

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 486/2011

Tuesday, this the 22nd day of November, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

K.A.Haneef,
Telecom Mechanic,
Employment No.6055008,
H.R.No.198607167,
Kanthaloor Telephone Exchange,
Munnar.Applicant

(By Advocate Mr K.S.Madhusoodhanan)

v.

1. Bharat Sanchar Nigam Limited
(A Government of India Enterprise),
represented by Principal General Manger,
Telecom Wing, BSNL Bhavan, Kalathiparambil Road,
Ernakulam, Kochi-682 016.
2. Assistant General Manager (Admn),
PGMT, BSNL Bhavan,
Ernakulam.
3. Sivan P.R., H.R.No.198607195,
Kanthaloor Telephone Exchange,
Munnar.
4. Saseendran C.B., Telephone Mechanic,
H.R.No.198704471,
Elappally Telephone Exchange,
Thodupuzha.
5. Sadanandan.T.M., Telephone Mechanic,
H.R.No.198809139, Elappilly Exchange,
Thodupuzha.
6. Muhammed Kassam.J.M., Telephone Mechanic,
H.R.No.199212471, Vazhavara Telephone Exchange,
Kattappana, Idukki.
7. James T.A., Telephone Mechanic,
H.R.No.199212588,
Kunjithanni Telephone Exchange, Idukki.
8. Sudheer.K.K., Telephone Mechanic,
H.R.No.199413287,

Udumbanchola Telephone Exchange,
Idukki.

....Respondents

(By Advocate Mr V Santharam for R.1 & 2)

This application having been finally heard on 18.11.2011, the Tribunal on 22.11.2011 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The applicant entered the service of the respondent in December, 1986 and later in 2002, on his promotion as a Telecom Mechanic, he was posted at Pooyamkutty BSNL Exchange. On 08-08-2009 he was transferred to Kanthaloor BSNL Telephone Exchange. Though the applicant is eligible to apply for a choice posting and even though he had so applied, vide Annexure A-3, for posting at Cochi Region as his first choice, he was posted, vide Annexure A-4, to Malayattoor, which is beyond 70 kms from his home town. This decision of the respondents, according to the applicant, is violative of their own guidelines and hence this OA seeking the following reliefs:-

- (a) for setting aside of Annexure A-4 order in so far as it relates to his transfer;
- (b) For a direction to the respondents to transfer the applicant to any of his place of choices in his annexure A-3 option.

2. The applicant has impleaded certain private respondents as some of them have been posted to the places of choice as indicated by the applicant. Though notice to private respondents were issued, they chose not to participate in the proceedings. Official respondents, however, had filed their reply. In their reply they have *inter alia*, stated as under:-

"There are 6 vacancies in Kochi Zone and 18 vacancies in MEA. Out of this, 6 age wise senior officials were posted in Kochi considering their first choice zone. Out of the 18 vacancies in

MEA, 2 were filled by considering the requests on medical grounds, 6 were filled by CSC selection committee for posting in BSNL Customer Service Centers, balance 10 were filled by age wise seniors who opted MEA as 1st Choice zone. The applicant opted Kochi as 1st Choice zone and MEA as 2nd choice zone. Hence, 1st and 2nd option of the applicant could not be considered as he is age wise junior to them. Vacancies in Aluva were filled by considering the cooices and age wise seniority of officials, who opted Aluva as 1st, 2nd, and 3rd respectively. The respondents 3 to 7 are age wise seniors to the applicant and respondent No. 8 was opted Aluva as 1st choice zone. Since the applicant was opted Aluva as 3rd choice zone, he was posted to Malayattoor against balance vacancies."

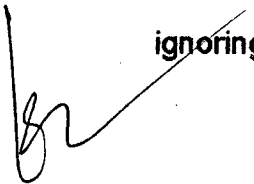
3. Respondents have also submitted that age wise seniors to the applicant were given priority on humanitarian consideration. And, by a separate M.A. No. 768 of 2011, the respondents have filed certain documents (Annexure R-1 to R-7).

4. The applicant had filed his rejoinder stating that save for 10 months when the applicant was posted to Naval Base, Kochi, he had never been posted at his native place or nearby throughout his service. In addition, by MA No. 973 of 2011 the applicant had annexed Annexure A-6 which is a photocopy of the medical sickness certificate in respect of his mother's health condition.

5. Counsel for the applicant argued that the impugned transfer suffers from two main grounds:-

(a) There is no system of 'age wise' seniority and thus, the respondents have gone thoroughly wrong in giving the posting orders on the basis of age wise seniority either on humanitarian ground or otherwise.

(b) There are certain individuals who have not even opted for a particular place for posting and these have been given such a place of posting ignoring the choice station preferred by the applicant. For example,



one Shri James T.A. Requested for Kochi Choice zone but his choice places did not include Fort Kochi (which is one of the choice station of the applicant) and he stands posted to Fort Kochi, vide serial No. 85 of Annexure – A 4 (impugned).

- © The domestic contingencies and situations have not been duly appreciated by the respondents who have transferred the applicant to a place which is far away from the native place of the applicant. The medical report in respect of the mother of the applicant vide Annexure A-6 added to the Misc. Application No. 973 of 2011 has also not been given due consideration.

6. Counsel for the respondents on the other hand justified the transfer stating that age wise seniority was not the main criterion and that all those who have been granted their choice stations are service vice senior even otherwise as per Annexure R-7. Thus, the applicant's challenge against the transfer of the private respondents is untenable.

