

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH AT JODHPUR

Original Application No. 257/2010

Dated this the 87th day of February, 2012 Q.S.

CORAM

HON'BLE MR. SUDHIR KUMAR, ADMINISTRATIVE MEMBER

Jetha Ram Siyag S/o Shri Heera Ram,
Resident if Raipura Phanta, Lookaransar,
District Bikaner at present working
As Telecommunication Operating Assistant,
(Phones) posted at BSNL, Loonkaransar. Dist.Bikaner.Applicant

(By Advocate Mr. S.S.Gaur)

Vs.

1. Bharat Sanchar Nigam Limited through its
Chairman cum Managing Director, BSNL Bhawan,
Harishchandra Mathur Lane, Janpath,
New Delhi.
2. Bharat Sanchar Nigam Limited through
Its Chief Manager, Telecommunication,
Rajasthan Telecom Circle, Sardar Patel Marg,
C.Scheme, Jaipur.
3. The General Manager, Telecommunication
Department, BSNL, Bikaner.
4. Assistant General Manager (HR-Admn)
C/o GMTD, Bharat Sanchar Nigam Limited,
Bikaner.Respondents

(By Advocate Mr. Vinit Mathur, ASG)

ORDER

The applicant of this OA has come before this Tribunal in this second round of litigation. Earlier he had filed OA 124/2010 which came to be decided on 24.8.2010 with the following observations:

“In the result this OA is disposed of at admission stage itself with a direction to the respondents to dispose of the representation of the applicant dated 30.4.2010 (Annexure.A/5) by passing a reasoned and speaking order within one month from the date of receipt of a copy of this order and until the representation of the applicant is disposed of by

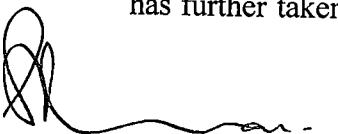
Q.S.

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the respondents, the applicant shall not be relieved from his present place of posting ie., Lunkaransar. However, it is made clear that any observation made in this order will not be binding on the respondents' authority. In the facts and circumstances of this case there will be no order as to costs. Accordingly this O.A is disposed of."

(2) Thereafter, the respondents have since passed the impugned order dated 9.9.2010 (Annexure A/I). In this, the applicant was directed to get himself relieved from Loonkarsar, and had been directed to report at Khajuwala, and that after reporting at Khajuwala he can again apply for transfer, which would be considered at the appropriate time. Being aggrieved with this impugned order, the applicant has filed the present OA, praying for an appropriate order or direction for quashing of this impugned order dated 9.9.2010, and the earlier posting order dated 27.4.2010, which was the subject matter before this Tribunal earlier in OA 124/2010 also, and seeking directions upon the respondents to transfer the applicant to BSNL, Bikaner, and any other appropriate orders and direction, as well as costs. As an interim payer, he had prayed for staying of the impugned order of transfer dated 9.9.2010, which interim prayer was granted to the applicant on 15.9.2010 and has continued since then. The case was once heard and reserved for orders on 25.7.2011, but was released for fresh hearing soon thereafter, and has now been heard again.

(3) The ground taken by the applicant in the present OA is that the impugned order Annexure A/1 has been passed by the respondents without considering his representation dated 30.4.2010, as directed by the Tribunal, and is wholly contrary to the directions of the Tribunal issued on 24.8.2010. The applicant has also submitted that the respondents have also not complied with the Sub Clause (a) of Clause (6) of their own transfer policy, which provides for requests of employees coming from hard tenure station to be accommodated, and the applicant has prayed that he deserves to be accommodated at an urban area, because he has been working at hard tenure stations for the last 20 years. He has further taken the ground that in response to the circular dated 8.4.2010, he had only



prayed for transfer from rural to the urban area, while through the impugned transfer order dated 27.4.2010, reiterated in the impugned Annexure.A/1 dated 9.9.2010, he has again been transferred to and asked to report at another rural area. Therefore, he had submitted that the OA be allowed, and directions be issued for him to be posted at Bikaner. He had cited the cases of some other persons, who are not party respondents in this case, stating that they had been favoured by the official respondents while he was being discriminated against, even though he is a physically handicapped person himself, appointed under the Physically Handicapped Quota, and cannot travel alone.

