

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.464/2009

Dated this the 2nd day of July, 2010

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HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Justin Raj D.S. S/o late Daivaraj
Jini Bhavan,Parasuvaikal PO
Parassala, Neyyattinkara
Thiruvananthapuram District
now working as Senior Telecom Office Assistant
BSNL office of the Sub Divisional Engineer
Kallara

.. Applicant

By Advocate Mr. P.K.Manoj Kumar

Vs

- 1 The Chief General Manager of the BSNL
Doora Sanchar Bhavan
Thiruvananthapuram- 33
- 2 The Principal General Manager
BSNL .BSNL Bhavan,
Uppalam Road,
Thiruvananthapuram
- 3 The Assistant General Manager (Administration)
BSNL, Uppalam Road,
Thiruvananthapuram
- 4 The Sub Divisional Engineer,
BSNL, Kallara Sub Divisional
Kallara.

..Respondents

By Advocate Mr. N. Nagaresh

The Application having been heard on 8.6.2010 the Tribunal delivered the following:

ORDER

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant entered service as Telecom Office Assistant under the Dying in harness scheme in the year 1987, in the office of the General Manager, Department of Telecommunication, Thiruvananthapuram. According to him, he has been transferred from place to place ever since his appointment as Telecom Office Assistant. While he was working in the office of the Divisional Engineer, Nemom, he was transferred to a the office of the Sub Divisional Engineer, Kallara which was challenged by the applicant through WP(C) No. 28 of 2006. WP(C)28/2006 was disposed of on the assurance of the second respondent that the the case of the applicant would be considered with all sympathy . Despite, the assurance his transfer was not considered. The applicant filed representation without any success. Then the applicants moved the High Court by filing WP(CV) 5142/2006 which was disposed of against which Writ Appeal 640/2006 was filed which was again disposed of on the basis of the assurance of the respondents regarding the transfer of the applicant back to Parassala / Neyyattinkara or any of the Thiruvananthapuram city offices. Till date, it has not been implemented. Aggrieved, the applicant submitted a representation to the 1st respondent. Not having received any reply, he again approached the High Court by filing WP(C) 14465/2007 which was disposed of directing the respondents to consider and dispose of the representations within two months. Pursuant to this direction, the 2nd respondent passed the order dated 22.8.2007 with the statement that

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the request for transfer will be entertained only after completion of one years' stay in the station.

2 The applicant has completed 2 years and 8 months at Kallara but his transfer was not considered. Again, the applicant filed WP © No. 33107/2008 before the High Court which was transferred to the Tribunal and renumbered as TA 130/2008. The Tribunal disposed of the same on 13.2.2009 directing the respondents to consider the representation of the applicant sympathetically keeping in mind the observations made in the judgment and the guidelines on the subject within three months. Pursuant to the above direction, the 1st respondent passed Annexure A-6 order rejecting the representation dated 22.9.2008. The applicant is challenging the order on the grounds that he had completed 4 years at Kallara, he is entitled to get transfer as per his request in the light of the transfer policy and guidelines, he was not asked to produce documentary proof corroborating the ailment of the applicant, his mother and wife while medical reimbursement for himself, his wife and mother were passed by the respondents, no action has been taken by the respondents, disciplinary action initiated against the applicant with malafide intention to overreach the observations and directions contained A-5 order of the Tribunal, the vigilance enquiry against the applicant based on a complaint received from a woman was enquired by the ASP, Neyyattinkara was found to be false and baseless, the respondents are harassing the applicant for approaching Courts against some of the officers of the BSNL, his aged mother needs regular medical attention, his two daughters are studying in IX and X standards, the salary of the applicant is the only source of livelihood and that employees having more than 25 years of service are continuously

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working within the city limits of Trivandrum without a single transfer and that despite several assurances given before the High Court his request was rejected. Hence he filed this O.A to set aside Annexure A-6, to direct the respondents to consider A-4 strictly in the light of the observations in A-5 order of the Tribunal and grant him transfer to any of the Trivandrum city Offices.

3 The respondents filed reply denying the averments in the O.A. justifying the rejection of the representation submitted by the applicant. They submitted that the cadre of Sr. Telecom Office Assistants come under SSA and an official belonging to that cadre is liable to be transferred to any place in the SSA in the interest of service. There are four grades in the Sr. Telecom Office Assistant cadre such as Grade-II, Grade-III and Grade-IV in addition to the basic grade. The applicant belongs to the cadre of Sr. TOA(G) Grade-II. The cadre has various categories such as Sr. TOA(G), Sr. TOA(P), Sr. TOA(T) and Sr. TOA(TG) and the officials belonging to each category have their own duties and responsibilities which are quite different from one another. The office of the Sub Divisional Engineer, Kallara is an office within Trivandrum SSA, which is well connected by public transportation and can be easily accessed from Trivandrum.. The applicant had been working in the city offices throughout his career for almost twenty years. As per the transfer policy of BSNL, an official can be considered for transfer on completion of two years in a particular station. They further submitted that the 1st respondent after considering all the aspects of the case and due application of mind passed orders on Ext. P4 representation rejecting the same giving reasons. They further submitted that in the disciplinary case initiated under Rule 35 of the



BSNL CDA Rules, 2006 action has been taken, they have placed the conduct of the applicant under observation. They submitted that a vigilance enquiry was contemplated against him based on a complaint received from a woman involving serious allegations against him. The Vigilance Officer of Trivandrum SSA has submitted his report to the competent authority for further action. They further submitted that the applicant is a vexatious litigant. The vigilance investigation has revealed that the applicant is doing money lending business in a large scale.

