

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 490 OF 2010

Friday, this the 2nd day of July, 2010

CORAM:

**HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER
HON'BLE Ms.K.NOORJEHAN, ADMINISTRATIVE MEMBER**

H.Palmer
Apsara Bhavan
Maradi, karode P.O
Thiruvananthapuram District

... Applicant

(By Advocate Mr.Vinod J Dev)

versus

1. The Director (HRD)
Bharat Sanchar Nigam Limited
Corporate Office
New Delhi
2. The Chief General Manager
Office of the Chief General Manager
Kerala Telecommunications
Bharat Sanchar Nigam Limited (BSNL)
Thiruvanthapuram
3. The Deputy General Manager(Admn)
Office of the Chief General Manager
Kerala Telecommunications
Bharat Sanchar Nigam Limited (BSNL)
Thiruvanthapuram

... Respondents

(By Advocate Mr.N.Nagaresh)

The application having been heard on 02.07.2010, the Tribunal on the same day delivered the following:

ORDER

HON'BLE Mr.JUSTICE K.THANKAPPAN, JUDICIAL MEMBER

The applicant has filed this OA challenging his transfer on promotion as Sub Divisional Engineer. But on promotion he was transferred to North Eastern Circle, Shillong by order dated 15.05.2009.

The applicant is seeking the following reliefs:-



a, **Declare that applicant is entitled to regularization on the cadre of Sub Divisional Engineer with effect from Annexure A-2, the date of 1st promotional order.**

b, **Declare that applicant is entitled to get promotion as per Annexure A-11 that applicant is entitled to get a posting in Kerala Circle as Sub Divisional Engineer.**

c, **Declare the period of leave availed of by the applicant from 15.06.2009 to 11.11.2009 as part of duty.**

d, **Issue necessary direction to respondents 1 and 2 to consider and pass appropriate orders on Annexures A-12, 16 & 17 as expeditiously as possible.**

2. OA has been admitted and while admitting the OA, this Tribunal directed the respondents to get instructions or file reply statement, if any. However, Mr.Nagaresh, Counsel for respondents has filed a statement today in which it is stated that the applicant did not join the promotion post within the stipulated period of 40 days as provided in Para 5 of Annexure A-11 transfer order dated 15.05.2009. Hence joining time was further extended to 24.07.2009. As he did not join, his promotion has been cancelled.

3. We have heard Mr.Vinod J Dev, Counsel for applicant and Mr.N.Nagaresh, Counsel for respondents and perused the documents produced before this Tribunal. Counsel for applicant contends that the applicant was initially appointed as Telecom Assistant on 11.11.1983 and he was subsequently absorbed as Junior Telecom Officer from 01.10.2000. On 02.11.2004 he was given temporary promotion as Sub Divisional Engineer at Malappuram District and he continued in the same cadre till the date of general promotion order. In the meanwhile, as per Annexure A-11, about 150 similarly situated persons have been promoted as Sub Divisional Engineer permanently. Out of that, 149 officers have been retained in



Kerala Circle and the applicant alone was transferred to Shillong. Hence, the transfer now made is malafide and discriminatory. Apart from that, Counsel for applicant submits that even if the promotion order of 150 officers were given as Sub Divisional Engineers, some of the juniors have also been promoted temporarily as Sub Divisional Engineer and the applicant is not allowed to continue in Kerala Circle as he was on leave from the date of his promotion. The Department is going to cancel the regular promotion order given to the applicant. This, according to the Counsel for applicant is irregular and illegal. Counsel for respondents resisted the contentions of the Counsel for applicant and submitted that it is a fact that 150 officers were already promoted to the post of Sub Divisional Engineer and out of which the applicant alone was transferred to Shillong and all others were retained in Kerala Circle. On considering the grounds urged in the OA and the basis of contentions of the Counsel for the parties, the question to be decided is whether the stand taken by the respondents is correct or not ? Admittedly, it is the case of the respondents that 150 officers were promoted permanently as Sub Divisional Engineers and out of which 149 officers were retained in Kerala Circle including some of the juniors of the applicant. The transfer now made to the applicant alone is discriminatory and in violation of Article 14 of the Constitution of India. Apart from that the applicant belongs to a lower community i.e SC. We are afraid that the respondents have not acted as per the provisions of the Constitution and the rulings of the Apex Court. It is an atrocious act. If so, the discrimination shown to the applicant is to be corrected. We are of the view that the transfer now made or to revert the applicant to the post of Junior Telecom Officer is irregular and illegal especially we have seen that 149 officers promoted alongwith the applicant were allowed to continue



in Kerala and the applicant alone was transferred to Shillong. This is actually against the approved norms of promotion and transfer followed by the Department. This matter is to be looked into by the Head of the Department seriously and to correct the officers who did this discriminatory order. We have also noted that after the promotion given to the applicant and other officers, vacancies still exist. Some of the junior officers were promoted on adhoc basis, i.e. vacancies still exist in Kerala. The transfer made against the applicant is irregular and illegal. Hence we quash the transfer order of the applicant and direct the respondents to retain the applicant in Kerala Circle in the promoted post and give a posting forthwith. It is a fit case to allow cost in this matter, but that drastic step will not justify the claim of the applicant.

4. In the above circumstances, we allow this OA to the extent stated above. No order as to costs.

Dated, the 2nd July, 2010.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


JUSTICE K.THANKAPPAN
JUDICIAL MEMBER

VS