

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH:NEW DELHI

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OA. No.1107 of 1994

Dated New Delhi, this 26th day of October, 1994

Hon'ble Shri J. P. Sharma, Member(J)
Hon'ble Shri B. K. Singh, Member(A)

Shri M. K. Bhandari
R/o P-26, Green Park Extn.,
NEW DELHI-110029. ... Applicant

By Advocate: Shri B. K. Aggarwal

Versus

Union of India through

1. The Chairman
Telecom Commission
Sanchay Bhawan
20 Ashoka Road
NEW DELHI-1

2. The Chief General Manager
Delhi Telephones, MTNL,
Khurshid Lal Bhawan, Janpath
NEW DELHI-50

3. Shri L. C. Agarwal
Chief General Manager
Delhi Telephones, MTNL,
Khurshid Lal Bhawan, Janpath
NEW DELHI-50 ... Respondents

By Advocates: Shri M. M. Sudan and
Shri A. K. Sikri

JUDGEMENT

Shri B. K. Singh, M(A)

This OA.No.1107/94 has been filed under Section 19
of the Administrative Tribunal Act, 1985 against the
impugned orders - (i) No.372-3/STG-III dated 11.2.94
issued by Director(Staff-II), Department of Telecommunication
New Delhi, and (ii) No. STA-I/16-94/Sr.PA/94/31 dated

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6.4.94 issued by Assistant General Manager(Admn.)

of the office of the Chief General Manager, Telephone,
New Delhi-50. This is regarding the transfer of the
applicant from New Delhi MTNL to Gujrat Circle,
Ahmedabad.

2. The uncontroverted facts of the case are that
the applicant was appointed as LDC on 4.10.63. He was
subsequently promoted to the post of Stenographer in
1971 and further promoted as Personal Assistant in
the year 1981.

3. As an experimental measure, Government of India
converted Delhi Telephones into a Public sector
Undertaking known as "Mahanagar Telephone Nigam
Limited"(MTNL) with effect from April 1986 and since
they did not have their own staff, the staff working
with the Government were placed at the disposal of
the MTNL. The applicant was promoted to the post
of Senior Personal Assistant in the grade of Rs.2000-
3200 with effect from 30.10.90 vide Annexure 'A'
enclosed with the paper book. The applicant along
with other staff are on deemed deputation to the



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MTNL. There were serious complaints against the applicant regarding racketeering in organising sanction of temporary telephones, shifting of telephones, extension of temporary telephone connections dishonestly and fraudulently. The CBI filed FIR No. RC-12(A)/93-DLI under dated 9.2.93 against the applicant & the various sections of IPC for misusing his official position and entering into a criminal conspiracy with private persons in the aforesaid undesirable activities (Annexure 'A' & 'B' of the paper book).

4. On the basis of the raid conducted by the CBI at the residence of the applicant and FIR lodged, the applicant was suspended vide letter No. MTNL/Disc/MKB/PA-13538/3 dated 18.2.93 issued by Respondent No. 2 and annexed as Annexure 'C' of the paper book. During the period of suspension, the applicant was served with impugned order of transfer along with another colleague who was also involved in the same case/FIR. The suspension order was revoked vide letter dated 6.4.94 (Annexure 'E'). On the basis of transfer order, MTNL, New Delhi struck off his name from the strength of the office of General Manager(Finance), MTNL on 6.4.94 (Annexure R-1 of the reply). The applicant has

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stated that he reported for duty on 11.4.94, but no orders of posting were given to him. He has been continuing in Delhi without any assignment on the basis of the interim relief granted by the Tribunal on 10.6.94.

5. The relief sought by the applicant includes prayer for quashing the impugned order as malafide, punitive, illegal and unconstitutional and awarding of cost to the applicant.

6. Notices were issued to the respondents No.1, 2&3 as above who filed their reply contesting the application and grant of relief prayed for.

7. We heard the learned counsel Shri B. K. Aggarwal for the applicant, Shri M. M. Sudan for the official respondents and Shri A. K. Sikri for MTNL, and perused the record of the case and also the departmental files placed before us.

