

GAHC040008812023



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

Case No. : WP(C) 305/2023

1:Doming Cheda

S/o Lt. Pottu Cheda, Permanent resident of Wotte Cheda village, P.O Pipu, P.S Chayangtajo, District East Kameng, Arunachal Pradesh and presently working as Block Development Officer at Sagalee Block, Papum Pare District Arunachal Pradesh. Cont. No. 919436069336

VERSUS

1:THE STATE OF AP and 2 Ors.

Represented by the Secretary, Rural Development Department, Govt. of Arunachal Pradesh, Civil Secretariat, Itanagar, Arunachal Pradesh.

2:The Director

Rural Development Department
Govt. of Arunachal Pradesh
Itanagar
Arunachal Pradesh.

3:Kapa Rai

Block Development Officer
Pangin
Siang District
Arunachal Pradesh

Advocate for the Petitioner : Adam Tatak

Advocate for the Respondent : Binter Picha

BEFORE
HONBLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 29-06-2023

Heard Mr. A. Tatak, the learned counsel for the petitioner and Mr. B. Picha, the learned Standing Counsel for the Rural Development Department, Arunachal Pradesh.

2. The present writ petition is filed assailing the order of transfer dated 23.06.2023 issued by the respondent No.2, whereby, the petitioner had been transferred from Sagalee Block, Papum Pare District, Arunachal Pradesh and posted at Tuting Block, Upper Siang District, Arunachal Pradesh.

3. The grounds of challenge in the aforesaid petition are three folds; firstly, that the transfer order has been issued in *malafide* exercise of power and to accommodate the respondent No. 3. The second ground is that in terms of Government Policy and Circular, transfer is required to be effective after 2 years however, the petitioner has completed only 1 year 6 month at the present of place posting. The third contention of the writ petitioner is that he is having some health issues and accordingly, he was transferred in the present place of posting on his own request and on the health ground only. As there is no change of circumstances and health condition of the petitioner still remains, therefore, transfer order ought not to have been issued.

4. It is by now well settled that transfer is an incidence of the

service and the guidelines and transfer policies do not confer indefeasible rights upon an employee to continue with a place of posting till the tenure is over. Of course, the transfer order can be interfered in exercise of power of judicial review under Article 226 of the Constitution of India when it is issued in *malafide* exercise of power but specific pleading to that effect is required to be made. In the present case such pleading is not available.

5. Therefore, this Court is not inclined to interfere with the transfer order. However, the fact remains that the employer being a state instrumentality should entertain and consider grievances of its employee.

6. In the case in hand, the petitioner has already filed representations on 26.06.2023 before the respondent Nos.1 and 2 and same are still pending.

7. It is therefore, provided that respondent authority more particularly respondent No.1 shall consider the aforesaid representation filed by the petitioner and pass Speaking Order. Such order shall be passed within a period of 15 days from receipt of copy of this order. A copy of this order be furnished within a period of 3 days from today before the respondent No.1. The petitioner is also permitted to serve a copy of this order downloaded from the website from this Court.

8. While parting with the record, it is clarified that this Court has

not expressed any opinion on the merit of the claim of the petitioner on health ground and the Secretary shall be at its own discretion to consider the application filed by the petitioner on health ground. Till such determination is made *status quo* as on today as regard the posting of the petitioner shall be maintained.

The writ petitioner is accordingly, disposed of.

JUDGE

Comparing Assistant