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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

(11)

OA No.2697/2001

New Delhi, this the 28th day of the May, 2002

HON'BLE MR. M.P.SINGH, MEMBER (A)

Karam Veer Nagar
Junior Telecom Officer
Department of Telecom,
S/o Late Shri Bodal Singh,
R/o B-28, Nehru Apartment,
Near Nasirpur Phatak,
Nehru Nagar,
Ghaziabad (UP).

... Applicant

(By Advocate: Shri Shri S.N. Anand)

V E R S U S

1. Union of India through Secretary
Ministry of Communications
(Department of Telecommunications)
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001.
2. The Deputy Director General (Personnel),
Department of Telecommunication,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001.
3. The Chief General Manager
UP (West) Telecom Circle
Dehra Dun (UP).
4. The General Manager
Ghaziabad Telecom District,
Ghaziabad (UP).

... Respondents

(By Advocate: Shri M.M. Sudan)

O R D E R

In the present OA, the applicant is challenging the order dated 13.9.2001 whereby he has been transferred from Ghaziabad SSA to NE (North East) II Circle Dimapur (Annexure-A).

2. Brief facts of the case are that the applicant joined as Telephone Operator in erstwhile Delhi Telephones (now MTNL) w.e.f. 10.2.1984 and subsequently, opted for UP Telecom Circle (now UP (West)

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Telecom Circle) in its office at Ghaziabad Telecom District. He was promoted as Junior Telecom Officer and posted as such in Ghaziabad Telecom District w.e.f. 10.7.2000. According to the applicant, the respondent No.2, i.e., Deputy Director General Personnel, prevailed upon respondent No.3, i.e., Chief General Manager, to transfer the applicant out from Ghaziabad SSA to NE II Circle Dimapur vide order dated 12.7.2001. In pursuance to this order, the applicant was relieved of the duties w.e.f. 13.7.2001. Aggrieved by this, he had submitted a representation requesting the respondents to cancel the aforesaid transfer order. The respondent No.1 vide its order dated 27.7.2001 ordered to keep the said transfer order in abeyance till further orders. The respondents have now again issued a fresh orders on 13.9.2001, in supersession of earlier orders of keeping the transfer orders in abeyance. It is stated by the applicant that his transfer ordered in July 2001 is contrary to departmental instructions. The departmental instructions (Annexure G to OA) stipulate that the cadre of Junior Telecom Officer (JTO) is a circle cadre and as such the applicant has transfer liability within the circle only and that transfer should normally be effected in April each year, so that the education of children is not dislocated. It is further stated by the applicant that the action of the respondents in transferring him is punitive in nature inasmuch as that one Shri Tej Prakash Verma, AGM O/o GM TD Ghaziabad has falsely implicated him in FIR dated 22.10.1999 (Annexure-K). The respondents nos. 3 and 4 have also initiated simultaneous departmental proceedings pursuant to the aforesaid alleged misconduct, which are still

pending. Moreso, in case any departmental proceedings are pending against any Govt. servant, last station of posting should not normally be changed as per the provisions of CCS (CCA) Rules. The action of the respondents in transferring the applicant to NE II Circle, Dimapur is illegal, arbitrary and punitive and contrary to their own instructions. Therefore, he has filed the present OA and has prayed for quashing and setting aside the order of transfer dated 12.7.2001 (Annexure B) and order dated 13.9.2001 and strike down the provisions of Para 37 of P&T Manual Volume IV so far as it relates to class or classes in respect to whom special provisions have been made separately.

