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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
CHANDIGARH**

O.A. No.060/00499/2014

Decided on: 23.02.2016

Coram: HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER (J)

Parvinder Kumar, HRMS No. 1984074760, working as DET
(Transmission) O/o Sr. General Manager Telecom, Sangrur.

.....Applicant

Versus

1. Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi -110001, through its Chairman-cum-Managing Director.
2. Senior General Manager (Pers), Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi -110001.
3. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Chandigarh.
4. Senior General Manager Telecom, Sangrur


.....Respondents

Present: Mr. M.K. Sood, counsel for the applicant
Mr. K.B. Sharma, proxy counsel for the respondents

Order(Oral)

BY HON'BLE MR. JUSTICE L.N. MITTAL, MEMBER(J)

1. In this O.A., the applicant Parvinder Kumar has challenged his transfer order dated 10.03.2014 (Annexure A-2) along with order dated 26.05.2014 (Annexure A-1) whereby his representation against transfer order (Annexure A-2) has been rejected.
2. I have heard learned counsel for the parties and perused the case file.
3. I need not go into the detailed facts of the case because it is covered against the applicant by judgment of this Tribunal in O.A. No. 060/00438/2014 titled D.K. Aggarwal & Another Vs. Union of India & Others decided on 02.02.2016.
4. In view of the aforesaid, the instant O.A. is dismissed. Interim order stands vacated. There shall be no order as to costs.


**(JUSTICE L.N. MITTAL)
MEMBER (J)**

**PLACE: Chandigarh
Dated: 23.02.2016**

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CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(ORDER RESERVED ON 29.01.2016)

O.A No. 060/00438/2014 Date of decision 02.02.2016

CORAM: HONBLE MRS. RAJWANT SANDHU, MEMBER (A)

1. D.K. Aggarwal, aged 47 years, Staff No.109474, HRMS NO.199000947, S/o Sh. R.S. Aggarwal, previously working as Assistant Director (Operations), now working as Assistant General Manager (Customer Service) as Looking After O/o Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Sector 34-A, Chandigarh.
2. Gopal Krishan, aged 50 years, Staff No.107440, HRMS No.199000503, S/o Sh. K.P. Gupta, previously working as Sub Divisional Engineer, now posted as Divisional Engineer Telecom (External), as Looking After O/o General Manager Telecom District, Patiala, looking after the work of Divisional Engineer Telecom (External), O/o General Manager Telecom District Patiala (Pb.).

APPLICANTS

BY ADVOCATE: Sh. R.K. Sharma.

VERSUS

1. Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi 110001, through its Chairman-cum-Managing Director.
2. Senior General Manager (Pers.), Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi 110001.
3. Chief General Manager Telecom, Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Chandigarh.
4. General Manager Telecommunication, Bharat Sanchar Nigam Limited, District Patiala.

RESPONDENTS

BY ADVOCATE: Sh. K.B. Sharma, proxy for Sh. D.R. Sharma alongwith Mr. Shameem Akhtar, PGM (SR) BSNL, Corporate Office, New Delhi.

ORDER

HONBLE MRS. RAJWANT SANDHU, MEMBER (A):-

1. This Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985, seeking the following relief:-

(i) Quash order No.1-1/2013-Pers.II dated 14th June, 2013, (Annexure A-1), and order No.1-1/2013-Pers.II dated 10th June, 2013, (Annexure A-2) (Not served upon the applicants so far and down loaded from website) qua applicants whereby they have been ordered to be transferred from Punjab Circle to North East-II Circle, Hard Tenure posting without following Transfer Rules and by adopting pick and choose policy during the mid session of the children of the applicants.

(ii) Quash order No.15-04/2013-Pers.II dated 6th May, 2014, (Annexure A-2A), whereby representations of the applicants for cancellation of their tenure transfer have been rejected without application of mind and by assigning non-existent reasons in violation of the transfer rules and by way of pick and choose, discrimination and by violating the provisions of Articles 14 & 16 of the Constitution of India.

