

GAHC040008082025



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

Case No. : WP(C)/220/2025

Niranjan Kumar Jha
Son of Shri Siyanand Jha, presently working as Executive Engineer (E), Daporijo
Electrical Division, Department of Power, PO and SP Daporijo, Upper Subansiri
District, Arunachal Pradesh.

VERSUS

The State of AP and 8 Ors
represented by the Secretary, Department of power, Govt of Arunachal Pradesh, PO
Itanagar, Arunachal Pradesh 791111 2:The Secretary

Age: 0

Occupation :

Department of Power

Govt of Arunachal Pradesh

PO Itanagar

Arunachal Pradesh 791111

3:The Chief Engineer (Power)

Age: 0

Occupation :

Ginko Linggi

Central Electrical Zone

Department of Power

Itanagar

Govt of Arunachal Pradesh.

4:The Superintendent of Engineer

Age: 0

Occupation :

Electrical at Ziro

Electrical Circle

APEC-5

Ziro

PO and PS Ziro
Govt of Arunachal Pradesh.

5:Er. Kajen Tamen
Age: 0
Occupation :
Assistant Engineer (E) Daporijo Electrical Sub Division
Department of Power
Daporijo
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh.

6:Paw Larika
Age: 0
Occupation :
DST Colony Daporijo
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh.

7:Nyajam Giba
Age: 0
Occupation :
DST Colony
Daporijo
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh.

8:Tadu Bayor
ZPM
Age: 0
Occupation :
Chetam cum Secretary General
AAPPRP
PO and PS Daporijo
Upper Subansiri District
Arunachal Pradesh.

9:Zomli Dugi
ZPM
Age: 0
Occupation :
Segi Gusar Cum Convener
AAPPRP
Daporijo
PO and PS Daporijo

Upper Subansiri District
Arunachal Pradesh

Advocate for the Petitioner : Lentsothe Sangtam, A Sarma

Advocate for the Respondent : GA (AP), Parswajyoti Das Nair, Pramod Kr. Gour, Kamal Saxena, SC (Power), Lissing Perme, 1 P K Tiwari, Sr. Advocate

**BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN**

ORDER

Date : 05.06.2025

Heard Mr. K.N. Choudhury, learned Senior Counsel, assisted by Mr. A. Sarma, learned counsel for the petitioner. Also heard Mr. L. Perme, learned standing counsel for the respondent Nos. 1, 2, 3 and 4; and Mr. P.K. Tiwari, learned Senior Counsel, assisted by Mr. P.K. Gour, learned counsel for the respondent No. 5.

2. In this petition, under Article 226 of the Constitution of India, the petitioner has challenged the transfer order No. PWRS/E-49/2015, dated 24.04.2025, signed on 28.04.2025, issued by the Secretary (Power), Government of Arunachal Pradesh, Itanagar, and also the speaking order, No. PWRS/E-245/2024-25, dated 16.05.2025, passed by the respondent No. 2.

3. It is to be noted here that vide impugned order dated 24/28.04.2025, the Secretary (Power), Government of Arunachal Pradesh, Itanagar had transferred the petitioner, Shri N.K. Jha, who has been serving as Executive Engineer, Daporijo Electrical Division to the Office of the Chief Engineer (Commercial-cum-CEI), Department of Power, Itanagar as Executive Engineer (Planning), and vide impugned speaking order dated 16.05.2025, the respondent No. 2 had rejected the representation of the petitioner.

- 4.** Issue notice to the respondents, returnable in three weeks.
- 5.** As Mr. Perme, learned standing counsel and Mr. Tiwari, learned Senior Counsel appears and accepts notice on behalf of the respondent Nos. 1 to 4 and 5, respectively, no formal notice is required to be issued to the said respondents. However, extra requisite copies of the petition be furnished to them during the course of the day.
- 6.** Steps be taken upon the respondent Nos. 6 to 9, by way of registered post with A/D, as well as by usual process, within a week from today.
- 7.** Mr. Perme, learned standing counsel for the respondent Nos. 1 to 4 shall produce the relevant file, regarding transfer of the petitioner, before this Court on next returnable date.
- 8.** In respect of interim prayer of the petitioner, Mr. Choudhury, the learned counsel for the petitioner, submits that the petitioner is serving as Executive Engineer at Daporijo Electrical Division and he was posted there on 24.03.2024, and as per the Circular No. APPTT-19/90, dated 02.06.1998, normal tenure of posting in a particular station is two years, but, he was transferred as Executive Engineer (Planning) to the Office of the Chief Engineer (Commercial-cum-CEI), Department of Power, Itanagar, before completion of two years, vide order dated 24/28.04.2025. Mr. Choudhury also submits that that the said order was challenged by the petitioner in a writ petition, being WP(C) No. 192(AP)/2025, wherein a Coordinate Bench of this Court, vide order dated 30.04.2025, had directed the respondent No. 2 to dispose of the representation of the petitioner, and thereafter, vide impugned speaking order dated 16.05.2025, the respondent No. 2 had rejected the representation of the petitioner on inconsistent grounds, and being aggrieved, the petitioner has approached this Court again by filing

