

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.NO.813 of 2016

Cuttack this the 18th day of January, 2018

CORAM:

THE HON'BLE SHRI S.K.PATTNAIK, MEMBER(J)
THE HON'BLE DR.MRUTYUNJAY SARANGI, MEMBER(A)

Gangadhar Mallick, aged about 58 years, S/o. late Duryodhan Mallick – at present working as JAO in the office of GDTD, Cuttack – permanent resident of Vill-Balipada, PO/PS-Govindpur, Dist-Cuttack, Odisha

...Applicant

By the Advocate(s)- M/s.N.R.Routray

Smt.J.Pradhan

T.K.Choudhury

S.K.Mohanty

-VERSUS-

1. Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110 001.
2. Chief General Manager (Telcom), Odisha Circle, BSNL Bhawan, Unit-II, Bhubaneswar-761 009, Dist-Khordha.
3. Internal Financial Advisor, BSNL, Odisha Circle, BSNL Bhawan, Unit-II, Bhubaneswar-751 009, Dist-Khordha.
4. General Manager, Telecom District, Cuttack, Door Sanchar Bhawan, Link Road, Cuttack-753 012.
5. Telecom District Engineer, Bharat Sanchar Nigam Limited, At/PO/Town/Dist-Phulbani.

...Respondents

By the Advocate(s)-Mr. K.C.Kanungo

ORDER

DR.MRUTYUNJAY SARANGI, MEMBER(A):

The applicant works as a Junior Accounts Officer in the Office of the General Manager, Telecom District, Cuttack. He is aggrieved by the order dated 12.7.2016 (A/1) transferring him as J.A.O. to the Office of the Telecom District Engineer, Phulbani. He had submitted a representation against the order of transfer

on 26.7.2016 which was rejected vide order dated 4.8.2016 under A/3. He was also relieved with effect from 20.8.2016 vide order dated 4.8.2016 (A/4). While the matter stood thus, applicant submitted representations dated 6.8.2016(A/10) to the Chief General Manager Telecom, BSNL, Odisha Circle and Internal Finance Advisor, BSNL, Odisha Circle (Respondent Nos. 2 & 3). Since he did not receive any response, he filed O.A.No.566 of 2016 before this Tribunal, which in its order dated 19.8.2016 disposed of the said O.A. as under:

- “4. In consideration of the above submissions of the Ld. Counsels for both the sides, I dispose of this O.A. by giving liberty to the applicant to make a comprehensive representation before Respondent No.2 within a period of one week from today and if such representation is filed, Respondent No.2, i.e., Chief General manager, telecom, Odisha Circle is directed to dispose of the representation within a period of three weeks from the date of receipt of the representation and communicate the decision in a reasoned and speaking order to the applicant. It is also directed that status quo in respect of the applicant shall be maintained until the final decision of the authorities is communicated to the applicant. However, if the representation is not filed within 7 days, as mentioned above, no further relief would be granted to the applicant.
5. With the aforesaid observation and direction, this O.A. stands disposed of at the stage of admission itself”.

2. In compliance with the above direction, applicant submitted an exhaustive representation on 24.8.2016(A/12) to the Chief General Manager, Telecom, Odisha Circle (Respondent

No.2). The Internal Financial Advisor, Telecom, Odisha Circle, (Respondent No.3) vide communication dated 8.9.2016 (A/15) rejected the appeal of the applicant and advised him to join the transferred post after 15.11.2016 since he had been granted retention upto 15.11.2016(AN). Aggrieved with this, applicant has filed the present O.A. on 8.11.2016 praying for the following reliefs:

- i) To quash the order of transfer dtd. 12.07.2016 (so far as this applicant is concerned), order of rejection dtd. 08.09.2016 and order of relieve dtd. 08.09.2016 under Ann.A/1, A/13 & A/15 respectively.
- ii) And to direct the Respondents to allow the applicant to continue at his present place of posting till his superannuation.

And pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

3. Applicant has based his prayer mainly on the ground that his transfer from Cuttack to Phulbani is violative of transfer policy dated 7.5.2008 corrected from time to time. It is the contention of the applicant that he is going to complete 57 years of age and his transfer to Phulbani is prohibited by the Corporate Office order dated 5.9.2012 since Phulbani is a Notified Soft Station. Since the respondents have allowed him to continue till 15.11.2016, the order relieving him with a fresh order is not permissible under the law. Moreover, since the applicant is close to retirement, he should be posted near his home town or a location of his choice as per the transfer

guidelines and policy. It is his further contention that there are other qualified JAOs who are undergoing training and could be posted at Phulbani instead of him.

4. The Respondents in their counter-reply filed on 6.1.2017 have submitted that transfer of the applicant has been done due to administrative exigencies, public interest and business requirement of the Company conforming to BSNL transfer policy. The applicant has been working in the Telecom District, Cuttack for the longest time among the employees working there whereas Shri Rabindranath Mohapatra, JAO has completed his tenure at the soft tenure station, i.e., Phulbani. The applicant has completed more than 35 years at Cuttack and has never been transferred in his service career since his joining the Department in 1981. His transfer is long over due. The applicant is to retire on superannuation on 20.09.2019. The claim of immunity from transfer as an Office Bearer of SC/ST Employees Welfare Association of BSNL for one year which had been extended to the applicant is already over since he was elected as Office Bearer with effect from 14.11.2015. The applicant does not deserve to continue at his present place of posting. The applicant is to retire on superannuation on 30.9.2019 and will attain 58 years of age on 30.9.2017 and therefore, as per the Transfer Policy, he is liable to be transferred from the date on which the transfer has been ordered. The Respondents have taken all relevant factors,

transfer guidelines on the grievances of the applicant into consideration and there is no illegality in the transfer order. The Respondents have cited the judgments of the Hon'ble Apex Court in S.C.Saxena vs. Union of India & another [(2006) 9 SCC 583], Union of India vs. S.L. Abbas [(1993) 4 SCC 457] to plead that a Government servant is liable for transfer to any other station and non-compliance of transfer order can lead to justifiable action against the employee concerned. The Respondents have also cited the order dated 16.08.2016 of the CAT, Ernakulam Bench in O.A.No.465 of 2016 in which the order of transfer against a BSNL employee was not interfered with. In that order, CAT, Ernakulam Bench had also recognized the right of the employer to order transfer of its employees so long as it does not violate any condition of service or the norms laid down for such transfer.

5. The applicant filed a rejoinder on 7.2.2017 in which he has reiterated that the transfer is against circular dated 16.6.2011 issued by the Respondents. He has submitted that Shri Rabindranath Mohapatra has already been relieved from Phulbani on 31.8.2016 and joined in his transferred place and one Bibhuti Bhubas Baral has already been posted as JAO in TDM, Phulbani.

6. The matter was argued by the respective counsels of both sides on 8.12.2017 and reserved for orders. The issue to be decided in the present O.A. is whether the order transferring

the applicant to TDE, Phulbani is legally sustainable in view of the Transfer Policy and norms followed by BSNL. The BSNL Employees Transfer Policy corrected upto 24.11.2014 lays down certain guidelines for transfer. Some of the guidelines relevant in the present O.A. can be summarized as follows:

“(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 will 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.

12(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 the Circle's jurisdiction. For intra-circle transfers, total stay of the executives shall be counted including that belonging to previous cadre (s)/grade(s) irrespective of category (non-executive/executive). In case of executives of non-territorial circles, posting within territorial jurisdiction of recruiting circle shall be counted towards stay tenure purpose.

7. In addition, the guidelines issued on 16.6.2011 on grant of facilities to SC/ST Employees Welfare Association of BSNL state as follows:

- “1. Grant of Immunity from Transfer:
This facility will be applicable to the President, General Secretary and Finance Secretary at CHQ level; Circle President, Circle Secretary and Circle Finance Secretary at Circle level and District President, District Secretary and District Finance Secretary at SSA level for the first year of election. The same facility may be extended to these office bearers for the second year subject to the following terms and conditions
 - a) The concession ceases to be applicable to the above office bearers of SC/ST Employees Welfare Association of BSNL on promotion to higher posts.
 - b) With the mutual goodwill between the office bearers and the local officers and subject to the administrative convenience, the office bearers elected to above said offices of the association may stay at the Headquarters station (the place where already posted) even longer than one year.
 - c) If the office bearers as proposed above for immunity from transfer working at other stations are elected to their Head Offices at CHQ/Circle/SSA levels may be brought on temporary transfer to those Head offices of the association during the first year of election and may be retained there even for longer than one year but with the goodwill between the association and the local officers and subject to administrative convenience only.
 - d) The concessions are not guaranteed and cannot be

claimed as a matter of right. They are always subject to administrative exigencies.

8. The applicant in the present O.A. had joined at Cuttack on 16.3.1981 as Telecom Office Assistant. Records show that he has got all his promotions at the same station and has continued at Cuttack from 16.3.1981 till the date of filing of this application. By virtue of the stay order granted by this Tribunal he is still continuing at Cuttack. A perusal of the Transfer Policy clearly shows that he is not entitled to any concession in terms of his continued stay at Cuttack since he has completed more than 35 years at Cuttack at the time of filing of the O.A. He was promoted as Junior Accounts Officer on 9.8.2010 and came to the category of Executives. For the Executives, transfer guidelines clearly stipulate that 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 the Circle's jurisdiction. For intra-circle transfers, total stay of the executives shall be counted including that belonging to previous cadre (s)/grade(s) irrespective of category (non-executive/executive). In case of executives of non-territorial circles, posting within territorial jurisdiction of recruiting circle shall be counted towards stay tenure purpose. Moreover, in the general policy it is stipulated that transfer of officers upto SSG Grade would generally be avoided in case of those more than 58 years of age. Upto STS Level, transfer of

officers involving change of station would be avoided after 56 years of for inter circle transfers and after 57 years for intra circle transfers. In the case of the applicant, when the transfer order was issued on 12.7.2016, he had not completed 57 years of age. Through his representation, he was allowed as a special consideration to continue upto 15.11.2016. However, he continued to work at Cuttack due to the stay granted by this Tribunal on 11.11.2016. So it is quite obvious that there is no violation of the transfer guidelines of the BSNL in case of the applicant. He wants take advantage of his position as Office Bearer of the SC/ST Employees Welfare Association. However, as per the guidelines issued by the Corporate Office/SR Cell of BSNL on 16.6.2011, grant of immunity from transfer is only for the first year of election. The applicant has already availed that facility and therefore, cannot claim to stop his transfer from Cuttack to Phulbani after more than 35 years of stay at Cuttack.

9. We have gone through the case laws cited by both the parties. The Hon'ble Supreme Court in a catena of judgments has held that no person has a vested right to continue in one place.[Union of India vs. S.L.Abas reported in (1993) 4 SCC 357, Kendriya Vidyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SCC 299, Abani Kanta Ray vs. State of Orissa 1995 Suppl (4) SCC 169, Rajendra Singh & Ors. vs. State of U.P. & Ors. reported in (2009) 15 SCC 178, Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532 and N.K. Singh vs. Union of

India & Ors. (1994) 6 SCC 1998]. The order dated 16.08.2016 passed by the CAT, Ernakulam Bench in O.A.No.465 of 2016 also elaborately discussed the issue of transfer of BSNL employees and came to the conclusion that there was no need to interfere with the order of transfer issued by the BSNL. The relevant portion of the judgment reads as follows:

“12... Learned Standing Counsel for the respondents referred to the Apex Court decision in State Bank of India vs. Anjan Sanyal – AIR 2001 SC 1748 and two decisions of the Kerala High Court in Moosakoya v. State of Kerala – 1997 (1) KLT 158 and Sreekumar S v. Union of India & Ors. – 2014(4) KHC 621 [WP C C] No.8427 of 2013 dated 16.10.2014]. All the aforesaid cases are relating to transfer of employees after a considerable period of stay at the same station. In State Bank of India case (supra) the Apex Court observed:

‘4. An order of transfer of an employee is a part of the Service conditions and such order of transfer is not required to be interfered with lightly by a court of law in exercise of its discretionary jurisdiction unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer or that the authorities, who issued the order, had not the competence to pass the order....’In Sreekumar case (supra) also the same ratio decidendi was followed by the High Court. Applicants have no case that Annexure A1 was issued by an incompetent authority’.

13. The long stay of the applicants for more than 20 years in Trissur is a strong reason pointed out by the respondents, justifying the transfer. Such justification is founded on the transfer policy guidelines contained in Annexure A6. One of the grievances of the applicants is that they would face difficulty in finding admission for their children in the schools at the transferred place. Respondents point out that Annexure A1 was not a mid-academic transfer and that the applicants were quite aware that when they were included in the long stay list published in March, 2016 itself. The proximity of the two SSAs also is worth noticing.

14. Taking stock of the facts and circumstances this Tribunal feels that there is no merit in the case of the applicants. They have approached this Tribunal with contentions in a circumlocutory manner to cover up their unreasonably long stay in the Trissur SSA over and above the periods specified in Annexure A6 transfer guidelines. After all, transfer is an incidence of service.

15. In the result the OA is dismissed. Parties are directed to suffer their own costs”.

9. It is the settled position of law that the Court/Tribunal should not interfere with the order of transfer unless the same arises out of bias and mala fide and the transfer has been made in violation of statutory mandatory rules(Shilpi Bose & Ors. vs. State of Bihar & Ors. in AIR 1991 SC 532).

In Union of India vs. S.L.Abas reported in (1993) 4 SCC 357, the Hon’ble Supreme Court has held as under:

“7. Who should be transferred where, is a matter for the appropriate authority to decide. Unless the order of retransfer is vitiated by mala fides or is made in violation of any statutory provisions, the court cannot interfere with it. While ordering the transfer, there is no doubt, the authority must keep in mind the guidelines issued by the government on the subject. Similarly, if a person makes any representation with respect to his transfer, the appropriate authority must consider the same having regard to the exigencies of administration”.

In Rajendra Singh & Ors. vs. State of U.P. & Ors. reported in (2009) 15 SCC 178, the Hon’ble Supreme Court had clearly laid down the principle that a Government servant has no vested right to continue in his place of posting:

“8. A government servant has no vested right to remain posted at a place of his choice nor can he insist that he must be posted at one place or the other. He is liable to be transferred in the administrative exigencies from one place to the other. Transfer of an employee is not only an incident inherent in the terms of appointment, but also implicit as an essential condition of service in the absence of any specific indication to the contrary. No Government can function if the Government servant insists that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires”.

9. The courts are always reluctant in interfering with the transfer of an employee unless such transfer is vitiated by violation of some statutory provisions or suffers from mala fides. In *Shilpi Bose vs. State of Bihar* this Court held:

“4. In our opinion, the courts should not interfere with a transfer order which is 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 mala fide. A government servant holding a transferable post has no vested right to remain posted at one place or the other, he is liable to be transferred from one place to the other. 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 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”.

In Airports Authority of India vs. Rajeev Ratan Pandey & Ors. (CA 5550 of 2009 decided on August, 17th 2009), the Hon'ble Supreme Court has established a similar position:

“In a matter of transfer of a Government employee, scope of judicial review is limited and High Court would not interfere with an order of transfer lightly, be it an interim stage or final hearing. This is so because the courts do not substitute their own decision in the matters of transfer”.

It is also pertinent to quote the observation of the Hon'ble Supreme Court in Kendriya Viodyalaya Sangathan vs. Damodar Prasad Pandey (2004) 12 SACC 299:

“4. Transfer which is an incidence of service is not to be interfered with by courts unless it is shown to be clearly arbitrary or visited by mala fide or infraction of any prescribed norms of principles governing the transfer (see Abani Kanta Ray v. State of Orissa 1995 Supp.(4) SCC 169. Unless the order of transfer is visited by mala fide or is made in violation of operative guidelines, the court cannot interfere with it (see Union of India vs. S.L.Abbas (1993) 4 SCC 357). Who should be transferred and posted where is a matter for the administrative authority to decide. Unless the order of transfer is visited by mala fides or is made in violation of any operative guidelines or rules the courts should not ordinarily interfere with it. Un Union of India v. Janardhan Debanath (2004) 4 SCC 245 it was observed as follows:

“No government servant or employee of a public undertaking has any legal right to be posted forever at any one particular place or place of his choice since transfer of a particular employee appointed to the class or category of transferable posts from one place to another is not only an incident, but a condition of service, necessary too in public interest and efficiency in the public administration. Unless an order of transfer is shown to be an outcome of mala fide exercise or sated to be in violation of statutory provisions prohibiting any such transfer, the courts or the tribunals normally cannot interfere with such orders as a matter of routine, as though they were the appellate authorities substituting their own decision for that of the employer/management, as against such orders passed in the interest of administrative

exigencies of the service concerned. This position was highlighted by this Court in National Hydroelectric Power Corpn. Ltd. v. Shri Bhagwan (2001) 8 SCC 574”.

11. The order transferring the applicant from the office of GMTD, Cuttack to TDE, Phulbani was issued on 12.7.2016 when the applicant had not completed 57 years of age. Any further extension for continuance upto 15.11.2016 vide order dated 9.8.2016 is only an extension of original order of transfer and no fresh order is required for the transfer. There is nothing wrong in the transfer order which was issued when the applicant was less than 57 years of age. We find no illegality in the order of transfer issued by the Respondent No.3 dated 12.7.2016. Accordingly, the O.A. is held to be without any merit and the said is dismissed. The stay granted on 11.11.2016 stand closed. All Misc. Applications stand disposed off. No order as to costs.

(DR.MRUTYUNJAY SARANGI)
MEMBER(A)

(S.K.PATTNAIK)
MEMBER(J)

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