8. The learned counsel for the applicant argued that it was a colourable exercise of power based on alleged misconduct for which CBI has already registered a case and the enquiry is on. He further argued that the

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impugned orders are punitive, malafide and illegal and are liable to be quashed. It was further contended that there was no order of re-instatement of the applicant since no posting orders were issued by MTNL and till he rejoins after revocation of suspension he cannot be relieved and as such there is no relieving order till date. It was further argued that transfer is no remedy for misdemeanour and that if in the enquiry the applicant is found guilty, he may be punished according to law. It was further argued that the impugned orders are neither in public interest nor in the exigencies of service and in this connection he cited the rulings in the cases of State of Kerala Vs. Balakrishnan 4993(1) 5 LJ 151 and Rajiv Saxena Vs Collector of Central Excise ATR 1990(1) p.378. During the perusal of record we came across another argument that the applicant's wife has been working in Safdarjung Hospital and juniors to him whose wives are not working, have not been transferred whereas the applicant whose wife is a serving woman, has been shifted against the instructions of the Government that wife and husband should be posted together as far as practicable.

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9. Against the above, the learned counsel for UOI, Shri M. M. Sudan argued that transfer order has been made on administrative grounds. The applicant was struck off from the strength of MTNL, New Delhi with effect from 6.4.94. Having been struck off, it was the imperative duty of the applicant to report for duty to Gujrat Telecom Circle, and in defiance of the order, the applicant filed the above OA seeking cancellation of the transfer orders. The applicant has been continuing in violation of the transfer order in the light of the interim relief passed on 10.6.94 by the Tribunal. It was further argued by him that the cadre of Senior Personal Assistant(Gazetted) holds all India transfer liability and in view of the seizure of incriminating document during the raid by CBI, his involvement in illegal activities, unbecoming of a Government servant was prima-facie established and that is how the FIR was registered against him and the CBI took the documents in its custody. The transfer was made because it was apprehended that by their presence in the same unit where he and his colleague were found involved in illegal activities, they can interfere with

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the records of the case which may prejudicially affect the course of investigation. Thus, he argued that the transfer order is in the public interest and it is neither punitive nor malafide. The said order is not discriminatory since both the officers involved have been transferred out of Delhi; one to Punjab Telecom Circle and the other to Gujarat Telecom Circle. A Government servant is duty-bound to work in the best interest of public service and it is also possible that for his work he may not be rewarded, but once he comes under a cloud, he is subjected to disciplinary proceedings. His involvement in an activity unbecoming of a Government servant has been prima-facie proved on the basis of the raid conducted by the CBI which has registered a FIR and the investigation is on and, therefore, in order to see that nexus is broken both the officers involved in the racket of sanction of temporary telephone connections, shifting of telephone lines and extension of temporary telephone lines etc. were transferred. Since he was already struck off from the roll of the MTNL on 6.4.94 there was no question of his reporting for duty on 11.2.94 when he received the orders revoking his

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suspension order. He should have gone and joined
Gujrat Telecom Circle.

10. Shri A. K. Sikri, learned counsel for MTNL
repeatedly argued that the application is infructuous
since he had been relieved with effect from 6.4.94 and
he managed to obtain the interim stay order only by
suppressing this fact. He also argued that it is an
administrative transfer order and it is neither
punitive nor malafide and it is not violative of the
statutory rules. There is no cause of action for the
applicant to challenge the transfer order and in this

(a)
connection, he cited the rulings in cases of B. Varedha
Vs. State of Karnataka(1986) 4 SCC 131 wherein the
Hon'ble Supreme Court held that transfer of a
Government servant is an ordinary incident of service
and, therefore, does not result in any alteration of
any of the conditions of service to his disadvantage;

(b) Kamlesh Trivedi Vs. ICAR ATC(1988) 3 SCC 445 and

(c) Shilpi Bose Vs. State of Bihar 1991 Lab. IC(SC) 360

wherein the Hon'ble Supreme Court has held that the
court should not interfere with an order made on
administrative grounds or in public interest.

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The applicant was on deemed deputation with the MTNL.

