

CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH

Original Application No.290/00222/2014

with

Misc. Application No.290/00277/14

Jodhpur this the 18<sup>th</sup> day of November, 2014

**CORAM :**

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

Arun Kumar Mangal S/o Shri Bhanwar Lal, aged 56 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 applicant has filed this OA under Section 19 of the Administrative Tribunals Act, for following reliefs:-

“(i) The applicant prays that order Annexure-A/1 qua the applicant and order Annexure-A/2 and Annexure-A/3 may kindly be quashed and the respondents may kindly be restrained from implementing these orders. 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 of the case, as averred by the applicant, are that the applicant is posted under the respondent No. 4 at Jodhpur on the post of Telecom Technical Assistant (TTA) and has been transferred to Pipar, Bilara vide order dated 20/11/2012 (Annex. A/1). The applicant challenged the order Annex. A/1 before this Tribunal in OA No. 476/2012. This Tribunal vide its order dated 10.12.2012 passed in OA No. 476/2012 remanded the case to respondent No. 2 who was at that time designated as General Manager, with direction to treat the OA as a representation and decide the same. The respondent No. 3 in compliance of the order dated 10.12.2012 vide his order dated 08.02.2013 (Annex. A/2) while deciding the representation maintained the order Annex. A/1 and it has further been mentioned therein that the applicant shall be relieved after completion of elections for recognition of the unions. The applicant challenged the order Annexs A/1 & A/2 by way of OA No. 149/2013 in this Tribunal and the Tribunal vide its interim order dated 11.04.2013 passed in aforesaid OA stayed the operation of orders Annex. A/1 & A/2. During the pendency of the OA, the applicant submitted an additional affidavit alongwith representation dated 19.04.2014 (Annex. A/5) and this Tribunal vide its order dated 16.05.2014 (Annex. A/6) directed the respondents to decide representation (Annex. A/5) in the light of additional affidavit and Transfer Policy. The respondent No. 3 vide his order dated 31.05.2014 rejected the representation Annex. A/5 and

maintained the order Annex. A/1 and made the same effective. Though the order Annex. A/3 has been passed on 31.05.2014 but the same has not been served upon the applicant and the applicant has been able to obtain copy of the aforesaid order with the help of his well-wishers and the applicant has not yet been relieved. It has been averred in the OA that though the representation Annex. A/5 was submitted to the respondent No. 2, but the same has not even been considered by the respondent No. 2 who is competent authority to transfer the applicant. The representation of the applicant has been rejected on the ground that the applicant has not completed 56 years of age whereas the Transfer Policy has provided that employees who are more than 55 years of age would be avoided for posting to tenure station and the applicant has completed 55 years and 7 months' of age and Pipar is a tenure station, therefore transfer of the applicant is violation of the Transfer Policy. Though the respondents have admitted that the applicant has completed 55 years' age and have not denied that Pipar is a tenure station but still rejected the representation of the applicant. The respondents maintained the transfer of the applicant on the ground of longer stay. It has further been averred that one Shri Praful Jogawat who was appointed in the year 2008 and posted at Bilara transferred in place of the applicant at Jodhpur, his transfer has been made at his request and the applicant has been transferred to accommodate Shri Sajjan Bishnoi and to fill up the post held by Shri Praful Jogawat. The transfer of the applicant amounts to mid session transfer and the applicant alongwith 8 other TTAs were informed that their transfer on the basis of longest stay is being made and therefore, they were asked to give their

option about three choice stations and the same is required to be ignored as there is no provision in Transfer Policy to transfer an employee on the ground of longer stay. The applicant submitted representation to the respondent No. 2 on 22.05.2012 with reference to letter Annex. A/9 giving details about his posting at various places and requested to keep him at Jodhpur since his 80 years old mother remains ill and sick and the applicant is only person who can look after her. The respondent-department supplied copy of stay particulars of TTA at Jodhpur (Annex. A/11) to one Shri Mangla Ram Gurjar and the name of the applicant appears at S.No. 9 which shows that the applicant is not the longest stayee at Jodhpur and these employees have been kept in Jodhpur at the sweet will of the respondents, though they have much longer stay at Jodhpur in comparison to the applicant. It has thus been wrongly claimed in order Annexure A/2 that the applicant has been transferred due to longest stay and the same reasons have not been mentioned in order Annex. A/1. Therefore, the applicant prayed to quash the orders at Annex. A/1, A/2 & A/3.

