

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
— JAIPUR BENCH

JAIPUR, this the 6th day of August, 2010

Original Application No. 368/2010

CORAM:

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

Karamvir Singh
s/o late Sh. Raju Ram,
r/o ST-3, RIICO Colony,
Jhunjhunu, working at
Churu TD, GMTD Office,
Churu.

.. Applicant

(BY Advocate: Shri Vikas Achra)

Versus

1. Bharat Sanchar Nigam Ltd.
through Chairman & Managing Director,
Bharat Sanchar Bhawan,
4th Floor, Janpath,
New Delhi.
2. Chief General Manager,
Telecommunication,
Bharat Sanchar Nigam Ltd.
Rajasthan Telecom Circle,
Sardar Patel Marg, Jaipur.
3. Assistant General Manager (Personnel),
Bharat Sanchar Nigam Ltd.,
Corporate Office, Personnel-II Section,
Bharat Sanchar Bhawan,
4th Floor, Janpath, New Delhi.
4. Assistant General Manager (Personnel),
Bharat Sanchar Nigam Ltd.,
Rajasthan Telecom Circle,
Sardar Patel Marg, Jaipur.

... Respondents

(By Advocate:)

ORDER (ORAL)

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

- (i) The Hon'ble Tribunal may be pleased to call for the original record of the case and after examining the same be pleased to quash and set aside the orders dated 17.5.2010 (Annexure-A/1) and 23.4.2010 (Annexure A/2) so far as it relates to the present applicant.
- (ii) The respondents may kindly be directed to allow applicant to continue on the post of SDE at CRU-TD, Churu.
- (iii) Any other prejudicial order to the interest of the applicant, if any passed during the pendency of the application, may kindly be taken on record and be quashed and set aside.
- (iv) Any other appropriate order or direction which may consider just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.

2. Briefly stated, facts of the case are that the applicant who is working as Sub-Divisional Engineer (T) at TD, Churu was transferred to QA Central, Palghat under DE(QA), Pondichery vide impugned order dated 17.05.2010 (Ann.A/1) pursuant to BSNL Corporate Office, New Delhi letter dated 23.4.2010. The grievance of the applicant is that he was transferred vide impugned order solely on the ground that disciplinary proceedings are pending against the applicant whereas the same cannot be a ground for transfer. It is further pleaded that transfer policy does not stipulate that an employee can be transferred on the ground of disciplinary

proceedings pending against him. The applicant further pleaded that the person with longest stay has not been transferred and the transfer order has not been passed by the competent authority. It is further stated that the applicant is facing departmental proceedings and criminal case where his presence is required, as such, the applicant could not have been transferred at a distance of about 2500 Kms., which will hamper the proceedings pending against him. It is on the basis of these grounds that the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. I have heard the learned counsel for the applicant at admission stage. From the material placed on record, more particularly from Ann.A/3, it is evident that criminal case No.38/08 is pending before the Special judge, Jaipur under Section 13(2) read with Section 13(1)(D) of Prevention of Corruption Act, 1988. Even the applicant in this OA has admitted that it is on account of this disciplinary proceeding as well as criminal case, the applicant has been transferred. Thus on the face of these facts, retention of the applicant at the present place of posting especially when investigation/departmental proceedings against the applicant for his involvement in corruption is pending, cannot be said to be in public/administrative interest and that the respondents have exercised power in a mala-fide manner. As can be seen from the facts of this case, the applicant is not being transferred as per the provisions contained in the transfer policy but his transfer has been necessitated on account of alleged involvement of the applicant in corruption case. As such, such a plea taken by the applicant that

person with longest stay has been retained deserved out right rejection. Further, the contention raised by the applicant that transfer of the applicant vide impugned order will hamper the disciplinary proceedings/criminal proceedings cannot be said to be a valid ground for retention of the applicant till criminal/disciplinary proceedings are concluded, which may take considerable long time and may hamper the public interest. In any case, scope of judicial review in the matter of transfer is very limited and it has been repeatedly held by the Apex Court that the order of transfer can be interfered on the ground of mala-fide and violation of any specific provisions. At this stage, I wish 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 transfer was not affected on the basis of transfer policy but for administrative reason viz. that the applicant was involved in a corruption case. Thus, I am of the view that it is not permissible for this Tribunal to interfere with the transfer which is made in public interest and for administrative reasons, especially when the applicant has not challenged the transfer on the ground

of violation of any statutory provisions or on the ground of mala-fide. In any case, if the applicant has any grievance regarding his transfer to a distant place out side the circle, it was permissible for him to make proper representation before the appropriate authority thereby highlighting his grievances regarding his transfer within the circle, which may enable him to defend his case before the criminal court as well as to participate in the departmental proceedings and, in that eventuality, the appropriate authority could have considered the matter. Having not done so, it is not permissible for this Tribunal in exercise of judicial review to interfere in the matter in view of the law laid down by the Apex Court, as noticed above.

5. With these observations, the OA is dismissed at admission stage.

6. It is further clarified that in case the applicant makes such representation before the appropriate authority highlighting his grievances regarding hardship being faced on account of his transfer at a distant place and other permissible grounds, it will be open for the appropriate authority to consider the matter sympathetically and dismissal of this OA will not come in the way of the applicant to raise such grievance before such authority, which will be considered by the appropriate authority on its own merit.



(M.L. CHAUHAN)
Judl. Member

R/