



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

Case No. : WA 25/2022

1:Okom Siram
S/o Late Bango Siram,
Permanent Resident of Yagrung Village, PO and PS Pasighat, East Siang District,
Arunachal Pradesh. PIN 791102
Contact No. 8416003234
Email ID Nil

VERSUS

1:THE STATE OF AP and 3 Ors.
Represented by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar.

2:The Commissioner (Power)
Govt. of Arunachal Pradesh
Itanagar.

3:Allen Yirang
S/o Lt. Makbul Yirang

Resident of Village Midland
PO and PS Roing
Lower Dibang Valley District
Arunachal Pradesh. PIN 792110.

4:Kaling Tayeng (IAS)
Commissioner (Power)
Govt. of Arunachal Pradesh
Itanagar

::BEFORE ::

HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE MITALI THAKURIA

For the appellants Advocate,	: Mr. Indraneel Chowdhury, Senior : Mr. Sandeepjoy Biswakarma, Mr. N. Doje, : Mr. Lardam Murtem, Mr. Keten Tabang, : Advocates.
For respondent no.1	: Ms. R. Basar, Govt. Advocate
For respondent no.2	: Mr. L Parme, S.C., Power Deptt.
For respondent no.3	: Mr. P.K. Tiwari, Senior Advocate, : Mr. T.T. Tara, Mr. K. Saxena, Advocate.
Date of hearing	: 22.11.2022 and 23.11.2022.
Date of judgment	: 04.01.2023.

JUDGMENT & ORDER

(C.A.V.)

(Mrs. Mitali Thakuria, J)

Heard Mr. I. Choudhury, learned senior counsel, assisted by Mr. S. Biswakarma, learned counsel for the appellant. Also heard Ms. R. Basar, learned Government Advocate for the State respondent no. 1, Mr. L. Perme, learned standing counsel for the Power Department and Mr. P.K. Tiwari, learned senior counsel, assisted by Mr. K. Saxena, learned counsel for the respondent no.3. None appears on call for the respondent no.4.

2. By filing this intra court appeal, the appellant has assailed the judgment and order dated 29.07.2022 passed by the learned Single Judge of this Court in WP(C) 215(AP)/2022. The appellant is the writ petitioner and by

the impugned order the said writ petition was dismissed.

3. In brief, the case of the appellant is that he is presently working as an Executive Engineer (Electrical) in the Department of Power in the State of Arunachal Pradesh. It is the admitted case of the appellant that on 04.09.2019, he was transferred and posted as Executive Engineer (Planning) in the office of the Chief Engineer (Planning), Central Electrical Zone, Itanagar. He had completed the normal tenure posting of two years on 03.09.2021. On 17.03.2022, the respondent no.3 was transferred from Roing Head Quarter to Yatdam Electrical Division and it is projected that the respondent no.3 had merely completed 9(nine) months of posting at Roing Head Quarter. It is further projected that having realized that the transfer of respondent no.3 was in violation of the Government policy of a minimum tenure of posting of two years, by another transfer order dated 28.03.2022, the appellant was transferred to Yatdam Electrical Division. The said order dated 28.03.2022 was challenged by respondent no.3 by filing WP(C) 129(AP)/2022 and this Court by judgment and order dated 26.04.2022 disposed of the writ petition by setting aside the transfer order dated 28.03.2022 by directing the Commissioner (Power) to revisit the issue of transfer of the appellant and respondent no.3 strictly in accordance with the departmental norms and Service Rules without being influenced by notes, if any, circulated by any political persons, whomsoever and it was directed that the said exercise shall be undertaken within a period of 4(four) weeks from the date of receipt of certified copy of the order. The respondent no.2 by an order dated 14.06.2022, transferred the respondent no.3 to Yatdam Electrical Division and the appellant was transferred to Pasighat.

4. The said order has been challenged by the appellant by filing WP(C) 215(AP)/2022. As indicated above, the said writ petition was dismissed

by judgment and order dated 29.07.2022 and the said judgment is assailed in this intra court appeal.

5. The submissions made by the learned Senior Counsel for the appellant can be compartmentalized into three distinct grounds, viz., (1) transfer order was mala fide, (2) the circulars related to transfer has a statutory force and cannot be diluted, and (3) no reasons was assigned for the transfer of the appellant and respondent no.3.

