

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

Original Application No.138 of 2005

Lucknow, this 7 the day of July 2005.

HON'BLE SHRI S.P. ARYA, MEMBER (A)

HON'BLE SHRI K.B.S. RAJAN, MEMBER (J)

S.C. Kaushal, aged about 47 years, son of R.V.S. Kaushal, resident of House No. 2/522, Vijay Khand, Gomti Nagar, Lucknow (presently working as General Manager Maintenance (NTR), Bharat Sanchar Nigam Limited, Kaiserbagh Telephone Exchange, Lucknow.

...Applicant.

By Advocate: Shri R.C. Singh.

Versus.

1. Union of India, through the Secretary, Ministry of Communication (Department of Telecommunication), Sanchar Bhawan, New Delhi.
2. Bharat Sanchar Nigam Limited, Statesman House, 8 Barakhamba Road, New Delhi, through its Chairman-cum-Managing Director.
3. Director (H.R.D.), Bharat Sanchar Nigam Limited Board, Statesman House, 8 Barakhamba Road, New Delhi.
4. Director (Operations), Bharat Sanchar Nigam Limited Board, Statesman House, 8 Barakhamba Road, New Delhi.
5. Joint Deputy Director General (Personnel), Bharat Sanchar Nigam Limited Board, 102-B, Statesman House, 8 Barakhamba Road, New Delhi.



6. Shri G.C. Srivastava, General Manager Telecom District,
Darbhanga (Bihar Circle).

...Respondents.

By Advocate: Shri G.S. Sikarwar for Official respondents.

Shri P.K. Srivastava for Private respondent.

ORDER

BY SHRI K.B.S. RAJAN, MEMBER (J)

1. The applicant Shri S.C. Kaushal, has moved an O.A. inter-alia with the following prayers;

1. Issuing/passing of an order or direction setting aside the impugned transfer order dated 15.3.2005, issued by the Respondents No.5 (as contained in Annexure No.1 to the Original Application), as modified vide order dated 1.4.2005 (contained in Annexure No.A-7 to the Original Application) , in so as it relates to the applicant, after summoning the original records.
2. Issuing/passing of an order or direction to the Respondents to allow the applicant to work and discharge the duties of General Manager Maintenance (NTR), Bharat Sanchar Nigam Limited, Lucknow as hitherto-fore and pay him salary and other benefits regularly."



2. The applicant has also, as an interim order, prayed that the impugned order dated 15.3.2005 as modified vide order dated 1.4.2005 in so far it relates to the applicant be stayed. By order dated 29.3.2005, the interim prayer was allowed and the impugned orders were kept in abeyance.

3. The applicant was appointed in the Indian Telecommunication Service as a Group-A officer in 1983 and at present he is in the Senior Administrative Grade. As a part of condition of services, the applicant has all India transfer liability. From 1983 till now, he had been posted in various capacities and he has been transferred to 6 places including the present place of posting at Lucknow, the total number of transfers being nine.

4. After the constitution of B.S.N.L., the services of the applicant were transferred to the said Corporation and the applicant is on deemed deputation to the said Corporation. In respect of transfer matter, the Guidelines and norms as prescribed by the D.O.T. apply to the officers who are on deemed deputation to BSNL. The extant regulations/ Guidelines relating to transfer and posting of officer of DOT/BSNL/MTNL are given in O.M. dated 23.2.2003 (Annexure-A-1) along with its enclosure. Some of the salient features of the transfer and posting policy or as under;

“4. The post, station and circle tenure for different cadres will be as follows:

SI No.	Name of Cadre	Post tenure	Station tenure	Circle tenure
1	SAG	4	6	8

2	JAG	4	8	8
3	STS	4	8	8
4	TES Group B/JTS or equivalent in other disciplines	3	9	24

For counting the station/circle tenure, the period of service rendered in the previous grade/grades would also be considered. However, the number of officers transferred out of circle at any time would not generally exceed 10% of the sanctioned strength in the Circle for officers up to STS level.

1. *In a career span of all officers, normally one hard tenure such as North East, K&K, A&N Islands and one term in other tenure Circles/SSAs would be ensured. After completion of tenure, the officer should be accommodated at the choice station as far as possible and not generally disturbed for the next four years. The stay in tenure/hard tenure Circle/SSA would be counted only if the officer has worked for the tenure period in the circle after the same was declared tenure Circle/SSA.*

For considering officers of tenure posting, the officers with longest stay in the particular circle would be considered first. However, posting of tenure officers to hard tenure station would generally be avoided.

9. *Notwithstanding the above guidelines, the competent authority will have the power to transfer officers in the interest of service as and when required."*
5. The respondents had, on 15.3.2005, issued a transfer order in respect of as many as 59 officers and the applicant was transferred from the post of GMM, Lucknow, NTR to GMTD, Jamshedpur Jharkhand Vice one Shri Pradeep Kumar Srivastava transferred. Later, by another order dated 1.4.2005, a slight modification was made to the abovementioned order, in as much as in place of the aforesaid Shri Pradeep Kumar Srivastava one

Shri G.C. Srivastava has been substituted, who stood transferred after his soft-tenure circle at Bihar to Lucknow. As the O.A. has direct implication with the transfer of the said Shri G.C. Srivastava, he has also been impleaded as Private respondents in the O.A.

6. The applicant who has been posted to Lucknow in September 2002 has assailed the aforesaid transfer order on various grounds. The grounds which are emphasised by the counsel for the applicant at the time of hearing including the following;

(A). Because the applicant was transferred to Lucknow in 2002 and joined on 2.9.2002 and has not completed even three years service at Lucknow.

(D). Because the impugned transfer order has not been issued by the competent authority and as such the same is void-ab-initio and no nest.

(E). Because neither public interest nor administrative reason has been shown in the impugned transfer of the applicant and it has been passed in colorable exercise of power.

(F). Because the impugned transfer order is contrary to the professed norms and policy as enunciated by the Government of India, Ministry of Communication (Department of Telecommunications) vide Officer Memorandum dated 25.2.2003.

(G). Because it is beyond the power and jurisdiction of the Bharat Sanchar Nigam Limited to change or modify the professed norms and policy set out by the Government of India, Ministry of Communications (Department of Telecommunications).

(J). Because while 11 other officers have been allowed to be retained at old place, the case of the applicant has not been considered at all, which shows discrimination."



7. On notice being issued both the official respondents as well as private respondent filed their Counter-Affidavits. Certain Preliminary objection was also taken by the official respondents in para-3 of their Counter-Affidavit contending that since BSNL has not so far been notified under Section 14 (2) of Administrative Tribunal Act, 1985, the Tribunal lacks jurisdiction in this case. The main ground of objection repeatedly spelt out by the official respondents in their reply is that the applicant is continuously working in Northern Telecommunication Circle since July, 1986 till date with only a short break of 7 months from February to September, 2002 and as the transfer policy clearly stipulates that one should be transferred after eight years of Circle Tenure, the applicant has been rightly transferred.
8. The Private respondent in his Counter-Affidavit defends his case stating that the applicant's stay in one circle is more than for a span of 18 years with a short break of 7 months. Apart from this, he has also stated in his Counter-Affidavit that he has served the tenure circle in Bihar from February 2002 till date and by virtue of provisions to seek a choice station as per which he has opted for Lucknow he has been posted as GMM at Lucknow; as such his right of choice station would be frustrated in case, if he is not allowed to take charge in the place of the applicant.
9. Rejoinder-Affidavit to the Counter-Affidavit has also been filed by the applicant wherein same ground and contention were repeated with reinforced emphasis. In addition, the applicant has preferred a supplementary affidavit, annexing certain documents relating to his daughter's health.

A handwritten signature in black ink, appearing to read 'Gn'.

10.Arguments were advanced by the counsel for the parties. The counsel for the applicant has vehemently argued that BSNL, an offshoot of the Department of Telecommunication has to follow the guidelines provided for transfer and it's power relating to transfer of officers belonging to DOT are very much restricted. The Learned counsel contended that since in his case the Appointing Authority is the President of India, unless so delegated the BSNL has no power to transfer the applicant and no documentary evidence has been produced to substantiate that the order has been issued by any such delegated power. He has further submitted that even in the case of BSNL, since the Board of Director is the legitimate authority to take decisions on important matters, it should have been the Board or at best any other authority to which the powers have been delegated alone could order for such transfer. This also, the counsel pleads has not been followed. The Learned Counsel contended that the order has been 'issued' with the 'approval' of Competent Authority, vide Paragraph-8 of the impugned order dated 15.3.2005 and it is the contention of the counsel for the applicant that it is no where been explained as to who the competent authority is. Learned counsel for the applicant, further, contended that in so far DOT officers on deemed deputation are concerned, guidelines formulated by the DOT alone apply, and no power has been vested with BSNL to modify the same. It is the case of the applicant that modification in his case has been made when an additional condition has been put forth by BSNL in their O.M. dated 21.12.2005 which reads as under:


"The period of less than 2 years service spent in different territorial areas, except in case of Tenure Circles/ stations where tenure is of one year shall not

be treated as break from continuation of service in the present circle."

