

**IN THE GAUHATI HIGH COURT**  
(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)  
**ITANAGAR BENCH**

**WP(C) 146 (AP)/2015**

**Er. Michi Nibo, S/o Late Michi Tallo,**  
Permanent Resident of Michi Village,  
Post Office & Police Station- Ziro,  
District-Lower Subansiri,  
Arunachal Pradesh.  
Present Resident of Pangin,  
Post Office & Police Station-Pasighat,  
District-East Siang, Arunachal Pradesh.

**.....Petitioners.**

**By Advocate:**

**Mr. Tony Pertin**

**-Versus-**

1. **State of Arunachal Pradesh represented by the Chief Secretary,**  
Government of Arunachal Pradesh,  
Itanagar.
2. **The Secretary, Rural Works Department,**  
Government of Arunachal Pradesh,  
Itanagar.
3. **Shri A.S.R.Zimik, Executive Engineer (Plg.),**  
Rural Works Circle, Pasighat,  
District-East Siang,  
Arunachal Pradesh

**.....Respondents.**

**By Advocates:**

**Ms. G. Deka, Sr. GA for respondent Nos. 1 & 2.**

**Mr. N. Ratan, for resp. no.3**

**BEFORE**  
**THE HON'BLE MRS. JUSTICE RUMI KUMARI PHUKAN**

**Date of hearing : 16-07-2015**

**Date of Judgment & Order: 17-07-2015**

**JUDGMENT & ORDER (CAV)**

By this writ petition filed under Article 226 of the Constitution of India, the petitioner has challenged the legality and validity of the impugned modification of the earlier transfer order, issued by the Secretary (RWD), Govt. of Arunachal Pradesh, Itanagar vide order under Memo No. SRWD-43/2012/645 dated 10-04-2015 (Annexure-14 to the writ petition) whereby the petitioner has been transferred from his new place of posting as ASW, Pasighat, within a period of 3 ½ months by retaining the private respondent No.3 and also the Corrigendum dated 16-04-2015 (Annexure-15 to the writ petition), whereby the petitioner's posting place has been earmarked as DPIU-II Anjaw instead of ASW Pasighat issued vide Govt. Order No. SRWD-43/2012 dated 10-04-2015.

**2.** Heard Mr. Tony Pertin, learned counsel for the petitioner. Also heard Ms. G. Deka, learned Sr. Govt. Advocate for the State respondent Nos. 1 and 2 and Mr. N. Ratan, learned counsel appearing on behalf of the private respondent No.3.

**3.** The brief fact of the case is that while the petitioner has been serving as Assistant Surveyor of Works (ASW) under Rural Works Division, Pasighat, he has been transferred and posted to Panging as DPIU-II in place of the private respondent No.3 with a direction that his pay and allowances shall be drawn against the post of ASW, Rural Works Division, Yingkiang vide No.SRWD-43/2012/Pt. dated 22.12.2014 issued by the Secretary, Rural Works Department, Govt. of Arunachal Pradesh. In compliance with the said transfer

