CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR

Original Application. No. 581/2011

Date of decision: 27.09.2012.

CORAM:

HON'BLE DR. K.B.S.RAJAN, JUDICIAL MEMBER

Narendra Kumar Roat S/o Shri Thawara Roat, aged about 46 years resident of Village Mali, Post Hirata District Dungarpur (Raj), at present employed on the post of TM in the Office of SDE (T) Punali, BSNL District Dungarpur.

Applicant in OA No. 581/2011.

Devi Lal Meena S/o Shri Deeta resident of Village Bilakh, Tehsil Rishabhdev, District Udaipur, at present employed on the post of Phone Mechanic at Telecom Center Kushalgarh, BSNL District Banswara.

Applicant in OA No. 582/2011.

Ramswroop S/o Shri Nankau aged about 51 years resident of C/o SDE Telegraph, Narwali, BSNL, District Banswara at present employed on the post of Telecom Mechanic in the office of SDE Narwali, BSNL, District Banswara.

Applicant in OA No. 583/2011.

Laxman Lal Bodat S/o Shri Rupsi Bodat aged about 47 years resident of Village Amjera, Post Amjera, Via Bichhiwara, District Dungarpur, at preent employed on the post of Telephone Mechanic in CTX Badodiya, BSNL, District Banswara.

Applicant in OA No. 584/2011.

Ram Gopal Jaiswal S/o Shri Moti Lal resident of SDE Telegraph, Bagidora BSNL, District Banswara, at present employed on the post of TM in the office of SDE Telegraph, Bagidora, BSNL, District Banswara.

Applicant in OA No. 585/2011.

Tejpal Singh Chauhan S/o Late Shri Pratap Singh aged about 43 years, resident of Village Kalaliya, Tehsil Rajpur, District Pali, at present employed on the post of TM in the office of SDOT Sallopat, BSNL, District Banswara.

Applicant in OA No. 586/2011.

Khemraj Parmar S/o Shri Hajaji Parmar aged about 51 years, resident of Village Borkhed Post Obri, Tehsil Sagwara, District Dungarpur, at present employed on the post of Lineman at Simalwara, BSNL, District Dungarpur, under SDO Telegraphs Dungarpur.

Applicant in OA No. 587/2011.

Moti Lal Parmar S/o Shri Ratan Lal Parmar, aged about 48 years, resident of Village Sardi PO Jawas, Tehsil Kherwara, District Udaipur,

at present employed on the post of Sr. TOA in the Office of SDOT Aspur, BSNL District Dungarpur.

Applicant in OA No. 588/2011.

[Mr. J.K.Mishra, Advocate]

Versus

1. Bharat Sanchar Nigam Limited through its Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.

2. The Chief General Manager Telecommunication, Bharat Sanchar Nigam Limited (A Govt. Of India Enterprises), Rajasthan Circle, Sardar Patel Marg, Jaipur.

3. The General Manager Telecom District, BSNL, Banswara – 327001.

Respondents

[Mr. V.D.Dadhich, Advocate]

O R D E R (Oral)

As the legal issue involved in all the above cases is one and the same, all these cases are dealt with in this common order. For reference purposes, OA No. 581 of 2011 has been taken as the leading/pilot case.

2. In all the above cases, the grievance of the applicants is that the applicants have served in difficult stations for a substantial period, much more than that prescribed for in the transfer guidelines. They have all submitted representations for transfer to choice stations for which provisions are available in the guidelines. Earlier, the applicants had filed O.As in this regard and the following order had been passed in all such cases:-

"2.It would appear that after serving for more than 7 years at a difficult station, in pursuance with the transfer policy & instruction in force, a detailed application dated 18.08.2008 has been submitted by the applicant for his transfer to Dungarpur City under SSA Banswara. It would

further appear that vide Annexure-A/1, the respondents seem to have replied to the applicant that on availability of suitable subsitutes his request would be granted. The availability of suitable substitutes is a matter within the responsibility of the higher officers, and after having served 7 years at a difficult station, the applicant ipso facto is entitled to a choice posting. Therefore, the Annexure-A/1 dated 09.05.2011 is hereby quashed and set aside, and the respondents are directed to reconsider the request of the applicant and make all efforts in accordance with the law to provide the benefit of choice posting to the applicant."

In pursuance of the aforesaid order of the Tribunal, respondents have passed speaking orders which are identical in almost all cases, save speaking order in OA No. 586 of 2011. In respect of OA No. 588 of 2011, of course, no order has been passed.

3. The identical speaking order reads as under:-

"Shri Narendra Kumar Roat TM o/o SDE (T) Punali, BSNL Distt.-Dungarpur filed an OA No. 102/2011 in Hon'ble CAT Jodhpur praying for issuance of directions to respondents to consider the posting of the applicant to his choice of palce as per the transfer policy of BSNL and specific instructions contained therein.

