

ORIGINAL APPLICATION No.259/2017

CORAM: HON'BLE SHRI A.J.ROHEE, MEMBER (J)
HON'BLE MS. B.BHAMATHI, MEMBER (A)

- Versus.***

1. The Assistant General Manager,
Office of Principal General
Manager (BSNL),
Sanchar Bhavan, Admn. Section,
Shahu College Road,
Pune-411009.
2. The Assistant Director (Staff B),
Bharat Sanchar Nigam Limited,
O/o. The C.G.M.T.,

B.S.N.L. Maharashtra Telecom Circle,
4th floor, 'A' Wing, Administrative
Building, BSNL Complex,
Juhu Danda Road,
Santacruz (W),
Mumbai-400054.

3. The Deputy General manager,
O/o. The C.G.M.T.,
B.S.N.L. Maharashtra Telecom Circle,
4th floor, 'A' Wing, Administrative
Building, BSNL Complex, Juhu Danda Road,
Santacruz (W),
Mumbai-400054. ...Respondents.

(By Advocate Shri V.S.Masurkar)

Reserved on 02.08.2017

Pronounced on 22.08.2017

ORDER

Per : A.J. ROHEE, MEMBER (J)

By this joint application, the applicants who are presently working as Sub Divisional Engineer (SDE) in BSNL with the respondent No.1 at Pune, approached this Tribunal under section 19 of the Administrative Tribunals Act, 1985 since they are aggrieved by the impugned order dt. 3.4.2017 (Annexure-A-1) issued by the respondents regarding their transfer to Beed and Dhule respectively in the same capacity. The following reliefs are, therefore, sought in this O.A. :-

“(A) Issue an appropriate Writ/Order quash and set aside the transfer Order dated 3.4.2017 and 4.4.2017 passed by the Respondents and be permitted to discharge their duty on the posts which was previously held by the present Applicants i.e. before transfer order dated 3.4.2017;

(B) Pending the hearing and final disposal of the Original Application, the execution, operation and implementation of the transfer Order dated 3.4.2017 and 4.4.2017 passed by the Respondents may kindly be stayed;

(C) Pending the hearing and final disposal of the present Application, no transfer of the present Applicant be done and may be permitted to discharge of their duty on the post which was held by them prior to the Order dated 3.4.2017;

(D) Ad-Interim Relief in terms of prayer clause `b' and/or `c' may kindly be granted;

(E) Any other further prayer that may be deem fit and proper be granted".

2. The applicants main contention are that they have already served at other places and also in rural areas and they were not due for transfer since they were placed at the bottom of the longest stay list. It is stated that the respondents have randomly chosen the applicants for being transferred by excluding the other senior officials who have longest stay than the applicants. Copy of

the longest stay list of SDEs in Pune SSA is at Annexure-A-2. The impugned transfer order was followed by relieving order dt. 4.4.2017. It is stated that the applicants have a very good service record and are not facing any departmental inquiry nor they have been punished for any lapse on their part.

3. Beside the above grounds, it is stated that the applicant No.1 has to look after his old parents and he is the only person to take their care.

4. The applicant No.2 is also required to look after his old father and he is the only person to take his care.

5. Both the impugned orders have been challenged on the following grounds as mentioned in paragraph 5 of the O.A., the same are reproduced here for ready reference :-

(a) That the impugned Order is wrong, erroneous and is contrary to law, equity and justice.

(b) It ought to have been appreciated by the Respondents that, the names of present Applicants which are reflected in the Longest Stay List of S.D.E. are at the bottom i.e. Sr. No.149 and 174 respectively, therefore without transferring the employees whose names are reflected prior to the Applicants, no transfer order of the Applicants would have taken out.

(c) It ought to have been appreciated by the Respondents that there are almost 140 people whose names are prior to the names of the present Applicants in the Longest Stay List and therefore, the Respondents was duty bound to take action of transfer of the that employees first, whose names are serially reflected prior to the names of the present Applicants.

