

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR

Reserved on : 27.10.2015

Jodhpur, the 6th of November, 2015

ORIGINAL APPLICATION No. 290/00231/2015

WITH

MISC. APPLICATION NO. 290/00181/2015

CORAM :

HON'BLE MS. MEENAKSHI HOOJA, ADMINISTRATIVE MEMBER

Hanuman Ram Gaur s/o Shri Madroop Ram, aged 56 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 Limited, through the Chairman cum 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 and 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

In the present OA filed u/s 19 of the Administrative Tribunals Act, 1985, the applicant has prayed that order dated 02.06.2015 (Ann.A/1), order dated 20.08.2013 (Ann.A/2) qua the applicant and relieving order dated 03.06.2015 (Ann.A/3) may kindly be quashed and the respondents may kindly be restrained from implementing the same and further the respondents may be directed to continue the applicant at Jodhpur on his present post.

2. The brief facts of the case, as averred by the applicant, are that the applicant while posted under respondent No.6 in Civil Defence at Jodhpur on the post of Telecom Mechanic was transferred to Keru vide order dated 20.08.2013 (Ann.A/2). Previously, the applicant was transferred to Boranada vide order dated 14.10.2011 but he was not relieved considering the facts that the applicant is a heart patient and he may need ICU facility and expert advice at any time. The applicant submitted various representations to the respondents requesting not to transfer him in village since he is a heart patient and looking to his family circumstances. The applicant has averred that the perusal of Transfer Policy (Ann.A/10) shall reveal that transfer can be effected only for the objectives and on the grounds mention in para Nos. 2, 4 and 5 of the policy, but the transfer of the applicant has not been effected for attaining objectives mentioned in above paras. The applicant has also averred that para 4(d) of the Transfer Policy enables placement of staff under compassionate grounds and pursuant to this provision the respondents have not transferred the staff on medical grounds and produced order dated 20.3.2013 (Ann.A/14). According to the applicant, 13 exchanges in the village under respondent No.2 have been abolished long back and the Telecom Mechanics posted in those villages are sitting idle in those villages and any one can be posted at Keru where the applicant has been transferred.

applicant requested the respondents to cancel his transfer order looking to his heart disease and the respondents have given assurance but when his transfer was not cancelled, he filed OA No.468/2013 before this Tribunal and this Tribunal vide order dated 26.03.2015 (Ann.A/16) passed in the aforesaid OA directed the applicant to submit representation mentioning his family circumstances and medical condition before the competent authority. Thereafter, the applicant submitted a detailed representation on 13.5.2013 (Ann.A/17) with all the supportive documents, but the respondent No.3 vide order dated 02.06.2015 (Ann.A/1) rejected the representation of the applicant by a non-speaking order in violation of the directions issued vide order dated 26.3.2015 by this Tribunal. Therefore, the applicant has filed this OA praying for the reliefs as mentioned in para-1 above.

3. In the reply, the respondents have submitted that pursuant to the transfer order dated 20.08.2013 (Ann.A/2) almost all the employees have already been relieved from Jodhpur to Rural Area and they have started working at the transferred place and in case the prayer of the applicant is allowed then it would create complete chaos in the administration which would not be conducive for the public interest and would be injustice to the other employees who are also transferred as per rules and regulations. The respondents have further submitted that the competent authority is the Senior General Manager, BSNL, Jodhpur and the transfer order is issued after taking approval from the competent authority in accordance with the BSNL employees transfer policy. The name of the applicant is amongst the senior most in the Telecom Mechanics stayees in the stay list. The respondents have also referred to the case of Mrs. Shilpi Bose and others vs. State of Bihar and others. According to the respondents, the transfer order dated 20.08.2013 has been passed in accordance with the transfer policy and the applicable rules and regulations and the so called list of stay particulars of

the correct list is at Ann.R/1. The applicant was appointed on 18.3.1989 with the respondents and in the appointment letter itself it is clearly mentioned 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 and GM (Project) that comes within the purview of the BSNL, Jodhpur office. In the special circumstances, the applicant has to work in any of the office of the respondents throughout India and in emergent condition he had to work in the army also. In the present case, the applicant has been transferred to a very near place i.e. Keru Exchange of BSNL that comes within the boundary of Jodhpur Development Authority, therefore, the transfer order is perfectly valid. Further, the applicant's request for reconsideration to cancel his order of transfer due to health/medical grounds vide representation dated 13.05.2015 has been duly considered again as per rules and regulations vide speaking order in compliance of the order of this Tribunal dated 26.03.2015. The respondents, therefore, prayed that the OA deserves to be dismissed.

