretary etc.

**26.** Mr. R.H. Nabam, learned Addl. Advocate General appearing for the State respondent Nos. 1 to 4 submitted that by the impugned order dated 26.04.2018 though petitioner has been transferred to the Office of the CE, RWD (P&D) at Itanagar but by the said order of modification, the order of promotion of the petitioner dated 12.01.2018 from the post of AE to the post of EE in the RWD has not been effected. Mr. Nabam, learned Additional AG has placed the relevant records of the case before the Court.

**27.** Mr. Mazumdar, learned Senior counsel from the petitioner's affidavit-in-reply to the affidavit of the respondent No.5 submitted that by an order under No. SRWD-33/2006 dated 17.09.2014 issued on 25.09.2014 by the authorities in the RWD of the State promoted the respondent No. 5, an AE of RWD to the post of EE (C) under RWD on officiating basis w.e.f. from the date of his joining in the post along with 3 others, wherein it was also observed that such officiating promotion is made purely on temporary basis due to exigencies of work in the department, where such officiating promotion shall not confer on him any right to claim for continuation and seniority in the post unless his service is regularised by a constituted DPC as per the provision of Recruitment Rules attached to the post where such officiating promotion is terminable at any time without assigning any reasons and notice. From the said order dated 17.09.2014, the petitioner has placed before the Court that the respondent No. 5 is also an AE and not a regular EE of RWD as claimed by him and as such the petitioner stated that since he is similarly placed as that of the respondent No. 5, the contention of the respondent No. 5 that the petitioner cannot replace the former by transfer and posting does not arise. In this regard the petitioner has also placed the list of EEs under the RWD as on 16.01.2018 to show that the respondent No. 5 has been serving as an EE on officiating basis at Poma division of RWD w.e.f. 15.05.2015, whereas the petitioner is serving as an EE in the same Poma division of RWD on officiating basis w.e.f. 02.04.2018.

**28.** Mr. Mazumdar from the said affidavit-in-reply of the petitioner also placed before the Court that promotion of the petitioner under 3% quota of Persons with Disabilities has been duly approved by the departmental Minister as well as the Chief Minister of the State and also by the Secretaries of the said department. It is also placed before the Court that the petitioner on 17.05.2018 through RTI received such information. In support of his submission against the impugned order dated 26.04.2018, Mr. Mazumdar has placed the following two Judgments of this Court. The Judgment dated 26.02.2014 passed in WP(C) 978/2014 (*Arunav Dey Vs. State of Assam and 2 others*) wherein the Court referring the Judgments of this Court in the cases of *Zakir Hussain Vs. State of Assam and others* reported 2001 (3) GLT 67, *I. Moatemjen (Dr.) Vs. State of Nagaland*, reported in 2011 (5)

*GLT 513 and Dubom Bagra Vs. State of Arunachal Pradesh and others*, reported in 2013 (5) GLT 487 have held that –

*"once a transfer order is made in public interest, the subsequent order cancelling or superseding the earlier order must be supported by sufficient reasons and if any such order is passed in a cryptic manner without assigning any reason, such order would not be in public interest while recommendation of an MLA or a Minister per se would not render an order of transfer invalid, interference by Minister or MLAs in such administrative decision making, particularly when they are not at all connected with the department concerned, would not be justified."*

**29.** Mr. Mazumdar also placed a decision of this Court in the case *Dilip Kr. Saikia Vs. State of Assam and others*, reported in 2005 (4) GLT 371 wherein it is held that --

*"If the exercise of power is based on extraneous consideration for achieving an alien purpose or an oblique motive, it would amount to malafide and colourable exercise of power. Frequent transfer, without sufficient reason to justify such transfer cannot to be held as bonafide. A transfer is malafide when it is made not for professed purpose such as normal course or in public or administrative interest or in the exigencies of service but for other purpose, such as to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative action should be just and fair. An order of transfer is to satisfy the test of Article 14 and 16 of the Constitution; otherwise the same will be treated as arbitrary.*

*A transfer order issued as in the instant case only to accommodate another person and that too without affording any opportunity to the person whose interest is affected, cannot be said to be an order issued in administrative exigencies."*

**30.** From the records of File No. SRWD-166/2017 placed by Mr. Nabam learned Additional Advocate General of the State it is seen that the petitioner filed an application on 18.04.2017 before the Secretary, Rural Works Department of the State to consider his case under the provisions of 3% quota of Right of Person with Disabilities Act and to promote him from the post of Assistant Engineer to the post of Executive Engineer in the said Department which are lying vacant for promotion and are at the disposal of the said department, stating that he served as an Assistant Engineer under RWD for more than 14 years and that he suffers from Low vision of 50% permanent disability that cannot be recovered in any manner as per the Certificate signed by the Board of Doctors in his favour and issued by the Government of Arunachal Pradesh in the Social Welfare,