Due to strong administrative reasons, MTNL did not want

to retain the applicant on deputation. In the

Telecom Deptt. circumstances the L had no option but to transfer the

applicant to some other place. The transfer, thus, is

valid and the applicant has no right to challenge the

same. The very fact that his name has been struck off

from the strength of MTNL and since MTNL is not within

the jurisdiction of the Tribunal, no direction can be

issued by the Tribunal as there is no notification under

Section 14 of the Administrative Tribunal Act, 1985.

The MTNL works under the administrative control of the

Ministry of Communications on the basis of whose

transfer orders, the applicant was relieved. The

applicant is an employee of the Telecommunication

Department, Government of India and is an employee of

the MTNL, and MTNL has to follow the orders issued

by the administrative department.

11. After going through the record of the case

received from SP/SBI/AC/Br. Delhi, it seems that the

applicant and his colleague were obtaining the Letter

Pads of the Hon'ble Members of Parliament and drafting

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letters for temporary telephone connections. In one case they had forged a letter on the letter pad of Dr Girija Devi, M.P., Lok Sabha recommending the case of one Rajesh Arora, resident of New Rajdhani Enclave, Delhi for a telephone connection. Dr Girija Devi was contacted by the Vigilance team of the MTNL between 10 a.m. to 11 a.m. on 28.1.93 and she was requested to comment on the genuineness of her signature. She was shocked to see the letter and stated that her signature was forged. Thus the recommendation was fake and the signature was also forged. Several other cases also came to the notice of the Vigilance Branch of MTNL and these were all handed over to the CBI for enquiry. Various documents and complaint petitions were received and they handed over these documents including the forged signatures of M.Ps. etc. to the CBI clearly stating therein that Shri M. K. Bhandari, Sr.PA to the General Manager(Finance), MTNL, Delhi Telephones, New Delhi and Shri Pramod Kumar, Sr.PA to the General Manager(South Area), MTNL, Delhi Telephones, New Delhi, were dishonestly and fraudulently abusing their official position and have entered into a criminal conspiracy

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with each other and some private persons in running a racket of organising sanction for shifting of telephone lines, new temporary connection of telephones and extension of temporary telephone connection. They both were found to be a part of racket generating fake recommendation letters of MRs/VIPs addressed to the competent authorities of MTNL, New Delhi and they charged huge amount from the telephone users/customers for organising sanction of telephone lines through such fake recommendation letters. Photocopies of two such letters where the concerned Hon'ble MPs, whose pads had been stolen and their signatures forged, denied issuing the letters and their denial letters were also forwarded to CBI. The two letters in question were, (i) D.O. letter No. Nil dated 23.12.92 purported to be written by Mr Shamim Hashmi, MP, Rajya Sabha addressed to Mr K. K. Tirkha, GM (Telephones), MTNL, New Delhi for extension of temporary Telephone Nos. 555-6422, 550-7372, 559-5719 and 555-4033. The Hon'ble MP denied having written this letter, and stated that his signatures are forged and the request may be cancelled by the MTNL, and (ii) D.O. letter No. Nil dated 12.1.93 purported to be written by Dr Girija Devi.



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MP, Lok Sabha addressed to Mr M.R. Subrammanyam, CCM, Delhi Telephones for sanction of a temporary telephone for Mr Rajesh Arora, resident of 175 New Rajdhani Enclave, New Delhi-92 for six months. The Hon'ble MP stated that she never wrote such a letter and her signature was forged.

12. On the basis of the aforesaid facts the CBI registered a case against these two and they were placed under suspension. Although the provision for changing the headquarter during suspension is within the competence of the competent authority but instead of doing that, the competent authority ordered these deemed deputationists' transfer outside Delhi to break the nexus and racket and as such they revoked the suspension order and decided to shift these two, the applicant to Gujarat Telecom Circle, Ahmedabad and his colleague Shri Promod Kumar, Sr PA to Punjab Telecom Circle, Amritsar. A perusal of the file of the internal vigilance and also other files produced by MTNL clearly reflects on the work and conduct of these two officers and we have carefully perused the files produced before us.

