

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A. No.377/1996

Date of order: 15.11.96.

M.H.Siddiqui

: Applicant

vs.

1. Union of India through Secretary Telecommunication Ministry of Communication, Sanchar Bhawan, New Delhi.
2. General Manager Telephones, Jaipur Telecom. Distt. Jaipur.
3. Shri S.G.Sarangal, Dy. General Manager Telecom. Jaipur Telecom. Distt. Jaipur.

: Respondents

Mr. K.S.Sharma, counsel for the applicant
Mr. V.S.Gurjar, counsel for respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH: MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAKASH: MEMBER (JUDICIAL))

The applicant M.H.Siddiqui has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1995 to seek the following reliefs:-

"i) that order dated 26.6.1996 (Annex A-1) relieving him to join at Kotputli in compliance of his transfer to that place be declared arbitrary, malafide, and illegal;

ii) the respondents may be directed to take the applicant on duty with immediate effect under S.D.O.Phones (North) Jaipur or elsewhere in Jaipur with a further direction not to transfer him against the policy matters;

iii) respondents may also be directed not to harass the applicant by foul and unfair means by further orders and transfers; and

iv) respondents may be directed to treat the applicant on duty from 26-6-96 onwards."

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2. Facts leading to this application in brief are that the applicant was working as S.G. Wireman under the control of respondents and was posted under the S.D.O.P.(North) Jaipur in the office of General Manager Telecom District (G.M.T.D.) Jaipur. He was transferred to D.E.,(Installation) from S.D.O.Phones Level-3 on 13.8.1994 but he was not taken on duty. He approached the Divisional Engineer (Admn.) who directed him to join at Level-3 in Jaipur, but there also he was not taken on duty. The applicant approached this Tribunal by filing C.A. No.439/94 for intervention in the matter. Vide order dated 20.9.1994 interim orders were issued by the Tribunal against the respondents to take him on duty without any further delay. In compliance whereof he was directed to resume his duties in Level-3 vide order dated 23.9.1994. Vide order dated 24.9.1994 after his joining in Level-3 he was transferred under the control and supervision of Dy. G.M. (respondent No.3). It is the case of the applicant that he complied with the orders dated 24.9.1994 and that he has been discharging his duties with utmost satisfaction of the respondents. The respondents did not pay him salary from 13.8.94 to 23.9.1994 inspite of the fact that the implementation of the orders were stayed by the Tribunal. Further by order dated 26.6.1996 (Annex.A-1) the applicant has again been transferred to S.D.O. Phones, Kotputli. It is the claim of the applicant that he has been transferred to Kotputli without any reason and due to the bias and malafide intention of respondent No.3 Shri S.G. Sarangal, Dy. General Manager Telecom, Jaipur Telecom District, Jaipur because the applicant has approached the

Tribunal earlier against his order of transfer. It is also the case of the applicant that as and when respondent No.3 used to visit the applicant's place of working, he always threatened him with dire consequences. It is also the case of the applicant that vide order dated 15.1.1996 the applicant was transferred to Shastri Nagar Telephone Exchange (Annex A-2). Again he was transferred to S.D.O.Phones (North) on 30.3.96. He was further transferred and directed to work at Vidyedhar Nagar R.S.U. under S.D.O.Phones (C) on 2.5.96 (Annex A-4). It is the grievance of the applicant that subsequent to the order dated 16.5.1996 vide the impugned order dated 26.6.1996 (Annex A-1) he has been transferred to Kotputli and has been made a rolling stone from one place to another. This is due to the malafide intention and bias of respondent No.3 against him who used to threaten him from time to time that he will teach him a lesson and will see how he serves in the department. Aggrieved, the applicant has now approached this Tribunal to claim the aforesaid reliefs complaining also that he has been transferred out of Jaipur even though there are a number of persons who have the longest stay at Jaipur in comparison to the applicant. It has also been urged that his transfer is wholly due to bias and malafide intention of respondent No.3 and as such the same is liable to be quashed.

3. The respondents have contested this application by filing a written reply to which the applicant has also filed a rejoinder.

4. Respondents No.1 and 2 on the one hand and respondent No.3 on the other hand have filed separate written replies to the OA. Respondent No.3 has also filed an affidavit in support of the reply to the OA.

5. I heard the learned counsel for the applicant and the respondents at great length and have examined the record in great detail.

6. The only point for determination in this OA is whether the impugned order dated 26.6.1996 (Annex.A-1) is an order of transfer of the applicant on the basis of bias ~~and~~ and malafide on part of the respondent No.3 ?

7. I have given anxious thought to the arguments addressed by both the learned counsels and have examined the record in great detail.

8. The stand of the respondents has been that the applicant has been transferred to Kotputli in the public interest and in the exigencies of service and also because of serious complaints of the public against the applicant.

9. In the matters of transfer of Government servants, it has been settled by Hon'ble the Supreme Court through a chain of decisions that the Court/Tribunal should not interfere in such matters unless the order of transfer of an employee suffers from