3. By way of reply, the respondents have averred that the applicant has been transferred to Pipar by competent authority in accordance with the transfer policy vide order dated 20.11.2012 and in pursuance of the directions given by this Tribunal the OA No. 476/2012, the OA was treated as representation and the same was decided considering each para and the applicant was informed accordingly. One similar OA bearing No. 133/2013 Prithviraj vs BSNL was dismissed and in that light before OA

No. 149/2013 filed by the applicant could be dismissed by this Tribunal, the applicant moved a representation and filed an affidavit and direction for deciding the said representation was prayed, therefore, this Tribunal issued directions to the respondents to decide the representation and not to disturb him until the representation is decided. The applicant has deliberately not given complete facts to mislead the Tribunal and after his representation was decided on 31.05.2014, the applicant was relieved and the relieving order was sent by speed post but the applicant refused to accept the speed post by which relieving order was sent (Annex. R/2). The impugned order was passed after considering the representation and the additional affidavit filed by the applicant and the applicant is only 55 years of age and he does not get immunity from transfer under transfer policy. The employee who is adamant not to comply with the transfer order, even when the transfer at a short distance of 65 km is made after nearly two decades does not deserve any protection. Such litigation should be discarded and the employees of such adamant nature should not be given stay on transfer every time they come to the court. The respondent-department suffer great problem in running the telephone exchanges situated in villages. Shri Prafull Jogawat was in the rural area at Pipar City on his first appointment and he applied for transfer at his own expenses, therefore, under para 6 (c) of the transfer policy he was transferred to Jodhpur and the applicant who was working at Jodhpur since 1993 was transferred to Pipar City. This shows that the applicant does not want to leave Jodhpur which is not possible. The applicant has given some incidents to show that the persons with longer stay than the

applicant have been retained. Shri Omprakash Sharma is going to retire on 31.07.2014, therefore under section D 13 (iii) of the policy he was not disturbed. Shri Prem Singh Kachawaha, Hari Kishan, Prem Pal Singh, Murlidhar & Vikram Singh are not employees of Jodhpur SSA as their salary is not given by SSA Jodhpur and Shri Bala Ram is Secretary of SC&ST Welfar Association, therefore, he is immune from the transfer. Shri Magna Ram Choudhary has not been transferred on medical ground as his kidney was transplanted. The applicant has got no vested right to work only at Jodhpur till his retirement and the applicant very well knew that was the obvious reason for not receiving the speed post. Therefore, respondents prayed to dismiss the OA.

4. In rejoinder, the applicant has reiterated the same facts as averred in the OA.

5. Heard both the parties. Counsel for the applicant contended that this is the third round of litigation and in the second OA i.e. OA No.149/2013 this Tribunal vide its order dated 16.05.2014 (Annexure-A/6) directed the respondent department to consider the representation of the applicant by way of speaking order while considering the additional affidavit filed by the applicant also.

6. The counsel for the applicant contended that the additional affidavit was filed by the applicant so as to bring out on record that during pendency of the OA the applicant has completed 56 years of age and he was posted at a tenure station which is against the Policy. Therefore, the

Annexure-A/3 order which is rejection of the representation, is illegal and the same requires to be set aside.

7. Per contra, counsel for the respondents contended that if during the pendency of the OA applicant crossed the age of 55 years he will not acquire any right regarding his transfer. He further contended that the applicant has been continuously working at Jodhpur for last about 20 years, and somehow he wants to be retained at Jodhpur, therefore, the transfer order issued by the respondents as well as the order dated 31.05.2014 (Annexure-A/3) is legal one and does not require any interference in judicial review. The counsel for the respondents vehemently argued that applicant has not completed 55 years of age at the time of filing of the earlier OA, therefore, he is not entitled to be exempted from the transfer and he has completed or crossed the age of 55 years during the pendency of the OA, therefore, he did not acquire any right regarding avoidance of posting to a tenure station. Counsel for the respondents further contended that in transfer cases, the Court or Tribunal should not interfere unless and until the order is passed by an incompetent authority or well established malafides is proved. In support of his argument, the learned counsel for the respondents relied upon the judgment of the Hon'ble Supreme Court passed in *Mrs. Shilpi Bose and Ors. V. State of Bihar & Ors.* reported in AIR 1991 SCC 532, and the orders of this Tribunal passed in OA No.241/2014 and in OA No.133/2013.

8. I have considered the rival contentions of both the parties and also perused the record. The judgments cited by the counsel for the applicant clearly lays down that the transfer of a Government servant is absolutely executive power of the respondent department or employer unless and until it is passed by the incompetent authority or passed by with a malafide intention. In this particular case, in second round of litigation, the respondent department was directed that while reconsidering the case of the applicant they shall take into account the additional affidavit filed by the applicant. Although the General Manager Telecom Department, Subhash Nagar, Pal Road, Jodhpur in para No.3 of the order referred that those persons who have completed 55 years of age would be avoided for posting to a tenure station but the General Manager has not discussed that whether the right accrued during the pendency of the petitions shall not be considered while deciding such representations. Although it has been argued by the counsel for the respondents, but this fact has not been considered effectively and positively by the competent authority in its order at Annexure-A/3. Therefore, I hereby quashed the Annexure-A/3 and direct the respondent department to reconsider that whether, when the applicant crossed the age of 55 years during the pendency of the OA, he will acquire any right of avoidance for posting to any tenure station or not. The respondents are directed to reconsider this aspect within two months from the date of receipt of a copy of this order. Till then, the applicant shall not be relieved from his present place of posting. In case of any grievance remains, the applicant shall have a right to approach the appropriate forum.

9. The OA is thus disposed of as stated above. Accordingly, the MA No.277/2014 is also disposed of. No order as to costs.

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

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Sarah  
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