

IN THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM; NAGALAND; MIZORAM AND ARUNACHAL PRADESH)

ITANAGAR PERMANENT BENCH(NAHARLAGUN)

WP(C) 659 (AP) 2017

Shri Sonim Manyu,
S/o Late Nethan Manyu.
R/o Village Teluliang,
Lohit District,
Arunachal Pradesh.

.....Petitioner

-Vs-

1. The State of Arunachal Pradesh represented by the Secretary, General Administration (G.A.), Government of Arunachal Pradesh, Itanagar – 791111.
2. The Deputy Commissioner, Anjaw District, Arunachal Pradesh.
3. The District Medical Officer, Anjaw District, Arunachal Pradesh.

.....respondents

By Advocate:

For the petitioner : Mr. Sunil Mow

For the respondents: Ms. R. Basar, learned Govt. Advocate for R-1 & 2.

Mr. T. Tagum, learned standing counsel for R-3.

:::BEFORE:::

HON'BLE MR. JUSTICE AJIT BORTHAKUR

Date of hearing : 31.08.2018

Date of Judgment : 31.08.2018

JUDGMENT & ORDER

Heard Mr. S. Mow, learned counsel for the petitioner and Ms. R. Basar, learned Govt. Advocate, appearing on behalf of the State respondent Nos. 1 and 2. Also heard Mr. T. Tagum, learned Standing Counsel for the respondent No.3.

2. By preferring the instant petition under Article 226 of the Constitution of India, the petitioner has prayed for setting aside and quashing the impugned order of transfer being Order No. AE/PF-0139/12/23536-52, dated

22.03.2017, issued by the respondent No. 2/ the Deputy Commissioner, Anjaw District, Arunachal Pradesh and the release order No. ANJ/MED/ESTT-C/17/311-14, dated 10.08.2017, issued by the respondent No. 3/ the District Medical Officer, Anjaw District, Arunachal Pradesh.

3. The petitioner's case, precisely, is that he is presently working as Upper Division Clerk (for short, 'UDC'), in-charge of Cashier and Accountant in the office of the District Medical Officer at Anjaw. The respondent No. 3 issued several orders, dated 13.01.2017, 14.01.2017, 25.01.2017 and 10.03.2017 levelling various allegations against him to put him harassment and ultimately, by an order, dated 13.03.2017, relieved him of the in-charge of Cashier and Accountant of the office of the respondent No. 3/ the District Medical Officer. The petitioner has further contended that he challenged the impugned order, dated 10.03.2017, issued by the respondent No. 3, in WP (C) No. 135 (AP)/ 2017, wherein, this Court passed an interim order, dated 22.03.2017, staying the aforesaid order and accordingly, the in-charge Deputy Commissioner, Anjaw District, through a W.T. Message, dated 23.03.2017, directed the respondent No. 3 not to give effect to the aforesaid impugned order, dated 10.03.2017, till the next date of hearing in this Court. However, during the pendency of the said writ petition and contempt petition being Cont. Case (C) No. 10 (Arunachal Pradesh)/2017 and in continuance of the interim order, the impugned transfer order vide No. AE/PF-0139/12/23546-52, dated 22.03.2017 and release order, dated 10.08.2017, were handed over to the petitioner, on 13.08.2017, by the respondent No. 3 against whom the aforesaid writ petition and contempt petition were pending. The impugned transfer order was shown to be passed on the same date of the interim order, that is, 22.03.2017, violating the order of this Court's interim order and it was never communicated to him. The petitioner has contended that the impugned order was being issued after six months of filing WP (C) No. 135 (AP) 2017, whereby the petitioner challenged the impugned order passed by the respondent No. 3 and despite knowing the aforesaid interim order passed in the writ petition, the respondent Nos. 2 and 3 issued the impugned transfer and release orders transferring him from the

office of the respondent No.3/ the District Medical Officer, Hayuliang to District Agriculture Officer (for short, 'DAO'), Hawaii.