3. The respondents in their reply have stated that the impugned transfer order has been issued by Bharat Sanchar Nigam Limited (BSNL) and no notification under Section 14 (2) of the Administrative Tribunals Act, 1985 has been issued conferring the jurisdiction of Central Administrative Tribunal on BSNL so far. Therefore, the present OA is not maintainable and deserves to be dismissed for want of jurisdiction. According to the respondents, the transfer order of the applicant has been issued in the public interest by BSNL and the said transfer order is not liable to be interfered by the Tribunal in view of the various judgements of the Hon'ble Supreme Court as well as Hon'ble High Court. It is further submitted by the respondents that one Shri R.C. Tomar, Member of Parliament and Member of Telecom Advisory Committee vide his letter dated 7.6.2001 has made a complaint to the Minister of State, Ministry of Communications, New Delhi that the applicant while



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posted as JTO in Ghaziabad has been harassing the members of Telecom Advisory Committee in general, and members of public in particular, as and when they come to meet the officers of the Department in the Rajnagar Telephone Building, Ghaziabad. Accordingly directions were issued by Deputy Director General (Personnel) B.S.N.L. H.Q. to the Chief General Manager, BSNL, UP (West) Circle, Dehradun vide letter dated 19.6.2001 to examine the matter. Subsequently, a representation was made by Capt. Jai Narain Prasad Nishad, Member of Parliament to the Hon'ble Minister of Communications stating that the allegations levelled against the applicant be enquired into and in the meanwhile the applicant may not be transferred out of Ghaziabad. Accordingly, the Minister of Communications felt it would be appropriate if the transfer order of the applicant is kept in abeyance till the allegations levelled against him are enquired into. Accordingly, an enquiry was conducted by the vigilance team. Vigilance team has reported various acts of indiscipline of the applicant and has noted the atmosphere of fear and terror created by the applicant. The vigilance team has also referred to the reports of Vigilance Officer, U.P.(W), GMTD, Ghaziabad dated 3.9.1996 and also the report of DE (Vigilance), Ghaziabad dated 19.7.2001 which clearly mention the terror created by the applicant due to which it is not possible to conduct free and fair investigations against the applicant. A number of other complaints were also received regarding the incidents of misbehaviour and manhandling of the officers of the department by the applicant. Therefore, the Minister of Communications felt it necessary that

the applicant be transferred as per his earlier transfer order and consequently, he was relieved from the said post by an order dated 13.9.2001. In view of the aforesaid position explained, the transfer order is not liable to be challenged by way of present OA.

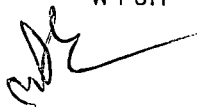
4. Heard both the rival contesting parties and perused the records.

5. During the course of the argument, learned counsel for the applicant has drawn my attention to the number of judgements, namely, Ashok Kumar Sharma Vs. Union of India and Ors. (AISLJ 2000(3)(CAT) 261), Sanyasi Bhunya Vs. Director of Elementary Education Orissa, Bhubaneswar & Ors. (AISLJ 1994(2)(CAT) 190), H.N. Patro Vs. Union of India and Ors. (AISLJ 1991(2)(CAT) 109), Shri Rohit Kumar Yadav Vs. Union of India and Anr. (AISLJ 1994(1)(CAT) 433), S.C. Nijhawan Vs. Union of India and Ors. (AISLJ 1995(3)(CAT) 152), U. Vijayan Vs. Union of India and Ors. (AISLJ 2000(2)(CAT) 300), U.C. Chaturvedy Vs. Union of India and Ors. (AISLJ 1998(3)(CAT) 69), G.P. Upadhyaya, I.A.S. Vs. Union of India and Ors. (AISLJ 2001(1)(CAT) 203) etc. and has submitted that since the transfer order issued by the respondents is not in public interest or for administrative reasons, it needs to be quashed and set aside. According to the learned counsel for the applicant, the transfer order is also violative of the guidelines issued by the department as the cadre of JTO is only a circle cadre and not an all-India cadre. Therefore, the applicant can be transferred within the circle, i.e., U.P.(West) Circle

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as per guidelines and clarification dated 17.7.2000 (Annexure G) wherein it has been clarified by the respondents that the JTO Cadre still remains Circle Cadre and not all-India cadre even after classifying it as (GCS) Group 'B' gazetted. Moreover, the applicant is an office bearer of Telecom Engineering Officers Association (India) (Annexure I) and has, therefore, immunity from transfer as per letter dated 24.9.1997 (Annexure H) issued by the Deptt. of Telecommunications. The learned counsel for the applicant has submitted that the applicant, who is a group 'B' officer of Department of Telecommunications, is at present on deemed deputation to the BSNL. The order of his transfer to NE II Circle, Dimapur has also been issued at the behest of Minister of Communication and, therefore, the Tribunal has jurisdiction to adjudicate the present application.

