

OA No. 291/22/2021 with MA No. 291/108/2021

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

**ORIGINAL APPLICATION NO. 291/22/2021
with
MISC. APPLICATION NO. 291/108/2021**

Order reserved on 12.02.2021

DATE OF ORDER: 16.02.2021

CORAM

**HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER
HON'BLE MRS. HINA P. SHAH, JUDICIAL MEMBER**

Gyan Chand Meena Son of Late Shri Mali Ram Meena, aged 51 years, Resident of Flat No. L-4136-A, Rangoli Garden, Vaishali Nagar, Jaipur-302021. Presently posted as General Manager, B.S.N.L., Rajasthan Circle, Jaipur. M. 9414081456 'Group-A'

....Applicant

Shri Punit Singhvi, counsel for applicant (through Video Conferencing).

VERSUS

1. Union of India through the Chairman Cum Managing Director, BSNL Corporate Office, Third Floor, Bharat Sanchar Bhawan, Janpath, New Delhi – 110001.
2. Chief General Manager, Telecom, BSNL Circle Office, Rajasthan, Telecom Circle Sardar Patel Marg, C-Scheme, Jaipur-302008.
3. Deputy General Manager (Pers-SM), BSNL Corporate Office, Fourth Floor, Bharat Sanchar Bhawan, Janpath, New Delhi – 110001.
4. Subhash Chandra Agarwal, General Manager (EB) C/o Deputy General Manager (Pers-SM), BSNL Corporate Office, Fourth Floor, Bharat Sanchar Bhawan Janpath, New Delhi – 110001.

....Respondents

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Shri T.P. Sharma, counsel for respondent Nos. 1 to 3 (through Video Conferencing).

None present for respondent No. 4.

ORDER

Per: Hina P. Shah, Judicial Member

The present Original Application has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985 for quashing and setting aside the transfer order dated 05.12.2020, (Annexure A/1) whereby he has been transferred from Jaipur to Bharatpur.

2. The brief facts of the case, as stated by the applicant, are that in the year 2016, on his own request, he was transferred to BSNL from DOT vide order dated 16.09.2016 (Annexure A/2). As per BSNL Employee Transfer Policy, a person can have a circle tenure of six years but before completion of the said period, applicant has been transferred from Jaipur to Bharatpur despite the fact that person having longer tenure at Jaipur was required to be transferred first as per the policy. But the Department has adopted pick and choose policy and transferred the applicant for the

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reasons best known to them, which is clearly discriminative. As per the Transfer Policy of BSNL and DOPT OM dated 30.09.2019, if the spouse of the employee is serving in Central or State Government or a public sector undertaking then the request of posting of husband and wife at the same station should be considered. In the present case, the wife of the applicant is serving as Associate Professor at Jaipur. He further states that the applicant is a General Manager (GM), which is above the rank of Deputy General Manager (DGM) and as one DGM is already posted at Bharatpur, there is no post of General Manager at Bharatpur. It was further stated that the applicant is having several medical and domestic problems and posting him to Bharatpur, which is 200 kms. away from Jaipur will make the applicant impossible to travel frequently to discharge his family obligations. He has filed his representation on 08.12.2020 requesting the respondents to cancel his transfer order and to allow him to discharge his duties at the present place of posting, but the respondents instead of considering his difficulties, have issued relieving order. However, neither the applicant has joined at the place of posting nor the

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person who is supposed to join at the applicant's place have still joined. Thus, being aggrieved by the inaction of the respondents, the applicant has preferred the present Original Application for quashing and setting aside the impugned transfer order dated 05.12.2020, (Annexure A/1), qua the applicant.

3. After issue of notices, the respondent Nos. 1 to 3 have filed their reply stating that the applicant is a regular employee of DoT and not of BSNL but is on deemed deputation in BSNL. It is the contention of the applicant that he has been transferred in violation of BSNL's Employee Transfer Policy as he has not completed circle tenure of six years and that persons having longer tenure at Jaipur have not been transferred. The respondents stated that the BSNL's Employee Transfer Policy states that "**Transfers are in general necessitated due to requirement of filling up of posts, meeting staff requirements at tenure/hard tenure/ unpopular / difficult station, matching employee's skill with job requirement, gainful deployment of surplus staff, sharing of shortage, even distribution of staff over recruiting zones, movement of staff**

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from sensitive posts, other administrative or meeting personal or tenure related requests etc.” Further, as per para 11(a) of the said Policy, it clearly clarifies that “ **Notwithstanding above, the Management reserves the right to transfer an Executive prior to the above specified tenure or to retain him/her beyond the specified tenure depending on the administrative requirement and in the interest of service”** and as per para 11(i) of the said policy, it is clear that “ Disciplinary action shall be taken if the employee does not relocate to the newly assigned post within the permissible time frame and it shall amount to non-obeying of orders”. Thus, it is clear that BSNL reserves its right to transfer an Executive prior to the specified tenure/period to meet out the administrative requirement/ constraints in the interest of BSNL. The applicant is working in Jaipur since 2016 and has completed station tenure of more than four years and his transfer to Bharatpur is as per the provisions of the Transfer Policy, which is a general transfer consisting of several persons. Moreover, officers completing their tenure at hard stations have to be given station of their choice and there are officers who have given Jaipur as their