Woman and Child Development Department, Naharlagun. Along with his said application the petitioner also enclosed his appointment order of AE dated 29.04.2004, the certificate of disability issued by the Board of Doctors and his Identity Card for Persons with Disabilities issued by the Circle Officer for Deputy Commissioner, Yupia, Papum Pare dated 03.08.2003. After verification of the documents of the petitioner, as it was found that the Rural Works Department of the State has not been identified as a department to implement the policy of reservation for Persons with Disabilities, the said department by letter No. SRWD-166/2017/266 dated 29.08.2017 sought for necessary clarification from the Department of Social Justice and Empowerment and Tribal Affairs of the State in that regard. Accordingly, the Department of Social Justice and Empowerment and Tribal Affairs of the State by its letter Nos. SW-13/2007(PIL) dated 22.09.2017 and 22.11.2017 clarified that as per the Notification dated 29.07.2013 of the Government of India in the Ministry of Social Justice and Empowerment (Department of Disability Affairs) at Serial Nos. 290 and 291, the posts of Assistant Engineer (Civil) and Executive Engineer (Civil) respectively have been identified to be reserved for Persons with Disabilities under Group 'A' posts and in view of the same, intimated that the RWD of the state that it required to follow the said Notification of the Government of India for reservation of 3% posts for Persons with Disabilities in the cycles of 100 point Post Based Roaster, where Point Nos. 1, 34 and 67 are reserved for such Persons. As per the Office Memorandum under No. OM-40/2006 dated 21.06.2012 of the Department of Administrative Reforms of the State in the cycles of 100 point Post Based Roaster, where Point No. 1, 34 and 67 are reserved for Persons with Disabilities, the Point No. 1 has been earmarked for Blindness; Point No. 34 for Hearing Impairment and Point No. 67 for Locomotor Disability or Cerebral Palsy Category of Persons with Disability respectively.

**31.** As the RWD of the State found that four posts of EEs in the said Department have fallen vacant due to officiating promotion of four senior EEs to the posts of Superintending Engineers (SE) and as per record no Persons with Disabilities has been filled up the post of EE (Civil) in the RWD of the State so far, therefore, the said Department proposed to fill up three posts out of four said

vacancies of EEs by giving officiating promotion from senior AEs, keeping one post reserved for PwD quota by giving officiating promotion from AE (Civil) to EE (Civil) by following the provisions of Clause 7 'Repeal & Savings' of the Recruitment to the posts of Executive Engineer Rules of the State. The RWD accordingly held that Point No. 1 of said PwD in the cycles of 100 point Post Based Roaster of EEs in the said department is a back log point. The said record also discloses that the DPC for regularisation of few officiating promotion of Chief Engineers, Superintending Engineers of the department could not be held and further, gradation list of AEs of the department could not be finalised due to Court cases. Considering all these and in the said backdrop, the department decided to allow the petitioner a regular AE (Civil) to hold the post of EE (Civil), reserved for PwD, on officiating basis in the EEs scale of pay as he possesses the requisite Degree and already completed 13 years of service in the post of AE (Civil), who fulfills the eligibility criteria for promotion to the post of EE (Civil) under the PwD quota. It is seen from the said record that after obtaining the necessary approvals from the Department of Administrative Reforms of the State on 22.12.2017, the Departmental Secretary of RWD on 22.12.2017, the Departmental Minister of RWD on 02.01.2018 and the Chief Minister of the State on 11.01.2018, the order dated 12.01.2018 (Annexure-1 to the writ petition) was passed allowing the petitioner to hold the post of EE (Civil) on officiating basis in pre-revised Scale of Pay of EE in the Pay Band 3, at Rs. 15,600/- - Rs. 39,100/- + Grade Pay of Rs. 6,600/- plus other allowances with certain terms and conditions. On his said appointment to the post of EE, by the said order dated 12.01.2018 the petitioner has been posted in the RWD Division, Papum Poma, Yupia in place of the respondent No. 5 and by the same order, the said respondent has been transferred and posted as EE (P&D) in the Office of the CE, RWD, East Zone.