4. In the rejoinder to reply, while reiterating the averments made in the OA the applicant has denied that if the transfer order is quashed it would create a chaos in the administration as no material has been placed on record in support of these averments. The applicant has submitted that a perusal of order Ann.A/2 will reveal that there is no mention in the order that the transfer has been made in interest of department or for business interest, but made malafidely. The applicant has further submitted that the respondents have failed to submit any document to establish that the transfer order has been passed with the approval of the competent authority. Since the respondents have failed to establish this fact it shall be taken that the transfer order has not been issued by the competent authority but has been issued by respondent No.3 who is not competent authority as the respondents have admitted that respondent No.3 is not competent authority

also denied that the transfer order has been passed in accordance with the Transfer Policy and in adherence to the guidelines or the administrative instructions. The applicant has further reiterated that the respondents have admitted that the applicant had submitted a number of representations to the respondent No.2 requesting him to not to transfer him in village area since he is a heart patient and also looking to his family circumstances as has been mentioned in para 4.3 of the OA. The applicant has further submitted that Keru being 26 Kms. From Jodhpur City is not relevant for considering the validity of transfer of the applicant made to Keru. The applicant has submitted a stay list which was submitted by the respondent in OA No.271/2012 at Ann.A/18 which shall reveal that Jagdish Prasad, Devi Lal, Hasmatuulla and Poonam Singh whose names appear at Sl.Nos. 7,10,40 and 46 are posted in Jodhpur since 20.10.1978, 26.9.1979, 13.01.1984 and 31.01.1984 respectively and have not been transferred from Jodhpur whereas the applicant is posted in Jodhpur from 20.3.1989 and has been transferred on the ground of longest stayee. Further the list Ann.R/1 is not signed by any official and it does not bear any date and such unsigned and undated list therefore, is not authentic and reliable. Thus, it is evident that the applicant is not the senior most stayee at Jodhpur. The seniors of the applicant at Jodhpur have been retained in Jodhpur while the applicant has been singled out and posted out in rural area. A perusal of Ann.A/18 will reveal that though it has been mentioned against the names of these Telecom Mechanics that they are handicapped, but there are no certificates and documents to this effect available with the respondents. These Telecom Mechanics are not handicapped and they are discharging duties of telecom mechanic including climbing the telephone poles. The applicants further submits that the reference of the judgment of the Supreme Court is irrelevant. The applicant has denied that his request for reconsideration to cancel his transfer order due to health

dated 26.3.2015 (sic). The respondents did not consider any of the grounds raised in the detailed representation. The transfer of the applicant has been malafidely made and amounts to malice in law therefore, the OA is maintainable. The applicant have further stated that as per provisions contained in Section D of the Transfer Policy employees who are more than 55 years of age would be avoided for posting on transfer. The policy further lays down that employees of 56 years shall normally be exempted from transfer involving change of station but despite these provisions the applicant has been transferred, which is in violation of the transfer policy. Therefore, the applicant pray that the applicant is entitled to the reliefs as claimed in the OA.

5. The respondents have also filed an additional affidavit in support of reply. The applicant has filed Misc. Application No.290/00181/2015 for rejecting the additional affidavit filed by the respondents on the ground that Rule 33 of the Central Administrative Tribunal Rules of Practice, 1993, clearly lays down that additional pleadings other than reply and rejoinder filed without leave of the Court shall not form part of the record. However, in this case it is seen that on dated 27.08.2015, counsel for the respondents had sought permission to file the additional affidavit and on 08.09.2015, he had submitted that he will file the same shortly and provide a copy to the applicant. In view of the above position, it cannot be said that the additional affidavit was filed without the leave of the Tribunal, therefore, the MA No.290/00181/2015 filed by the counsel for the applicant for rejecting the additional affidavit is dismissed.

