

CENTRAL ADMINISTRATIVE TRIBUNAL

ERNAKULAM BENCH

Original Application No. 543 of 2009

FRIDAY, this the 25th day of June, 2010

CORAM:

HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

1. S.P. Mohanakumar,
S/o. Late C.N. Parameswaran Pillai,
Telephone Supervisor (Operative),
Customer Service Centre,
BSNL Perumbavoor residing at
"Ushas", Pattal, Iriginal P.O.,
Perumbavoor - 683 548.
2. P.J. Xavier,
S/o. Late P.X. Joseph,
Section Supervisor (Operative),
AOTR III Section, Office of the PGMT,
BSNL, Catholic Centre, Kochi - 682 031,
residing at C.R.5 P&T Quarters,
Thevara, Kochi - 682 013.
3. Bijumon M.P.,
S/o. Late M.S. Purushothaman,
Senior Telecom Operative Assistant,
Office of AO TR-VAS, Catholic Centre,
Ernakulam, Kochi - 682 031,
residing at Muttath House,
South Paravoor P.O. - 682 320.
4. Ramachandran M.G.,
S/o. Late M.B. Gopalan,
AD Liaison Section,
O/o. PGMT, Catholic Centre,
Broadway, Kochi - 682 031,
residing at Madathiparambil House,
Chittoor Road, Kochi - 682 031.
5. V.V. Saniraj,
S/o. Late Viswambharan,
Section Supervisor (Operative),
TR VAS, Office of the PGMT,
Ernakulam, Kochi - 682 031,
residing at Kunnalakkattu House,
Jayanthi Road, Maradu, Ernakulam Dist.

6. Venugopal A.K.,
S/o. Late A.K. Panikkar,
Senior TOA (G),
Office of the PRO, BSNL,
Ernakulam, Kochi – 682 016,
residing at 12/37, Nandanam,
Panayappilly, Kochi – 682 002. Applicants

(By Advocate Ms. Jebi Mather for M/s. Dandapani Associates)

versus

1. The Deputy General Manager (A&OP),
Office of the Principal General Manager,
Telecom, BSNL Bhavan, Kalathilparambil Road,
Ernakulam, Kochi 682 016.
2. The Assistant General Manager (Admn.)
Office of the Principal General Manager,
Telecom, BSNL Bhavan, Kalathilparambil Road,
Ernakulam, Kochi 682 016. Respondents

(By Advocate Mr. T.C. Krishna)

The application having been heard on 17.06.2010, this Tribunal on ~~25-06-10~~ delivered the following:

ORDER

HON'BLE Ms. K. NOORJEHAN, ADMINISTRATIVE MEMBER

Being aggrieved by the orders issued by the respondents vide Annexures A-8, A-9, A-10 and A-17, the applicants have filed this O.A. They submitted that Annexure A-8 is in gross violation of the directions issued by this Tribunal. In the A-8 impugned order, no analysis or reason were given for retaining many of the juniors. As the order Annexure A-8 was passed by the first respondent in derogation of the directions given by this Tribunal, the applicants are not bound to join duty in the new place of posting. Hence this O.A. with the following prayer :

- (i) Call for the records leading to Annexures A-8, A-9 and A-10 and set aside the same;
- (ii) Call for the records pertaining to Annexure A8 order and verify whether

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the first respondent has complied with Annexure A7 order passed by this Tribunal;

(iii) direct the first respondent to consider Annexures A-11, A-12, A-13, A-14, A-15 and A-16 representations filed by the applicants dated 10.08.2009 within a period of 4 weeks and during that time the applicants may be permitted to continue at their respective places;

(iv) Call for the records leading to the case and set aside Annexure A-17 order.

2. The applicants, who are working as Senior Telecom Operative Assistants, Telephone Supervisors (Operative) and Section Supervisor (Operative) at Perumbavoor and Ernakulam Secondary Switching Areas respectively, have earlier approached this Tribunal in OA No. 258/2009 against their transfer orders dated 24.04.2009 issued by the second respondent. They have filed their respective representations stating their personal problems to join at the new place of posting as also the fact of juniors having been retained and 1:1 ratio not being followed. Respondents contended that the transfer orders have been issued strictly in accordance with the High Range transfer policy guidelines for non-executives. All transfers have been carried out in public interest keeping in view the administrative requirements of the Department. After having heard both sides, the Tribunal on 10.07.09 passed the following order in OA No. 258/2009:

