

16

**THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR  
ORDER SHEET**

APPLICATION NO.: \_\_\_\_\_

Applicant (S)

Respondent (S)

Advocate for Applicant (S)

Advocate for Respondent (S)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL

**02.11.2010**

OA No. 294/2010 with MA 208/2010

Mr. C.B. Sharma, Counsel for applicant.  
Mr. T.P. Sharma, Counsel for respondents.

In this case judgment was dictated in the open court on 11.10.2010. Before signing it, a request was made on behalf of the learned counsel for the respondents that Department will suo-moto review the matter as this judgment may far reaching implications. For that purpose the matter was order to be listed on 14.10.2010. Similar request was made on that date. Accordingly, the matter was order to be listed on 02.11.2010. Today, ~~learned counsel for~~ the respondents has shown their inability to review the matter. Accordingly, the matter is decided on the basis of judgment dictated in the open court on 11.10.2010.

  
(M.L. CHAUHAN)  
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH

Jaipur, this the 02<sup>nd</sup> day of November, 2010

**ORIGINAL APPLICATION NO. 294/2010**

**With**

**MISC. APPLICATION NO. 208/2010**

**CORAM**

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

C.D. Gupta son of Late Shri Mishri Lal Gupta, aged about 57 years, resident of Sindhi Colony, Behind Telephone Exchange, Tonk and presently working as Chief Accounts Officer, O/o TDM, Tonk.

.....Applicant

(By Advocate: Mr. 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 Road, Jaipur.
3. Principal General Manager (FP), Corporate Office, 7<sup>th</sup> Floor, SEA Section, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, Jan Path, New Delhi.

.....Respondents

(By Advocate: Mr. T.P. Sharma)

**ORDER (ORAL)**

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That the respondents be directed to allow the applicant to work as Chief Accounts Officer in Telecom District Tonk by quashing order dated 28.05.2010 (Annexure A/1) with the memo dated 07.06.2010 (Annexure A/4) in respect of the applicant with all consequential benefits.
- (ii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iii) That the cost of this application may be awarded."

2. The case of the applicant is that as per the BSNL's transfer policy dated 07.05.2008 (Annexure A/2), only those persons could have been transferred who have completed 15 years of circle tenure in SSA level to which the applicant belongs and persons who have attained the age of 56 years should be avoided for inter circle transfer and 57 years for intra circle transfer. The grievance of the applicant is that as on cut-off-date i.e. 31.03.2010 on which date the eligibility has to be seen, the applicant had completed 56 years of age and as such, in terms of provisions contained in Section B (Clause A) of the transfer policy, the applicant could not have been transferred. This Tribunal while issuing notices on 29.06.2010 had granted ex-parte interim stay, which has been continued from time to time.

3. When the matter was listed on 17.08.2010, this Tribunal had passed the following order:-

"Heard learned counsel for the parties.

The stand taken by the respondents is that the decision has been taken to transfer CAO, who are equal or less than 58 years of age as on 31.03.2010 and rendered 15 years of service, on administrative grounds for the purpose of betterment of circles.

The applicant has placed reliance on the policy decision on transfer rules and guiding principles (Annexure A/2) whereby in Para 13(iii) it has been specifically stipulated that generally, transfer of employees who are 55 years of age as on 31<sup>st</sup> March of that financial year would be avoided for posting to tenure stations. Admittedly, the applicant has attained more than 55 years of age when he was transferred vide impugned order dated 28.05.2010 (Annexure A/1). Similar is provision in respect of officers of JAG levels.

The respondents are directed to file specific affidavit whether the provisions as contained in transfer rules and guiding principles (Annexure A/2) which find mention in Para 11 (a) and 13 (iii) has been substituted deleting the existing provisions by inserting new provisions in the light of decision as pleaded by the respondents in the reply affidavit.

The applicant alongwith the rejoinder has annexed a copy of the order dated 08.07.2010 (Annexure A/5) whereby the respondents have cancelled/modified the transfer order of 18 persons who were transferred vide impugned order dated 28.05.2010 (Annexure A/1).

The respondents are directed to file specific affidavit thereby stating what are the compelling circumstances, which has led in cancellation of the transfer order of the persons mentioned in the order dated 08.07.201 (Annexure A/5) and as to how the case of the applicant is different to those persons, whose names have been mentioned in the aforesaid order. Such an affidavit shall be filed within a period of ten days.