the present petition, challenging the impugned transfer order dated 24/28.04.2025, and also the impugned speaking order dated 16.05.2025.

8.1. Mr. Choudhury also submits that the transfer of the petitioner is nothing but a malice in law, in as much as his transfer order, as per note sheet dated 14.03.2025, of the Under Secretary, Power and Electrical, at page 37 of this petition, was initiated on the basis of public complaint and the same is also apparent from the impugned speaking order dated 16.05.2025. Mr. Choudhury also submits that vide impugned transfer order, dated 24/28.04.2025, the petitioner was directed to hand over the charge of Executive Engineer of Daporijo Electrical Division to the respondent No.5, who is the seniormost Assistant Engineer (Electirical), Daporijo Electrical Division, but he is not even an Assistant Executive Engineer, and as such he is ineligible to hold the charge of that post and in view of the decision of Hon'ble Supreme Court in the case of **N.K. Singh vs. Union of India and Ors.**, reported in (1994) 6 SCC 98, the same is impermissible.

8.2. Mr. Choudhury also submits that respondent Nos. 6 and 7 in this petition, lodged one FIR against the petitioner before the Superintendent of Police, Daporijo, Upper Subansiri district, for the offence under Section 7 of the Prevention of Corruption Act, 1988, allegedly for demanding and taking bribe/commission of Rs. 40,000/- in lieu of passing of pending bill of Rs. 2,00,000/-, and thereafter, on 06.11.2024, another complaint was received by the Deputy Chief Minister-cum-Minister, Power and thereafter, the Chief Engineer (Power), Government of Arunachal Pradesh was directed to conduct an inquiry and accordingly, the Chief Engineer (Power) had conducted an inquiry and he had noticed discrepancies in respect of work execution and also recorded a finding that the electrification works for BSNL towers at Leriak, Pute,

Leya and Luchi in Giba Circle, under Daporijo Electrical Division, deviated significantly from the approved DPR and work orders, and the work commenced on verbal instruction from the then Executive Engineer-in-charge and was executed as per the direction of the Junior Engineer, without proper documentation or adherence to specifications, and the work orders were issued only after completion of the work. Mr. Choudhury also submits that the Chief Engineer (Power), during inquiry, found that there were monetary discussions in the audio recordings, however, the footage did not explicitly show the officer receiving money, and he opined that bribery could not be established and he recommended further expert verification of the audio and video evidence to ascertain the authenticity of the allegations, and based on the forensic findings, necessary disciplinary or legal action may be initiated against the petitioner, if found guilty, and appropriate departmental action to be considered against the officials responsible for the procedural lapses in work execution and non-adherence to DPR specifications. Mr. Choudhury further submits that nowhere in its report, the committee had stated the allegations against the petitioner to be prima-facie correct and that the present petitioner is not at all involved in the same.

8.3. Referring to a decision of Hon'ble Supreme Court in the case of **Somesh Tiwari vs. Union of India and Ors.**, reported in (2009) 2 SCC 592, Mr. Choudhury also submits that the transfer of the petitioner is mala fide for being passed on materials which not in existent, and the mala fide is of two kinds, one malice in fact and the second malice in law, and the case of the petitioner falls in the category of malice in law, as the same came to passed as a punitive measure, without affording an opportunity of being heard to the him, and therefore, Mr. Choudhury has contended to grant interim stay of the impugned

transfer order. Mr. Choudhury also submits that till date, the petitioner has not handed over the charge of his office.

