

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

ITANAGAR PERMANENT BENCH

WP(c) NO. 321(AP)2018

Sri Niranjan Kumar Jha

Son of Shri Siyanand Jha, aged about 43 years, presently working as Executive Engineer(E), Namsai Electrical Division, Department of Power, Namsai, Arunachal Pradesh. Mobile No. 9436222860.

.....*Petitioner*

- *Versus* -

1. The State of Arunachal Pradesh, represented by the Commissioner & Secretary to the Government of Arunachal Pradesh, Power Department, PO Itanagar, PIN 791111.
2. The Secretary to the Governor of Arunachal Pradesh, Itanagar 791111.
3. The Parliamentary Secretary(Power), Government of Arunachal Pradesh, Itanagar 791111.
4. The Chief Secretary to the Government of Arunachal Pradesh, Itanagar 791111.
5. The Chief Engineer(Power), WEZ/EEZ/CEZ/TPMZ, Department of Power, Government of Arunachal Pradesh, Itanagar 791111.
6. Shri Chow Tewa Mein, M.L.A., Chowkhowa and Parliamentary Secretary, Environment & Forest Department, Arunachal Pradesh, Itanagar 791111.
7. Shri Chow Zingnu Namchoom, M.L.A. & Parliamentary Secretary (Planning), Government of Arunachal Pradesh, Itanagar 791111.
8. Shri Tarik Mize, Executive Engineer, Tawang Electrical Division, Arunachal Pradesh.
9. Shri Joram Lali, Executive Engineer, Pasighat Electrical Division, Arunachal Pradesh.
10. Shri Sang Dorjee, Executive Engineer, Office of the S.E.(E), Dirang, Arunachal Pradesh.

11. Shri A. K. Paul, Executive Engineer, Office of the CE(P), WEZ, Itanagar, Arunachal Pradesh.
12. Shri Tajon Taggu, Executive Engineer, Sagalee Electrical Division, Arunachal Pradesh.
13. Shri Katem Libang, Executive Engineer, Rumgong Electrical Division, Arunachal Pradesh.
14. Shri Dogin Tade, Executive Engineer, Office of the C.E.(P), TPMZ, Itanagar, Arunachal Pradesh.
15. Shri Torik Diyum, Executive Engineer, Anini Electrical Division, Itanagar, Arunachal Pradesh.
16. Shri Nido Taka, Executive Engineer, Capital Electrical Division, Itanagar, Arunachal Pradesh.
17. Shri L. Khimhun, Executive Engineer, Miao Electrical Division, Arunachal Pradesh.
18. Shri Tami Jerang, Executive Engineer, Deomali Electrical Division, Arunachal Pradesh.
19. Shri Zomba Hasho, Executive Engineer, Seppa Electrical Division, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner :

Mr. P. K. Roy Choudhury
Mr. R. R. Choudhury
Mr. A. K. Singh
Mr. D. T. Sermupa
Mr. T. Sangpa
Mr. T. Sering

Advocates for the respondents:

Mr. Duge Soki, Addl. Sr. Govt. Advocate

Mr. P. K. Tiwari, Sr. Advocate
Mr. A. Bhattacharjee
Mr. D. Taye
Mr. T. Sangma

:::B E F O R E:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 30.08.2018

Date of Judgment & order : 21.09.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. P. K. Roy Choudhury, learned counsel, appearing on behalf of the petitioner.

Also heard Mr. Duge Soki, learned Addl. Senior Government Advocate, appearing on behalf of State Respondents No. 1 to 5; and Mr. P. K. Tiwari, learned senior counsel appearing on behalf of private respondent No. 11.

2. By this petition preferred under Article 226 of the Constitution of India, the petitioner, who is an Executive Engineer(E), has basically challenged the impugned transfer order, dated 31.05.2018, issued on 05.06.2018, by the respondent No. 1/Commissioner(Power), Government of Arunachal Pradesh, by which, he has been transferred from the office of the Namsai Electrical Division, Namsai, and posted to the office of the Superintending Engineer(E), Dirang, as EE(Planning).