(4) In their reply/written statement filed on 14.2.2011, the respondents submitted that the impugned communication dated 9.9.2010 (Annexure.A/1) was passed fully in compliance with the orders of this Tribunal dated 24.8.2010 on the applicant's earlier OA 124/2010, and after taking into consideration all the points raised by the applicant in his representation, before passing the said impugned order.

(5) The respondents further submitted that the applicant had been initially appointed on 2.8.1988, and was posted at Loonkaransar, and he had remained posted there only, without any transfer since then, and for the first time he was transferred on 27.4.2010. He was to be relieved on 29.4.2010, but on his request praying for being relieved on next ~~the~~ day, ie., on 30.4.2010, it was delayed/postponed, and the applicant never attended office thereafter, and the competent authority therefore relieved the applicant on 30.4.2010 by sending him the letter of his having been relieved through registered post at his home address. It was further submitted that the applicant had approached this Tribunal earlier after concealing the fact that he had been relieved, and this fact was brought out only during the course of the arguments before this Tribunal on 13.5.2010. It was prayed that since the applicant has approached this Tribunal with unclean hands, therefore, as per the law laid down by the Hon'ble Supreme Court in this regard, he is not entitled to claim any relief, and even to maintain this OA before this Tribunal. It was further submitted that the applicant had approached the respondents with an application dated 15.5.2010,



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requesting him to be allowed to rejoin his duties at Loonkaransar, and in reply to that he was informed vide order dated 18.5.2010 that since he already stood relieved even prior to the passing of the interim order of this Tribunal, therefore he is not entitled to avail the benefit of the interim order, and has to report to the next place of posting.

(6) It was further submitted that it is well within the domain and competence of the employer to utilize the services of their employees in a better and effective manner, and the employee cannot be allowed to choose his place of posting at a particular place, or to remain posted even beyond the normal tenure of posting at one place, which is 12 years in his case. It was further submitted that the transfer policy is not mandatory in nature, and it is only guidelines, and since the transfer of the applicant was not a single transfer order, and a number of employees have been transferred from one place to another in the same order, while all others have ~~been~~ joined at their respective places of posting, the applicant has avoided joining. It was further prayed that as per the law laid down by the Hon'ble Supreme Court in a catena of judgments regarding transfer cases, the court should restrain their hands while interfering with the transfer orders, unless the same are an outcome of malafide, or have been issued by an incompetent authority, or are in violation of the statutory powers on the subject. But, it was submitted that in the instant case, none of these ingredients are applicable. As such, it was prayed that the OA is liable to be dismissed even without going into the merits of the case.

(7) The applicant thereafter filed a rejoinder on 3.3.2010. While he conceded that the respondents may allot him a residential quarter at the new place of posting, but submitted that this reason alone for effecting his transfer is against the orders passed by this Tribunal in OA 124/2010 vide order dated 24.8.2010. It was further denied that the applicant has ever been relieved by the respondents. He had further pointed out that out of the ten employees affected by transfer order dated 27.4.2010, two who had been transferred from Bikaner to Loonkaransar have once again been transferred back to Bikaner, and had been working there now. It was submitted that while the department



had favoured those persons in reposting them to Bikaner in an arbitrary manner, they had not cancelled the transfer orders of the applicant, despite the fact that he is a physically handicapped person. In proof of this contention of his, he had produced Annexure.A/8, a copy of the order of one of those employees who was relieved from BSNL, Loonkarsar on 28.1.2011, and posted to Bikaner once again.