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choice station and if such officers are not considered then it will demotivate them. As far as ground of spouse raised by applicant is concerned, the respondents stated that as per para 6 (g) of the said Policy, it is clear that **“As far as possible and within the constraints of administrative feasibility, request for posting of husband and wife at the same station shall be considered if the employee’s spouse is serving in Central/ State Government or a Public Sector Undertaking (PSU).”** Therefore, it cannot be said that it is the right of the applicant to be posted at the same station on the spouse ground. It is further stated that the applicant has been transferred and relieved to Bharatpur Telecom District, which is a District Headquarter and there are Government Colleges available under the control of Government of Rajasthan. Pertaining to the ground of medical facilities raised by the applicant, it is stated that Bharatpur is a District Headquarter and all types of medical facilities are available there and also as per his entitlement, he can claim medical reimbursement under BSNL Medical Reimbursement Scheme (MRS). As per several judgments of the Hon’ble Apex Court,

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Transfer and Posting is an exclusive prerogative of the Department and normally Courts should not interfere when the same are in administrative exigencies and in public interest unless the same are passed by an incompetent authority or in violation of rules or in colourable exercise of power. The respondents have relied on several judgments of the Hon'ble Apex Court and a few are as under:

- a). National Hydroelectric Power vs. Shri Bhagwan [Appeal (Civil) No. 1095-1096 of 2001 – decided on 11th September, 2001].
- b). State Bank of India vs. Anjan Sanyal [Appeal (Civil) No. 226 of 1997 – decided on 12th April, 2001].
- c). State of Uttar Pradesh vs. Siyaram [Appeal (Civil) No. 5005 of 2004 – decided on 05th August, 2004].

The respondents, therefore, stated that before relieving the applicant w.e.f. 16.12.2020 vide order dated 15.12.2020, his representation was duly considered by the competent authority. His transfer to Bharatpur is not a Circle Tenure Transfer. The new assigned station i.e. Bharatpur is a District Headquarter and the same does not come under the category of Hard/ unpopular/ difficult station. As far as the ground raised by the applicant that he is being posted at lower cadre then this is also not correct as

the post of DGM is lower post to GM and the applicant is transferred to the same post of GM, which is a very prestigious post and not at a lower post. Therefore, as the Transfer Order passed by respondents is just and proper and as per rules, the applicant does not deserve any relief and the present Original Application deserves to be dismissed.

4. Heard learned counsels for the parties through Video Conferencing and perused the material available on record.

5. The applicant as well as respondents reiterated their stand as stated earlier.

6. The case of the applicant is that his transfer from Jaipur to Bharatpur is in violation of BSNL's Employee Transfer Policy and that the respondents have not considered his spouse ground as well as medical and domestic problems. According to him at Bharatpur, he will have to work at a lower post. His other ground is that the persons, who have been for a longer period in Jaipur have not been transferred and he is only picked up. His other ground was that he has not completed

six years of circle tenure and has been transferred before the completion of the said tenure.

7. As seen, the transfer order dated 05.12.2020, (Annexure A/1), in challenge is a General Transfer order of several General Managers, which is issued as a result of Re-organizations/ Re-structuring of Circle, which is clearly in administrative exigency. The applicant is transferred to Bharatpur on the post of General Manager, which he was previously holding. He has not to work below anyone and the post of DGM is a post lower to him. Pertaining to spouse ground, the respondents have stated that the rule is clear that as far as possible both husband and wife are required to be accommodated at the same station. No doubt the guideline requires the two spouses to be posted at one place as far as practicable, but that does not enable any spouse to claim such a posting as a legally enforceable right if the departmental authorities do not consider it feasible. Pertaining to medical ground raised by the applicant, it is clear that there are medical facilities available at Bharatpur and the applicant can claim reimbursement as per rules. Educational problems of the applicant can also be

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solved as there are several schools and colleges at Bharatpur.

8. On the other hand, the Department has to take into consideration several factors while transferring a person and has to accommodate persons of hard station / difficult and unpopular station. Personal and medical problems are bound to be there but when administrative exigencies are there then a person transferred has to obey the said orders. As seen Bharatpur is only 200 kms. away from Jaipur and has all the medical facilities and there are several schools and colleges also. Also in the present case, there is no question of any malafides. The competent authority had gone through the representation of the applicant and thereafter relieved him vide order dated 15.12.2020.

9. The controversy in the present matter has set to rest in view of several judgments of the Hon'ble Apex Court, which are clear that Courts/Tribunals should not normally interfere in transfer matters which are made in public interest and for administrative reasons unless the Transfer Orders are made in violation of

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any mandatory Statutory rule or on the ground of malafide. A Government Servant holding a transferable post has no vested right to remain posted at one place as he is liable to be transferred from one place to the other. Transfer Orders issued by competent authority do not violate any of the legal rights. If the Courts/Tribunals try to interfere in Transfer Orders, then there will be complete chaos in the administration which would not be conducive to public interest. The Hon'ble Apex Court in the case of **Union of India & Ors. vs. S.L. Abbas**, reported in AIR 1993 SC 2444 has observed that an order of transfer is not only an incident but a condition of service. Who should be transferred where is a matter for the appropriate authority to decide.

10. Thus, as discussed above in detail, the impugned transfer order in challenge dated 05.12.2020, (Annexure A/1), qua the applicant, requires no interference as the same is just and proper and as per rules and the applicant is not entitled for any relief. The Original Application is, accordingly, dismissed with no order as to costs.

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11. In view of the order passed in the O.A., M.A. No. 291/108/2021, for staying the impugned transfer order qua the applicant, is dismissed as infructuous.

(HINA P. SHAH)
JUDICIAL MEMBER

(DINESH SHARMA)
ADMINISTRATIVE MEMBER

Kumawat