

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 468/2013 with MA 290/00146/2014

Jodhpur, this the 26th day of March, 2015

CORAM

Hon'ble Justice Mr K.C. Joshi, Judicial Member

Hon'ble Ms. Meenakshi Hooja, Administrative Member

Hanuman Ram Gaur S/o Shri Madroop Ram, aged 54 years, Telecom Mechanic in the office of Sub-Divisional Engineer, (North-I), Bharat Sanchar Nigam Limited, Man ji Ka Hatha, Jodhpur; R/o 54 Rajiv Gandhi Nagar, Magra Punjla, Jodhpur.

.....Applicant

By Advocate: Mr. Vijay Mehta.

Versus

1. Bharat Sanchar Nigam Ltd., through its Chairman & Managing Director, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. Senior General Manager, Bharat Sanchar Nigam Limited, Subhash Nagar, Pal Road, Jodhpur.
3. Assistant General Manager, (Administration & HR), Bharat Sanchar Nigam Limited, Subhash Nagar, Pal Road, Jodhpur.
4. Sub Divisional Engineer, (HRO), Bharat Sanchar Nigam Limited, Subhash Nagar, Pal Road, Jodhpur.
5. Assistant General Manager, (Ex-I), Bharat Sanchar Nigam Limited, Telegram Office, Sardarpura, Jodhpur.
6. Sub Divisional Engineer, Phones North-I, Bharat Sanchar Nigam Limited, Telegram Office, Man ji Ka Hatha, Jodhpur.

.....Respondents

ORDER

Per Justice K.C. Joshi

The applicant has filed this OA under Section 19 of Administrative Tribunal Act, 1985 seeking following relief(s):

"The applicant prays that order Annex. A/1 qua the applicant may kindly be quashed and the respondents may kindly be restrained from implementing the same. The respondents may kindly be directed to continue the applicant at Jodhpur on his present post. Any other order may kindly be passed giving relief to the applicant."

2. The brief facts, as averred by the applicant, are that the applicant is Telephone Mechanic (TM) in the respondent-department and posted at Civil Defence in Jodhpur under respondent No. 6. The applicant has been transferred to Keru vide order dated 20.08.2013 (Annex. A/1). Prior to this, the applicant was transferred to Boranada but the respondents did not relieve the applicant considering the fact that the applicant is a heart patient and he may need ICU facility and expert advice at any time. The applicant has been ordered to simultaneously discharge his duties in Civil Defence at Jodhpur and Keru which is not at all possible. The applicant submitted various representations requesting respondent No. 2 to not to transfer him in village area on the ground of health (him being heart patient) and family circumstances. The wife of the applicant has expired two years

and she will now appear in MA previous examination. His son aged 20 years is a student of MA (Previous) and carrying out his studies in Jai Narain Vyas University, Jodhpur and there is nobody else other than the applicant to look after them. The applicant has averred that considering his representations and personal request, he was not relieved pursuant to transfer order dated 14.10.2011. The applicant has filed medical certificate (Annex. A/4) and certificate issued by the JNVU (Annex. A/11) in support of his above averments. The applicant has averred that he is a heart patient and there are no medical facilities of heart specialist and there is no ICU in Keru. This will endanger his life in case any heart attack takes place and such transfer have been struck down by the Hon'ble Tribunal by a number of orders. The applicant has averred in the application that his work has been appreciated by the Controller (Collector) Civil Defence, Jodhpur vide his letters dated 23.06.2011 (Annex. A/6) and 23.08.2013 (Annex. A/7) whereby he pleaded with the respondent No. 2 to retain the present staff including the applicant posted in Civil Defence for National security reasons. The transfer of the applicant has not been effected for attaining objectives mentioned in para Nos. 2, 4 and 5 transfer policy (Annex. A/8) and none of the grounds mentioned in aforesaid para exist for effecting transfer of the applicant and no reasons for transfer of the applicant to Keru have

service. Para 6 (b) of the transfer policy provides that transfers should be effected in March/April but transfer of the applicant has been made in mid session. The applicant further averred that the respondent No. 2 and 3 assured him that he will not be relieved from the present place of posting at Jodhpur and the Annex. A/1 qua the applicant will be cancelled but pursuant to these assurances, the applicant has not been relieved but his transfer order has not yet been cancelled and now the respondents are taking steps to relieve the applicant for Keru. It has also been averred that 13 exchanges in the villages under the respondent No. 2 have been abolished long back and the TMs posted in those villages are sitting idle, and any one of them can be posted at Keru where the applicant has been transferred. The respondents in their reply to OA No. 271/2012 vide para No. 4.17 while admitting the fact that these exchanges have been abolished and the TMs are sitting idle, have asserted that it is for the administrative authorities to see who should be posted at which place. Thus, the applicant has prayed for relief as extracted in para No. 1.

