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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Original Application No. 280 of 1997.
Jodhpur the 20th day of October, 1997.

Pokar Mal S/o Shri Gyarsi Lal, aged 46 years,
Lineman(Phones), Bakra Road, Jalore, Department of
Telecom, Jalore.

.....Applicant.

VERSUS

1. Union of India through the Secretary to the Government, Ministry of Communication, New Delhi(Telecom).
2. Sub Divisional Officer, Telegraphs, Jalore.
3. Junior Telecom Officer (outdoor), Jalore.

.....Respondents.

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CORAM :

HONOURABLE MR.A.K.MISRA, JUDICIAL MEMBER

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For the Applicant
For the Respondents

.....Mr.Vijay Mehta
.....Mr.Vineet Mathur

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BY THE COURT :

The applicant has moved this O.A. with the prayer that Transfer order dated 11.8.1997 (Annex.A/1) be quashed and respondents be restrained from transferring him from Bakra Road.

2. Notice of this O.A. was given to the respondents who have filed their reply in which it is alleged by them that the applicant has not exhausted alternative remedy of representing to the departmental authorities. The applicant was transferred from the

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present place of posting in the past but he was adjusted at his own request on the ground of his wife's illness and the transfer order was kept in abeyance for six months. The applicant is being transferred now after his adjustment at the present place of posting for more than one year. The respondents averred in their reply that application has got no merit and it is liable to be dismissed.

3. I have heard the learned counsel for both the parties and gone through the records.

4. It is a settled position of law that the transfer order would not be interfered with if the same is not based on mala fides and colourable exercise of administrative powers. In this case, no malafides have been alleged and no specific instance of colourable exercise of administrative powers has been cited.

5. The applicant has mentioned in his O.A. that within a period of four years, he has been transferred many times. Vide Annex.A/2 dated 4.6.1993, he was transferred from Bakra Road to Bagra. Then vide an order dated 8.10.1994 (Annex.A/3), he was transferred from Bagra to Jalore. Further, vide an order Annex.A/4 dated 5.7.1995, applicant was transferred from Jalore to Bakra Road at his own request. Thereafter, in May 1996, applicant was transferred from Bakra Road to Rewatra. However, on a representation, the order transferring the applicant from Bakra Road to Rewatra, was kept in abeyance for six months vide order dated 26.6.1996 (Annex.A/5). Now, vide Annex.A/1 dated 11.8.1997, the applicant has been transferred from Bakra Road to Bhinmal, which is under challenge.

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6. From the above facts, it appears that applicant was transferred once in 1993 and once in 1994, thereafter he was transferred to his present place of posting at his own request and he remained posted there, till he was transferred vide the impugned order Annex.A/1. The applicant was at Bakra Road even prior to June 1993 and was again posted there in July 1995. The applicant has alleged himself to be a Class IV employee. The respondents have denied that applicant is a Class IV employee but they have not mentioned to which class of employees, the applicant belongs. Therefore, it can be inferred that being a Lineman (Phones), applicant may be a skilled or semi skilled worker in a lower grade. But in any case, he remained posted at Bakra Road for number of years in different spells of time.

7. The applicant has placed on record that his wife is a patient of Affective Psychosis, a type of mental illness and is in continuous treatment of Dr.V.K.Razdan, who has narrated in the Certificate Annex.A/6 that frequent transfer of her husband is detrimental to her health and on this ground it is argued that transfer of the applicant deserves to be quashed. On the other hand, the learned counsel for respondents has argued that looking to the family circumstances, applicant was adjusted at Bakra Road in the past but he cannot be repeatedly adjusted at the same place due to family circumstance. In such adjustment, larger public interest suffers. He further argued that the services of the applicant would be better utilised at Bhinmal, therefore, he has been transferred. It is also argued by the learned counsel for the respondents that in order to avoid service of transfer order, applicant is on medical

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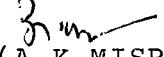
leave since 10.8.1997. In view of all these facts, he does not deserve any consideration.

8. I have considered the rival arguments. As an employer, the respondents have inherent powers to transfer its employees. It is the employer who knows as to on which place, the services of their employee(s) can be better utilised. Therefore, in the instant case, if the applicant has been transferred from his present place of posting after two years, it cannot be termed as transfer in colourable exercise of power. Earlier transfers and his wife's illness, might have been considered for his reposting at Bakra Road, therefore, on the basis of earlier transfers, applicant cannot argue that he was subjected to frequent transfers. Keeping in view the family circumstances, his transfer to Rewatra was kept in abeyance for six months but instead he was retained at the present place for more than one year. This also goes to show that the department is not harassing him by frequent transfers. In my opinion, the applicant can not insist to be retained at the present place of posting on the ground of illness of his wife. The applicant's wife is taking treatment at Jodhpur, therefore, transfer of applicant from Bakra Road (a Railway Station) to Bhinmal (another Railway Station on the same Line), cannot be said to be an inconvenient transfer and posting. From Bakra Road he was to come to Jodhpur for his wife's treatment; from Bhinmal too, he can come to Jodhpur for her treatment. For all these reasons, the impugned order, transferring the applicant, is not liable to be interfered with by the Tribunal. The applicant has alleged that his sons are studying in school and college and mid term transfer would affect their

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studies. I have considered this aspect. There is no supportive documentary evidence to this effect. Hence, this argument does not help the applicant.

9. In view of the above discussion, the Application has no merits and deserves to be dismissed and is hereby dismissed. The parties are left to bear their own costs.


(A.K.MISRA)

Judicial Member

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