4. Mr. S. Mow, the learned counsel for the petitioner submits that being aggrieved by the order, dated 10.03.2017, issued by the respondent No. 3, whereby the petitioner was discontinued to be the in-charge Cashier, and Accountant of his office, in accordance with Rule 3 CCS (Conduct) Rules, 1964, the petitioner by filing WP (C) No. 135 (AP) 2017 challenged the aforesaid order on the ground that an action under Rule 3 of the CCS (Conduct) Rules, 1964 can only be passed after a departmental proceeding, which was not done and as such, the aforesaid impugned order was invalid in law. Mr. Mow further submits that this Court by order, dated 22.03.2017, in the aforesaid writ petition directed the respondents not to give effect to the order, dated 10.03.2017, till the next date of hearing. However, the aforesaid interim order was disobeyed by the respondent No. 3/ the District Medical Officer, Anjaw, by issuing the petitioner's release order, dated 10.08.2017 and when a contempt petition was pending against him, with a view to defeat both the aforesaid two proceedings. However, having considered that the writ proceeding being WP(C)No.135(AP)/2017 became infructuous, the petitioner withdrew the said writ petition with liberty to file a fresh petition vide order, dated 30.08.2017. According to Mr. Mow, the learned counsel for the petitioner, the impugned transfer order was passed in total disobedience to the interim stay order passed by this Court, dated 22.03.2017, against the transfer order, dated 10.03.2017, which was communicated to him after about six months of filing the WP (C) No. 135 (AP) 2017. Mr. Mow further submits that as held by the Hon'ble Supreme Court in *Greater Mohali Area Development Authority & Ors. Vs. Manju Jain & Ors.*, reported in (2010) 9 SCC 157, such un-communicated administrative orders have no force in law.

5. Ms. R. Basar, learned Govt. Advocate appearing for the State/ respondent Nos. 1 and 2, submits that the Deputy Commissioner, Anjaw, who is the administrative head of the district, made the inter-departmental transfer of some staff including the petitioner, within the district, as is authorized by the Government in Public interest for maintaining smooth functioning of the public offices and accordingly, the respondent No. 3

released the petitioner on 10.08.2017. Ms. Basar further submits that the Deputy Commissioner being the appointing authority is authorized to depute staff like U.D.C./ L.D.C., whenever there is shortage of man-power in any department within the district.

6. Controverting the argument advanced by the learned counsel for the petitioner, Mr. Tagum, learned standing counsel for the Health Department/ respondent No. 3, submits that the petitioner was not transferred by way of punishment, but in public interest to ensure smooth functioning of the office of the respondent No. 3, although, while issuing the impugned order, dated 10.03.2017, inadvertently quoted Rule 3 of the CCS (Conduct) Rules, 1964. Mr. Tagum submits that wrong quoting of a Section or provision of law and Rules by the competent authority does not by itself vitiates the exercise of power of that authority as held by the Hon'ble Supreme Court in the judgment delivered in *R. K. Palanisamy Vs. N. Arumugham & Anr.*, reported in (2009) 9 SCC 173. According to Mr. Tagum, the transfer of the petitioner was a matter of internal office arrangement only in public interest, without any mala-fide reason and as such, the plea of violation of any statutory provisions of law or Rules is not sustainable. In this regard, Mr. Tagum has relied upon the ratio of the judgment rendered by the Hon'ble Supreme Court in *State of U.P. & Ors., Vs. Gobardhan Lal.*, reported in (2004) 11 SCC 402. Mr. Tagum, learned counsel for the respondent No. 3, further submits that the record reveals that the petitioner has consistently showed his inefficiency and indiscipline in service and therefore, his transfer to another office by the competent authority in the same status within the district cannot be termed as a punishment transfer within the scope of FR 15. In this regard, Mr. Tagum has also relied upon the judgment of the Hon'ble Supreme Court in *Union of India & Ors., Vs. Janardhan Debanath & Anr.*, reported in (2004) 4 SCC 245. According to Mr. Tagum, the petitioner had suppressed the material facts, which having come to light withdrew the earlier WP(C)No.135(AP) /2017 and on the other hand, he overstayed in the office of the respondent No.3 for more than 5 (five) years although the normal tenure as per Government Guidelines is only 2 (two) years. Therefore, Mr. Tagum submits that the petitioner's impugned transfer and release orders are being not even in violation of any executive instructions, the same may not be interfered with

by this Court. Mr. Tagum has pertinently referred to the ratio of the judgment rendered by the Hon'ble Supreme Court in *Shilpi Bose (Mrs.) & Ors., Vs. State of Bihar*, reported in *1991 Supp (2) SCC 659*.