(d) It was error on the part of the Respondents in not considering the very fact that the Applicants have completed their round of transfer in the tenure place, rural area and also at different areas throughout the Maharashtra/India and then also the name of the present Applicants were chosen randomly and their transfer is made without following due process of law.

(e) It was an error on the

part of Respondents in randomly selecting the names of the present Applicants, from the list of 238 employees, There is absolutely no reasons given by the Respondents that why the name of the present Applicants is being selected and are transferred.

(f) The entire purpose of longest stay list will be frustrated if the employees are randomly selected for the purposes of transfer. The said conduct of the Respondents is nothing but the indiscipline way of transferring the employees and without following rule of their own Administration (BSNL).

(g) It was an error on the part of the Respondents in not considering the fact that there is not a single adverse remarks on the Applicants in respect of their performances/services/conduct. In spite of all this, office of Respondents have chosen their names randomly and transferred the same at far distance from Pune.

(h) It was an error on the part of the Respondents in not considering the facts in respect Applicants in spite of giving details of difficulties and also information in respect of their earlier transfers to different places in

Maharashtra/India, without giving any heed to the representations made by the Applicants, the Respondents was in hurry to transfer the Applicants and also from their respective posts.

i) The Respondents failed to consider the fact that, there was fetter I recommendation on note sheet given by their own department to retain the present Applicants in the Pune SSA itself, which also bears signatures of designated officers. Copy of letter dated 6.4.2017 is annexed here to and marked as **Annexure 'A-7'**.

j) The case of the Applicant was not properly dealt with.

k) The evidence on record was not properly scanned and appreciated by the authority.

l) The procedural aspect was not followed properly.

m) The impugned transfer Order is otherwise bad and illegal and is liable to be quashed and set aside".

6. On notice, the respondents appeared and by a common reply dt. 5.5.2017 resisted the O.A. by denying all the adverse averments, contentions and grounds raised therein. The respondents have

raised objection regarding filing of the joint application since factual background for both is different.

7. It is stated that both the applicants are working at the present station since more than 5 (five) years and being the Executive Officers of BSNL, they were liable to serve anywhere in India. The respondents have neither violated any provision of the transfer policy nor any rules governing the service conditions of the applicants. The O.A. is, therefore, liable to be dismissed.

8. Reliance is placed on the decision rendered in **State Bank of India v. Anjan Sanyal & Ors.** {2001(3) Supreme 436}, in which it has been held that 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 no

competence to pass the order.

9. Reliance is also placed on the decision in **State of Madhya Pradesh and Ors. v. S.S.Kourav** {JT 2995 (2) SC 498}, in which it has been held that :-

"The courts or Tribunals are not appellate forums to decide on transfers of officers on administrative grounds. The wheels of administration should be allowed to run smoothly and the courts or tribunals are not expected to interdict the working of the administrative system by transferring the officers to proper places. It is for the administration to take appropriate decision and such decisions shall stand unless they are vitiated either by malafides or by extraneous consideration without any factual background foundation. In this case we have seen that on the administrative grounds the transfer orders came to be issued. Therefore, we cannot go into the expediency of posting an officer at a particular place".

10. It is stated that when the transfer order is challenged on the ground of mala fide, it has been held in **N.K.Singh v. Union of India** {(1994) 28 ATC 246}, that scope of judicial review to interfere with the transfer order is elaborately considered and it has been held that interference is justified only in case of mala fide or infraction of any professed norm or principle. It

is also held that where career prospects remained unaffected and no detriment is caused, challenge to the transfer must be eschewed. It is also held that when transfer is challenged on mala fide procedure for determining, it is stated that the Court will look into the records only and not enter into a roving inquiry.