Hon'ble CAT Jodhpur vides order dated 03.05.2011 has given directions as under :-

> "Accdordingly this OA is disposed of at the sstage of admission with a direction to the respondents to consider the representation of the applicant for his transfer to the choice of place of posting in the light of provisions contained in BSNL Employees Transfer Policy dated 7.5.2008. The respondents are directed to pass reasoned orders in this regard within period of 3 months from the date of issue/receipt of copy of this order."

Annexure 'A3' as referred representation in OA is the transfer request from Shri Narendra Kumar Roat TM dated 28.03.2009 for transfer from Telephone Exchange, Punali to Dungarpur Phones.

> *"Accordingly the representation of the applicant Shri Narendra Kumar Roat TM has been examined by the respondent No. 3, i.e. the General Manager Telecom District, BSNL, Banswara-327001 and request for his transfer has been registered in transfer request register at Serial No. 10 in office of General Manager Telecom District, BSNL Banswara.*

Presently no suitable substitute is available for posting in palce of Shri Narendra Kumar Roat TM at Punali. Since he is the person looking after the exchange and other equipments of land line and mobile of BSNL at Punali and there is nobody to look after his work, therefore,

he can not be transferred from there to some where else without substitute.

Therefore, under the compelling circumstances and to provide interruption free services to the public at Punali, the transfer of the applicant from Punali to Dungarpur Phones is not possible at present. However, his request will remain maintained in the request register and will be taken care of at appropriate time as per availability of staff or administrative requirement in future."

4. Speaking order in respect of O.A. 586 of 2011 is different only with respect to the penultimate paragraph thereof which reads as under:-

"Presently no suitable substitute is available for posting in place of Shri Tejpal Singh at Sallopat. Since he's the only person looking after the whole exchange and other equipments of line and mobile services of BSNL at Sallopat and in case, if he is transferred from there to somewhere else without a substitute the above equipments and the exchange will become unmanned and there will be nobody to look after his work, which may lead to interruption to the whole services provided to the public by the BSNL at Sallopat. Therefore, under the compelling circumstances and to provide interruption free telecom services to the public at Sallopat, hence the transfer of the applicant from Sallopat to Banswara is not possible at present. However his request will remain maintained in the request register and will be taken care of at of appropriate time as per availability of staff or administrative requirement in future"

5. The applicants have moved the O.As, seeking the following relief:-

"8(i) That the impugned order dated 31.5.2011 (Annexure A/1), passed by the 3rd respondent may be declared illegal. The respnodents may be directed to consider the case of applicant for transfer to his choice station i.e. Dungarpur City, at government costs, as per the transfer policy and the instruction regarding to posting of employees on completion of two years tenure at difficult station, forthwith or within a specific period of time.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed jus and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

6. In respect of O.A. 588 of 2011, the relief sought for is as under:-

"(i) That the respondents may be directed to consider the case of applicant for transfer to his choice station i.e. Dungarpur City, at Govt./Company costs, as per the transfer policy and the instruction in regard to posting of empkloyees on completion of two years tenure at difficult station, forthwith or within a specific period of time.

(ii) That any other direction, or orders may be passed in favour of the applicant which may be deemed jus and proper under the facts and circumstances of this case in the interest of justice.

(iii) That the costs of this application may be awarded."

7. The following table would reflect the details of present place of posting, period served therein and place of choice of posting the applicants:-

OA No.	*Name.*	*Presently Posted at*	*Period in the present place*	*Choice place requested*	*Date of impugned order*
581/2011	Narendra Kumar Roat	T.E. Punali	9 years	Dungarpur	31-05-2011
582/2011	Devi Lal Meena	Kushalgarh	11 years	Banswara phones or Dungarpur	17-06-2011
583/2011	Ramswaroop	SDE Narwali	17 years	Urban Area, Banswara	01/07/11
584/2011	Laxman Lal Bodat	CTX Badodia	8 years	D.E. Dungarpur	17-06-2011
585/2011	Ramgopal Jaiswal	Bagidora	8 years	Under GMTD Banswara	01/07/11
586/2011	Tej Pal Singh Chouhan	SDOT Sallopat	3 years plus	SDOP Banswara	20-05-2011
587/2011	Khemraj Parmar	Simalwara	20 years	SDOT Sagwara	01/07/11
588/2011	Moti Lal Parmar	Sr TOA, SDOT, Aspur	11 years	Dungarpur	No response

8. Respondents have contested the O.As. According to them, the general guidelines at Annexure A-2 is not final and it has been

made clear that various considerations are required to be taken note of while considering the matter of transfer, including administrative arrangement. Transfer shall not be purely based on tenure given in the transfer policy as it is one of the considerations and transferred shall also be based on competence and skill required to execute the work and provide opportunity to the employee to develop competency etc. The Transfer Guidelines are framed only with a view to facilitate the employees but cannot be at the cost of administrative need and it is not a matter of right that after certain period of posting at a place, the employee will get place of posting as part of his choice.

