

GAHC010265022024



2024:GAU-AS:12562

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

Case No. : WP(C)/6675/2024

GO-3112L EE (CIV) CHANDRA SHEKHAR BELCHANDAN
S/O- LATE K.S. BELCHANDAN, PRESENTLY SERVING AS OFFICER
COMMANDING (OC) AT 92 RCC (GREF), PROJECT BRAHMANK, PIN- 930042
C/O- 99 APO.

VERSUS

THE UNION OF INDIA AND 4 ORS
REPRESENTED BY JOINT SECRETARY (BR-WING), MINISTRY OF DEFENCE
(EARLIER DESIGNATED AS SECRETARY (BRDB), ROOM NO. 418, B-WING
4TH FLOOR SENA BHAWAN, NEW DELHI-110011.

2:DIRECTOR GENERAL
BORDER ROADS ORGANIZATION
SEEMA SADAK BHAWAN
RING ROAD
DELHI CANTT.
NEW DELHI-110010.

3:ADDITIONAL DIRECTOR GENERAL (EAST)

BORDER ROADS ORGANISATION
LANKESWAR
JALUKBARI
GUWAHATI
C/O- 99 APO
PIN- 900885.

4:THE CHIEF ENGINEER
HQ CE (P) BRAHMANK
PIN- 931722
C/O 99 APO.

5:COMMANDER
HQ 44 BRTF (GREF)
PIN- 931044
C/O- 99 APO

Advocate for the Petitioner : MRS. R BORAH, MR. D BORAH

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

BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO
JUDGMENT & ORDER(ORAL)

Date : 12-12-2024

Heard Mr. D Borah, the learned counsel for the petitioner and Mr. K Gogoi, the learned CGC for the respondents.

2. Having regard to the nature of grievance projected by the petitioner, the writ petition is taken up for final disposal at the motion stage itself.

3. By filing this writ petition, the petitioner has challenged the transfer order dated 06.12.2024 by which he has been transferred from 92 RCC/44 TF/ BMK to HQ CE (P) PSK and he has been directed to move forthwith. By the same transfer order, one Dheeresh Kumar has been posted in place of the petitioner. However, Dheeresh Kumar is not a party to the instant writ petition.

4. Assailing the transfer order, the petitioner through Mr. D Borah, the learned

counsel contends that the petitioner had joined HQ CE (P) Brahman on 13.02.2024 (FN) as can be seen from the arrival report of the GREF Officer (Annexure-1). Thereafter, within a period of about two months, the petitioner has been transferred to 92 RCC/44 TF/BMK and he had been directed to move by 09.05.2024, vide the order of transfer dated 08.04.2024 (Annexure-2). As such, a movement order was issued on 27.04.2024 indicating the date of departure of the petitioner to the new place of posting as 30.04.2024 (FN). The petitioner in view of his transfer within a short period of time met the Director General of Border Roads Organisation, Seema Sadak Bhawan (respondent No.2) on 01.05.2024 and according to the petitioner, he was assured by the said authority that his transfer and posting to the new location would not be disturbed and that he was being transferred since it was a command post. A fresh movement order was, thereafter, issued and pursuant to which, the petitioner joined the new place of posting on 09.05.2024 (FN).

5. However, to the great surprise of the petitioner vide posting order dated 06.12.2024, he has been posted out from 92 RCC/44 TF/BMK to HQ CE (P) PSK and he has been directed to move forthwith.

6. Mr. D Borah, the learned counsel submits that despite the assurance given to him by the Director General of Border Roads Organisation, he has been transferred out again within a period of seven months to a new location, which is not even a command post and which would be detrimental to the petitioner's career prospect. He submits that in order to be promoted to the next rank of Superintending Engineer, an Officer in the rank of Executive Engineer is required to have command experience of at least two years and by issuance of the

impugned posting order dated 06.12 2024, the petitioner will lose his chance of promotion and that he is almost at the fag end of his career in the service.

7. The learned counsel for the petitioner by referring to the posting policy for GREF Officers submits that executive tenures are generally to be for a period of two to three years for the Officers in the rank of Executive Engineer or equivalent and above. The same, however, can be curtailed or extended due to organizational requirements or on performance of the Officer. However, in the instant case, according to the petitioner, there is no issue with regard to his performance and merely by stating that in the *organizational interest* the petitioner has been transferred would not suffice and, therefore, the impugned transfer order has been issued in a most arbitrary manner and should be interfered with by this Court. In support of his submission, the learned counsel for the petitioner has relied upon the following judgments:

- (i) ***B Varadha Rao Vs. State of Karnataka and Others reported in (1986) 4 SCC 131;***
- (ii) ***T.S.R Subramanian and Ors. Vs. Union of India and others reported in (2013) 15 SCC 732;***
- (iii) ***Sunit Kumar Bardoloi Vs. State of Assam and Ors. reported in 2010(2) GLT 786***