The petitioner, by this petition, has further challenged the impugned order, dated 22.06.2018, passed by the respondent No. 1/the Commissioner (Power), Government of Arunachal Pradesh, thereby rejecting the petitioner's representation, dated 05.06.2018.

3. It is to be stated that the petitioner, herein, had earlier filed the writ petition viz. WP(c)278(AP)2018, which was preferred against the above-quoted impugned transfer order, and the same was disposed of by the learned Single Judge at the motion stage itself by directing the respondent No. 1/ Commissioner (Power), Government of Arunachal Pradesh, to consider and dispose of the petitioner's representation, dated 05.06.2018, on or before 22.06.2018, and to maintain status quo, till then.

4. Now, by filing the instant writ petition for the second time, the petitioner Shri Niranjana Kumar Jha, has contended that his representation, dated 05.06.2018, for retention at Namsai Electrical Division as Executive Engineer(E),

was rejected by the respondent No. 1/Commissioner(Power), Government of Arunachal Pradesh, vide impugned order, dated 22.06.2018, without proper application of mind, by indicating that the academic session of all schools has just started whereas the academic session had already started in March, 2018, and by the month of June, 2018, it has completed 3(three) months. In the said order, according to the petitioner, the respondent No. 1 did not state anything about the petitioner's allegation regarding political interference, but only stated that transfer and posting of government employees is the prerogative of the State Government and the employees are bound to comply with the Government's order.

5. The petitioner, in this writ petition, has further contended that the respondent No. 1/Commissioner(Power), Government of Arunachal Pradesh, had passed the impugned order, dated 22.06.2018, in a very mechanical manner under the duress of political heavyweights, without taking into consideration about the *malice* that has been specifically alleged by the petitioner. Among other allegations thrown at the State Respondents, the petitioner has alleged that the standard adopted by the respondent No. 1 in disposing of the petitioner's representation, dated 05.06.2018, is a departure from the set standards and norms and such an action is in breach of the principles of natural justice, thereby smacks biasness, unreasonableness and arbitrariness.

6. Situated thus, the petitioner, in view of the strength of the interim order, dated 22.06.2018, regarding *status quo* in respect of the petitioner with regard to his posting place at Namsai, passed by this Court, in WA 193/2018, has contended that he is still posted at Namsai and unless, an interim order is passed by the Court in this petition, the petitioner will suffer irreparable loss and injury.

7. In the above backdrop of the case, the petitioner by preferring the instant petition, under Article 226 of the Constitution of India, has prayed for quashing and setting aside the impugned order, dated 22.06.2018, passed by the respondent No. 1/Commissioner(Power), Government of Arunachal Pradesh,

rejecting the prayer of the petitioner for retention at his present place of posting i.e. Namsai as well as recalling of the impugned transfer order, dated 31.05.2018, issued on 05.06.2018, in so far as the present petitioner is concerned.

8. It is seen that this Court, while issuing notice to the respondents, had stayed the operation of the impugned order, dated 22.06.2018, passed by the respondent No. 1/Commissioner(Power), Government of Arunachal Pradesh, Itanagar.

9. Mr. Roy Choudhury, learned counsel for the petitioner, in support of his case, has relied on the decision rendered in the case of *Bharat Singh: Dattu : Nathu Ram : Ram Phal -v- State of Haryana, (1988) 4 SCC 534*.

10. The State Respondents, represented by Mr. Soki, learned Addl. Senior Government Advocate, instead of filing the affidavit-in-opposition, has placed before this Court, the relevant records for effective and speedy disposal of the matter at hand. I have also heard and taken note of his arguments which will be recorded in the succeeding paragraphs.

11. Mr. Tiwari, learned senior counsel, at the first instance, submitted that he could not file the affidavit-in-opposition on behalf of private respondent No. 11 as the connected writ appeal, stated-above, is pending before this Court. He, however, has put-forth his arguments in an exhaustive manner. The Court has duly taken note of it.