7. Arguments were heard and documents perused. The applicant is no doubt eligible to give choice station in view of his having served the high range and he had no doubt given the following three zones with three choice stations for each of the zone:-

<i>Choice Zone</i> (<i>MEA/Kochi/Aluva Areas/Divisions of MPZ/KNIX/PBR/KLCY & TDP</i>)	<i>Choice Place</i>
1. M.E.A.	1. Ravipuram
	2. Vaduthala
	3. SRM Road
2. Kochi	1. Palluruthy
	2. Mattanchery
	3. W.Island

<i>Choice Zone</i> <i>(MEA/Kochi/Aluva Areas/Divisions of MPZ/KNIX/PBR/KLCY & TDP)</i>	<i>Choice Place</i>
3. Aluva	1. Vypin
	2. Narakkal
	3. Varapuzha

Of the above, In Mattanchery Respondent 5 has been posted; in Fort Kochi R6 and R-7 stand posted; at Narakkal R3 and R-4 have been posted, while at Cherai R-8 has been posted. That is why, the private respondents have been impleaded. It appears that in the other places none has been posted under the impugned transfer order, presumably due to non availability of vacancies therein.


8. Though the counsel for the applicant has argued that age-wise seniority should not be the criteria, since all those who have been posted to the above places are also seniors to the applicant as per service seniority, no fault could be found in their posting. Applicant's service seniority position and that of others are as under:-

<i>Sl No.</i>	<i>Party</i>	<i>Service Seniority</i>	<i>Age-wise s'ty</i>	<i>Sl. No in R-7</i>
1	Applicant	187	109	131
2	Respondent No. 3	186	46	152
3	Respondent No. 4	50	52	153
4	Respondent No. 5	51	37	55
5	Respondent No. 6	67	68	58
6	Respondent No. 7	50	65	57
7	Respondent No. 8	128	153	25

9. As regards medical ground, counsel for the applicant submitted that Annexure A-6 would show that the applicant's aged mother is suffering from renal problem and is to undergo dialysis in future. The respondents do consider such requests as is seen from para 5 of the reply wherein the respondents have themselves stated that two of the transfers in the MEA were on medical

grounds. As such, the applicant is also entitled to be given that consideration, while he has not been considered. No doubt, vide clause 10(ii) of Annexure A 2, Cancer, acute renal problems and heart ailments are grounds for exemption. However, it is not known whether such problems should be with reference to the employees or their spouses only or could be in the case of their other dependent family members. For, the said clause in the guidelines reflect only non executive employees/their spouses and none else. Again, the transfer order is dated 11-05-2011 while, the medical certificate vide Annexure A-6 is of October 2011. As such, it cannot be expected that the respondents ought to have taken into account the said medical certificate. However, when the acute ailments as stated above qualify for exemption, confining the same to the employee or their spouses does not appear logical. Even if any other family member suffers from such serious ailments respondents ought to take into account the same in matters of exemption or transfer to a place of choice. It is hoped that in future, the same would be so considered.

10. In so far as Respondent No. 7 is concerned, he had inter alia indicated Mattancherry as one of the choice stations but stands posted to Fort Kochi. Counsel for the applicant submitted that if the said respondent could not be accommodated in one of the choice stations, he could have been accommodated in other choice stations, whereas, he stands posted to a place which is not his choice station while that place which is the choice station of the applicant has not been offered to the applicant. There is no doubt some substance in the argument of the applicant. Fort Kochi had two vacancies, of which one had gone to Respondent No. 6 who had opted the same as his first choice and he being senior to the applicant he has been rightly accommodated first. However, instead of respecting the choice station of the applicant, the next vacancy has been offered to Respondent No. 7 who did not opt for Fort Kochi



Exchange at all. The reasons are not known.

11. As of date, the applicant's grievance is that he stands posted to a place which is 70 kms away from Kochi. Normally, judicial interference in matters of transfer is kept to the minimum as held in a number of judgments of the Apex Court. (See *Shilpi Bose v. State of Bihar* 1991 Supp (2) SCC 659 *Union of India v. S.L. Abbas*, (1993) 4 SCC 357; *N.K. Singh v. Union of India* (1994) 6 SCC 98 ; *Abani Kanta Ray v. State of Orissa* 1995 Supp (4) SCC 169 *State of U.P. v. Gobardhan Lal* (2004) 11 SCC 402); *State of UP vs Gobardhan Lal* (2004) 11 SCC 402 *State of UP vs Siya Ram* (2004) 7 SCC 405); *Director of School Education v. O. Karuppa Thevan*, 1994 Supp (2) SCC 666, *Kendriya Vidyalaya Sangathan v. Damodar Prasad Pandey*, (2004) 12 SCC 299 , *Union of India v. Janardhan Debanath* (2004) 4 SCC 245 *S.C. Saxena v. Union of India*, (2006) 9 SCC 583, *Rajendra Singh v. State of U.P.*, (2009) 15 SCC 178 *Airports Authority of India vs Rajeev Ratan Pandey and others* (CA 5550 OF 2009 decided on August 17th 2009). In the instant case, the applicant's claim cannot be held to be unreasonable. After having served in High range for the requisite span of tenure, when he has requested for choice station, while others have been given their respective choice station, the applicant has been singled out. True, he might be junior in service seniority. Nevertheless, when R-7 did not opt for Fort Kochi, his posting there is at the cost of the choice station of the applicant. Respondents have committed some error at this juncture. Nevertheless, it may not be appropriate to dislodge the said respondent now. All that could be done is to await further vacancy in any of the nine choice stations in the near future and once such a vacancy arises the respondents shall consider posting the applicant to such choice station, of course, after seeking his consent at that point of time as well. The medical ground should also be kept in view in this regard.



12. The OA is therefore, **disposed of** with a direction to the respondents to consider transfer of the applicant from Malayattoor as and when vacancy arises in any of the nine choice stations as given by the applicant and prior to his posting the applicant as such, his consent should also be obtained.

13. Under the above circumstances, there shall be no orders as to costs.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

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