

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.38/2022

In WP(C) No.423/2022

Date of order: 01.11.2022

North Eastern Electric Power Corporation Ltd (NEEPCO) & ors Vs. Bidul Goswami

Coram:

Hon'ble Mr. Justice Sanjib Banerjee, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellants : Mr. V.K. Jindal, Sr. Adv. with
Mr. S. Rana, Adv.

For the Respondent : Mr. P.J. Saikia, Sr. Adv. with
Mr. P. Deka, Adv.
Mr. A.P. Kharsahnoh, Adv.

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| i) | Whether approved for reporting in Law journals etc.? | Yes |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT: (per the Hon'ble, the Chief Justice) (Oral)

The appeal is directed against an interim order passed on a writ petition challenging an order of transfer. Quite inexplicably, the order impugned requires status quo to be maintained, effectively stalling the transfer.

2. It is too late in the day to emphasise that the High Court's authority to interfere in matters of transfer is very limited and unless a case of egregious mala fides is made out, the High Court must yield to the administrative reasoning of the employer. Indeed, once an employer

cites administrative exigencies for the transfer of an employee who holds a transferable job, it is almost the end of the matter and the High Court ought not to interfere therein.

3. In this case, the writ petitioner-respondent was issued a transfer order on or about June 10, 2022 after serving in and around this area for nearly 16 years. The transferred place of posting is Tawang. Shortly upon receipt of the transfer order, the writ petitioner made a representation, citing the ill-health of his aged mother as a ground to allow him to continue in his present place of posting. The representation was disposed of by a terse order and a release order of June 29, 2022 followed.

4. The writ petitioner challenged the entire lot by way of an initial petition under Article 226 of the Constitution that was disposed of by this Court by an order of July 29, 2022. The Court, at that stage, found that the representation had not been adequately dealt with and merely required the representation to be reconsidered.

5. Upon reconsideration of the matter, a speaking order followed from the employer on August 5, 2022, which again was supplemented by a further reconsidered order of September 15, 2022. The decision remained the same. Another letter was issued by the employer on September 16, 2022 requiring the writ petitioner to immediately join his transferred place of posting. A third writ petition came to be instituted. By the interim order impugned dated October 18, 2022, the employer was

directed to file an affidavit clarifying certain matters. In the meantime, status quo was directed to be maintained with regard to the movement of the writ petitioner. It is the sting of the status quo in the tail of the interim order that the employer is aggrieved by.

6. The clarification that the Court required follows the observation at paragraph 7 of the impugned order:

“7. On perusal of the said impugned order, it indicates that the respondent Corporation while making reference to the order passed by this Court has however, referred to the letter dated 05.08.2022, which on the said date was no longer in existence. Further, it is noted that the respondent Corporation has also stated therein that the joining to the new place of posting by the petitioner will be subject to the outcome of the final disposal of the writ petition pending before this Court. Again on the date of the said order i.e. dated 16.09.2022, there was no writ petition pending, inasmuch as, the writ petition has been disposed of on 12.09.2022, as evident from the records annexed as Annexure-M to the writ petition.”

7. With respect, the substance of the matter was the transfer of an employee and the perceived anomalies noticed were incidental and too insignificant to be given any credence in the larger context.

8. Two principal grounds have been urged by the writ petitioner in resisting his transfer. The first ground is that even if his representation is rejected, there is a period of 60 days which is permitted to the employee before he has to join the transferred place of posting. The writ petitioner claims that in the communication of September 16 2022, the employer acted in breach of Rule 17 of the applicable transfer rules by calling upon

the writ petitioner to immediately report to the transferred post. The second ground urged is that the transfer rules require a certain committee to be constituted to look into the representation of an employee who has been served an order of transfer and seeks to resist the same. According to the writ petitioner, such board contains a member from the medical fraternity who is best able to gauge the medical condition of the concerned employee or any close relative if a ground in such regard is cited to resist the transfer. The writ petitioner says that the constitution of the committee in this case was inappropriate and it is not clear as to whether any committee was constituted at all for the purpose of going into the merits of the writ petitioner's representation.

9. There is no doubt that Rule 17 of the NEEPCO transfer policy allows a transferred employee two months' time from the date of the administrative order rejecting his representation to join the transferred post. Equally, Rule 15.2 of the said transfer policy requires a committee to be constituted to consider the special grounds, if cited.

10. In this case, the writ petitioner's representation following the receipt of the transfer order indicated that the writ petitioner's mother, aged 70, was suffering from partial paralysis following her cardiac arrest in the year 1990. The writ petitioner also indicated the nature of treatment that the writ petitioner's mother required. It was a long-term ailment and not a rare condition.

11. This was not a case of any extraordinary ground for resisting the transfer as the writ petitioner's mother was aged and infirm and suffered from a permanent disability. It is not the writ petitioner's case that there would not be adequate medical facility in the transferred place of posting, should the writ petitioner be required to take his mother along with him.

12. At any rate, Rule 15 of the transfer policy merely recognises that certain special grounds may be cited to resist an order of transfer. These special grounds include education of children, aged parents, employment of spouse and the medical conditions as defined in NEEPCO Medical Attendance Rules. Further, Rule 15.1 clearly stipulates that the functional criticality or requirement of the employer would have overriding priority over anything else.

13. Apart from the fact that no special medical condition in terms of NEEPCO Medical Attendance Rules had been cited by the writ petitioner and the only ground cited was infirmity of an aged parent, the employer must be deemed to be aware of the rules. Accordingly, the refusal by the employer to accede to the writ petitioner's request would imply that the functional criticality or the administrative requirement of transferring the writ petitioner outweighed other considerations. When so much authority is given to the employer in freely transferring an employee, the rather flippant ground cited by the writ petitioner should not have weighed

much with the Court to arrest a routine process in course of public employment.

14. Transfers cannot be stopped on the flimsy ground of age or infirmity of elderly parents of government employees. It is but natural that with advanced age, a person would be suffering from some form of disability and it is not an extraordinary situation that the writ petitioner was faced with. There is no doubt that the employer considered the writ petitioner's case and even reconsidered the same following the orders of the Court, but found nothing special for the writ petitioner to be retained in his present place of posting.

15. Once so much appears to the Court that it was in the usual course that an employee was sought to be transferred by the public employer and the employee's representation against the order of transfer had been considered, the Court should refrain from interfering in the matter. There is no doubt that the writ petitioner in the present case has abused the process to obtain undeserving orders of status quo to stall his transfer and the time of joining his transferred place of posting.

16. There is no merit in the grounds urged by the writ petitioner. The appeal succeeds. The writ petitioner should join his transferred place of posting by November 15, 2022 which would be two months from the date of communication of the last reconsidered decision of the employer. Indeed, the date should be counted when his original representation was

disposed of, but because orders of Court intervened, the writ petitioner is given the benefit of two months' time from September 15, 2022.

17. In view of this order, the writ petition itself, WP(C) No. 423 of 2022, is disposed of. The interim order impugned dated October 18, 2022 is set aside.

18. WA No. 38 of 2022 is disposed of as indicated.

19. There will be no order as to costs.

(W. Diengdoh)
Judge

(Sanjib Banerjee)
Chief Justice

Meghalaya
01.11.2022
"Lam DR-PS"