12. According to Mr. Tiwari, the transfer order, dated 31.05.2018, issued on 05.06.2018, impugned herein, has been issued by the competent authority i.e. Commissioner(Power), Government of Arunachal Pradesh, and the same has not been issued under the dictum of any political authority as alleged by the petitioner. Learned senior counsel has further submitted that the requests for transfer of respondent No. 11 from the Office of the Chief Engineer(Power),

Western Electrical Zone, Department of Power, Itanagar, to Namsai Electrical Division, Namsai, was made by the two MLA-cum-Parliamentary Secretaries, on separate occasions, to the Minister(Power), Government of Arunachal Pradesh and not to the Commissioner(Power) in any case. In the request made by the Parliamentary Secretary(Env. & Forest) vide U.O. Note, dated 16.05.2018, it has been categorically highlighted that the Deputy Chief Minister of the State of Arunachal Pradesh also desires for transfer of respondent No. 11 to Namsai Electrical Division. So the respondent Commissioner acted correctly and validly as per the guidelines prescribed for transfer and posting of a government employee. Mr. Tiwari submitted that it is also not the case of the petitioner that he was transferred-out of Namsai before the completion of his normal tenure of posting. In fact, the petitioner served as Executive Engineer(Power) at Namsai for more than 2(two) years and he has, thus, completed his normal tenure of posting at Namsai.

13. In the same breathe, Mr. Tiwari, learned senior counsel, has contended that the petitioner's representation, dated 05.06.2018, was considered and disposed of by the authority concerned, by a speaking order, in accordance with law.

14. Furthermore, Mr. Tiwari has submitted that the respondent No. 11 has already taken-over the charge of Executive Engineer, Namsai Electrical Division and in the event, an order is passed by the Court, quashing the impugned transfer order, dated 05.06.2018, the same will cause immense hardships and untold sufferings not only to the respondent No. 11 as he has already joined the said Division with bags and baggage and has been functioning as the Executive Engineer, Namsai Electrical Division, since then, but also to the similarly situated 10(ten) other Executive Engineers(Power), who are transferred by the same common transfer order.

15. Mr. Tiwari, learned senior counsel, apart from his forceful arguments, has also relied on the following citations of the Apex Court:

- (i) *State of U.P. & ors. V. Gobardhan Lal (2004) 11 SCC 402*
- (ii) *Mohd. Masood Ahmad v. State of U.P. & Ors. (2007) 8 SCC 150*

16. Mr. Tiwari has expressly relied upon Paragraph No. 7 as well as Paragraph No. 8 of the above-referred cases, and the same are extracted hereunder, in chronological order, for ready reference:

"7. *It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best, may afford an opportunity to the Officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by mala fides or is made in violation of any statutory provision."*

"8. In our opinion, even if the allegation of the appellant is correct that he was transferred on the recommendation of an MLA, that by itself, would not vitiate the transfer order. After all, it is the duty of the representatives of the people in the legislature to express the grievances of the people and if there is any complaint against an official, 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. It all depends on the facts and circumstances of an individual case. In the present case, we see no infirmity in the impugned transfer order."

17. As regards the arguments placed on behalf of the State Respondents, Mr. Soki, learned Addl. Senior Government Advocate, representing Respondents No. 1 to 5, have made contentions to the effect that if the prayer of the petitioner is allowed by the Court then it will result in cascading ill-effects on the government duties and responsibilities of all the officers, under transfer.

18. According to the learned Addl. Senior Government Advocate, the petitioner by referring to the various schemes and other flagship programmes, as one of the grounds for his retention at Namsai, in his representation, dated 05.06.2018, addressed to the Minister(Power), Government of Arunachal Pradesh, goes to indicate the intention of the petitioner to continue at Namsai till March, 2019, perhaps, for some dubious reasons.