4 I have heard learned counsel for both the parties and have carefully gone through the documents produced before me.

5 The applicant who joined service in 1987 continuously worked within the Thiruvananthapuram city till 16.12.2005 when he was transferred to the office of the SDE Kallara. Thereafter, the applicant has been sending a series of representations and approaching the High Court again and again for a transfer to Thiruvananthapuram city. He has filed WP(C) NO. 28/2006, WP(C) No. 5142/2006, W.A. No. 640/2006, WP(C) No. 14465 of 2007 and WP 33107/2008 (TA 130/2008). The request of the applicant in all these Petitions was a transfer to Thiruvananthapuram city on the ground of frequent illness of his mother, education of his two daughters and the illness of himself who is undergoing treatment in the Medical College hospital, Thiruvananthapuram. The High Court of Kerala had directed sympathetic consideration of the case of the applicant and disposed of the representation submitted by him. The Tribunal in TA No. 130/2009. has directed as follows:

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"Though so many reasons are stated in Exhibit P-3 order in not giving the transfer to the applicant, considering the entire background of the case, this Tribunal is of the view that the respondents will reconsider his case ignoring the reasons stated in P-3 order as the applicant had filed so many writ petitions from 2005 onwards and none of the directions of the Hon'ble High Court have been complied with by the respondents. This Tribunal is at the hope that this time the respondents will consider the P-4 representation dated 22.9.2008 of the applicant keeping in mind the history of case as well as the directions of Hon'ble High Court."

6 The contention of the respondents is that no documentary proof corroborating any serious ailment of his mother, wife and himself has been produced to substantiate his claim. They further stated that disciplinary action has been initiated against the applicant on certain charges under Rule 35 of BSNL CDA Rules, 2006 and that vigilance enquiry was conducted against him on public complaint based on which necessary action is being contemplated against the applicant. They further contended that the applicant is a vexatious litigant approaching the Court just after submitting representations, he had also filed criminal cases against the BSNL Officers by making incorrect and fabricated allegations. They further submitted that there is no illegality or malafides in rejecting the representation of the applicant.

7 The respondents were directed to produce the transfer guidelines by way of an affidavit. They were also directed to clarify whether mandatory transfers are done on completion of tenure in SSAs and the number of Sr. TOAs who have requested for transfer to Trivandrum city as reflected in the request Register.

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8 As directed, the respondents have filed affidavit on 25.6.2010 stating that the applicant had registered his application for transfer in 2006 whereas employees registered since 2002 are pending consideration and that the transfer of the applicant cannot be considered at this stage since disciplinary proceedings are pending against him for serious misconduct for which charge sheet has already been served on him. They further submitted that as per Clause 13(IV) the transfer from urban to rural/unpopular and vice versa to rural stations should be treated as tenure stations with tenure of three years and that there has been no general recruitment to the cadre of Sr. TOA and other similar cadres for the last about 30 years and the BSNL is facing acute shortage of staff in these cadres.

9 I have gone through the affidavit and the extracts of the Transfer Register produced as Annexure R(J). It is seen that the applicant has registered a request for transfer to Parassala or city office on 31.7.2006.

10 Having heard the learned counsel for the respondents and after perusal of the reply statement and affidavit filed by the respondents, it is seen that the applicant joined office of the SDE, Kallara in 2006 as there was no volunteer for going to Kallara and that without a substitute he could not be transferred out. The respondents themselves have relied on Clause 13(iv) which is extracted below:

"(iv) For transfer from urban to rural /unpopular stations identified as tenure station within a Circle/SSA, tenure period shall be two years. Competent authority for notifying unpopular stations for the purpose of tenure shall be the concerned Head of Circle. For effecting transfers from urban to such tenure

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stations, system of calling for volunteers would be adopted & in the event of not getting adequate volunteers, employees of the cadre having longest stay at the station shall be transferred. Such transferred employees shall be eligible for choice posting at urban station on completion of the tenure, if necessary, by transferring out other employees with longest stay at the urban station. Posting of unwilling female employees to such tenure stations would be avoided. Persons posted at tenure stations may be allowed to continue even beyond two years tenure if they so volunteer. However, they would be subjected to the prevailing tenure limits."

The respondents are expected to follow the transfer policy guidelines prescribed by them and grant transfer according to the date of registration of the request.

11 In this view of the matter, I am of the view that the O.A can be disposed of with the direction to the respondents to reconsider A-4 request for transfer of the applicant in accordance with the Transfer Policy guidelines especially Clause 13(iv). I order accordingly. The O.A is disposed of as above. No costs.

Dated 2nd July, 2010



K. NOORJEHAN
ADMINISTRATIVE MEMBER

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