

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 1100 of 1995

Allahabad this the 26th day of May 1996

Hon'ble Dr. R.K. Saxena, Member (Jud.)

Rajendra Kumar, A/a 42 years S/o Shri Chandra Bhan
R/o No. 13-B, Prem Vatika Mission Compound, Saharanpur.

APPLICANT?

By Advocate Sri D.C. Saxena.

Versus

1. Union of India through Secretary, Ministry of Telecommunication, New Delhi.
2. Chief General Manager, Telecom, U.P. Eastern Circle, Lucknow.
3. Director, Telecom(West), Dehradun.
4. Chief General Manager Telecom(Western), U.P. Circle, Dehradun.
5. Telecom District Engineer, Now known as Telecom District Manager, Saharanpur.
6. S.D. E. (Administration) C/o Telecom Distt. Manager, Saharanpur.

RESPONDENTS.

By Advocate Sri Prashant Mathur.

O R D E R

By Hon'ble Dr. R.K. Saxena, Jud.Member

The Applicant has challenged the order dated 25/8/95 (annexure A-1) whereby he was relieved from Saharanpur and was directed to report to Circle office, Dehradun.

2. The facts of the case, as stated in the O.A., are that the applicant who was an Ex-Army man was appointed as Telegraph Assistant w.e.f. 30/7/1981 at Muzzafarnagar. He was then transferred to Saharanpur. At the time when the impugned order (annexure A-1) was passed, he was posted at Saharanpur. He was, however, transferred to Dehradun ignoring the representation which was made by him. The respondent no.6 is said to have passed the order of relieving the applicant with malafide intentions. Therefore, the O.A. has been filed with the relief disclosed above.

3. The O.A. was taken up on 26/10/95 and order of maintenance of status-quo was passed. The notices were issued to the respondents, in response of which, the short counter-reply at the stage of admission was filed. The respondents contested the case and pleaded that a policy decision about merger of Telegraph Assistants to Telecom Office Assistants which was subsequently changed, was taken and option of the employees were sought but the applicant had not opted for the same. It is admitted that the applicant was transferred from Saharanpur to Dehradun because no vacancy was available at Saharanpur and, therefore, the applicant could not be accommodated at Saharanpur. It is denied that the order of transfer and relieving the applicant was passed with malafides. Besides, it is also said that the allegation of malafides against

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any particular person or officer, has not been made and established. It is, therefore, pleaded that there is no merit in the case.

4. The applicant filed rejoinder in which those very grounds which were taken in the O.A., were stressed.

5. I have heard the learned counsel for the parties and have perused the record. The matter has been disposed of finally at the stage of admission itself.

6. There is no dispute that the applicant was an Ex-Army man and had joined as Telegraph Assistant on 30/7/81. At the relevant time, he was posted at Saharanpur. The contention of the learned counsel for the applicant is that there were several vacancies available at Saharanpur yet, he was transferred to Dehradun. It has also been averred that prior to this order of transfer, he was transferred to Sri Nagar (Garwal) vide order dated 28/1/95 (annexure-A-4) but, subsequently it was cancelled. The transfer is an incidence of service and one cannot be expected to remain posted permanently at the particular place if the service is transferable one. Undoubtedly, the service which was joined by the applicant is transferable one. According to his own contention, he had been posted at Muzzafarnagar and Saharanpur. From the averments made in the O.A., I do not find any

ground which may be the basis for interference in the order of transfer and of the applicant being relieved therefrom. It is well established principle of law that the order of transfer can be interfered with only when it is penal in nature, or it is against rules or there is malafide. So far as first two grounds are concerned, neither there is any averment to that effect nor do I find any such ground. No doubt, the applicant has come with the plea that this order of transfer and of his being relieved, have been passed with malafide intention. Mere saying that the order of transfer has been passed with malafide intention, will not suffice. It is easy to allege malafides but very difficult to establish. I do not see any ground of this nature and thus, I do not find any basis to interfere with the order. The O.A. is, therefore, dismissed.

7. The M.A. 2984/95 was also moved on behalf of the applicant with the prayer that direction be given to the respondents for payment of the salary of the applicant to him. This application was ordered to be disposed of at the time of final disposal of the case. I, therefore, take up it for disposal. It is not clear if the applicant continued at Saharanpur after he was relieved and the order of status-quo was passed by the Tribunal. It is, therefore, not possible to pass an order in categorical terms. It is, however, observed that if the applicant had

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not been relieved by the date on which order of status-quo was passed by this Bench, the salary may be paid. The M.A.no.2984/95 is disposed of accordingly.

8. On the consideration of the facts and circumstances of the case, the G.A. stands dismissed. No order as to costs.

9. The interim order of status-quo, ^{Member (J)}
which was passed on 26/10/95, stands vacated.

Sub. J. *Divideley*
Member (Jud.)

1/M.M./