9. Per contra, Mr. Perme, learned standing counsel for the respondent Nos. 1 to 4 submits that nothing is mentioned in the impugned transfer order to show that by way of punishment, the petitioner was transferred, and that public complain has been lodged against him, and under such circumstances, no case for interference of this Court is made out, and any interference of this Court will cause prejudice to the public. Referring to a decision of Hon'ble Supreme Court in the case of **State of U.P. and Ors. Vs. Gobardhan Lal**, reported in **(2004) 11 SCC 402**, and a decision of a Division Bench of this Court in the case of **M. Balakrishna Reddy vs. Union of India (UOI) and Ors.**, reported in **(2007) 4 GauLT 583**, Mr. Perme submits that a transfer, even made in transgression of any administrative guidelines, cannot be interfered with and the same do not confer any legally enforceable right and the court cannot substitute their own decision in the matter of transfer for that of competent authority, and as such, Mr. Perme has contended to reject the prayer of the petitioner.

10. On the other hand, Mr. Tiwari, learned Senior Counsel for the respondent No. 5, submits that transfer is a condition of service and unless the order of transfer is shown to be an outcome of mala fide exercise of power or violative of any statutory provision or passed by an authority not competent to do so, the order of transfer cannot lightly be interfered with as a matter of course. In support of his submission, Mr. Tiwari has also referred to a decision of Hon'ble Supreme Court in the case of **Gobardhan Lal** (supra). Mr. Tiwari has also pointed out that there is serious allegations against the present petitioner, and under such circumstances, the authority has decided to transfer him and

there is nothing to show mala fide on the part of the respondent authority. Mr. Tiwari also submits that after the impugned speaking order being passed by the respondent No. 2, the petitioner has already been released, vide order dated 29.04.2025, and therefore, Mr. Tiwari has contended to reject the prayer.

11. In reply to above submissions of Mr. Perme, and Mr. Tiwari, Mr. Choudhury, the learned counsel for the petitioner, referring to para-No. 8 of the decision of Hon'ble Supreme Court in the case of **Mohinder Singh Gill and Anr. vs. the Chief Election Commissioner, New Delhi and Ors.**, reported in (1978) 1 SCC 405, submits that validity of the impugned transfer order must be judged by the reasons so mentioned there in, and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise and since in the impugned transfer order, no reason has been given, the respondent authority cannot supplement the reasons/grounds of transfer.

12. Having heard the submissions of learned Advocates of both sides, I have carefully gone through the petition and the documents placed on record, and also perused the impugned order dated 24/28.04.2025 (Annexure-1), the impugned speaking order dated 16.05.2025, and the note sheet dated 13.03.2025, at page 37 of the petition, whereby transfer of the petitioner was initiated. Also I have carefully gone through the decisions, referred by learned counsel for both the parties.

13. The power of the Courts and Tribunals in interfering with the transfer order has authoritatively been settled in catena of decisions by Hon'ble Supreme Court in catena of decisions, including the decision in **National Hydroelectric Power Corporation Ltd. v. Shri Bhagwan**, reported in 2001 (8) SCC 574 and also in the decisions referred by learned counsel for

both the parties, as referred to herein above. From a careful perusal of the same, following proposition can be crystalised:-

13.1 The scope of judicial interference against transfer orders is very limited. The courts will only step in, if such an order is in contravention of any statutory rule or is based on mala-fides, and not otherwise. Courts do not have the power to declare invalid any transfer order on the ground that the same will cause inconvenience to the employee or his family as individual convenience of employees is subject to the overarching needs of the administration. Employees are transferred from one place to another to maintain the smooth functioning of the organization, they are working in, as well as for public interest.

13.2. A transfer is a condition of service and an employee has no fundamental right to get a posting at a particular place of his/her choice. The employer has the power to transfer an employee and it can determine his place of posting and for what duration, the services of that employee would be required at that place.

13.3. It is also well settled that a transfer order must always be passed in a just, fair and reasonable manner, and it should not be passed arbitrarily or whimsically.

14. Now, adverting to the factual matrix of the case in hand, it appears from the Circular, dated 02.06.1998 (Annexure-13), that the normal tenure of posting in all the Government posts, shall be three years. But vide order No. PERS-126/2004, dated 19.12.2008, the aforesaid tenure of three years has been modified to two years with immediate effect.

15. It also appears that the present petitioner was posted as Executive Engineer at Daporijo Electirical Division and he joined there on 08.05.2024. The

impugned transfer order came to be passed on 24/28.04.2025, and as such, on that date he had not completed the tenure of two years. Further, it appears that in the impugned transfer order dated 24/28.05.2025, no ground has been mentioned. These are undisputed facts.

16. As submitted by Mr. Choudhury, learned Senior Counsel for the petitioner, the legality of the same is to be tested by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. And the decision in **Mohinder Singh Gill (supra)**, so referred by him, also strengthened his submission, wherein in para-No. 8, it has been held as under: -

“8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Commr. of Police, Bombay v. Gordhandas Bhanji*, reported in 1951 SCC 1088:

“Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.”