(iii) Issue directions to the respondents to follow the transfer rules and Guidelines, Annexure A-3 in right perspective by preparing All India seniority for the purpose of transfer and posting from peace to tenure station at All India level keeping in view the fact that the cadre of the Sub Divisional Engineers is All India Cadre and respondents should follow the principles of longest stayee in their respective circles/place for the purpose of posting to tenure with further directions to display All India Seniority for the purpose of tenure posting and modification / cancellation of posting order to the tenure station on website.

Vide interim order dated 30.05.2014, operation of the impugned order was stayed and this position continues till date.

2. It is stated in the OA that applicant no.1 initially joined erstwhile Department of Telecom as J.T.O. on 17.08.1990 with seniority of 1989. He was promoted as S.D.E. w.e.f. 29.12.2001. Prior to the present place of posting, he was posted at different stations of Ferozepur SSA for the period of 13 years from 17.08.1990 to 21.09.2004, which has been declared as soft tenure recently. His son is studying in

B:Tech. at IIT Delhi and his minor daughter is studying in 11th Class. His wife is suffering from severe backache problem and the applicant himself is asthmatic and suffers from back problem. Applicant No.1 is the only male member to look after his family. It is also stated that applicant no.2 initially joined the erstwhile department of Telecom as JIO on 18.08.1990 with 1989 as seniority and was promoted as Sub Divisional Engineer on 29.12.2001. Applicant no.2 has two children studying at Patiala. Daughter is studying in fourth year of B.E. Computer Science in Punjabi University, Patiala and son is studying in 10th Class at Aurobindo International School, Patiala.

3. Applicant no.1 had applied for his transfer to BSNL Corporate Office, New Delhi on 23.12.2012 in view of study of his son at Delhi. Thereafter applicant no.1 having come to know his likely transfer to tenure station, represented on 10.04.2013 for his transfer and posting to Srinagar SSA in J&K Circle. Similarly applicant no.2 had represented on 21.09.2012 for his transfer to J&K at Srinagar. However, these requests were cancelled on 2nd February, 2013 in view of the calling for volunteers for posting in Wireless Service Nodal Centre at Chandigarh. Applicant no.2 also applied for his posting at ITPC Data Centre, Chandigarh on 10.04.2013, but that request had not been considered. Though cadre of Sub Divisional Engineers is all India cadre and seniority is also on All India level, but normally the members are retained in circle of recruitment. However, without following transfer rules and policy guidelines and without preparing All India seniority, respondent Corporation had issued orders for transfer of both the applicants from Punjab Circle to North Eastern-II Circle vide order dated 14.06.2013 (A-1) and 10.06.2013 (A-2) respectively. Feeling aggrieved against the orders passed by the respondents, applicants submitted their representations dated 17.06.2013 (Annexure A-6 and A-7). However, the respondent Corporation had not considered the request of the applicants, hence this OA.

4. In the grounds for relief it has, interalia, been stated as follows:-

1. That respondents themselves have framed Transfer Rules and Guidelines as per which posting in tenure station like North East, Assam, J&K, A&N Islands is to be ordered after considering stay of the executive in a particular circle. In terms of rules/policy A-3, cadre of Sub Divisional Engineers being All India Cadre, seniority for tenure posting is necessarily to be maintained at All India level after calling for the information from various circles and it is only thereafter that the Corporate office can come to know as to who has longest stay in their respective circles. In the present case, without following the said rules/policy, arbitrary and discriminatory criteria of pick and choose is being followed. Incumbents from one circle have been taken and incumbents from other circles have been left irrespective of All India seniority and stay in a particular circle. In the case of Maharashtra, U.P. and Rajasthan Circles, there are about 100, 25 and many incumbents who are senior to the applicants, who are having stay of more than 30 years in their circles. In Rajasthan Circle there are many officers senior to the applicants who have been retained in the same circle, same SSA and same station. However, instead of touching them, respondents have picked up the persons who are not liable to be transferred. Thus action of the respondents is in violation of their own Rules and Guidelines and is not sustainable in the eyes of law. It is well settled that if the Government lays down a policy for doing a particular thing in a particular manner, that thing has to be done in that manner only and the Government cannot violate policy guidelines, which are binding on it. In the present case, this principle has been given complete go by.