11. In **S.C.Saxena v. UOI & Ors.** {(2006) 9 SCC 583}, it has been held that "a government servant cannot disobey transfer order by not reporting at the place of posting and then go to a court to ventilate his grievances. It is his duty to first report for work where he is transferred and makes a representation as to what may be his personal problems. Such tendency of not reporting at the place of posting and indulging in litigation needs to be curbed".

12. In **Rajendra Singh v. State of U.P.** {2010 (1) SLR (SC) 633}, it has been held that "a Government servant has no vested right to remain posted at a place of his choice, nor he can insist that he must be posted at one place of his choice.

He is liable to be transferred in the administrative exigency from one place to the other. It is held that 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 intention to the contrary.

13. It is stated that the action of the respondents in transferring the applicants is in public interest and due to office exigency. It has been effected in accordance with the objects of the transfer policy dt. 7.5.2008 (Annexure-R-1) and as per the need of the Management, particularly considering the provisions of clause 2, 3 and 4 of the said policy. Hence, there is no element of arbitrariness or mala fide in issuing the impugned transfer order. The BSNL being a Public Sector Undertaking is bound to give better service to the consumers and at the same time to see that the concerned SSAs increase their profitability in the interest of the Organization and the Nation. The respondents reserve right to transfer any employee

in office exigency even before completion of the prescribed tenure which is stated to be maximum tenure and not the minimum one as alleged by the applicants.

14. It is stated that after making representations for cancellation of the impugned transfer order, the applicants did not wait for reasonable time to allow the respondents to take a decision on it and immediately approached this Tribunal. For this reason also, the O.A. is not maintainable.

15. Relying on the decision rendered by the Hon'ble Supreme Court in **State of U.P. v. Gobardhan Lal** {2004(2) SC SLJ 42}, it is stated that Courts or Tribunals cannot substitute their own decisions in the matter of transfer for that of competent authority. If mala fide are alleged as the ground for cancellation of transfer order, then it must be such as to inspire confidence in the Court or based on concrete materials. Mere allegations of mala fide are not sufficient to hold in favour of the employee.

16. Number of other decisions as mentioned in paragraph No.26 are also relied by respondents. On its basis it is stated that the OA is devoid of any substance and hence liable to be dismissed.

17. In the O.A., the applicants have prayed for the following interim relief :-

"(a) Pending the hearing and final disposal of the present Application, the execution, operation and implementation of the transfer Order dated 3.4.2017 and 4.4.2017 passed by the Respondents may kindly be stayed.

(b) Pending the hearing and final disposal of the present Application, no transfer of the present Applicants be done and may be permitted to discharge their duty on the posts which was held by them prior to the transfer order dated 3.4.2017".

18. When the matter was taken up for admission on 2.5.2017, and while the applicant's counsel was being heard, Shri V.S.Masurkar, learned Standing Counsel for respondents appeared and submitted that he has already filed a caveat and he has received copy of the O.A. also. He also stated that he served copy of the reply to the O.A. on the learned Advocate for the applicants. In view of this and considering the fact that applicants were already

relieved, the prayer for grant of ad-interim relief was not considered and the matter was adjourned for hearing on prayer for interim relief. On the next date of hearing i.e. on 5.5.2017 this Tribunal after hearing learned Advocates for the parties and after considering the longest stay list, noticed that there are 118 officials who are working in the present station at Pune for more than 10 years and the applicants stand at Sl.Nos.149 and 174 respectively in the said list. Also considering the fact that in other similar O.A. interim relief was granted, this Tribunal directed the respondent to cancel the relieving order of the applicants and they should be reinstated and should continue in their reinstated position till the disposal of the present O.A.

19. On the adjourned date of hearing i.e. on 20.6.2017, it was pointed out by the learned Advocate for the respondents that the respondents have challenged the order dt. 5.5.2017 passed by this Tribunal granting interim relief in favour of the applicants, before the Hon'ble High Court in

Writ Petition No.6036/2013 and vide order dt. 14.6.2017 a direction was issued to this Tribunal without disturbing interim order, to decide the O.A. on merits within six weeks. In view of the submission made, which is not opposed by the other side and since the applicant has already filed a rejoinder the matter was listed for final hearing on 2.8.2017.