17. It is well settled that when the transfer order is challenged contending that

it was made as a punitive measure, the court can lift the veil to find out whether the same was made on administrative ground or as stated in the order or as a punitive measure as contended by the affecting party.

18. In the case in hand, from the impugned speaking order, dated 16.05.2025, by which the representation of the petitioner dated 28.04.2025, was disposed of, pursuant to order dated 30.04.2025, passed by this Court, in WP(C) No. 192(AP)/2025, and also from the note sheet dated 13.03.2025, of the Under Secretary, Power and Electirical, and further from the impugned speaking order dated 16.05.2025, it appears that on the basis of public complain etc., the proposal for transfer of the petitioner herein was initiated. First such complaint dated 27.10.2024, made under the Prevention of Corruption Act to the Superintendent of Police, Daporijo, Upper Subansiri district and second complaint dated 06.11.2024, was made to the Deputy Chief Minister-cum-Minister, Power, levelling serious allegations of corruption and malpractices against the petitioner.

19. It also appears that an inquiry committee was formed comprising of the Chief Engineer (Power), Central Electrical Zone, who, in his inquiry report dated 11.02.2025 (Annexure-12), had noted as under:

- (i) The execution of electrification works for BSNL towers at Leriak, Pute, Leya, and Luchi in the Giba Circle under Daporijo Electrical Division deviated significantly from the approved DPR and Work Orders.
- (ii) The work commenced on verbal instructions from the then Executive Engineer-in-charge and was executed as per the direction of the

Junior Engineer (JE) without proper documentation or adherence to specifications.

- (iii) The work orders were issued only after completion of the work, and discrepancies were found between the executed work and the approved DPR.

19.1. In respect of the allegations against the petitioner, it had been noted that:

- (i) The complainants, Shri Paw Leriak and Shri Tagam Giba, submitted an FIR alleging that Shri N.K Jha, Executive Engineer (Elect.) demanded Rs. 40,000/- as 20% of the work value as departmental expenses.
- ii) Audio and video evidence were provided by the complainants; however, Shri N.K Jha denied the allegations, claiming the recordings were fabricated and dubbed.
- (iii) Statements from other witnesses, including the complainants, Junior Engineer, Assistant Engineer, and others, were recorded. While there were indications of monetary discussions in the audio recordings, the footage does not explicitly show the officer receiving money.
- (iv) The Inquiry Committee could not conclusively establish bribery but recommended further expert verification of the audio and video evidence to ascertain the authenticity of the allegations.

19.2. Thereafter, the inquiry committee had recommended as under:

- (i) The matter be referred for further investigation by an expert forensic team to authenticate the audio and video recordings.

- (ii) Based on the forensic findings, necessary disciplinary or legal actions be initiated against the accused officer if found guilty.
- (iii) Appropriate departmental action may be considered against the officials responsible for the procedural lapses in work execution, and non-adherence to DPR specifications.

20. Thus, it appears that though no ground has been assigned in the impugned transfer order, from the impugned speaking order dated 16.05.2025, it appears that it came to be passed on the basis of public complain etc., the proposal for transfer of the petitioner herein was initiated. First such complaint, dated 27.10.2024, made under the Prevention of Corruption Act to the Superintendent of Police, Daporijo, Upper Subansiri district and second complaint, dated 06.11.2024, was made to the Deputy Chief Minister-cum-Minister, Power.

21. Further, it appears that on 24/28.04.2025, on which the transfer order came to be passed, no FIR was registered against the petitioner and no disciplinary proceeding was initiated against him. The Inquiry Committee had recommended legal and disciplinary action based on the forensic findings, if the accused officer is found guilty. No forensic finding also made available on that day.

22. And admittedly, before passing the impugned order, no opportunity of being heard was afforded to the petitioner by the respondent authority. Thus, the action of the respondent authority, prima-facie appears to be a malafide action and therefore, the impugned order appears to be punitive in nature and it would attract the principle of malice in law, as held by Hon'ble Supreme Court in **Somes**

Tiwari (supra), wherein it has been held as under:-

“16. Indisputably an order of transfer is an administrative order. There cannot be any doubt whatsoever that transfer, which is ordinarily an incident of service should not be interfered with, save in cases where inter alia mala fide on the part of the authority is proved. Mala fide is of two kinds—one malice in fact and the second malice in law. The order in question would attract the principle of malice in law as it was not based on any factor germane for passing an order of transfer and based on an irrelevant ground i.e. on the allegations made against the appellant in the anonymous complaint. It is one thing to say that the employer is entitled to pass an order of transfer in administrative exigencies but it is another thing to say that the order of transfer is passed by way of or in lieu of punishment. When an order of transfer is passed in lieu of punishment, the same is liable to be set aside being wholly illegal.

