

GAHC010159492023



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

Case No. : WP(C)/4139/2023

BAKUL ROY
S/O- LATE BIBHUTI ROY, R/O- COLLEGE ROAD, WARD NO.8, P.O. RK
NAGAR, P.S. KARIMGANJ, DIST.- KARIMGANJ, ASSAM, PIN- 788166

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SPL. SECRETARY TO THE
GOVT. OF ASSAM, PUBLIC WORKS ROADS DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM
PUBLIC WORKS ROADS DEPARTMENT
ESTABLISHMENT (B) BRANCH
DISPUR
GUWAHATI-6

3:THE CHIEF ENGINEER
PUBLIC WORKS ROADS DEPARTMENT
ASSAM
CHANDMARI
GUWAHATI-3

4:THE ADDL. CHIEF ENGINEER
PUBLIC WORKS ROADS DEPARTMENT
BARAK VALLEY ZONE
SILCHAR
DISTRICT- CACHAR
ASSAM
PIN- 788001

5:THE SUPERINTENDING ENGINEER

CACHAR ROAD CIRCLE
DISTRICT- CACHAR
ASSAM
PIN- 788001

6:THE EXECUTIVE ENGINEER
PATHARKANDI AND RATABARI TERRITORIAL ROAD DIVISION
PWRD
DISTRICT- KARIMGANJ
PIN- 78873

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : SC, PWD ROAD

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

28-07-2023

Heard Mr. S.A.Ahmed, learned counsel for the petitioner and Mr. P.Nayak learned Standing counsel, Public Works Roads Department (PWRD) for all the respondent Nos. 1 to 6.

2. The petitioner, namely, Bakul Roy is a Junior Engineer (Civil) under the PWRD. He earlier served at Umpanai under Karbi Anglong Territorial Road Division. Pursuant to his transfer and posting, since 07.01.2021, he is serving as a Junior Engineer (Civil) in the Office of the Executive Engineer, Patharkandi and Ratabari Territorial Road Division, PWRD.

3. It is contended by the petitioner that without allowing him to complete the normal tenure of posting of 3 (three) years in the office of the Executive Engineer, Patharkandi and Ratabari Territorial Road Division, PWRD, the Commissioner and Special Secretary to the Government of Assam, PWRD vide Notification under No. E CF No. 236430/333-AF transferred the petitioner in the same capacity i.e., Junior Engineer (Civil), PWRD from the said office of the Executive Engineer, Patharkandi and Ratabari Territorial Road Division, PWRD and posted him at PWRD, Barchalla & Dhekiajuli Territorial Road Division against existing vacancy with immediate effect and until further orders.

4. The petitioner by annexing the copy of the Blood Report dated 21.04.2022 and the Prescription dated 20.06.2023 issued by the concerned Doctor regarding his medical ailment (Annexure-E) stated that he is suffering from acute high blood sugar and high blood pressure, hyper tension etc. and associated with heart problems.

5. Relying on the Office Memorandum dated 04.02.2002 issued by the Commissioner & Secretary to the Government of Assam in the Personnel Department, the petitioner stated that whenever public interest demands that an officer should be transferred from his place of posting even before completion of 3 (three) years in the place, proper justification and ground should be recorded in writing for the transfer of the officers concerned and such order of transfer of the officers concerned should be issued only after getting approval of the Chief Minister for such transfer.

6. Petitioner contended that he has been transferred without obtaining any such prior approval of the Chief Minister of the State though he did not complete three years of his posting at Patharkandi and Ratabari Territorial Road Division of the PWRD.

7. During the deliberation of the matter, Mr. Nayak, learned Standing counsel, PWRD placed before the Court a copy of the Office Memorandum No. ABP.116/2001/ 34 dated 06.08.2013 issued by the State Government in the Personnel (B) Department wherein the Government after re-examining the stipulation of obtaining prior approval of the Chief Minister while effecting the transfer and posting of all the Government Officers before completion of their normal tenure of 3 (three) years in one place; after careful consideration, substituted the same observing that henceforth the approval of the Chief Minister is required to be obtained only for the transfer of any officer who has not completed 2 (two) years in a particular place of posting, instead of 3 (three) years, observing further that the normal tenure of posting of an officer in a place of posting for 3 (three) years will remain the same and accordingly, modified the earlier Departmental Office Memorandums No. ABP.40/91/117 dated 19.09.1992, ABP.116/01/4 dated 04.02.2002 and ABP.116/2001/29 dated 12.11.2009.

8. Mr. Nayak, learned Standing counsel, PWRD also placed before the Court a copy of the order under No. PR.SECY/CMO/07/2021/94 dated 09.04.2022, whereby the Principal Secretary to the Chief Minister informed the Chief Secretary, Assam as well as the Senior Most Secretaries of all the Departments that no proposal for transfer and posting of any official can be processed prior to completion of 2 (two) years of tenure in current post and that if any transfer and posting is required before completion of 2 years of tenure due to administrative exigency or compelling circumstances, such grounds may be clearly brought out in the proposal submitted for approval of the Chief Minister.

9. With regard to transfer of a Government employee by the Employer concerned from one place to another, the Hon'ble Apex Court in the case of *S.C. Saxena Vs. Union of India and Others*, reported in (2006) 9 SCC 583 have held that — "*In the first place, a Government employee cannot disobey the transfer order by not reporting at the place of posting and then go to a Court to ventilate his grievances, it is the duty of the transferred employee to first report for work where he/she is transferred and make representation as to what may be his/her personal problems. The tendency of not reporting at the place of posting and indulging in litigation need curbed.*"

10. Considered the fact that the petitioner was transferred in the interest of public service and in compliance of the Office Memorandum No. ABP.116/2001/ 34 dated 06.08.2013 as well as the order under No. PR.SECY/CMO/07/2021/94 dated 09.04.2022 of the Principal Secretary of the Chief Minister of the State, noted above.

11. For the reasons above, the Court is of the opinion that the impugned order of transfer under No. ECF No. 236430/333-AF dated 03.06.2023 issued by the Commissioner and Special Secretary to the Government of Assam in the PWRD transferring the petitioner, Junior Engineer (Civil) PWRD from Patharkandi and Ratabari Territorial Road Division to PWRD, Barchalla and Dhekiajuli Territorial Division against the existing vacancy with immediate effect and until further orders, does not call for any interference.

12. Accordingly, the prayer made by the petitioner in this writ petition stands rejected.

13. However, the petitioner, if so advised, may file representation before the concerned authority after joining at his new place of posting in terms of the impugned order of his transfer dated 03.06.2023, noted above and in the event of filing such representation by the petitioner before the authority concerned, the said authority shall consider the representation of the petitioner following the due procedure and in accordance with law.

14. With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant