

IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA:
MANIPUR: TRIPURA: MIZORAM & ARUNACHAL PRADESH)
ITANAGAR BENCH

(1) W.P.(C) NO. 364(AP)2009

1. Er. Sumnyak Sumnyan
S/o Shri L. Somnyan, Executive
Engineer, presently posted as Director,
Department of Tirap and Changlang,
Chimpu, Itanagar, District Papum-Pare,
Arunachal Pradesh.
2. Shri B.N. Jha
Superintending Engineer,
Tezu District Lohit,
Arunachal Pradesh.
3. Shri Taru Siga
Superintending Engineer,
Presently deputed as G.M. Hydro
Power Corporation,
Itanagar, District Papum-Pare,
Arunachal Pradesh.
4. Er. Katung Wahge
S/o Shri Tali Wahge
Superintending Engineer, Capital Circle,
Itanagar, District Papum-Pare,
Arunachal Pradesh.
5. Er. Markar Bam
S/o late Tomar Bam
Superintending Engineer, PWD,
Aalo Circle, West Siang District,
Arunachal Pradesh.
6. Shri Kalom Yirang
Superintending Surveyor of Works,
PWD, (Eastern Zone), Itanagar.
7. Shri A.K. Atreya
Superintendent Engineer, PWD,
Bassar, West Siang District,

Arunachal Pradesh.

8. Shri Duggum Ete
Superintendent Engineer, PWD,
Jairampur, District Tirap,
Arunachal Pradesh.
9. Shri Tayom Taloh
Superintendent Engineer, (SSW) PWD,
Western Zone, Itanagar,
PO/PS Itanagar, District Papum-Pare,
Arunachal Pradesh.
10. Shri Hage Piliya
Superintendent Engineer, PWD,
Boleng, West Siang District,
Arunachal Pradesh.
11. Shri Hage Bida
Executive Engineer (SW)
Design and Planning,
Itanagar, District Papum-Pare,
Arunachal Pradesh.
12. Shri T. Doni
Executive Engineer (SW),
Survey and Investigation,
Itanagar, District Papum-Pare,
Arunachal Pradesh.
13. Shri Tage Taki
Executive Engineer, Capital Division (A)
Itanagar, District Papum-Pare,
Arunachal Pradesh.
14. Phuntso Dorjee
Executive Engineer
Bomdila, West Kameng District,
Arunachal Pradesh.
15. Shri Lobsang Yeshi
SW, PWD, Western Zone, Itanagar,
PO/PS Itanagar, District Papum-Pare,
Arunachal Pradesh.

: *Petitioners*

vs

1. The State of Arunachal Pradesh
Represented by the Chief Secretary,
Govt. of Arunachal Pradesh, Itanagar.
2. The Commissioner
Public Works Department
Govt. of Arunachal Pradesh, Itanagar.
3. Shri Toli Bassar
Chief Engineer, Urban Development
Department, Itanagar.
4. Shri Taba Tedir
S/o late Taba Tat
Chief Engineer-cum-Director
Directorate of Urban Development and
Housing. Govt. of Arunachal Pradesh,
Itanagar.

: Respondents

(2) W.P.(C) NO. 377(AP)2009

Shri Atop Lego
Superintending Engineer (D&P)
Arunachal Pradesh, Public Works
Department, Itanagar,
PO. Itanagar, District Papum-Pare,
Arunachal Pradesh.

: Petitioners

vs

1. The Secretary to the Govt. of
Arunachal Pradesh, Itanagar.
2. The Commissioner
Public Works Department
Govt. of Arunachal Pradesh, Itanagar.
3. The Commissioner, Power,
Govt. of Arunachal Pradesh, Itanagar.
4. The Commissioner,
PHE & Water Supply,
Govt. of Arunachal Pradesh, Itanagar.

5. The Commissioner,
Water Resources Department,
Govt. of Arunachal Pradesh, Itanagar.
6. The Commissioner
Hydro Power Development,
Govt. of Arunachal Pradesh, Itanagar.
7. The Commissioner, RWD,
Govt. of Arunachal Pradesh, Itanagar.
8. The Commissioner
Urban Development & Housing Department,
Govt. of Arunachal Pradesh, Itanagar.
9. Shri Toli Basar
Chief Engineer-cum-Director
Urban Development Department,
Govt. of Arunachal Pradesh, Itanagar.

: Respondents

B E F O R E
THE HON'BLE MR JUSTICE MUTUM B.K. SINGH

For the Petitioners

: Mr. P. Taffo, Adv.
Mr. R.C. Tok, Adv.
Mr. B. Tapa, Adv.
Ms. N. Danggen, Adv.
Mr. T. Gyadi, Adv.
(in WP© No.364(AP)09)

Mr. C. Baruah,
Senior Advocate
Mr. Toning Pertin, Adv.
Mr. R. Pait, Adv.
Mr. C. Modi, Adv.
Ms. B. Lego, Adv.
(for the petitioner in WP©
No. 377(AP)09)

For the Respondents

: Mr. R.H. Nabam,
Sr. Govt. Advocate

: Mr. A.K. Goswami,
Senior Advocate

Mr. U. Bhuyan, Adv.
(for respondent No.4 in
WP© No.364(AP)09)

Mr. R. Saikia, Adv.
Mr. I. Basar, Adv.
Ms. T. Wangmo, Adv.
(for respondent No.9 in
WP© No.377(AP)09)

Date of Hearing : 10-08-2010.

Date of Judgment & Order : 12-08-2010

JUDGMENT AND ORDER
(CAV)

1. Challenge in these two writ petitions are to the order of approval for inter-departmental transfer of Chief Engineers of Engineering Departments dated 27-5-2009, issued by the Government of Arunachal Pradesh, Ministry of Administrative Reforms and Training, Department of Administrative Reforms and the transfer and posting order dated 25-8-09 in respect of Shri Toli Basar, issued by the Commissioner (PWD), Government of Arunachal Pradesh, Itanagar.

2. Heard Mr. P. Taffo, learned counsel appearing for the petitioners in WP(C) No.364(AP)09 and Mr. C. Baruah, learned Senior counsel appearing for the petitioner in WP(C) No.377(AP)09 as well as Mr. R.H. Nabam, learned Senior Government Advocate for the State respondents and Mr. A.K. Goswami, the learned Senior Advocate assisted by Mr. U. Bhuyan, learned counsel for the respondent No.4 (in WP© No. 364(AP)09).

3. That, the necessary facts emerged from the pleadings of the parties are that :-

The petitioners in WP© No.364(AP)09 are the serving Superintending Engineers and the Executive Engineers in the Public Works Department. The sole petitioner in WP© No. 377(AP)09 is also serving as Superintending Engineer in the Public Works Department. Pursuant to the Cabinet decision of the Government of Arunachal Pradesh dated 5-6-08, an approval order of the Government was issued on 27-5-09 for inter-departmental transfer of Chief Engineers of 7 (seven) Engineering Departments of the State of Arunachal Pradesh, which was notified in the Arunachal Pradesh Gazette of 15-6-2009. On 25-8-09, an order was issued transferring and posting of Shri Toli Basar as Chief Engineer of Eastern Zone, PWD, who was by then serving as Chief Engineer-cum-Director of the Department of Urban Development. Shri Toli Basar took over the charge as Chief Engineer, Eastern Zone PWD, on 31-8-08 and on the same day, respondent No.4 in WP(C) No. 364(AP)09, namely Shri Taba Tedir has also taken over the charge as Chief Engineer-cum-Director, Urban Development and Housing Department. Shri Taba Tedir is not a party respondent in WP(C) No. 377(AP)09. The petitioners in WP(C) No.364(AP)09 are aggrieved by the said orders dated 27-5-09 and 25-8-09, mainly on the ground that the said orders were issued without framing any rules and/or guidelines for implementation of the order dated 27-5-09 and thus pray for quashing both the orders. The petitioner in WP© No.377(AP)09 is aggrieved by the impugned orders dated 27-5-09 and 25-8-09, stating that he is eligible for promotion to the post of Chief Engineer, PWD as per the relevant

Recruitment Rules but the same has been denied and deprived of illegally.

4. Upon hearing the submissions of the learned counsel appearing for the parties and on perusal of the respective pleadings, it is evident that admittedly Shri Toli Basar (respondent No.3 in WP(C) No.364(AP)09 and respondent No.9 in WP(C) No.377(AP)09) is senior to all the petitioners in the Grade of Superintending Engineers, while serving in the Public Works Department before his deputation in the Urban Development and Housing Department where he was permanently absorbed and promoted as Chief Engineer. Subsequently, by virtue of the impugned order dated 27-5-09, Shri Toli Basar has been transferred and posted as Chief Engineer, Eastern Zone, PWD vide order dated 25-8-09. Indisputably, as per the provision of the Chief Engineer (Civil) (Group-A) Recruitment Rules, 1991, the post of Chief Engineer has to be filled up by selection from amongst the Superintending Engineers (Civil), possessing degree in Civil Engineering with 5 (five) years regular service in the Grade by promotion, failing which, by transfer on deputation.

