

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 21st day of May 2002.

Original Application no. 599 of 2002.

Hon'ble Maj Gen K.K. Srivastava, Member (A).

Umesh Chandra Tripathi, S/o Sri K.K. Tripathi,
presently posted as Assistant Engineer, Bijnore Sub Division,
Department of Telecommunication, Distt. Bijnore (UP).

... Applicant

By Adv : Sri R Trivedi,

Versus

1. Union of India through the Secretary, Ministry of Communication,
Department of Telecommunication, New Delhi.
2. Director (Civil), Department of Telephones, Civil Head Quarters,
36 Janpath, Chandra Lok Building, New Delhi.
3. Chief Engineer (Civil), Bharat Sanchar Nigam Limited, Dehradun.
4. Superintending Engineer (A&P), Bharat Sanchar Nigam Limited,
Dehradun.
5. Virendra Pal, presently posted as Assistant Engineer (P&D),
O/o C.E. (C) Dehradun.

... Respondents

By Adv : Sri R.C. Joshi & Sri G.R. Gupta

O R D E R

Hon'ble Maj Gen K.K. Srivastava, Member (A).

In this OA, filed under section 19 of the A.T. Act, 1985,
the applicant has challenged the impugned order dated 16.5.2001
passed by Superintending Engineer (A&P), Bharat Sanchar Nigam Limited,
Dehradun (respdt no. 4), transferring the applicant from Bijnore
to Dehradun. The applicant has prayed that the impugned transfer

order dated 16.5.2002 be quashed.

2. By the impugned transfer order dated 16.5.2002, one Shri Virendra Pal (respdt no. 5) Assistant Engineer (P&D) has been posted from Dehradun to Bijnore on his own request and cost whereas the applicant has been posted from Bijnore to Dehradun in place of respondent no. 5.

3. Sri R. Trivedi, learned counsel for the applicant has assailed the transfer order as it has been issued in violation of laid down guidelines issued by Ministry of Communication, Department of Telecommunication O.M. dated 4.5.1990 (Ann 4). Learned counsel for the applicant submitted that the impugned transfer order is not a routine order and the transfer of the applicant has been done prematurely as he has not completed tenure of four years as laid down in para 3 of the OM dated 4.5.1990. He has also invited ~~the~~ attention to para (seven) of the said OM in which it has been laid down that the request for transfer will be considered only after the official has put in a service of at least 2 years at the station where he/she is posted. In the instant case respondent no. 5 has just completed about 8 months of service at Dehradun. Learned counsel for the applicant also alleged that the impugned order has been passed under pressure of the Headquarters as is evident from the facts that the copy of the impugned order has been marked to the Senior D.D.G. (BW), BSNL, New Delhi with reference to his instructions dated 15.5.2002.

4. Resisting the claim of the applicant, Sri G.R. Gupta, additional standing counsel, submitted that the applicant has ~~All India~~ liability to serve, such orders were passed in public interest and as a disciplined employee the applicant should be

been ready to work any where he has ordered to with devotion and dedication.

5. I have considered the submission of learned counsel for the parties and perused records.

6. Transferring the respondent no. 5 from Dehradun to Bijnore when he has completed only 8 months of service is in contravention of the guidelines laid down in OM dated 4.5.1990 (Ann 4). Para 7 of OM reads as under :-

"The request for transfer will be considered only after the official has put in a service of at least 2 years at the station where he/she is posted. In the case of transfers at own request, the officers will not be entitled to any TA/DA & joining time etc. In cases these officials have completed 4 years of service, the transfer will be made in public interest or administrative conveniences and in such cases, the transferees will be entitled to TA/DA and joining time."

Therefore, the action of the respondents is irregular and is not in accordance with rules. It is, therefore, liable to be set aside.

7. I also agree with the submission of learned counsel for the applicant that the applicant has been transferred prematurely as he has not completed tenure of four years at Bijnore. The applicant was posted at Bijnore on 28.1.1999 and thus he has completed only more than 3 years. Therefore, as per guidelines laid down in para 3 of the OM of the Department of Telecommunication, Ministry of Communication dated 4.5.1990, the applicant has not to be disturbed at this stage. Disturbing the applicant will adversely affect the education of his daughters who are in final stages of BA and class 12th.

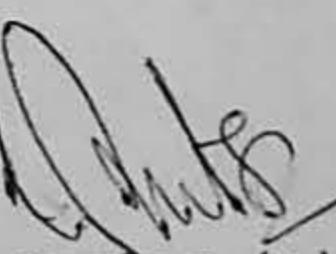
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8. I find force in the submission of the learned counsel for the applicant that the impugned transfer order dated 16.5.2002 has been issued at the instance of higher authorities at Delhi and the competent authority has not applied his own mind while issuing the impugned transfer order.

9. In the light of aforesaid observations I am *prima facie* satisfied that the action of the respondents is arbitrary and against rules. The applicant is entitled for protection. The impugned transfer order dated 16.5.2002 (Ann 3A) is quashed. The respondents are directed not to interfere with the working of the applicant at Bijnore and he will be allowed to complete his tenure as per rules.

10. There shall be no order as to costs.

Member (J)


Member (A)

/pc/