

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

01.04.2013

OA No. 81/2013

Mr. P.N. Jatti, Counsel for applicant.

Mr. Mukesh Agarwal, Counsel for respondents.

Heard learned counsel for the parties. The OA is disposed of by a separate order.

Anil Kumar
(Anil Kumar)
Member (A)

ahq

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.

Jaipur, the 11th day of April, 2013

CORAM :

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. ORIGINAL APPLICATION NO. 81/2013

Prahlad Chandra Verma son of Shri Chanda Lal Verma by caste Verma aged about 49 years, resident of Quarter No. 1/3, New P and T Colony, Vigyan Nagar, Kota. Presently working as JTO (Junior Telecom Officer) in the office of GMTD, Kota.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Chairman and Managing Director, Bharat Sanchar Nigam Ltd., H.C. Mathur Lane, Janpath, New Delhi.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Rajasthan Circle, Jaipur.
3. General Manager Telecom, Bharat Sanchar Nigam Ltd., District Kota, Kota.

... Respondents

(By Advocate: Mr. T.P. Sharma)

2. ORIGINAL APPLICATION NO. 82/2013

Ishwar Chand Snehi son of Shri Prakash Snehi aged about 46 years, resident of 446 Sector A, Shri Nath Puram, Kota. Presently working as JTO (Junior Telecom Officer) in the office of GMTD, Kota.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Chairman and Managing Director, Bharat Sanchar Nigam Ltd., H.C. Mathur Lane, Janpath, New Delhi.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Rajasthan Circle, Jaipur.

3. General Manager Telecom, Bharat Sanchar Nigam Ltd., District Kota, Kota.

... Respondents

(By Advocate: Mr. T.P. Sharma)

3. ORIGINAL APPLICATION NO. 83/2013

Dinesh Kumar Nagar son of Shri Hemraj Nagar, aged about 31 years, resident of D-65, New Nakoda Colony, Baren. Presently working as JTO Baran, office of the SDOP, Baran, Kota.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Chairman and Managing Director, Bharat Sanchar Nigam Ltd., H.C. Mathur Lane, Janpath, New Delhi.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Rajasthan Circle, Jaipur.
3. General Manager Telecom, Bharat Sanchar Nigam Ltd., District Kota, Kota.

... Respondents

(By Advocate: Mr. T.P. Sharma)

4. ORIGINAL APPLICATION NO. 84/2013

O.P. Mahawer son of Shri Asharam Mahawer, aged about 52 years, resident of A/24, Subhash Colony, Kota, presently working as JTO (Junior Telecom Officer) in the office of GMTD, Kota.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Chairman and Managing Director, Bharat Sanchar Nigam Ltd., H.C. Mathur Lane, Janpath, New Delhi.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Rajasthan Circle, Jaipur.
3. General Manager Telecom, Bharat Sanchar Nigam Ltd., District Kota, Kota.

... Respondents

(By Advocate: Mr. T.P. Sharma)

5. ORIGINAL APPLICATION NO. 85/2013

Abdul Hamid son of Abdul Majid, aged about 50 years, resident of 50 years, B-20, Indra Colony, Vigyan Nagar, Kota, presently working as JTO (Junior Telecom Officer) in the office of GMTD, Kota.

... Applicant

(By Advocate: Mr. P.N. Jatti)

Versus

1. Union of India through the Chairman and Managing Director, Bharat Sanchar Nigam Ltd., H.C. Mathur Lane, Janpath, New Delhi.
2. Chief General Manager Telecom, Bharat Sanchar Nigam Ltd., Rajasthan Circle, Jaipur.
3. General Manager Telecom, Bharat Sanchar Nigam Ltd., District Kota, Kota.

... Respondents

(By Advocate: Mr. T.P. Sharma)

ORDER (ORAL)

Since the facts and the legal position in all these OA are similar, therefore, they are being disposed of by a common order. The fact of OA No. 81/2013 (P.C. Verma vs. Union of India & Others) has been taken as a lead case.

2. The applicants in OA No. 81/2013 (P.C. Verma vs. Union of India & Others), OA No. 82/2013 (Ishwar Chand Snehi vs. Union of India & Others), OA No. 84/2013 (O.P. Mahawer vs. Union of India & Others) and OA No. 85/2013 (Abdul Hamid vs. Union of India & Others) have assailed the transfer order dated 28.12.2012 and the applicant of OA No. 83/2013 (Dinesh

Anil Kumar

Kumar vs. Union of India & Others) has assailed the transfer order dated 31.12.2012.

3. The brief facts, as stated by the learned counsel for the applicant, are that the applicant has been working as Junior Telecom Officer at Kota since 14.12.2005. He has been transferred from Kota-TD to BSW-TD vide order dated 28.12.2012. That the applicant had submitted a representation against this transfer order but no action has been taken by the respondents.