5. There is no pleading in WP(C) No. 364(AP)09 to the effect that any one of the petitioners or the petitioners is/are eligible for promotion to the post of the Chief Engineer, PWD, as per the relevant Recruitment Rules. In the absence of such pleading, I am of the considered view that no right of the petitioners has been infringed or any prejudice has been caused to the petitioners' right by the impugned orders. It is well settled proposition of law that only the person whose legal/fundamental right has been infringed can approach to the Court of equity under Article 226 of the Constitution and the relief sought for must be for the enforcement of legal

rights. In view of the said settled position, the existence of the right shall be the foundation for exercise of jurisdiction under Article 226 of the Constitution and such right shall be the personal or individual right of the petitioner himself. There cannot be lost sight of the fact that the impugned orders relate to the inter-departmental transfer and posting of the Chief Engineers of the 7 (seven) Engineering Departments of the State of Arunachal Pradesh. The impugned orders have neither caused any prejudice nor infringed the rights of the petitioners in any manner whatsoever. There is no material on record to show that the rights of the petitioners have been infringed or violated by the impugned orders and as such I of the considered view that the petitioners in WP(C) No. 364(AP)09 have no locus to challenge the impugned orders dated 27-5-09 and 25-8-09.

6. That, in WP(C) No. 377(AP)09, there is a specific pleading that the petitioner is the seniormost Superintending Engineer in the Public Works Department, belonging to APST, and he is eligible for promotion to the post of Chief Engineer, PWD, as per the relevant Recruitment Rules but the same has been denied or deprived of by the impugned order dated 25-8-09. Record reveals that prior to the issuance of the impugned order dated 25-8-09, 3 (three) vacant posts of Chief Engineer were available in the Public Works Department. As against the said three vacant posts of Chief Engineer, two senior Superintending Engineers of the Public Works Department have been given ad hoc promotion and the respondent No.9, Shri Toli Basar has been transferred and posted against the remaining post of Chief Engineer, PWD, without considering the case of the petitioner. Hence, the right of promotion of the petitioner has been infringed by the

impugned orders, the learned counsel appearing for the petitioners contended.

7. The learned counsels appearing for the petitioners have strenuously argued that Shri Toli Basar was the Chief Engineer-cum-Director of the Department of Urban Development. The Department of Urban Development is not under the administrative control of the Commissioner, Public Works Department and as such the Commissioner, Public Works Department is not the competent authority to issue the impugned transfer order dated 25-8-09, in respect of the said Shri Toli Basar. Thus, the transfer and posting order dated 25-8-09, in respect of Shri Toli Basar is liable to be quashed.

8. Countering to the above submissions, Shri R.H. Nabam learned Senior Government Advocate appearing for the State respondents submits that the Commissioner, Public Works Department, issued the impugned transfer and posting order dated 25-8-09, in respect of Shri Toli Basar as approved by the concerned Minister of Public Works Department and the Urban Development Department as well as the Chief Minister, Government of Arunachal Pradesh. The matter was also approved by the Chief Secretary, Government of Arunachal Pradesh as per the provision of the Arunachal Pradesh Rules of Executive Business, 1987. Since the Commissioner, PWD has been authorized by the Chief Secretary with the prior approval of the concerned Minister as well as the Hon'ble Chief Minister of the State of Arunachal Pradesh, the Commissioner, PWD is competent to issue the impugned transfer and posting order dated 25-8-09, in respect of Shri Toli Basar. I have also perused the relevant notings of the office file, a copy of which is available at

Annexure-C of the Affidavit-in-Opposition of the State respondents in WP(C) No. 364(AP)09. It shows that the matter was placed before all the concerned authorities and subsequently, the Commissioner, PWD issued the impugned order 25-8-09, including the transfer and posting of Shri Toli Basar from the post of Chief Engineer-cum-Director, Urban Development Department to the post of Chief Engineer, Eastern Zone PWD. As the inter-departmental transfer of Chief Engineers was approved by the Government of Arunachal Pradesh vide order dated 27-5-09, I am of the considered view that the Commissioner PWD is competent to issue the impugned order dated 25-8-09, under the facts and circumstances of the case since he has been authorized to do so by the Chief Secretary with the approval of the Department of Urban Development. Thus, I cannot accept the argument advanced by the learned counsels appearing for the petitioners.

9. That, as regards the allegation of the petitioner in WP(C) No. 377(AP)09, that his right of promotion to the post of Chief Engineer has been deprived of by the impugned order dated 25-8-09, admittedly, the petitioner appears to be in the zone of consideration for promotion to the post of Chief Engineer according to his seniority position in the Grade of Superintending Engineers. However, promotion to the post of Chief Engineer has to be made by selection as per relevant Recruitment Rules. The role of seniority will come into play only when the merits of the candidates in the zone of consideration are equal. During the course of hearing, both the learned counsel appearing for the parties have admitted that the present petitioner has already filed a writ petition being WP(C) No. 473(AP)09, challenging the provisional seniority list of the Superintending Engineers (Civil) of the

PWD, published on 24-11-09. As per the said seniority list, Shri K.D. Prasad and Shri S.N. Pandey are shown seniors to the petitioner but the said Shri S.N. Pandey has been reflected as retired voluntarily. The said writ petition is still pending in this Court and as such the claim of the petitioner that he is the seniormost Superintending Engineer in the Public Works Department is not well founded.

10. As stated in the above paragraph, the post of the Chief Engineer has to be filled up by selection from amongst the eligible Superintending Engineer, the claim of the petitioner that his right of promotion being the seniormost Superintending Engineer belonging the APST, PWD has been deprived of by the impugned order dated 25-8-09, appears to be misconceived as the seniority is not the only criteria for promotion to the said post. The petitioner may have legitimate expectation of getting promotion to the post of Chief Engineer but such expectation should not be based on mere anticipation basing on the seniority position.

11. That, apart from the above discussions, it has been brought to the notice of this Court that the first impugned order dated 27-5-09, relating to the inter-departmental transfer of the Chief Engineers of the seven Engineering Departments has been withdrawn by a subsequent order dated 21-4-2010, issued by the Chief Secretary to the Govt. of Arunachal Pradesh. The said order is reproduced hereinbelow for reference :-

“Dated the 21st April/2010

ORDER

In the interest of Public Services the Govt. of Arunachal Pradesh is pleased to order that henceforth

there shall be no interdepartmental transfer of Chief Engineers in view of the fact that there exists no seniority list of Chief Engineers maintained by works departments under the Government of Arunachal Pradesh. Therefore, the Govt. order No.AR-90/2008 dated 27th May 2009 stands withdrawn with immediate effect.

However, such withdrawal shall be without prejudice to the validity of interdepartmental transfer of Chief Engineer already effected vide aforesaid order dated 27th May 2009.

*Sd/- TABOM BAM
Chief Secretary to the
Government of Arunachal Pradesh*

Memo No.AR-02/2010 Dated Itanagar the 28th April 2010.”

12. A copy of the above order dated 21-4-2010 is available as Annexure-J to the Additional Affidavit of the writ petitioner in WP(C) No. 377(AP)09. In view of the aforesaid withdrawal order, both the learned counsels did not press the prayer for cancellation of the impugned order dated 27-5-09, during the course of hearing. The subsequent withdrawal order dated 21-4-10, is not been challenged in the present writ petitions. It shows that the petitioners are not aggrieved by the subsequent withdrawal order. A bare reading of the second paragraph of the subsequent withdrawal order, it is crystal clear that the impugned order dated 25-8-09, in respect of transfer and posting of Shri Toli Basar as Chief Engineer, Eastern Zone, PWD, has been well protected by the subsequent order dated 21-4-2010. It is equally well settled law that the administrative order of the Government shall be deemed to have been issued in the interest of the public unless the person assailing such order can prove that such Government order is ultra vires, arbitrary, irrational or issued in violation of statutory provision of rules etc. In the instant case, the subsequent order dated 21-4-10 is not under

challenge and thus, it shall be presumed that the said order has been issued in the interest of the public. In terms of the said subsequent withdrawal order, both the writ petitions have become virtually infructuous.

12. For the reasons and discussions made hereinabove, I do not find any good ground to interfere with the impugned order dated 25-8-09. Resultantly, both the writ petitions are dismissed being devoid of merit. No order as to costs.

JUDGE

RJ