2. It is not in public interest to transfer and post the SDEs from Punjab Circle to hard tenure station ignoring the decreasing strength and to allow the other circles to retain the seniors with longer stay.

3. No All India seniority list has been displayed so as to judge as to who are persons having longer stay in their respective circles. Even modifications / cancellation of transfers to tenure stations are not displayed on the website.

4. Even the individual circumstances of the applicants have not been taken into consideration including mid-session of the studies of the children of the applicants which has also been ignored. It is well settled by the Honble Apex Court in case titled Director of School Education, Madras and others Versus O. Karuppa Thevan and another, that employees should not be transferred during mid-session of their children. As such, action of the respondents is liable to be set aside on this score as well.

5. In the written statement filed on behalf of respondents, preliminary objection has been taken that it is well settled law that the transfer is an incidence of service. The Honble Apex Court in the case of Shilpi Bose Vs. State of Bihar (AIR 1991 SC 532), has held that the Courts should not interfere with transfer orders which are 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 malafide. 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 the 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 be conducive to public interest. The High Court overlooked these aspects in interfering with the transfer orders. Similar view has been taken in (i) SBI Vs. Anjan 2001 (5) SCC 508; (ii) National Hydro Electric Power Corporation Ltd. Vs. Shri Bhagwan (2001 (8) SCC 574; (iii) Union of India Vs. Janardan Debnath (2004 (4) SCC 245); (iv) State of U.P. Vs. Siya Ram (2004 (7) SCC 405).

6. It is further stated that in compliance to the order dated 03.02.2014 passed by this Tribunal the answering respondents have decided the representations of the applicants as per the Policy and Rules. All the points raised by the applicants in the representations have been duly replied by the respondents vide order dated 06.05.2014 (A-2/A) and the requests of the applicants have not been agreed by the answering respondents. The respondents have passed the order dated 06.05.2014 as per the Transfer Policy and the Rules. Thus the present O.A. filed by the applicants is liable to be dismissed being devoid of merit. Besides, in the Transfer Policy (Clause B), it has been mentioned that in the interest of service, transfer orders can be issued at any time of the year and the respondents have not challenged this clause of the Policy. Thus there is no infirmity in the orders dated 06.05.2014, 14.06.2013 and 10.06.2013 passed by the respondents.

7. In the reply on merits, it has been stated that Ferozepur SSA is declared as soft tenure only w.e.f. 15.04.2013 and it was not a soft tenure for the period during which applicant no.1 served there. Accordingly, no benefit of tenure service can be granted to him. Regarding applicant no.1 it is also mentioned that neither of his two children are studying at the present place of service of the employee i.e. Chandigarh. Also, personal problems cited by the officers are general in nature and do not weigh over the paramount interest of the employer company.

8. It has further been denied that members of the SDE Cadre are always retained in the Circle of recruitment cadre. In fact, BSNL transfer policy Section B clause 11 (e) stipulates as under In the career span of all executives, normally one hard tenure such as NE, Assam, J&K and A&N Islands and one term in other circles/SSAs, if any, would be required. Section (B) of Transfer Rules and Guiding Principles dated 07.05.2008 of BSNL reads: For considering executives for tenure posting on transfer, the executives with longest stay in a particular Circle would be considered first as a substitute for the officer who wants to come back to the Circle on completion of tenure at tenure Circle Station. Accordingly, reference of BSNL Transfer Policy made here for preparation of All India Seniority (long stay) list is totally misplaced. BSNL Transfer Policy is applied uniformly in respect of all tenure transferees. Substitutes are invariably picked from the circle where the officer is to be posted on completion of tenure. The one to one transfer from tenure circle to the circle where the officer wants to go back on tenure completion helps in keeping manpower strength equated and undisturbed. As per BSNL Transfer Policy section B clause 11 (d) stipulates that: For Inter circle transfer, the stay will be counted from the date of regular promotion / recruitment into the grade of JTO/JAO and others equivalent to the first level of Executive hierarchy.

