

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 5<sup>th</sup> day of October, 2010

O.A. No. 283/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)

Raj Kishore Dhandhel  
s/o Shri Sohan Lal Dhandhel,  
r/o Plot No.56, Patel Nagar,  
Opposite Water Tank,  
Mahesh Nagar, Jaipur,  
and presently working as  
Senior Accounts Officer,  
O/O C.G.M.T. Rajasthan Circle,  
Jaipur.

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Jan Path, New Delhi.
2. Chief General Manager, Telecom, Rajasthan Circle, Sardar Patel Marg, Jaipur.
3. Assistant General Manager (SEA), Corporate Office, 7<sup>th</sup> Floor, S.E.A. Section, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Jan Path, New Delhi.

.. Respondent

(By Advocate: Shri Tej Prakash Sharma)



ORDER (ORAL)

The applicant has filed this OA against the order dated 28.5.2010 (Ann.A/1) whereby the applicant was transferred from Rajasthan Circle to Uttarakhand Circle with immediate effect.

2. When the matter was listed on 9.6.2010, this Tribunal while issuing notices has also made the following observations:-

"The grievance of the applicant is that on account of pendency of disciplinary proceedings he was reverted to the post of Senior Accounts Officer and consequently posted at Jaipur in the office of respondent No.2 where he joined on 17.3.2010. Now vide impugned order dated 28.5.2010, the applicant has been transferred to another circle. According to the learned counsel for the applicant, the Assistant General Manager was not competent to pass such order and also that the applicant is facing departmental proceedings, as such, the applicant should not have been shifted, more particularly, when he has joined at Jaipur on 17.3.2010. It has been averred in the OA that the applicant has not been relieved so far.

In view of what has been stated above, the applicant has made out a prima-facie case for grant of ex-parte interim stay. Accordingly, operation of the impugned order dated 28.5.2010 (Ann.A/1) is stayed so far it relates to the applicant till the next date."

The stay so granted by the Tribunal was continued from time to time. However, when the matter was listed on 6.8.2010, this Tribunal passed the following order:-

" MA 207/2010 has been moved by the respondents for vacation of the ex-parte stay granted by this Tribunal on 9.6.2010 in OA 283/2010.

It has been stated in the MA that the applicant was transferred considering the policy framed by the BSNL as well as due to pendency of the vigilance case the applicant has been transferred as his name appeared in the ODI list. This Tribunal in the order dated 9.6.2010 has specifically observed that on account of pendency of disciplinary proceedings the applicant was reverted to the post of Senior Accounts Officer and subsequently posted at Jaipur, where he joined on

17.3.2010. It was further observed that vide impugned order dated 28.5.2010 the applicant has been transferred to another circle. The respondents have not given any reason in this MA as to why the applicant was again transferred, that too outside the circle within a period of two months specially when the applicant was transferred to Jaipur on account of pendency of the disciplinary case.

Thus, I am of the view that this MA for vacation of ex-parte stay is required to be rejected. The respondents are directed to file a specific affidavit thereby dealing with the observations so made by this Tribunal in para-2 of the order dated 9.6.2010, whereby it was further observed that the Assistant General Manager was not competent to pass such order transferring the applicant outside the circle.

It may be stated here that the instructions of transfer against a person appearing in the ODI list were issued on 4.2.2010 and the applicant was reverted as well as posted at Jaipur vide order dated 15.3.2010, where he joined subsequently on 17.3.2010. As such, the requirement of the instructions dated 4.2.2010, prima-facie, stood complied with more particularly when the applicant has not been posted in his hometown.

Let a specific affidavit be filled by the respondents in the light of the observations made hereinabove as well as in the light of the observations made vide order dated 9.6.2010. Such an affidavit shall be filled within a period of one week.

MA 207/2010 stands dismissed accordingly. Let the matter be listed on 19.8.2010."

3. The respondents have filed reply to the main OA as well as additional affidavit pursuant to the direction given by this Tribunal vide order dated 6.8.2010. The stand taken by the respondents in the reply as well as in the additional reply is that the applicant has been transferred from Rajasthan Circle to Uttarakhand Circle in pursuance to the direction issued by the Department of Telecom vide letter dated 4.2.2010. It is further stated that according to the direction of the Chief Vigilance Commission/DOT it has been decided that the officers who are appearing in the ODI (Officers of Doubtful Integrity) list may be transferred immediately from one zone to another zone. Thus, according to the respondents, In

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compliance of the direction, the applicant whose name appeared in the ODI list was transferred from Rajasthan Circle to Uttarakhand Circle vide order dated 28.5.2010. It is further stated that the applicant was ordered to officiate on adhoc basis in the grade of Senior Time Scale of Telecom Finance (Chief Accounts Officer) was reverted to his substantive grade as Senior Accounts Officer as a disciplinary case under Rule 36 of BSNL CDA Rules, 2006 has been initiated and a charge sheet has been served vide memorandum dated 23.10.2009 and on reversion, the applicant was transferred and posted as Senior Accounts Officer O/o the CGMT Rajasthan Circle, Jaipur vide letter dated 15.3.2010 and joined subsequently on 17.3.2010. Thus, according to the respondents, the applicant was transferred on account of circular dated 4.2.2010 as his name appeared in ODI list.