(8) Heard the arguments in detail. While passing its order for disposing of the applicant's earlier OA at admission stage itself, this Tribunal had directed the respondents to dispose of the representation of the applicant dated 30.4.2010 by passing a reasoned and speaking order, as cited above. It is seen that in the impugned order six points have been considered and decided, and while the Tribunal had directed the respondents to give due consideration to the fact that the applicant is a physically handicapped person, and that he was appointed under disability quota, the respondents have in the impugned order stated that in the transfer policy of respondents' Corporation, there is no provision of any relaxation to be provided for in respect of people appointed against physically handicapped quota. Annexure.A/2 dated 8.4.2010 seeking the options of the employees of the respondents' Corporation has also not stated that any such reservation or relaxation in the matter of posting will be provided for physically handicapped persons. The respondents have in this case stated that even though the applicant had opted and given his option, but the same had been received on 19.4.2010, while specific instructions had been given through Annexure.A/2 that such options should be received by 15.4.2010, and this appears to be the reason as to why the option of the applicant does not appear to have been considered by the respondents.

(9) On the other hand, the applicant has submitted in Para 4.2 of the OA that through Annexure.A/3 dated 15.4.2010 (page 23 of the OA), he had given his option for posting from rural areas to Bikaner, and if not so transferred to Bikaner, for him to be retained at Loonkaransar itself. In their reply written statement as filed on 14.2.2011, the respondents have nowhere stated that this option as submitted by the applicant was not

received by them on 15.4.2010, but was instead received only on 19.4.2010, as stated in Annexure.A/1. In his further representation dated 30.4.2010 at Annexure.A/6 also, the applicant had stated that while the transfer policy provides for employees having their sons and daughters as physically handicapped may be given preference, but surprisingly when the applicant himself is a physically handicapped person and is not able to travel alone, no consideration in this case has been given to his request.

(10) While there is some merit in the submission of the respondents that the applicant has nowhere admitted having received the order relieving him on 30.4.2010, in turn respondents have also not denied having received in their office the applicant's request of the same date, i.e., 30.4.2010, sent through Annexure.A/6, which was produced before this Tribunal both in the earlier OA, as well as in this OA, and judicial notice of which had been taken in the earlier OA itself.

(11) The respondents are correct in their submission that the Courts and Tribunals should not normally interfere in transfer matters, except in certain compelling circumstances. But when the respondents had issued the letter dated 8.4.2010 seeking options, and had fixed a very short time of only seven days for receipt of the options, and when the applicant, posted at a far off village posting at Loonkaransar, has stated that he had given his option on the due date on 15.4.2010 itself through Annexure.A/3 (page 23 of the OA) through proper channel, if there has been a delay on the part of his superiors in communication of that option to the appropriate authorities who were in-charge of issuing the orders of transfer, the respondents cannot now be allowed to hide behind any such delay caused on their own account, and to state, as has been stated in Para 3 of impugned Annexure.A/1, that the option of the applicant was received late on 19.4.2010, and hence could not be acted upon. Receipt of the option given by the applicant on 15.4.2010 through proper channel by his immediate superior has not been specifically denied by the respondents, and therefore has to be deemed to have been admitted. Therefore, the respondents were duty bound to consider the option of the applicant given on 15.4.2010

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through Annexure.A/3 (Page 23 of the present OA), and in that respect at least the contents of the impugned so-called speaking order are not on all fours.

(12) Therefore, the impugned Annexure.A/1 is struck down as based upon wrong statements and submissions, and since the respondents have not denied that the immediate superior of the applicant had received the option given by the applicant on 15.4.2010 itself, they shall pass a fresh reasoned and speaking order, after taking into consideration the option of the applicant as having been received in time on 15.4.2010 itself, and thus also decide once again upon the representation dated 30.4.2010 ~~etc~~ etc. Annexure.A/6 given by the applicant, as already directed earlier on 24.8.2010 in the order on OA No.124/2010.

(13) With the above observations/directions, this OA is allowed to the extent as directed above, but there shall be no order as to costs.

Sudhir Kumar

Dated this the 27th day of February, 2012.



SUDHIR KUMAR
ADMINISTRATIVE MEMBER

PPS