

Oct. 1998

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NOS.: 302/98 AND 303/98.

Dated this Friday, the 1st day of May, 1998.

CORAM : HON'BLE SHRI JUSTICE R. G. VAIDYANATHA,
VICE-CHAIRMAN.

Shri G. N. Panjwani,
SSS, Office of the J.T.O.,
Telegraph Office,
Ulhasnagar - 421 001.

Residing at -
201, Devrishi Apartment,
'A' Block, Ulhasnagar - 421 001.

.. Applicant in
O.A. No. 303/98.

Shri R.F. Shahani,
BCR, TOA, Gr.III (G),
Office of the Divisional Engineer,
E-10-B, New Telephone Exchange,
Ulhasnagar - 421 001.

Residing at -

12, Rishikesh Apartment,
3rd Floor, Near Sadhu Vaswani
Garden, Gol Maidan,
Ulhasnagar - 421 001

(By Advocate Shri K.B. Talreja
alongwith Shri K.R. Yelwe).

.. Applicant in
O.A. No. 302/98.

VERSUS

1. Union Of India through
The General Manager,
Telecom, Maharashtra Circle,
Department of Telecommunication,
Ministry of Telecommunications,
Fountain Bldg., Mumbai-400 001.

Respondents in
both the O.A.

2. The General Manager,
Telecom (Dist. Kalyan),
Department of Telecommunications,
Telephone Bhavan,
Kalyan - 421 301.

3. The Divisional Engineer,
Telecom, E-10-B, New Telephone
Exchange, Ulhasnagar - 421 001.

Respondent No. 3
in O.A. No. 302/98.

4. The Jr. Telecom Officer, Telegraph Office, Ulhasnagar - 421 001.	Respondent No. 3 in O.A. No. 303/98.
5. The Assistant General Manager (A), O/o. the General Manager, Telecom, Dist. Kalyan, Telephone Bhavan, Kalyan - 431 301.	Respondent No. 4 in both the O.As.

(By Advocate Shri P. M. Pradhan).

: OPEN COURT ORDER :

{ PER.: SHRI R. G. VAIDYANATHA, VICE-CHAIRMAN }

These are two applications filed by the two officers of Telecom challenging the order of transfer dated 30.03.1998. Both the applicants are working at Kalyan and are now transferred to Bhiwandi under the impugned order. Respondents have filed reply opposing both the O.As. I have heard the Learned Counsels appearing on both sides.

2. Earlier the applicants came to be transferred under the order dated 20.10.1997. Both the applicants challenged the said order by filing two O.As. in this Tribunal in O.A. No. 968/97 and 969/97. The Learned Single Member Bench of this Tribunal by order dated 12.02.1998 gave liberty to the applicants to make a representation against the order of transfer and the respondents were directed to consider the representation and pass a speaking order and till then the order of transfer came to be stayed.

In pursuance of this order of the Tribunal, both the applicants made a representation to the respondents on 23.03.1998. The respondents rejected

the representation and then issued a fresh movement order dated 30.03.1998 and being aggrieved by the same, the applicants have preferred this two O.As.

3. The Learned Counsel for the applicant questioned the legality of the order of transfer and contended that the order of transfer is contrary to rules, abnormal and arbitrary. He also submitted that the applicants are put to great inconvenience and difficulties due to these transfers. On the other hand, the Learned Counsel for the respondents, while supporting the impugned order, submitted that the administration has transferred the applicants in public interest and this Court should not sit in appeal over the decision of the Administration.

(P) J.S.W.
The respondents have clearly pleaded that the order of transfer is in public interest. Even in the order of transfer it is stated that re-shuffling of staff and rotational transfers of staff has become necessary due to the formation of new three offices of Area Manager at Bhiwandi, Kalyan and Vasai... Though the word 'tenure of four years' is mentioned, the perusal of the order dated 20.10.1997 shows that the tenure period of four years applies to those officials who are to be transferred on rotational basis and it does not qualify the earlier part of the order which refers to re-shuffling of the staff. The order is not happily worded. This can be easily gathered by the three annexures attached to the order. The first order is a simplicitor

transfer of certain officials, the second order is transfer in respect of officials who gave request for transfer and the last order shows about transfer of officers who have put in four years. Hence, by reading all the documents together, we can safely conclude that the tenure is only for rotational transfer and not for re-shuffling of the staff, in the interest of the administration.

4. New Area Managers' offices have been established and the administrative staff for the new offices are provided by diverting some of its existing staffs. The Learned Counsel for the respondents contended that when such new offices are being opened, senior and experienced staffs will have to be ^{drafted} diverted for the new offices and that is why the applicants have been transferred in the interest of administration.

5. Now it is well settled that the Court or Tribunal cannot sit in appeal over the judgement of the administration in transferring officials in public interest. An order of transfer can be quashed or interferred with only if it is done with malafide intention or contrary to any statutory rules vide 1994 SCC (L&S) 230 | Union Of India & Others V/s. S. L. Abbas | and 1995 (1) SC SLJ 350 | State of Madhya Pradesh & Anr. V/s. Sr. S.S. Kourav & Others |. This Tribunal, therefore, cannot sit in appeal over the order passed by the administration and then decide

as to who should be transferred and where. The Learned Counsel for the applicant was not able to point out any statutory rule which is violated by the respondents in effecting transfer. However, he brought to my notice the provision in P & T Manual which speaks about normal tenure of an official for four years. In my view, the period of tenure of four years is at best a guideline and violation of a guideline cannot be a ground for interfering with the order of transfer. Infact, in the decision referred to above, 1994 SCC (L&S) 230, one of the guidelines pressed into service before the Supreme Court was that, husband and wife should be allowed to stay in a single place and normally should not be transferred. The Supreme Court has observed that this is only a guideline and not a mandatory provision which cannot be violated by the administration. Therefore, the fact that there is a general guideline which states that normally an officer should be allowed to continue for four years is not a statutory rule which cannot be violated, particularly in the interest of administration.

The personal difficulties of the applicant ^{etc} about the transport problems which was pressed into service by the Learned Counsel for the applicant, is not a ground for interfering with the order of transfer. In the very nature of things, in case of every transfer, there is bound to be some difficulties for the employees. Since the transfer is an incidence of service, the applicants cannot challenge the transfer on that ground.

After hearing both the sides I am satisfied that no case is made out for interfering with the impugned transfer order.

6. One more grievance made by the Learned Counsel for the applicants is that the applicants are transferred to a different seniority unit. As rightly pointed out by the Learned Counsel for the respondents, all the units are in the same Telecom district and the applicants are not going to lose seniority by being transferred to the new office at Bhiwandi. Since the applicants ^{are in} ~~were~~ ⁱⁿ supervisory cadre, transferring them from one place to another place or from one seniority unit to another seniority unit, will not violate any rule. It is always open to the applicants to make representation about their difficulties and it is for the Management to consider it on humanitarian grounds ~~or~~ as per rules.

7. In the result, both the applications are rejected at the admission stage. No costs.

(R. G. VAIDYANATHA)
VICE-CHAIRMAN.

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