

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 16th day of September, 2010

ORIGINAL APPLICATION NO. 422/2010

CORAM

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

B.S. Meena son of Shri H.R. Meena, aged about 56 years, resident of 297-C, Talbandi, Kota and presently working as Divisional Engineer adhoc (Rural), Office of GMTD Bharat Sanchar Nigam Limited, Kota.

.....Applicant

Applicant present in person.

VERSUS

1. Bharat Sanchar Nigam Limited through its Chairman and Managing Director, Corporate Office, Bharat Sanchar Bhawan, 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 Circle, Sardar Patel Marg, Jaipur.
4. Deputy General Manager (Pers-I), Corporate Office, Personnel I Section, Bharat Sanchar Bhawan, 4th Floor, Jan Path, New Delhi.

.....Respondents

(By Advocate: -----)

ORDER (ORAL)

This is the second round of litigation. Earlier the applicant had filed OA No. 299/2010, which was disposed of by this Tribunal vide order dated 06.07.2010 thereby directing the respondent no. 1 to decide the representation of the applicant dated 30.04.2010 by passing a reasoned & speaking order. It was further directed that till such representation is not decided by respondent no. 1, the respondents shall maintain status quo qua the applicant as of today.



2. Pursuant to the direction given by this Tribunal, the respondents have decided the representation of the applicant vide impugned order dated 04.08.2010 (Annexure A/1), which is under challenge in this OA. The applicant has prayed that this impugned order dated 04.08.2010 (Annexure A/1) and order dated 13.04.2010 (Annexure A/4) may kindly be quashed and set aside and the respondents be directed to allow the applicant to work as Divisional Engineer (Rural) in Telecom District Kota.

3. In the OA, the applicant has raised the same grievances which he had raised before the appropriate authority through his representation. The challenge to the order dated 04.08.2010 (Annexure A/1) whereby the representation of the applicant was rejected has been made on ~~two~~ counts that the applicant has not completed circle tenure as he was promoted in the 'STS' cadre on ad hoc basis in the year 2003 and in Group 'B' Cadre in 1994.

4. I have heard the applicant, who is present in person. I am of the view that the applicant is not entitled to any relief. The contentions raised by the applicant in the representation were noticed by respondent no. 1 and thereafter he passed the reasoned order, which thus reads:-

.....
Accordingly, in compliance to the above order, the representation dated 30.4.2010 of the applicant, Shri B.S. Meena, AGM, was examined by the Respondent no. 1 i.e. CMD, BSNL and the grounds for cancellation of transfer mentioned therein has been duly considered/evaluated. The ground of request are mainly on the points (i) retirement in August, 2014 i.e. 56 years is running & not completed tenure of 15 years in Rajasthan (ii) wife is suffering from heart, diabetes and thyroid problem (iii) to take care of old parents suffering from various health problem (iv) to

solemnize marriage & (v) exoneration in the case of charge-sheet served under Rule 14.

In this regard it is submitted that:

Shri B.S. Meena, AGM, was transferred from Rajasthan Circle to BSNL-CO vide order dated 13.4.2010 on the basis of longest stay in the Circle. Hence, the contentions that he has not completed tenure of 15 years in Rajasthan Circle is not correct. He is working in Rajasthan Circle since 12.6.79 (i.e. more than 30 years). As per transfer policy, upto STS level, transfer of officers involving change of station would normally be avoided after 56 years for inter Circle transfer and after 57 years for intra circle transfer. At the time of issuance of order Sh. Meena has not crossed 56 years and also his stay in the Circle is more than 30 years. Hence, there is no violation of transfer policy in his case.

As regards domestic/health related problems, as pointed out by Shri Meena, it is stated that the interest of service/organization is supreme and above the convenience of individual officer. Moreover, BSNL has the prerogative to utilize the services of its executives according to the suitability to the post which cannot be challenged by the petitioner having all India transfer liability.

In so far as submission of the officer that he has been exonerated from Rule 14 charges vide DOT Vig. Letter dated 30.3.2006 is concerned, it is informed that even though he has been exonerated in the disciplinary proceedings but prosecution case approved by DOT vide their letter No. 9-122/2002-Vig.I dated 7.5.2003, is still pending.

In view of position explained above, it is stated that since the transfer is in accordance with the existing instructions and in the interest of service, there seems no justification in cancellation of the transfer order and hence the request of the officer cannot be acceded to.

This issues with the approval of Competent Authority."

5. Thus as can be seen from the reasoning given in the aforesaid order, the applicant is working in the Rajasthan Circle since 12.06.1979 i.e. more than 30 years and further that at the relevant time when the impugned order of transfer dated 13.04.2010 was passed, the applicant has not crossed 56 years of age. As such, the

transfer of the applicant was not made in violation of any transfer policy. The contention raised by the applicant that tenure of 15 years has to be counted from the date when he was promoted in the STS cadre/ in Group 'B' cadre cannot be accepted in as much as the transfer policy dated 07.05.2008 (Annexure), which has been placed on record, stipulates the circle tenure in respect of different posts viz. ^{particular} SAG, JAG, STS, TEC and holding of the post in executive cadre is irrelevant for the purpose of transfer. Admittedly, the applicant is working in Rajasthan Circle since 12.06.1979 on different posts, thus he has completed 30 years of tenure in Rajasthan Circle. As such this contention raised by the applicant deserves out right rejection.

Admittedly, there is no violation of the transfer policy. The applicant has all India transfer liability. Vide impugned order dated 13.04.2010 (Annexure A/4), the applicant has been transferred to corporate office, Delhi. The scope of judicial review in the matter transfer is very limited. Courts are always reluctant to interfere with transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. This is not a case of such nature. At this stage, it will be useful to quote decision of the Apex Court in the case of **Rajendra Singh & Others vs. State of Uttar Pradesh & Others** [2010(1) SCC (L&S) 503] whereby the Apex Court in Para Nos. 8, 9 and 10 has made the following observations:-

"8. A government servant has no vested right to remain posted at a place of his choice nor 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 (see State of U.P. v. Gobardhan Lal, 2005 SCC (L&S) 55, Para 7).

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, 1992 SCC (L&S) 127, this Court held (Para 4)

"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 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, 1994 SCC (L&S) 1304, this Court reiterated that (Para 6)

"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 the grounds of mala fides and violation of any specific provision....."

6. Thus in view of the law laid down by the Apex Court in the case of Rajendra Singh (supra) based upon its earlier decisions; it is not permissible for this Tribunal to interfere in the matter. Accordingly, the OA is dismissed at admission stage with no order as to costs.


(M.L. CHAUHAN)
MEMBER (J)

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