19. The sum and substance of the argument of the learned Addl. Senior Government Advocate is that the petitioner's representation, dated 05.06.2018, was considered and disposed of by the authority concerned i.e. respondent Commissioner(Power), Government of Arunachal Pradesh, in accordance with law by a speaking and reasoned order, as well as in compliance of the terms and conditions stipulated in the order of this Court, passed on 12.06.2018, by the learned Single Judge in WP(c)278(AP) 2018.

20. Mr. Soki further goes on to say that since the respondent No. 11 has already taken-over the charge of Executive Engineer, Namsai Electrical Division, Namsai, therefore, at this belated stage, if the Court accedes to the prayer of the petitioner for extension of his stay at Namsai for another year, then, it will create chaos in the functioning of the entire Department.

21. As per Mr. Soki, learned Addl. Senior Government Advocate, the petitioner has, in fact, miserably failed to demonstrate that the common transfer order, dated 31.05.2016, issued by the Commissioner(Power), Government of Arunachal Pradesh, on 05.06.2018, suffers from *mala fide* and/or malice on the part of the State Respondents and therefore, the allegation levelled by the

petitioner against the respondent authorities regarding *mala fide* lacks *bona fide* and merit. He, therefore, prays for dismissal of the instant case, summarily.

22. So far as the relevancy of the citations placed by Mr. Tiwari, learned senior counsel, in this matter, is concerned, Mr. Soki, learned Addl. Senior Government Advocate, has expressed his agreement in totality, more particularly, to the ratio laid down by the Apex Court in the case of ***Mohd. Masood Ahmed*** (supra).

23. I have heard the rival submissions of the contesting parties at length and I have also minutely scrutinized the records placed by the State Respondents.

24. At the very outset, it needs to be mentioned that the petitioner by preferring the instant petition, has challenged the legality and validity of the order, dated 22.06.2018, whereby the respondent No. 1/the Commissioner (Power), Government of Arunachal Pradesh, rejected the petitioner's representation, dated 05.06.2018, seeking cancellation of his transfer from Namsai Electrical Division to the office of the Superintending Engineer(Electrical), Dirang Electrical Circle, as Executive Engineer(Planning) vide Govt. Order No. PWRS/E-49/2015, dated 31.05.2018, and communicated on 05.06.2018. The petitioner has resisted his said transfer order, alleging *mala fide*, due to political interference and moreover, his elder son, who is studying in Class-X, will appear for Board's Examination to be held in March, 2019, and the Session of Class-X has already commenced in March, 2018. The petitioner's further ground is that his second son is a patient of Asthma and throat infection of adenoids as well as he is a chronic patient of H. Paylori Stomach Infection and High B.P., requiring both of them routine medical check-up.

25. It is noticed that being aggrieved, the petitioner challenged the said impugned order, dated 31.05.2018, issued on 05.06.2018, in WP(c) No. 278(AP) 2018, which was disposed of, at the motion stage itself, by this Court, vide order, dated 12.06.2018, directing the respondent No. 1/the Commissioner(Power),

Government of Arunachal Pradesh, to dispose of the petitioner's said representation, dated 05.06.2018, on or before 22.06.2018 and till then, to maintain 'status quo' as on that day in respect of the posting of the petitioner and the respondent No. 11 at Namsai. The petitioner being further aggrieved, preferred an appeal against the aforesaid order of the learned Single Judge i.e. in WA 193/2018, wherein the learned Division Bench of this Court, by order, dated 22.06.2018, directed to continue with the status quo order and in the meantime, on 22.06.2018, the respondent No. 1/the Commissioner(Power), Government of Arunachal Pradesh, rejected the representation of the petitioner.

26. A bare reading of the impugned order of rejection of the representation, dated 05.06.2018, reveals various grounds; firstly, that the normal tenure of the Government Officers in the respective place of posting is two years, vide Govt. O.M. PERS-126/2004, dated 19.12.2008, and whereas the petitioner completed 2½ years at the present place of posting as Executive Engineer(Electrical), Namsai Electrical Division, and as such, he is liable for transfer; secondly, in terms of CCS(Service) Rules, the employees are bound by the prerogative of the State Government in respect of the transfer and posting; thirdly, that the petitioner's request for his retention at Namsai Electrical Division is not appropriate as the academic session of all schools has just started, and, fourthly, that his reliever Shri A.K. Paul, Executive Engineer(Electrical), has joined on 11.06.2018.

