

IN THE GAUHATI HIGH COURT

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

ITANAGAR PERMANENT BENCH (NAHARLAGUN)

WP(C)342(AP)2018

Shri Ojing Jamoh,
S/o Lt. Aran Jamoh presently serving as R.F.O. under Divisional Forest Officer,
Pasighat.
R/o Diking Village, Pasighat.
P.O/P.S, Pasighat.
District: East Siang, Arunachal Pradesh.

..... Petitioner.

– VERSUS –

1. The State of Arunachal Pradesh represented by the PCCF & Principal Secretary (E & F), Government of Arunachal Pradesh, Itanagar.
2. The PCCF & Principal Secretary(E & F), Govt. of Arunachal Pradesh, Itanagar.
3. The Joint Secretary (E & F), Govt. of Arunachal Pradesh, Itanagar.
4. The Chief Conservator of Forests Central Circle Pasighat, Govt. of Arunachal Pradesh.
5. The Divisional Forest Officer, Pasighat, Govt. of Arunachal Pradesh.
6. Shri Jumgo Geyi, Range Forest Officer, Pasighat Forest Range under Divisional Forest Officer, Pasighat.

..... Respondents.

Advocates for the Petitioner: Mr. D. Panging
Ms. G. Basar
Mr. V. Jamoh
Mr. O. Tayeng
Mr. D. Tamut
Mr. Marge D.
Mr. M. Doji
Ms. M. Gibi

Advocates for the Respondent: Mr. S. Tapin, Sr. Govt. Advocate
Mr. P. K. Tiwari
Mr. K. Saxena
Mr. H. K. Jamoh
Mr. R. L. Thungon

::: BEFORE :::
HON'BLE MR. JUSTICE NANI TAGIA

JUDGMENT AND ORDER (Oral)

13.05.2019

Heard Mr. D. Panging, learned counsel for the petitioner.

2. Also heard Mr. S. Tapin, learned Senior Govt. Advocate for the State respondents No. 1 to 4 as well as Mr. P. K. Tiwari, learned Senior counsel representing respondents No. 5 and 6.

3. This writ petition has been filed challenging the order of transfer and posting, dated 14.06.2018 issued by the PCCF & Principal Secretary(E & F), Govt. of Arunachal Pradesh, the respondent No.2, herein, vide No. FOR.81/EA/2000/Pt-IV/11,694-740, by which order, amongst other, the writ petitioner, who was working as a Range Forest Officer was earlier transferred and posted to Pasighat Range under DFO, Pasighat Forest Division has been retained at Central Mobile Squad Pasighat CAC, Pasighat and the respondent No.6, who was earlier transferred and posted to Koronu Range under DFO, Dibang Forest Division, Roing has also been retained at Pasighat Range under Pasighat Forest Division, where the writ petitioner had already joined in terms of earlier order of transfer and posting, dated 23.02.2018.

4. The facts leading to filing of the present writ petition is briefly stated as follows: that by an order of transfer and posting, dated 23.02.2018 issued by the PCCF & Principal Secretary(E & F), Govt. of Arunachal Pradesh, the respondent No.2, herein, vide No. FOR/374/EA/96/P-I/3321/865, the writ petitioner, who was working at Central Mobile Squad Pasighat CAC, Pasighat was transferred and posted as Range Forest Officer at Pasighat Range under DFO, Pasighat Forest Division, Pasighat and the respondent No.6, who was working at Pasighat Range under DFO, Pasighat Forest Division, Pasighat was posted at Koronu Range under DFO, Dibang Forest Division, Roing. In terms of the aforesaid transfer and posting order, dated 23.02.2018, the writ petitioner had joined at his new place of posting as a Range Forest Officer at Pasighat Range under DFO, Pasighat Forest Division, Pasighat on 13.03.2018. However, the respondent No.6 did not join at his new place of posting at Koronu Range under DFO, Dibang Forest Division, Roing and had instead made a representation to the respondent authorities for retaining him at Pasighat Range under DFO, Pasighat Forest Division, Pasighat. It may be noticed herein that both the writ petitioner as well as the respondent No.6 had completed their normal tenure of posting at their earlier respective places of posting.

