

GAHC010097482023



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

Case No. : WA/153/2023

BINAY KUMAR DIWANA
SON OF SRI SHREEKRISHNA CHAURASIA, RESIDENT OF TYPE-III,
QUARTER NO. 14, NHPC COLONY, GERUKAMUKH, IN THE DISTRICT OF
DHEMAJI, PIN- 787035, ASSAM.

VERSUS

THE UNION OF INDIA AND 4 ORS.
REPRESENTED BY THE SECRETARY (POWER), SHRAM SHAKTI BHAWAN,
RAFI MARG, NEW DELHI, DELHI- 110001.

2:NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003.

3:THE EXECUTIVE DIRECTOR (HR)
NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003.

4:THE GENERAL MANAGER (HR)
NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003.

5:THE DEPUTY GENERAL MANAGER (HR)
NHPC LIMITED
CORPORATE OFFICE

SECTOR- 33
FARIDABAD

HARAYANA- 121003

Advocate for the Petitioner : MR. D GOSWAMI

Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 09-05-2023

(Sandeep Mehta, CJ)

The instant intra-court appeal has been preferred by the appellant/ petitioner being aggrieved of the order dated 02.05.2023, passed by the learned Single Judge of this Court dismissing WP(C) 1534/2023 filed by the appellant/petitioner assailing the transfer order dated 10.03.2023, by virtue whereof the appellant/petitioner was transferred from the Lower Subansiri Hydro Electric Project, in the district of Dhemaji, Assam, and was posted at Baira Siul PS. The writ petitioner challenged the transfer order on various grounds, amongst others *inter alia* that it was a case of frequent transfer; the transfer order has been issued with *mala fide* intent of causing harassment to the petitioner and that the transfer order has been issued without the approval of the Chairman & Managing Director of the National Hydroelectric Power

Corporation Limited (hereinafter referred to as "NHPC" for short). The learned Single Bench appreciated the entirety of the facts presented on record and came to the conclusion that during the entire service career of the appellant/petitioner, commencing from 19.01.2004, he had been given only one hard posting at Tawang basin during the period from 01.07.2009 and the remaining tenure was on soft postings. It was further noted that as per Clause 3.2 of the Transfer Policy of the NHPC, no employee of the corporation, i.e. NHPC, could be allowed to stay within one region or within one cluster for more than ten years. However, ignoring the policy and taking note of the personal difficulties of the petitioner, he had been allowed to remain within Cluster-III (soft posting) for a continuous period of more than ten years and by virtue of the impugned transfer order he had been posted in an area which comes under Cluster-III. Finding that there is no material to substantiate the allegation of *mala fide* exercise of power, or violation of any statutory provision or condition of service and concluding that the impugned order of transfer had the approval of the competent authority, the learned Single Judge proceeded to dismiss the writ petition by the order dated 02.05.2023, which is assailed in this intra-court appeal.

Learned counsel Mr. D. Goswami, representing the appellant vehemently and fervently contended that the finding recorded in the impugned order that the appellant had served on a hard posting only for two years is factually incorrect, because the petitioner was posted at Parbati-II Project-Head Race Tunnel Construction site from the year 2004 till 2009, which is hard posting, and thereafter he was transferred to the Tawang Basin and remained there for two years. Thus, the total period of nearly eight years had been spent by the petitioner on hard postings. Nonetheless, learned counsel for the appellant was not in a position to dispute the fact that since August, 2014, after being transferred from the Regional Office, Kolkata, the appellant has been serving in Cluster-III. Learned counsel for the appellant urged that the impugned transfer order is not only a short of *mala fide* exercise of power but also contrary to the transfer policy.

Per contra, learned senior counsel Mr. P. K. Tiwari, assisted by Mr. A. R. Gogoi, representing respondent Nos. 2 to 5, and Ms. A. Gayan, learned Central Government counsel have opposed the submissions advanced by the appellant's counsel. Learned senior counsel Mr. P. K. Tiwari has drawn the attention to the averments made in paragraph 14 of the Interlocutory Application filed by the respondents seeking vacation of the *ad interim* order wherein it is clearly stated that the transfer order was given the seal of approval by the Chairman & Managing Director of the NHPC. The allegation that the transfer order has been issued contrary to the guidelines is emphatically denied. It has been submitted that the transfer order of the appellant/petitioner was resorted to by way of administrative exigency.

We have given thoughtful consideration to the submissions advanced at Bar and gone through the material available on record. We do not find any procedural irregularity in the impugned transfer order, which can be considered sufficient to term the same as arbitrary, unjust or illegal. The transfer order itself speaks that it was being issued keeping in view the organizational requirements. The appellant/petitioner has been transferred from Subansiri Lower HEP to Baira Siul PS, which is within Cluster-III. Thus, there is no reason for this Court to disbelieve the averments made in the affidavit-in-opposition filed on behalf of the respondents before the learned Single Bench that the transfer order was made for administrative exigencies. The appellant's counsel was not in a position to dispute the fact that the appellant has been posted at soft postings from the year 2011 onwards. The fact is born out from the Chart showing the details of the appellant's postings as set out in paragraph 4.A. of the instant appeal. The transfer policy, which is applicable to the appellant/petitioner, clearly stipulates that no employee shall be permitted to stay on soft postings for more than ten years. Nevertheless, the appellant/petitioner has been given indulgence in the matter of transfer by providing him soft postings from the year 2011 onwards. Hence, the appellant/petitioner is precluded from raising grievance against the impugned transfer order on purely hyper-technical grounds.

In view of the above discussion, we are of the firm opinion that the impugned order does not suffer from any infirmity warranting interference and, accordingly, the appeal is dismissed as being devoid of merit.

JUDGE

CHIEF JUSTICE

Comparing Assistant