

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

ITANAGAR PERMANENT BENCH

WP(c.) NO. 418(AP)2018

Sri Sabadam Tayang

Son of Late Tapoto Rayang

Aged about 38 years

Permanent resident of village – Tafragam

PO/PS- Tezu, Lohit District and

Presently serving as EAC-cum-in-charge ADC

Bordumsa, District – Changlang

Arunachal Pradesh.

Mobile No. 9401590927

.....*Petitioner*

- *Versus* -

1. The State of Arunachal Pradesh, represented by the Chief Secretary, Government of Arunachal Pradesh, Itanagar.
2. The Commissioner/Secretary, Department of Personnel, Government of Arunachal Pradesh, Itanagar.
3. The Chief Electoral Officer, Arunachal Pradesh, Itanagar.
4. Shri Ibom Tao, In-charge, SDO, Doimukh, District Papum Pare, Arunachal Pradesh.

.....*Respondents*

Advocates for the petitioner :

Mr. Rintu Saikia
Mr. L. Nochi
Mr. R. Bori
Mr. B. Riba
Mr. B. Taipodia
Ms. J. Das

Advocates for the respondents:

Ms. Tsering Wangmo, Government Advocate

Mr. Kento Jini
Mr. T. T. Tara
Mr. Duksor Loyi
Mr. J. Jini
Mr. Gamken Bam
Mr. Marc Rime
Mr. Binter Picha

:::B E F O R E:::
HON'BLE MR. JUSTICE NELSON SAILO

Date of hearing : 25.09.2018
Date of Judgment & order : 04.10.2018

JUDGMENT AND ORDER(CAV)

Heard Mr. Rintu Saikia, learned counsel, appearing on behalf of the petitioner.

Also heard Ms. Tsering Wangmu, learned Government Advocate, appearing on behalf of the State Respondents No. 1 & 2, and Mr. T. T. Tara, learned counsel for the Respondent No. 4.

2. The petitioner being aggrieved with the impugned office order, dated 24.08.2018(Annexure-III) transferring him from Bordumsa to Anini, has approached this Court through the present writ petition. Facts of the case, in brief, may be noticed at the outset. The petitioner who is a State Civil servant, is in the Senior Grade of the Arunachal Pradesh Civil Service (APCS), at present. He was posted from Deomali in the district of Tirap to Diyun in the district of Changlang, vide order, dated 01.08.2016. He was working as Extra Assistant Commissioner (EAC) at Deomali and he was posted in the same capacity at Diyun. Thereafter, vide order, dated 21.07.2017(Annexure-II), he was transferred from Diyun to Bordumsa in the same capacity. He was additionally given the charge of Addl. Deputy Commissioner (ADC) in the transferred post. While he was continuing his service at Bordumsa, the respondent authorities, more particularly, the Respondent No. 1, vide the impugned office order, dated 24.08.2018, transferred him from Bordumsa to Anini as EAC, with immediate effect.

3. Appearing for the petitioner, Mr. Saikia, learned counsel, submits that as per the standing guidelines followed by the State Government, the tenure of posting in all government posts, is for two years. The petitioner having not

completed two years of tenure at Bordumsa, the respondent authority could not have transferred him to Anini. He submits that the petitioner was additionally given the charge of ADC in addition to EAC and the respondent authority, in his place, have transferred the private Respondent No. 4 who is also functioning as in-charge Sub-Divisional Officer (SDO) at Doimukh. In this connection, the learned counsel also submits that the petitioner having been posted as in-charge ADC at Bordumsa, he cannot be replaced by another officer such as the private Respondent No. 4 who is also an in-charge SDO at Doimukh. In support of his submissions, the learned counsel has produced an order, dated 19.06.2018, passed in WP(c)287(AP)2018 whereby this Court after having regard to the fact that both the petitioner and the private Respondent, therein, were holding temporary charge of Block Development Officers (BDO) by way of an *ad-hoc* arrangement, stayed the impugned order by which the petitioner was replaced by the private respondent to hold the temporary charge of BDO.