6. In order to show that the transfer order was mala fide, it was submitted that by an order dated 09.06.2021, the appellant was transferred from Roing Electrical Division to Roing Hq. as Electrical Inspector. Therefore, it is urged that the normal period of tenure posting of respondent no.3 would have expired on 08.03.2023. However, the respondent no.4, who is holding the post of Commissioner (Power), is the classmate and close friend of the respondent no.3, had in violation of the transfer policy of the State, transferred the respondent no.3 from Roing Hq. to Yatdam Electrical Division vice Sri Gangtok Banyang by order dated 17.03.2022. The said order was issued on 19.03.2022. It may be stated that in the said transfer order dated 17.03.2022, the name of Sri Gangtok Banyang is also written as Sri Gamtok Banyang and in another office order dated 24.03.2022, his name is written as Sri Gangtong Bangyang. It is submitted that although the transfer order dated 17.03.2022 was to be effective from 01.04.2022, the respondent no. 3 was hurriedly released from the establishment of Roing Hq. on 22.03.2022 and on 23.03.2022, he gave his joining report to the Superintending Engineer (E), APEC-III, Miao vide letter dated 23.03.2022. However, the said Superintending Engineer (E), APEC-III, Miao by an office order dated 23.03.2022, directed the respondent no.3 to take charge after 31.03.2022 as per government transfer order. It is submitted that

the initial circular regarding transfer posting guidelines dated 02.06.1998 was amended on 19.12.2008 and as the authorities had observed that the departments were not following the guidelines scrupulously, by a circular dated 18.08.2021 issued by the Chief Secretary of the State, it was reiterated that there would be strict compliance of the said guidelines.

7. It was submitted that by order dated 26.03.2022, in partial modification of order dated 19.03.2022, the respondent no.4 in his capacity as respondent no.2 had transferred the appellant to Yatdam Electrical Division, allowing him to take charge from Gangtong Bangyang after 31.03.2022. Accordingly, on 01.04.2022, the appellant took over charge of the post of Executive Engineer (E) at Yatdam Electrical Division.

8. It was submitted that the respondent no.3 had approached this Court to assail the transfer order dated 28.03.2022 and this Court by judgment and order dated 26.04.2022 passed in WP(C) 129(AP)/2022, set aside and quashed the transfer order dated 28.03.2022 and the respondent no.2 was directed to revisit the transfer.

9. It was further submitted that as this Court had set aside the transfer order dated 28.03.2022, the subsequent transfer order dated 14.06.2022 ought to contain at least some reason so as to show some deference to the judgment and order of this Court.

10. It was further submitted that the respondent no. 3 and 4 are classmates from the same school and class and are very good friends. In the said context, it was submitted that the pleadings made to that effect in the writ petition was not specifically denied by the respondent nos. 3 and 4. It was also

submitted that the relationship between respondent no. 3 and 4 is something which was private to them and that the appellant had no proof of such friendship. However, after the writ petition was dismissed, the appellant has been able to collect the proof that the respondent no.3 and 4 were classmates in the same school and the school/ class photographs during 1989-99 and the photographs of Vivekananda Kendriya Vidyalaya, Jairampur students had a visit to Kanyakumari in December, 1998, which is registered in school register, which is annexed to the affidavit filed by the appellant on 17.09.2022 was to place on record additional documents which despite due diligence could not be procured and filed before the learned Single Judge when the writ petition was being heard. Accordingly, it was submitted that the additional documents were not new facts introduced by the appellant but they are merely proof of the close friendship between the respondent no. 3 and 4 which was sufficient to show mala fide. Hence, it was submitted that this Appellate Court would be pleased to take cognizance of the additional documents filed by the appellant to substantiate his allegations.

11. In respect of the second point that the transfer policy in the State of Arunachal Pradesh, had statutory force, it is submitted that ordinarily all orders passed by the Executive are done in the name of the Governor, which is sufficient compliance of power vested under Article 166 of the Constitution of India. However, in the present case in hand, the transfer policy vide circular dated 02.06.1998 was not a mere act on part of the executive because in the said circular it was specifically mentioned that "*... in supersession of all previous notifications/ circulars etc. issued on the subject, the following policy guidelines on the transfer and posting of all categories of officers and staff in Arunachal Pradesh is approved by the Governor and is circulated for compliance by all concerned.*" Accordingly, it was submitted that it can be presumed that active

steps was taken by the Governor because of the matter was placed before the Governor and he had given his approval and therefore, due meaning has to be assigned for the words "approved by the Governor" and it must be deemed that the said circular was having some statutory force and not a mere executive action. It is also submitted that this fact clearly distinguishes the transfer policy of the State of Arunachal Pradesh from the situation envisaged in the case of *Union of India v. S.L. Abbas, (1993) 4 SCC 357*.

12. In respect of the third point that the impugned transfer order contained no reason, it was submitted that though this Court, by order dated 26.04.2022 in WP(C) 129(AP)/2022, had not directed the respondent no. 2 to pass a speaking order, nonetheless, it was incumbent from the respondent no. 2 to assign at least some reason to pass the impugned transfer order, moreso because the respondent no. 3 was being transferred prior to the normal tenure of two years, which is in violation of the Government circular on transfer policy, which was mandatory in nature.

