CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

15.09.2011

OA No.322/2011

Mr. P.N. Jatti, counsel for applicant.
Mr. Tej Prakash Sharma, counsel for respondents.

Heard. The O.A. is disposed of by a separate order on the separate sheets for the reasons recorded therein.

K.S. Rathore

(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

Original Application Nos. 322/2011, 323/2011, 324/2011, 325/2011, 326/2011 and 328/2011

DATE OF ORDER: 15.09.2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER

(1) OA No. 322/2011

J.P. Meena S/o Shri Kana Ram Meena, by caste Meena, aged about 48 years, R/o Meena Colony, PL-37, Ganga Pole-Jaipur, presently working as Telephone Mechanic, O/o Sub Divisional Officer (P), Durgapura, Jaipur.

...Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.
3. Principal General Manager, Jaipur Telecom District BSNL, Jaipur-10.
4. Sub Divisional Officer (P), Durgapura, Jaipur.

...Respondents

Mr. Tej Prakash Sharma, counsel for respondents.

(2) OA No. 323/2011

Jaiprakash Tiwari S/o Kanhiya Lal Tiwari, by caste Tiwari, aged about 53 years, R/o B-284, Vidhya Dhar Nagar, Jaipur, presently working as Telephone Mechanic, O/o Sub Divisional Engineer (SDE) (MM) Workshop, Sanganeri Gate, Jaipur.

...Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.

2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.

3. Principal General Manager, Jaipur Telecom District BSNL, Jaipur-10.

4. Sub Divisional Officer (MM) Workshop, Sanganeri Gate, Jaipur.

...Respondents

Mr. Tej Prakash Sharma, counsel for respondents.

(3) OA No. 324/2011

Mahendra Kumar S/o Shri Ram Dass, by caste Jatav, aged about 51 years, R/o Old Vidhyadhar Nagar, Jaipur, presently working as Telephone Mechanic O/o Sub Divisional Officer (P), Durgapura, Jaipur.

...Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.

2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.

3. Principal General Manager, Jaipur Telecom District BSNL, Jaipur-10.

4. Sub Divisional Officer (P), Durgapura, Jaipur.

...Respondents

Mr. Tej Prakash Sharma, counsel for respondents.

(4) OA No. 325/2011

Mohan Lal Bunker S/o Shri Narain Lal Bunker, by caste Bunker, aged about 51 years, R/o PL. No. B-20, Shri Ram Nagar, Jhotwara, Jaipur, presently working as Telephone Mechanic (TM) O/o Sub Divisional Officer (P), Hasanpura, Jaipur.

...Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.

2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.

3. Principal General Manager, Jaipur Telecom District BSNL, Jaipur-10.

4. Sub Divisional Officer (P), Hasanpura, Jaipur.

...Respondents

Mr. Tej Prakash Sharma, counsel for respondents.

(5) OA No. 326/2011

Vijesh Kumar S/o Ramchandra, by caste Dhanka, aged about 52 years, R/o 52/618, Pratap Nagar, Sector-5, Gram Bhambala, presently working as Telephone Mechanic O/o Sub Divisional Officer (P), Durgapura, Jaipur.

...Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.

2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.

3. Principal General Manager, Jaipur Telecom District BSNL, Jaipur-10.

4. Sub Divisional Officer (P), Durgapura, Jaipur.

...Respondents

Mr. Tej Prakash Sharma, counsel for respondents.

(6) OA No. 328/2011

Madho Lal S/o Ram Narain, by caste Khatik, aged about 52 years, R/o 2714, Bhindon Ka Rasta, Indra Bajar, Jaipur, presently working as Telephone Mechanic (TM) O/o Sub Divisional Officer (P)-III Sanganeri Gate, Jaipur.

...Applicant

Mr. P.N. Jatti, counsel for the applicant.

VERSUS

1. Union of India through the Chairman, Bharat Sanchar Nigam Limited, Sanchar Bhawan, New Delhi.

2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur-8.

3. Principal General Manager, Jaipur Telecom District BSNL, Jaipur-10.

4. Sub Divisional Officer (P)-III, Sanganeri Gate, Jaipur.

...Respondents

Mr. Tej Prakash Sharma, counsel for respondents.

ORDER (ORAL)

All the aforesaid OAs involving similar question of law and facts are being decided by this common order.

2. The applicants preferred these OAs against the transfer order dated 15th July, 2011 (Ann.A/1). This Tribunal while issuing notices has passed interim order to the extent that so far as the applicants are concerned, the applicants may not be relieved pursuant to the impugned order dated 15.7.2011 (Ann.A/1) if they are not relieved so far.

3. The respondents filed reply to the OA submitting that in view of the decision given in the case of Govt. of A.P. vs. G.Venkataraman reported in 2008(9) SCC 345 wherein the Hon'ble Supreme Court has observed that it is surprising that High Court castigated the respondent transfer as lacking bonafides on flimsy and fanciful pleas. The High Court's finding is unfounded and untenable. The legal position regarding interference by the Court in the matter of transfer is too well established. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as malafide. In another case Suresh Chand vs. State of Rajasthan reported in 2010 (3) WLC-678 where it has been held that transfer is not judicial or quasi judicial exercise of power. Similar view was taken in the matter of D.K.Shringi vs. Nuclear Power Corporation of India reported in 2007 (4) WLC (Raj.) 261 wherein it is categorically held that the transfer is open to

challenge only when it is malafide, politically motivated or contrary to the provisions of law.

The learned counsel appearing for the respondents referred to BSNL Employees' Transfer Policy particularly Section –D of the Additional Guidelines to Non-Executives wherein clause (iv) provides as under:-

> "(iv) For transfer from urban to rural/unpopular stations identified as tenure station within a Circle/SSA, tenure period shall be two years. Competent authority for notifying unpopular stations for the purpose of tenure shall be the concerned Head of Circle. For effecting transfers from urban to such tenure stations, system of calling volunteers would be adopted and in the event of not getting adequate volunteers, employees of the cadre having longest stay at the station shall be transferred. Such transferred employee shall be eligible for choice posting at urban station on completion of the tenure, if necessary, by transferring out other employees with longest stay at the urban station. Posting of unwilling female employees to such tenure stations would be avoided. Persons posted at tenure stations may be allowed to continue even beyond two years tenure if they so volunteer. However, they would be subjected to the prevailing tenure limits."

The learned counsel also referred to transfer order wherein it is categorically stated that with the approval of the competent authority Telecom Mechanics are transferred from Urban to Rural area (based on longest stay at Jaipur) in view of the policy decision taken by the respondents and in view of the longest stay at Jaipur to provide chances to the persons who are working in rural area and thus the impugned order has been passed.

4. It is not disputed that no allegation of malafide has been alleged by the applicants in any of the OAs and further they have also not challenged the policy decision/guidelines issued by the respondents from time to time. The transfer order is challenged merely on the ground that their children are studying and in mid session they should not be transferred.

5. I have thoroughly considered the impugned order, the guidelines and the policy decision taken by the respondents and also carefully gone through the judgments rendered by the Hon'ble Supreme Court and High Court and, in my considered view, the OAs directed against the transfer order being devoid of merit deserve to be dismissed as these transfer orders are purely made in accordance with the policy to provide chances to the persons who are working in the rural areas.

6. Consequently, the aforesaid OAs are dismissed with no order as to costs.

7. The interim order issued on 26.7.2011 and continued from time to time is vacated.

(JUSTICE K.S.RATHORE)
Judl. Member

R/