

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 133/2013

Jodhpur, this the 03rd day of March, 2014.

CORAM

Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial)

Prathvi Raj S/o Shri Bhag Chand, aged 52 years, Telecom Mechanic in the office of Sub Divisional Engineer, (OCB), Bharat Sanchar Nigam Limited, Telegram Office, Sardarpura, Jodhpur; R/o Kalal Colony, Nagori Gate, Jodhpur.

.....Applicant

By Advocate: Mr Vijay Mehta

Versus

1. Bharat Sanchar Nigam Limited, through the Chairman cum Managing Director, Bharat Sanchar Bahwan, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. Senior General Manager, Bharat Sanchar Nigam Limited, Door Sanchar Zila, Subhash Nagar, Pal Road, Jodhpur.
3. Assistant General Manager, Bharat Sanchar Nigam Limited (Administration & HR), Subhash Nagar, Pal Road, Jodhpur.
4. Sub Divisional Engineer, (OCB), Bharat Sanchar Nigam Limited, Telegram Office, Sardarpura, Jodhpur.

.....Respondents

By Advocate : Mr S.K. Mathur.

ORDER (Oral)

The present OA has been filed by the applicant to challenge the order Annexure A/1 dated 05.12.2012 by which respondent-department has transferred the applicant to Dechu, Balesar and

Annex. A/2 dated 20.03.2013 which was issued after considering the representation of the applicant.

2. Short facts of the case, as averred by the applicant, are that the applicant while posted at Jodhpur as Telecom Mechanic in Bharat Sanchar Nigram Limited (BSNL) was transferred vide order Annex. A/1. The applicant has challenged the order Annex. A/1 by filing OA No. 25/2013 and this Tribunal vide order dated 22.01.2013 while disposing of the OA remanded the matter back to respondent No. 2 with the direction to treat the OA as representation and decide the same (Annex. A/3). The respondents after considering the OA as representation have maintained the order of transfer dated 05.12.2012, qua the applicant. It has been averred in the application that the transfer claimed to have been made in the interest of service, but no detail, particulars and material of interest of service have been mentioned in the order and a bald statement that transfer has been made in interest of service does not discharge burden of the respondents to establish that the transfer has been made in the interest of service which amounts to oblique motives and malice in law. It has further been averred in the application that the transfer has been affected in violation of Transfer Policy and there is no provision to affect transfer on the ground of interest of service. The transfer of the applicant also claimed to have been effected due to longer stay but there are many other Telephone Mechanics of longer stay than the applicant and they have not been transferred. Even one Hanuman Ram Gaur who is of a longer stay and was transferred

vide order dated 24.06.2011 has not yet been relieved. It is further averred that transfer has been made in mid academic session and this is in violation of the policy and such transfers have been struck down by the Hon'ble Tribunal and Hon'ble Supreme Court. The applicant has further averred that his sons and daughters are carrying on studies in Jodhpur and there are no such institutions at the place of transfer for their studies. The applicant has further averred that the transfer order has been maintained by the respondents vide order Annex. A/2 dated 20.03.2013 on the ground that the applicant is a longer stayee. However, it has been said in the order that four employees of longer stay named by the applicant have not been transferred on medical grounds and one employee of longer stay has not been transferred because he is President of the Union, who is exempted from transfer and one employee though transferred on 24.06.2011 will now be relieved. The applicant has averred in his application that aforesaid 4 employees who have not been transferred on medical grounds are not sick, as they have not taken any medical leave and are performing daily duties. Further, the President of the Union is not an employee exempted from transfer and all these employees are of longer stay than the applicant, therefore, the applicant has been discriminated and he has been treated unequally with reference to these employees. The respondents have issued order dated 04.01.2013 for putting in abeyance transfers due to verification of membership of the unions and the applicant has not yet been relieved. Therefore, the applicant has filed this OA seeking following relief:

"The applicant prays that order Annex. A/1 qua the applicant and order Annex. A/2 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."

3. By way of reply, the respondents have denied the averment made by the applicant in his application and have further averred that in compliance to the order of the Hon'ble Tribunal dated 22.01.2013, passed in OA No. 25/2013, representation of the applicant was decided by the concerned authority and transfer order has been passed on the basis of longer stay, in accordance with the transfer policy, and in view of the elections relieving was deferred till the elections were over. It has been further averred in the reply that village Balesar is not very far from Jodhpur and now the academic session is over. The applicant can join at Balesar but he is pursuing continuously the stay petition and this is his second OA challenging the transfer order. This shows that the applicant somehow wants to avoid to carry out the transfer order which is very bad practice and putting hindrance in the administration. The respondents in para 4.9 of their reply averred that para 4.9 of the OA is misconceived and replied to the six incidents referred to by the applicant and averred reasons for not transferring the 5 telephone mechanics referred by the applicant in his OA and further averred that sixth person i.e. Shri Hanumana Ram has already been transferred and is being relieved shortly. The respondents in their reply have also averred that the applicant is working at Jodhpur for the last 22 years and he still wants to somehow continue at Jodhpur. This shows that the applicant is

bent upon not to leave Jodhpur and to continue on one or the other legal proceedings. Therefore, respondents have prayed to dismiss the OA.