13. The learned senior counsel for the appellant had submitted that the learned Single Judge had failed to consider the mandatory in nature of the transfer policy of the State, which was to be strictly followed. Moreover, it was submitted that the plea taken by the appellant that the respondent no. 3 and 4 are friends and classmates, which was not specifically denied, was not considered by the learned Single Judge and that the additional documents now produced at the appellate stage clearly demonstrated that the respondent no. 3 and 4 were classmates and friends and therefore, the transfer order dated 14.06.2022 was clearly vitiated by malice as well as it was mala fide. It was submitted that the learned Single Judge had further failed to take note of that in spite of the fact that the previous transfer order was set aside by the Court, the respondent no.4, who was holding the post of respondent no.2 allowed the

respondent no.3 to continue and function as Executive Engineer at Yatdam Electrical Division and therefore, the learned Single Judge ought to have balance equities by interfering with the transfer order and allowing the appellant to function as the Executive Engineer at Yatdam Electrical Division.

14. The learned senior counsel for the respondent no.3 had objected to the introduction of additional affidavit by which the appellant has introduced two sets of additional documents and two photographs to project that the respondent nos.4 and 5 studying in the same class and in the same school on the ground that those materials were not produced in the writ proceedings and there is no explanation as to why those additional facts could not be produced in the writ proceedings in spite of exercise of due diligence. It was also stated that merely because both of them studied together would not be sufficient for the Court to draw a presumption that the transfer order of the respondent no.3 was vitiated by mala fide. It was also submitted that the respondent no.4 by order dated 26.03.2022 had transferred the appellant to Yatdam Electrical Division, but as the appellant was the beneficiary of transfer, he did not raise any grievance.

15. By relying on the stand taken by the respondent no.3 in the affidavit-in-opposition filed in the writ petition, it was submitted that in this appeal, the learned senior counsel for the appellant has made three-fold submissions to assail the transfer order. Firstly, that it was mala fide; secondly, that the transfer circulars had statutory force; thirdly, that no reason was assigned for the transfer. In the said context, it was submitted that the issue of mala fide has already been addressed by him by submitting that the transfer order was not a result of any bias or mala fide action of respondent no.4 and that merely by alleging that the respondent nos.3 and 4 studied together, inference of mala fide cannot be drawn. It was submitted that the appellant has

not been able to demonstrate that how by the transfer of the respondent no.3, he could have suffered any prejudice. It was submitted that the appellant has not been able to show that his transfer was made as a measure of punishment. It was also submitted that mala fide cannot be inferred in respect of a transfer order, but has to be proved. It was reiterated that as the appellant was assailing the transfer of respondent no.3, mala fide is not a ground available to the appellant.

16. On the submission made by the learned senior counsel for the appellant that the transfer policy in the State of Arunachal Pradesh had statutory force, it was submitted that the said plea is not at all sustainable on facts and in law and that the transfer circulars issued by the State Govt. are required to be treated as an executive action, be it in the name of the Governor or be it by approval of the Governor.

17. In respect of the ground that the impugned transfer order contained no reason, it was submitted that the same was of no consequence because this Court, vide order dated 26.04.2022 passed in WP(C) 129(AP)/2022, did not require the respondent no.2 to pass a speaking order.

18. Considered the submissions made at the bar and also considered the materials available on record.

19. On the basis of the submissions made by the learned senior counsel for the appellant, the following point of determination arises in this case:-

i. Whether the impugned transfer order dated 14.06.2022 is vitiated on account of being passed mala fide and did not contain any reason?

ii. Whether the impugned judgment and order dated 29.07.2022 passed by the learned Single Judge in WP(C)

215(AP)/2022 is liable to be interfered with?

20. The point that the impugned transfer order was mala fide is taken up first. In this regard, the Court is inclined to accept the submissions made by the learned senior counsel for the respondent no.3 that merely because an order is passed by an authority who happens to either know the benefitting party or might have studied in the same school or college is not sufficient to presume mala fide. We cannot lose sight of the fact that in the earlier round of litigation, one of us (*K.R. Surana, J*), had passed an order dated 26.04.2022 in WP(C) 129(AP)/2022 whereby the Commissioner (Power), Govt. of Arunachal Pradesh was directed to revisit the issue of transfer of the petitioner and respondent no.3. Therefore, the respondent no.4, who is holding the office of respondent no.2, i.e. Commissioner (Power), Govt. of Arunachal Pradesh was bound to comply with the order and pass a fresh transfer order concerning the appellant and the respondent no.3. Therefore, as the impugned order was passed in compliance with the direction of this Court, it would be absurd to accept the contention of the appellant that the transfer order was mala fide. If the appellant was aware of a special relationship between the respondent no.3 and respondent no.4, the appellant would have immediately rushed to this Court seeking modification of the directions contained in the said order dated 26.04.2022 in WP(C) 129(AP)/2022, which was not done. Therefore, at this appellate stage, the Court is inclined to reject the contention of the appellant that the impugned transfer order was mala fide.

