

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

WP (C) 549 (AP) 2013

ITANAGAR BENCH

**Sri. Bamin Tadit,
S/O Sri. Bamin Chobin,
C/O Superintendent of Police,
Capital Complex, Itanagar,
Dist. Papumpare, Arunachal Pradesh.**

..... **Petitioner.**

By Advocates:
Mr. M. Pertin,

-Versus-

1. **The State of Arunachal Pradesh represented through
Secretary Home, Govt. of A.P., Itanagar.**
2. **The Director General of Police, Govt. of A.P., Itanagar.**
3. **The Superintendent of Police, Capital Complex, Itanagar,
Arunachal Pradesh.**
4. **The Superintendent of Police, Telecom, THQ, Itanagar,
Arunachal Pradesh.**

.....**Respondents.**

By Advocates:

Ms. G. Deka, learned Add, Sr. Govt. Adv.

BEFORE
HON'BLE MR. JUSTICE N. CHAUDHURY

Date of hearing : 23-06-2014.

Date of Judgment & Order : 23-06-2014.

JUDGMENT (ORAL)

Whether transfer can be made outside the cadre is the moot question to be replied in this writ petition.

2. The petitioner Sri Bamin Tadit is a Sub-Inspector (Radio Technician) under the Arunachal Pradesh (Telecom) Organization. The Department is vertically divided into two wings, namely, Radio Technician and Telecom (Operational). Telecom (Operational) wing is responsible for doing the communication duties both by wireless transmission as well as telecom transmission and the Radio Technician wing is responsible for repair and maintenance of wireless transmission equipments. While personnels of Radio Technician wing are trained for repairing of equipments of wireless transmission only, those in the operational wing (Telecom) are trained for

sending and receiving the messages Moorse code and also to maintain radio procedure. Thus members of one wing is not aware of the technical knowledge of the other wing both the wings being meant for two different types of technical jobs. The cadre seniority list of the two wings are also separately maintained.

3. The case of the petitioner is that despite such striking difference between the functioning of the two wings, the Police Establishment Board by an order dated 20.09.2013 (Annexure-1, to the petition) approved the transfer of the present petitioner who is an Sub Inspector of Radio Technician wing to the post of Officer-in-Charge of WT Transmission, Longding. The post of Officer-in-Charge, WT is in the Telecom Wing (Operational) of the Arunachal Pradesh Telecom Organization. The duties and responsibilities of the post are with regard to the transmission and receipt of the messages, a subject in which the petitioner was never trained or educated. Since this transfer is beyond the cadre of Radio technician Wing and the petitioner never before had any occasion to work in operational (Telecom) wing, this order has been brought under challenge in the present petition. The case of the petitioner is that all along he has been working in the Radio Technical Wing, he got promotion as Sub Inspector in this wing and that he has been holding the post of SI (Radio Technician) and that he was always used for the purpose of repairing and maintenance of the WT equipments. He was neither trained in Morse Code nor does he possess any knowledge for the transmission or reception of telegraphic signals. The seniority list of radio technician wing is separately maintained and that the position of the petitioner in seniority list of this wing is 2. Once he is transferred to a different cadre, he will be deprived of his seniority position. Besides, his retirement is in the month of July, 2016 and in such circumstances he has a right of option as to his last place of posting. Petitioner filed the representation before the authority pointing out the imminent inconvenience he is supposed to suffer along with possible failure of public interest because of out the cadre transfer in a highly technical service but the same did not receive any consideration of the concerned authority. Under such compelling circumstances, the petitioner has prayed for setting aside the impugned transfer order .

4. This Court at the time of motion hearing was satisfied that the petitioner has a prima facie case and that unless interim order is passed there is chance injustice and accordingly passed an interim order staying the operation of the impugned transfer order. This order was extended from time to time and the same is in force till date.

5. I have heard Mr. Muk Pertin, learned counsel for the petitioner and Ms. G. Deka, learned Addl. Sr. Govt. Advocate appearing on behalf of the State.