4. The learned counsel for the applicant submitted that the applicant's transfer is against the transfer policy of the Department. The transfer policy dated 07.05.2008 has been annexed at Annexure A/3. The transfer policy mentions that there has to be need of transfer. The transfer policy has also specified what will constitute as need for transfer. The transfer policy also mentions about the basis for transfer. As per the transfer policy, the tenure period of the applicant is ten years as Station/SSA tenure as per Section B of the transfer policy but the applicant has been transferred only after a period of seven years. He further argued that the children of the applicant are studying and therefore, the transfer order in the mid session cannot be issued. By way of MA, he has placed a copy of the receipt from the Educational Institute to show that children of the applicant are studying at Kota.

Anil Kumar

5. With regard to applicant of OA No. 83/2013 (Dinesh Kumar), the learned counsel for the applicant stated that he was earlier transferred vide order dated 25.06.2011 from Kota to Jaipur. Then on 23.07.2011, he was again transferred from Jaipur to Kota at his own request. Now he has again been transferred from Kota to BAM-TD vide order dated 31.12.2012. Thus he has been subjected to frequent transfers. Therefore, his transfer order dated 31.12.2012 be quashed and set aside.

6. In support of his averments, the learned counsel for the applicants referred to the following case law:-

- (1) D.R. Sengal vs. Chief Postmaster General & Others
1991 (15) ATC 36
- (2) Vinod Sahi vs. Union of India & Others
OA No. 410/1995 decided on 24.01.1996
CAT Lucknow Bench, Swamy's Case Law Digewt
1996/1 Page 708
- (3) R. Nanoo vs. Divisional Railway Manager,
Trivandrum & Others, 1989 (10) ATC 137
- (4) Shri Padma Kanta Saikia vs. Union of India & Ors.
September, 2009 Swamynews Page No. 92

7. The learned counsel for the applicant submitted that there are many employees who have longer stay than the applicants but they have not been transferred. Therefore, the applicants have been discriminated upon. The applicants cannot be transferred before the completion of their tenure period, which is ten years.

8. Therefore, he submitted that the transfer order dated 28.12.2012 (Annexure A/1) in respect of OA No. 81/2013 (P.C.

Anil Kumar

Verma vs. Union of India & Others), OA No. 82/2013 (Ishwar Chand Snehi vs. Union of India & Others), OA No. 84/2013 (O.P. Mahawer vs. Union of India & Others) and OA No. 85/2013 (Abdul Hamid vs. Union of India & Others) and the transfer order dated 31.12.2012 (Annexure A/1) in respect of OA No. 83/2013 (Dinesh Kumar vs. Union of India & Others) be quashed and set aside.

9. On the other hand, the learned counsel for the respondents argued that the applicants are holding the transferable posts and the respondents are at liberty to transfer the applicants as per administrative exigencies. Therefore, he submitted that the Tribunal may not interfere with the transfer order dated 28.12.2012 and 31.12.2012, as assailed by the applicants.

10. He further argued that it is settled law that transfer of an employee is an incident of service and in the transfer matters, Courts/Tribunals has a very limited scope and jurisdiction to interfere. The transfer of the applicants was made as per norms and rules. Therefore, the present OA deserves to be dismissed.

11. He further argued that this transfer order has been issued by the competent authority according to the guidelines. There is no malice/ malafide on the part of the competent authority. In support of his averments, he referred to the judgment of the Hon'ble Supreme Court in the case of

Anil Kumar

Government 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 transferred as lacking bonafides on filmsy and fanciful pleas. The High Court's findings is unfounded and untenable. The legal position regarding interference by the court in the matter of transfer is too well established. The respondents transfer neither suffers from violation of any statutory rules nor can it be described as malafide.

12. The learned counsel for the respondents also referred to the order of the Hon'ble Rajasthan High Court in the case of **Suresh Chand vs. State of Rajasthan**, reported in 2010 (3) WLC 678 wherein it has been held that transfer is not judicial or quashi judicial exercise of power. In the matter of **D.K. Shringi vs. Nuclear Power Corporation of India** reported in 2007 (4) WLC 261, it was held that transfer is open to challenge only when it is malafide, politically motivated or contrary to provisions of law.

13. Learned counsel for the respondents also referred to the order of the Central Administrative Tribunal, Jodhpur Bench, Jodhpur in OA No. 306/2012 decided on 19.10.2012 [**Shrawan Kumar vs. BSNL & Others**]. This OA was dismissed on the ground that the transfer was not based on malice in law and the respondents were competent to transfer the applicants.

Anil Kumar

14. Learned counsel for the respondents further submitted that actually the applicant was transferred vide order dated 11.05.2012 (Annexure R/1), which was kept in abeyance till 31.12.2012 and on completion of the period of held in abeyance, he was relieved with effect from 31.12.2012. The applicant was transferred from Kota to Banswara due to administrative exigency in Banswara and in the interest of service. There is shortage of staff at Banswara.

15. He further submitted that representation of the applicant dated 'Nil' received on 29.12.2012 has already been considered and the same was not acceded to by the competent authority. With regard to the representation of the applicant dated 09.01.2013 the learned counsel for the respondents submitted that the applicant has already been relieved and struck off with effect from 31.12.2012 (A/N) from Kota to join at Banswara. There are no new facts in his representation dated 09.01.2013.