11. In addition, the counsel for applicant has contended that he had completed 2 years plus in Lucknow and under the guidelines the tenure is four years in respect of a particular post and six years in respect of a particular station and since he has not completed four years in the same post nor six years in the same station, his transfer is vitiated as the same is violative of the professed norms. The counsel for the applicant has also invited our attention to the table at Para 4.12 wherein, he has given details of post tenure station and Circle tenure and contended that such officers mentioned there in have been in the same station/circle for longer duration but were not transferred.

12. On their part, the learned counsel for official respondents emphasized that the applicant has put in longer duration in the same circle. As regards the contention that the transfer order is not passed by the Competent Authority, the counsel for the respondent's states that under the provision of guidelines, CMD has been authorized to issue the transfer order. The said provisions reads as under;

"On allocation of officers of all thy cadres to various units, the specific posting of SAG level officer and below may be issued by CMDs/CGMs within their delegated powers."

According to the learned counsel for the private respondents, his main thrust is his legitimate right to seek a posting at the place of choice as per the provisions of guidelines on transfer. Since he has done soft tenure posting at Bihar, he is entitled to such choice station posting.



13. The parties were permitted to make available the relevant authorities in support of their contention and counsel for the applicant and official respondents have made available certain authorities / documents. In so far as the counsel for the applicant is concerned, he relies upon the following decisions;

1. *AIR 1978 SC 851 Mohinder Singh Gil Vs. The Chief Election Commissioner, New Delhi and Others.*
2. *(1994) 2 UPLBEC 1030-Natthi Lal vs. Director, Rajya Krishi Utpadan mandi Parishand and Others.*
3. *1999 (17) LCD-419- Dr Auneesh kumar and others vs. Director, IVRT and Others.*
4. *1990 SCC (L&S) 918-Ram Adhar Pandey.*
5. *Judgment dated 10.7.1998 passed in O.A.No.277 of 1995 (Satyendra Singh vs. Union of India & Others.*
6. *(1992) 20 ATC 66-M.K. Sharma Vs. u.O.I. & Others.*
7. *(1993) 223 ATC 836-Jayashree L. Narayanan & Another vs. Union of India & Another.*
8. *(1996) 34 ATC-255-Vinod Sahi Vs. U.O.I. & Others.*
9. *(2004) 22 LCD 366-Kallu prasad Vs. State of U.P. and others.*



10.(1994) SCC (2) 416-Dr. Ramesh Chandra Tyagi Vs. union of India.

11.1995 Supp. (4) SCC -169 Abani Kanta Ray Vs. State of Orissa and Others.

14.Learned counsel for the respondents also filed the authority in the case of Rajendra Prasad Vs. union of India reported in ESC (Alld.) 2—5 (2)- 1224 and has also made available the Rotational Transfer Policy issued by the Department of Post and Telegraph dated 12.11.1981 as per which Gazetted officers who will be normally subjected to a station tenure lf 4 years, which may be extended up to 6 years in individual cases, in the public interest.

15.In the Supplementary Rejoinder-Affidavit, the applicant has stated that his daughter Km Neha Kaushal is a student of B. Tech. (First Year) in Northern India Engineering College, Lucknow and her course is of 4 years duration. And, his daughter is patient of Seizure and requires constant treatment. According to the applicant, she could not stay in the Hostel, and this is one more reason to the applicant to agitate against his transfer.

16.We have given our thoughtful consideration and have also perused the records.

17.The Hon'ble High Court of Judicature at Allahabad has in its judgment in the case of Rajendra Prasad vs Union of India 2005 (2) ESC (All) 1224, referring to a number of judgments of the Apex Court congealed the entire provisions relating to transfer of a government servant in the following words:-



"10, In view of the above, it is evident that transfer is an incident of service. An employee working on a transferable post cannot claim a right to be posted at a particular place. It is the choice of the employer to determine as on what place and for how long, the services of an employee are required. The court cannot interfere with the transfer order unless it is found to be in contravention of statutory rules or passed in malafide."

18. Thus, it is well settled that the scope of judicial review in the matters of transfer is absolutely restricted. "Administrative independence" is the Rule and 'judicial interference' is only an exception. And, even such judicial interference is permitted or justified, only in cases of **malafide** or **infraction of professed norms or principles.**" (**Vide the three Judges Bench Judgment of Apex Court in the case of State of U.O. and Others Vs. Ashok Kumar Saxena and Another's, 1998 (3) SCC-303.**) Hence, while analyzing the case, the Tribunal has to keep in view this limited provision of power/indulgence of judicial interference in matters of transfer. In so far as malafide is concerned, there has absolutely been no mention thereof nor has it been advanced in the course of argument and thus what is left to be seen is whether there has been any infraction of professed norms.