**32.** The said record also reveals that while recommending the petitioner for his promotion to the post of EE, RWD against existing vacant reserved post of PwD, the departmental Minister also brought to the notice of the Chief Minister of the State that the Minister in the UD & Housing and Town Planning etc., and the Parliamentary Secretary in the UD, Housing etc. of Arunachal Pradesh made a request for posting of the petitioner at Papum Pare Division, Yupia as the present

incumbent serving in the said post, i.e., the respondent No. 5, has already completed his normal tenure at Yupia and has expressed his desire to be relieved from his present posting owing to health ground. In the said recommendation the departmental Minister wrote to place the respondent No. 5 as EE (P&D) under CE (P&D), E/Zone vice Er. Hage Duyu, EE, transferred, which was accordingly endorsed by the Chief Minister of the State on 11.01.2018.

**33.** From the records of File No. SRWD-15/2004(PT) regarding transfer and posting of EE in RWD it is seen that after such order dated 12.01.2018 allowing the petitioner to hold the post of EE (Civil) RWD, Poma Division Yupia, on 17.01.2018 one Smti Nabam Sukia Ex. ZP. Member, Upper Balijan, Sangdupota Circle, Papum Pare District; one Shri Nabam Tangum, ASM, Jote Panchayat, Sangdupota Circle, Papum Pare District and Sri Mallo Nai, GPM, Kulia, Jote Panchayat, Sangdupota Circle, Papum Pare District (without signature of the third one) submitted a representation before the Secretary RWD to recall/cancel the transfer of the respondent No. 5 from Poma Division to the Office of the CE, Itanagar and to consider the same stating that the said transfer of respondent No. 5 is politically motivated and his transfer will hamper the developmental work which progressed in full swing in Poma Division, Yupia. On 18.08.2018, the respondent No. 5 filed a representation before the Secretary RWD to recall his transfer Order from RWD Poma Division to the Office of the CE, Itanagar stating that petitioner is junior to him, he should be kept under Planning Division for smooth functioning of work and as visits in some area are to be completed in January, 2018 and DPRs to be submitted in February, 2018 and that said time is not appropriate for transfer and that his transfer is politically mandated. On 30.01.2018, former President of BJP of the State wrote to the Chief Minister that transfer of the respondent No. 5 is untimely and for his good work, his request for retention of transfer order seems considerable and requested the Chief Minister of the State to retain the transfer and posting of respondent No. 5 as per norms of the Department. Considering the fact that respondent No. 5 has served as EE at Poma Division, Yupia around three years, which is more than normal tenure of two years as per Government order, since his transfer was on public interest and considering his request, the respondents in the RWD decided to retain him at

Poma Division, Yupia till 31<sup>st</sup> March, 2018 and accordingly passed the Order dated 21.02.2018 (Annexure-4 to the writ petition). However, after receipt of the recommendations of the Minister in the UD & Housing and Town Planning etc., as well as from the Parliamentary Secretary in the UD, Housing etc. in their UO notes dated 06.03.2018 and 05.03.2018 respectively to the departmental Minister of RWD for retention of the respondent No. 5 at Poma Division, Yupia, the File was again moved, wherein the department concerned found that the petitioner was already released from the Office of the CE, in terms of the order dated of 21.02.2018 (Annexure-4) and that he joined as EE at Poma Division on 02.04.2018 and also took ex-parte charge of the said post on 06.04.2018 and as such, for suitable view, placed the matter before the departmental Minister and approval of the Chief Minister of the State. Thereafter, on 10.04 2018 the departmental Minister endorsed the file to the Chief Minister of the State and on 25.04.2018, the Chief Minister endorsed his note approving for retention of the respondent No. 5.

**34.** But the said record also reveals that there is no approval of the Chief Minister of the State or the departmental Minister regarding transfer and posting of the Petitioner from the post of EE (Civil), RWD Poma Division, Yupia as required under the provisions of the Rule 32(h) of the Arunachal Pradesh Rules of Executive Business, 1987 wherein it is specified that –

*32. The following cases shall be submitted to the Chief Minister before the issue of orders – (h) Proposals for appointment and posting of the officers of all Group 'A' and equivalent including the non officials treated at par with Group 'A' Officers and proposals for such Officers.*

**35.** In WA No. 247/2017 (*Sri Nyakpu Yangfo -Vs- Sate of AP and 3 other*) decided on 04.09.2017, the Hon'ble Division Bench of this Court while rejecting the prayer of the appellant on the ground that the appellant came to be posted as an EE of PWD at Seppa Division at the request made by the MLA and a Parliamentary Secretary, and being a beneficiary of the said process, later he cannot question the legality and validity of a process initiated by the same Political persons in favour of respondent as EE of PWD at Seppa Division, replacing the former by a transfer order, where it is also held that it would not lie in the mouth

of the appellant to allege arbitrariness on the part of those politician and or to allege any illegality in the transfer order, the said Court while expressing the said view, was fully aware that the said appellant has already completed the normal tenure of two years at his place of posting as per Government order.