8. *Per contra*, Mr. K Gogoi, the learned CGC submits that the petitioner cannot have any grievance against his transfer to the new location. He submits that the place to which the petitioner has been transferred out through the impugned

transfer order is a vacant post and he submits that the petitioner has been transferred out in the *organizational interest* and that he cannot be said to have any enforceable right by relying upon the transfer policy as held by the Apex Court in a catena of decisions. He submits that transfer is an incident of service and, therefore, executive instructions or administrative instructions concerning transfer and posting do not confer an indefensible right to claim a transfer and posting. Individual convenience of persons, who are employed in the service is subject to the over-reaching needs of the administration. He further submits that no Government Servant can claim to remain in a particular place or in a particular post, unless his appointment itself is to specify a non-transferable post. He also submits that even if, in the event, the petitioner has any difficulty with the new order of posting, he should first join the new place of posting and, thereafter, avail for any such remedy that may be available to him in law. From the writ petition, the learned CGC submits that it only appears that the petitioner has not even represented his cause to the respondent authorities concerned before approaching this Court. Therefore, the petitioner cannot have any legitimate grievance and the writ petition should be dismissed. In support of his submission, the learned CGC, relies upon the following decisions:

- (i). SC Saxena Vs. Union of India and Others, reported in (2006) SCC 583;***
- (ii). Dr. Nagorao Shivaji Chavan Vs. Dr. Sunil Purushottam Bhamre and Others, reported in (2019) 13 SCC 788;***
- (iii). Sk. Nausad Rahaman and Others Vs. Union of India and Others reported in (2022) 12 SCC 1;***
- (iv). Judgment and Order dated 02.12.2024 passed by the***

***Division Bench of this Court in WP(C)No.2460/2024
(Union of India and 4 Ors. Vs. Sri Kundan Kumar).***

9. I have heard the submissions made by the learned counsels for the rival parties and perused the materials available on record, including the authorities relied upon.

10. The projection made by the petitioner mainly is with regard to the frequent transfer given to him. As already cited in the preceding paragraphs, the petitioner was transferred to HQ CE (P) Brahman, where he joined on 13.02.2024 (FN). Thereafter, he has been transferred out to 92 RCC/44 TF/BMK vide order dated 08.04.2024. It may be noted that the posting to 92 RCC/44 TF/BMK according to the petitioner is a command posting and that despite the objection that was raised by him to the respondent No.2, he was assured by the said authority that he would be kept in the new place of posting for a reasonable period of time and since the same is a command posting, the same would be in the interest of his service career. However, after the petitioner joined the said place of posting on 09.05.2024, he has been again transferred out vide the impugned transfer order dated 06.12.2024. The petitioner, apart from taking the plea that the same being not only a frequent transfer, but the same would be detrimental to his service career has also taken the stand that the impugned transfer order only speaks about his transfer being made in the *organizational interest* without the same not being substantiated by any *bona fide* reasons or in the interest of public. Therefore, the transfer order is only a result of colorable exercise of power for collateral purposes by the respondent authorities and the same should be interfered with by this Court or else serious

injustice would be caused to the petitioner. The learned counsel also submits that due to the manner in which the impugned transfer order was passed, the petitioner did not have enough time to incorporate the representation which he had submitted subsequently to the Director General of Border Roads Organisation (respondent No.2) through proper channel and, therefore, pending consideration of his representation, some protection should be given to the petitioner.

11. Citing the case of the *B Varadha Rao* (supra), the learned counsel submits that there is no dispute to the fact that transfer is an incident of service and the appointing authority has wide discretion in the matter of transfer and that the Government is the best judge to decide how to distribute and utilize the services of its employees, but such exercise should be done with honesty, *bona fide* and reasonably. If such exercise is based on extraneous consideration or for achieving an alien purpose or an oblique motive, it would amount to *mala fide* and a vulnerable exercise of power. Therefore, frequent transfer without sufficient reasons to justify such transfer cannot but be held to be *mala fide*. It is true that the impugned transfer order does not provide in detail as to why such transfer has been done, except for stating that the posting has been approved in the *organizational interest*. However, at the same time, it cannot be said that the transfer order at the face of it appears to be a colourable exercise of power, in view of sufficient reasons to justify such transfer not being mentioned. Transfer orders, in general, do not contain all such materials and justifications to justify as to why such transfer has been effected in anticipation that party concerned may eventually go to Court. The instant impugned transfer order, therefore, having not mentioned the details and reasons for making such

transfer it cannot be presumed that the exercise was carried out with *mala fide* intent.

12. This Court is also not unmindful of the fact that as pleaded by the petitioner, the prospect of future promotion would be jeopardized, if he is moved from the present place of posting, which is a command post. However, as already observed hereinabove, and particularly taking note of the wide discretion that the competent authority has over the employees in respect of transfer and posting, this Court is not inclined to interfere with the impugned transfer order. At the same time, taking note of the contention of the petitioner that he has submitted a representation to the Director General of Border Roads (respondent No.2) through proper channel, it would be incumbent upon the said authority to take note of the nature of grievance projected by the petitioner i.e. frequent transfer and his future prospect for promotion, if he is not posted in a command post in particular. The representation so filed be disposed of as expeditiously as possible preferably within a period of seven days from the date of receipt of a certified copy of this order.

13. According to the petitioner, he had submitted his representation before the respondent No.2 through proper channel. The respondent authorities concerned shall ensure that the representation reaches the respondent No.2 in order to carry out the directions as provided herein above.

14. With the above observation(s) and direction(s), the writ petition stands disposed of. No costs.

JUDGE

Comparing Assistant