In the additional affidavit, the respondents have submitted that the applicant is misleading the Hon'ble Court by placing incorrect facts and particulars before this Hon'ble Tribunal. It is submitted that the competent authority is Senior General Manager, BSNL, Jodhpur and the transfer order

approval of the competent authority only and for doing the same separate reference of any office order is not required. The respondents have further stated that as per the official practice, the competent authority passes his approval on note sheet and the file and the authorised signatory i.e. AGM (Adm. & HR) signed on his behalf the letter of transfer order wherein it is invariable mentioned that it is approved by the competent authority. It has been denied that the order has been passed with any malafide intention. The applicant has been transferred in the interest of service to Keru, considering his physical problems. It has been reiterated that the transferred place is only 26 Kms from the Jodhpur city and comes under the jurisdiction of JDA, Jodhpur and frequent and convenient transport facilities at all and any of the time and the applicant can avail of medical facilities at Jodhpur. It is denied that the controlling officer has ever recommended his case. The respondents have further submitted that the officials as mentioned were exempted from transfer on the request of the officials due to physical deformation and their unsuitability to do field duty and not due to medical/illness grounds. The transfer of the applicant has been done in accordance with the Departmental Rules and Regulations. Para 3 of the BSNL Employees Transfer Policy dated 07.05.2008 deals with Management's right which reads as "The management has the right to move or not to move employees (s) from one post/job to another, to difference locations, to different shifts, temporarily or permanently, as per business requirements and special needs." The name of the applicant is amongst the senior most in the Telecom Mechanic stayees in the stay list. The transfer order dated 20.08.2013 is perfectly valid and legal. The respondents have further submitted that the applicant has been transferred to perform the duties of Keru Exchange related work and only on special occasions the Civil Defence fault which occurs rarely are to be attended that too in rare cases when none else is available within the section

The respondents have therefore,

6. Heard. Ld. Counsel for the applicant referred to order dated 02.06.2015 (Ann.A/1) by which his representation dated 13.05.2015 (Ann.A/17) (p.67-70) filed in pursuance of the decision of this Tribunal dated 26.03.2015 in OA No.468/2013 (Ann.A/16) (p.57 to 66) and contended that the order dated 02.06.2015 (Ann.A/1) has been issued without taking into account the directions of this Hon'ble Tribunal, which were to thoroughly consider the representation of the applicant and though the applicant submitted his detailed representation mentioning his family circumstances and medical condition with supported documents, but they have not been taken into account in the order Ann.A/1. He further submitted that by order dated 03.06.2015 (Ann.A/3) the applicant was relieved on 3rd June, 2015 itself even before the order dated 02.06.2015 was served on him and this was done during the summer vacation of the Hon'ble Tribunal so that the applicant could not approach the Tribunal and this shows the malafide in issuing the relieving order. Counsel for the applicant further referred to Ann.A/2 dated 20.08.2013 which is his initial transfer order in which as per the note below the list, it has been mentioned that the applicant, apart from performing his duty in Station Telephone Exchange, Keru, he will also do the additional duty regarding civil defence at Jodhpur. Thus, he has been placed under two different authorities. Counsel for the applicant also submitted that the applicant is a serious heart patient and there are no facilities of ICU/Heart Specialist at Keru and thus his medical conditions has not been taken into account at all by the authorities while issuing order Ann.A/1. Counsel for the applicant further submitted that it has not even been issued by the competent authority because as per the policy of the BSNL (Ann.A/9) the transferring authority of Group-C and D non-executive employees is Circle Head/SSA Head but the order dated 02.06.2015 Ann.A/1 has not been issued by this authority. He also referred to Ann.R/1 and submitted that this

again and again and reiterated that in order dated 02.06.2015 (Ann.A/1) no proper consideration of the medical grounds submitted by the applicant have been given nor the order has been issued by the competent authority and further the relieving order Ann.A/3 has been passed in a mala-fide manner and Ann.A1/, A/2 and A/3 require to be set-aside and prayed for allowing the OA.