19. Before entering into the above, it will be appropriate to consider the other contention of the applicant. In so far as competence of the authorities which passed the impugned transfer order, the counsel for the official respondents has rightly brought to our notice that after allotment of officers to BSNL, the CMD has got the power and he is the Competent authority. The authority who has signed the impugned order has



clearly specified that the said transfer order is issued with the approval of Competent authority. Thus, the authority that has issued the transfer order has only authenticated the decision of the competent authority and the issue of the letter is in execution of the competent authority. Hence no legal flaws can be fastened in this regard. Secondly, as to the power of BSNL to modify any provisions of the guidelines, the counsel for the applicant contends that the BSNL cannot introduce a new condition that posting for a circle less than 2 years can not be counted as period spent in different circle, the same does not hold water. First, the BSNL has only clarified as to the condition relating to the Tenure Circle. Secondly, the prescription of various circles is with reference to the entire Corporation and as such, such a prescription is within the power of the Corporation. As such, the Corporation can very well even stipulate such a condition and the same cannot be held to be any modification of the policy laid down by the D.O.T.

20. Now the contention relating to infraction of professed norms as contained in the guidelines. The Norms stipulate that an officer of the level of SAG can be permitted to remain to the same post for a tenure of 4 years and in the same station for 6 years and in the same circle for a period of 8 years. It is the case of the applicant that since his posting at Lucknow is only for a period of 2 years plus and there being many more officers in Lucknow itself, who have put in more years of service in the same place his transfer is in violation of the professed norms in as much as

(a) it does not comply with the provisions as to the tenure of place in the particular post and

(b) the applicant not being the longest stayee, he could not have been transferred before others who have longer stay at Lucknow are transferred.

21. Learned counsel for the respondents stated that since the applicant has been in the NTR for as many as 18 years, this is not infraction of professed norms. According to the learned counsel for the respondents, the tenure aspect could be completion of either of the three i.e. Post Tenure, Station Tenure or Circle Tenure.

22. Since the counsel for the respondents contended that any one of the three situations i.e. completion of 4 years in the same post or 6 years in the same station and 8 years in the same circle if fulfilled, the same makes one liable for transfer, it was found expedient to ascertain the same from a responsible officer of the respondent organization. This was, however, not substantiated by any specific document. Further, as the prescription of terms of posting, tenure of station and tenure of circle posting as contained in the guidelines was not clear, a senior officer of BSNL was asked to elucidate and accordingly the DGM (Administration) U.P. (East) made himself available and he explained the rules position. According to him, the guidelines provided for a normal tenure of four years and normal tenure of six years in the same station and normal tenure of eight years in the same region. **In other words, after four years one has to be rotated from the post was holding to some other post within the same station and thus, it become inter station rotation. After six years, however, in the same station, one should move out of station but within the same region which means that after 6 years the transfer shall be in inter region. After 6 years one has to move out of region, it self, which means inter regional, transfer.** The contention of the counsel for the respondents is that since after 8 years the applicant is in same

circle, he has been transferred. On the other hand counsel for the applicant submits that the authorities could have ordered for the move of the applicant out of the region after completion of 8 years whereas, they did not chose so. If once they have chosen to retain the applicant in the same circle, there is an expectation that that the applicant is not disturbed for a minimum period of four years where he is posted and thus there is an infraction of the professed norms. It was at this juncture that the applicant has brought the domestic circumstances and stated that his daughter cannot be allowed to be left alone at Lucknow in view of her health condition. There is substance of the contention of the applicant on the following two scores:-

(a) There is a purpose and logic in stipulating four years, six years and eight years respectively in respect of post tenure, station tenure and Regional tenure. Four years in a post is to enable the incumbent to understand the functions, make available his service after thoroughly understanding and the rich expertise gained by remaining in the post for a substantial period. At the same time, if the period is for a fairly long period, the same would result in extra 'attachment' either to the post or with the general public if it is one of the sensitive posts. Hence, rotation after four years is considered essential. At the same time, instead of moving the individual outside the station he could be rotated in some other post within the same station. This period of six years directly or indirectly facilitates the incumbent to establish his family and have his children education uninterrupted for such a period. Period of eight years is in all probability meant to ensure that the experience and expertise of the incumbent is made available to other Circles also as otherwise a particular circle would have the best of

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officers while insouciant may be in another particular circle. Thus, there is rationale in stipulating the aforesaid period of four years in a post, six years in a station and eight years in a Circle. Completion of eight years in a Circle alone would not suffice. Hence, in view of the fact that the applicant has not completed even half of his station tenure, there is certainly infraction of the professed norms.