9. In respect of O.A. No. 586 of 2011 the respondents have further stated that in this case as a substitute, unlike in the case of clerks, a person of technical knowledge is required.

10. Counsel for the applicants submitted that the respondents, in pursuance of the earlier order of the Tribunal had passed speaking order stating that the request of the applicants will remain maintained in the request register and will be taken care of at the appropriate time as per availability of staff or administrative requirement in future. This order was passed as early as in May-Jul 2011. More than three months have passed but no further action has been taken in regard to the transfer of the applicants. Counsel for the applicant has invited the attention of the Tribunal to paragraph 13 (ii) of the guidelines which reads as under:

"Seat/section tenure will be four years and SSA tenure for Circle cadre staff shall be 12 years. For counting tenure, period of service rendered in previous cadre (s)/grade(s) would also be counted. However, the period of service rendered as DRM/TSM shall be excluded. Break period of two years or more shall only be recognized while computing seat/section/SSA tenure."

11. In fact, earlier on the last occasion the case was listed for filing of rejoinder by the applicants. Counsel for the applicants submitted that since the case is being prolonged for a substantial period, and the facts have not been disputed, instead of filing their rejoinder, he would like to argue the matter. Counsel for the applicants submitted that since there has been no further progress in the matter of transfer of the applicants, it would be appropriate and the ends of justice would be met if a time frame is calendared and the respondents are directed to adhere to the schedule in effecting transfer of the applicants.

12. Counsel for the respondents has not disputed as to the facts of the case as detailed above.

13. Arguments were heard. The reasons given in the reply that administrative exigencies are to be kept in view while considering the matter of transfer cannot be treated as unreasonable. At the same time, when certain period has been prescribed as tenure period, the period of posting could be extended by a couple of months or even for one year, if administrative exigencies warranted. The tenor of the

reply, however, reflects that the period of tenure prescribed has absolutely no role to play. This is certainly unreasonable. The orders impugned date back to May-June, 2011 and the reply furnished is of July/August, 2012. There has been no whisper as to the further action taken since the date of issue the impugned orders. The faith of an employee that the respondents would be taking care of their personal interests, would be diluted if, after the issue of the impugned orders which reflect a sort of assurance to the individuals, that their case would be considered, there is absolutely no further progress in that direction and instead, the tenor of the reply is in a retorting style. The guidelines provide for transfers after a specific period of tenure and it cannot be that the respondents have no authority to transfer others to the hard stations where the applicants are now serving and see to it that such individuals so transferred are relieved from the places of their duties and report to the new place of posting so that the applicants could be shifted to the place of their choice. The request of the applicants is not immediately on completion of their tenure in hard stations. In all the cases, the period spent in the hard station is more than twice the normal tenure period. Keeping the applicants in the same place of posting despite the request for transfer even after the expiry of the tenure period by a substantial period, and justifying the same stating that volunteers are not forthcoming or substitutes are not available make the guidelines and fixation of tenure otiose. The sanctity of the guidelines should be maintained and the same should not be frustrated or used by the respondents to suit their case. A sincere and honest attempt is warranted on the part of the respondents to ensure that their own

orders that the request of the applicants will be taken care of at the appropriate time are not disregarded. The respondents shall have to fix a time frame in this regard. If rotational transfer on annual basis is prevalent, which is normally available in most of the central government deportments, the same may be pressed into service after the completion of the current academic session and transfer orders are passed. Shifting any of the individual from other places to the place where the applicants are serving before the completion of the current academic session would be posing difficulties to such persons so transferred, as education of their children would be disturbed. In fact, such a difficulty would also be faced by the applicants, if their children education is spoiled on account of the transfer of the applicants at the middle of the academic sessions. Thus, the proper way to deal with the case is that the respondents undertake an exercise of ascertaining the details of persons who have not done their tenure in hard stations but who have completed their tenure in their present place of posting and issue necessary orders for their transfer to the places where the applicants are now slogging for years, and the applicants be afforded transfer to the place of choice. In case there is no vacancy in the place of choice, alternative choice stations be called for from the applicants. All these could be carried out before March, 2013 and final transfer order could be effected during the school vacation in April-May, 2013. If need be, a warning list could be prepared by November-December, so that individuals who are likely to be shifted, may be in a position to mentally prepare themselves for such transfer.

14. In view of the above, **the O.As are disposed** of with a direction to the respondents to undertake the exercise of ascertaining persons who have completed their tenure in non-difficult stations and who could be transferred to hard/difficult stations and after issue of a warning letter to such persons, they may be transferred to stations where the applicants are serving and the applicants be transferred to their choice stations.

15. No costs.

[Dr.K.B.S.Rajan]
JudicialMember

mehta