

GAHC040014672024



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

Case No. : WP(C)/499/2024

Tajum Nyadu

Son of Late Tali Nyodu, presently serving as Executive Engineer, Thrizino, PO and PS Thrizino, West Kameng District, Arunachal Pradesh

VERSUS

The State of AP and 2 Ors

represented by the Chief Secretary, Govt of Arunachal Pradesh, Itanagar. 2:The Principal Secretary

Age: 0

Occupation :

Public Works Department

Govt of Arunachal Pradesh

Itanagar.

3:Er. Nyelam Mama

Age: 0

Occupation :

C/o Office of the Executive Engineer

PWD Thrizino Division

PO and PS Thrizino

West Kameng District

Arunachal Pradesh

Advocate for the Petitioner : Ojing Pada, Likha Moriam,T Mingki

Advocate for the Respondent : GA (AP), J Tsering,Parswajyoti Das Nair

-BEFORE-

HON'BLE MRS. JUSTICE MITALI THAKURIA

11.11.2024

Heard Mr. O. Pada, learned counsel for the petitioner. Also heard Mr.

S. Tapin, learned Senior Government Advocate for the State respondents and Mr. P. D. Nair assisted by Mr. J. Tsering, learned counsel for the private respondent No. 3.

2. This writ petition under Article 226 of the Constitution of India has been preferred challenging the legality and validity of the impugned Transfer Order dated 22.10.2024, vide Memo No. 11011(11)/4/2021-Estt-OPWD/1122-29, whereby the private respondent No. 3 has been posted as Executive Engineer, Thrizino PWD Division in place of the present petitioner; as well as the impugned Transfer Order dated 28.10.2024, vide Memo No. PWD-11011(11)/4/2021-Estt-PWD/1149-55, whereby the present petitioner has been transferred from Executive Engineer, Thrizino PWD Division to the Office of the Chief Engineer, PWD(WZ), Itanagar.

3. Mr. S. Tapin, learned Senior Govt. Advocate appearing for the State respondents submits that from the instruction received from the concern Department, it is seen that the petitioner is posted at Bomdila since the year, 2007 as Assistant Engineer and thereafter, he was posted as in-charge Executive Engineer, Bomdila Division since 03.08.2015 and in the same division, he was regularly promoted on 14.10.2016. He further submitted that since 2016 till the date of order i.e. on 28.10.2023, he was discharging his duty as Executive Engineer from Bomdila. On 28.10.2023, an order of transfer was issued, whereby, the present petitioner was transferred from Bomdila Division to Itanagar and in pursuant to that order, he gave his charge only on 04.12.2023 and joined in his place of posting at Itanagar but within a month, he again got his transfer order from Itanagar to Thrizino, PWD Division as an Executive Engineer which is also under the Bomdila Division, which was created only on 17.01.2024.

Since 17.01.2024, he was again working as Executive Engineer in Thrizino, PWD Division at Bomdila. The transfer order was made only on 22.10.2024, whereby, the private respondent was posted in his place and vide order dated 25.10.2024, the petitioner has been transferred and posted in Itanagar Division against the existing vacancy. Thus, since the year, 2007 to 2024 for around 16-17 years, the petitioner is discharging his duty in Bomdila Division and since 2016 to 2024, he is discharging his duty as an Executive Engineer (regular). Though, he was posted in Thrizino PWD Division which also belongs to Bomdila Division. Thus, there is no mala fide intention on the part of the concern authority in transferring the present petitioner in the office of the Chief Engineer, Itanagar. Moreso, Mr. Tapin, learned Senior Govt. Advocate submits that several complaints were also received against the petitioner. Mr. Tapin, learned Senior Govt. Advocate further submitted that the petitioner cannot be further posted in Bomdila Division whereas he has already discharged his duties for more than 16-17 years.

4. In this context Mr. Pada, learned counsel for the petitioner submitted that he filed his representation on 30.10.2024 which is still pending for consideration and disposal and that apart, the petitioner is on the verge of retirement and hence, he submitted that till the end of the financial year i.e. March, 2025, he may not be transferred from his present place of posting from Thrizino PWD Division to Bomdila Division. Mr. Pada, learned counsel for the petitioner further submitted that his present place of posting was at Thrizino PWD Division and he was posted only on 17.01.2024 and within a period of 9 (nine) months he has been transferred by the authority concerned in violation of the

circular/guidelines dated 18.08.2021 issued by the Chief Secretary, Govt. of Arunachal Pradesh, Itanagar, wherein, it is exclusively mentioned that normal tenure of transfer posting for all categories of officers and staff will be 2 (two) years but within a period of 9 (nine) months, he has been transferred from his present place of posting to the office of the Chief Engineer, Itanagar, PWD (WZ). Mr. Pada, learned counsel for the petitioner further submits that there is nothing on record to show that there is any public interest or administrative exigencies, for which transfer order has been passed against the petitioner.

