(x) To meet the staff requirement of tenure/hard tenure/difficult/unpopular stations.

3. **Management's Right:**

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.

SECTION - A
TRANSFER RULES & GUIDING PRINCIPLES :

(Applicable for ALL EMPLOYEES)

6. **General Principles:**

(a) Transfer on the basis of completion of post/station/SSA tenure shall normally be done each year. Transfers involving Station. SSA, Circle, urban or rural posting change shall be undertaken for meeting the shortages and service demands for difficult/unpopular area postings, request from employees posted on tenure/hard tenure stations and others. The request of employees coming from hard tenure/tenure stations shall be accommodated, if necessary by displacing other employee, depending on the longest stay basis.

(b) The cut off date for computing Circle/SSA/Station/Post tenure would be 31st March of that particular financial year. Transfers involving change in the Post/Station/SSA/Circle shall be affected in such way that orders are issued preferably during the month of March/April. However, in the interest of service, transfer orders can be issued at any time of the year.

SECTION-B

ADDITIONAL GUIDELINES SPECIFIC TO TRANSFER OF EXECUTIVE EMPLOYEES WITH ALL INDIA TRANSFER LIABILITY:

(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 equivalent	4	6	8
2.	JAG or equivalent	4	8	12
3.	STS or equivalent	4	10	15
4.	TES Gr.B/JTS or equivalent	4	10	18

(b) xxxxx xxxxx

© xxxxx xxxxx

(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) xxxxx xxxxx
to (j)

(k) Generally, transfer of officers upto JAG level who are more than 55 years of age (as on 31st March of that particular financial year) would be avoided for posting to hard tenure stations. Similarly, transfer of officers upto SAG grade would generally be avoided in case of more than 58 years of age. However, upto STS level, transfer of officers involving change of station would normally be avoided after 56 years for inter circle transfer and after 57 years for intra circle transfers."

10. After a careful reading of the above quoted rules, I do not find any irregularity or anything contrary to Rules on the part of Respondent No.1 in passing the impugned transfer order dated 28th March, 2009. With regard to judicial review of the impugned orders passed by the respondents, I have carefully gone through the grounds urged by the applicants and the judgments cited by the learned counsel for the applicant. I am of the opinion that there is no need to interfere with the impugned transfer order passed by Respondent No. 1 in view of the facts and circumstances of the case since the ratio of the above

cited judgments by the learned counsel for the applicant are not applicable to the case on hand.

11. While considering the contentions raised by the learned counsel for the respondents, I have carefully gone through the judgments cited by him in respect of the scope of judicial review in matters of transfer. The Hon'ble Supreme Court in Government of Andhra Pradesh vs. G.Venkataratnam (supra) has held in paras 6, 8 and 11 as follows :

> "6. The High Court judgment is wholly untenable and, we regret to say, it is rather unusual and strange. The judgment was apparently delivered in anger. The anger might have been caused by the Government Pleader or the Director (the second respondent before the High Court) but as a result the Court not only lost the judicial poise and restraint but also arrived at completely unfounded conclusions. The judgment quotes a passage from William Dalrymple's book, The Last Mughal about how the Red Fort at Delhi was vandalised by the British nd how the damages of the colonial times are perpetuated by the Archaeological Survey of India. One fails to see how the Red Fort, the maintenance of which the Government of Andhra Pradesh is not even remotely connected with, comes into all this.
>
> 8. The Court seems to have been completely taken in by the ipse dixit of the respondent and his tall claims about his own ability and virtually allowed him to choose his own place of posting. The judgment at its beginning recounts the respondent's qualifications that include two Master's degrees, one in Sanskrit and the other in Archaeology, a B.Ed degree in Sanskrit and the degree of Sahitya Shiromani from Sri Venkateswara University. The judgment then proceeds to observe as follows:
>
> 'The petitioner as it appears from the pleadings is a highly qualified man. The confidence with which he made assertion in the affidavit dated 13.3.2006 to the effect that 'if any other employee has my skill, knowledge, expertise and experience I forego my job' makes this Court examine this matter in depth and not treat the impugned order as a mere order of transfer in the course of administration.'
>
> 11. We are surprised to see the High Court castigating the respondent's transfer order as lacking in bonafides on such flimsy and fanciful pleas advanced by the respondent. We are more than satisfied that the High Court's finding regarding lack of bonafides in the matter on the part of the

State Government is completely unfounded and untenable. The legal position regarding interference by courts in the matter of transfer is too well established to be repeated here. The respondent's transfer neither suffers from violation of any statutory rules nor can it be described as malafide by any stretch of imagination. We are, accordingly, unable to sustain the High Court's order. In the result this appeal is allowed, the order coming under challenge is set aside and the writ petition filed by the respondent in the High Court is dismissed."