order, the petitioner joined at Pangin on 23-12-2014 in place of the private respondent No.3 and joining reported was forwarded to the Chief Engineer (E/Z), Rural Works Department, Itanagar vide order dated 26-12-2014 by the Superintending Engineer, RWD, Pasighat Circle. Subsequently, vide order dated 09-03-2015 issued by the Executive Engineer, the private respondent No.3 was directed to handover the charge of DPIU-II to the petitioner with immediate effect within five days from the date of issue or the order. Thereafter, vide order dated 12-03-2015, issued by the respondent No.2, the petitioner was directed to take over the charge of DPIU-II, Pangin immediately after 31-03-2015 from the private respondent No.3 and subsequently, by the order dated 06-04-2015, the private respondent No.3 was released from the establishment of EE/PIU-II, RWD Pangin on 06-04-2015 (A/N) and directed him to join at his new place of posting i.e. as EE (Plg.), RWC, Pasighat against existing vacancy. Thereafter, the Secretary (RWD)/respondent No.2 issued an order dated 10-04-2015, whereby the petitioner has been asked to continue as ASW, Pasighat RW Division, Pasighat and the private respondent No.3 has also been asked to continue as DPIU-II Pangin. Again by issuing a Corrigendum, the petitioner posting place was marked as DPIU-II Anjaw instead of ASW Pasighat issued vide order No. SRWD-43/2012 dated 10-04-2015. As per impugned order, the private respondent has been retained as DPIU-II Pangin and the petitioner is transferred back to Pasighat as ASW within a week from his assumption of charge as DPIU-II Pangin without assigning any reason which in patent violation of the Government transfer and posting policy circulated vide Circular dated 02-06-1998 and 19-12-2008. Hence this writ petition is being filed by the petitioner for quashing of the impugned order dated 10-04-2015 and Corrigendum dated 16-04-2015 thereby transferring and reposting the petitioner from the DPIU-II Pangin to the Rural Works Division, Pasighat as ASW.

**4.** Mr. T. Pertin, learned counsel appearing on behalf of the petitioner submits that the petitioner has been subjected to frequent transfer in violation of the policy and guidelines on the transfer and posting of all categories of the officers and staff in Arunachal Pradesh, issued by the Department of Personnel, vide Circular dated 2<sup>nd</sup> June, 96. The petitioner, in compliance of the transfer order dated 22-12-2014, joined the posting place as DPIU-11 Pangin in place of the respondent No.3 and assumed the charges ex-parte on 23-12-2014 (A/N) on the basis of the O.M-110/2006 dated 13-02-2007. The learned counsel for the petitioner has also submitted that petitioner was directed by the respondent No.2 to take over the charge from the private respondent No.3 immediately after 31-03-2015 and thereafter the private respondent No.3 was released from the establish on 06-04-2015 enabling him to join his new place of posting.

**5.** The learned counsel for the petitioner, Mr. Pertin, has submitted that the petitioner assumed the charges from the respondent No.3, as DPIU-II, RWD, Pangin and even after released of the private respondent No.3 from that establishment on 06-04-2015 by the order under memo dated 06-04-2015, how a transfer and posting order has been passed by the respondent No.2 again vide order dated 10-04-2015 within 4 days without any specific reason showing the posting place of the petitioner as ASW, Pasighat RW Division and to continue in the same place and the posting place of the private respondent No.3 from DPIU-II, Pangin and to continue the same post, whereby at the relevant time, the private respondent was released from Pangin and the petitioner has already joined and assumed the charge of DPIU-II, Pangin, which was issued arbitrarily and in violation of the transfer policy and guidelines framed by the State of Arunachal Pradesh and on the behest of the local MLA/Minister. Therefore, the said order, which was impugned in this petition, is liable to be set aside and quashed.

6. The learned counsel for the petitioner has relied upon the decision of this Court reported in **1997(1) GLT 140 (Roukuolhoulte Angami Vs. State of Nagaland and Others)**, wherein, it has been held that:-

*"This Court, in a catena of decision, has held that for cancellation, modification or keeping in abeyance of the transfer order passed in public interest must be supported with sufficient reasons necessitating for passing such order. Once the transfer order is made in public interest, Court normally does not interfere unless the order is passed with mala fide or against the statutory rules. The only way open to the aggrieved govt. servant is to file a representation before the competent authority to redress his grievances. But this Court insist that for cancellation/modification or keeping it is abeyance of such order must be supported with sufficient reasons because the transfer of officers are always made in public interest and after elaborate exercise as to who should be transferred wherein the exigency of the administration. While processing the transfer order various factors are taken into consideration. Therefore, if the transfer order made in public interest is allowed to be taken away by another cryptic order modifying/canceling or keeping in abeyance of the transfer order without assigning any reasons, it ceases to be in public interest, therefore, it must be held that the order has been passed at the whims and caprice of the authorities exercising the power.*