27. Interestingly, in the aforesaid order of rejection of the representation, there is no whisper about the allegation of mala fide and/or political interference in the issuance of the transfer order concerning the petitioner, he raised in the second paragraph of his representation, dated 05.06.2018, which reads, as under:

"The above transfer order has not been issued in the public interest rather due to political will as per "Note Sheets" given by the Hon'ble MLAs of Namsai and Chowkham Constituencies."

The petitioner's above contention was based on the information supplied by the Under Secretary(Power)-cum-PIO, Government of Arunachal Pradesh, dated 07.06.2018, pursuant to his application under the RTI Act, 2005, dated 05.06.2018, vide Annexure-4, relating to U.O. Notes of MLAs/Ministers with File Noting and orders. The aforesaid information contained of copy of letter of request, dated 25.04.2018, made by the respondent No. 7/MLA, Namsai, to transfer the respondent No. 11 Shri A.K. Paul, Executive Engineer(E), presently posted in the Planning Division of the Office of the respondent No. 5/the Chief Engineer(Power), WEZ, Government of Arunachal Pradesh, Itanagar, to Namsai Electrical Division in the interest of public service as Executive Engineer(Power), indicating thereby in place of the petitioner and another request was made by the respondent No. 6/MLA, Chowkham, for transfer of the said respondent No. 11 for his posting at Namsai Electrical Division. For better appreciation of the aforesaid two Letters of Request, they are hereinbelow extracted:

"ARUNACHAL PRADESH

Sub : Transfer and posting of Er. Ashok Kumar Paul, Executive Engineer(E), Power, to Namsai Electrical Division.

Shri Ashok Kumar Paul, Executive Engineer(E), presently posted in the Planning Division of office of the Chief Engineer, Western Electrical Zone, Department of Power, Itanagar, may kindly be transferred and posted as Executive Engineer, Namsai Electrical Division.

Hon'ble Minister(Power, etc.) is requested to transfer him to Namsai Electrical Division in the interest of public service.

Sd/-

*(Chow Zingnu Namchoom)
MLA Namsai and Parl. Secy. Planning*

*Hon'ble Minister(Power, etc.)
UO NO. HPS(PLG)-01/2018/*

Dtd. 25th April, 2018"

The above letter of request was endorsed by the Deputy Chief Minister, Arunachal Pradesh, to the Commissioner(Power), with remark, "Please examine and process", dated 03.05.2018, which endorsement is ascertained from the contents of the Letter of Request, dated 16.05.2018, issued by the respondent No. 6, which reads:

"ARUNACHAL PRADESH

Shri A. K. Paul, Executive Engineer(Electrical), presently posted in the office of the Chief Engineer(Power), Western Electrical Zone, Department of Power, Itanagar, may kindly be transferred and posted as Executive Engineer, Namsai Electrical Division, Namsai, in place Sri N. K. Jha, EE(Electrical).

The case of posting of Sri A. K. Paul as EE(E) Namsai has already been recommended by Chow Zingnu Namchoom, Hon'ble MLA, Namsai and Parliamentary Secretary(Planning) vide his UO No. HPS(PLG)-01/2018, Dtd. 25.04.2018. Chowna Mein, Hon'ble Deputy Chief Minister, Arunachal Pradesh, also desires that Shri Paul be posted at Namsai Electrical Division for the utilization of his services in Namsai and Lohit Districts.

Sd/-

*(Chow Zingnu Namchoom)
MLA Namsai and Parl. Secy. Planning*

Hon'ble Minister(Power etc.)