In Mohd. Masood Ahmad vs. State of U.P. & Ors. the Apex Court has observed in paras 4, 5 and 7 as follows:

"4. The petitioner-appellant, who was an Executive Officer, Nagar Palika Parishad, Muzaffarnagar, had in his writ petition challenged his transfer by the State Government by order dated 21.6.2005, as Executive Officer, Nagar Palika Parishad, Mawana, District Meerut. Since the petitioner was on a transferable post, in our opinion, the High Court has rightly dismissed the writ petition since transfer is an exigency of service and is an administrative decision. Interference by the courts with transfer orders should only be in very rare cases. As repeatediy held in several decisions, transfer is an exigency of service vide B. Varadha Rao v. State of Karnataka, Shilpi Bose v. State of Bihar, Union of India v. N.P.Thomas, Union of India v. S.L.Abbas.

5. In State of Punjab v. Joginder Singh Dhatt this Court observed (vide p.2486, para 3 of the said AIR):

"3. We have heard learned counsel for the parties. This Court has time and again expressed its disapproval of the courts below interfering with the order of transfer of public servant from one place to another. It is entirely for the employer to decide when, where and at what point of time a public servant is transferred from his present posting. "Ordinarily the court have no jurisdiction to interfere with the order of transfer. The High Court grossly erred in quashing the order of transfer of the respondent from Hoshiarpur to Sangrur. The High Court was not justified in extending its jurisdiction under Article 226 of the Constitution of India in a matter where, on the face of it, no injustice was caused."

7. The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme court in Rajendra Roy vs. Union of India, National Hydroelectric Power Corpn Ltd. v. Shri Bhagwan, State Bank of India v. Anjan Sanyal. Following the aforesaid principles laid down by the Supreme court the Allahabad High Court in Vijay Pal Singh v. State of U.P. and Onkar Nath Tiwari v. Chief Engineer, Minor irrigation

Department has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a court of law in exercise of its discretionary jurisdiction under Article 226 unless the court finds that either the order is malafide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders."

In State of U.P. & Ors. vs. Gobardhan Lal (2005) SCC (L&S) 55 the Hon'ble Supreme Court in paras 7, 8 and 9 has observed as follows:

"7. It is too late in the day for any government servant to contend that once appointed or posted in a particular place or position, he should continue in such place or position as long as he desires. 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 contra, in the law governing or conditions or service. Unless the order of transfer is shown to be an outcome of a malafide exercise of power or violative of any statutory provision (an Act or rule) or passed by an authority not competent to do so, an order of transfer cannot lightly be interfered with as a matter of course or routine for any or every type or grievance sought to be made. Even administrative guidelines for regulating transfers or containing transfer policies at best may afford an opportunity to the officer or servant concerned to approach their higher authorities for redress but cannot have the consequence or depriving or denying the competent authority to transfer a particular officer/servant to any place in public interest and as is found necessitated by exigencies of service as long as the official status is not affected adversely and there is no infraction of any career prospects such as seniority, scale of pay and secured emoluments. This Court has often reiterated that the order of transfer made even in transgression of administrative guidelines cannot also be interfered with, as they do not confer any legally enforceable rights, unless, as noticed supra, shown to be vitiated by malafides or is made in violation of any statutory provision.

8. A challenge to an order to transfer should normally be eschewed and should not be countenanced by the courts or tribunals as though they are Appellate Authorities over such orders, which could assess the niceties of the administrative needs and requirements of the situation concerned. This is for the reason that courts or tribunals cannot substitute their own decisions in the matter of transfer for that of competent authorities of the State and even allegations of malafides when made must be such as

to inspire confidence in the court or are based on concrete materials and ought not to be entertained on the mere making of it or on consideration borne out of conjectures or surmises and except for strong and convincing reasons, no interference could ordinarily be made with an order or transfer.

9. The very questions involved, as found noticed by the High Court in these cases, being disputed questions of facts, there was hardly any scope for the High Court to generalise the situations based on its own appreciation and understandings of the prevailing circumstances as disclosed from some write-ups in journals or newspaper reports. Conditions of service or rights, which are personal to the parties concerned, are to be governed by rules as also the inbuilt powers of supervision and control in the hierarchy of the administration of State or any authority as well as the basic concepts and well-recognised powers and jurisdiction inherent in the various authorities in the hierarchy. All that cannot be obliterated by sweeping observations and directions unmindful of the anarchy which it may create in ensuring an effective supervision and control and running of administration merely on certain assumed notions of orderliness expected from the authorities affecting transfers. Even as the position stands, avenues are open for being availed of by anyone aggrieved, with the authorities concerned, the courts and tribunals, as the case may be, to seek relief even in relation to an order of transfer or appointment or promotion or any order passed in disciplinary proceedings on certain well-settled and recognized grounds or reasons when properly approached and sought to be vindicated in the manner known to and in accordance with law. No such generalised directions as have been given by the High Court could ever be given leaving room for an inevitable impression that the courts are attempting to take over the reigns of executive administration. Attempting to undertake an exercise of the nature could even be assailed as an onslaught and encroachment on the respective fields or areas of jurisdiction earmarked for the various other limbs of the State. Giving room for such an impression should be avoided with utmost care and seriously and zealously courts endeavour to safeguard the rights or parties."