21. The submissions made by the learned senior counsel for the appellant that in the State of Arunachal Pradesh, transfer circulars have a statutory force is rejected because of the fact that the said transfer circulars does not contain any reference that such circular has been issued under powers derived from any statutory provision of law in force. Therefore, the transfer

circulars which have been referred to by the learned senior counsel for the appellant, can only be treated as an executive action irrespective of the fact whether such circulars have been issued in the name of the Governor or with the approval of the Governor. We are unable to accept that in the name of providing due meaning to the words "approved by the Governor", a finding can be returned by the Court that the circular dated 02.06.1998 has a statutory force.

22. The third reason to challenge the impugned transfer order is that no reasons were assigned for the transfer. In the said context, it would be pertinent to note that this Court by order dated 26.04.2022 in WP(C) 129(AP)/2022 had a mere requirement of the respondent no.2 to revisit the issue of transfer of the appellant and the respondent no.3 strictly in accordance with the departmental norms and service rules without being influenced by notes, if any, circulated by any political persons whomsoever. Therefore, this Court never expressed any desire that the transfer order that may be consequently passed should contain any reason. Therefore, there was no requirement that the respondent no.2, the post which is held by respondent no.4 should assign any reason. The learned departmental counsel has produced the relevant departmental records, which contains the computer generated note sheets, which were perused and returned. A part of the said note sheets are also annexed to the objection filed by the appellant in the connected IA(C) 1233(AP)/2022. On a conjoint reading of the said note sheet, it appears that the concerned departmental authorities, who had processed the file, had given their respective notes, which ultimately reached the respondent no.2. The said notes disclose that the normal tenure of the appellant was already completed and he was eligible for transfer whereas the tenure of the respondent no.3 had not yet completed. Therefore, as per contents of note no.56, 57 and 58, the matter was

sent for approval to the respondent no.2, the post held by respondent no.4. Consequently, the respondent no.2 made his comments in note no.61, which was further sent up to the departmental advisor, who endorsed his approval. Thereafter, the file was signed by the Deputy Chief Minister and Chief Minister. Therefore, time from 19.05.2022 to 14.06.2022 i.e. close to a month was taken by the departmental authorities to complete the process, culminating in the issuance of the impugned transfer order.

23. Therefore, we find that the learned Single Judge had rightly held that it could be seen from the relevant note sheet that the competent authority had proposed the transfer of the parties concern for ensuing better administration. Hence, we approve of the finding by the learned Single Judge that admittedly, good administration co-relates to public interest which is one of the essential features in making a decision on transfer or posting. We cannot find any error committed by the Single Judge by following the case of (1) *State of U.P. & Ors. Vs. Gobardhan Lal*, (2004) 11 SCC 402; (2) *National Hydro-electric Power Corporation Ltd. Vs. Sh. Bhagwan & Anr.*, (2001) 8 SCC 574; (3) *State Bank of India Vs. Anjan Sanyal & Ors.*, (2001) 5 SCC 508; (4) *Union of India Vs. S.L. Abbas*, (1993) 4 SCC 357; (5) *Abdur Rahim SK Vs. State of Assam & Others*, 2017 (2) GLT 20; and (6) *Redam Jini Vs. State of Arunachal Pradesh*, (2011) 2 GLR 539.

24. Accordingly, we are inclined to affirm the view of the learned Single Judge that there are no compelling reasons or grounds for this Court to interfere with the impugned transfer order. We also endorse the view of the learned Single Judge that the allegation of mala fide sought to be projected by the appellant does not convince this Court to make an interference. We would also like to mention that the senior counsel for the appellant has not been able to demonstrate as to how and in what manner the case of *Andrew Banrilang*

Umdor Vs. State of Meghalaya & Ors., 2007 (4) GLT 712 is applicable in the present case.

25. Accordingly, we do not find any merit in this appeal and therefore, this appeal is dismissed.

26. Before parting with the records, it is clarified that the respondent authorities should carry out the transfer order bearing no. POWER-12015/2/2022/2871-78 dated 14.06.2022.

27. Under the circumstances, there shall be no order as to cost.

JUDGE

JUDGE.

Comparing Assistant