9. In the rejoinder that has been filed on behalf of the applicants, while the contents of the OA have been reiterated, it has also been stated that more than 95% of officers of SDE cadre are at present posted in their circle of recruitment. Although SDE is in All India Cadre but the transfers must be effected in transparent manner which is lacking in the cases of the applicants. BSNL Management issued transfer order of Sh. Balbir Gupta, Wali Mohammad, Samson Kumar and Dharminder Kumar to North East-II circle. Later on these orders have been modified to J&K without assigning any reason. Even these transfer orders are issued without any substitution.

10. In an affidavit filed on behalf of the respondents on 20.01.2015, it has been stated that Gurdarshan Singh and Sarabjit Singh had completed tenure posting in NE-II Circle and therefore their request for posting in Punjab Circle was to be accommodated in terms of Rule 11(e) of the Section B of Rules and Guidelines of BSNL Transfer Policy dated 07.05.2008. Therefore, the applicants having longest stay in Punjab Circle (as per the longest stay list of Punjab Circle) were posted in NE-II Circle as substitute to Sh. Gurdarshan Singh and Sh. Sarabjit Singh respectively, so that the officers who have completed hard tenure may be accommodated in Punjab Circle. Further, the transfer orders of the applicants, Sh. Parvinder Kumar Garg and Sh. S.K. Puri are on the basis of longest

stay in Punjab Circle. It is not merely that the present applicants were transferred. There are a number of other executives also transferred who have joined at their places of transfer in compliance to their transfer orders. 87 executives from all over India were transferred to tenure circles (43 to NE Region, 14 to Andaman & Nicobar and 30 to J&K) in the year 2013. In addition to these 87 executives, in year 2013 BSNL promoted around 2400 executives from JTO to SDE grade, and 305 executives from all over India were posted in the tenure circles due to manpower shortage in these areas. Further, as per provisions of para 11(d), (e) & (f) of BSNL Transfer Policy, when these executives would return to their home circle after completion of their mandatory two years tenure, the same number of executives from the respective circles will be transferred as substitutes to them. This arrangement is resorted to in order to maintain telecom services in the far flung areas / hilly terrain in the interest of service / national interest.

11. In another affidavit dated 03.10.2015 filed on behalf of the respondents, list of vacancies and number of posted officers has been annexed.

12. Arguments advanced by the learned counsel for the parties were heard. Learned counsel for the applicants narrated the background of the matter. In addition he stated that the SDEs of the Punjab Circle were disproportionately being posted to J&K Circle and North East Circles. Since the respondent BSNL was taking the argument that the persons posted in these circles had to be adjusted again in the Punjab Circle after they had completed the tenure posting and were given their choice posting, this resulted in persons from the Punjab Circle, mainly being posted to North East Circle and J&K Circle. Learned counsel stated that the respondent BSNL should prepare the All India list of SDEs indicating longest stay of these officers in their present places of posting and persons from other states should also be given postings in J&K and North East Circle.

13. Learned counsel for the respondents stated that the applicants had never served in a hard tenure area i.e. J&K and North East. Their entire services was in Punjab Circle and there was no discrimination in there being given a posting in the North East Circles. He further stated that there was no provision for having All India seniority list to determine transfers of employees, as such a list was maintained only for the purpose of considering promotion to the next higher post. Learned counsel also stated that transfer was an incident of service and the applicant had no right to continue in the Punjab Circle throughout their careers.

14. I have given careful consideration to the matter. The pleadings of the parties and the material on record have been perused. Learned counsel for the parties have also been heard at length. The relevant paras of the BSNL Transfer Rules and Guiding Principles that has been issued in 2008 is Section B, Para 11 reads as follows:-

(a) ..

