

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH CHANDIGARH**

2. O.A. No.060/00384/2014

Sunil Datt Vs. U.O.I. & Others

02.05.2014

Present: Mr. Gurmohan Singh, counsel for the applicant

1. Contends, inter alia, that though the applicant has been ordered to be transferred from Chandigarh to Ropar, vide order dated 07.08.2013, he has been continuing at Chandigarh since 1983 when he had joined the respondent-Department. He further submits that there are six employees who had longer tenure of stay than the applicant.
2. Issue notice to the respondents.
3. It would be the duty of the applicant to serve respondents **dasti**.
4. List on 06.05.2014.

As —

**(RAJWANT SANDHU)
MEMBER (A)**

'mw'

1
**(SANJEEV KAUSHIK)
MEMBER (J)**

*1- Dasti issued on 2/5/14, please
2- Proof of service and
will not reply please*

copy

6

2

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH CHANDIGARH**

13. O.A. No. 060/00384/2014

Sunil Datt vs. U.O.I. & Others

06.05.2014

Present: Mr. Gurmohan Singh, counsel for the applicant

1. Learned counsel for the applicant makes a statement at the Bar that the applicant may be permitted to withdraw the O.A.
2. Permitted.
3. The O.A. stands disposed of as withdrawn.


(UDAY KUMAR VARMA)
MEMBER (A)

'mw'


(SANJEEV KAUSHIK)
MEMBER (J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

REPORT OF THE SCRUTINY OF THE ORIGINAL APPLICATION

APPLICANT Sunil Dutt

Respondent (S) DS N 2

Represented by Advocate Mr. Gur Mohan S/

Nature of Grievance Trans.

No. of applicants One

CLASSIFICATION

1. Is the application in proper form? (Three complete sets in proper form in two compilation) Y
2. Whether name description addressw of the parties been furnished in the cause title? Y
3. (a) Has the application been duly signed and verified? Y
(b) Have the copies duly signed? Y
(c) Have the sufficient number of copies of the application been filed? Y
4. Whether all the necessary parties are impleaded? Y
5. Whether English translation of documents in a language other then English or Hindi been filed? Y
6. Is the application in time? Y
7. Has the Vakalatnama/Memo of Appearance/Authorization has been filed? Y
8. Is the applicaton maintainable? Y

9. Is the application accompanied by IPO/DD for Rs.50? Y

10. Has the impugned order Original duly attested by legible copy been filed? Y

11. Have the legible copy of annexures duly attested, been filed? Y

12. Has the index of documents been filed and paging done properly? Y

13. Has the applicant exhausted all available remedies? Y

14. Has the declaration as required by item 7 of the form made? Y

15. Has the required number of envelopes (Five sets bearing full address of the respondents filed)? Y

16(a) Whether the relief sought for arise out of Single cause of action? Y

(b) Whether any interim relief prayed for? Y

17. In case of M.A. for condonation of delay is filed, whether supported an affidavit of the applicant? Y

18. Whether this case can be heard by Single Bench? SB

19. Any other point? -

20. Result of scrutiny with details of the scrutiny clerk. Cm

21. Whether Caveat is filed in the case or not? Ad

Super Kisan
Section Officer (Judicial)

Deputy Registrar 31
11/5/14

Registrar 81
11/6/14

CENTRAL GOVERNMENT
ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH

ORIGINAL APPLICATION NO. 060/00384/140F

APPLICANT (S)

VERSUS

RESPONDENT(S)

I N D E X

<u>SR. NO.</u>	<u>DISCRIPTION OF DOCUMENTS</u>	<u>PAGE NO.</u>
1.	<u>CD</u>	<u>1-16</u>
2.	<u>Ann A11 to A-5</u>	<u>17-34</u>
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		

CAT Orders 1-2
Decided on 6/5/14
Issued 12/5/14

Certified that the case is complete in all respects.

