

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

JAIPUR, this the 28th day of July, 2010

Original Application No. 336/2010

CORAM:

HON'BLE MR. M.L.CHAUHAN, MEMBER (JUDL.)  
HON'BLE MR. K.S.SUGATHAN, MEMBER (ADMV.)

D.L.Verma  
s/o Shri Ram Lal Ji Verma,  
resident of c/o Modu Lal Verma,  
near Water Tank, Vikas Nagar,  
Bundi and presently working as  
Sub-Divisional Engineer,  
Telecom District Bundi.

.. 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. Union of India through its Secretary,  
Department of Telecom,  
Ministry of Communication & Information  
Technology, Sanchar Bhawan,  
New Delhi.
3. Chief General Manager,  
Telecom, Rajasthan Telecom Circle,  
Sardar Patel Marg,  
Jaipur.
4. General Manager (Pers.-II),  
Corporate Office,  
Bharat Sanchar Nigam Limited,  
Personnel-II Section,

Bharat Sanchar Bhawan,  
4<sup>th</sup> Floor, Jan Path,  
New Delhi.

... Respondents

(By Advocate: .....

ORDER (ORAL)

This is second round of litigation. Earlier, the applicant has filed OA No.263/10 against the transfer order issued by respondent No.1 on 23.4.2010. The said transfer order was challenged by the applicant on the ground that transfer order has been passed in violation of the transfer policy Ann.A/2, inasmuch as, the applicant has not completed the tenure of 18 years and also that the applicant has already attained the age of 55 years and will attain 56 years of age in July, 2010. Since representation of the applicant was pending, this Tribunal vide order dated 24.5.2010 disposed of the OA at admission stage with direction to respondent No.1 to decide representation of the applicant by passing speaking and reasoned order. It was further observed that till representation of the applicant is not decided, the respondents shall maintain status-quo qua the applicant. Now, vide impugned order dated 12<sup>th</sup> July, 2010, representation of the applicant has been considered and the same has been rejected. At this stage, it will be relevant to quote last para of the order where the reasoning for rejection has been recorded and thus reads:-

"Accordingly, the representation dt. 28.4.2010 has been perused in detail and it is stated that

16

- (i) The officer 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 officer. Also the officer will be completing 56 years only on 15.7.2010.
- (ii) Since the order of transfer in respect of the officer is based on Lr.No.21-9/2010-VA dt. 9.3.2010 and as stated in the letter the ODI list received from Rajasthan Circle by CVO, this is not a general transfer under transfer policy but a transfer due to administrative reasons, on specific ground under Vigilance clause on 'Doubtful integrity'.

It is this order which is under challenge in this OA.

2. The main ground of challenge raised by the applicant in the OA is that transfer could not have been effected solely on the ground of doubtful integrity as nothing has been mentioned in the transfer policy that doubtful integrity can be formed basis for the purpose of effecting transfer and also that the applicant was allowed deputation in Rajasthan Circle, as such, he could have been transferred within the Circle and not outside the Circle, besides the grounds which were raised in the earlier OA that the applicant has not completed tenure of 18 years.

3. We have given due consideration to the submissions made by the learned counsel for the applicant. We are of the view that the applicant is not entitled to any relief in view of the law laid down by the Apex Court. At this stage, it will be useful to quote decision of the Apex Court in the case of Rajendra Singh and Ors. vs. State of U.P. and Ors., (2010) 1 SCC (L&S) 503 whereby the Apex Court in para 8 to 10 has made the following observations:-

"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 vs. State of Bihar* (192 SCC (L&S) 127), 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 vs. Union of India* (1994 SCC (O&S) 1304) this Court reiterated that:-

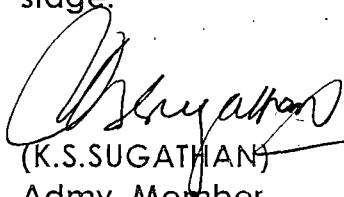
"6. ... the scope of judicial review in matters of transfer of a government servant to an equivalent post without any adverse consequence on the service or career prospects is very limited being confined only to the grounds of mala fides and violation of any specific provision...."

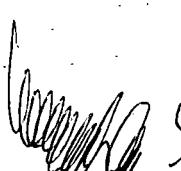
4. As can be seen from the law laid down by the Apex Court, as reproduced above, the scope of judicial review in such matters are very limited and courts are always reluctant to interfere with transfer of an employee unless such transfer is in violation of some statutory provisions or suffers from mala fide. The instant case is not a case of such nature. The respondents have categorically stated that transfer of the applicant was effected not on the basis of the transfer policy but for administrative reasons viz. on the ground of doubtful integrity. Even the applicant in his OA has admitted that applicant is facing ACP case at Kota which is under investigation. In view of this admitted fact, we are of the view that it is not permissible for us to interfere with the transfer which is made in public interest and for administrative reasons, especially when the applicant has not challenged the transfer order on the ground of violation of the statutory provisions or on the ground of mala fide. As can be seen from para-9 of the judgment in the case of Rajendra Singh (supra) where the earlier decision of the Apex Court in the case of Shilpi Bose has been reproduced, it has been categorically stated that even if a transfer is passed in violation of the executive instructions or orders, the courts ordinarily should not interfere with the order instead affected party should approach the higher authorities in the department. In the instant case, the appropriate authority has declined to interfere in the matter on the ground that the transfer of the applicant was not made under transfer policy but in public interest. Thus, in exercise of power of judicial review, it is not permissible for us to interfere in such matters and we are of the view

that public interest should sub-serve as against the interest of the individual person.

5. The learned counsel for the applicant argued that even if the transfer of the applicant was warranted under the facts and circumstances of the case, in that eventuality, the applicant could have been transferred within Rajasthan Circle at another place against non-sensitive post and not outside the Rajasthan Circle which has caused undue hardship to the applicant. The applicant has not raised such contention before the appropriate authority in his earlier representation. As such, no finding on this point is required to be given save and except that it will be permissible for the applicant to file fresh representation to the respondents qua this aspect and, in case such representation is made by the applicant, we see no reason why the appropriate authority shall not consider the representation on this aspect and dispose of the same expeditiously.

6. With these observations, the OA is disposed of at admission stage.

  
(K.S.SUGATHAN)  
Admv. Member

  
(M.L.CHAUHAN)  
Judl. Member

R/