(b)

(c)

(d) For counting Station/SSA tenure, the period of service rendered in the previous cadre(s) / grade(s) would be counted. For Inter circle transfer, stay will be counted from the date of regular promotion/recruitment into the grade of JTO/JAO and others equivalent to the first level of Executive Hierarchy. Inter circle tenure based transfer in respect of Executives will continue to be restricted for SDE/Other equivalent levels and above. However, the number of officers transferred out of Circle at any time would not generally exceed 10% of the sanctioned strength in the Circle for officers upto STS level. Transfer/Posting history of DOT employment shall be taken into account for the ex-DOT absorbed employees in BSNL. Service period of 2 years or more will only be recognized while computing post/station/SSA/Circle tenure. For Territorial Circle Executives, while computing Station/SSA/Circle tenure, any stay in non-territorial Circle within the territorial jurisdiction of the Circle shall also be counted. Similarly, for non-territorial Circle executives, stay of territorial circle shall be counted while computing Station/SSA/Circle tenure.

(e) In the career span of all executives, normally one hard tenure such as North East, Assam, J&K, A&N Islands and one term in other tenure circles/SSAs, if any, would be required. After completion of tenure, the executives shall be accommodated at the choice station as far as possible and not generally disturbed for the next four years. The stay in tenure / hard tenure Circle/SSA would be counted only if the executive has worked for the tenure period in the circle after the same was declared tenure Circle/SSA. Tenure will be counted for the period served at the station after the date of joining. Extra leaves taken over and above due for the tenure period of tenure station shall be deducted for the stay at that station.

(f) For considering executives for tenure posting on transfer, the executives with longest stay in a particular circle would be considered first. Female executives would also be encouraged to serve in tenure postings. However, posting of unwilling female

Executives to hard tenure stations would be avoided. Due recognition to female executives who have served in hard tenure locations shall be given in their ACRs.

Admittedly, the applicants have never served outside Punjab Circle and hence they are liable for transfer as per para 11 (e) of the Transfer Guidelines reproduced above. So far as the issue of the studies of the applicants children are concerned, it is seen that this OA was filed in May, 2014 and by now the children would have completed their professional course or would have crossed the crucial academic level of +1/+2. Other aspects that have been referred for resisting the transfer such as own-health or health of spouse are common but not serious problems and cannot come in the way of a mandatory transfer to a hard tenure area.

15. Regarding the contention of the applicants that there is under staffing in the Punjab Circle and the vacancy position is higher here, than in the circles of the North East, it is observed that this aspect is the concern of the BSNL Management and not that of the applicants.

16. The applicants have also contended that officers from the Punjab Circle are disproportionately being sent to the hard tenure circles, while from circles such as U.P., Rajasthan, Maharashtra etc. few officers are being moved to hard tenure areas. There is insufficient material on the record to substantiate this allegation. However, the one to one replacement that has been referred by the respondents in the written statement in this OA and other similar cases would appear to work against the officers of those circles from which officers have been drawn for postings to the hard tenure areas. Hence in the interest of employees morale it would be desirable for the BSNL to be transparent regarding the parent circle of the officers working in the hard tenure area on transfer from their recruitment circles. Such information if shared with the employees would ensure that officers posted to the hard tenure areas do not feel discriminated against as the responsibility of working in the hard tenure areas would be shared by officers of all circles of the country.

17. In view of the discussion above, I am of the considered view that there is no violation of the transfer policy guidelines in posting the applicants to the North East Circles. They should accept the transfer order in good grace and serve where they are posted for the tenure period, after which they will be entitled to get their posting of choice. OA is accordingly dismissed.

18. No costs.

(RAJWANT SANDHU)
MEMBER (A)

Place: Chandigarh.
Dated: 02.02.2016

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O.A NO. 060/00438/2014
(D.K. AGGARWAL & ANR. VS. BSNL & ORS.)