7. The State respondent Nos. 1 & 2 by filing their affidavit-in-opposition has stated that the petitioner joined his duties as DPIU-II at Pangin as per the order No. SRWD-43/2012(Pt) dated 22-12-2014. The joining report has been forwarded to the Chief Engineer (EZ), RWD, Arunachal Pradesh, Itanagar vide order dated 26-12-2014. The respondent authorities have also stated that the Govt. has issued a modification order vide No. SRWD-43/2012 dated 10-04-2015 for retention of the respondent No.3 as DPIU-II at Pangin on

administrative reason and exigencies of works of the Department. In the said modification transfer and posting order, the place of the petitioner was wrongly shown as ASW, Pasighat Rural Works Division by clerical mistake instead of DPIU-II at Anjaw. Therefore, a corrigendum was issued vide order No. SRWD-43/2012 dated 16-04-2015 by showing the posting place of the petitioner as DPIU-II Anjaw. Therefore, there is no illegality and arbitrariness meted out to the petitioner. The private respondent No.3 was promoted as Executive Engineer vide order No. SRWD-33/2006 dated 17-09-2014 and in the subsequent order No. SRWD-15/2004 dated 15-11-2014, the respondent No.3 was allowed to continue as DPIU-II at Pangin in the circumstances of administrative reasons and exigencies of the works of the Department.

**8.** Mr. G. Deka, learned Sr. Govt. Advocate has submitted that vide Government Circular No. APTT-19-90 dated 01-06-1998 and subsequent modified order No. PR-126/2004 dated 09-12-2008, a general guidelines was issued for the normal process of transfer and posting of the govt. employees. Transfer and posting is the prerogative of the State Government on the circumstances of administrative necessity and exigencies of works of the Department which can be effected before completion of the normal tenure as specified in Para 1(b) of the guidelines. The State respondents have also stated in their affidavit-in-opposition that in the interest of public service, the respondent authority has reposted the petitioner from ASW, Pasighat Rural Works Division to Anjaw as DPIU which is equivalent in rank and responsibilities to the post of DPIU-II Pangin in the interest of public service. Therefore, no illegality and arbitrariness has been meted out to the petitioner.

**9.** The private respondent No.3, in his affidavit-in-opposition, has stated that basing upon the O.M. issued by the Commissioner (Administrative Reforms), Govt. of Arunachal Pradesh, the petitioner has assumed the charges ex-parte as DPIU-II Pangin but the private respondent did not handover the

charges as per the Govt. Order dated 12-03-2015. Moreover, in a ongoing projects in a Division, there are certain formalities of handing and taking over the charges are required such as clearance of accounts, tools, treasury clearance and plants etc. in comparison to other Departments where there is no monetary transactions does not involved. Therefore, the assumption of ex-parte charge taken by the petitioner was illegal as because the earlier transfer order was partially modified and was allowed to continue the private respondent No.3 at Pangin as DPIU-II. The private respondent also stated that the order dated 22-12-2014 was not implemented as because the petitioner submitted representation before the respondent authorities with reasons that he was transferred from Yingkiong in Upper Siang District vide order dated 20-06-2013 and posted at Pangin as DPIU-II against the existing vacancy. Therefore, the State Govt. through the respondent No.2 vide order dated 17-09-2014, promoted the respondent No.3 to the post of Executive Engineer(c) under Rural Works Department on officiating basis.

**10.** It is the case of the private respondent that pursuant to the promotion order dated 17-09-2014, the private respondent No.3 was allowed to continue as DPIU-II at Pangin vide order dated 05-11-2014 and accordingly, the respondent No.3 submitted his joining report as DPIU-II at Pangin on 12-11-2014. On submission of the representation before the authorities for frequent transfer as respondent No.3 hardly completed 41 days which is against the Govt. policy decision and guidelines on transfer and posting of Govt. Officers/staff of the State Government vide Circular dated 02-06-1996 and order dated 19-12-2008. The petitioner's joining report on 23-12-2014 at Pasighat in the office of the Superintending Engineer, Rural Works Circle, Pasighat and did not physically take any charge from the private respondent No.3 and in the meanwhile the respondent No.2 vide order dated 12-03-2015 by modifying the order dated 22-12-2014, the respondent No.3 was allowed to

continue at Pangin as District Project Implementation Unit (DPIU-II) till 31-03-2015.