6. The Government has filed an affidavit-in-opposition. In Paragraph-5 of the affidavit-in-opposition, the basic statement of the petitioner as to the nature of the two wings of the organisation has been admitted. In this paragraph, the respondent has deposed that the Arunachal Pradesh Police(Telecom) Organization has two (2) separate wings, namely, Radio Technical Wing and Telecom Wing (Operational). It is also admitted that the petitioner is a member of the Radio Technical Wing. However, in Paragraph-7 of the affidavit-in-opposition, the statement has been made that the petitioner earlier worked for 3 years in the Telecom wing.

7. From rival pleadings of the parties it emerges that the aforesaid two (2) wings are differently treated all along. Further, it is clear from the fact that there are two separate recruitment rules and that seniority lists of the officers under the two wings are also separately maintained. Annexure - III of the affidavit by the Government provides the rules of SI (Radio Technician) (Group -B), recruitment rules, 1999. Similarly, Annexure-IV of the said affidavit furnishes the provision for recruitment of SI in the Telecom. Obviously, there are two separate recruitment rules. The seniority list of the SI (Radio Technician) has been placed at Annexure-IV series of the writ petition. It shows that the petitioner Sri. Bamin Tadi is at serial No. 5 in the seniority list of the SI (Radio Technician) in Civil Police. It is not contended in the affidavit that names of the officers of the Telecom wings are there in the Annexure IV seniority list. Thus, it is prime-facie clear from the statements made in Paragraph-3 of the affidavit filed by the Government that the petitioner belongs to Radio Technician Wings and he has been transferred outside the cadre to Telecom Wing of the APP (Telecom) Organization.

8. Transfer outside a cadre is normally not permissible. Once a transfer is made beyond the cadre or service, it becomes a case of deputation. Deputation can be permitted only at the option of the employee and it cannot be imposed by the department. Even in case of deputation, a deputee retains his right against the post in his parent department where he can be repatriated after the deputation period is over. Except for the case of deputation, transfer cannot be made beyond the department or cadre. The reason for the same is that when a person is appointed in a particular post or cadre, he knows its cadre strength. He gets an idea as to his seniority position in the cadre and thus he knows his future prospect in the cadre. This acts as an incentive to him and in the process, the quality of

his service also improves. But once he is shifted to a different cadre or service, his earlier experience, seniority and future prospect becomes irrelevant and useless. Not only he gets demoralized, the quality of his service is also bound to deteriorate. Because, he will have to train himself in an entirely new nature of work. Particularly, in advanced stage of service career as in the present case, such a new challenge may be catastrophic.

9. In the present case, petitioner is accustomed to attending duties of repair and maintenance of Wireless transmission. He does not have any knowledge or experience in Moorse Code or any other wireless or telegraphic transmission mechanism. But in the capacity of Officer-in-Charge of the operational wing, he will have to supervise the duties and responsibilities of the transmission wings and he being ignorant in this new technical job he will be seriously inconvenienced. In the process not only the petitioner shall suffer but public interest shall also be adversely affected.

10. Considering the facts and circumstances it is apparent that in the case of his transfer to telecom wing, the petitioner will be exposed to new and unknown Technical atmosphere for which, he was never trained or educated. He will lose his seniority position and above all, he being at the fag end of his service life it will be impractical to make him learn an entirely new technical subject. As pointed out, the petitioner is going to retire in the month of July, 2016, for which hardly a period of 2 years is left. At this stage, learned Govt. Advocate submits that she has produced the original records. On perusal of the records, it appears that a note was placed before the Chief Minister, Arunachal Pradesh, as to the representation submitted by the present petitioner for retention of his transfer at the present place of posting on humanitarian ground and the same was approved by the Chief Minister of the State of Arunachal Pradesh. This was done on the consideration that the petitioner is on the verge of his superannuation. Considering the totality of the circumstances including the observation of the Chief Minister in the records, I feel that the impugned transfer order needs to be set aside. It is accordingly set aside and quashed.

11. The Government is at liberty to consider the prayer of the petitioner to permit him to work from present place of posting as he is going to retire within two years. The writ petitioner is allowed.

No order, as to costs.

JUDGE

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