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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET


ORDERS OF THE TRIBUNAL

1.9.2009

OA 293/2009

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

Heard learned counsel for the parties. Order reserved.


(B.L.KHATRI)
MEMBER (A)

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3-9-09

The Judgment/ order
is pronounced in the open
Court today.


3-9-09

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 30th day of September, 2009

ORIGINAL APPLICATION No.293/2009

CORAM :

HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

Ram Pal,
TMTE (Phone) Telephone Exchange,
Hindaun City,
District Karauli.

... Applicant

(By Advocate : Shri C.B.Sharma)

Versus

1. Bharat Sanchar Nigam Limited through its
Chairman and Managing Director,
Corporate Office, Statesman House,
Barakhamba Road,
New Delhi.
2. Chief General Manager,
Telecom (BSNL),
Rajasthan Circle,
Sardar Patel Road,
Jaipur.
3. Telecom District Manager (BSNL),
Sawai Madhopur.
4. Sub Divisional Engineer (Phones),
BSNL,
Hindaun City,
District Karauli.

... Respondents

(By Advocate : Shri Neeraj Batra)

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ORDER**PER HON'BLE MR.B.L.KHATRI**

The applicant has filed this OA u/s 19 of the Administrative Tribunals Act, 1985, against the order dated 7.7.2009, issued by respondent No.4 in pursuance of the order issued by respondent No.3 on 7.7.2009 by which the applicant has been transferred from Hindaun City to Bamanwas under SDOT (South) Gangapur City and has been struck-off from the strength of SDO Phones, Hindaun City, w.e.f. 7.7.2009 (A/N).

2. Learned counsel for the applicant had inter-alia relied upon the submissions made through this OA. Para 4(3), 4(4) & 4(5) of the OA read as under :

"4(3) That one Sh.Lokesh Gupta i.e. respondent No.3 holding the post of Telecom District Manager and against his working news in local news paper weekly "Sajag Pratinidhi" dated 14.6.2009 in which editor of the newspaper disclosed some works which are going on against norms of the Corporation and also mentioned name of one Shri Gajraj Singh Meena and respondent No.3 taking into consideration of news transferred Shri Gajraj Singh Meena from Hindaun City to Sapotra and respondent No.3 annoyed with the staff of Hindaun City and transferring the staff one by one and applicant also became victim of news published and has been ordered for transfer from Hindaun City to Bamanwas vide order dated 7.7.2009. The respondent No.3 conveyed any order dated 7.7.2009 to the respondent No.4 who further ordered for transfer on the same date i.e. 7.7.2009 and struck off from the strength of Hindaun City and nobody has been posted against the applicant.

4(4) That applicant at present in the strength of SDE (Phones) Hindaun City and transfer to Bamanwas under the unit of SDOT (South) and his seniority also going to be affected. The respondent No.3 malafidely conveyed the order dated 7.7.2009 to respondent No.4 and

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respondent No.4 further passed order who is not competent to pass such orders and order dated 7.7.2009 passed by respondent No.3 never made available to the applicant inspite of fact that applicant no where involved in the matter and news also concerned with the working of respondent No.3.

- 4(5) That the applicant is low paid employee and managing his family with the studies of children at Hindaun City and by the present transfer whole family of the applicant is going to be affected, as in Bamanwas there is no College facilities. Besides, the applicant has been transferred from one unit to another i.e. from SDE (Phones) Hindaun City to SDOT (South) Gangapur City and by this action seniority of the applicant is also going to be affected. In fact, transfer of the applicant is based on news published against the respondent No.3."

3. Learned counsel for the applicant also submitted that respondent No.3 had transferred the applicant on the basis of malafide action due to a news published in the local newspaper regarding working of respondent No.3. Respondent No.3 acted malafidely and put the applicant in adverse position by way of transfer from one unit to another. Besides, children of the applicant are studying in Hindaun City and there is no college facility at Bamanwas and by the present transfer, seniority of the applicant is also going to be affected. It was also contended that the employees who had longer stay than that of the applicant had been retained, whereas the applicant has been transferred in an illegal manner.

4. Notice of this OA was given to the respondents, who have filed their reply opposing the claim of the applicant. In reply to para 4(3), 4(4) & 4(5) of the OA, the respondents have made the following submissions :



"III. That the contents of Para No.4(3) of the OA are not admitted as stated. It is submitted that the statement of the petitioner that respondent No.3 annoyed with the staff of Hindaun City due to news published in the weekly "Sajag Pratinidhi" dated 14.6.2009 against his working, is totally false. There is no relevancy of transfer of Shri Ram Pal T.M. from Hindaun City to Telephone Exchange Bamanwas with the said news published in the above newspaper. The petitioner T.M. is working at Hindaun City since last 26 years. Transfer of the said official has been ordered in the interest of service as per provisions of BSNL Transfer Policy and there is no malafide intention to the ground stated by the official is baseless and unjustified and transfer orders are fully justified an in order as per transfer policy of BSNL.

