

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

O.A. No. 167/2019

Reserved on: 26.04.2019
Pronounced on: 08.05.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Hanuman Sahai Gurjar S/o late Shri Lallu Ram Gurjar, Aged about 59 Years, R/o 183/91, Pratap Nagar, Sector-18, Sanganer, Jaipur-302033 (Raj.), presently working on the post of DGM (Finance), Jaipur Group 'A'.

...Applicant.

(By Advocate: Shri Amit Mathur)

Versus

Bharat Sanchar Nigam Limited through Chief General Manager (Telecommunication), Rajasthan Telecom Circle, Sardar Patel Marg, Jaipur-302008 (Raj.)

...Respondent.

(By Advocate: Shri T.P.Sharma)

ORDER

Per: A.Mukhopadhyaya, Member (A):

The present Original Application, (OA), arises from the transfer of the applicant from Jaipur to Alwar vide respondent's order dated 28.03.2009; (Annexure A/1 – the impugned order).

2. Briefly, the facts of the case as averred by the applicant are that he was transferred from the Corporate Office of the BSNL, (respondent organisation), to Rajasthan Circle vide respondent's order of 04.10.2018; (Annexure A/2). Thereafter, vide order dated 29.10.2018, (Annexure A/3), the applicant was posted at Bhilwara. However, since he was suffering from a serious illness,

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(para 4.6 of OA read with medical certificate and prescriptions at Annexure A/5 refer), he approached the respondent for a posting in Jaipur in order to attend to his medical condition and in view of his impending superannuation on 31.08.2020; (paras 4.8 and 4.9 of OA refer). The respondent organisation first transferred him to Alwar vide order dated 28.12.2018, (Annexure A/6), and finally, vide order dated 16.03.2019, (Annexure A/8), posted him at Jaipur. However within 12 days of his joining in Jaipur in compliance of the respondent's order, (Annexure A/8), the applicant was again transferred to Alwar vide the impugned order of 28.03.2019; (Annexure A/1).

3. The applicant contends that the impugned order, which was a fresh transfer and not an order of modification was made in clear and direct violation of the respondent's own Employee Transfer Policy of 07.05.2008, (Annexure A/13), as para 2(b)(ix) of the said Transfer Policy sets out one of its aims as under:

"To fulfil the needs of employees nearing retirement for possible placement close to their home town or a location of their choice."

4. The applicant further states that the impugned transfer order is also clear violation of para 11(k) of the said policy, the relevant portion of which states that **"transfer of officers up to SAG Grade would generally be avoided in cases where they were more than 58 years of age"**

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5. The applicant also draws attention to the respondent's own directives related to company cost transfers vis-à-vis own cost transfers, (Annexure A/11), which debar transfer/posting in areas other than tenure areas at company, (i.e. respondent) cost **"except with the prior approval of the competent cadre controlling authority in BSNL"**. He contends that no such prior approval was taken before issue of the impugned order of 28.03.2019, (Annexure A/1), which was to be executed by company cost and therefore this order is also a clear violation of the express directions of the respondent's Corporate Office.

6. Finally, the applicant supports his contention that the impugned order is perverse and malafide by stating that this order was immediately followed by an order on the same day, i.e. 28.03.2019 itself, (Annexure A/10), posting one Shri P.C.Khandelwal at Jaipur against the same position which was occupied by the applicant earlier. The applicant points out that this posting of Shri P.C.Khandelwal was made **"at own cost"** basis, (Annexure A/10 – remarks column refers), so as to not fall foul of Corporate Office directives as at Annexure A/11. Aggrieved by the aforementioned actions of the respondent, the applicant has approached this Tribunal seeking the following relief:-

It is therefore prayed that the present Original Application be allowed. The impugned order dated 28.03.2019 be quashed and set aside. The respondent be directed to allow the applicant at his present place of posting at Jaipur instead of transferred place at Alwar.

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Any other relief or direction which is deemed fit in the facts and circumstances of the case be passed in favour of the applicant.

7. In reply, the respondent points out that after being relieved from Headquarters on 07.12.2018, the applicant did not join at his place of posting issued by the Rajasthan Circle vide order dated 29.10.2018; (Annexure A/3). Again, when he was posted thereafter to Alwar vide a modification of the transfer order of 29.10.2018, (Annexure A/3), vide its order dated 28.12.2018, (Annexure A/6), he still did not join at his place of posting. As regards the representation made by the applicant with reference to his medical condition, the respondent states, (para 4.6 of reply refers), that the applicant with his stated illness does not fall within the exemption clause provided in the transfer rules and guiding principles. He further states that since adequate and proper medical facilities to treat his medical condition are available at Alwar, he is not entitled to get any exemption for cancelling his posting at Alwar. The respondent further claims, (para 4.9 of reply refers), that the order placing the applicant at Jaipur dated 16.03.2019, (Annexure A/8), was issued under an erroneous impression that the officer he was to replace at Alwar, one Shri R.P.Meena, who was under transfer to Gujarat Circle, was likely to get an order retaining him at Alwar from the Corporate Office of the respondent and therefore the post at Alwar would not be available/vacant for one more year.

Subsequently, when no such retention order was received, the applicant was posted at Alwar vide the impugned order dated 28.03.2019, (Annexure A/1), which was thus merely a restoration of his earlier posting there vide order of 28.12.2018; (Annexure A/6). The respondent contends that para 11 of the transfer policy, (Annexure A/13), specifically empowers the respondent management "**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 service**". The respondent further states that in view of this express provision, no question of arbitrariness or malafide arises with the making of the impugned order which was issued in order to meet administrative exigencies and rectify a bonafide mistake made by the management.