Dealing Hand

Sagor Kumar
Section Officer

19/5/14

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH

Original Application No. 060/0384 of 2014

SUNIL DATT Vs BSNL & ORS

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Chandigarh

Dated: 28.04.2014

Sunil Datt
Applicant

S32 *Gur Mohan Singh* *(Suman K. Vimal)*
(GURMOHAN SINGH) (SUMAN.K.VIMAL)
ADVOCATES
COUNSEL FOR THE APPLICANT

28 APR 2014

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH, CHANDIGARH
O.A. 2014

SUNIL DATT V BSNL & others

LIST OF DATE AND EVENTS

05.07.1983 The Applicant joined Bharat Sanchar Nigam Limited, Punjab Circle as Telegraph Assistant.

24.02.2003 The Applicant was promoted to the post of Junior Account Officer in Bharat Sanchar Nigam Limited, Punjab Circle.

07.08.2013 The Respondent no.5 issued the transfer order of the applicant from Chandigarh to Ropar and the person named Ramandeep Singh from Ropar to Chandigarh in applicants place.

14.08.2013 The applicant served a representation to the respondent no. 4 praying for the cancellation of the transfer order dated 07.08.2013 for the reasons stated therein.

05.04.2014 The applicant once again moved an representation to the respondent no.4 for cancellation of the transfer order dated 07.08.2013 in view of the guidelines laid down by respondent to be followed for transfer policy.

09.04.2014 The respondent no.4 give the communication letter to the DGM (Finance) justifying the transfer order and order the applicant to be relieved.

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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
CHANDIGARH BENCH, CHANDIGARH**

Original Application No. 060/02384 of 2014

Sunil Datt S/o Sh. Kishori Lal, R/o H. No. 93, Milk
Colony, Dhanas, Chandigarh,

...Applicant

Versus

1. Bharat Sanchar Nigam Limited through its Chairman cum Managing Director, Bharat Sanchar Bhawan, H C Mathur Lane, New Delhi-110001.
2. General Manager Telecom, Bharat Sanchar Nigam Limited, Telephone Exchange building, Sector 34-A, Chandigarh.
3. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Circle, Telecom Circle, Sanchar Sadan, Sector 34-A, Chandigarh.
4. General Manager (Finance), Bharat Sanchar Nigam Limited, Punjab Circle, Telecom Circle, Sanchar Sadan, Sector 34-A, Chandigarh.
5. AGM(HR), Bharat Sanchar Nigam Limited, Punjab Circle, Telecom Circle, Sanchar Sadan, Sector 34-A, Chandigarh.
6. Ramandeep Singh, JAO, Bharat Sanchar Nigam Limited, O/o General Manager Telecom, Ropar, Punjab.

...Respondents

Sunil Datt

RESPECTFULLY SHOWETH:**DETAILS OF APPLICATION****1. Particulars of order against which application is made:**

The Original Application is directed against the impugned order bearing Memo No. Staff/IF/PB/JAO/Vol-II/5 dated 07.08.2013

(ANNEXURE A-1) vide which the transfer of the applicant has been ordered from Chandigarh to Ropar in violation of the rules laid down in the guidelines of transfer policy of BSNL's employee dated 07.05.2008 **(ANNEXURE A-5)** and further without issuing any show cause notice and granting any opportunity of hearing, despite of the two representation duly made by the applicant in such concern.

2. Jurisdiction of the Tribunal

That the applicant declares that this Hon'ble Tribunal has jurisdiction over the subject matter under challenge as per the provisions of the Administrative Tribunals Act, 1985 and the Rules framed there under.

3. Limitation

That the applicant declares that the original application filed by him is within the period of limitation.



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4. Facts of the Case:

1. That the applicant was appointed as an Telegraph Assistant in Bharat Sanchar Nigam Limited on 05-07-1983 at Chandigarh and thereafter the applicant was promoted to the post of Senior telephone Office Assistant in Bharat Sanchar Nigam Limited. On 24-02-2003 the applicant was further promoted to the post of Junior Account officer in Bharat Sanchar Nigam Limited at Chandigarh and presently is working on the post at sector 34, Chandigarh.
2. That the respondent vide Memo No: Staff/IF/PB/JAO/Vol-II/5 dated 07.08.2013(Annexure A-1) had ordered the transfer of the applicant from Chandigarh to Ropar and Ramandeep Singh from Ropar to Chandigarh in a very arbitrary manner and by violating the rules laid down in the guidelines issued by the Bharat Sanchar Nigam Limited Corporate office, New Delhi.
3. That after knowing about the transfer order dated 07.08.2013 the applicant moved a representation to the respondent no. 4 on 14.08.2013 requesting for cancellation of the said transfer order due to the reason of ill health of himself and his wife. No reply was ever given by the respondent to that representation

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till today. The copy of the said representation is annexed herewith as **ANNEXURE A-2** for the kind perusal of this Hon'ble Tribunal.