**36.** It is seen that both the respondent No. 5 and the petitioner are AEs (Civil) in RWD of the State and respondents in RWD allowed both of them to hold the post of EEs on officiating basis in the pay scale of EE. It is also seen that respondent No. 5 is senior in service than the petitioner and the respondents in the RWD on finding that there is back log in reservation of Persons with Disabilities category with regard to the posts of EE (Civil) in the said department, considering the case of the petitioner under 3% quota of Persons with Disabilities and after obtaining due approval of the required authorities, including the Chief Minister of State, accordingly at Point No. 1 of such PwD in the cycles of 100 point Post Based Roaster of EEs in the said department, the petitioner, a Person with Visual Disabilities, has been allowed to hold the post of EE (Civil) on officiating basis finding him eligible for his promotion to the post of EE (Civil) under the PwD quota. It is also seen that the order of posting of the petitioner dated 12.01.2018 was issued in the interest of public service, but the perusal of the impugned order dated 26.04.2018 and the relevant record in that regard, placed before the Court, does not reveal that the same was issued in public interest, except on the request of the Minister in the UD & Housing and Town Planning etc., and the Parliamentary Secretary in the UD, Housing etc. of the State of Arunachal Pradesh in their UO notes dated 06.03.2018 and 05.03.2018 respectively.

**37.** As the petitioner has joined the post of EE (Civil) at RWD Poma Division on 02.04.2018, took ex-parte charge of the said post on 06.04.2018 in compliance of the orders of RWD of the State dated 12.01.2018 (Annexure-1) and 21.02.2018 (Annexure-4) respectively, of which the respondents in the State Government are fully aware of at the time of issuing the impugned modification order of transfer and posting dated 26.04.2018 (Annexure-10), as seen from the records, issued the same without assigning any sufficient reasons, which has not been issued in the exigency of any public service, but on request of political persons, not connected with the concerned department. But the said political persons when

recommending the petitioner by their joint note on 10.10.2017 to place him as EE (Civil) at RWD, Poma Division, Yupia they were aware that the respondent No. 5 has already completed the tenure of two years in the said place of posting, where the said respondent expressed his desire to be relieved from his said posting owing to health ground and the said fact has not been denied by the respondent at any point of time.

**38.** The Constitution Bench of the Hon'ble Supreme Court in the case of *E.P. Royappa Vs. State of Tamil Nadu*, reported in (1974) 4 SCC 3 have observed –

*It is also necessary to point out that the ambit and reach of Articles 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Articles 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine. It is therefore, no answer to the charge of infringement of Articles 14 and 16 to say that the petitioner had no right to the post of Chief Secretary but was merely officiating in that post.*

*"It is an accepted principle that in public service transfer is an incident of service. It is also an implied condition of service and appointing authority has a wide discretion in the matter. The Government is the best judge to decide how to distribute and utilise the services of its employees. However this power must be exercised honestly, bona fide and reasonably. It should be exercised in public, interest. If the exercise of power is based on extraneous considerations or for achieving an alien purpose or an oblique motive it would amount to mala fide and colourable exercise of power. Frequent transfers, without sufficient reasons to justify such transfers, cannot but be held as in fide. A transfer is mala fide when it is made not for professed purpose, such as in normal course or in public or administrative interest or in the exigencies of service but for other purpose that is to accommodate another person for undisclosed reasons. It is the basic principle of rule of law and good administration that even administrative actions should be just and fair."*

**39.** In the present case, from the perusal of the records placed by the State respondents, this Court is of the view that the action of the respondents in issuing the impugned order under No. SWRD-15/2004(PT) dated 26.04.2018 of the Rural Works Department of the State (Annexure-10 to the writ petition) is based on extraneous considerations, for achieving an alien purpose and with an oblique motive. It is found that the said order dated 26.04.2018 has neither been issued in normal course nor in public or administrative interest or in the exigencies of service, but for other purpose, that is to accommodate the respondent No. 5, for

undisclosed reasons, made for professed purpose, which is mala fide. The said administrative action of the RWD Department of the State in issuing the said order dated 26.04.2018 is in colourable exercise of power and was not just and fair.

**40.** For the reasons above the impugned order under No. SWRD-15/2004(PT) dated 26.04.2018 of the Rural Works Department of the State (Annexure-10 to the writ petition) being bad in law and illegal cannot sustain in the eye of law and is accordingly set aside and quashed. The impugned order dated 03.05.2018 passed earlier in this case stands merged with this order.

**41.** With the aforesaid observation, this writ petition stands allowed.

**JUDGE**

*Rupam*