

**IN THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)**

ITANAGAR PERMANENT BENCH

WP(C)140(AP)2016

Dr. M. Akhtar
Son of Late Md. Taqui,
Presently serving as Veterinary Officer,
Department of Animal Husbandry & Veterinary,
Government of Arunachal Pradesh,
Phone: 09436054886

.....Petitioner

By Advocates:

Nikita Danggen
Ms. Pura Sangeeta
Ms. A. Panor
Mr. O. Duggong
Mr. O. Perme
Mr. T. Tatak
Mr. B. Gadi
Mr. D. Taggu
Mr. J. Lomi

-Versus-

- 1.** State of Arunachal Pradesh, represented by the Commissioner, Department of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, Itanagar.
- 2.** Deputy Commissioner, Namsai District, Namsai, Government of Arunachal Pradesh, Itanagar.
- 3.** Dr. Keshav Sharma, Veterinary Officer, Lathaw Veterinary Dispensary-cum-In-charge of District Veterinary Officer, Namsai District, Government of Arunachal Pradesh, Namsai.

.....Respondents

By Advocates:

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Ms. Riyum Basar, Government Advocate

Mr. D. Chetia
Mr. R. M. Deka
Mr. M. Das
Mr. M. K. Das
Ms. S. Ketan

.....For Respondent No. 3

:::BEFORE:::
HON'BLE MR. JUSTICE UJJAL BHUYAN

Date of hearing : 26-09-2016

Date of Judgment & Order: 27-09-2016

JUDGMENT & ORDER (ORAL)

Heard Ms. Nikita Danggen, learned counsel for the petitioner, Ms. Riyum Basar, learned Government Advocate, for the State respondents as well as Mr. M. Das, learned counsel for respondent no. 3.

2. This case was heard yesterday and today is fixed for delivery of judgment. Accordingly, judgment is being dictated in the open Court.

3. By filing this petition, under Article 226 of the Constitution of India, petitioner seeks quashing of order dated 07.03.2016 passed by the Commissioner, Department of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, Itanagar. By the said order, petitioner has been transferred from Rupa to Longding whereas Respondent No. 3 has been retained in his posting at Lathaw.

4. Both petitioner and Respondent No. 3 are serving as Veterinary Officer('V.O.' for short) in the Department of Animal Husbandry and Veterinary, Government of Arunachal Pradesh.

5. Relevant facts leading to filing of the present writ petition, may be briefly noted:

It appears that while the petitioner was serving as V.O. in the Veterinary Dispensary('V.D.', for short), Rupa, in West Kameng District, he was transferred to Koloriang as In-charge, District Veterinary Officer('D.V.O.', for short), vide departmental order dated 31.03.2015.

Petitioner submitted a representation dated 12.08.2015 before the Minister, Department of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, through the MLA, Namsai, stating that he was suffering from cardiac problem which requires continuous treatment. Though the Cardiac Surgeon had declared the petitioner fit to resume his duty, he was advised to avoid places in high altitudes and to attend duty in places having better medical facilities. Further stating that he has only 2 years of service left in him, petitioner requested the Departmental Minister to post him at Namsai.

The Departmental Minister, made an endorsement dated 17.08.2015 to the Director of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, Nirjuli, to consider posting of the petitioner at Longding which was vacant at that point of time. On 24.01.2016, an order was issued by the Departmental Commissioner, posting the petitioner as In-charge D.V.O., Namsai, in place of Respondent No. 3 who was transferred to Hawaii.

It appears that Respondent No. 3 made a representation dated 08.02.2016 before the Departmental Commissioner, seeking review of the transfer order, in question. He stated that his substantive post was V.O. in the

V.D. at Lathaw and was given additional charge of D.V.O. of the newly created Namsai district since the post of D.V.O. at Namsai was yet to be created by the State Government. Respondent No. 3 also pointed-out various other difficulties while requesting review of the transfer order.

This was followed by subsequent representations of Respondent No. 3.

An order dated 19.02.2016 was issued by the Departmental Commissioner, partially modifying the earlier transfer order by posting the petitioner as In-charge D.V.O. at Namsai and posting Respondent No. 3 as V.O. at Chowkham.

However, this order was also partially modified and ultimately, impugned order dated 07.03.2016 was issued by the Departmental Commissioner, posting the petitioner at Longding while retaining Respondent No. 3 at Lathaw with additional charge of D.V.O., Namsai.

Aggrieved, the present writ petition has been filed.

6. This Court, vide order dated 15.03.2016 issued notice of motion and thereafter, vide order dated 02.05.2016, had passed an interim order directing maintenance of status quo.

