

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. NO. : 218/96

DATE OF DECISION: 21 MAY-1996.

A. K. SHARMA.

: APPLICANT.

Vs.

UNION OF INDIA & ORS. : RESPONDENTS.

COUNSEL FOR THE APPLICANT. : SHRI S. K. SINGH.

SHRI P. K. THAKUR.

SHRI M. K. AMBASTHA.

COUNSEL FOR THE RESPONDENTS. : SHRI P. K. JAIPURIYAR,
ADDL. STANDING COUNSEL.

C O R A M

HON'BLE MR. N. K. VERMA, MEMBER (ADMINISTRATIVE)

O R D E R

HON'BLE MR. N. K. VERMA, MEMBER (A) :

Heard Shri S. K. Singh, learned counsel for the applicant for grant of interim order by staying the operation of the impugned order at Annexure-A/5, dated 08.06.1995 and Annexure-A/8, dated 20.12.1995 by which the applicant was transferred and posted at DTO, Gumla. The applicant alongwith one Shri R. K. Kujur, Telegraphist, were struck off the strength of their respective offices and relieved on the afternoon of 20.12.1995 with a direction to report for their duties to the Officer Incharge, DTO, Gumla on 26.12.1995. Shri Singh brought to my notice that the applicant was transferred as a surplus staff to the newly created DTO at Gumla, whereas, persons

junior to him at Ranchi have been retained. Moreover, the applicant had already done the tenure posting at Daltonganj from where he was posted to Ranchi on his own request. He had filed an earlier O.A. No. 67/96 which was disposed of by an order dated 15.02.1996 in which the Chief General Manager (Telecom), was directed to dispose of the representation of the applicant by a speaking and reasoned order within a period of one month from the date of receipt of that order. Accordingly, the Chief General Manager (Telecom), Bihar Circle, Patna, through his order dated, March 21st, 1996, had examined the representation of the applicant and come to the conclusion that Shri A.K. Sharma, Telegraphist, being junior most, has been transferred to Gumla under the Ranchi Telecom. There has been no malafide on the part of the authority regarding the transfer of the applicant as he was transferred due to the exigency of the situation keeping in view the interest of the department. His prayer for re-consideration of the transfer to Gumla was disallowed and he was directed to join his post at Gumla within two weeks. The applicant has now come again through this O.A. filed on 05.04.1996 for following reliefs :

(A) For quashing the order of the respondents dated 08.06.1995 issued under the signature of the Telecom District Manager, Ranchi, by which the applicant was transferred to Gumla from Hinoo.

(B) For quashing the order dated 20.12.1995

issued under the signature of the Sub-Divisional Engineer Incharge, CTO, Ranchi by which the applicant has been transferred and posted at DTO, Gumla and struck off from the strength of his respective office and unilaterally relieved in the forenoon of 23.12.1995.

For quashing
(C) ~~L~~ The order of the Chief General Manager
(Telecom), Bihar Circle, Patna, dated
March 21st, 1996.

2. The applicant has assailed these orders as illegal, arbitrary and malafide. During the course of arguments, Shri S.K.Singh very strenuously tried to establish that the applicant's transfer was wholly illegal in view of the fact that it violated the guidelines issued by the department by which it was stipulated that in the absence of volunteers, Group 'C' officials in the division may be transferred to man newly opened Telegraph office in remote areas for a tenure of two years as per the Department of Telecommunications Memo placed at Annexure-A/1, dated 04.02.1994. The applicant had already done three years posting at Daltonganj as a Telegraphist which was a newly opened DTO at that time, as per Annexure-A/2. Thereafter, the applicant on his own request by foregoing his transfer T.A. and Transit Time came to Ranchi from Daltonganj in 1990 and, therefore, he should have been left to continue there because of the shortage of staff at Ranchi as per the departmental yard-stick as the department is having only 24 Telegraphists against the

requirement of 29 telegraphists. It was also brought to notice that he was declared surplus one while Miss Shashi Kumari was retained as Telegraphist at CTO, Ranchi although she is working on casual basis which would indicate that there is a requirement of casual staff at Ranchi and the applicant could have been retained at Ranchi instead of being transferred to Gumla.

3. I have given a very careful consideration to the averments and arguments of applicant's counsel. The Hon'ble Supreme Court has in a number of judgments laid down the scope of judicial review of transfer. It is fairly well settled on the basis of the said decisions that unless a transfer order is malafide or is made in violation of statutory provisions "Tribunal cannot interfere." It has also been laid down that executive instructions are in the nature of guidelines. They do not confer legal and enforceable rights. In *Union of India vrs. S.L.Abbas*, (1993) 25 ATC 844, Supreme Court has laid down that "The Tribunal is not an appellate authority which can substitute its own judgment to the judgment of the administrative authorities." Interference with an intra vires bonafide order of transfer, therefore, would be in excess of the jurisdiction of the Tribunal. In a recent judgment passed by the Hon'ble Supreme Court in the case of *Union of India vrs. Ganesh Dass Singh*, cited at (1995) SCC (L&S) 1142, the Supreme Court has held that "Transfer made by competent authority for administrative reasons - Held, not subject to judicial review - Where the allegation that transfer to another Depot was mala fide, was made without specifying the officer to whom that allegation was att-

ributed and the further allegation that the transfer had been made on account of the transferee's complaint about the working of the Depot was rejected by the Tribunal, such order of transfer, should not have been quashed as being the result of trade union activities of the transferee - Even otherwise, on facts, the Tribunal's view that the transfer was made in colourable exercise of powers, held, not justified - *Mala fides* - Administrative law - Judicial review."

3. In view of these directions of the Hon'ble Supreme Court precluding the interference of the Tribunal in transfer matter unless the same is contrary to the rules and suffers from *mala fides*, the contention of the applicant cannot be sustained. The O.A. is dismissed at the admission stage itself as devoid of merits.


(N.K.VERMA)
MEMBER (A)