4. I have heard the learned counsel for the applicant and gone through the material placed on record.

5. As can be seen from material placed on record, it is evident that the applicant has been transferred on account of circular/guidelines issued by the Department of Telecom vide letter dated 4.2.2010 based upon CVC guidelines as the applicant's name appeared in the ODI list, as such, contention raised by the applicant that he has not completed requisite tenure as per the transfer guidelines framed by the BSNL vide letter dated 7.5.2008 (Ann.A/7) cannot be accepted. It may be stated that the transfer policy dated 7.5.2008 (Ann.A/7) applies to the employees who are

transferred on account of administrative exigency or administrative reason under normal circumstances and does not apply in respect of employees who are placed in ODI list and for which purpose a separate circular has been issued by the department. Thus, according to me, the transfer policy Ann.A/7 is not applicable in the case of the applicant whose name find mention in the ODI list and he has been transferred on account of circular issued by the DOT vide letter dated 4.2.2010 (Ann.R/1) which stipulates that (i) officers appearing in ODI list be transferred out of zone, (ii) these officers appearing in the Agreed list/ODI list are not occupying a sensitive post and (iii) such officers are not posted on allowance post. This circular further provides that in addition to above all cadre controlling units are advised that the officers appearing in ODI list should not be given choice posting till currency of punishment and if they are posted to a tenure place, no benefit of tenure posting should be extended to them on their completion of tenure posting. Thus, in view of the guidelines issued vide circular dated 4.2.2010 (Ann.R/1) the transfer guidelines issued vide circular dated 7.5.2008 (Ann.A/7) are not attracted in the instant case. Further, who should be transferred where is a matter to be decided by the appropriate authority in the department and the scope of judicial review in such matters is confined to violation of statutory provisions or where the order is passed malafidely. At this stage, it will be useful to quote para 8-10 of the judgment rendered by the Apex Court in the case of Rajendra Singh vs. State of Uttar Pradesh and ors., (2010) 1 SCC (L&S) 503, which thus reads:-

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"8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires.

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose v. State of Bihar*, this Court held:-

"4. In our opinion, the courts should not interfere with a transfer order which is made in public interest and for administrative reasons unless the transfer orders are made in violation of any mandatory statutory rule or on the ground of mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. Transfer orders issued by the competent authority do not violate any of his legal rights. Even if a transfer order is passed in violation of executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. If the courts continue to interfere with day-to-day transfer orders issued by the government and its subordinate authorities, there will be complete chaos in the administration which would not be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders."

10. In *N.K.Singh v. Union of India* this Court reiterated that:

"6.... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision..."

6. Thus in view of the law laid down by the Apex Court as reproduced above, and the fact that the applicant was transferred from Rajasthan zone to another zone in compliance of the circular

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dated 4.2.2010 which circular appears to have been issued in public interest to maintain purity in the administration and it is not a case where the transfer order has been passed in violation of the statutory provisions or suffers from malafide, as such, no interference in the matter is required. The interim stay granted on 9.6.2010 and continued from time to time is hereby vacated.

7. The contention raised by the learned counsel for the applicant that the circular issued by the Department of Telecommunication in respect of officers appearing in the ODI list is applicable only to Group-A officers and is not applicable in the case of the applicant and clarification in this respect is likely to be issued by the respondents shortly; Suffice it to say that in case such clarification as contended by the learned counsel for the applicant is issued by the department, in that eventuality, the case of the applicant shall be considered in the light of such clarification. Further, the contention raised by the learned counsel for the applicant that departmental proceedings against the applicant are pending, as such, he should not be transferred in view of the decision rendered by various Benches of the Central Administrative Tribunal is of no consequence in the facts and circumstances of this case as the <sup>effect is</sup> fact of circular issued pursuant to the guidelines issued by the CVC where the persons appearing in the ODI list have to be transferred out of circle was not under consideration before the Benches who have rendered the said decision. Suffice it to say that public interest should prevail over the individual interest and if the appropriate authority has taken decision that persons of doubtful

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integrity should be transferred out of circle in order to maintain purity in administration and public interest, such policy decision has to be maintained in the public interest.

8. Thus, I find no merit in this OA, which is accordingly dismissed with no order as to costs.



(M.L. CHAUHAN)  
Judl. Member

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