Let the matter be listed on 02.09.2010.

IR to continue till the next date."

4. The respondents have filed their reply. In the reply, the stand taken by the respondents is that departure from normal transfer policy has been taken in public interest after obtaining approval from the competent authority as there is shortage of COs in Punjab Circle as compared to Rajasthan Circle. It was further stated that the representations so received from the aggrieved employees have been disposed of by a general circular, intimating the decision of the Administration (Annexure R/2).

5. The respondents have also filed an additional affidavit thereby explaining the circumstances why the transfer order of 18 persons has been cancelled and modified. It has been stated in the Additional affidavit that the request of only those persons has been acceded to and reviewed whose period for retirement on superannuation left from 2 to 3 years as on 31.03.2010. It is further stated that the applicant as on 31.03.2010 has attained the age of more than/equivalent to 57 years, as such he is not similarly situated to that of 15 persons who of

15 persons whose names have been mentioned in the details given alongwith the affidavit. Regarding the cancellation/modification of 3 officers who does not fall under the category of persons where period for retirement on superannuation left from 2 to 3 years as on 31.03.2010, it is stated that one lady officer has been retained on compassionate grounds having medical problem (heart ailment). Other 2 officers re-allotted to different circles as per the need of the organization.

6. In the rejoinder, the applicant has specifically given the instances of three officers namely S/Shri S.L. Meena, Ghanshyam and N.R. Choudhary who have completed circle tenure and were less than 56 years of age, though eligible for transfer but have not been transferred whereas according to the applicant, he was entitled for the benefit of Para 11 (a) of the transfer policy has been transferred in violation of the said provisions.

7. The respondents have filed additional affidavit dated 04.10.2010. In this Affidavit, the respondents in Para No. 1 have made the following observations:-

"That the contents of para 1 of the rejoinder to the reply are not admitted in the manner stated by the applicant. It is respectfully submitted that the decision has been taken to transfer CAO, who are having the service of less than 58 years of the age as on 31.3.2010 and rendered of 15 years of service can be transferred to the another reason."

W

8. On the next page in the same Para, they have given the names of three officers, their stay and date of retirement, which is in the following terms:-

S.No.	Name	Stay	DOR
1.	S.L. Meena	05.12.94	30.04.2022
2.	Ghanshyam	19.12.94	30.11.2020
3.	N.R. Choudhary	13.03.95	31.07.2016

9. From the portion, as quoted above, it is evident that the eligibility for the purpose of transfer of the CAOs has to be seen as on 31.03.2010 and only those CAO have been transferred who have rendered 15 years of service on the cut-off-date as on 31.03.2010. Admittedly, the persons named above have completed 15 years of service and were thus eligible for transfer. Thus in terms of transfer policy and in terms of provisions contained in Para 11(a), when these persons were eligible for transfer, who have completed 15 years of service and does not fall within the age limit prescribed under Para 11 (a), as period of about 6 to 12 years <sup>left in</sup> for their retirement and admittedly were less than 56 years of age could have been transferred instead of the applicant, who was admittedly entitled to the benefit of provisions contained in Para 11(a) of the transfer policy. In case there were no eligible employees within the prescribed age criteria who could have been transferred to another circle, in that eventuality, it was permissible for the respondents to depart the age criteria prescribed under Para 11 (a) and in that eventuality, this Tribunal would not have interfere in the matter even if there was violation of provisions contained in Para 11 (a) of the transfer policy in the public

interest but once there were eligible persons who could have been transferred, it was not permissible for the respondents to transgress the policy as contained in Para 11 (a).

10. For the foregoing reasons, I am of the view that the applicant has made out a case for the grant of relief. Accordingly, the impugned order dated 28.05.2010 so far as it relates to transfer of the applicant outside the circle i.e. Punjab is quashed and set aside. The interim stay granted on 29.06.2010 and continued from time to time is hereby confirmed. The OA shall stands disposed of accordingly.

11. In view of the order passed in the OA, no order is required to be passed in MA No. 208/2010, which shall stands disposed of accordingly.

  
(M.L. CHAUHAN)  
MEMBER (J)

AHQ