4. That further on 05.04.2014 the applicant again moved an representation to the respondent no.4 and requested for the cancellation of the transfer order dated 07.08.2013 (Annexure A-1) by mentioning the rules laid down in the guidelines issued by the Bharat Sanchar Nigam Limited, Corporate office, New delhi regarding the transfer policy of the BSNL employee and as per which the transfer orders stands nowhere being clear violation of the transfer policy. The copy of the said representation is annexed herewith as **ANNEXURE A-3** for the kind perusal of this Hon'ble Tribunal.
5. That the office of respondent no.4 vide its communication to the DGM (Finance) O/o GMT Chandigarh dated 09.04.2014 had made the following grounds for justifying the transfer orders of the applicant. The said relevant paragraph is reproduced herein below:

"The transfer of Sh. Sunil Datt, AO has been made on the following grounds:-

1. The tenure of the cadre of JAO in Chandigarh SSA has been considered.
2. Faculty required at Ropar SSA in required position has also been observed

Sunil Datt

3. Age of the officer has been considered
4. Residual service of the officer has also been considered."

Further, it is for the kind consideration of this Hon'ble tribunal that no such ground can be the basis of the transfer of the applicant or any employee of the BSNL. For the transfer of any employee of the BSNL the specific guidelines had been laid down by the BSNL Corporate office and as per the said guidelines the present transfer order (Annexure A-1) is totally illegal, and arbitrary in nature. The copy of the said Reply dated 09.04.2014 is annexed herewith as **ANNEXURE A-4** for the kind perusal of this Hon'ble Tribunal.

6. That further the respondent vide communication letter dated 09.04.2014 had also mentioned Rule-5 of the Transfer Policy dated 07.05.2008 and had said that while transferring the applicant the said parameters had been observed. It is pertinent to mention here that the Rule-5 of the Transfer policy dated 07.05.2008 is the "basis for transfer" and no such ground has been mentioned in this rule on the basis of which the respondents had made the transfer order of the applicant. The said rule

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is reproduced herein below for the kind perusal of this Hon'ble Tribunal:

“ 5. Basis for Transfer:

Transfer shall not be purely based on tenure decided by the transfer policy. Transfers 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.

Transfers shall be based on:

- (a) Vacancies created due to promotions, creation of posts and retirement.
- (b) Job rotation requirement in synchronization with period specified for post, station/ and circle tenure.
- (c) Past experience in various functions and nature of jobs handled.
- (d) Surplus and/or shortages at any location.”

7. That in view of the above said rules the applicant's transfer order stands nowhere in the eyes of the law and are clear violation the rules laid down in the guidelines of the transfer policy issued by the BSNL for its employee. It is further pertinent to mention here that there are six persons who are having the longer stay at one station i.e at Chandigarh then the present applicant but the present applicant had been

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choose and pick for the transfer in a very arbitrary and illegal manner and in the clear violation of the rule 12(i) of the transfer policy. The said rule clearly says that "for intra circle transfers the total stay of the executives shall be counted including that belonging to previous cadre (s)/ grade irrespective of category". The Section-C, Rule 12(i) of the BSNL employee transfer policy dated 07.05.2008 is reproduced herein below for the kind perusal of this Hon'ble tribunal:-

" SECTION-C

ADDITIONAL GUIDELINES SPECIFIC TO EXECUTIVES WITH CIRCLE SERVICE LIABILITY

12. While the transfer on administrative grounds and request transfers shall be governed by Rule 7 and Rules 8 & 9 above respectively, following guidelines shall be applicable for transfer of executives within recruiting circle:

(i) Such of those executives who have completed 4 years of stay on a post or 10 years of stay in a station/SSA may be transferred to another post/ another station/SSA within Circle's jurisdiction. For intra circle transfers, total stay of the executives shall be counted including that belonging to previous cadre(s)/ grad(s) irrespective of category (non-executive/executive). In case of executives of

Sunil Dutt

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non-territorial circles, posting within territorial jurisdiction of recruiting circle shall be counted towards stay tenure purpose.”

