CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

26.02.2013

OA No. 35/2013

Mr. S.C. Sethi, Counsel for applicant.
Mr. T.P. Sharma, 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 26th day of February, 2013

CORAM:

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 33/2013**

Nayeem Mansoory son of Shri Imam Mansoory, aged about 34 years, at present resident of 6-D-41, Vigyan Nagar, Kota. Presently working as JTO (Junior Telecom Officer), Nayapura Telephone Exchange (CMTS Planning Wing), Kota.

... Applicant

(By Advocate: Mr. S.C. Sethi)

Versus

1. Chairman and Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Janpath, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
3. AGM (Pers.), Office of CGMT, BSNL, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
4. General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Kota SSA, Near ESI Hospital, Jhalawar Road, Kota (Rajathan).

... Respondents

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

2. **ORIGINAL APPLICATION NO. 34/2013**

Vinod Kumar Yadav son of Shri Bajrang Lal Yadav, aged about 37 years at present resident of House No. 445, Shastri Nagar, Dadabari, Kota. Presently working as JTO (Junior Telecom Officer) (OFC-II) AGM (Transmission) Kota (Rajasthan).

... Applicant

(By Advocate : Mr. S.C. Sethi)

Versus

1. Chairman and Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Janpath, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
3. AGM (Pers.), Office of CGMT, BSNL, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
4. General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Kota SSA, Near ESI Hospital, Jhalawar Road, Kota (Rajathan).

... Respondents

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

3. **ORIGINAL APPLICATION NO. 35/2013**

Puneet Kumar Kaushik son of Shri Jitendra Kumar Sharma, aged about 35 years at present resident of 422-B, R.K. Puram, Kota (Rajasthan). Presently working as JTO (Junior Telecom Officer) Project Vijay in the office of AGM (CO&CM) BSNL Nayapura, Kota (Rajasthan)

... Applicant

(By Advocate : Mr. S.C. Sethi)

Versus

1. Chairman and Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Janpath, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
3. AGM (Pers.), Office of CGMT, BSNL, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
4. General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Kota SSA, Near ESI Hospital, Jhalawar Road, Kota (Rajathan).

... Respondents

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

4. **ORIGINAL APPLICATION NO. 36/2013**

Narendra Singh Nagar son of Shri Shiv Charan Ngar, aged about 35 years at present resident of House No. B/450, Indira Vihar, Near Raghukul Kostel, Kota (Rajathan). Presently working as JTO (Junior Telecom Officer), DE Mobile- Planning Nayapura, Kota (Rajasthan).

... Applicant

(By Advocate : Mr. S.C. Sethi)

Versus

1. Chairman and Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Janpath, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
3. AGM (Pers.), Office of CGMT, BSNL, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
4. General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Kota SSA, Near ESI Hospital, Jhalawar Road, Kota (Rajathan).

... Respondents

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

5. **ORIGINAL APPLICATION NO. 37/2013**

Ashish Kumar Bansal son of Shri Gulab Chand Bansal, aged about 41 years, at present resident of Quarter No. 2, Type 4, P&T Colony, Dada Bari Kota. Presenlty working as JTO (Junior Telecom Officer) Nayapura, Telephone Exchange (CMTS Planning Wing), Kota.

... Applicant

(By Advocate : Mr. S.C. Sethi)

Versus

1. Chairman and Managing Director, Bharat Sanchar Nigam Ltd., Bharat Sanchar Bhawan, Janpath, New Delhi.
2. Chief General Manager, Bharat Sanchar Nigam Ltd., Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).

3. AGM (Pers.), Office of CGMT, BSNL, Rajasthan Telecom Circle, Sardar Patel Marg, C-Scheme, Jaipur (Rajasthan).
4. General Manager, Telecom District, Bharat Sanchar Nigam Ltd., Kota SSA, Near ESI Hospital, Jhalawar Road, Kota (Rajathan).

... Respondents

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

ORDER (ORAL)

The OA No. 33/2013 (Nayeem Mansoory vs. BSNL & Others), OA No. 34/2013 (Vinod Kumar Yadav vs. BSNL & Others), OA No. 35/2013 (Puneet Kumar Kaushik vs. BSNL & Others), OA No. 36/2013 (Narendra Singh Nagar vs. BSNL & Others) and OA No. 37/2013 (Ashish Kumar Bansal vs. BSNL & Others) have similar facts, therefore, they are being disposed of by a common order. The facts of OA No. 33/2013 (Nayeem Mansoory vs. BSNL & Others) is being taken as a lead case.

2. Brief facts of the case, as stated by the learned counsel for the applicant, are that the applicants are working as JTO. As per the transfer policy of the respondents dated 13.08.2008 and 09.05.2012 (Annexures A/4 & A/5 respectively), the tenure of TES Group 'B'/JTS or equivalent is ten years at station/SSA tenure. None of the applicants have completed this tenure period of ten years but the respondents vide order dated 11.05.2012 (Annexure A/1) have transferred the applicants from their present place of posting.