IV. That the contents of Para 4(4) of the OA are not admitted in the manner stated by the applicant. It is submitted that the statement of the petitioner that his seniority will be affected due to his transfer is quite false. Seniority of any official is not affected due to transfers in the interest of service. There is no relevancy of transfer of the applicant from Hindaun City to Telephone Exchange Bamanwas with the said news published in the above newspaper. Respondent NO.4 SDEP, Hindaun City, is fully competent to issue the said relieving orders of the official. Action of the SDEP, Hindaun City, is as per rules and quite in order.

V. That the contents of Para 4(5) of the OA are not admitted as stated. It is stated that there is no relevancy of education facility upto Senior Secondary standard is available at Bamanwas and a number of candidates are selected in various Group-A posts from Bamanwas. Seniority of the official will not be affected due to his transfer as such transfer is in the interest of services."

5. Learned counsel for the respondents had also relied upon the transfer policy dated 7.5.2008 (Ann.R/5) as also the Transfer Rules & Guiding Principles, as per Section-A with the said transfer policy dated 7.5.2008, wherein it has been mentioned that as a general rule, an employee shall not be transferred from one recruiting unit to another, either within

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the same circle, or to another circle, unless he/she has completed five years of service in the cadre. It was submitted that the applicant was transferred as per the transfer policy and in the interest of administration.

6. Learned counsel for the respondents had also relied upon the following case laws :

- i) Union of India and others v. S.L.Abbas [AIR 1993 SC 2444]
- ii) State of Madhya Pradesh & Anr. v. S.S.Kourav & Ors. [AIR 1995 SC 1056], &
- iii) Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey & Ors. [AIR 2004 SC 4850]

7. I have heard the rival submissions and perused the facts of the case and the relevant case laws. From perusal of the facts of the case, it is evident that the applicant had been working at Hindaun City for the last 26 years and the tenure, as per the transfer policy dated 7.5.2008 (Ann.R/5), is of five years. Thus, there is no violation of the transfer policy and it appears that the applicant has been transferred as per the exigencies of administration.

8. In this connection, it is considered necessary to rely upon the case of Abani Kanta Ray v. State of Orissa [1995 (Supp.) 4 SCC 169], wherein the Apex Court, in para 10, observed as under :

"It is settled law that a transfer which is an incident of service is not to be interfered with by the Courts unless it is shown to be clearly arbitrary or vitiated

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by mala fides or infraction of any professed norm or principle governing the transfer."

In the case of State of Punjab v. Joginder Singh Dhatt [AIR 1993 SC 2486] the Apex Court, in para 3, observed as under :

"We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the Courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. Ordinarily the courts have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused."

9. In this case, learned counsel for the applicant has alleged malafide on the part of respondent No.3 on the ground that he had transferred the applicant on the basis of a news published in the local newspaper regarding working of respondent No.3. From perusal of the copy of cutting of the said newspaper (Ann.R/4) it is evident that there is no relevancy of applicant's transfer with the said news.

10. The Apex Court in the case of Suresh Chandra Dixit & Ors. v. General Manager, ITI Limited, Naini, Allahabad & Ors. [2008 (2) SLJ 68] observed that;

"Heavy onus lies upon a person who alleged malafide against individual to prove the allegations of malafide [refer to para 6 & 7 of S.Pratap Singh v. State of U.P. {AIR 1964 SC 72}]."

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In State of U.P. v. Gobardhan Lal [AIR 2004 SC 2165], while examining the plea of malafide the Court held that;

"Even the allegation of malafide when made such has to inspire confidence in the Court or are based on concrete materials and are not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises."

Besides, in the case of State of Bihar v. P.P.Sharma [1992 Supple (1)SCC 222] the Apex Court held that;

"It is a settled law that the persons against whom malafides or bias was imputed should be impleaded eo-nomine as a party respondent to the proceedings and given an opportunity to meet those allegations. In his/her absence no enquiry into those allegations would be made."

11. From perusal of the facts of the case, it is evident that the allegation of malafide has not been proved. Besides, the person concerned has not been impleaded as eo-nomine, as held by the Apex Court in the para referred to above. In this connection, it is also considered necessary to refer to the case of Union of India and others v. S.L.Abbas [AIR 1993 SC 2444], wherein the Apex Court observed in para 7 as under :

"7. Unless the order of transfer is vitiated by mala fides or is made in violation of any statutory provisions, the Court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the Government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration."

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12. Having considering the facts of the case, I am of the opinion that the applicant has not been able to make out any case for interference by this Tribunal. However, the applicant will be at liberty to make a detailed representation to respondent No.3 requesting his transfer to any station(s) of his choice after giving detailed reasons, within a period of one month from the date of issuance of this order, and respondent No.3 should decide the said representation within a period of three months from the date of receipt thereof.

13. In the result, the OA stands dismissed in the manner stated above, with no order as to costs.


(B.L.KHATRI)
MEMBER (A)

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