7. The respondent No. 3/ the District Medical Officer, Anjaw District, Arunachal Pradesh in his affidavit-in-opposition averred and Mr. T. Tagum, learned Standing counsel, *inter-alia*, submits that the order No. MEST/2016-17, dated 10.03.2017, was issued not in the form of any punishment under CCS (CCA) Rules, 1965, but by way of internal office arrangement for smooth and effective functioning of the establishment, more particularly, to maintain the Accounts Section up-to date as the month of March is account closing month. It has been averred that the petitioner used to remain absent unauthorizedly, which hampered the smooth functioning of the office. The petitioner challenged the aforesaid order, dated 10.03.2017, in the earlier WP(C) No. 135 (AP)/2017. Pursuant to the order vide ANJ/PA-0003/2016-17, dated 16.03.2017, issued by the respondent No. 2/ the Deputy Commissioner, Anjaw directing all the Heads of Government of the district to complete all account transactions by 25.03.2017, the respondent No. 3 has engaged and entrusted one Smti. Kimi Bellai, UDC as in-charge-Cashier and another Shri Beneglum Tamai, LDC as in-charge Accountant for effective functioning of the Accounts Section of the office. It is also averred that pursuant to their posting, the petitioner has been transferred from the office of the respondent No. 3, Anjaw to the DAO at Hawaii and in his place, one Ehanso Manyu has joined at the office of the District Medical Officer, Anjaw and further, the petitioner was allowed to remain in the said office as U.D.C. vide order, dated 10.01.2013 and in the meantime, he has completed 5 (five) years of tenure, although the guidelines issued by the Govt. of Arunachal Pradesh provides for a tenure of 2 (two) years only.

8. The respondent No. 2/ the Deputy Commissioner, Anjaw District, Arunachal Pradesh, by filing an affidavit-in-opposition averred and Ms. R. Basar, learned Govt. Advocate, *inter-alia*, submits that the records reveal that the petitioner indulged in repeated absenteeism and that the respondent No. 2 issued the transfer order vide AE/PF-0139/1223546-52, dated

21.03.2017, in public interest and the aforesaid order was signed on 22.03.2017, whereas the respondent No. 3 released the petitioner, on 10.08.2017 vide the release order No. ANJ/MED/ESTT-C/17/311-14, dated 10.08.2017. Ms. Basar submits that as per direction of this Court, dated 22.03.2017, the release was not to be effected till the next date of hearing and was to be listed after 3 (three) weeks, but the release order was issued after 5 (five) months in August, 2017 by the respondent No. 3/ the District Medical Officer, Anjaw, so as to enable him to join in the new place of posting in the office of the DAO in Hayuliang Sub-Division. The respondent No. 2 has further averred that the appointing authority, that is, the Deputy Commissioner, Anjaw District deposes the ministerial staff like U.D.C./L.D.C., wherever there is shortage of man-power and in public interest in any department in the district, under the disposal of the Heads of the Department and that the petitioner was never posted as Cashier or Accountant. Hence, it is prayed to dismiss the writ petition.

9. Perusal of the release order, dated 28.12.2012, issued by the respondent No. 2/ the Deputy Commissioner, Anjaw District, Hawaii, reveals that the petitioner's service was retained in the office of the respondent No. 3/ the District Medical Officer, Anjaw, Camp Tezu until further order. The said order does not show as averred in the petition that by virtue of his training in accounts and experience in accountancy for many years, he was given the charge of Cashier and Accountant in the office of the respondent No. 3, although, if any, it was only by way of an internal office arrangement for smooth functioning of the said office. However, as it appears from the office memorandum, dated 13.01.2017, issued by the respondent No. 3, the petitioner submitted an explanation vide his explanation, dated 14.01.2017. On the other hand, another memorandum, dated 25.01.2017, issued by the respondent No. 3 reveals that the petitioner demonstrated insubordinate conduct and indiscipline in the matters of unauthorized retention of an office vehicle and unauthorized absence in duty. Thus, the conduct of the petitioner as UDC in the office of the respondent No. 3/ the District Medical Officer, Anjaw was prima facie not satisfactory, which is, of course, not in issue to be adjudicated in the instant writ petition.

10. It is noticed from the order, dated 10.03.2017, issued by the respondent No. 3 that the petitioner was relieved of the in-charge of Cashier and Accountant of his office, with immediate effect quoting Rule 3 of CCS (Conduct) Rules, 1964, which the petitioner had challenged in WP (C) No. 135 (AP)/2017, wherein, this Court by order, dated 22.03.2017, granted interim order not to give effect to the aforesaid order till the next date fixed, that is, for 3 weeks next. For better appreciation of the matter, the impugned order, dated 10.03.2017, is hereinbelow extracted:

**"GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE DISTRICT MEDICAL OFFICER
ANJAW DISTRICT; HAYULIANG**

No. Mest/2016-17

Dated, Hayuliang the 10th March, 2017.

