

In the Central Administrative Tribunal
Jaipur Bench, Jaipur

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Date of Order : 28.10.02

D.A. No. 287/2002

G.D. Gupta S/o Shri S.L. Gupta, aged about 57 years,
R/o E-303, Lal Kothi Scheme, Jaipur and presently
working as Chief Accounts Officer (South), Bajaj Nagar
Exchange, Jaipur Office of Principal General Manager,
Telecommunications, Jaipur - 302010.

... Applicant.

Versus

1. Union of India through its Secretary, to the
Department of Telecommunications, Government of
India, Sanchar Bhawan, Ministry of Communication,
New Delhi - 110 001.
2. Chief General Manager, Rajasthan Telecommunication
Circle, Jaipur - 302 008.

... Respondents.

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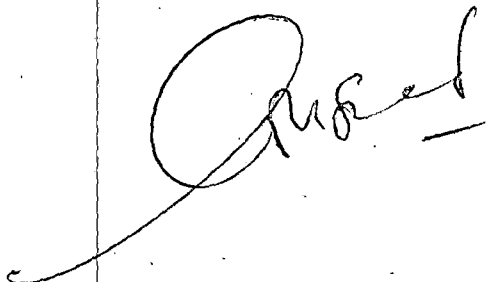
Mr. C.B. Sharma, counsel for the applicant.
Mr. Neeraj Batra, counsel for the respondents.

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CORAM :

Hon'ble Mr. Justice G.L. Gupta, Vice Chairman
Hon'ble Mr. Gopal Singh, Administrative Member

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ORDER

PER MR. JUSTICE G.L. GUPTA :

The transfer order dated 20th June, 2000 (Annex. A/1), has been called in question in this Original Application.

2. It is averred that the applicant had joined at Jaipur on 5th July, 2001 pursuant to the order dated 8th June, 2001 (Annex. A/11) and he has been now transferred within eleven months of his taking-over at Jaipur retaining for more than 2-3 years. the persons junior to him at a station/ It is also averred that the applicant while working at Jaipur, was allowed further promotion on temporary and officiating basis for ninety days on the post of Dy. General Manager (Finance and Accounts) and was posted at Sriganganagar. The applicant had to forego the promotion ~~xxxxxxxxxxxxxxx~~ yet, he has been transferred to Sriganganagar.

The further case for the applicant is that the applicant was posted at Gaziabad vide Memo dated 23rd April, 1998 and after joining, he requested for his transfer to Jaipur circle. His request was accepted and he was posted at Udaipur under the General Manager Telecom District Udaipur vide Memo dated 7th October, 1997. The applicant wanted his posting at Jaipur and the vacancy was also available and when his request was not acceded to



he filed O.A. No. 282/2000 in this Tribunal which was disposed of giving directions to the respondents to dispose of the representation of the applicant within two months. The representation was not disposed of by the competent authority and, therefore, the applicant preferred a Contempt Petition 50/2000. However, the same was dismissed by this Tribunal vide order dated 12th February, 2001. When the representation of the applicant was rejected, he again filed O.A. No. 68/2001 before the Jodhpur Bench of this Tribunal, but, during the pendency of the O.A. before the Jodhpur Bench of the Tribunal, the applicant was transferred to Jaipur vide order dated 8th June, 2001 and thereupon, O.A. of the applicant was dismissed as having become infructuous. thereafter, the applicant has been transferred to Sri-Ganganagar. It is averred that this transfer order is mala fide and is not in public interest and while transferring the applicant, the guide-lines have been ignored.

3. In the counter, the respondents have come-out with the case that when the applicant has been transferred, no guide-lines have been violated. It is averred that the transfer is in part of service and an officer can be transferred ^{anywhere} by the Head of the Department, as per administrative requirement.

4. Rejoinder has been filed by the applicant reiterating the facts stated in the ^{Original} Application. It is further



stated that the present transfer order is just to harass the applicant.

5. We have heard the learned counsel for the parties and perused the documents placed on record.

6. The learned counsel for the applicant contended that the transfer order has been issued in violation of the transfer policy stated in the Guide-lines dated 20th May, 2002. He tried to bring the case for the applicant under para (A), (ii) of the Transfer Policy. He relied on the cases of Ram Krishna versus U.P. Jal Nigam 2000 (3) ATJ 234 and Jitendra Kumar Saxena versus Union of India and others 2000 (3) ATJ 657.

7. On the other hand, the learned counsel for the respondents contended that the scope of judicial review in the matter of transfer is very limited and this Court should not interfere on the vague allegations of mala fides when there is no violation of any of the guide-lines of the transfer policy. He relied on some cases of Hon'ble the Supreme Court.

