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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH : JODHPUR.

Date of Order : 9/10/2001

O.A. No. 11/2001.

Hansa Ram son of Shri Vishva Ramji, aged about 47 years, resident of Vill and PO Palri (Jod) via Sumerpur Distt. Pali (Raj.), at present employed on the post of HG Sr. TOA (P), in the office of General Manager Telecom District Sirohi.

... APPLICANT

v e r s u s

1. Union of India through Secretary to Govt. of India, Min. of Communication, Department of Telecom, Dak Bhawan, Sansad Marg, New Delhi.
2. General Manager Telecom District, Sirohi, Distt. Sirohi.
3. Divisional Engineer (Admn.), o/o general Manager Telecom District, Sirohi, Distt. Sirohi.
4. Shri Mukesh Kumar verma, Sr. TOA (P), through Sub-Divisional Engineer, Shivganj. Dist. Sirohi.

... RESPONDENTS

Mr. J. K. Kaushik, counsel for the Applicant.
Mr. Vineet Mathur, counsel for the respondents.

CORAM

Hon'ble Mr. A. P. Nagrath, Administrative Member.

BY THE COURT

By order dated 07.11.2000 (Annexure A-1), the respondents departments issued transfer and posting orders which included the transfer of Private respondent No.4 Shri Mukesh Kumar Verma, Senior TOA (P) to Sheoganj on his own request. The applicant Hansa Ram has assailed this order on the ground that his name appeared at Sl. no. 1 amongst those who had submitted a request for transfer to Sheoganj. But ignoring him, the respondents have transferred and posted respondent No. 4 to Sheoganj. According to him, as per the Policy guidelines of the department, respondent No. 4 was not even eligible to make a request for transfer as he had completed just about 6 months at Sirohi and



did not fulfil the requisite conditions for getting his name registered for request transfer. Applicant has filed this OA with a prayer that the impugned order dated 17.11.2000(Annexure A-1), so far it relates to transfer of respondent No. 4 be declared illegal and the same be quashed. Further he seeks direction to consider his own request transfer to Sheoganj as per his turn and Rules in force.

2. The case of the applicant is that he had submitted a request for transfer to Sheoganj Telephone Exchange on 15.11.1994 in view of his personal domestic problems. Again, vide letter dated 24.05.2000, applications were invited by the department from Sr. TOA (P)'s for own request transfer as per the eligibility condition of 10 years on one station or 3 years on one seat. The applicant submitted his request vide letter dated 01.06.2000. Instead of posting him to Sheoganj, the respondents have posted Shri Mukesh Kumar Verma who has even submitted his refusal on 21.11.2000. Still, he has been relieved by letter dated 24.11.2000 and applicant's request has been ignored, despite his repeated requests for transfer and fulfilling all requisite conditions. The applicant alleged that the impugned order is ~~arbitrary~~ illegal, arbitrary and discriminatory and the same deserves to be cancelled in respect of respondent No. 4.



3. The respondents in their written reply to the OA have stated that a new sub division was created at Sheoganj in November 2000, for which there was a need for suitable computer trained heads, and it was found that respondent No. 4 was a computer hand and his service could be best utilised at the newly

sub-divisional Headquarter at Sheoganj. According to the respondents, the applicant had given option for transfer to Telephone Exchange or the Telegraph Office at Sheoganj, but there are no vacancies in the Telephone Exchange or in Telegraph Office and in that view the applicant cannot make a grievance against the transfer of respondent No. 4. Despite his unwillingness, it has been considered necessary for the department to release respondent No. 4 to join at Sheoganj. In fact the department had considered the request of respondent No.4 giving his unwillingness for transfer and his request has not found favour with the department and the same has been regretted. The applicant has filed a rejoinder and in that, he has questioned the action of the respondents for obtaining willingness from respondent No.4 on 21.11.2000 while the last date of submitting willingness was 02.06.2000. It has been stated that the applicant also has undergone the same training for working on computers as respondent No. 4. The applicant has raised doubts about the entire sequence of events leading to posting of respondent No. 4 to Sheoganj and has assailed the action of the respondents on that account.



