

GAHC010164432023



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

Case No. : WP(C)/4311/2023

MANASH KANTI CHOUDHURY
S/O- LATE MOHITOSH CHOUDHURY,
R/O- HOSPITAL ROAD, DULLAVCHERRA,
P.O-DULLAVCHERRA , DIST- KARIMGANJ, ASSAM, PIN-788736

VERSUS

THE STATE OF ASSAM AND 3 ORS
THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM, LAND
AND REVENUE DEPARTMENT
DISPUR, GHY-06

2:THE DEPUTY COMMISSIONER
P.O AND DIST- KARIMGANJ
ASSAM

PIN-788710

3:THE CIRCLE OFFICER

RAMKRISHNA NAGAR REVENUE CIRCLE

P.O- R.K NAGAR
DIST- KARIMGANJ
ASSAM
PIN-788166

4:THE CIRCLE OFFICER
PATHARKANDI REVENUE CIRCLE

P.O- PATHARKANDI
DIST- KARIMGANJ

ASSAM
PIN-78872

Advocate for the Petitioner : MR. A R TALUKDAR

Advocate for the Respondent : SC, REVENUE

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-08-2023

Heard Mr. A. K. Talukdar, learned counsel for the petitioner and Mr. J. Handique, learned Standing Counsel, Land and Revenue Department of the State for the respondent No.1. Also heard Mr. A. Chakroborty, learned Government Advocate, Assam for the respondent Nos. 2 to 4.

2. The petitioner is a resident of Dullavcherra in the district of Karimganj and is serving as Grade-III Lot Amin of the Revenue Department of the State under the Deputy Commissioner, Karimganj since later part of March, 2017.

3. It is stated by the petitioner that after his initial appointment on 30.03.2017 in the Ram Krishna Nagar (R. K. Nagar) Revenue Circle in the district of Karimganj, the Deputy Commissioner, Karimganj vide order dated 15.03.2022 transferred and posted him in the Land Acquisition Branch of his office and thereafter, he was re-posted in the office of the Circle Officer, at R.K. Nagar.

4. By a subsequent order dated 15.06.2023, the Deputy Commissioner, Karimganj transferred the petitioner from the office of the Revenue Circle, R.K. Nagar to the office of the Circle Officer, Patharkandi Revenue Circle.

5. Petitioner also stated that within a span of 1 year 3 months, he faced three transfer orders from 15.03.2022 and as such, being aggrieved with the said transfer order dated 15.06.2023, he preferred a writ petition, being WP(C) No. 3619/2023, wherein, the Court vide order dated 21.06.2023, disposed of the said writ petition of the petitioner directing the Deputy Commissioner, Karimganj to consider the representation of the petitioner submitted before the said authority on 16.06.2023 and to pass a reasoned order therein directing further to disposed of the same within a period of 15 days from the date of receipt of certified copy of the said order of the Court dated

21.06.2023.

6. Accordingly, the Deputy Commissioner, Karimganj vide No.RKG-31/652/2023-LR-KXJ dated 04.07.2023 passed a speaking order rejecting the said representation of the petitioner upholding the transfer order issued by the said authority on 15.06.2023 transferring the petitioner from R.K. Nagar Revenue Circle to Patharkandi Revenue Circle.

7. Being aggrieved with the same, the petitioner has preferred this writ petition stating that he is suffering from various medical ailments and in that regard annexed a certificate of the Medical Officer, Cheragi Primary Health Center dated 05.07.2023, Prescription of a Doctor dated 10.07.2023 as well as a medical discharge note dated 14.07.2023 of one Tapasya, minor daughter of the petitioner issued by the L. V. Prasad Eye Institute, Hyderabad.

8. The petitioner contended that he has a family and 80 years old mother to be looked after and as such, it is difficult for him to join his duty at Patharkandi on his said transfer issued by the Deputy Commissioner, Karimganj.

9. Petitioner further placed before the Court that there are numbers of employees serving for 15/16 years without being transferred and that he has been targeted by the local MLA for which he has been transferred from R.K. Nagar Revenue Circle to Patharkandi Revenue Circle.

10. It is to be noted herein that the Court on 21.06.2023 while disposing of said WP(C) No. 3619/2023, preferred earlier by the petitioner, observed as follows:-

”6. It is by now well settled that transfer is an incidence of service and such order of transfer can judicially be reviewed in exercise of power under Article 226 only in certain circumstances, when such order of transfer is passed by an authority not competent to pass such order, when the order of transfer changes the position and status of the employee and when such order is passed in malafide exercise of power. Sometimes frequent orders of transfer are also interfered when the employer transfers such person by abuse of power and without having any administrative exigency. However, in the present case, none of the aforesaid conditions are discernible.

7. Having held that, at the same time this Court can't be oblivious of the fact that a duty is cast upon the employer to give a consideration to any of the grievances raised by its employee. Therefore, the present writ petition is disposed of with a direction to the respondent that the Deputy Commissioner shall take on record the representation filed by the petitioner on 16.06.2023 and pass an order in that application.