UO NO. HPS(Enviro. & Forest)/02/AP/2018/212

Dtd. 16.05.2018"

28. The impugned transfer order, dated 31.05.2018, shows that it is a common order of transfer of 12(twelve) Executive Engineers of the Power Department inclusive of the present petitioner. The above Letters of Request for posting of the private respondent No. 11 at Namsai Electrical Division, Namsai, were placed before the Minister of Power, Arunachal Pradesh, not before the respondent No. 1 i.e. Commissioner(Power), Government of Arunachal Pradesh, although based on the aforesaid requests, the respondent No. 11 was posted in place of the petitioner and accordingly, the petitioner is transferred out of the said Namsai Electrical Division and pursuant to the aforesaid impugned order, the respondent No. 11 has been released from the office of the respondent No. 5, on 06.06.2018, and joined at Namsai Electrical Division, on 08.06.2018.

29. The Hon'ble Apex Court in **Gobardhan Lal**(supra) held that the transfer of employee is prerogative of the authorities concerned, and the Court should not normally interfere therewith, except when : (i) transfer order is shown to be vitiated by mala fides, or (ii), in violation of any statutory provision, or (iii) having been passed by an authority not competent to pass an order. The Court held that

the allegations of mala fide must be based on concrete material and must inspire confidence of the Court.

30. In the instant writ petition, the respondents have not filed their affidavit to counter the contentions made by the writ petitioner. As observed by the Hon'ble Apex Court in *Bharat Singh*(supra), if the relevant facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter affidavit as the case may be, the Court will not entertain the point. Herein, the petitioner has annexed all the relevant documentary evidence in support of the averments made in the petition, but the respondents have abstained from making any reply thereto by filing any affidavit in support of what the learned counsel appearing for the respondents advanced their arguments in view of the pendency of the Writ Appeal as stated above.

31. Undoubtedly, the petitioner has completed the tenure of service at Namsai Electrical Division of the Power Department and as such, he is liable to be transferred as per the transfer guidelines of the Government. However, his transfer was preceded by two requests of MLA-cum-Parliamentary Secretaries and the Deputy Chief Minister, Arunachal Pradesh, for posting of the respondent No. 11, specifically, by his name, addressed to the Minister(Power), Arunachal Pradesh, who, in turn, asked the respondent No. 1/Commissioner(Power), Government of Arunachal Pradesh, to examine and process the requests so made indicating thereby application of his independent authority over the matter and accordingly, the respondent No. 1, who is the competent authority, by issuing the impugned common transfer order, posted the respondent No. 11 in place of the writ petitioner.

32. Thus, it is apparent that the posting of respondent No. 11 at Namsai Electrical Division of the Power Department at the behest of the MLAs and Minister, who are not the competent authority under law, caused posting of the respondent No. 11 through the respondent No. 1/the Commissioner(Power),

Government of Arunachal Pradesh. The record does not reveal that there is any allegation against the petitioner.

33. It is the settled principle that the competent authority only has the jurisdiction to transfer the employees considering the exigency of business and in the public interest. The above Note Sheet, of course, does not show that the MLAs specifically suggested for transfer of the writ petitioner out of Namsai Electrical Division, but it is apparent that it was as their behest, the respondent No. 1 has accommodated the respondent No. 11 at Namsai Electrical Division in place of the petitioner. Therefore, there is no case of element of mala fide interference obliquely on the part of the MLA/Minister in the matter of transfer and posting of officials of the State Power Department, keeping aside the independent jurisdiction of the competent authority, i.e. the respondent No. 1/the Commissioner(Power), Government of Arunachal Pradesh.

34. Therefore, in the considered view of this Court, the Order Sheet of the connected office File does not reveal that there was any interference in the transfer of the writ petitioner from the Namsai Electrical Division, but, apparently in the case of the respondent No. 11, against whom, the petitioner has not sought any relief.

35. Consequently, **the instant writ petition stands dismissed.** No costs.

36. In view of the above, the strength of the earlier status-quo order is hereby rendered infructuous.

37. Return the Office File to Mr. Soki, learned Addl. Senior Government Advocate.

JUDGE

Bikash