5. Assailing the impugned transfer and posting, order dated 14.06.2018, Mr. D. Panging, learned counsel for the petitioner submits as both the writ petitioner as well as the respondent No.6 had completed the normal tenure of posting of 2 years at their earlier respective place of posting and accordingly, the writ petitioner in due compliance of the transfer and posting order, dated 23.02.2018 had joined at his new place of posting at Pasighat Range under DFO, Pasighat Forest Division, Pasighat on 13.03.2018, but just after 4 months, the order of transfer and posting, dated 23.02.2018 in respect of the writ petitioner as well as the respondent No.6

was issued, the said order came to be illegally modified vide the impugned transfer and posting, order dated 14.06.2018. Mr. D. Panging, learned counsel for the petitioner further submits that the impugned modified transfer and posting order, dated 14.06.2018 in respect of the writ petitioner and the respondent No.6 is illegal; the respondent authorities could not have issued the said modified order of transfer and posting dated 14.06.2018 within a short span of time and the same has also been issued on an extraneous consideration on the request being made to the PCCF & Principal Secretary(E & F), Govt. of Arunachal Pradesh, the respondent No.2, herein, by one, Shri Tobom Dai, General Secretary of All Arunachal Pradesh Student Union(AAPSU), vide letter dated 01.05.2018, whereby a request was made for rescinding of the transfer order of the respondent No.6. The respondent authorities having acted illegally for an extraneous consideration, the impugned order dated 14.06.2018 in so far as it modifies the order of transfer and posting of the writ petitioner and the respondent No.6 requires to be interfered with by this Court.

6. On the other hand, Mr. S. Tapin, learned Senior Govt. Advocate for the State respondents No. 1 to 4 by referring to the counter affidavit filed by the respondents No. 1 to 4 submits that the respondent authorities have issued the modified impugned transfer and posting order, dated 14.06.2018 in the interest of public service. Mr. S. Tapin, learned Senior Govt. Advocate for the State respondents No. 1 to 4 on the basis of the records which, however, have not been reflected in the counter affidavit filed by the respondents No. 1 to 4 has also submitted that the impugned modified transfer and posting order, dated 14.06.2018 was issued having regard to the good service, the respondent No.6 was rendering in his last place of posting at Pasighat as well as on the basis of the two recommendations made by the two Members of Legislative Assembly (MLAs) for transferring the writ petitioner

from Central Mobile Squad Pasighat to Pasighat Range under DFO, Pasighat Forest Division, Pasighat and therefore, Mr. S. Tapin, learned Senior Govt. Advocate submits that as the posting of the writ petitioner from Central Mobile Squad Pasighat to Pasighat Range under DFO, Pasighat Forest Division, Pasighat was not in public interest, rather made on the request of two MLAs and therefore, the same can be legitimately modified at any time, for which reasons, the same has been modified accordingly vide impugned order, dated 14.06.2018.

7. Mr. P. K. Tiwari, learned senior counsel for the respondents No. 5 and 6 taking a cue from the submissions made by Mr. S. Tapin, learned Senior Govt. Advocate submits that as the writ petitioner came to be posted at Pasighat Range under DFO, Pasighat Forest Division, Pasighat by a request or letter written by two MLAs, the conduct of the writ petitioner in the present case is not above board and therefore, the writ petitioner is not entitled to equitable reliefs from this Court so as to entitle any interference to be made to the impugned modified transfer and posting order, dated 14.06.2018. Mr. P. K. Tiwari, learned senior counsel further submits that the impugned modified transfer order, dated 14.06.2018 does not involve any dislocation with regard to the place of posting in respect of the writ petitioner inasmuch as the petitioner would be required to move only about 1^{1/2} (one and half)KM; and therefore, no any hardship or prejudice would be caused to the writ petitioner, if the modified order of transfer and posting, dated 14.06.2018 is complied with inasmuch as the same involves no any movement of the family members of the petitioner.

8. Mr. P. K. Tiwari, learned senior counsel by referring to the counter affidavit filed by the respondent No.5, more particularly, the paragraphs-14 and 15 of the

said affidavit submits that the respondent No. 6 was involved in the works under Compensatory Aforestation Fund Management & Planning Authority (in short "CAMPA") the report of which was required to be prepared by none other than the respondent No.6 and it was in that context, the respondent authorities deemed it fit and proper to issue a modified order of transfer and posting, vide order dated 14.06.2018, though may be in a short span of time.

9. Mr. P. K. Tiwari, learned senior counsel in support of his submissions has also referred to a decision of the Hon'ble Supreme Court, reported in **2004 11 SCC 402, State of U.P & Ors. Vs. Gobardhan Lal**, for the proposition that the order of transfer can only be interfered with, if it is vitiated by *mala fides*, if it is issued in violation of any of the statutory provision or the same is issued by an authority not competent to pass such an order. Those being a limited ground of interference with regard to the order of transfer and posting, this Court in the present case must not interfere with the impugned order of transfer and posting, dated 14.06.2018 as none of the ground has specified in the aforesaid decision is present in the present writ petition.