"26. Considering all the above facts, this Tribunal is of the considered view that transfer of Shri. K.A. Babu has to be held as arbitrary, accordingly his transfer is struck down. As regards others, Respondent No.1 shall within a period of 4 weeks from the date of communication of this order, analyze the reasons for retaining many juniors without granting exemptions and if there are justifications, for such retention of these juniors, the same shall be spelt out in a speaking order and a copy of the same shall be made available to all other applicants. Even if there is any grievance thereafter, such applicants shall have to join duty in the new place of posting and make due representation as held in the case of Gujarat Electricity Board Vs. Atmaram Sangomal Pashani (1989) 2 SCC 602. In the event of such representations being filed, the same shall be considered by the respondents and decision communicated. Till such time, the contrast is considered by the Respondent No.1 with reference to juniors not exempted specifically, as stated above, within 4 weeks, the applicants shall not be transferred."

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3. Against the above order, the respondents filed Writ Petition No. 21812 of 2009 before the Hon'ble High Court which was dismissed on 03.08.2009. After dismissal of the Writ Petition, the first respondent issued Annexure A-8 order alongwith A-9 transfer order which were served upon to the applicants. All the applicants have been relieved from their duties with instructions to report to the units mentioned against their names. The applicants submitted their representations (Annexures A-11 to A-16) to the first respondent respectively. They submitted that the 2nd respondent has now passed an order dated 15.09.2009 rejecting their request as it is not in compliance with the directions of the Tribunal. The applicants submitted that they were not in a position to submit their representations through proper channel as they did not join the new place of posting immediately after they were relieved. The respondents ought to have considered the representations and passed a speaking order on their representations. The action on the part of the respondents in not considering their representations on merit has resulted in miscarriage of justice. Therefore, the O.A. should be allowed.

4. The respondents contested the O.A. They submitted that in compliance of the directions of this Tribunal, the matter was considered by the 1st respondent and disposed of vide Annexure A-8 order. It has been specifically mentioned in Annexure A-8 that as per order dated 23.03.09, the officials to be posted to High ranges will be selected from various areas depending on incoming requests/shortage/requirement etc. of various area.. It was further stated that as per the order of this Tribunal, the applicants have to join duty in the new place of posting and then make due representations. However, they submitted their respective representations without joining duty in the new place. This amounts to

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very serious indiscipline. The transfer order was issued strictly in accordance with the High Range transfer policy norms and other orders on the subject. As the applicants have no case, the O.A. is liable to be dismissed.

5. I have heard the learned counsel on either side and perused the documents.

6. In the instant case, the prayer of the applicants for staying operation of the orders at Annexures A-8, A-9 and A-10 has been rejected vide order dated 13.08.2009 in view of the earlier order passed in OA No. 258/2009. Accordingly, the applicants had already joined the new places of posting. Now what is left in the OA is only consideration of the representations of the applicants.

7. During the course of arguments, the learned counsel for the applicant has produced a copy of transfer and posting order No. ST/EK-275/II/14 dated 18th May, 2010, to show that almost all who were posted in the High Range Area are brought back to their earlier place of posting and a similar treatment should be given to the applicants also. A perusal of the said order shows that this is the general transfer order for the year 2010, as the transfer order which the applicants challenged in OA No. 258/2009 was for the year 2009 and it was issued on 24.04.2009. Many of the officials transferred in 2009 are being posted back to Ernakulam/Aluva/Angamaly etc., at request without TA/TP. Therefore, the tenure in High Range Area is fixed as one year. There is an instruction in the May, 2010 order that those who availed more than 40 days leave and those who joined late can be relieved only after completion of one year. Therefore, the applicants are also entitled to request for a transfer back to Ernakulam and near about areas, on completion of one year in High Range Area.

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8. Having considered the facts of the case and the contentions of the rival parties, I am of the considered view that the OA can be disposed of by giving a direction to the respondents to consider the representations of the applicants afresh and pass a speaking order. Accordingly, it is ordered as under :

(a) The applicants may make fresh representations through proper channel giving all details to the 1st respondent within 20 days from the date of receipt of a copy of this order ;

(b) The 1st respondent shall consider the representations of the applicants within one month from the date of receipt of such representations and pass a speaking order. Needless to say that while considering the representations, the concession already offered to the similarly placed persons, may be given to the applicants herein also.

9. The O.A. is disposed of as above. No order as to costs.

(Dated, the 25th June, 2010)


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER