

OA/291/00176/2016
With MA No. 291/00138/2016

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

OA/291/00176/2016
With MA No. 291/00138/2016

Order reserved on : 02.05.2016
Date or order : 23.05.2016

Coram

Hon'ble Ms. Meenakshi Hooja, Member (A)

V.C. Jain S/o Late Shri K.C. Jain aged about 55 years, R/o D-9/140, Chitrakoot Colony, Near Vaishali Nagar, Jaipur 302021, posted as SDE, BSNL Circle Office, Jaipur (Raj)

.....Applicant

(By Advocate Mr.Tanveer Ahmed)

VERSUS

1. Union of India through its Secretary, Ministry of Communication and Information Technology, Sanchar Bhawan 20, Ashoka Road, New Delhi 110001.
2. Bharat Sanchar Nigam Limited through its Chief General Manager, Sardar Patel Marg, Jaipur 302008
3. The Assistant General Manager (NP-SWP), Switch Planning Cell Office, CGMT, Rajasthan Circle, Lalkothi, Jaipur 3020015(Raj)

.....Respondents

(By Advocate Mr.S.S. Sharma, Counsel for Respondent No. 1 & Mr. T.P. Sharma, Counsel for Respondent No. 2 & 3)

ORDER

This OA has been filed by the applicant u/s 19 of the Administrative Tribunals Act, 1985 seeking direction to implement and execute the order dated 12.01.2016 (Annexure A/9) passed by

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the Assistant General Manager (Pers. II), BSNL Corporate Office, New Delhi, seeking the following relief:

(i) The respondent may be directed to implement and execute the order dated 12.01.2016 (Annexure A/9) in the interest of justice.

(ii) Any other order or direction which this Hon'ble Tribunal deems just and proper may also be passed in favour of the applicant.

2. When the case came up for hearing and consideration, Ld. Counsel for applicant submitted that as may be seen from order dated 17.05.2010 (Annexure A/1) (in which the name of the applicant appears at sl. No. 3) the transfer order of the applicant dated 17.04.2010 by which he was transferred from CO Jaipur to Sirohi TD was held in abeyance. Thereafter vide order dated 26.04.2011 (Annexure A/2) it was further held in abeyance up to 31.03.2012 and vide order dated 30.04.2011 (Annexure A/3) it was further held in abeyance up to 30.06.2012.

3. Counsel for applicant thereafter referred to the policy guidelines dated 4th July, 2012 (Annexure A/4) wherein it has been provided in Para – (i) that "As per rules of tenure posting, the executive should be asked to give three options of posting. Their accommodation to one of the three choices will be based on availability of substitutes in these areas as per longest stay in

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SSA/station compared at Circle level" and submitted that actually the applicant was transferred against the policy.

4. Counsel for applicant further submitted that suddenly vide letter dated 28.03.2015 (Annexure A/6) direction were issued to relieve the applicant immediately (the applicant's name figures at serial number 6 in the Annexure attached with this letter) and again vide letter dated 18.06.2015 (Annexure A/7) instructions were issued for implementation of the earlier transfer order of the applicant to Sirohi TD and finally vide Annexure A/8 dated 16.07.2015 the applicant was relieved on 16.07.2015 (AN) with the direction to join his new assignment at Sirohi TD and his name was struck off from the strength of NP-CFA Cell on 16.07.2015. Counsel for applicant submitted that the applicant challenged the aforesaid orders of transfer and relieving in earlier OA No. 291/00733/2015 filed by him but he did not pursue the same as that had become infructuous, in view of the order dated January 12, 2016 (Annexure A/9) by which the Corporate Office of BSNL, New Delhi has now deployed the applicant in the Term Cell of DoT. However, as the order Annexure A/9 dated January 12, 2016 has not been implemented, he has filed the present OA and prayed for implementation of this order.