10. Rival submissions advanced at the bar have received due consideration of this Court.

11. It has remained un-disputed at the bar that when the order of transfer and posting, dated 23.02.2018 was issued, the writ petitioner as well as the respondent No.6 had already completed their normal tenure of posting of 2 years as prescribed under the relevant guidelines prevailing in the State of Arunachal Pradesh with regard to the transfer and posting. In that view of the matter, both the writ

petitioner as well as the respondent No.6 had completed 2 years of posting at their earlier respective place of posting.

12. Having taken note of the fact that the writ petitioner as well as the respondent No.6 had completed their normal tenure of posting at their last places of posting respectively, the respondent authorities had issued the order of transfer and posting, dated 23.02.2018, whereby the writ petitioner was posted at Pasighat Range under DFO, Pasighat Forest Division, Pasighat and the respondent No.6 was posted at Koronu Range under DFO, Dibang Forest Division, Roing.

13. The proposition of law with regard to the scope of interference by this court under Article 226 of the Constitution of India as has been referred to by Mr. P. K. Tiwari, learned senior counsel, in the decision cited by him in *The State of U.P & Ors. Vs. Gobardhan Lal (Supra)* is well settled. The present case, however, is not a question involving the order of transfer and posting, rather, the issue involved in the present writ petition is the legality of modified order of transfer and posting, dated 14.06.2018 which had been issued purportedly in modification of the transfer and posting, order dated 23.02.2018 in respect of the writ petitioner as well as the respondent No.6 within a short span of about 4 months. When the order of transfer and posting is issued, unless anything contrary is indicated, the Court always presumes that the order of transfer and posting have been issued legally by taking into consideration the relevant facts that are required to be taken into account. Normally, the writ Court does not interfere with the order of transfer and posting unless, it is vitiated by *mala fides* or it is issued in violation of any statutory provisions or it has been issued by the authority, who is not competent to issue such an order. However, when it comes to the scope of judicial review with respect to the

modification of the order of transfer and posting, the writ Court would like to be satisfied that there was an overwhelmingly public interest involved for modification of such an order of transfer and posting, which was issued just a few months back.

14. The State respondents through the affidavit filed by the respondent No.5 has essentially sought to justify the impugned modified order of transfer and posting, dated 14.06.2018 on the ground that the respondent No.6 was rendering a good service at his last place of posting by involving himself in a works relating to Compensatory Aforestation Fund Management & Planning Authority(CAMPA) which was under the guideline of the Hon'ble Supreme Court and in that view of the matter, there was a good, sufficient and justifiable reasons to issue the modified order of transfer and posting, dated 14.06.2018. However, without going into the sufficiency of the reason given by the respondent No.5, I find, the same reasons or grounds that the respondent No.6 was doing a good works at Pasighat Range under DFO, Pasighat Forest Division by involving himself in a CAMPA works was already known to the respondent authorities as well as available on records of the respondent authorities even before the order of transfer dated 23.02.2018 was issued, whereby the respondent No.6 was transferred to Roing. If that be so, the same ground which was already in the knowledge of the respondent authorities as well as available in the records even before the first order of transfer and posting, dated 23.02.2018 was issued, could not, in the considered view of this Court, be made as a ground for justifying the impugned modified transfer and posting, order dated 14.06.2018. In addition to the above, it has also been found from the affidavit-in-reply filed by the writ petitioner to the Interlocutory application filed by the respondent No.6 that one, Shri Tobom Dai, who is stated to be a General Secretary of All Arunachal Pradesh Student Union(AAPSU) by his letter dated

01.05.2018, written to the PCCF, the respondent No.2, herein, had made a request for rescinding the transfer order of the respondent No.6, which fact has not been disputed by the State respondents as well.

15. In the absence of any denial by the State respondents to the letter written by one Shri Tobom Dai, General Secretary, All Arunachal Pradesh Student Union(AAPSU), this Court can reasonably presume that the said letter had also influenced the decision making process of the respondent authorities for issuing the modified order of transfer and posting, dated 14.06.2018.

16. Taking into account the facts and circumstances of the case in totality I am of the view that the respondent authorities have failed to justify their action of issuing the impugned modified order of transfer and posting, dated 14.06.2018 in respect of the writ petitioner as well as the respondent No.6.

17. In that view of the matter, this writ petition deserves to be allowed and the same is accordingly allowed. Accordingly, the impugned transfer and posting, order dated 14.06.2018 issued by the PCCF & Principal Secretary(E & F), Govt. of Arunachal Pradesh, the respondent No.2, herein, vide Memo No. FOR.81/EA/2000/Pt-IV/11,694-740, in so far as it modified the transfer and posting order of the writ petitioner as well as the respondent No.6, is hereby set aside and quashed.

18. The writ petition is **disposed of** in terms above.

JUDGE

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