8. Learned counsels for the parties were heard and the material available on record was perused.

9. In addition to reiterating the pleadings made in the OA and in the rejoinder to the respondent's reply, learned counsel for the applicant cited the following judgments in support of his contentions:

- i) In the case of **Dr. (Smt.) Pushpa Mehta. vs. Rajasthan Civil Services Appellate Tribunal and Others**, the Rajasthan High Court in its order dated

16.09.1999 in SB Civil Writ Petition No.1430/99 has ruled as follows:

“We are of the view that unless there are compelling reasons, ordinarily, an employee should not be disturbed from the place of his/her posting, when he/she is at the verge of retirement. An employee should be given sufficient time, which may be of two years or so to plan peacefully his/her post retirement life. This can be the legitimate expectation of an employee who has served the Department for major part of his/her life.”

Learned counsel for the applicant states that the impugned order is clearly in contravention of this ruling.

ii) Referring to the case of **Ajay Kumar Sharma vs. State of Rajasthan and Ors.** in S.B. Civil Writ Petition No.4676 of 2000 decided on 27.08.2002, the applicant's counsel contended that here also a person was transferred within a few days, (three days), from one station to another, (Ajmer to Bikaner), and that the court held in this case, (paras 14 and 15 of the judgment refer), that in a decision where the nexus of the transfer order with administrative exigencies is absent or again where the transfers are made in order to adjust a particular person with no reasonable basis, such type of transfers can be termed as malafide.

Learned counsel for the applicant argued that as in the cited case, in the present case also, the impugned transfer order in question was not passed either on administrative exigency or in the public interest but was in violation of the

respondent's own policy. Therefore, as in the cited case, in the instant case also, the impugned order should be held as being unsustainable on account of being malafide.

iii) Citing the case of **Arun Chauhan vs. the State of Rajasthan** in D.B. Civil Special Appeal No.818 of 2004 decided on 01.03.2005, the applicant's counsel drew attention to para-6 of the judgment in which it had been ruled by the Rajasthan High Court that "**....the exercise of power of transfer to accommodate a public servant is not absolute or power of whim or pleasure. As and when a request is made by an employee for transfer, it must be considered in right perspective taking into account all relevant considerations including likely hardship to the person sought to be dislodged by such transfer and the public interest.**"

10. Learned counsel for the applicant argued that in the present case, while accommodating the said Shri P.C.Khandelwal, the respondent had completely ignored the hardship that this caused the applicant given that the respondent was well aware of his medical condition and also that the respondent had posted the applicant at Jaipur after considering his representation for this barely 12 days before transferring him out of this station.

11. Learned counsel for the respondent, in addition to the pleadings and arguments given in the reply cited the order of this

Tribunal dated 04.12.2018 in **OA No. 637/2017** in which the Tribunal had upheld another transfer order based on the same transfer policy of this respondent holding this policy to be in the nature of guiding principles and thus being an enabling rather than mandatory dispensation in the absolute sense. Citing that the Tribunal had upheld the transfer made "**on valid administrative grounds**" in that case, he argued that the same position obtained here as the impugned order with respect to the applicant was made in order to deal with an administrative exigency and in the public interest.

12. We have considered the rival contentions of the learned counsels for the applicant and the respondents. It is undisputed that in this case, whatever be the background or the reasons for doing so, the respondent, of his own volition, transferred/posted the applicant to Jaipur vide order dated 16.03.2019, (Annexure A/8), and that a plain reading of this order shows that it is a modification of his earlier orders dated 29.10.2018, (Annexure A/3), posting the applicant at Bhilwara and 28.12.2018, (Annexure A/6), posting the applicant at Alwar. It is also not in dispute that at the time the impugned order was issued on 28.03.2019, (Annexure A/1), the respondent's own policy directions/orders of 14.03.2019, (Annexure A/11), were very much in force. Accordingly, as expressly stated by the applicant and not denied or refuted in any manner by the respondents, the

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respondent was required to obtain prior approval of the Corporate Office before issue of the impugned order of transfer at company's cost. This does not appear to have been done. Again, the transfer policy of the respondent, (Annexure A/13), does have, as one of its goals, the placement of employees nearing retirement to their home town or a location of their choice and does provide, (para 2b (ix) of policy refers), for a minimum period of three years at a location in order to avoid hardship to employees; (para 11 (b) of the policy refers). While the respondent specifically invokes the enabling provision provided by para 11 (a) of this policy to assert his right to transfer an employee such as the applicant even prior to the employee completing the specified tenure at a given station, it has to be noted that this is to be done only on account of "**administrative requirement and in the interest of the service**". In this case, neither in the reply to the OA, nor in the arguments extended in order to defend his stand, has the respondent been able to show how dislodging the applicant from his place of posting within 12 days of posting him there and doing so despite the fact that he suffered from a medical condition and is less than a year and a half away from his superannuation still qualifies as being administratively necessary, and that too at company cost. No disclosure has been made as to why only the services of the applicant will meet the requirements of such unspecified administrative exigency or the public interest and why no one

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else from the extensive cadre available with the respondent can be found for such purpose. In the absence of this, the weight of the circumstantial evidence provided by the applicant to the effect that his sudden and untimely transfer was made merely to accommodate another person becomes persuasive. The impugned order therefore, even if not made with malafide intent, certainly appears to be arbitrary and in direct variance both with the principles and goals laid down in the respondent's own transfer policy, (Annexure A/13), and own policy directions on economy measures; (Annexure A/11). Given this position, our finding is that the order runs entirely perverse to the dictates of the respondent's own policy and directions on economy measures and thus does not qualify as an action taken to meet an administrative exigency or further the public interest.

13. In the result, the OA is allowed and the impugned transfer order of 28.03.2019 is set aside. The respondents are directed to allow the applicant to continue working at Jaipur

14. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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