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13. The power of transfer is an inherent administrative power as has been held in a catena of judgements by the

Hon'ble Supreme Court and CAT, such as, K. Gopul Vs UOI

(1967) 3 SCR 627, Paresh Chand Vs. Controller of Stores

(1970) 3 SCC 370, E. Royappa Vs State of Tamil Nadu

(1974) 3 SCC p.3, Shanti Kumari Vs Deputy Director

(1981) 2 SCC 72, Dr C. S. Kar Vs West Bengal (1986)

90 CLN 88, Manmohan Singh Vs UOI (1988) 6 ATC 218,

M.S. Halwa Vs UOI (1987) 3 SLJ(CAT) 687, Amarnath Vaish

Vs UOI 1987 4 ATC 606. In Amarnath Vaish's case it was

held that the inherent power vested in the administrative

authorities cannot be taken away on the basis of

guidelines issued by the departments for regulating

transfer orders. Thus, guidelines will not hold good

when the authorities decides to shift an officer on

administrative grounds or in public interest. The same

view was reiterated in the case of UOI Vs S. S. Kirtania

(1989) 3 SCC 445, Gujrat Electricity Board Vs Atma Ram

(1989) 2 SCC 662.

14. The Hon'ble Supreme Court have frowned on

intervention in transfer orders by High Courts and

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Tribunals when the same are made on administrative grounds or on grounds of public interest or in the exigencies of public service. The judicial intervention is called only when malafide or malice is established against the authorities ordering the transfer. These are exceptional cases where judicial intervention is called but in no other case such as for L transfer on administrative grounds or in public interest. The power of transfer is exercised under the Fundamental Rule-15 or under corresponding rules. All such orders being administrative in nature are not ^{to be} lightly interfered with by the courts. It is only where a right of the Government servant is established and the authorities have acted beyond ^{their} power, the court can interfere, e.g., in the case of K. H. Phadnis Vs State of MP(1971) 1 SCC 790, Bhida Daya Vs. Divisional Commercial Superintendent (1986) 6 ATC 483. Thus, interference even by the Apex Courts is an exception to the rule and in 99% cases they have upheld the validity of the transfer orders.

15. Coming to the facts and circumstances of the present case, the administrative order issued by the Telecommunication Department, Government of India of

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which the applicant is an employee, is more than justified especially in view of these two Sr. PAs indulging in undesirable activities, such as, manipulating the letter-head pads of the Hon'ble MPs, forging their signatures, making recommendations in their name for grant of temporary telephone connections, extension of temporary telephone lines etc. In order to break the nexus of these two officers, they have been shifted to two different places, the applicant to Gujarat Telecom Circle, Ahmedabad and his colleague Shri Promot Kumar to Punjab Telecom Circle, Amritsar. This was necessary and it is purely in public interest. This will also enable the MTNL and the parent department to ensure that the records and the incriminating documents seized ^{from} _{with} them are not tampered ^{by} these two officers.

16. We have gone through the rulings cited by the learned counsel for the MTNL in cases of B. Varedha Vs State of Karnataka (supra), Kamlesh Trivedi Vs ICAR(supra), Shilpi Bose Vs State of Bihar (supra). The Hon'ble Supreme Court has held that Transfer of a Government servant is an ordinary incident of service and, therefore, does not result in any alteration of any of the conditions of service to his disadvantage. On transfer he is entitled to TA/DA

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and packing charges etc. and also dislocation allowance.

The Hon'ble Supreme Court in the other two cases of Kamlesh Trivedi and Shilpa Bose held that the court should not interfere with an order made on administrative grounds or in public interest. In case of Gujarat Electricity Board

vs. A.R. Sungomal Poshani AIR 1989 SC 1433 it was held

that transfer from one place to another place is a condition of service and the employee has no choice in the matter.

A Government servant, on transfer, must comply with the order and if there is any genuine difficulty, he has to approach the authorities for its modification or cancellation.