5. Mr. S. Tapin, learned Senior Govt. Advocate submits that it is the petitioner had suppressed the material fact that Thrizino, PWD Division is a newly created Sub-Division which is under the Bomdila Division and after creation of the Sub-Division, he got transfer order from Itanagar to Bomdila on 17.01.2024 and accordingly, it is that he is working in Bomdila since the year, 2007 to till date. Mr. S. Tapin, learned Senior Govt. Advocate further submits that there cannot be any reason to interfere in the transfer order passed by the Department concerned by transferring the present petitioner to office of the Chief Engineer, PWD (WZ), Itanagar.

6. Mr. P. D. Nair, learned counsel for private respondent No. 3 submitted that from Paragraph Nos. 2 & 3 of the writ petition itself, it is seen that the petitioner has suppressed the material fact in his petition and it is only stated that he was transferred from Thrizino PWD Division to the Office of Chief Engineer, PWD (WZ) only after 9 (nine) months of his posting as he was posted to Thrizino PWD Division on 17.01.2024 suppressing all the material facts that Thrizino PWD Division comes under the Bomdila Division and also suppressed the fact that he was posted at

Bomdila since 2007.

7. In support of his submissions, Mr. Nair also relied on the following decisions of the Hon'ble Supreme Court as well as the decisions of this Court:

(i) S. C. Saxena Vs. Union of India & ors. [(2006) 9 SCC 583], wherein it has been held that a government servant cannot disobey a transfer order by not reporting at the place of posting and then got to a court to ventilate his grievances. It is the duty to first report for work where he is transferred and make a representation as to what may be his personal problems. It is further held that the guideline of the government department does not confer the government employee legal enforceable right. It is the fundamental rule which says that the President may transfer all the government servants from one post to another and hence it cannot be legally enforceable in the eye of law.

(ii) Pubi Lombi Vs. State of Arunachal Pradesh & Ors. [2024 SCC OnLine SC 279], wherein the Hon'ble Apex Court has held that there cannot be any interference in absence of plea of *mala fide* or violation of statutory provision taken by the petitioner.

(iii) State of U.P. & Ors. Vs. Gobardhan Lal [(2004) 11 SCC 402]

(iv) Union of India & Ors. Vs. S. L. Abbas [(1993) 4 SCC 357]

(v) Bimal Chandra Das Vs. Union of India & Ors. [(2019) 2 GLR 577]

(vi) Central Board of Secondary Education through its Chairman & Ors. Vs. Jagadish Barman & Ors. [2024 SCC OnLine Gau 1527].

8. Citing the above referred judgments, Mr. Nair submitted that as per the guideline of the Hon'ble Apex Court, the transfer order of the government employee cannot be interfered only on the sole ground that same is in violation of transfer policy in absence of any plea of *mala fide* or in violation of the statutory provisions. He, further, submitted that as per the affidavits shown by the petitioner, the age of the petitioner is

shown to be about 58 years and even if it is considered in that case also the petitioner has his tenure for more than a year till his superannuation.

9. Mr. Tapin, learned Senior Govt. Advocate also submitted that as per Govt. policy, a person may not be transferred or disturbed when his tenure is less than a year but herein the present case, the petitioner tenure is more than a year and hence, that also cannot be a ground to interfere with the transfer order of the present petitioner.

10. Considering the submission made at the Bar and on perusal of the materials available on record that the petitioner is already working in Bomdila Division since the year, 2007 and he is also discharging his duty as Executive Engineer since the year, 2016 to 2024 in the Bomdila Division, this Court is of the considered opinion that the transfer order is not in violation of the statutory provision or it also cannot be considered that the transfer order has been made with mala fide intention by the authority concerned. Moreso, considering the submission made by the learned Senior Govt. Advocate, it is seen that the present petitioner has been posted at Bomdila Division since for more than 16-17 years as in the capacity of Assistant Engineer as well as in the capacity of Executive Engineer.

11. In view of the above discussions and what has been enunciated in the foregoing paragraphs, the petitioner has not been able to make out a case, warranting interreference of this Court in the transfer order dated 22.10.2024 vide Memo No. PWD-11011(11)/4/2021-Estt-OPWD/1122-29. Accordingly, this petition being devoid of merit, stands dismissed.

JUDGE

Comparing Assistant