20. In the rejoinder dt. 6.6.2017 the applicant has denied the stand taken in the reply and reiterated the grounds stated in the O.A.

21. On 2.8.2017 we have heard Shri N.M.Poojari, learned Advocate for the applicants and reply arguments of Shri V.S.Masurkar, learned Advocate for the respondents at length.

22. We have carefully perused the entire pleadings of the parties, the documents relied upon by them in support of their rival contentions and also various citations/copies of decisions relied upon by the respondents in their reply.

FINDINGS

23. The only controversy involved for decision

of this Tribunal in the present O.A. is whether the impugned order of transfer of applicants is illegal, improper, incorrect or arbitrary and hence the same is liable to be set aside both on administrative grounds, as well as, on personal grounds as alleged by the applicants.

24. As stated earlier, it is the settled law that so far as transfer of Government employees is concerned, it is the inherent incident of service and the Government employee has no vested right to continue at the same place of his choice forever or till his retirement. The employer reserves right to transfer any employee considering the office exigency or in public interest, especially when appointment is based on All India level. However while doing so, it is also obvious that if transfer policy/guidelines/statutory rules are framed governing the transfer of employees in any department, there should be no violation of any of those provisions.

25. Further it is the settled law that the Courts or Tribunals while exercising the power of

judicial review when transfer order is challenged, shall not lightly interfere with the transfer order, unless mala fide against the Competent Authority issuing the transfer order are pleaded and proved, or when competency of Authority issuing the transfer order is challenged.

26. Keeping in mind the above referred settled principles of law regarding transfer, we shall now turn to consider the legality, propriety or corrections of both the impugned orders of transfer.

27. It is not disputed that the applicants are working as SDE at Pune Office of the respondents for last more than five years. The applicants have alleged mala fide in issuance of the impugned transfer order. However, no details or particulars are given as to how the respondent No.3 indulged in mala fide. According to the applicants since he has not completed minimum tenure of 10 years as per the transfer policy and other SDEs having longer stay than them are not shifted, this amounts to mala fide on the part of the R-3. It is true that

before applicants are transferred by the impugned order they have also served at different stations earlier. The record further shows that there is neither any disciplinary proceedings pending against applicants, nor they have been punished at any time. The applicants have alleged mala fide in issuance of the impugned transfer order, inasmuch as, the others who are seniors to them as per the longest stay list were not disturbed and the applicants have been randomly chosen. Except this, no other details or particulars of the mala fide are mentioned by the applicants in the O.A. During the course of the arguments, the learned Advocate for the applicants submitted that the applicants have not completed minimum tenure of 10 years as per the transfer policy and other SDEs having longest stay than the applicants are not shifted and this amounts to mala fide on the part of the respondent No.3 in issuing the transfer order.

28. It is thus obvious that the main contention of the applicants is violation of the transfer policy since according to them minimum

station tenure of 10 years is prescribed and admittedly since they have completed 5 years and 11 months only at Pune, they were not due for transfer and has been arbitrarily transferred. As against this, according to respondents maximum and not the minimum tenure is prescribed under transfer policy and the respondents reserve their right to transfer any employee on administrative exigency even before completion of maximum period of 10 years.

29. So far as this aspect of the case is concerned, the learned Advocate for the applicants relied on the provisions of BSNL Employees Transfer Policy and particularly Clause 11 thereof incorporated in Section 'B' under the caption "additional guidelines specific to transfer of Executive employees with All India transfer liability" under which for JTOs/SDEs, Station/SSA tenure is prescribed as 10 years and on this basis it was strongly contended by the learned Advocate for the applicants that unless the employees who are governed by the said policy do not complete 10 years Station/SSA tenure, they are not liable to be

transferred.

30. However, in this behalf although the prescribed period of post tenure Station/SSA tenure and Circle tenure as mentioned in Clause 11(a) is not disputed by respondents, they only relied upon Note appended below tabular form which is by way of exception to the general rule, from which it can safely be said that the period of tenure is maximum and not minimum. For the sake of convenience and ready reference, the entire text of Clause 11(a) and (b) which are relevant are reproduced here :-

“(a) Transfer tenure :

Annual pool of qualifying employees eligible for transfer shall be drawn on the basis of following tenure :-

Sl. No.	Executive Level	Post tenure	Station/SSA tenure	Circle tenure
1	SAG or equi-valent	4	6	6
2	JAG or equi-valent	4	8	8
3	STS or equi-valent	4	10	15
4	TES Gr.B/JTS or equivalent	4	10	18

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.

(b) Minimum period of three years at a location shall be maintained as far as possible in order to avoid hardship to the employees".

31. It is thus obvious that the period of tenure prescribed for each Executive Level cannot by any stretch of imagination be said to be a minimum period of tenure and it is in fact maximum one for which an employee can continue at a station. In this respect, the learned Advocate for the respondents has also relied upon the provisions of Clause 3 of the transfer policy under the caption "Management's Right", which reads as under :-

"The management has the right to move or not to move employee(s) from one post/job to another, to different locations, to different shifts, temporarily or permanently, as per business requirements and special needs".

32. In this behalf, objectives of transfer policy as prescribed in Clause 2(a) of the policy are also relied upon, which reads as under :-

"2(a) In the changing business environment, role/profile of employees needs to be augmented continuously.

Functional managers need to be given on-the-job training and exposure in different types of work situations to develop them to be Business Managers. Similarly, non-executive employees need to be retrained and redeployed in new jobs/locations to meet the technology/market related changes in business of the company".

33. It is thus obvious from combined reading of the provisions incorporated in clause 2, 3 and 11 (a) and (b) that maximum period of 10 years is prescribed for JTOs/SDEs and the Management has the right to transfer an Executive prior to completion of the said period or to retain him beyond the said period on administrative requirement and in the interest of service. It, therefore, does not lie in the mouth of the applicants to say that a minimum tenure of 10 years is prescribed and before its completion, the Management has no right to transfer or shift any employee. The only limitation on the power to transfer before completion of tenure of 10 years is that employee can't be shifted before rendering 3 years of service at a station. Hence, the period of 3 years can conveniently be said to be minimum tenure before which employee can't be transferred. The

applicants have already completed more than 5 years at Pune and hence they were in zone of consideration for transfer.

34. It is needless to say that BSNL Management, even otherwise being an employer has every right to transfer any employee at any time depending upon the administrative requirement, office exigency and even in public interest. Further, in this behalf it cannot be forgotten that the applicants being Central Government employees, as per their service conditions, they are liable to be transferred any where in India. This time they have been transferred within Maharashtra Circle from one District to another. There is nothing on record from the side of the applicants to show that as per the service conditions they are exempted from transfer. This being so, it is obvious that the applicants are fully governed by the provisions of transfer policy and as such it cannot be said that the impugned order by which the applicants are transferred before completion of 10 years of Station/SSA tenure but on completion of more than 3

years tenure is in any manner illegal, improper or mala fide.

35. The second ground raised by the applicants is that there are many senior persons to them in the cadre of SDEs who have longer stay, but not shifted and the applicants were chosen to have completed five years of tenure only at Pune. In this respect, it may be mentioned here that although the applicants have previously served at different stations and also for some years in Rural areas, it cannot be said that they cannot be considered for transfer before completion of 10 years tenure. As stated earlier, it is the prerogative of the respondents to transfer any employee in office exigency except that it should not be punitive or tainted with mala fide. In the present case, we are of the view that there is neither an element of mala fide, nor the impugned order has been effected by way of punishment.