8. That the applicant respectfully submits that the impugned order has not taken effect to so far and the applicant is continuing at the same station where the applicant was working prior to passing of impugned transfer order and similarly, the respondent no.6 is also working at the same station at which he was posted prior to the passing of the impugned transfer order. Meanwhile, thereby that the impugned transfer order is just on papers and has not been implemented and in this view of the matter the applicant seeks the indulgence of this Hon’ble Tribunal to stay the operation of the impugned transfer order.
9. That in view of the rules laid down in the BSNL employee transfer policy dated 07.05.2008 (Annexure A-5) the applicant’s transfer order dated 07.08.2013 (Annexure A-1) is liable to be cancelled being illegal and arbitrary in manner and against the principles of natural justice.

5. Grounds of relief(s) with legal provisions

- i) That the Bharat Sanchar Nigam Limited (Corporate Office) has framed the BSNL

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Employee's transfer policy vide No.6-1/2007-

Restg dated 7th may 2008, which is to be strictly followed by the respondents. The respondents had not properly followed the guidelines given under the said transfer policy. Further, the section-c, clause 12 (i) is applicable to the applicant, which has been totally overlook and ignored by the respondents in a very arbitrary manner. For the kind consideration of this Hon'ble tribunal there are six persons who had longer tenure of service than the present applicant but the applicant had been pick and chosen by ignoring all of them and totally ignoring the Rule 12(i) of the transfer policy for the reason better known to the respondents. The name and details of the said six persons along with the applicant is as follows:-

Sr. No	Name	Date of joining	Place	Date of Retirement
1.	Minakshi	22.12.1980	Chandigarh	Oct 2021
2	Harjit Singh	01.12.1980	Chandigarh	Feb 2021
3.	Renu bala	22.11.1981	Chandigarh	July 2021
4.	Suraksha	17.04.1982	Chandigarh	Mar 2022
5.	Gurnam Singh	1982	Chandigarh	Oct 2018
6.	Rajinder singh	17.04.1982	Chandigarh	May 2022
7.	Sunil Datt	05.07.1983	Chandigarh	Mar 2020

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- ii) That under the transfer policy rules of 2008 it is nowhere mentioned that the grounds which are taken by the respondents like the tenure of the cadre of JAO or age of the officer or the residual service of the officer should be considered thus the said grounds are not sustainable in the eye of law and are against the rules laid down in the BSNL employee transfer policy, 2008.
- iii) That the case of the applicant is squarely covered under the rules of the transfer policy of the respondents issued by the corporate office of BSNL, New Delhi and it is to be strictly followed and thus the transfer orders being illegal and arbitrary be cancelled.
- iv) That the applicant has served a due representation dated 14.08.2013 to the respondent no.4 through proper channel but the respondent never gave any reply to it. Further on 05-04-2014 the applicant again served a representation to the respondent no.4 and in communication letter / order to it the DGM (Finance) gave a communication letter and in that the impugned order dated 07.08.2013(ANNEXURE A-1) had been alleged to be justified on the reasons mentioned in it.
- v) That it is well settled position in law that wherever the Govt. has framed a transfer policy, though it may not be statutory yet it has to be

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adhered to and the reasons should be assigned in case of deviation. In support of the above submission, reliance is made upon a Division Bench judgment of the Hon'ble High Court in the case of "Dev Parkash Chugh Vs. State of Punjab & others reported in 2006(1) RSJ 123 DB P&H". In the said judgment there is a reference to another Division Bench Judgment in the case of "Jagjit Singh VS. State of Punjab & others reported in 2005(3) Law Herald 809 DB P&H". Para 12 & 21 of the judgment being relevant are reproduced as under:-

"12. Mr. P.S. Patwalia, Senior Advocate, learned counsel for the petitioner has argued that the Government has promulgated the policy itself which has come under scrutiny on a number of occasions and especially the clause that an employee, gazette or non-gazetted, who is due to retire within the next two years, should be allowed to continue in the same district or at the same station of posting till retirement as far as possible. Reference has been made to a Division Bench judgment of this Court rendered in re: Jagjit Sing Vs. State of Punjab and others, 2005(3) Law Herald 809 (P&H) (DB). It has been contended that the Hon'ble Bench has categorically observed that when policy instructions are issued by the State Government, the same are to be accepted and not to be violated by the Government as well as

Sunit Dahi

authorities upon which the same are binding. The transfer orders having been issued in violation of the policy instructions cannot be sustained.