malafide or is in violation of statutory rules/guidelines. In the instant case, from the perusal of the record made available and documents filed by the applicant; one thing is clear that after the applicant approached this Tribunal in the year 1994 by filing OA No.439/94 and an interim direction was granted by the Tribunal the applicant has been transferred for five times from one place to another. This happened more particularly in the year 1996. Inspite of the applicant being shifted from one place to another, the applicant complied with every transfer order. However as soon as he was transferred out of Jaipur to Kotputli vide order dated 26.6.96 (Annex.A-1), he has approached the Tribunal to seek the relief claimed in this O.A. It is also pertinent to mention that the applicant has not been supplied with the copy of the order of transfer dated 24.6.96 referred to in the impugned letter dated 26.6.96 (Annex.A-1). A perusal of the impugned order Annexure A-1 exhibits that in compliance of the order dated 24.6.1996; the applicant has been relieved with immediate effect and directed to report to S.D.O.Phones, Kotputli. In the year 1996 ~~1997~~ he was first transferred to Shastri Nagar Telephone Exchange on 15.1.1996, thereafter to S.D.O.Phones (North) on 30.3.1996 (Annex. A-3) and again he was transferred and directed to work at Vidyadhar Nagar S.R.U. under S.D.O.PHONES (G) vide Annexure A-4, dated 2.5.96 and yet again directed to report for duty under S.D.O.Phones (North) vide order dated 16.5.96 (Annex.A-5). Thus, there is ~~no~~ substance in the allegation of the applicant that after getting a stay order in his earlier O.A. No.439/94, the applicant has been made a rolling

stone from one place to another. The applicant has not filed the order of his transfer to Kotputli. The respondents also on their part have failed to produce his order of transfer to Kotputli. It appears that without supplying the order of transfer of the applicant to Kotputli, the applicant has been relieved and proceeded to report to S.D.O.Phones, Kotputli by the impugned order dated 26.6.1996. The applicant thereafter rushed to the Tribunal and filed this OA on 1.7.1996, but the respondents took a number of opportunities to file their reply to the OA and could file their reply to the OA only on 11.9.1996.

10. The respondents have justified their action in shifting the applicant to Kotputli on the ground that there were serious written complaints received from members of the public which made the respondents to transfer him and he has been transferred in the interest of service. Respondent No.3 while separately filing reply to the OA has averred that it is not because of the bias or malafide intention of him that the applicant has been transferred to Kotputli. A perusal of the documents filed with the reply of the official respondents exhibit that communication dated 16.3.1996 (Annex.R-1) is a letter written by the Junior Telecom Officer to the S.D.O.Phones (North), Jaipur mentioning therein that the applicant work is not upto the mark. To the similar tone another communication of the same date i.e. 16.3.1996 has been filed. Besides these two communications of the same date i.e. 16.3.1996, the third communication is said to be a complaint by one Hussani Begum made on 20.11.1987 mentioning therein that she has been

coerced the complainant to part with 2000/- for installation of a telephone connection at her house. Except these three communications, there is no other complaint. It is not understood why the complaint dated 20.11.1987 was not pursued to its necessary conclusion. After 1987, the other two communications were of the same date i.e. 16.3.1996. Had there been other serious complaints as averred by the respondents in their reply from the members of the public, the respondents could have produced them. It appears that respondent No.3 did not feel happy on account of the applicant approaching the Tribunal in the year 1994 when he filed the earlier application, wherein an interim stay was granted. The action on part of the respondents to shift the applicant from one place to another on five occasions and that too within a span of one year exhibits that the allegation of bias of respondent No.3 against the applicant are not without substance. This is also evident from the tenor of the reply filed by respondent No.3 who goes to the extent of narrating that "the material present on record not only proves the gross negligent un-becoming behaviour of the applicant but also proves that the applicant is guilty of an offence punishable under the IPC". If the written complaints (except of 1987 no other complaints filed) made by the public were so serious, the respondents could have well started the disciplinary proceedings against the applicant and taken other appropriate action. Instead of following a normal procedure of proceeding against an employee by initiating disciplinary proceedings; respondents have chosen a short cut method of shifting him out of Jaipur

and posting him to Kotputli and relieving him immediately vide order dated 26.6.96. The person behind all this action appears to be respondent No.3. It is note worthy that in the reply filed by the official respondents No.1 and 2 in para 4.1 the respondents have averred on one hand that the duties and work of the applicant has not been satisfactory and that there have been serious complaints regarding the manner of discharge of his duties by his controlling officer/authority. On the other hand, the official respondents also aver that " In such circumstances, the applicant was shifted from one division to another division under different controlling Officers/Authorities so that his service could be best utilized in the interest of the Establishment." The nature of above averments indicate that on one hand the respondents categorise the applicant's work as not satisfactory and on the other side they consider it proper to shift him from one division to another so that his services could be best utilised in the interest of the establishment. If they consider that his services and could be best utilized else-where; are good/then by their own version, it is believed that the applicant's work is not satisfactory. From above discussion, it is clear that it is because of the bias and malafides of respondent No.3 that the applicant has been transferred to Kotputli and has been relieved with immediate effect vide order dated 26.6.1996 (Annex .A-1).

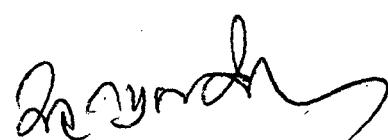
11. In view of above, I am of the considered opinion that the impugned order Annexure A-1, dated 26.6.96 does not stand the test of law laid down by Hon'ble the Supreme Court in the case of Chief General Manager vs. Rajendra Bhattacharya, 1995 (29) ATC 379, wherein it has been held that transfer order could not be

interferred unless it is tainted with malice or is in violation of a statutory rules/guidelines. Since in the instant case the impugned order dated 26.6.96 appears to be tainted with malice of respondent No.3, it is hereby quashed and the issue raised in this OA is answered accordingly.

12. Consequently, the O.A. is allowed and the respondents are directed:-

- 1) to take the applicant on duty forth-with and issue necessary orders of his posting within 10 days of the receipt of the copy of this order, under the S.D.O,Phones (North) Jaipur or elsewhere in Jaipur.
- ii) to pay him all the salary and allowances etc., from 26.6.1996 onwards as admissible to him, within a period of two months from the date of receipt of a copy of this order.

13. No order as to costs.



(RATAN PRAKASH)
MEMBER (J)