**11.** Mr. N. Ratan, learned counsel appearing for the private respondent No.3 has submitted that the respondent No.3 was initiating all the official correspondence and supervising the ongoing projects of 4 nos. of PMGSY roads, which were in full swing. The Executive Engineer, RWD Pasighat Division had issued the release order illegally to the respondent No.3 as he was not having authority to issue such order( as he is junior to private respondent No.3) except by the Superintending Engineer, Pasighat Civil Circle. Although there is an office memorandum dated 13-02-2007 to take the ex-parte charge but that office memorandum is not absolute and cannot be done on suo motu basis without the concurrence from the competent authority. So, the private respondent No.3 did not give any charge to the petitioner and as such, he is still continuing as a DPIU-II, Pangin. Moreover, after taking ex-parte charge the petitioner has no right to issue notification without the approval from the competent authority to issue such notification on suo motu basis which is against the official norms and has acted by passing the superior authorities in this regard which is completely unbecoming on the part of a public servant and the same is a misconduct.

**12.** It is also submitted by the learned counsel for the respondent No.3 that there was various interlocutory orders issued by the competent authority and without following the orders issued by the competent authorities, the petitioner resorted to submit joining report at Pasighat not at Pangin which is not tenable in law. It is a well settled principle of law that the normal tenure of posting of an officer as per the Govt. guidelines is two years but whereas, the respondent No.3 has completed only 41 days in office and was transferred twice which shows complete malafide and extraneous action on the part of the respondent authorities. Therefore, the respondent authorities considering the

genuineness repeatedly allowed the respondent No.3 to continue at Pangin as DPIU. Hence, there is no any arbitrariness and illegalities on the part of the respondent authorities to issue corrigendum dated 16-04-2015.

**13.** In support of his contentions, Mr. Ratan, learned counsel appearing on behalf of the private respondent No.3 has referred the decisions of the Apex Court rendered in the case of **State of UP and Others Vs. Gobardhan Lal and D.B. Singh Vs. D.K. Shukla and Others**, reported in **(2004)11 SCC 402** and **Civil Appeal No.409 of 2004**; **Modh. Masood Ahmad Vs. State of U.P. and Others**, reported in **(2007) 8 SCC 150** and **Chairman cum Managing Director Coal India Ltd and others Vs. Ananta Saha and Others**, reported in **(2011) 5 SCC 142**.

**14.** In the cited case of **State of UP and Others Vs. Gobardhan Lal and D.B. Singh Vs. D.K. Shukla and Others**, reported in **(2004)11 SCC 402** and **Civil Appeal No.409 of 2004**, relied upon by the private respondent no.3, the Apex Court held as under:

*"Transfer is prerogative of the authorities concerned and court should not normally interfere therewith, except when (i) transfer order 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 such an order.*

*A challenge to an order of transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs of requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of mala fides*

***when made must be such as to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer.”***

**15.** In the case of **Mohd Masood Ahmad** (supra), relied upon by the private respondent No.3, wherein, it has been observed that 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. 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, there is no infirmity in the impugned transfer order.