21. In view of the above, we are of the considered opinion that such policies/guidelines ought to be normally adhered to but if any deviation has to be made the order must contain the reasons, which should be transparent so that the same are acceptable and are within the vision of the concerned. In the case at hand, the order of transfer does not contain administrative reasons for transferring the petitioner nor any public interest has been disclosed in the order as well as in the written statement. On the other hand, the petitioner has also not disclosed any mala fide intention on the part of the employer as also the colourable exercise of power. Thus, in the totality of the facts disclosed before us, we conclude that since no reasons have been given by either side, the stipulation contained in the policy ought to have been adhered to in the facts and circumstances of this case. It would mean that each case which falls within the ambit of the policies/guidelines has to be examined by the concerned quarters and the orders should be passed accordingly. Resultantly, the petitioner is allowed and the impugned order of transfer dated 20.06.2005,

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Annexure P-11, is quashed with no order as to costs."

vi) That in the impugned transfer order is neither in public interest nor in the exigencies of services nor for administrative reasons and in the absence of the same, the order of transfer cannot be sustained. In response to the representation against the transfer, the action is being sought to be justified which do not form the basis laid down in the transfer policy and as such the reasons given in the order dated 09.04.2014 justifying the impugned transfer order dated 07.08.2013 are wholly unsustainable and clearly appears to be an after thought.

6. Details of Remedies Exhausted

That the applicant declares that he had already made a representation dated 14.08.2013 and 05.04.2014 (Annexure A-2 & A-3) against the impugned transfer order dated 07.08.2013 which has been rejected by the order dated 09.04.2014 and as such is left with no other speedy and efficacious remedy in present peculiar facts and circumstances except to move to this Hon'ble Tribunal by filing the instant application.

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7. Matter not previously filed or pending with any other Court

That the applicant declares that he has not filed any other application, writ petition or suit regarding the matter in respect of which this application has been made, before any Bench of the Tribunal, Authority or Court nor any such application, writ petition or suit is pending before any of them.

8. Relief(s) sought

In view of the facts enumerated above in Para 4 and 5, the applicant prays for the following relief(s):-

- i) the records of the case may kindly be called for perusal of the Hon'ble Tribunal.
- ii) that the present O.A be accepted and the orders dated 07.08.2013(A-1) and 09.04.2014(A-4) passed by the respondents vide which transfer had been order of the applicant be quashed being illegal, arbitrary and in violation of the guidelines laid down by the respondents (Annexure A-5)and principles of natural justice.
- iii) pass any appropriate order or direction which this Hon'ble Tribunal may deem fit in the peculiar facts and circumstances of the case;
- iv) cost of the application may also be awarded in favour of the applicant;

9. Interim Order, if any prayed for

That the impugned transfer order dated 07.08.2013 of the applicant which has not been implemented so far

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may kindly be stayed during the pendency of the present O.A in the interest of justice.

10. Particulars of Postal Order filed in respect of Application Fee.

- i) Number of the Indian Postal Order: 80G585743
- ii) Date of Postal Order: 01.05.2014
- iii) Name of Issuing post office: P.O HIGH COURT, CHD
- iv) Post office at which payable:

12. List of Enclosures:

A separate index is also attached.

Chandigarh

Dated: 28.04.2014

Sunil Dutt
Applicant

Through Counsels

Gurmohan Singh Suman K. Vimal
(GURMOHAN SINGH) (SUMAN.K.VIMAL)
ADVOCATES
COUNSELS FOR THE APPLICANT

VERIFICATION:

I, Sunil Dutt s/o Sh. Kishori Lal, R/o H. No. 93, Milk Colony, Dhanas, Chandigarh verify that the contents of Para 1, 4 and 6 to 11 are true to my personal knowledge and Para 2, 3 & 5 are believed to be true being based on legal advice and that I have not suppressed any material fact.

Chandigarh

Dated: 28.04.2014

Sunil Dutt
Applicant