(b) The Apex court in the case of **B. Varadha Rao vs State of Karnataka (1986) 4 SCC 131**, at page 135 held as under:-

“6. One cannot but deprecate that frequent, unscheduled and unreasonable transfer can uproot a family, cause irreparable harm to a government servant and drive him to desperation. It disrupts the education of his children and leads to numerous other complications and problems and results in hardship and demoralization...”

Again, In the in the case of **Amar Kant Choudhary Vs. State of Bihar AIR 1984 (SC) 531**, the Apex court observed as under;

“Suspensions, adverse remarks in confidential rolls and frequent transfers from one place to another are ordered or made many a time without jurisdiction and without giving a reasonable opportunity to the officer concerned and such actions surely result in the demoralization of the services. (Emphasis supplied).

Considering the above, the transfer order in respect of the applicant is certainly in violation of the professed norms. If there is no violation of the professed norms and the transfers so made are in accordance with the laid down policy, even frequent transfers, despite

the same having demoralizing character, nothing could be done by the Court, as the Apex Court held in the case of Abhay Kant Chowdhri (Supra), wherein after, observing as above, the Court goes to observe, "*Courts can give very little relief in such cases. The Executive itself should, therefore, devise effective means to mitigate the hardship caused to the officers who are subjected to such treatment.* But since in this case there is also an infraction of the professed norm as stated above, judicial interference is justified.

23. At the same time it is to be seen whether the respondent No. 6 is hampered in any way by retention of the applicant here at Lucknow. He has crystallized certain amount of right in seeking choice station. He has, in fact, exercised the option to Lucknow, but it is not known whether he has exercised three options, which are, as confirmed by the officer of the Respondent corporation, available to him. To a pointed question to the counsel of the official respondents, as to whether the private respondent could be accommodated only in that post which is occupied by the applicant, the reply was that the private respondents could be accommodated in some other post as well at Lucknow. As such, it is not such that retention of the applicant at Lucknow would deprive the private respondent of his option. The official respondents could well accommodate him either in some posts at Lucknow or in any of the other choice station which the private respondent would have opted for.

24. In this case, the applicant has been at Lucknow for 2 years 8 months by now. It is not been shown by the respondents that the transfer order of the applicant was under any particular exigency of service. Obviously, it is a normal rotational transfer. The transfer order does not stipulate whether the same is on administrative ground or in public interest, though, one could

infer that the transfer order is certainly in public interest as, such transfer of as many as 59 officers cannot but be held as in public interest. But at the same time, it is not spelt out that services of the applicant are absolutely required at the new place of posting that too forthwith. The respondent, keeping in view the fact that there has been an infraction of the norm professed and that the applicant has been transferred as many as nine times earlier, which he had accepted without any agitation should well have retained him at Lucknow at least till he completes four years though not six which is the prescribed station tenure. In that event, two out of the three parameters (i.e. post tenure and circle tenure) would have been fulfilled. Again, Table at Para- 4.12 of the O.A. shows that many officers have been retained and the applicant has been shouted out. Thus, there is also some discrimination meted to the applicant.

25. In view of the above, we are of the considered opinion that in the instant case as of the guidelines namely tenure posting in the same station has been vitiated As his stay at Lucknow is only about the period of 2 years and 8 months and since one and 4 months are available so he could be made to transfer, we are of the considered view that ends of justice would be met if the applicant is permitted to stay at Lucknow itself, either on the same post or some other post for a period of 18 months from now so that on completion of his tenure he could be shifted-out. It is perhaps not impossible for the official respondents to accommodate the private respondents as, according to them, numbers of equivalent posts are available where individual can be posted.

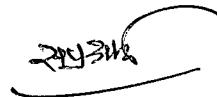
26. In view of the above, the O.A. succeeds and the respondents are directed not to shift the applicant from Lucknow for time being.

The impugned order to the extent of the transfer of the applicant is thus quashed. The respondents may however consider the applicant for move out of N.T.R. after completion of four years from the date of the posting of the applicant at Lucknow. It is open to the official respondents to accommodate the Private respondent to any choice station, as he would be opted for.

27. With the above direction the O.A. is disposed of without any order as to costs.



(K.B.S. RAJAN)
MEMBER (J)



(S.P. ARYA)
MEMBER (A)

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