ORDER

In accordance with Rule 3 of CCS (Conduct) Rules, 1964 Shri S. Manyu UDC is hereby discontinued from the in-charge of Cashier and Accountant in DMO Office Anjaw with immediate effect.

Henceforth, the official is directed to hand over all office documents related to Development/accounting/ banking etc whichever is under his possession within two days time from the issue of this order to the undersigned for further necessary action.

Sd/-

Dr. K. Perme,
DMO, Anjaw".

11. The above order, dated 10.03.2017, indicates reshuffling of incumbents' assigned duties in the office of the respondent No. 3 for smooth and efficient functioning of the said public office only and not by way of punishment although the respondent No. 3 misquoted therein Rule 3 of the CCS (Conduct) Rules, 1964.

12. In P. K. Palanisamy (Supra), the Hon'ble Supreme Court dwelt on the above situation of misquoting of a particular provision of law as source of power and held as extracted hereinbelow:

"28 *In Ram Sunder Ram Vs. Union of India*, reported in (2007) 13 SCC 255, it was held.....

"19...It appears that the competent authority has wrongly quoted section 20 in the order of discharge whereas, in fact, the order of discharge has to be read having been passed under Section 22 of the Army Act.

9...It is well settled that if an authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does not exist and can be traced to a source available in law.

Thus, quoting of wrong provision of Section 20 in the order of discharge of the appellant by the competent authority does not take away the jurisdiction of the authority under Section 22 of the Army Act. Therefore, the order of discharge of the appellant from the army service cannot be vitiated on this sole ground as contended by the learned counsel for the appellant”.

“29. In *N. Mani Vs. Sangeetha Theatre*, it is stated;

9...It is well settled that if an authority has authority has a power under the law merely because while exercising that power the source of power is not specifically referred to or a reference is made to a wrong provision of law, that by itself does not vitiate the exercise of power so long as the power does not exist and can be traced to a source available in law”.

13. Thus, quoting of the wrong provision of Rule 3 of CCS (Conduct) Rules, 1964 in the impugned order, dated 10.03.2017, does not take away the jurisdiction of the respondent No. 3 as Head of Office in reshuffling his office staff and therefore, does not vitiate the order. Although the petitioner challenged the validity of the said order, dated 10.03.2017, in WP (C) 135 (AP)/ 2017, the same was withdrawn on the ground of the same became infructuous and accordingly, dismissed with liberty to file afresh and consequently, in view of it, the connected Cont. Case (C) No. 10 (AP) 2017 also stood closed vide orders, dated 30.08.2017.

14. In the instant writ petition, the petitioner has challenged the legality and validity of the two orders, viz. his transfer order, dated 22.03.2017 (Date of communication was 21.03.2017 and signed on 22.03.2017), issued by the respondent No. 2/ the Deputy Commissioner, Hawaii, Anjaw District,

Arunachal Pradesh, whereby the petitioner was transferred from the office of the respondent No. 3 to the office of the District Agriculture Officer (DAO), Hawai and his release order, dated 10.08.2017, from the office of the respondent No. 3, pursuant to the said transfer order, dated 22.03.2017, issued by the respondent No. 2. The aforesaid 2 (two) orders are extracted herein below:

**"GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE DEPUTY COMMISSIONER, HAWAI; ANJAW DISTRICT**

No. AE/PF-0139/12

Dated Hawai, the March 17, 2017

ORDER

In the interest of public, transfer and posting of the following officials is made to the place as shown against each with immediate effect:-

Sl. No.	Name & Designation	Place of transfer/ posting		Remarks
		From	to	
1.	Shri Sonim Manyu, UDC	DMO Office, Swami Camp, Hayuliang	DAO Office, Hawai
2.	Shri Ehanso Manyu, UDC	DPDO Office, Hawai	DMO Office, Swami-Camp, Hayuliang	Vice Sl. No. (1)

Serial No. (2) should move first.

Sd/-
(Mamta Riba)
Deputy Commissioner,
Hawai, Anjaw District".

Memo No. AE/PF-0139/12/23546-52

Dated Hawai, the 21st March 2017".

