

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH**

Jaipur, this the 5th day of October, 2010

O.A. No. 295/2010

CORAM:

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

**B.L.Gautam,
s/o Shri Jagannath Gautam,
r/o Q.No.IV/2, Telecom Colony,
Jhalawar and presently working as
Sub Divisional Engineer (HRD),
O/o Telecom District Manager,
Jhalawar.**

.. Applicant

(By Advocate: Shri C.B.Sharma)

Versus

- 1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Corporate Office, Stateman's House, Barakhambha Road, New Delhi.**
- 2. Union of India through Secretary, Department of Telecom, Ministry of Communication and Information Technology, Sanchar Bhawan, New Delhi.**
- 3. Chief General Manager, Telecom, Rajasthan Circle, Sardar Patel Marg, Jaipur.**
- 4. Assistant General Manager (Pers-II), Corporate Office, Personnel-II Section, Bharat Bhawan, 4th Floor, Janpath, New Delhi.**

.. Respondent

(By Advocate: Shri Neeraj Batra)

Neeraj

O R D E R (O R A L)

This OA has been filed by the applicant against the order dated 23.4.2010 (Ann.A/1) and subsequent order dated 17.5.2010 whereby the applicant was transferred from Rajasthan Circle to Haryana Circle.

2. When the matter was listed on 29.6.2010, this Tribunal while issuing notices has also granted ex-parte interim stay on the premise that age of the applicant is about 55 years and therefore is coming within the protective ambit of guidelines issued which prohibits transfer of persons who are 55 years of age and therefore, the transfer order has been passed by the department malafidely.

3. Notice of this application was given to the respondents. The respondents have filed reply. In the reply, the respondents have stated that transfer of the applicant is not a general transfer under transfer policy but his transfer is due to administrative reasons on specific ground under vigilance clause on doubtful integrity. It is further pleaded that as per Section B, para (k) of the transfer policy dated 7.5.2008, the inter circle transfer upto STS level officers (JTO/SDE & DE/AGM) can be done upto 56 years of age. The applicant's age on 23.4.2010 i.e. on the date of transfer comes to 54 years and 4 months only. It is further submitted that tenure period of Group-B post for inter circle transfer is 18 years and the applicant has already completed more than 18 years of service. As per Section B para (d) of transfer policy wherein it is clearly mentioned that for inter circle transfer, stay shall be counted from regular

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promotion/recruitment into the grade of JTO i.e. first level of executive hierarchy. According to respondents, the applicant is working on the post of JTO w.e.f. 23.2.1988 and thus has already completed more than 18 years on the date of transfer i.e. 23.4.2010. It is further stated that the applicant is not transferred to a tenure circle and hence the age of 56 years prescribed for the same under BSNL Employees Transfer Policy is also not applicable to the applicant. It is further stated that the transfer order has been issued as per rules and regulations and is also due to administrative reason under vigilance clause on doubtful integrity.

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

5. From the material placed on record, it is evident that transfer of the applicant has been affected on account of circular issued by the Department of Telecommunication in respect of transfer of officers appearing in the Agreed/Officers of Doubtful Integrity (ODI) List which stipulates that officers appearing in the ODI list should be transferred out of zone and further these officers should not be allowed to occupy sensitive post. Thus, the general transfer policy guidelines applicable to other employees of the BSNL are not attracted in the instant case.

6. That apart, the respondents have further pleaded that there is no violation of the transfer policy issued by the Department in respect of their employees because the applicant has not attained the age of 56 years and when the impugned order of transfer was issued the applicant was of 54 years and 4 months only. The

respondents have also further pleaded that the applicant has already completed circle tenure of 18 years.

7. Thus, viewing the matter from any angle, the applicant has not made out any case even for violation of the transfer policy applicable to the employees of the BSNL and also violation of the instructions/circular issued by the Department of Telecommunication for transferring the persons appearing in the ODI list out of circle. Admittedly, the applicant carries all India transfer liability and the applicant has not made out any case for infringement of any statutory provisions as well as that the impugned order was passed malafidely. The scope of interference is very limited. The Hon'ble Apex Court in the case of Rajendra Singh vs. State of Uttar Pradesh and ors., (2010) 1 SCC (L&S) 503, in para 8 to 10 held as under :-

"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..."

8. 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 ^{in effect} 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 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.

9. Thus in view of what has been stated above, the applicant has not made out a case for grant of relief. Accordingly, the OA is dismissed with no order as to costs.

10. The ex-parte interim relief granted on 29.6.2010 and extended from time to time shall stand vacated.


(M.L. CHAUHAN)
Judl. Member

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