

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

#22.

+ W.P.(C) 6331/2010

Date of Decision:20.09.2010

BSNL & ORS

..... Petitioners

Through: Mr.Rajnish Prasad, Adv.

versus

SHUSHIL KUMAR

..... Respondent

Through: Mr.S.N.Sharma, Adv.

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. JUSTICE MOOL CHAND GARG

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

: **MOOL CHAND GARG, J.(Oral)**

Caveat No.205/2010

Since counsel for the caveator is present and has accepted notice of the writ petition, the caveat is discharged.

C.M.12567/2010(exemptions)

Exemptions allowed subject to all just exceptions.

W.P.(C).6331/2010

1. This writ petition has been filed by the petitioners aggrieved of the order dated 06.07.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the Tribunal') in O.A.No.1413/2010 whereby the application filed by the respondent seeking a direction against the petitioners to implement the transfer order passed by them on 20.12.2006 whereby the respondent was posted to the BSNL, Corporate Office, New Delhi has been allowed and directions have been given to the petitioners to issue relieving order of the respondent for enabling him to join the Office of

BSNL, Corporate Office, New Delhi within a period of 6 months.

2. Briefly stating the facts giving rise to the filing of the present petition are that the respondent who had been working with BSNL, after his promotion to Group-B cadre post of Sub Divisional Engineer (SDE) in the year 2002 had been working for more than 19 years in Haryana Circle of BSNL in Gurgaon but on his request due to his mother's adverse health, he was transferred in view of the active requirement of SDE level officers which existed in the Corporate Office at that time and additionally on sympathetic grounds. However, the respondent was not relieved from Haryana Circle office.

3. According to the petitioners, the respondent would not be relieved from Gurgaon on account of administrative reasons inasmuch as there was huge work pressure as well as acute shortage of staff/officers at Guragaon even though representations were being made by the respondent time and again in particular on 22.12.2007 and 05.05.2008. It is also submitted that in the meanwhile since an officer who had been earlier transferred to J&K stood relieved from the said post, on account of requirement of a person like the respondent in J&K and who had already worked for a long period in Guragaon, and was due for repatriation as per the transfer policy, he was transferred to J&K.

4. It is undisputed fact that after the order of transferring him to J&K was passed, O.A.No.735/2010 was filed by the respondent before the Tribunal which was disposed of vide order dated 05.03.2010 with a direction to the petitioner to treat the said O.A. as representation and take a decision by speaking order within 6 weeks.

5. The petitioners then passed order dated 21.04.2010 justifying the respondent's transfer to J&K. This decision was then challenged by the respondent vide O.A.No.1413/2010 which has been disposed of vide order dated 06.07.2010 with the following directions.

13. No doubt it is entirely within the domain of the executive authority to decide who will be posted where and there is no vested right to any particular place of posting, but a fair and reasonable approach as against an arbitrary

or irrational one is expected of a model employer like the Government. It is noted that the applicant has put in 19 years of service at Haryana Circle. It would be only appropriate and in the interest of justice for the respondents to implement the transfer order passed by them on 20.12.2006 in respect of the applicant posting him to BSNL CO. It is ordered accordingly. The impugned orders are set aside in so far as they relate to the applicant. Let the respondents issue relieving orders of the applicant for joining at BSNL CO New Delhi within a period of six weeks from the date of receipt of a certified copy of this order. No costs.

6. The Tribunal examined the record which was placed before it. It is not disputed by counsel for the petitioner before us that vide order dated 20.12.2006, the respondent who was working for 19 years in Gurgaon was directed to be transferred to Corporate Office of BSNL on the basis of his own request dated 12.12.2006.

