

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.290/00241/2014

Jodhpur this the 17th day of July, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Nimbu Ram s/o Asu Ram b/c Meghwal, aged 57 years, r/o Indra Colony, Lohawat, Distt. Jodhpur, office address-Telecom Mechanic Junior Telecom Office, Lohawat, Distt. Jodhpur

.....Applicant

By Advocate: Shri R.R.Vyas

Versus

1. The Bharat Sanchar Nigam Limited (Govt. of India Enterprises) through its Chief Managing Director, BSNL, Bharat Sanchar Bhawan, 5th Floor, Janpath, New Delhi.
2. Bharat Sanchar Nigam Limited through Maha Prabandhak, Subash Nagar, Pal Road, Jodhpur.
3. Sahayak Maha Prabandhak (Administration and HR), Office of Maha Prabandhak, Bharat Sanchar Nigam, Jodhpur.

.....Respondents

By Advocate : Shri Aditya Singhi

ORDER (Oral)

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

The present OA has been filed by the applicant against the transfer order dated 4.6.2014 (Ann.A/1) whereby he has been transferred from Lohawat to Village Aau (Phalodi) and therefore, the applicant has prayed that the order dated 4.6.2014 and the relieving order may be quashed.

2. The short facts of the case, as stated by the applicant, are that he is resident of Lohawat and his mother is very old and he is the only son to look

after her, but he is transferred to a village which is 80 Kms. away from Lohawat. He has further stated that he is 57 years of age and retiring from service after 3 years. According to the policy of the respondents, an employee should not be transferred while he is to be retired from the post just after 5 years and there is no public interest involved in his transfer. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying to quash the transfer order.

3. By way of reply to the OA, the respondents have submitted that the applicant is working at Lohawat from a very long time and he is transferred from Lohawat to Aau in the Government interest and thereafter relieving order was passed on 20.6.2014. Since the applicant is on medical leave, therefore, he was informed about relieving order by post, but the applicant has avoided receiving the post. In the present case, no hard tenure is given to the applicant and he is posted just from one office to another office in the interest of service at a distance of about 40-45 kms, which is hardly one hour distance. The applicant had stayed for more than two decades at Lohawat whereas his other colleagues have been performing duties outside Jodhpur, hence accepting applicant's plea would be against the interest of other employees as all the employees have also be treated equally. Therefore, the applicant is not entitled to any relief.

4. Heard both the parties. Counsel for the applicant contended that the applicant has been transferred against the transfer guidelines (Ann.A/2) as he has already completed 57 years of age, therefore, his transfer is against the transfer policy guidelines. He further contended that even the non statutory guidelines are enforceable whenever they are deviated from, or deviation is against public interest or undermines public purpose. Such non-

statutory guidelines can be enforced on the basis of promissory estoppel and legitimate expectation. In support of his argument, counsel for the applicant relied upon the judgment of the Hon'ble Bombay High Court in Persis Kothawala vs. Life Insurance Corporation of India, Mumbai and another reported in 2004 AIHC 2613.

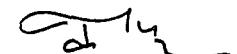
5. On the contrary, the counsel for the respondents contended that the applicant has been transferred from Lohawat to Aau, which is 40 Kms away from the present place of posting. He further contended that it is settled position of law that transfer policy or guidelines are having only persuasive force and until and unless the transfer is with malice or without authority, it cannot be interfered with by the Tribunal or the Courts and transfer is necessary incident of service. The counsel for the respondents relied upon the following judgments in support of his contention:-

- i. National Hydroelectric Power vs. Shri Bhagwan in Appeal (Civil) 109501906 of 2001 dated 11.9.2001.
- ii. State of Punjab and Others vs. Joginder Singh Dhatt reported in AIR 1993 SC 2486
- iii. Bhagwan Das Mittal vs. State of Rajasthan and ors. reported in RLW 2007 (3) Raj 1713.

6. Having considered the rival contention of both the parties, in our considered view, the facts of the case cited by the counsel for the applicant are different from the present one because in the above case the LIC of India enhanced the rent of the tenants ex parte and in that case the Bombay High Court held that even if there were some guidelines, they were enforceable by the tenant because the rent enhanced by the LIC was so excessive that it was held to be against the public interest. In the present case, the judgments cited by the counsel for the respondents have some relevance.

7. In our considered view, since the applicant has been transferred only 40 Kms away from the present place of posting and he has not able to prove any malice on the part of the respondents, therefore, no interference is required in the matter. Therefore, the OA being devoid of any force is dismissed with no order as to costs.


(MEENAKSHI HOOJA)
Administrative Member


(JUSTICE K.C.JOSHI)
Judicial Member

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