

WP(C) 6438/2007
BEFORE
HON'BLE MR. JUSTICE RANJAN GOGOI

As agreed to and as the records in original have been placed before the Court, final orders in the writ petition are being passed at the motion stage. The challenge in the present writ petition is against an order dated 27th of November 2007 by which the respondent No.5, Dr. Surendra Nath Kalita, who was working as the Superintendent, Barpeta Civil Hospital has been transferred and posted as the Zonal Leprosy Officer in the office of the Director of Health Services, Assam, Guwahati. The writ petitioner who was holding the said office of Zonal Leprosy Officer has been transferred in the place of the Respondent No.5 by the same order dated 27th of November 2007.

A perusal of the records placed before the Court, particularly the note-sheet would go to show that the respondent No.5 had submitted an application for being posted in Guwahati on health grounds, he having claimed to be suffering from high diabetes with almost 70% loss of vision. The matter was processed and two posts against which the respondent No.5 could be accommodated were identified. One post happened to be in the Mohendra Mohan Choudhury Hospital where the incumbent had joined in March 2007; the second post was the one of Zonal Leprosy Officer in which the petitioner had served for a period of one year six months. The matter, thereafter, reached the table of the departmental Minister who, taking into account the health condition of the respondent No.5, approved the proposal for transfer of the said respondent No.5 in place of the petitioner. As under the relevant Govt. notification the transfer of the petitioner was being effected before expiry of three years in the particular post where he was working, the file was to be put up to the Chief Minister who approved the proposed action. Thereafter, the impugned order dated 27th of November 2007 was passed.

There is no vested right in any Govt. officer to serve in any particular station for a fixed duration of time. Though several Office Memorandums lay down that the normal 'tenure' of a Govt. servant should be three years, on administrative compulsions and necessities, an officer can be transferred before the expiry of three years. What the Office Memorandum in question requires is that such action should be taken with the prior approval of the Chief Minister. The said requirement has been complied with in the present case. That apart, if the departmental Minister as well as the Chief Minister had taken the view that in the peculiar facts and circumstances of the case and on account of the health condition of the respondent No.5 the said respondent should be brought to the post held by the petitioner, there is no reason why the Court should construe the said action to be either mala fide or against the laid down norms so as to justify interference. The Court, therefore, cannot find any fault with the impugned transfer order dated 27th of November 2007.

The averments made in the writ petition and the oral arguments advanced by Sri T. J. Mahanta, learned counsel for the petitioner, indicates that after the inter se transfer of the petitioner and respondent No.5 was made by the order dated 27th of November 2007 the petitioner has filed an application before the Secretary to the Govt. of Assam, Health and Family Welfare Department, seeking reconsideration of his posting in the Barpeta Civil Hospital on health grounds. As the petitioner has filed the above stated representation it will be the bounden duty of the departmental Secretary to consider the same on merits and pass appropriate orders thereon. Naturally, if the transfer of the respondent No.5 to the post of Zonal Leprosy Officer was made on a representation filed by the said person and consequently the petitioner was transferred from the said post, as the petitioner has filed a similar representation dated 3.12.2007 the same has to necessarily receive the due and proper attention of the concerned authority i.e. the departmental Secretary. The departmental Secretary, therefore, is directed to take on record the said representation and on due consideration of the facts stated therein and pass appropriate orders within the next 15 days.

This will dispose of the writ petition.

The records placed before the Court by the learned Standing Counsel, Health Depa

rtment, be returned to him.