7. The Tribunal after going through the record has taken note of the 4 pages of the note-sheets proposing transfer of the respondent to J&K and found that the order of transfer was not on the basis of transfer policy but apparently on the basis of incorrect information supplied to the authorities. The relevant observations in this regard are available at para-10 of the impugned order which is reproduced hereunder for the sake of reference:

10. The learned counsel has placed before court four pages of original records. Page 25/N is a note proposing transfers to J&K/NEI Circles which were approved on 06.01.2010 ***with a wrong marginal note that the applicant was not under transfer. Thereafter by a note on p26/N dated 13.01.2010, it was pointed out the applicant had been transferred earlier to BSNL CO in December 2006 but he had not joined.*** Accordingly that transfer had become infructuous and he was being proposed for transfer to J&K under long stay in supersession of the earlier order. Such proposed action was also approved. The note on page 27/N carries a proposal for cancellation of transfer order of Shri J.P.Sharma SDE BSNL CO to J&K and to decide transfer of Shri R.K.Somani, SDE Rajasthan Circle to J&K on long stay basis as he was senior to Shri M.L.Vijay, SDE in that respect. Copy of a letter of BSNL Gurgaon to Haryana Circle dated 30.03.2010 has also been placed by the

respondents which appears to have been issued with approval of the competent authority in connection with the order passed by the Tribunal in OA 735/2010. It has been conveyed therein that the applicant was ordered for transfer to New Delhi but could not be relieved due to shortage of SDEs in Gurgaon SSA. It is explained that it would not be right to say that the applicant was not relieved due to pending disciplinary proceedings.

8. It is obvious that the petitioner who had not relieved him from Gurgaon and it was for that reason the respondent could not join the Corporate Office. The entire case had been projected as if the respondent was at fault though he was not.

9. The Tribunal has further observed that the plea taken by the petitioners that transfer of the respondent in December, 2006 had become infructuous because the respondent had not joined by observing that this cannot be said to be fair and reasonable conclusion for the reason that it was the petitioners who have not relieved the respondent in the interest of administrative reasons and shortage of staff despite repeated representations. Even though, it was not their case that the shortage of staff was overcome by early February 2010 when the impugned order of transfer to J&K was issued. In fact, if there was such acute shortage of staff and pressure of work in Haryana Circle it is not clear why they did not make an attempt to locate persons with long stay elsewhere for the purpose of such transfer to J&K. My attention has not been drawn to any specific provision in the transfer policy/guidelines which makes it mandatory for the respondents to provide substitutes to hard stations like J&K from the same Circle to which officers are posted as per their choice after completion of tenure there. As such it seems that despite shortage they were prepared to relieve him for J&K after treating the earlier transfer to be infructuous, without any prior intimation or notice about cancellation of such existing transfer orders. They could as well have relieved him for BSNL CO, New Delhi as per the existing transfer order. It is not the respondents case that the specific post, if any, against which the applicant was to be adjusted at BSNL CO had

been filled up or that there were no vacancies left at all to accommodate him there. A bald statement that the man power requirement was met in BSNL CO would not suffice.

10. It was in these circumstances, the Tribunal has rightly observed that the order transferring the respondent to J&K was not only unfair and unjust but was also contrary to the circular directing implementation of pending transfers dated 04.02.2010. Therefore, it was neither their case before the Tribunal nor before us that the request of transfer of the respondent to New Delhi was not in accordance with the guidelines merely because he had long stay or certain officers sought posting in Haryana it did not imply that as per the transfer policy the existing transfer orders should have been superseded.

11. In these circumstance, we concur with the reasoning given by the Tribunal. Taking all these facts into consideration, it was obligatory upon the petitioners to have relieved the respondent from Gurgaon office and to permit him to join at New Delhi as per his request on medical grounds.

12. We may additionally state that the request of the respondent to be transferred from Gurgaon to Delhi on the ground of his mother's continuous ill-health was accepted way back in the year 2006 but he was retained back at Gurgaon on account of shortage of staff and public interest thus requiring him to be retained at Gurgaon. It is unexplainable that for 4 years the petitioner could not find a replacement and the respondent continued to be retained at Gurgaon inspite of his being required to be posted at Delhi. Had the respondent been posted at Delhi, it would not have been available for the petitioner to then plea that their policy requires a person from the circle to be transferred if another person is posted on transfer to the circle concerned.

13. Accordingly, we find no reason to interfere with the order passed by the Tribunal and the writ petition is, therefore, dismissed.

14. No costs.

C.M.12566/2010

Disposed of as infructuous.

MOOL CHAND GARG, J

PRADEEP NANDRAJOG, J

SEPTEMBER 20, 2010

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