5. In this regard counsel for applicant submitted that he has also filed MA No. 291/00138/2016 in which letter dated April 11th, 2016 (Annexure MA/1) has been enclosed by which directions were given by the Corporate Office, BSNL, New Delhi to relieve all the

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persons by 30.04.2016 in case of transfer orders pending prior to 15.01.2016, and as the transfer order of the applicant (Annexure A/9) is of 12.01.2016 it was the duty of Respondents to relieve him to enable him to join the Term Cell but he has not been relieved and therefore prayed for the OA to be allowed.

6. Per contra, counsel for Respondents submitted, that as brought out in the reply, vide Office Order dated 16.07.2015 (Annexure R/2, also filed by the applicant as Annexure A/8) it is clear that consequent upon joining of Shri Laxmi Narayan Goyal as AD (BB-OP), Shri V.C. Jain AD the applicant, has been relieved and struck off from the strength of NP-CPA Cell on 16.07.2015 (AN) itself and he was further instructed to join his assignment at Sirohi TD but the applicant did not join his assignment at Sirohi TD and did not comply with the orders. Counsel for Respondents also drew attention to the fact that as may be seen from Annexure R/1 dated 09th May, 2012, Sirohi is classified as a soft tenure area. Counsel for Respondents further referred to letters dated 02.02.2016 (Annexure R/3), 23.03.2016 (Annexure A/4) and DO letter dated 01.04.2016 (Annexure R/5) written by the office of Respondent No. 2 to the BSNL Corporate Office highlighting the facts of the transfer of the applicant on 17.04.2010 to Sirohi TD, the order being held in abeyance up to 30.06.2012 and also his relieving on 16.07.2015. It has specially been highlighted in these letters that the applicant has been longest stayee in Jaipur (31 years) and despite being finally relieved on 16.07.2015 (Annexure A/8 and Annexure R/2) he has not joined at Sirohi-TD and not

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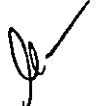
complied with the orders. It has been further added that the applicant has now been deployed in TERM Cell of DOT vide order dated 12.01.2016 (Annexure A/9) and if he is so relieved than that will create dissatisfaction amongst the Executives of Rajasthan Telecom Circle who have complied with the orders. In these letters it has also been prayed for cancellation of the transfer order of the applicant to Term Cell of DOT in order to maintain discipline. Counsel for Respondents submitted that letter MA/1 dated 11th April, 2016 is not applicable in the case of applicant because it is not a routine case and letters have been written giving genuine reasons as aforesaid to the higher authorities to cancel the transfer.

7. Counsel for Respondents further submitted the applicant has submitted medical certificates of sickness continuously only after his relieving from Jaipur to Sirohi. It was also submitted that the transfer order was initially made on 17.04.2010 but it was held in abeyance upto 30.06.2012 and thereafter, final order of relieving was issued on 16.07.2015 but despite the same the applicant did not join at Sirohi-TD and has not complied with the orders. The counsel for Respondents thus prayed for the dismissal of the OA.

8. Rebutting the argument of the counsel for Respondents, counsel for applicant submitted that transfer/deployment order of the applicant dated 12th Jan, 2016 (Annexure A/9) to Term Cell DoT has been issued by the Corporate office of BSNL, and Annexure MA/1 dated 11th April, 2016 are also directions of the

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Corporate office, hence the applicant is required to be relieved from Rajasthan Circle to enable him to join at his new deployment in TERM Cell of DOT.

9. Considered the aforesaid contentions and perused the records including of OA No. 733/2015. It is noted that the applicant was transferred from CO-Jaipur to Sirohi-TD vide order dated 17.04.2010 but vide orders dated 17.05.2010 (Annexure A/1), 26.04.2011 (Annexure A/2) and 30.04.2011 (Annexure A/3), the transfer order of the applicant was held in abeyance lastly up to 30.06.2012. It was mentioned in all these orders that on expiry of the period of held in abeyance, he will automatically stand relieved. What happened after that for almost three years is not on record, but it is further noted that vide letter dated 28.03.2015 (Annexure A/6) fresh instructions were issued to immediately relieve a number of officials listed in Annexure -1 of the said letter, in which the name of the applicant figured at srl. No. 6 showing his held in abeyance (HIA) up to 30.06.2012 and again vide letter dated 18.06.2015 (Annexure A/7) instructions was issued to relieve the applicant immediately and thereafter, vide order dated 16.07.2015 (Annexure A/8) the applicant was relieved and struck off from the strength of NP-CFA cell on 16.07.2015 (AN) and the applicant was further directed to join his new assignment at Sirohi-TD. It was also mentioned in the said order that Shri Laxmi Narayan Goyal has joined as AD (BB-OP) on 16.07.2015 (FN) vice Shri V.C. Jain AD (applicant) under GM (NP-CFA). It is also noted that the aforesaid transfer and relieving orders were also challenged in earlier OA No. 

