

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

Original Application No.149/2013

Jodhpur this the 16th day of May, 2014

CORAM :

Hon'ble Mr. Justice K.C. Joshi, Member (J)

Arun Kumar Mangal S/o Shri Bhanwar Lal, aged 54 years, Telecom Technical Assistant in the office of Sub Divisional Engineer (RLU-CFA), Bharat Sanchar Nigam Limited, Telegram Office, Sardarpura, Jodhpur; R/o 23, Nehru Park, Jodhpur.

.....Applicant

(Through Adv. Mr. Vijay Mehta)

Versus

1. Bharat Sanchar Nigam Limited through the Chairman cum Managing Director, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New Delhi.
2. 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, (RLU-CFA), Bharat Sanchar Nigam Limited, Telegram Office, Sardarpura, Jodhpur.

.....Respondents

(Through Adv. Mr. S.K. Mathur)

ORDER (ORAL)

The present OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 challenging the legality of the transfer order at Annexure-A/1 by which the respondent department has transferred the applicant from Jodhpur to Pipar, and Annexure-A/2 dated

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08.02.2013 which was issued after considering the representation of the applicant.

2. The short facts of the case, as averred by the applicant, are that the applicant is posted on the post of Telecom Technical Assistant (TTA) and he has been transferred to Pipar, Bilara vide order No.E-120/Genl/TFR/TTA/12-13/6 (Annexure-A/1). It has been averred in the OA that the applicant earlier also challenged the order at Annexure-A/1 by way of filing of the OA No.476/2012 and the same was disposed of by this Tribunal vide order dated 10.12.2012 directing the respondents to treat the OA as a representation and decide the same. The respondent department considering the OA No.476/2012 as representation of the applicant but maintained the transfer order of the applicant vide order dated 08.02.2013 on the grounds that the applicant has a longer stay. It has been further averred that five employees of longer stay named by the applicant have not been transferred because they belong to NTR and one has not been transferred on medical ground. It has been further averred that one employee of longer stay has not been transferred because he is Secretary of the SC/ST Welfare Association. Therefore, it has been averred that the applicant has been discriminated and has been treated unequally with reference to these employees, who have longer stay than the applicant and they have been kept at Jodhpur at the sweet will of the respondents. According to the applicant, in the order dated 08.02.2013 (Annexure-A/2) no details or particulars and material of interest of service have been mentioned, and the bald statement that transfer has been made

in interest of service does not discharge the burden of the respondents to establish that the transfer has been made in the interest of service. It has been further averred that the transfer has been affected in violation of the transfer policy, but there is no provision to affect transfer on the ground of interest of service. It has also been claimed that the transfer has been affected due to longer stay but there are many TTAs of longer stay than the applicant in the respondent department and they have not been transferred. Therefore the applicant by way of this OA seeks the following reliefs:-

"The applicant prays that order Annexure-A/1 qua the applicant and order Annexure-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 respondent department averred that the transfer of the applicant from Jodhpur to Pipar has been made in accordance with the transfer policy and in the interest of State. Moreover, the transfer has been made to Bilara with H.Q. at Pipar which are not far away from Jodhpur and the applicant has no right to work only at Jodhpur and the allegations of oblique motive and malice in making the transfer are baseless. It has been further averred that in accordance with the direction given by this Tribunal in OA No.476/2012, the case of the applicant was considered under Para 6 (a) of the transfer policy and on the basis of longer stay the present transfer was made which was in accordance with the transfer policy. It has been further averred that the applicant has challenged the transfer order Annexure-A/1, which was also challenged in his earlier OA No.476/2012 and thus, this OA is not

maintainable. Therefore, the respondent department prays that the present OA deserves to be dismissed.

4. In rejoinder the applicant while reiterating the same facts as averred in the OA annexed the Annexure-A/10, the Additional Guidelines Specific to Non-Executives.

5. Heard both the parties. Counsel for the applicant contended that he has filed the additional affidavit today and averred that in the light of the change circumstances when the applicant has completed 55 years of age, he cannot be posted at a tenure station as the applicant before filing of this OA has been transferred from Jodhpur to Pipar which is a tenure station. Therefore the counsel for the applicant submits that the OA may be disposed of with a direction to the respondent department to consider the representation filed by the applicant on 19.04.2014 before the competent authority.

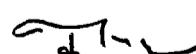
6. Per contra, counsel for the respondents contended that this ground was not available to the applicant at the time of filing of this OA and he further contended that the similar matter i.e. in OA No.133/2013 (Prathvi Raj vs. BSNL & Ors,) was dismissed by this Tribunal. He further relied upon the judgment of Hon'ble Apex Court in the case of *Mrs. Shilpi Bose and others vs. State of Bihar & Ors*, reported in AIR 1991 SCC 532 in which the Hon'ble Apex Court held that the Tribunal or Court should not normally interfere with the transfer order which were within the domain

of the executive and in the administrative exigency one can be transferred by the respondent department.

7. I have considered the rival contention of both the parties. I do agree with the arguments advanced by the counsel for the respondents that normally the Court or Tribunal should not interfere with the transfer orders and it is well settled principle of law that it is an executive function of the State or the Department to transfer his any employee from one Station to another on the administrative exigency, but at the same time, looking to the entire facts and circumstances of this case, I am proposing to dispose of this OA with certain directions.

- (i) The respondents department shall decide the representation, which was already filed by the applicant on 19.04.2014 before the competent authority regarding his completion of the age of 55 years, within a period of two months from the date of receipt of a copy of this order in the light of the additional affidavit filed by the applicant and further in the light of the policy laid down by the department in a sympathetic manner.
- (ii) If any grievance remains with the applicant thereafter, he can file a fresh OA if so advised.
- (iii) The effect of the transfer order at Anneexure-A/1 shall remain stayed, qua the applicant, till the disposal of the representation.

8. Accordingly, the OA is disposed of with no order as to costs.


(JUSTICE K.C. JOSHI)
MEMBER (J)

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