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

5. Heard both the parties. Counsel for the applicant contended that the applicant has earlier been transferred vide order Annex. A/1 which was challenged before this Tribunal and this Tribunal vide order dated 22.01.2013 passed in OA No. 25/2013 (Annex. A/3), directed the respondent-department to dispose of the representation (treating OA (as a representation) of the applicant by means of a reasoned order within two months from the date of receipt of the copy of the order. The applicant filed written representation and the same was decided by Annex. A/2. Counsel for the applicant further contended that although the respondent-department ordered in Annex. A/1 that the order is being issued in public interest but no public interest has been mentioned in order Annex. A/1 or A/2 and order Annex. A/2 refers only that on the basis of maximum stay at Jodhpur, the applicant is being transferred. Further, the applicant has referred the persons who have been exempted from transfer on medical grounds at page 21 of the OA but no medical grounds have been mentioned in the above list and the respondent-department failed to provide the medical reasons of the each and every persons to the applicant. He further contended that the applicant was transferred in mid-academic session as his daughter is studying in B.Ed. Counsel for the

applicant further contended that the applicant has averred in the application that 13 village exchanges have been abolished by the respondent-department but the respondent-department is adamant to post the applicant in village exchange. He also contended that the respondent-department did not produce any comparative chart of stay of the applicant at Jodhpur qua other persons. The reasonability of the order must be pleaded in the reply or counter and relevant record of longer stayee must be produced before the Tribunal. He further contended that Hon'ble Apex Court in several judgments held that public interest is not a magic word which can do service for anything in any situation. Nor is it a carpet under which anything could be swept and in a particular case such interest must be disclosed or discernible. He further contended that the Division Bench of this Tribunal relied upon the judgment of the Apex Court. He further contended that the Madras Bench of the Central Administrative Tribunal had held that nature of administrative exigencies referred in the order itself which necessitated transfer must be mentioned and no case of the urgency has been made out in the transfer order, therefore, it must be quashed. Counsel for the applicant further contended that order Annex. A/1 cannot be supplemented by another order i.e. Annex. A/2. In support of his arguments he relied upon the following judgments :

- (i) CAT Jodhpur Bench order dated 10.05.2013 passed in OA No. 262/2012, Mr Shanti Lal Hingad vs UOI & Ors.
- (ii) CAT Ernakulam Bench order passed in OA No. 484/93, Y. Kurikesu v. Senior Superintendent of Telegraph, Traffic, Trivandrum Division & Ors published in 598. Swamy's CL Digest 1993

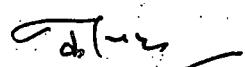
- (iii) Mahendra Kishore Sharma vs UOI & Ors reported in (1992) 20 Administrative Tribunals Cases 66.
- (iv) M. Vijaya vs UOI reported in (1995) 31 Administrative Tribunals Cases 327.
- (iv) Kallash Chandra Sharma vs Director, Sheep and Wool, Rajasthan & Ors reported in RLR 1992 (2) page 441.
- (v) CAT Jodhpur Bench order dated 21.07.2011 passed in OA No. 158/2011, Smt. Indirani Sen vs UOI & Ors.
- (vi) CAT Jodhpur Bench order dated 09.09.2009 passed in OA No. 226/2008, Karan Singh vs UOI & Ors.
- (ix) Mohinder Singh Gill and Annr vs. The Chief Election Commissioner, New Delhi & Ors reported in AIR 1978 SCC 851.

6. Per contra, counsel for the respondents contended that the applicant is working from 1991 in Jodhpur and after careful consideration of each and every aspect, the applicant has been transferred by Annex. A/1 and after the order of this Tribunal Annex. A/3, the respondent-department re-examined the matter and it was considered fit to transfer the applicant and to maintain the order Annex. A/1. He further contended that the applicant has been transferred in public interest and after transfer the applicant is still working at Jodhpur under orders of this Tribunal whereas original order was issued way back on 05.12.2012 and after that one academic session has already been passed. Therefore, no case for study of daughter of the applicant might remain. He further contended that the respondent-department is not under any obligation to inform the applicant about the medical ground of each and every employee and Annex. A/1 is passed on the basis of longer stay and no bias or malice has been pleaded in the OA, therefore, Annex. A/1 and A/2 cannot be said to be illegal or in contravention of any policy. He

further contended that transfer policies have persuasive value and do not carry statutory force and it is not possible to keep each and every person at Jodhpur and someone has to be transferred from HQ to smaller places.

7. I have considered the rival contentions raised by both the parties and also perused the judgment cited by counsel for the applicant. It is settled principle of law that transfer is an essential ingredient of service and it can further be inferred by documents filed by both the parties that applicant is serving at Jodhpur since 1991. In my considered view, it is not necessary for the respondent-department to provide service record of each and every employee whose cases have been considered on account of medical grounds for not transferring being longer stayee. Further, it is also settled principle of law that courts should not interfere in the transfer orders except where well established case of malice is proved or order has not been issued by the competent authority and after looking into the entire facts and circumstances of this particular case, I see no reason to interfere with the order of the transferee authority.

8. Accordingly, OA is dismissed with no order as to costs.


(JUSTICE K.C.JOSHI)
Judicial Member

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