7. Respondents No. 1 and 2 have filed a common affidavit opposing the contentions made by the petitioner.

It is stated that Respondent No. 3 is posted as V.O. in Lathaw V.D. in Namsai District and also allowed to discharge as In-charge of Namsai D.V.O. since the post of Animal Husbandry and Veterinary Officer for Namsai district, has not yet been created. It is also stated that Respondent No. 3 had hardly completed one year of his service tenure in his present place of posting at Lathaw which was taken into consideration while passing the impugned order.

All relevant factors were taken into consideration while passing the impugned order which does not suffer from any infirmity or illegality to warrant interference.

8. Respondent No. 3 has filed a detailed counter affidavit, opposing the contentions advanced on behalf of the petitioner. It is stated that there is no infirmity, legal or otherwise, in the impugned order dated 07.03.2016 to warrant any interference. Petitioner has been posted at Longding as per initial instruction of the Departmental Minister which was on the own request of the petitioner.

Referring to order dated 19.02.2016, which was subsequently modified by impugned order dated 07.03.2016, Respondent No. 3 has stated that petitioner could not have been posted as In-charge D.V.O., Namsai, as that post is non-existent. Respondent No. 3 is functioning as In-charge D.V.O., Namsai, in addition to his substantive post of V.O. in the V.D. at Lathaw. The Department having noticed the above anomaly which occurred in the orders dated 24.01.2016 and 19.02.2016, rightly corrected the same and passed the impugned order dated 07.03.2016. No case for interference is made-out, it is contended.

9. Ms. Danggen, learned counsel for the petitioner, has forcefully argued that there was no justification for modification of the order dated 19.02.2016 by issuance of the impugned order dated 07.03.2016. She has submitted that it is a settled position of law that if a transfer order issued in public interest is sought to be cancelled or modified subsequently, the same has to be justified on account of overriding public interest with reasons given. No such reasons are discernible from the impugned order dated 07.03.2016.

Learned counsel for the petitioner has further submitted that the order dated 19.02.2016 was a balanced order having taken note of the personal inconveniences of both petitioner and Respondent No. 3 but Respondent No. 3 on the strength of extraneous influence, got the order dated 19.02.2016 modified by issuance of the impugned order dated 07.03.2016.

Ms. Danggen, learned counsel for the petitioner, has also submitted that endeavour of the respondents to justify the impugned order dated 07.03.2016 by adducing additional grounds in the affidavit is not permissible as the impugned order dated 07.03.2016 must be capable of being defended on the basis of reasons assigned in the order itself or on the basis of contemporaneous records.

Learned counsel for the petitioner has further submitted that petitioner has less than 2 years of service left in him and at this point of time, he should be allowed a comfortable station which was taken note of by the authorities concerned in the order dated 19.02.2016. Therefore, the impugned order should be interfered with.

In support of her submissions, learned counsel for the petitioner Ms. Danggen, has placed reliance on the following decisions:

- (1). **AIR 1978 SC 851** (Mohinder Singh Gill & anr. v. Chief Election Commissioner, New Delhi & ors.)
- (2). **2001 (3) GLT 67** (Zakir Hussain v. State of Assam & ors.)
- (3). **2009 (3) GLT 635** (Potsangbam Super Singh & ors. v. State of Manipur & ors.)
- (4). **2011 (5) GLT 513** [I. Moatemjen(Dr.) v. State of Nagaland]

10. Referring to the affidavits filed by Respondents No. 1 & 2, Ms. Basar, learned Government Advocate, has submitted that there is no infirmity in the impugned order passed by the Government which was in fact passed after taking all relevant factors into consideration. She has also produced the connected records, in original, for perusal of the Court.

Learned Government Advocate has further submitted that it was the petitioner himself who had started the chain of transfers to get over the initial transfer order from Rupa to Koloriang. Contending that scope of interference in an order of transfer by the Court is limited, she seeks dismissal of the writ petition, as according to her, no legal or fundamental rights of the petitioner has been violated.

11. Mr. Das, learned counsel for respondent No. 3, has submitted that it was the petitioner himself who had exerted political influence to get his initial transfer order modified. Learned counsel has further submitted that petitioner cannot dictate the departmental authorities that he should be given a posting of his choice. Further submission of learned counsel for Respondent No. 3 is that insistence of the petitioner to be posted as In-charge D.V.O., Namsai, is totally misplaced inasmuch as no such post is in existence. He must have a substantive posting in order to be In-charge D.V.O., Namsai.

Respondent No. 3 while serving as V.O. in the Veterinary Office, Lathaw, was given In-charge of D.V.O., Namsai. Without any substantive posting, petitioner could not have been directly posted as In-charge, D.V.O. Namsai. This was noticed by the departmental authorities and rectified vide the impugned order dated 07.03.2016 and therefore, there is no illegality or infirmity in the said impugned order, to warrant any interference. As such, the instant writ petition is devoid of any merit and is liable to be dismissed.