3. By way of reply the respondents have averred that ten employees have been transferred vide order Annex. A/1 dated 20.08.2013 and the applicant Shri Hanuman Ram Gaur is at S.No. 1 and the name of the applicant comes first than the other employees in the list as per transfer policy. The employees at S.No. 5, 9 & 10

their respective transfer place in Rural Areas but the applicant and another employee at S.No. 6 have not joined on account of stay order in their favour passed by this Tribunal. If the prayer of the applicant is allowed and the transfer order is quashed, then it would create complete chaos in the administration which would not be conducive to public interest and it would be injustice to the other employees who are also transferred as per the Rules and Regulations and in accordance with the transfer policy. Even in future, the administration will not be able to transfer the employee looking to the business requirement and special needs which would hamper the arrangement of the Department and would be in contravention to the Public interest. The respondents while replying to the facts para-wise have stated that the transfer order has been issued by competent authority and passed in accordance with the BSNL Employee Transfer Policy and applicable Rules & Regulations, looking to the maximum stay of the employees at one place in Jodhpur and the same is in the interest of the State. The competent authority has the right to transfer any person to any post or any place as per the business requirements and special needs. The applicant has been transferred to a very nearby place to Jodhpur i.e. Keru Exchange which comes within the Jodhpur Development Authority only. The distance between both the cities is hardly half an hour and about 25 kms. The appointment letter of

other bordering units/offices and under the GMM & GM (Project) that comes within the purview of the BSNL, Jodhpur Office like the other bordering units/offices and in special circumstances, the applicant has to work in any of the office of the respondents throughout India and in emergent condition in the army also. The transfer order has been passed looking to maximum stay of the applicant at one place i.e. Jodhpur. The respondents have also averred that the transferred place of the applicant is well equipped with the transportation facilities, by which the children of the applicant can pursue their education in Jodhpur only. The applicant can very well avail the facilities like medical, Education and others from Jodhpur only, by living in Keru Exchange and cancellation of transfer order on medical grounds is not in the transfer policy of the respondents. Thus, the respondents have prayed that the applicant is not obeying the transfer order which is perfectly legal and valid in the eyes of law, in accordance with the policy framed by the respondents and also as per the Departmental Rules & Regulations, therefore, respondents have prayed to dismiss the OA.

4. The applicant has filed rejoinder reiterating the same facts as averred in the OA.

5. Heard both the parties. Counsel for applicant contended

applicant's wife has expired about 2 years ago and he has

studying in college at Jodhpur. The applicant himself is heart patient and he may need facility of ICU at any time which are not available at Keru and in case of any heart attack in Keru it would be fatal for the applicant and he referred to medical certificate issued by Heart Specialist dated 09.07.2008 (Annex. A/4). Counsel for applicant further contended that in consideration of representations and personal requests the applicant has not been relieved in pursuant to transfer order dated 14.10.2011 and para 4 (d) of Transfer Policy enables placement of the staff on compassionate grounds. Therefore, counsel for applicant prayed to quash the transfer order Annex. A/1 qua applicant on aforesaid grounds.

6. Per contra, counsel for respondents contended that the transfer order has been issued by competent authority and passed in accordance with the BSNL Employee Transfer Policy and applicable Rules & Regulations, looking to the maximum stay of the applicant which is in the interest of the State. The competent authority has the right to transfer any person to any post or any place as per the business requirements and special needs. The applicant has been transferred to a very nearby place to Jodhpur i.e. Keru Exchange which comes within the Jodhpur Development Authority only and the distance between these two places is 25 kms or say half an hour journey. Counsel for respondents further

mentions that the person appointed on this post have to work with the Office of BSNL, Jodhpur and any of its other bordering units/offices and under the GMM & GM (Project) that comes within the purview of the BSNL, Jodhpur Office like the other bordering units/offices and in special circumstances, the applicant has to work in any of the office of the respondents throughout India and in emergent condition in the army also. The transferred place of the applicant is well equipped with the transportation facilities, by which the children of the applicant can pursue their education in Jodhpur only. The applicant can very well avail the facilities like medical, Education and others from Jodhpur only, by living in Keru Exchange. He further contended that cancellation of transfer order on medical grounds is not in the transfer policy of the respondents and courts should not interfere with day-to-day transfer orders issued by the Government and its subordinate authority otherwise there will be complete chaos in the administration which would not be conducive to public interest. Thus, counsel for respondents has prayed to dismiss the OA.

7. We have considered the rival contentions and pondered over the arguments advanced by both the parties. The courts/tribunals should not ordinarily interfere with the executive powers of the Government until there is a proven case of malafide on the part of

competent authority but at the same time if a case of medical expediency is made out it is the bounden duty of concerned Department to consider his case looking to his health problems. The respondents in their reply have averred that the applicant has been transferred under para 4(b) of the transfer policy and transfer/cancellation of transfer on medical grounds is not in the Transfer Policy of the respondents. It is a settled principle of law that these policies have persuasive value and do not carry force of law and the applicant has made out his case on serious medical problems. Therefore, looking to entire facts and circumstances of the case, we propose to dispose of this OA with certain directions.

8. Accordingly, OA is disposed of with the directions that :

- (i) The applicant shall file a representation to the competent authority of respondent-department mentioning his family circumstances and medical condition with supportive documents, within a month from the date of receipt of this order.
- (ii) Thereafter, the competent authority shall thoroughly consider the representation of the applicant and decide the same by an appropriate speaking order, within one month from the date of receipt of representation from the applicant.
- (iii) Till then, the interim order granted in favour of [redacted] shall remain effective.

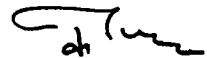
- (iv) Thereafter, if any grievance remains to the applicant, he may approach appropriate forum, if so advised.

9. In terms of above directions, OA No. 468/2013 and MA No. 290/00146/14 filed for vacation of interim order dated 28.10.2013, are disposed of. There shall be no order as to costs.



[Meenakshi Hooja]
Administrative Member

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[Justice K.C. Joshi]
Judicial Member