4. Mr. Saikia, learned counsel for the petitioner, further submits that the impugned order of transfer is in violation of the directives of the Election Commission of India (ECI). By referring to the communication, dated 19.12.2017(Annexure-V), issued to all the Chief Secretaries of the States and Union Territories and also the Chief Election Officers of the States and Union Territories, he submits that pursuant to the direction of the Apex Court, the Government concerned, throughout the territory of India, have been directed not to post officers belonging to the categories of officers provided in the said communication for election duty in cases of elections to the Lok Sabha and the State Legislative Assembly. Similarly, the learned counsel, by referring to the communication, dated 07.09.2016, issued by the ECI to the state administrations given in the communication, submits that no home posting is allowed for the officers who are connected directly with the elections or will be completing three years of posting in a particular district before a particular date as given in the communication. The petitioner being posted at Bordumsa, is engaged with summary revision of electoral rolls 2019 and he is also the Electoral Registration Officer at Bordumsa. Therefore, having regard to clause (xi) of the

communication, dated 07.09.2016, he could not have been posted out of Bordumsa vide the impugned order, dated 24.08.2018. The learned counsel for the petitioner, to demonstrate the engagement of the petitioner in the electoral rolls revisional activities, refers to annexure-VI(series) of the writ petition.

5. Mr. Saikia, learned counsel, by further referring to the rejoinder filed against the affidavit-in-opposition of the private Respondent No. 4, submits that a special summary revision of photo electoral rolls of intensive nature with 01.01.2019 as the qualifying date, has been directed to be initiated by the ECI and instructions were issued to the Respondent No. 1 by the ECI on 18.06.2018. As per the instructions, the revision process is required to be completed within the pre-fixed timelines. The active participation of all officers concerned including the Electoral Registration Officers have been directed. By referring to the said communication, appended to the rejoinder affidavit as annexure-II, the learned counsel submits that there is a ban on transfer of officers and staffs engaged with the revision of electoral rolls. As per the instruction, any officer or staff employed in connection with the preparation, revision and correction of electoral rolls, are to be deemed to be on deputation with the ECI and they will be subject to the control, superintendence and discipline of the ECI. The instruction was issued in terms of Section 13 CC of the Representation of People's Act, 1950. Therefore, before the transfer and posting of any such officers engaged with the revision of electoral rolls, prior concurrence of the ECI, is invariably required. Such being the position, the learned counsel submits that the petitioner could not have been transferred to Anini without the permission of the ECI.

6. Mr. Saikia, learned counsel, also refers to Article 324 of the Constitution of India, wherein, the superintendence, direction and control of elections, has been vested in the ECI. He, thus, submits that under the circumstances, the impugned order of transfer insofar as the petitioner is concerned, being unsustainable, should be set aside and quashed.

7. Ms. Wangmu, learned Government Advocate, appearing for the Respondents No. 1 & 2, submits that the impugned Office Order, dated 24.08.2018, was issued in the interest of public service and as per the guidelines issued by the ECI. By referring to the communication, dated 18.06.2018, appended as Annexure-II in the rejoinder filed by the petitioner, the learned Government Advocate submits that the same are only instructions in respect of special revision of photo electoral rolls and in fact, the revision activities is scheduled to start only from 01.09.2018. She also submits that the impugned order of transfer was issued on 24.08.2018 prior to initiation of the revision activities scheduled to begin from 01.09.2018. Therefore, the claim of the petitioner that being engaged in revision of rolls, he could not have been transferred, is only misconceived. She further submits that by the impugned office order, dated 24.08.2018, the civil servants of the State have been transferred *en-masse* in administrative exigency and therefore, it is not the case that the petitioner has been singled-out by transferring him to Anini from Bordumsa. She also submits that the transfer order being *bona fide*, the interference of this Court is not called-for. To conclude her submissions, the learned Government Advocate submits that Court may peruse the relevant records that was requisitioned from the respondent authorities.

8. Mr. T. T. Tara, learned counsel for private Respondent No. 4, submits that the preliminary objection of the Respondent No. 4, is that the prayer of the petitioner in his writ petition, is defective, inasmuch as he has not prayed for invoking any writ. Therefore, in absence of an appropriate prayer, this Court may not entertain the writ petition and reject the same at the outset. The learned counsel by referring to the communication, dated 19.12.2017, annexure-V of the writ petition, submits that the instruction of the ECI, is only in respect of the paragraph 6(viii) (x)(xii) and (xiii) of the communication, dated 07.09.2016. A perusal of the said communication, nowhere involves paragraph No.(xi) of the same communication, which debars transfer of officers engaged in the electoral revision rolls. Therefore, it is clear that there is no requirement of obtaining prior approval of the ECI since clause(xi) is specifically excluded. The learned counsel

by referring to the communication, dated 01.06.2018, annexed as Annexure-VI(series) in the writ petition, submits that the revision activities have only been scheduled to begin from 01.09.2018 and therefore, the respondent authorities concerned are within their rights to issue the impugned order, dated 24.08.2018.

9. Mr. T. T. Tara, learned counsel, further submits that the Respondent No. 4 is in fact senior to the petitioner in service. He also submits that the Respondent No. 4, in fact, has been recently promoted to the Selection Grade of the APCS. The petitioner, on the other hand, is in the senior grade of the APCS and therefore, there is no question of drawing a parity between them. In other words, since the Respondent No. 4 is senior to the petitioner, the attempt on the part of the petitioner to project that his services as in-charge, ADC, at Bordumsa, has been replaced by the Respondent No. 4, also an in-charge of SDO at Doimukh, is only misconceived and cannot be sustained. The learned counsel submits that the transfer order having been issued as per the directives of the ECI, there is nothing wrong with the same and this Court, in exercise of extraordinary powers conferred by Article 226 of the Constitution of India, may not interfere with the transfer and posting order impugned by the petitioner.

10. Mr. T. T. Tara, learned counsel, in support of his submissions, relies upon the following decisions:

- (i).** *Union of India & ors. v. S. L. Abbas*, reported in **(1993) 4 SCC 357**
- (ii).** *Abdur Rahim SK v. State of Assam & ors.*, reported in **2017 (2) GLT 20**
- (iii).** *Union of India V. Ramakrishnan & ors.*, reported in **(2005) 8 SCC 394**
- (iv).** *Bal Kishan v. Delhi Administration & anr.* reported in **1989 suppl. (2) SCC 351**
- (v).** *Rajendra Singh & ors. v. State of U.P. & ors.*, reported in **(2009) 15 SCC 178**
- (vi).** *State of M.P. & anr. v. S. S. Kourav & ors.*, reported in **(1995) 3 SCC 270**
- (viii).** *N K Singh v. Union of India & ors.*, reported in **(1994) 6 SCC 98**
- (viii).** *State of U.P. & ors. v. Gobardhan Lal*, reported in **(2004) 11 SCC 402**

11. I have heard the submissions advanced by the learned counsels for the rival parties and I have also perused the materials made available on record including the records produced by the learned Government Advocate.

12. As may be noticed, the Respondents No. 1 & 2, have not filed their affidavit-in-opposition but the records have been produced. None has appeared for Respondent No. 3 nor has an affidavit-in-opposition filed on its behalf. It is only the private Respondent No. 4 who has filed the affidavit-in-opposition.

13. The role of the Court insofar as transfer and posting of employees under the government establishment or statutory bodies, is well-settled. The Apex Court in the case of **Rajendra Singh** (supra), has held that the Court should not enter into a domain which is not reserved for it. In the case of **S. S. Kourav** (supra), the Apex Court held that Courts or Tribunals are not appellate forums to decide transfer of officers in administrative exigencies. Likewise, in the case of **N.K. Singh** (supra), the Apex Court held that transfer of a government servant in a transferable post, is a necessary incident of service and if not, a condition of service. In the case of **Gobardhan Lal** (supra), the Apex Court held that a challenge to an order of transfer should not normally be eschewed and should not be countenanced by the Courts or by the Tribunals as though they are the Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirement of the situation concerned. Courts or Tribunals cannot substitute their own decisions in the matter of transfer and even when allegations of *mala fides* are made, it must inspire the confidence of the Court or be based on concrete materials.

14. In the case of **S.L. Abbas**(supra), the Apex Court held that unless the order of transfer is vitiated by mala fides or made in violation of any statutory provisions, Court cannot interfere with it. The rest of the decisions relied upon by the learned counsel for private Respondent No. 4 need not be gone into, considering the well-settled position in the matter of transfer and posting.

15. In the instant case, it can be seen that no *mala fides* have been pleaded by the petitioner and on perusal of the records produced by the learned Government Advocate, it is also seen that transfer was made as per the guidelines of the ECI and in view of administrative exigencies. The transfer has also been made *en-masse* amongst the APCS Officers. The petitioner, against the impugned order of transfer, submitted his representation and the same, undisputedly, was also considered by the appropriate authority and it was decided that the transfer order, dated 24.08.2018, posting the petitioner to Anini from Bordumsa, will stand.

16. Such being the position and upon considering the case in its entirety, I do not find merit in the writ petition and accordingly, the same is dismissed. Let the records be returned to the learned Junior Government Advocate Ms. T. Wangmo.

17. The interim order passed earlier, shall also stand vacated. No cost.

JUDGE

Bhush