16. The learned counsel for the respondents further argued that transfer policy was modified on 13.08.2008. The modified policy provides as under:-

"Notwithstanding the tenure shown in this para, the management reserves the right to transfer an executive prior to specified tenure depending on the administrative requirement and in the interest of service."

17. Thus he argued that even in the policy, it has been mentioned that the Management has a right to transfer an executive prior to specified tenure depending upon the

Anil Kumar

administrative requirement and in the interest of service. Therefore, the transfer order issued even prior to the completion of the tenure is in accordance with the transfer policy of the respondents.

18. He further submitted that the ratio decided in the case law referred to by the learned counsel for the applicants is not applicable under the facts & circumstances of the present case. On the contrary, he submitted that the similar controversy has been resolved by this Bench of the Tribunal in OA No. 33/2013 decided on 26.02.2013 [Nayeem Mansoor vs. Chairman and Managing Director, BSNL, New Delhi & Others] and other connected OAs. Therefore, he argued that the present OA has no merit and it should be dismissed with costs.

19. Heard the rival submissions of the respective parties, perused the documents on record and the case law referred to by the learned counsel for the parties. The learned counsel for the applicants has also submitted his written submissions.

20. It is an admitted fact that the applicants have been transferred before the completion of their tenure. It is also admitted that other employees who have longer stay than the applicants at their place of posting have not been transferred. It is also admitted that the applicant have since been relieved in compliance of their transfer order. However, it is a settled principle of law that transfer is an incident of service and an employee has no right to remain at one place of posting as

Anil Kumar

long as he desires. I have carefully gone through the transfer policy of the respondents dated 07.05.2008 and 13.08.2008. Under the heading "Basis for transfer", it has been mentioned that:-

"Transfer shall not be purely based on tenure decided by the transfer policy. Transfer shall also be based on competencies and skills required to execute the work or to provide an opportunity to employees to develop competencies as per job rotation requirement."

In Section -B of this transfer policy, it has been clearly mentioned that:-

"Notwithstanding above, the management reserves the right to transfer an executive prior to the above specified tenure or to retain him/her beyond the specified tenure depending on the administrative requirement and in the interest of the service."

21. I have carefully perused the case law referred to by the learned counsel for the applicants and I am of the view that the ratio decided in these case laws, referred to by the learned counsel for the applicants, is not applicable under the facts & circumstances of the present case. On the contrary, the ratio decided in the cases, referred to by the learned counsel for the respondents, is squarely applicable under the facts & circumstances of the present case. The similar controversy has been decided by the Jodhpur Bench of the Tribunal in OA No. 306/2012 decided on 19.10.2012, Shrawan Kumar vs. BSNL & Others (supra) and by this Tribunal in OA No. 33/2013 decided on 26.02.2013, Nayeem Mansoori vs. Chairman & Managing Director, BSNL, New Delhi & others (supra).

Anil Kumar

22. In the present case, I am of the opinion that the transfer order has been issued by the competent authority and it is not based on malafide or is politically motivated. The transfer policy also provides that the respondent department can transfer employees before the tenure. Even if it is accepted that while transferring the applicants, the respondents have strictly not followed the transfer policy even then the applicants have no legal enforceable right as held by the Hon'ble Supreme Court in the case of **State of U.P. vs. Goverdhan**, 2005 SCC (L&S) 55. The Hon'ble Supreme Court in Para Nos. 7 & 8 in the case of **State of U.P. vs. Goverdhan Lal** has held that :-

"7. It is too late in the day for any Government Servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. Transfer of an employee is not only an incident inherent in terms of appointment but also implicit as an essential condition of service in the absence of any specific indication to the contra, in the law governing or conditions of service. Unless the order of transfer is shown to be an outcome of a mala fide exercise of power or violative of any statutory provision (an Act or Rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course of routine for any or every type of grievance sought to be made. Even administrative guidelines for regulating transfer or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence of depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court, has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.

Anil Kumar

8. A challenge to an order of transfer should normally be eschewed and should not be countenanced by the Courts or Tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that Courts or Tribunals cannot substitute their own decision in the matter of transfer for that of competent authorities of the State and even allegations of mala fides when made must be such as to inspire confidence in the Court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surprises and except for strong and convincing reasons, no interference could ordinarily be made with an order of transfer."

23. Based upon the facts of these OAs and also the legal position, it cannot be said that the transfer orders dated 28.12.2012 and 31.12.2012 suffer from any illegality or they have been issued in violation of any rules. Consequently, the applicants cannot be given any relief in the present OAs.

24. Thus the OAs are dismissed being devoid of merit with no order as to costs.

25. The Registry is directed to place the copy of this order in the files of OA No. 82/2013, 83/2013, 84/2013 and 85/2013.

Anil Kumar
(Anil Kumar)
Member (A)

AHQ