7. Per contra, Ld. counsel for the respondents submitted that the order dated 02.06.2015 (Ann.A/1) is a reasoned and speaking order passed in pursuance of the order dated 26.03.2015 (Ann.A/16) of this Tribunal in OA No.468/2013. In this context, he submitted that the applicant has been posted at Keru Exchange vide order dated 20.08.2013 (Ann.A/2) which is just 25 Kms. from Jodhpur and is within the jurisdiction boundaries of the Jodhpur Development Authority (JDA) itself. Counsel for the respondents further submitted that as can be seen from Ann.R/1, the applicant is the senior most stayee and has been in Jodhpur from the year 1989 itself from his date of appointment and Keru being so close to Jodhpur, the applicant can avail of all the medical facilities in Jodhpur itself. The list is signed by the authority concerned and is not an unsigned list as mentioned by the counsel for the applicant and his representation has been duly considered including his medical position. Counsel for the respondents further submitted that both the applicant's transfer order dated 20.08.2013 (Ann.A/2) and the decision on the representation vide order dated 02.06.2015 (Ann.A/1) have been issued after due approval of the competent authority and the same has been recorded in the orders also. The applicant has already been relieved on 03.06.2015 as per Ann.A/3 and there is no malafide because he has been relieved in pursuance of the order dated 02.06.2015 (Ann.A/1) and it can certainly not be said that this was done to prevent him for getting interim relief from this Tribunal. In this case, as may be seen from Ann.A/2 and A/1,

applicant has already been relieved and he has joined at Keru, therefore, he prayed for dismissal of the OA.

8. Considered the aforesaid contentions and perused the record. A perusal of initial transfer order dated 20.8.2013 (Ann.A/2) reveals that the order was issued with the approval of the competent authority. Further Ann.A/1 order which is decision on the representation of the applicant in pursuance of the directions given by this Tribunal in OA No. 468/2013, the same has also been approved by the competent authority. Thus, it cannot be said that the orders have not been issued by a competent authority. Moreover, Ann.R/1 is a signed certified copy of stayees at Jodhpur in which name of the applicant is at Sl.No.1 and he is in Jodhpur from his initial appointment i.e. from 20.3.1989 and there is no reason to doubt about authenticity of this list. It is further noted that as mentioned in the reply and brought out by the counsel for the respondents, Keru is just 25 Kms. from Jodhpur and within the JDA limits and further the applicant has already been relieved and he has joined at Keru. There also does not appear to be any discrimination against the applicant on medical grounds, as brought out by the respondents, some of the persons as mentioned by the applicant with reference to Ann.A/18 (filed with the rejoinder) were exempted due to physical deformation and their unsuitability to do field duties. In any case, transfer and posting are administrative decisions where overall requirement of the Organization/Department need to be given due priority and this also finds mentioned in the policy with reference to the para on 'Management's Right'. As such, no case is made out by the applicant regarding policy violation. Further, there does not appear to be force in the arguments of the counsel for the applicant that Ann.A/3 is issued in a malafide manner because it is noted that he was relieved on 03.06.2015 in pursuance of the order dated 02.06.2015 (Ann.A/1). The order dated 02.06.2015 as at

after the 1st round of litigation appears to be reasoned and speaking, taking into account the plea of the applicant and the administrative exigencies.

9. In view of the above analysis and as held by the Hon'ble Apex Court in a catena of judgments that transfer is an incident of service and Court and Tribunals should not ordinarily interfere in such matters, unless there is a malafide or the orders are issued by an authority not competent to do so or it is in violation of the statutory rules, and as this does not appear to be so in the present case, now there remains no scope or justification to interfere further with, or to set-aside Ann.A/1, A/2 and A/3. However, the applicant is always at liberty to approach the respondent authorities for redressal of his any genuine difficulties.

The OA is accordingly dismissed with no order as to costs.

The Misc. Application No.290/00181/2015 has already been dismissed as in Para-5 above.


(MEENAKSHI HOOJA)
Admv. Member

R/