In the case of State of U.P. & Ors. vs. Siya Ram & Ors. (2004) SCC (L&S) 1009 para 5 of the judgment is as follows:

5. The High Court while exercising jurisdiction under Articles 226 and 227 of the Constitution of India had gone into the question as to whether the transfer was in the interest of public service. That would essentially require factual adjudication and invariably depend upon peculiar facts and circumstances of the case concerned. 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 other 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 malafide exercise or stated 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 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.*

In Union of India & Ors. vs. S.L.Abbas the Hon'ble Supreme Court in paragraphs 7 and 8 of the judgment held as under :

"7. Who should be transferred where is a matter for the appropriate authority to decide. Unless the order of transfer is vitiated by malafides 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. The guidelines say that as far as possible, husband and wife must be posted at the same place. The said guideline does not confer upon the Government employee a legally enforceable right.

8. The jurisdiction of the Central Administrative Tribunal is akin to the jurisdiction of the High Court under Article 226 of the Constitution of India in service matters. This is evident from a perusal of Article 323-A of the Constitution. The constraints and norms which the High Court observes while exercising the said jurisdiction apply equally to the Tribunal created under Article 323-A (We find it all the more surprising that the learned single Member who passed the impugned order is a former Judge of the High Court and is thus aware of the norms and constraints of the writ jurisdiction). The Administrative Tribunal is not an Appellate Authority sitting in judgment over the orders of transfer. It cannot substitute its own judgment for that of the authority competent to transfer. In this case the Tribunal has clearly exceeded its jurisdiction in interfering with the order of transfer. The order of the Tribunal reads as if it were sitting in appeal over the order

"To stay experimentation in things social and economic is a grave responsibility. Denial of the right to experiment may be fraught with serious consequences to the Nation. It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country. This Court has the power to prevent an experiment....."

".....But in the exercise of this high power, we must be ever on our guard, lest we erect our prejudices into legal principles....."

(See: New State Ice Company v. Earnest A. Liebmann, 285 US 262 at 310-11 __ Dissenting opinion of Brandeis, J.)

In regard to Courts and policy we might recall the following words of a learned author:

"The Courts are kept out or the lush field of administrative policy, except when policy is inconsistent with the express or implied provisions of a statute which creates the power to which the policy relates or when a decision made in purported exercise of a power is such that a repository of the power, acting reasonably and in good faith, could not have made it. In the latter case, 'something overwhelming ' much appear become the Court will intervene. That is, and ought to be, a difficult onus for an applicant to discharge. The Court are not very good at formulating or evaluating policy. Sometimes when the Courts have intervened on policy grounds, the Court's view of the range of policies open under the statute or of what is unreasonably policy has not won public acceptance. On the contrary, curial views of policy have been subjected to stringent criticism. In the world of politics, the Court opinions on policy are naturally less likely to reflect the popular view than the policies of a democratically elected Government or of expert administrators....."

"The considerations by reference to which the reasonableness of a policy may be determined are rarely judicially manageable....."

(Emphasis Supplied)

[See: "The Purpose and Scope of Judicial Review" __ by Sir Gerard Brennan in "Judicial Review of Administrative action in the 1980s" Oxford University Press.]

In Forward Construction Co. v. Prabhat Mandal, (1986 (1) SCC 100): (AIR 1986 SC 391), a similar self-financing project was embarked upon by the Municipal Corporation of Bombay. It is true, the present argument as

to the manner of execution of the project being ultra vires the powers of the local authority was not in terms raised there. But some of the arguments have a familiar ring. This Court, noticing the financial feature of the scheme observed (at page SC 399 : AIR 1986):

"The mere fact that the Corporation was to make a gain of the non-refundable premium did not mean that that was the only purpose which was in view. The purpose obviously was the best utilisation of the available space. If in a commercial zone the Corporation was able to make available accommodation for commercial purposes we do not see why such a venture cannot be one either for the purpose of promoting public safety, convenience or in the nature of facilities being made available as a part of the improvement of the city. If commercial activities are to be pin-pointed in a commercial zone and for that purpose the Municipal Corporation takes a step to provide accommodation for commercial purposes it cannot be said that the property of the Corporation was being acquired or held for purposes other than the purposes of the Act."