8. While parting with the record, it is clarified that this court has not expressed any opinion on the merit of the representation filed by the petitioner and the Deputy Commissioner shall be at liberty to apply his mind to the representation filed by the

petitioner and to take a considered decision being an employer and taking note of exigency of the service."

- 11.** From the impugned order No.RKG-31/652/2023-LR-KXJ dated 04.07.2023 (Annexure-9 to this writ petition), it is seen that the petitioner on his appointment was initially posted at R. K. Nagar Revenue Circle on 30.03.2017 wherein he continued for a period of four years and then by order dated 15.03.2022, he was transferred to Land Acquisition Branch in the office of the Deputy Commissioner, Karimganj in the interest of public service. However, the petitioner made a prayer for his transfer back to R.K.Nagar on 04.07.2022 and considering his such prayer, the Deputy Commissioner, Karimganj vide order 04.08.2022 placed him back in the R.K. Nagar Revenue Circle.
- 12.** Later in exigencies of service, the petitioner was transferred by the impugned order dated 15.06.2023 from R. K. Nagar Revenue Circle to the office of the Patharkandi Revenue Circle.
- 13.** The Deputy Commissioner, Karimganj in the impugned order dated 04.07.2023 categorically stated that the transfer of the petitioner vide order 15.06.2023 was in the interest of public service and on the ground of Administrative exigencies stating that the Government of India has launched two numbers of National Projects i.e., (i) construction and up-gradation of Badarpur-Churaibari NH-37 under project "BHARATMALA" and (ii) INDRADHANUSH GAS GRID project; besides other Land Acquisition Works (Baithakal Water Resource Scheme) where the Project of Baithakal Water Resource Scheme had already commenced at Patharkandi Revenue Circle for which the services of Land Record Employees (Amin) during surveys of land/assessment and payment of compensation etc. to stakeholders for timely execution of the Project at the said Circle is highly essential during execution of the said Project.
- 14.** The Deputy Commissioner, Karimganj in the said order dated 04.07.2023 also stated that the existing strength of Land Record Staff of R. K. Nagar Circle is 19 that is higher than that of other Revenue Circles including Patharkandi Revenue Circle, where it has only 14 numbers of Amin against the sanctioned strength of 24.
- 15.** Further, the Deputy Commissioner, Karimganj in the impugned order dated 04.07.2023 stated that the Government of Assam have already advised to transfer those employees across the offices, who have been in a particular office for a longer time to obviate nepotism and increase transparency in the work thus achieving better efficiency in the Government Offices and that the petitioner has served more than 5 years in the R. K. Nagar Circle in his service period of

6 years from 2017 and that considering his family difficulties he has been transferred to the nearest place to R. K. Nagar Circle i.e., Patharkandi Revenue Circle, that is just 20 Kms away.

16. It is well settled that the scope of judicial review by the High Court in exercise of the powers under [Article 226 of the Constitution of India](#) pertaining to an administrative action of the authority in passing an order of transfer is very limited and that an order of transfer can be challenged and interfered with if the same is not issued in the interest of public service or if not issued in the administrative exigencies or issued in violation of any statutory provision. Further, such transfer order can also be interfered with if the same amounts to changing the conditions of service of an employee or was passed in malafide exercise of power or by an authority, who is not competent to pass such transfer order [*Monidutta Vs. State of Assam* reported in 2006 (2) GLT 508].

17. The Hon'ble Supreme Court in the case of *Shilpi Bose VS State of Bihar*, reported in 1991 Supp 2 SCC 659 held that - *the Courts should not interfere with a transfer Order which are made in public interest and for administrative reasons unless the transfer Orders are made in violation of any mandatory statutory Rule or on the ground of malafide. A Government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer Orders issued by the competent authority do not violate any of his legal rights. Even if a transfer Order is passed in violation of executive instructions or Orders, the Courts ordinarily should not interfere with the Order instead affected party should approach the higher authorities in the Department. If the Courts continue to interfere with day-to-day transfer Orders issued by the Government and its subordinate authorities, there will be complete chaos in the Administration which would not be conducive to public interest.*

18. In the case in hand, it is seen that the transfer of the petitioner from R. K. Nagar Revenue Circle to Patharkandi Revenue Circle vide order dated 15.06.2023 issued by the Deputy Commissioner, Karimganj is purely on public interest that can be seen from the impugned order dated 04.07.2023 (Annexure-9 to this writ petition) passed by the Deputy Commissioner, Karimganj while disposing of the representation of the petitioner dated 16.06.2023 in terms of the order of the Court dated 21.06.2023 passed earlier in said WP(C) No. 3619/2023 that was preferred by the petitioner.

19. Though the petitioner alleged malafide against the local MLA with regard to his transfer

from R. K. Nagar Revenue Circle to Patharkandi Revenue Circle in terms of the order passed by the Deputy Commissioner, Karimganj, but the said local MLA has not been made a party respondent in the present proceeding.

20. For the reasons, this writ petition being devoid of any merit stands dismissed.

JUDGE

Comparing Assistant