The release order, dated 10.08.2017, reads as hereinbelow extracted:-

"GOVERNMENT OF ARUNACHAL PRADESH
OFFICE OF THE DISTRICT MEDICAL OFFICER
ANJAW DISTRICT, SWAMY CAMP, HAYULIANG

No. ANJ/MED/ESTT-C/17

Dated Swamy Camp the 10th August, 2017

RELEASE ORDER

In the interest of public service vide DCs, order No. AE/PF-0139/12/23546-52, dated the Hawaii the 21st March, 2017, Shri Sonim Manyu (UDC) of DMO office is hereby released from this establishment with effect from 10th August, 2017 afternoon to enable him to join at District Agriculture Officer, Hawaii. The incumbent is to draw his monthly salary from DAO Office Hawaii w.e.f. the month of August, 2017

Sd/
District Medical Officer,
Anjaw District Swamy Camp,
Hayuliang.

Memo No.ANJ/MED/ESTT-C/2017/311-14 Dated Swamy Camp the 10th Aug 2017".

15. The petitioner assailed the above 2 (two) orders basically on 3 (three) grounds, firstly, the transfer order was issued on the very date, this Court issued the interim order, dated 22.03.2017, passed in WP (C)No. 135 (AP)/2017. Secondly, the said order was never communicated to him and thirdly, based on the interim order of this Court, dated 22.03.2017, the respondent No. 2 by his W.T. Message, dated 22.03.2017, directed the respondent No. 3/ the District Medical Officer, Swami Camp, Hawaii not to give effect to the order, dated 10.03.2017, aforementioned, which is, of course, not impugned in the present writ petition. It is not perceptible from the averments made in the instant petition as to in what way there is any proximate cause between the aforesaid 2 (two) sets of different causes of action. The alleged cause of action that arose in WP (C) No. 135 (AP)/2017 shows no relevancy in the instant petition, when not in issue herein and no relief is sought and the said writ petition and the connected contempt petition were dismissed on withdrawal being stated to be infructuous.

16. In Para-4 of *Shilpi Bose (Supra)*, the Hon'ble Supreme Court held:-

"4.....In our opinion, the Courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even, if a transfer order is passed in violation of executive

instructions or order, the Courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest.....”

17. The petitioner’s contention is that he was not communicated the impugned transfer order, dated 21.03.2017, issued by the respondent No. 2 which was purportedly shown communicated on 21.03.2017 to the persons concerned (by name), that is, the transferees including the petitioner and pursuant to the said transfer order, dated 21.03.2017, the respondent No. 3 released him from his office belatedly on 10.08.2017. There is no evidence to show that the aforesaid transfer order was received by the petitioner and therefore, it may be inferred that the said order was not communicated to him until he was made known when released abruptly on 10.08.2017 from the office of the respondent No. 3. None communication of an executive order to the persons concerned in advance normally vitiates such order creating no enforceable right in favour of the issuing authority as is held in ***Greater Mohali Area Development Authority (Supra)***, whether he is an undesirable employee in the office of the respondent No. 3 by reason of various allegations of office indiscipline or that he completed the tenure in the said office as per the standing government transfer guidelines. The respondent No. 3 has also not shown any reason for not releasing the petitioner incumbent immediately after his transfer order issued in public interest. Thus, undoubtedly there was hide and seek role over the matter of transfer of the petitioner from the office of the respondent No. 3/ the District Medical Officer, Anjaw. However, the aforesaid matter has lost its significance in view of various allegations raised against the petitioner pertaining to his office discipline and staying for more than the normal tenure in the same office as per Govt. guidelines.

18. It is pertinent to be mentioned that 2 (two) relievers of the petitioner have already joined in the office of the respondent No. 3/ the District Medical

Officer, Anjaw to efficiently handle the post of Cashier and Accountant in place of the petitioner who was in-charge of the said two posts. Here, it needs to be borne in mind that in case an employee is considered to be inefficient or not desirable in public office, by reason of purported lapses/ negligence of duty, a duty is cast on the employer to hold a regular enquiry as per the relevant Rules as has been succinctly held by the Hon'ble Supreme Court in Jandhan Debnath (Supra). The Hon'ble Court further held that it is for the employer to consider the entire facts and circumstances in a particular case and depending upon the administrative exigencies in public interest and the extent of solution to the inconveniences faced by the administration.

19. Thus, this Court is of the considered opinion that no interference in the impugned transfer order and pursuant thereto, the petitioner's release from the office of the respondent No. 3 is warranted.

The petitioner is, however, given liberty to approach the higher departmental authorities if still felt aggrieved by the impugned orders herein.

Consequently, the writ petition stands dismissed.

JUDGE

Talcm