

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH AT JODHPUR

Original Application No.294/2013

Jodhpur, this the 27<sup>th</sup> day of October, 2014

CORAM

HON'BLE MR. JUSTICE KAILASH CHANDRA JOSHI, MEMBER (J)  
HON'BLE MS. MEENAKSHI HOOJA, MEMBER (A)

Gordhan Jangla S/o Shri Bhanwar Lal, aged about 50 years, R/o 2/1262, Kudi Bhaktasani, Housing Board, Jodhpur, at present employed on the post of Telephone Mechanic in Telephone Exchange, Merta Road, District Nagaur.

.....Applicant

Mr. J.K. Mishra, counsel for applicants

Vs.

1. Bharat Sanchar Nigam Limited through its Chairman & Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Janpath, New Delhi.
2. Chief General Manager Telecommunications, BSNL, Rajasthan Telecom Circle, C-Scheme, Sardar Patel Marg, Jaipur-302008.
3. General Manager Telecom District, Bharat Sanchar Nigam Limited, Nagaur-341001.
4. General Manager Telecom District, Bharat Sanchar Nigam Ltd., Jaipur.

...Respondents

Mr. Kamal Dave, counsel for respondents.

ORDER (ORAL)

Per Justice K.C.Joshi, Member (J)

The present OA has been filed under Section 19 of the Administrative Tribunals Act for seeking the following reliefs:-

- "(i) *That impugned order dated 19.11.2012 (Annexure-A/1) and letter dated 23.11.2012 (Annexure-A/2) may be declared illegal and the same may be quashed. The respondents may be directed to consider the case of applicant for transfer from Nagaur SSA to Jodhpur SSA as per para 8 of the Transfer Policy dated 07.05.2008 (A/3) and allow all consequential benefits.*
- (ii) *That any other direction, or orders may be passed in favour of the applicant which may be deemed just 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".*

2. Short facts of the case, as stated by the applicant, are that the applicant was initially engaged to the post of Casual Labour in the year 1984 at Telephone Exchange Jodhpur and thereafter he was appointed as Regular Mazdoor in the year 1994. The applicant was promoted as Phone Mechanic after passing the requisite test on 06.03.1995 and he continues to hold the same. It has been averred that on 23.10.2010, the applicant got arrested and was kept under detention for about 24 hours and left with bondage of 6 months on bond for good behavior and he was transferred by the Department from Jodhpur to Phalodi on 17.03.2006. The applicant was even penalized on the aforesaid incident and a penalty of withholding of increment for two years was imposed without cumulative effect vide order dated 18.01.2007. The applicant was again transferred from Phalodi to Nagaur in another SSA under para 37 of P&T Manual Vol-IV just within one year and joined thereon vide dated 19.02.2007. It has been further averred that the applicant submitted an application on 19.02.2012 for his transfer from Nagaur SSA to Jodhpur City in Jodhpur SSA on his own request with bottom seniority but the same was turned down vide letter dated 22.08.2011 since he had not completed five years of service in Nagaur SA on dated 19.02.2012. It has been further averred that the

applicant has submitted his application for his transfer under Para 8 of the Transfer Policy after rendering five years of service in Nagaur SSA and his case was processed vide 3<sup>rd</sup> respondent's letter dated 11.09.2012 annexing letter dated 29.08.2012 and at SA Jodhpur vide note sheet dated 20.09.2012. It has been further averred that 67 posts of Phone Mechanic have been shown as vacant in Jodhpur City to Jodhpur SSA. Vide letter dated 12.11.2012 (Annexure-A/7), the respondent No.4 was pleased to give its acceptance but just after a few days, the respondent No.4 issued another letter dated 19.11.2012 (Annexure-A/1) whereby the previous letter dated 12.11.2012 was ordered to be cancelled without disclosing any reasons and on the basis of that letter the respondent No.2 has also turned down the claim of the applicant vide letter dated 23.11.2012 (Annexure-A/2). Hence, the applicant by way of this application has sought the reliefs as mentioned in para No.1.

3. By way of reply, the respondent department averred that the applicant relied mainly on 3 grounds i.e. he fulfills the requisite eligibility conditions for his transfer from SSA Nagaur to Jodhpur City under SSA Jodhpur, his transfer case has been refused on account of penalty and he cannot be punished four times and lastly that the case of the applicant was accepted with reference to his request by respondent No.4, but the review of the same and cancellation of the same is illegal. It has been further averred that primarily entire grievance of the applicant is for his own request transfer to Jodhpur City under the Jodhpur SSA and applicant was transferred under the SSA Nagaur and an application seeking own request

transfer with bottom seniority moved by him was rejected vide letter dated 22.08.2011 on ground that he is having less than 5 years of service. It has been further averred that the applicant has no case much less *prima facie* case in view of settled legal position that transfer being purely an administrative matter, where judicial interference is permissible in view of the various judgment of Hon'ble Supreme Court only when Statutory Rule is violated or the transfer order suffers from *mala fide*. The policy does not create any right as the same is not enforceable as Statutory Provisions. It has been further averred that utilization of the employee is necessarily an administrative function, in the present case when transfer is sought by the employee from SSA to another SSA the consent of both the circle became necessary. Hence, the respondents prayed that the OA deserves to be dismissed.

4. By way of rejoinder, the applicant reiterated the same facts as averred in the OA.

5. Heard both the parties and perused the record. Counsel for the applicant contended that the applicant seeks his transfer as per the mandatory policy of the respondent department whereas the counsel for the respondents contended that the policy is not mandatory but advisory one. Counsel for the applicant further contended that he has sought the transfer from Nagaur to Jodhpur on various grounds but the respondent department failed to consider those grounds. Counsel for the applicant further contended that due to the pendency of the criminal case against the

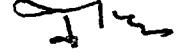
applicant, the representations submitted by the applicant are being rejected by the respondent department repeatedly.

6. Looking to the entire facts and circumstances of the case, we are intending to dispose of this application with certain directions.

7. Accordingly, the OA is disposed of and the applicant is directed to file a detailed representation praying for his transfer under the policy within a month from the date of receipt of a copy of this order and the respondent department is directed to decide the same in the light of the policy and other relevant circulars available with them, within a period of three months from the date of receipt of such representation.

8. The OA is thus disposed of as stated above with no order as costs.

  
(MEENAKSHI HOOJA)  
Administrative Member

  
(JUSTICE K.C.JOSHI)  
Judicial Member

Rss

Cow Pond

Shallow

shallow

water

water 3-11-19.