While the concern of public law is to discipline the public power by forging "legal techniques as both part of the way in which public power is made operational and part of the process through which it is attempted to render such public power legitimate and to think of issues of legal regulation of public power in a way that goes deeper than particular instances and seeks to elaborate issues of general principle". There is, however, as Professor Wade points out, ample room within the legal boundaries for radical differences of opinion in which neither side is unreasonable. In Tameside case Lord Denning pointed out the error of confusing differences of opinion, however strong, with unreasonableness on the part of one side or the other. Lord Diplock said that the very concept of administrative discretion involves a right to choose between more than once possible course of action upon which there is room for reasonable people to hold differing opinions as to which is to be preferred.

In the ever increasing tempo of urban life and the emerging stresses and strains of planning, wide range of policy options not inconsistent with the objectives of the statute should be held permissible. Referring to the "Role of the Judge in Public Law Litigation" a learned author says:

"Administrative law is, in essence, a search for a theory of how public policy should be made. Two powerful traditions mark the boundaries of that search. On one side, we leave the choice among competing values to a largely unstructured process of pulling and hauling by individuals directly accountable to the citizenry. On the other side, we demand a highly structured process of party-controlled proof and argument before a neutral arbiter to

resolve disputes over the application of rules to specific facts. Between these extremes is that vast land-scape we call policy making the reconciliation and elaboration of lofty values into operational guidelines for the daily conduct of society's business."

(See: :Policy making Paradigms in Administrative Law" __ Colin S.Diver __ Harward Law Review ___ vol.95 ___ 393)

It appears to us that in the context of expanding exigencies of urban planning it will be difficult for the Court to say that a particular policy option was better than another. The contention that the project is ultra vires of the powers of the Municipal Council does not appeal to us."

In Food Corporation of India & Ors. vs. Bhanu Lodh & Ors. (2005) SCC (L&S) 433 the Hon'ble Apex Court has held in para 14 of the judgment as follows:

"14. Merely because vacancies are notified the State is not obliged to fill up all the vacancies unless there is some provision to the contrary in the applicable rules. However, there is no doubt that the decision not to fill up the vacancies, has to be taken bona fide and must pass the test of reasonableness so as not to fail on the touchstone of Article 14 of the Constitution. Again, if the vacancies are proposed to be filed, then the State is obliged to fill them in accordance with merit from the list of the selected candidates. Whether to fill up or not to fill up a post, is a policy decision, and unless it is infected with the vice of arbitrariness, there is no scope for interference in judicial review. (See in this connection Govt. of Orissa v. Haraprasad Das and State of Orissa v. Bhikari Charan Khuntia.)"

In Government of Orissa vs. Haraprasad Das & Ors. (1998) SCC (L&S) 382) para 1 of the judgment states as follows :

"Rules 9 and 10 deal with recruitment of in-service employees and promotions of employees. Appointment and Promotion Committee referred to in these Rules has no role to play in case of direct recruitment from open market. The Administrative Tribunal was therefore wrong in holding that the selection list prepared for direct recruitment from open market was required to be approved by the said Committee and it could become a valid selection list only after its approval by the said Committee. The Tribunal also failed to appreciate that if the selection list was not valid since it was not approved by the Committee then it could not have conferred any right in favour of those who were included in the said list. Rule 11

(v) does not speak of any approval by the Appointment and Promotion Committee. Moreover, it does not provide that it will remain valid for one year from the date of approval by such Committee. The language used in the rule in very clear and admits of no ambiguity. It provides that the selection list once drawn will remain valid for one year. What the Tribunal failed to appreciate was the significance of the word "drawn" used in the said Rules. Therefore, according to the Rules, the period of one year starts running from the date on which a selection list is drawn. In the present case, the selection list was drawn up on 13-7-1993. It, therefore, expired on 12-7-1994. The Government was, therefore, justified in not making any further appointment from the said list after 12-7-1994. The Tribunal in directing the Government to make further appointments from the said dead list has committed an illegality in exercise of its jurisdiction. Even if the said Rule is treated as directory and not mandatory, it was not for the Tribunal to direct the Government to treat it as "live" and in force and to make further appointment from that list."

For the foregoing reasons and discussions made above and in view of the legal propositions laid down by the Hon'ble Apex Court and various High Courts and taking into consideration the factual aspect of the case, I am of the opinion that there is no need to interfere with the impugned transfer order dated 28.3.2009 passed by Respondent No. 1(Annexure-A/8) since the same has been issued in accordance with the transfer policy of BSNL Employees (Annexure-A/3).

12. In the result, the O.A. is dismissed being without any merit. The interim order dated 30th March, 2009, passed by this Tribunal directing maintenance of status quo with regard to the transfer (Annexure-A/8) in respect of the applicants only, which was extended from time to time, is hereby vacated. No order as to

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अनुभाग अधिकारी
Section Officer
केंद्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
बैंगलूर न्यायपीठ बैंगलूर
Bangalore Bench, Bangalore.

29/7/09

Sd-

(B. Venkateswara Rao)
Member (J)