6. On the other hand, learned counsel for the respondents has submitted that the impugned order of transfer has been issued by the BSNL and since no notification under Rule 14 (2) of Administrative Tribunals Act, 1985 has been issued conferring the jurisdiction of Central Administrative Tribunal on BSNL so far, the present OA is not maintainable on the ground of jurisdiction. In support of his claim, he relied upon the judgement of the Hon'ble Delhi High Court dated 24.8.2001 in C.W.P. No.2702/2001 wherein it has been held that "since Central Government had not issued any notification under Section 14 (2) of the Act to apply provisions of sub-section 3 of MTNL, CAT was not vested with any jurisdiction to entertain any petition related



to any service dispute in the MTNL." The learned counsel has also submitted that the applicant has created terror and has been abusing and physically assaulting the senior officers. It is for these reasons, that the Minister of State for Communications has issued orders for the transfer of the applicant. Moreover, the applicant has all-India transfer liability as per Para 37 of P&T Manual Volume IV.

7. The admitted facts of the case are that the applicant has been transferred from Ghaziabad SSA to NE II Circle Dimapur vide order dated 12.7.2001 (Annexure B) and he was relieved from duty vide order dated 13.9.2001 (Annexure A). The applicant is a Group 'B' officer of Department of Telecommunication and is on deemed deputation to BSNL. The impugned order of his transfer has been passed by the office of G.M. Telecom, District Ghaziabad but the same has been done at the instance of Minister of State for Communications. Since the applicant is a Group 'B' officer of Department of Telecommunications on deemed deputation to BSNL and he has been transferred on the orders of Minister of State for Communications, as admitted by the respondents in their reply, the Tribunal can exercise its jurisdiction to adjudicate the present application. The judgement of the Hon'ble Delhi High Court dated 24.8.2001 in CWP No.2027/2001 relied upon by the learned counsel for the respondents is distinguishable as in that case the approval of the Department of Telecommunications was not obtained by the respondents (MTNL) for issuing the suspension order of the applicant therein.

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8. From the record placed before me, I find that the impugned order of transfer has been passed at the instance of the Minister of State for Communication as he has received certain complaints from the Member of Parliament and not because of any administrative exigency or in public interest. No inquiry appears to have been made in respect of the complaints/allegations and thus findings about misconduct of the applicant has been arrived at by the respondents without observing the principles of natural justice. The applicant is in the grade of JTO which is the lowest supervisory level in the organisation. There are many senior supervisory/executive levels above the applicant. The contention of the respondents that the applicant is harassing the public and the Members of Telecom Advisory Committee which is a high powered committee does not sound logical. The other contention taken by the respondents in their reply that the applicant is misusing his financial power/public funds is also not tenable as the post of JTO is a very junior level in the Administrative hierarchy of the organisation and the incumbent of that post is hardly vested with any financial power. In fact, the financial powers are vested/exercised at much senior level in the organisation. That apart, the respondents have adequate powers under CCS (CCA) Rules to hold an enquiry and ^{could} take disciplinary action against the applicant for the complaints/allegations made by the officials and Members of the public. Instead of taking disciplinary action, the respondents have transferred the applicant for extraneous reasons. The impugned transfer order is, therefore, arbitrary and punitive in


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nature and is against the guidelines which stipulates that the JTO is only a circle cadre and is, therefore, liable to be quashed and set aside.

9. For the reasons stated above, the present OA is allowed and the transfer orders dated 12.7.2001 and dated 13.9.2001 are quashed and set aside. No costs.


(M.P. SINGH)
MEMBER (A)

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