36. The applicants have produced on record the notification issued by the respondents clarifying circle stay and SSA stay of SDEs in Pune vide

Annexure-A-2. From its perusal it is obvious that there are few SDEs who have longer stay at Pune, but have not been shifted and the applicants were preferred. However, as stated and discussed earlier, it is the exclusive prerogative of the respondents and the applicants having accepted the liability of all India transfer when they entered the service, it cannot be said that only because the others having longer stay than the applicants are not considered, the impugned transfer order is arbitrary in any manner. It may be stated here that the employer is the best Judge to consider who will be the most suitable employee for effective administration of a particular station. After considering this fact, it is obvious that the applicants were transferred. This being so, it can safely be said that before issuing impugned transfer order, the respondents must have considered the entire longest stay list. As such, it cannot be said that the applicants have been singled out or randomly chosen for being transferred to Bheed and Dhule. We, therefore,

reject the contention of the learned Advocate for the applicants that the decision taken by the respondents to shift the applicants is in any manner illegal, improper, incorrect or arbitrary, so as to exercise power of judicial review vested in this Tribunal to set aside the impugned order.

37. So far as this aspect of the case is concerned, the learned Advocate for the respondents has pointed out that this Tribunal had an occasion to consider similar case regarding transfer of JTOs working in BSNL in OA No.2087/2017 concerning Nagpur Circuit Bench and vide order dt. 2.8.2017 i.e. the date on which the arguments of the learned Advocates for the parties in this O.A. were concluded, dismissed the O.A. maintaining the order of their transfer. The said view will be binding on us while deciding this O.A. also since similar grounds are raised and it pertains to same transfer policy.

38. As stated earlier, the applicants are already relieved. However, this Tribunal vide order dt. 5.5.2017 cancelled the said relieving

order and directed the respondents to reinstate the applicants in the present post. We hope that the respondents must have followed the said order. However, during the course of arguments, the applicants who were present in the Court and their Advocate also submitted that although the applicants reported back on duty, the respondents have not paid them salary from the month of June, 2017 onwards. If it is so, this is in fact, a case of violation of the order of this Tribunal by the respondents. However, this aspect will be taken care of while passing the operative order in this O.A.

39. It is obvious from record that the representations submitted by the applicants for cancellation of transfer on personal grounds is still pending with respondent No.3. It is the settled law that so far as cancellation of transfer on personal ground is concerned, this Tribunal cannot directly interfere unless a decision is first taken by the Competent Authority on the said representation.

40. From the above discussion, we do not find any merit in the present OA, especially when neither a case of mala fide is made out, nor competency of the authority who has issued the impugned transfer order is challenged. As stated earlier, no case for violation of the provisions for transfer policy is made out by the applicant. Hence, the impugned order is not liable to be set aside on any ground, whatsoever.

41 (a) In the result, the O.A. stands dismissed.

(b) On such dismissal, normally interim protection granted to the applicants vide order dt. 5.5.2017 would also be vacated. However, since the applicants representations for cancellation of transfer order on personal grounds is still pending with the respondent No.3 we propose to continue the said interim protection to them for a further period of four weeks from to day, so that till then the respondent No.3 is directed to consider and pass a reasoned order on pending representations of applicants.

(c) It is needless to say that the applicants may take appropriate steps depending upon the decision taken by R-3 on their pending representations, which shall be communicated to them immediately and in any case within a period of four weeks from to day.

(d) The respondents are also directed to ensure that if the applicants have attended the duty after passing of interim order dt. 5.5.2017 in their favour, they shall be paid their salary till they are lawfully shifted from the present post.

(e) The R-3, is therefore, directed to comply this part of the order also within the prescribed period of four weeks from to day.

(f) In the facts and circumstances of the case, the parties are directed to bear their respective costs of this O.A. The Registry is directed to expedite issuance of certified copy of this order to both the parties.

(Ms. B. Bhamathi)
Member (Administrative)

(Arvind J. Rohee)
Member (Judicial)

B.