In support of his submissions, learned counsel for Respondent No. 3, has placed reliance on the following decisions:-

- (1). **(2012) 7 SCC 389** (Asha -vs- B.D. Sharma University of Health Sciences).
- (2). **(2014) 1 GLR 761** (Takar Tachang & anr. -vs-State of Arunachal Pradesh & ors.).

12. Submissions made by learned counsel for the parties have been considered. Also perused the record produced by the learned Government Advocate.

13. The sequence of events leading to passing of the impugned order has already been narrated above. The chain of transfer orders culminating in the impugned order dated 07.03.2016 came to be passed, following request made by the petitioner himself before the Departmental Minister for modifying his transfer from Rupa to Koloriang vide order dated 31.03.2015. The Departmental Minister entertained the said request and made an endorsement to the Director of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, Nirjuli, to consider posting of the petitioner at Longding stating that the post at Longding was vacant. But instead of posting him at Longding, by order dated 24.01.2016, petitioner was posted in place of respondent No. 3 at Namsai. Thereafter, respondent No. 3 also joined the fray and started submitting representations though before the Departmental Commissioner as a result, order dated 24.01.2016 was modified and a new order was passed on 19.02.2016 posting the said respondent No. 3 at Chowkham while maintaining the posting of the petitioner at Namsai.

14. According to the learned counsel for the petitioner, Chowkham is situated at a distance of only about 25 kms. from Namsai and therefore, respondent No. 3 should have been happy to get such a posting. Be that as it

may, this order dated 19.02.2016 remained in the record book for hardly 2(two) weeks to be replaced by the impugned order dated 07.03.2016, as narrated above.

15. Coming to the representation of the petitioner addressed to the Departmental Minister on 12.08.2015, it is seen that the petitioner had himself made a request to post him at Namsai. Another thing which is to be noted is that petitioner is a Veterinary Officer(V.O.), which is a relatively junior level post in the Veterinary Department, yet he had bypassed the entire departmental hierarchy and made a representation directly to the Departmental Minister through the MLA, Namsai. To be fair to the Departmental Minister, he did not oblige the petitioner in full, rather suggested his posting at Longding stating that the post at Longding was vacant.

16. At this stage, it may be noted that people in general or the community, approaching the public representatives like MLAs and Ministers, with their grievances regarding performance of government officials or seeking their transfer and posting, may be a legitimate exercise in a democracy but it would be an altogether different thing if government servants violate government discipline and approach political leaders for furthering their personal interests or service career, like choice of posting and transfer, etc.. Such act of government servant should not be encouraged as it is a violation of departmental hierarchy and would lead to breach of service discipline. Such act of a government servant approaching political leaders to further his interest, may amount to misconduct warranting disciplinary action.

17. Having said that, impugned order dated 07.03.2016 reflects compliance of Minister's endorsement for posting of the petitioner at Longding on a representation submitted by the petitioner himself. Contention of learned counsel for the petitioner that modification of a transfer order once passed,

must be justified by sound and good reason, is a doubled-edged weapon effecting the petitioner himself. In fact, first transfer order involving the petitioner, reflected transfer of the petitioner from Rupa to Koloriang. This was modified on the request of the petitioner himself. Therefore, it is not open to the petitioner to blow *hot-and-cold* at the same time. Petitioner having himself sought modification of the initial order of transfer, cannot now turn around and assail the modified order on the ground of non-disclosure of reasons.

18. On the above ground itself, writ petition is liable to be dismissed. However, since learned Government Advocate has produced the relevant record for perusal of the Court, the record was opened only to find the record being full of requests and counter-requests of Ministers and MLAs for transfer and posting of various government servants. In fact, the very first page of the record discloses a request made by the Minister of State for Minority Affairs, Govt. of India, New Delhi, on 07.08.2013, to the Minister of Animal Husbandry & Veterinary, Government of Arunachal Pradesh, for cancellation of transfer order of a V.O.. The whole file is full of such requests and counter-requests. Departmental authorities may take note of such malady of serving government servants approaching politicians for furthering their service interest and take suitable remedial measures.

19. Having noticed the above, Court is of the view that further perusal of the file would be of no assistance other than divulging more and more about the sorry state-of-affairs, as discussed above. Court would refrain from making further observations in this regard.

20. All the citations presented at the Bar have been considered but having regard to the facts and circumstances of the present case, Court is of the view that those are not at all attracted.

21. On thorough consideration of the matter, Court finds no good ground to interfere with the impugned order dated 07.03.2016. Writ petition is found to be devoid of merit and it is accordingly dismissed.

22. Record produced is hereby returned back to the learned Government Advocate.

JUDGE

Bhask