**16.** I have considered the rival submissions of the parties at length and also gone through the official records as well as the legal pronouncements referred above. Evidently the petitioner nowhere challenge the transfer of the private respondent No.3 as malafide and only it has been assailed that in view of the existence of the official transfer order dated 22-12-2014, subsequent modification order dated 10-04-2015 and the Corrigendum dated 16-04-2015 is not permissible as no reason has been assigned for issuing such modification of the earlier transfer order. In this aspect, reply of the private respondent No.3 bears much impact that the petitioner has personally taken his own interest all kinds of unofficial activities without following the order of the competent authorities and started to undertaken site visiting and site inspection without there being assignment from the higher authorities and without any formal

handing and taking over as because there is a huge financial involvement in the division and without clearing the financial matters like any other office of non-involvement of financial matters would have been different. So, without clearing the financial matters a division cannot be taken over ex-parte by the petitioner as per the rules provided under financial rules and subsidiary rules (FRSR). It is pertinent to mention herein that the financial matters are brought during the audit examination and that rule is always binding on drawing and disbursing officer. So, DPIU-II Pangin involves various schemes such as PMGSY under RWSD various other schemes are involved huge amount and without clearing auditing and clearing the financial implications, the private respondent No.3 cannot hand over the charge to the petitioner. There is much substance in the submission of the respondent side.

**17.** Having regard to the submissions made by the learned counsel for the petitioner, I have gone through the document so filed by them. The first transfer order dated 22-12-2014 was issued the respondent No.2 whereby the petitioner was posted at DPIU-II Pangin in place of the private respondent No.3. However, down below of the said order reflected that his pay and allowances shall be drawn against the post of ASW, Rural Works Division, Yingkiong. Obviously his posting was not in the nature of promotion, although the post of DPIU-II Pangin is hold by the Executive Engineer (private respondent No.3). The petitioner hurriedly joined in his post unilaterally on the next day of the order while the private respondent No.3 was not released by the department concerned. Perhaps the petitioner was over interested to take over the charge of the higher post hold by the private respondent No.3. Officially the private respondent No.3 was directed to hand over the charge only on 09-03-2015 by the Executive Engineer, RWD, Pasighat and by the subsequent order dated 12-03-2015 issued by the respondent No.2, it was directed that the petitioner will take over charge from the private respondent No.3 after 31-03-2015. Therefore, it is to be noted that in spite of specific

direction that the charge is to be taken over from the private respondent No.3, the petitioner cannot take over the charge but he again took the charge unilaterally and hurriedly on 04-04-2015. Apparently he has not acted as directed in the official order and he immediately started his work without being formally handed over the charge to him by the private respondent No.3.

**18.** On the other hand, on consideration of the case of the private respondent No.3, it is found that he was just promoted to the post of DPIU-II Pangin in the month of November, 2014 and he joined in the said post on 12-11-2014. He has also not completed his tenure in the said place of posting as per the guidelines regarding transfer and posting circulated by the State Government. From the official record, it appears that the private respondent No.3 has moved the authority through the local MLA/Minister for his transfer before the normal tenure and ultimately on recommendation, so made by the local MLA/Minister, and with the approval of the Minister concerned of the Department, the transfer order of both the petitioner and private respondent No.3 was modified, no other malafide or arbitrariness of the authority is reflected.

**19.** As has been mandated by the catena of cases including the cited case of ***Mohd Masood Ahmad Vs. State of U.P. and Ors, (2007)8 SCC 150***, wherein, the Apex Court has held that transfer is an exigency of service and is an administrative decision and interference by the courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the Supreme Court, transfer is an exigency of service, it should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders were not competent to pass the orders. It has been discussed in the above case laws that 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. 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.

**20.** In the present case, it is found that the private respondent No.3 having genuine grievances against the transfer order, which was made before completion of his tenure in the place of posting. So he has moved the higher authority, which was ultimately acted upon and resulting the modification of the said transfer order, which has been impugned in this case. However, after going through all the material on records, there is no scope to hold that there was an infirmity or malafide in the impugned transfer order so as to interfere with by this Court. However, the petitioner may approach the respondent authorities to ventilate his grievances, if any, by way of submitting proper representation and the authority concerned, on receipt of the same, shall consider and pass necessary order in accordance with law.

**21.** With the above observations and directions, this writ petition stands disposed of. There shall be no order as to costs. Return the official record to Ms. G. DeKa, learned Sr. Govt. Advocate, forthwith. The interim order passed earlier stands vacated.

**JUDGE**

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