

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 16th day November, 2010

ORIGINAL APPLICATION No.300/2010

CORAM:

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

R.K.Tripathi,
s/o Shri Raj Bahadur Tripathi,
r/o 4-W-22, Talbandi, Kota and
presently working as Sub Divisional Engineer
(Marketing & Legal),
Office of GMTD,
Bharat Sanchar Nigam Limited,
Kota

.. 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 its Secretary,
Department of Telecom,
Ministry of Communication and Information Technology,
Sanchar Bhawan, New Delhi.
3. Chief General Manager,
Telecom, Rajasthan Circle,
Sardar Patel Road,
Jaipur.
4. Assistant General Manager (Pers-II),
Corporate Office, Personnel-II Section,
Bharat Sanchar Bhawan,

44

4th Floor, Jan Path, New Delhi.

.. Respondents

(By Advocate: Shri Neeraj Batra)

ORDER (ORAL)

The applicant has filed this OA against the order dated 23.4.2010 (Ann.A/1) whereby the applicant was transferred from Rajasthan Telecom Circle to MP Telecom Circle and another order dated 17.5.2010 issued by respondent No.4 pursuant to order of transfer Ann.A/1.

2. When the matter was listed on 6.7.2010, this Tribunal while granting ex-parte interim stay directed the respondents to maintain status quo qua the applicant. The respondents themselves have not relieved the applicant, even though the order of transfer was passed on 23.4.2010 and further in compliance of the said order another order was passed on 7.5.2010. The challenge was made on the ground that in terms of policy decision, employees who are more than 55 years of age should be avoided from transfer and further that representation of the applicant dated 29.4.2010 against the transfer has not been decided by the respondents as wife of the applicant is serving in the Urban Improvement Trust, Kota and applicant cannot shift his family at this stage. It is further stated that the applicant has not completed the tenure of 18 years.

3. The respondents have filed reply. In the reply, the respondents have stated that the applicant has already completed more than 18 years on the date of transfer. According to the respondents, 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 not applicable to the applicant. It is further stated that the transfer of the applicant is not a general transfer under transfer policy but this transfer is due to administrative reason on specific ground under vigilance clause on doubtful integrity. It is further stated that the age of the applicant on 23.4.2010 i.e. the date of transfer order comes to 55 years 10 months, thus there is no violation of transfer policy.

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

5. According to me, the ratio of the judgment rendered by this Tribunal in the case of B.L.Gautam vs. BSNL and Ors., dated 5th October, 2010 is squarely applicable in this case. At this stage, it will be useful to quote para 5 to 8 of the aforesaid judgment, which thus reads:-

"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.

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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."

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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..."

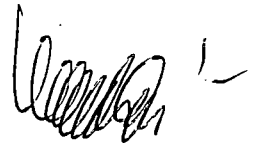
8. The contention raised by the learned counsel for the applicant that the circular issued by the Department of Telecommunication in respect of officers appearing in the ODI list is applicable only to Group-A officers and is not applicable in the case of the applicant and clarification in this respect 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 effect 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.

6. The reasoning given by this Tribunal in the case of B.L.Gautam (supra) is also applicable in the facts and circumstances of this case. As, such, the applicant has not made out a case for my interference. The interim stay granted on 6.7.2010 shall stand vacated.

7. It is further clarified that if the Department of Telecommunication is contemplating of issuing circular that only

Group-A officers whose name appear in the ODI list have to be transferred and not Group-B officer to which category the applicant belongs, the applicant shall be entitled to ^{the benefit of} such clarification as already noticed in Para-8 in the case of B.L.Gautam (~~supra~~) relevant portion of which has been reproduced hereinabove. It is further clarified that in case the respondents want to review the transfer order on the premise that wife of the applicant is working at Kota, this order will not come in the way of the respondents.

8. With these observations, the OA stands disposed of with no order as to costs.



(M.L.CHAUHAN)

Judl. Member

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