4. The learned counsel for the applicant stated that the entire sequence of events in this case would reveal that posting of respondent No. 4, was due to some extraneous reasons and the impugned order is colourable exercise of authority. Learned counsel for the respondents stated that there is not even remotely any ground to support the contention of the opposite side that the order of transfer is a colourable exercise of authority. Learned counsel stated that notwithstanding the

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procedure of maintaining a priority register in respect of own request transfer, this does not preclude the department from posting certain individuals on certain seats in case they are found more suitable for the job. After the creation of new sub division the department found respondent No. 4 as a suitable person to be posted at Sheoganj and his order was issued and he was released to carry out the order despite his unwillingness. It is thus obvious that he was considered suitable for the kind of requirement at Sheoganj. The learned counsel submitted that there is no dispute that the applicant stood higher in priority for a request transfer in Sheoganj. Since there is no vacancy in the Telephone Exchange or Telegraph Office at Sheoganj, it has not been possible to consider the request of the applicant for posting at Sheoganj, for the present. He asserted that for the available vacancy in the new sub-division, respondent No. 4 was considered suitable. The department was well within its rights to post him there.



5. It has been held in a catena of cases by Hon'ble the Supreme Court that it is for the competent departmental authority to decide as to where and how the services of any employee are to be utilised. An order of transfer is an incidence of service and is not a condition of service. it is not for the Courts/Tribunals to decide the posting and transfers of the employees and the scope of the judicial intervention will barely be whether the transfer order suffers from the malafides on the part of the authority making the order or the order is in violation of Statutory Rules or if the order of transfer appears to be as a colourable exercise of authority. In state Bank of

India Vs. Anjayn Sanyal 2001SOL Case No. 260, Hon'ble the Supreme Court observed as under :-

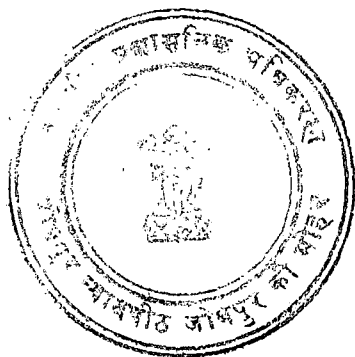
"4. An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly by a Court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order."

6. Learned counsel for the applicant emphasised that in the instant case, the transfer order has been issued to help respondent No. 4 out of extraneous considerations and this order is arising out of colourable exercise of authority. To support his argument that in this regard, the learned counsel cited the case of 'Dr. P. Damodaran Vs. State of Kerala and Ors.' 1982 (1) SLR 563 ; decided by Keral High Court on 4.9.1981. In that case Hon'ble the High Court has observed that the reason for transferring back the third respondent is that the government has taken a sympathetic attitude in his case. Nothing has been shown to the Court to justify the action as to why the discrimination is meted out in favour of the third respondent. It was discovered by Hon'ble the High Court that the entire exercise of that transfer order is to accommodate a particular person without due regard to the interest of the administration or the public interest or the provisions of law or requirements of justice. This was an exercise for extraneous and irrelevant consideration



and amounted to abuse of power. In that case, the High Court quashed the order of transfer of the third respondent.

7. In the case before us there is nothing on record to show that respondent No. 4 was keen for his transfer to Sheoganj and had given his willingness for such a transfer. In fact, what is before us is his unwillingness for this transfer. Learned counsel for the applicant had referred to rejoinder filed on behalf of the applicant to state that willingness of respondent No. 4 was obtained by the department on 21.11.2000 as evident from Para 4.6 of the reply statement. The reading of Para 4.6 makes it obvious that there is some omission in typing. What was submitted vide order dated 21.11.2000 is not the willingness of respondent No. 4 but his unwillingness and that unwillingness has been brought on record by the applicant himself as Annexure A-6 where the respondent No. 4 has clearly stated that he was not willing for own cost and request transfer to Sheoganj. The facts clearly reveal that despite categorical expression of unwillingness by the respondent No.4, the department still released him to carry out the transfer order. It also appears that he was persuaded to accept this transfer order as a request transfer. Such a sequence of events, where the transfer has been ordered against the expressed willingness of respondent No. 4, by no stretch of imagination can be stated to be an order to benefit respondent No.4 and cannot be stated to be a colourable exercise of authority. The contention of the learned counsel for the applicant in this regard is liable to be rejected. As I have stated above and as has been held by the Courts/Tribunals as also by the Apex Court repeatedly, it is for the competent




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departmental authority to decide where and how the service of an employee is to be utilised. In this case, the department found the respondent No. 4 suitable for the vacancy at Sheoganj and their action of posting cannot be interfered with.



8. In view of the facts and circumstances as discussed above I find the applicant has failed to make out any case in his favour. This OA is therefore dismissed but with no order as to costs.


(A.P. NAGRATH)
Adm. Member

P./C.

R/COPY
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15/10

R/COPY
on 16/7
1/2/7

Part II and III destroyed
in my presence on 22.5.67
under the supervision of
section officer as per
order dated 13/3/67

NG 121
Section officer (Record)
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