

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No.871/2001

New Delhi, this the 17th day of May, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (J)

R.C. Sharma
s/o Shri A.N. Sharma
R/o House No.6753, Block No.10,
Gali No.3, Dev Nagar,
New Delhi.

... Applicant

(By Advocate: Shri Naresh Kaushik)

V E R S U S

1. Department of Telecommunications
through its Secretary,
Ministry of Communications,
Sanchar Bhawan,
New Delhi.
2. Director (EW),
DOT, 10th Floor, Chander Lok Building,
Janpath, New Delhi.
3. Chief Engineer (BW),
C.G.O. Complex, Lodhi Road,
MTNL, New Delhi.
4. SR. D.D.G. (Elect.)
Department of Telecommunications,
10th Floor, Chandra Lok Building,
Janpath, New Delhi.

... Respondents

(By Advocate: Shri V.K.Rao and Shri R.V.Sinha)

ORDER

By Shri Kuldip Singh, Member (J):

The applicant has filed this OA under Section 19 of the Administrative Tribunal's Act, 1985 whereby he has assailed an order dated 3.4.2001 vide which the applicant has been transferred from the post of Electrical Engineer (E), MTNL, Delhi to SW(E), PEC, Delhi. The applicant alleges that this order of transfer is in violation of the guidelines and policies framed by the department with regard to the transfer of the employees and to this extent the counsel for the applicant has referred to the

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transfer policy and submitted that the policy issued by the Department dated 5.7.99 shows that the tenure of an officer at a station will be of four years which can be extended upto 6 years as per para 3 of the said policy and the counsel for the applicant submitted that the applicant has not spent 4 years at this particular posting so this period could not have been reduced but the same should have been extended.

2. The learned counsel for the applicant further referred to para 4 of the policy which says that the Executive Engineer (Electrical)/Assistant Engineer (Electrical) may be rotated from field to planning and vice-versa but only after completion of 4 years on a post.

3. Besides that, he further stated that the incumbent who is going to replace him had earlier sought a transfer on request and as per the provision a person who seeks transfer on his own request he has to put in at least 2 years at the station where he or she is posted and in this case the person who is going to replace applicant has not put in 2 years where he was also posted so on this ground he says that the transfer order particularly of the applicant is in violation of the guidelines issued by the department itself so the applicant should not have been transferred.

4. Besides that the counsel for the applicant also submitted that he understands that

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there is a complaint against him as the Superintending Engineer had made certain complaint on the basis of which the applicant has been transferred so the transfer is a punitive one.

5. The Department of Telecommunications have filed a counter-affidavit but respondent No.3 has not filed any counter-affidavit. Respondent Nos.1,2 and 3 have stated that the application is a misuse of process of law and it is submitted that the applicant is holding all-India transfer liability so he can be transferred in any part of the country but the present transfer is not made outside station, rather his services has been placed at the same station.

6. It is also stated that the applicant was posted with MTNL at his own request but the Department of Telecom is the cadre controlling authority in respect of Group 'A' and Group 'B' officers and the transfer/posting of officers are made by the DOT Headquarters on the basis of transfer policy guidelines.

7. It is also pleaded that the transfer is an incident of service and the applicant has no right to be posted at a particular place rather it is pleaded that the transfer has been made in public interest and on administrative grounds and the same is not violative of any statutory rule nor as a

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result of any mala fide action, so this court should not set aside the transfer order.

8. I have heard the learned counsel for the parties and have gone through the records of the case.

9. The learned counsel for the applicant submitted that since the transfer is in violation of the transfer policy issued by the department particularly in para 3 and 4 as annexed by him along with the rejoinder which shows that discriminatory treatment has been meted out to the applicant and the transfer order cannot be sustained being a discriminatory one. The minimum tenure of the applicant is stated to have been fixed by the guidelines itself and the minimum tenure is of 4 years and the applicant has hardly spent 3 years only and he is being shifted from his present place of posting which is definitely in violation of the OM dated 5.7.99, so the transfer order is liable to be quashed on this ground alone.

10. Besides that the learned counsel for the applicant has also submitted that since the respondents in their counter-affidavit have submitted that because of a complaint made by the Superintending Engineer the applicant is being transferred that means that the transfer order is punitive in nature and without affording any opportunity, the applicant is being transferred.



11. In reply to this, the counsel for the respondents referred to the judgment in the case of Mrs. Shilpi Bose and Others Vs. State of Bihar and Others, reported in AIR 1991 SC 532 where it was observed by the Hon'ble Supreme Court that "the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer order is made in violation of any mandatory statutory rule or on the ground of mala fide." So the learned counsel for the applicant submitted that the guidelines issued by the department which has been relied upon by the applicant are not mandatory statutory rules but are just simple guidelines and the same guidelines in paragraph 12 further says that notwithstanding the guidelines the department can post any person anywhere in the interest of service eventhough they do not fall within the purview of guidelines. So in order to quash the transfer order the court has to see whether there is any violation of any statutory rule or there is any mala fide action only then the court can quash the transfer order.

12. The counsel for the respondents relied upon another judgment in the case of U.O.I. and Others Vs. S.L. Abbas, reported in 1993 (4) SCC 357. After relying upon this judgment, the counsel for the respondents submitted that while exercising the power of judicial review over a transfer matter the court is not to sit as an appellate authority

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which can substitute its own judgment and while deciding the case of S.L. Abbas (Supra) the Hon'ble Supreme Court has also referred to its earlier decision wherein it was observed that if an order is questioned the authority is not obliged to justify the transfer by adducing the reasons therefor. The Supreme Court has also not said that the court or the Tribunal can quash the order of transfer, if any of the administrative instructions or guidelines are not followed, much less can it be characterised as mala fide for that reason, then the order of transfer can be questioned in a court or Tribunal whether it is passed mala fide or made in violation of statutory provisions. Thus repeatedly the Hon'ble Supreme Court has observed that the transfer order can be questioned only if there is a violation of any mandatory statutory provisions or if the transfer order is tainted with mala fide motive.

13. Shri V.K. Rao, Counsel appearing for the MTNL also submitted that the transfer order has been passed on administrative grounds without any mala fide reasons and there is no mala fide in it so the same should not be quashed.

14. I have given my thoughtful consideration to the matter involved. Though the learned counsel for the applicant has contended that the impugned order of transfer is no violation of transfer policy but at the same time para 12 of the guidelines also says that if transfer is made in the

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interest of service then notwithstanding the guidelines, the competent authority even though they do not fall within the purview of the policy, can pass a transfer order in respect of an employee. The department has also tried to justify the transfer order as the working of the applicant was not satisfactory at a particular stage so the department for their own administrative reasons has transferred the applicant from one seat to another seat, that too in Delhi itself and as such it cannot be said that there is any mala fide motive to transfer the applicant.

15. As far as the posting of Shri Puri is concerned though the counsel for the applicant has tried to canvass that Shri Puri with his pull and pressure has got posting in the place of the applicant, I find that there is nothing on record to indicate the same.

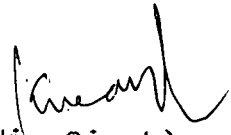
16. Moreover it is a well settled law that it is the management who has to see where to post a particular individual and how best they can extract work from an officer and since in this case though there appears to be some deviation from the guidelines issued by the department but since the order is stated to be in the interest of service and is protected under para 12 of the guidelines, so I think that no interference is called for.

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17. In view of the above, OA has no merits
and the same is dismissed. No costs.


(Kuldip Singh)
Member (J)

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