3. That the transfer of the applicants is neither in the exigency of service nor in the interest of Administration but they have been transferred to accommodate other persons in Kota SSA (Rajasthan Telecom Circle) on their own request. Therefore, this transfer order is malafide and colourable exercise of power. It is also against the policy of transfer of BSNL Staff. In the case of OA No. 33/2013 (Nayeem Mansoory), his transfer was held in abeyance upto 31.03.2013 vide order dated 27.08.2012 (Annexure A/7) but vide order dated 31.12.2012, he has been suddenly ordered to be relieved on 05.01.2013 A/N. Learned counsel for the applicants further argued that before transferring the applicants, no option has been asked from the applicants. If other persons are to be accommodated on their requests, the option of the applicants must also been taken. He further argued that in the case of Puneet Kumar Kaushik (OA No. 35/2013) and in the case of Ashish Kumar Bansal (OA No. 37/2013), their wives are posted at the same place. There is a general policy of the Government of India that as far as possible husband & wife should be posted at the same station. Therefore, in the case of these applicants, this general principle has also been ignored. Therefore, he argued that the transfer order dated 11.05.2012 (Annexure A/1) and relieving order dated 31.12.2012 (Annexure A/2) are against the transfer policy, arbitrary and is colourable exercise of power. These orders should be quashed and set aside. The applicants be allowed to work at their original place of posting. In support of his averments, he

referred to the order of the Central Administrative Tribunal, Bombay Bench (camp at Nagpur) in OA No. 215/2012, **Shri Rahul vs. BSNL & Others** and two other connected OAs decided on 02.05.2012. He also referred to the order of the Central Administrative Tribunal, Lucknow Bench in the case of **Vinod Sahi vs. Union of India & Others**, 1996 (34) ATC 255.

4. On the other hand, learned counsel for the respondents argued that it is a settled law that transfer of an employee is an incident of service and department is free to transfer his employee as per administrative exigency and in the transfer matters, Courts and Tribunals has a very limited scope and jurisdiction to interfere. The transfer of the applicants has been made as per the norms and rules.

5. He further argued that the applicants have already been relieved in pursuant to the transfer order dated 11.05.2012 (Annexure A/1). He further submitted as per the transfer policy of the respondent department dated 07.05.2008 which was modified on 13.08.2008, the management has a right to move or not to move an applicant from one post to another, to different locations as per business requirement & needs. While modifying the aforesaid policy on 13.08.2008, Para I I(b) was replaced where it has been clarified that "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." The photocopy of transfer policy dated 07.05.2008 and its modification dated 13.08.2008 have been annexed as Annexures R/1 and R/2 respectively.

6. He further submitted that merely because the applicants have not completed the tenure period at their place of posting, they cannot claim as a matter of right to retain them in their place of posting.

7. Learned counsel for the respondents further submitted that the representations of the applicants were considered and they were rejected by the competent authority. The applicants were ordered vide order dated 24.12.2012 to be relieved with effect from 31.12.2012 against the transfer order dated 11.05.2012 in the interest of service (Annexure R/4).

8. 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 **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

Anil Kumar

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.

9. 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.

10. 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. Therefore, he argued that in view of the settled legal position as well as on facts of the case on merit, the present applicants are not entitled for any relief in these OAs, therefore, these OA may be dismissed.

11. Heard the learned counsel for the parties, perused the relevant documents on record and perused the case law referred to by the learned counsel for the parties. It is an admitted fact that the applicants have been transferred before the completion of the 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 applicant have since been relieved in compliance of the transfer order dated 11.05.2012 (Annexure A/1). It is settled principle of law that transfer is an incidence of service and an employee has no right to remain at one place of posting as long as he desires. I have carefully gone through the transfer policy of the respondents dated 07.05.2008 and 13.08.2008 (Annexures R/1 and R/2 respectively). 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."

12. Thus it is clear from the perusal of the transfer policy itself that the applicants could have been transferred by the respondents before the completion of their tenure and the

employees having longer stay than the applicants could have been retained by the respondent department. Thus I do not find malice in law/ rule in the action of the respondents.

13. The Hon'ble Supreme Court in Para Nos. 7 & 8 in the case of **State of U.P. vs. Goverdhan Lal**, 2005 SCC (L&S) 55, 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.
>
> 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."

14. 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, the ratio decided in the cases referred to by the learned counsel for the respondents is squarely applicable in the facts & circumstances of the present case. 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 for the sake of arguments, 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 Lal** (supra). Therefore, it cannot be said that this transfer order dated 11.05.2012 (Annexure A/1) suffers from any illegality or it has been issued in violation of any Rules.

15. Consequently these OAs are dismissed with no order as to costs.

Anil Kumar

16. However in the cases of applicants in OA No. 35/2013 (Puneet Kumar Kaushik vs. BSNL & Others) and OA No. 37/2013 (Ashish Kumar Bansal vs. BSNL & Others), since their wives are posted in the same station, learned counsel for the respondents submitted that in case the applicants submit a representation to that effect then the respondents would consider their cases sympathetically and according to the provisions of law. Therefore, these two applicants are given liberty to file a representation before the respondents within a period of 15 days from the date of receipt of a copy of this order and the respondents are directed to consider the same according to the provisions of law.

17. The Registry is directed to place the copy of this order in the respective files.

(Anil Kumar)
Member (A)

AHQ

copy given vide
No 260 To 269
28/2/13