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291/00733/2015 filed by the applicant but the OA was not pursued.

10. The main contention of the counsel for the applicant in this OA has been that after deployment in Term Cell in DOT vide order dated Jan. 12th, 2016 (Annexure A/9), the applicant has to be relieved from Rajasthan Circle and despite there being instructions dated April 11th, 2016 (Annexure MA/1) from Corporate Office, New Delhi to immediately relieve all persons whose inter-circle transfer orders are pending for more than three months (i.e. orders are before 15.01.2016) are to be relieved by 30.04.2016 but the applicant has not been relieved and therefore he cannot join his new assignment as per order Annexure A/9 dated January 12th, 2016.

11. On the other hand it has been argued by the counsel for respondents that instructions dated April 11th, 2016 (Annexure MA/1) are not applicable to the case of the applicant because in the first place he has not complied with the orders dated 16.07.2015(Annexure A/8) and not joined his new assignment at Sirohi-TD and further vide office of CGM, Jaipur letters dated 02.02.2016, 23.03.2016 including DO letter dated 01.04.2016 (filed as Annexure R/3, R/4 and R/5) have been written to the Corporate Office to cancel the transfer order dated 12.01.2016 (Annexure A/9) of the applicant, as he has been serving in Jaipur SSA for the last 31 years, and has not complied with earlier orders in order to maintain the discipline in the Circle and to check

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dissatisfactions amongst those Executives who have complied with the orders. However, in this regard it is noted that the Corporate Office of BSNL has not responded to the aforesaid letters (Annexure R/3, R/4 and R/5) written by the O/o the CGMT, Rajasthan Circle. Thus this appears to be a case where Respondent No. 2 i.e. Chief General Manager, BSNL, Jaipur has been requesting the higher authorities of BSNL to cancel the deployment of the applicant to a Term Cell by order dated 12.01.2016 (Annexure A/9) but it is seen that there has been no response from the concerned authorities of Corporate Office of BSNL to the communications sent by the Respondent No. 2 and his office. There is thus force in the contention of counsel for Respondents that the case of the applicant is not a routine matter because in the first place the applicant did not comply with the order dated 16.07.2015 (Annexure A/8) and did not join at Sirohi-TD and secondly Respondent No. 2 and his office are themselves requesting for cancellation of the transfer order (Annexure A/9). Thus, notwithstanding general instructions in letter dated 11th April, 2016 (Annexure MA/1) specific directions are required to be issued by the Corporate Office of BSNL, in the case of the applicant.

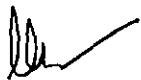
12. In view of the position of the case as analyzed above, it is considered just and proper that the Corporate Office of BSNL to whom letters at Annexure R/3, R/4 and R/5 have been written by Respondent No. 2 should first decide the matter of the applicant in the context of their own instructions dated April 11th, 2016 (Annexure MA/1) Accordingly, it is directed that the Corporate

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Office of BSNL will decide the matter as above preferably within a month from the date of the receipt of the order. In this context Respondent No. 2 is directed to submit a copy of this order to the competent authority in the Corporate Office of BSNL to facilitate expeditious decision. If thereafter, any grievance arises/remains with the applicant he may approach the appropriate forum as per law.

13. The OA is thus disposed of with the above directions, with no order as to costs.

14. MA No. 291/00138/2016 is also disposed of, in view of the aforesaid orders.


(MS.MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

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