8. We have given the matter our thoughtful consideration. It is now a settled legal position that in transfer matters the scope of judicial review is very limited. The Court can be justified in interfering with the transfer orders only when it is shown that the transfer order is in violation of the statutory provisions or was issued by an authority not competent to transfer or suffers from malafides. See State Bank of India versus Anjan

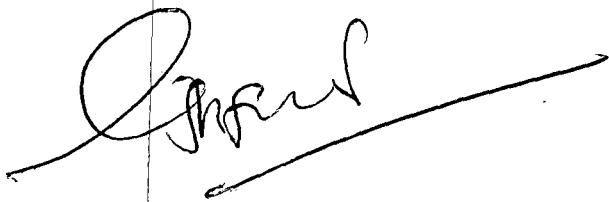


Sanyal & Mrs. (JT 2001 (5) SC 203), State of M.P. and
another versus S.S. Kourav and others (1995 SC 1056),
National Hydro Electric Power Corporation versus Shree
Bhagwan (2001 (8) SCC 574) and Union of India and others
versus N. Ethomas (Civil Appeal No. 3933/92) decided by
Hon'ble the Supreme Court on 22nd September, 1992.

9. It is not the case for the applicant that the transfer order has been issued by an authority not competent to transfer. It is also not the case for the applicant that the transfer order has been issued in violation of the statutory provisions. What is contended is that the transfer order is in violation of the Guidelines dated 20th May, 2002. The relevant Guide-line is reproduced hereunder :-

" (A) (ii). Subject to administrative exigencies and feasibility, no employee should normally be made to continue in the same post for more than four years, but should be allowed change of environment within the same station or else where as feasible. "

It is not understand, how the applicant's case is covered by this provision. The provision says that an employee cannot be allowed to continue for more than four years. It is not the case for the applicant in the instant case that he has been allowed to function at a place for more than four years.



10. The learned counsel for the applicant also relied on clause (i) of the transfer policy which says that a request for transfer will be considered only after the official has put in a service of at least two years at the station. This provision also does not come in the way of the transfer of the applicant. If, the applicant wants change from Sriganganagar he can invoke this clause after he puts in two years at Sriganganagar.

11. The learned counsel for the applicant did not point-out any other provision which has been violated when the applicant has been transferred from Jaipur to Sriganganagar.

12. It may be that the applicant was earlier transferred to Jaipur pursuant to the O.A. filed by him. In any case, the said O.A. was not decided in favour of the applicant. The Tribunal had nowhere given any direction to the respondents to transfer the applicant to Jaipur or to continue him at Jaipur for a particular period. The O.A. filed by the applicant was disposed of giving a direction to the respondents to dispose of the representation. The representation was rejected and the applicant filed an another O.A. In the meantime, a new vacancy had been created at Jaipur and respondents adjusted the applicant at Jaipur. Simply because the transfer order was issued during the pendency of the O.A. ^{filed} at Jodhpur, it cannot be inferred that the respondents were annoyed with the applicant and they have issued a transfer order deliberately to harass the applicant.



Order in a reserved
(transfer) matter is
submitted for considera-
tion & approval Sir.

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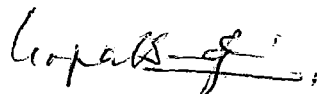
H'ble GS

13. The cases relied on by the learned counsel for the applicant cannot assist the applicant in view of the clear-cut decisions of Hon'ble the Supreme Court of India, referred to above. In the case of Jitendra Kumar Saxena (supra), it was noticed by the learned single Member that frequent transfers had been made within a short period of time. In these circumstances, it was held that, that was a case of abuse of power. The instant matter is not of that type.

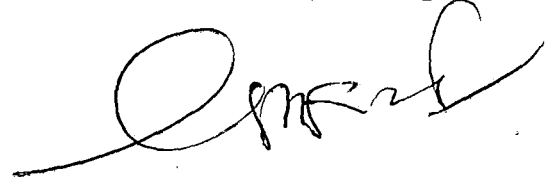
In the case of Ram Krishna (supra), it was noticed by the High Court that the applicant had been transferred within twenty days of the dismissal of the Writ Petition filed by the applicant. The order, in the circumstances, was held to be mala fide. In the instant case, it is not the fact situation. Even in that case, the Tribunal had observed that a Government servant has no right to continue on a particular place and it is the right of the employer to transfer him anywhere on administrative grounds.

14. Having considered the entire material on record, we find no cause to interfere in the order of transfer.

15. Consequently, the Original Application is dismissed with no order as to cost. The Interim Order issued on 8th July, 2002, stands vacated.



(Gopal Singh)
Administrative Member



(G.L. Gupta)
Vice Chairman

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