If the order of transfer is not modified or cancelled or stayed, the concerned public servant must carry out the order of transfer. In the absence of any stay of transfer order a public servant has no justification to avoid the transfer order merely on the ground of difficulty in

moving from one place to the other. In the instant case, the plea taken is that the applicant has not been relieved whereas the facts are contrary to this. The MTNL struck him off the rolls on 6.4.94 from MTNL and as such he should have applied for Transfer TA/DA to go to his new place of posting instead of making excuses that he has not been relieved.

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The Hon'ble Supreme Court held in the aforesaid case that if a person on transfer fails to proceed in compliance to the transfer order, he would expose himself to disciplinary action under the relevant rules. This has not happened to the applicant till date. But the respondents have the right to proceed against him if he refuses to comply with the transfer order from Delhi to Ahmedabad. In the case of UOI Vs S. S. Kirtania JT 1989(3) SC 131, the Hon'ble Supreme Court have directed the lower courts made, to avoid interfering with transfer orders/either on administrative grounds or in public interest unless there are strong and pressing grounds rendering the transfer order illegal on ground of violation of statutory rules or on ground of malafide. There is no violation of statutory rules in this case and the onus was on the applicant to prove the malafide. Except for casual allegation that he was transferred on account of some authorities in MTNL who pressurized his parent department to shift him from MTNL and transfer him out of Delhi, nothing else has been on the subject.

17. Mere casual allegation do not prove malafide or malice. It has been held by the Hon'ble Supreme Court

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in case of K. Nagaraja Vs State of A.P. (1985) 1 SCC 523

(para-36) that:

"Burden to establish malafide is a very heavy burden to discharge. Vague and casual allegations suggesting that a certain act was done with an ulterior motive cannot be accepted without proper pleadings and adequate proof."

We do not find any concrete instances and adequate proof and pleadings on record to justify the contention

of the learned counsel for the applicant that his transfer was malafide. At least he has not been able to discharge this heavy burden which is cast on him to the charge of malafide.

Merely levelling some vague and casual allegations prove

do not amount to proof or proper pleadings and as such this contention cannot be accepted.

18. While going through the pleadings, we have come

to an averment that others whose wives are not serving,

have not been transferred whereas the applicant has been

transferred. The Hon'ble Supreme Court in the case of

Bank of India Vs Jagjit Singh Mehta (1992) 1 SCC 306 have

observed that ordinarily, and as far as practicable

husband and wife who are both employees should be posted

at the same station even if their employer be different.

Transfer has to be made in accordance with the administrative

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needs and a serving couple have to take their choice at the threshold between career prospects and family life. After giving preference to the career prospects by accepting such an appointment which has an All India transfer liability, the acceptance of transfer to any place in India subordinating the need of the couple living at one station, does not violate any statutory rule or principle. These are merely guidelines and they cannot be kept together at the same station for good. Therefore, this contention has also no basis and is untenable.

15. The ground that there is discrimination since the other employees have not been touched has no legs. They have preferred a good family life without a serving woman, and they are not after money or after career prospects. They have preferred family life to career prospects and as such they are a separate class altogether whereas the applicant falls in a separate group and comes within that group where people go in for career prospects by marrying a serving woman. This decision has to be taken when one decides to marry a serving woman or allows his

wife to take up a job. Thus, there is no discrimination and as such Articles 14 & 16 of the Constitution are not attracted. Thus, this contention also fails.

20. Both Government servants involved in the racket, i.e. the present applicant Shri M. K. Bhandari, Sr.PA to the General Manager(Finance),MTNL, Delhi Telephones, New Delhi and his colleague Shri Premod Kumar,Sr.PA to the General Manager(South Area),MTNL, Delhi Telephones, New Delhi, have been transferred out of Delhi and here also there is no discrimination. A perusal of the files clearly goes to show that there is a *prima-facie* case against both of them and, therefore, they have been shifted on administrative grounds. It is neither a punishment nor is there any malafide involved in it.

21. In the conspectus of the facts and circumstances of the case, this application fails and is dismissed as such, leaving the parties to bear their own costs.

22. Interim stay order granted by the Tribunal on 10.6.94 is vacated.


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23. The departmental files may be returned to
the counsel for respondents.

(B. K. Singh)
Member (A)

J. P. Sharma
(J. P. Sharma)
Member (J)

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