23. It also appears from the impugned speaking order dated 16.05.2025, that the Secretary (Power), Government of Arunachal Pradesh, in paragraph No. 7, had observed that the committee found the allegations to be prima facie correct and recommended regular departmental proceeding against the officer, which seems to be incorrect on the face of the record. The inquiry committee had categorically held that the committee could not conclusively establish bribery, and therefore, recommended for expert verification of the audio and video recordings to ascertain the authenticity of the allegations. The committee had recommended disciplinary or legal action, if the accused officer is found guilty based on the forensic findings, but such forensic finding is not being made available till date. The inquiry committee had recommended for appropriate departmental action against the official responsible for the procedural lapses in

work execution, and non-adherence to DPR specifications.

24. It is the categorical submission of Mr. Choudhury, learned counsel for the petitioner, that the petitioner is not involved with the aforementioned procedural lapses in work execution and non-adherence to DPR specifications, and that his predecessor-in-office was responsible for the same, and that the petitioner had refused to make payment of the bill of the respondent Nos. 6 and 7 because of the deviation of DPR and work orders and to compel him to make payment of the bill, an FIR was lodged by the respondent Nos. 6 and 7, but no case has been registered against the petitioner till date, and since the disciplinary proceeding and inquiry against the petitioner is yet to be initiated, the impugned transfer order is premature at this stage.

25. In the given facts and circumstances there appears to be substance in the submission of Mr. Choudhury. Further, it appears that the respondent No.5, who was allowed to take charge of the office of the petitioner, is an Assistant Engineer not even an Assistant Executive Engineer also, and this fact is not in dispute and also it being specifically pleaded in the petition that he is not suitable to hold the charge of the office of the petitioner. That being so, there appears to be element of prejudice to public interest. And in view of the decision of Hon'ble Supreme Court in the case of **N.K. Singh** (supra), the impugned transfer order dated 24/28.04.2025, appears to be not in accordance with law.

26. Thus, from the aforesaid discussion following factors emerges:-

- (i) Without completion of the tenure of two years of posting, the petitioner was transferred from Daporijo Electrical Division to the Office of the Chief Engineer (Commercial-cum-CEI), Department of

Power, Itanagar.

- (ii) The respondent No.5, who was allowed to take charge of the petitioner, is not even an Assistant Executive Engineer, rather, he is an Assistant Engineer, and as such, he is not suitable to assume the charge of the office of the petitioner and as such there appears to be element of prejudice to public interest.
- (iii) The transfer order, as per note sheet of the Under Secretary, Power and Electrical, was actuated on the basis of a complaint made against the petitioner on 27.10.2024, before the Superintendent of Police, Daporijo, Upper Subansiri district by the respondent Nos. 6 and 7, and also on the basis of another complaint to the Deputy Chief Minister-cum-Minister, Power on 06.11.2024. But no criminal case has been registered against him till date, and the Inquiry Committee could not establish the allegation of bribery and it had recommended further investigation and based on such finding, to initiate necessary disciplinary or legal action. This goes to show that the impugned order is punitive in nature. But, before passing the same, no opportunity of being heard was afforded to the petitioner, and on such count, it appears to be malice in law.
- (iv) The inquiry committee, nowhere in its report had arrived at a finding that the allegation against the petitioner appears to be prima facie correct and it had recommended for disciplinary or legal action if he is found guilty after further investigation and forensic finding. That being so, the impugned speaking order, dated 16.05.2025, was not based on any factor germane for passing the same.

27. It is submitted at the Bar that though he was released by the respondent authority, he has not yet handed over the charge of his office.

28. Thus, weighing the aforesaid factors, in the light of submissions of learned counsel for both the parties and also taking note of the well settled proposition of law, regarding the scope of judicial interference of transfer order, this Court is of the view that a prima facie case for interference with the impugned transfer order, dated 24/28.04.2025, appears to be made out.

29. Accordingly, in the interim, it is provided that the impugned transfer order, dated 24/28.04.2025, shall not be given effect to, till returnable date.

30. List the matter after three weeks.

JUDGE

Comparing Assistant