

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO.567/2000

WEDNESDAY THIS THE 5th DAY OF JULY, 2000.

C O R A M

HON'BLE MR. A. V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. Smt. Annamma Varghese W/o Sri Baby John
Sr. TOA(P), Trunk Exchange, Thiruvalla
residing at Njaliplackal, Vennikulam P.O.
Thiruvalla.
2. Smt. A.C.C. Kartha W/o Chandrachudan Kartha
SR. TOA(P), Trunk Exchange, Thiruvalla
residing at Lakshmi Vilas, Kaviyoor P.O.
Thiruvalla
3. Sri K.C. Muralee Manoharan
S/O P. Chellappan Pillai
Sr. TOA(P), Trunk Exchange,
Thiruvalla
residing at Lakshmi Vilas, Kaviyoor P.O.
Thiruvalla.Applicants

By Advocate Mr. M.R. Rajendran Nair

Vs.

1. Union of India represented by the Secretary to
Government of India,
Ministry of Communications,
Department of Telecom
New Delhi.
2. The General Manager,
Telecom
Thiruvalla.
3. The Chief General Manager,
Telecom,
Kerala Circle,
Thiruvananthapuram.
4. The Sub Divisional Engineer,
Trunks and MDF
Thiruvalla.Respondents

By Advocate Mr. Govindh K. Bharathan, SCGSC

The application having been heard on 19.6.2000, the Tribunal
delivered the following on 15.7.2000.



O R D E R

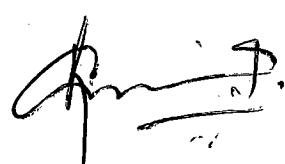
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

Applicants who were working as Senior Telecom Office Assistants (P) (Sr. TOA(P) for short) at Thiruvalla Telephone Trunk Exchange filed this Original Application aggrieved by A4 order dated 1.5.2000 issued by the second respondent and A8 order dated nil issued on 16.2.2000 by the fourth respondent. By A4 order, the applicants have been transferred from Trunk Exchange, Thiruvalla and posted to General, Cash Accounts and Planning Sections in the office of the General Manager (T), Thiruvalla and by A8 order their names were struck off from the strength of the Trunk Exchange, Thiruvalla from the afternoon of 16.5.2000 with instructions to report to General Manager, Telecom, Thiruvalla.

2. According to the applicants by A1 order dated 7.2.2000 the first applicant was transferred by the first respondent to Accounts Section of the office of the General Manager (Telecom) Thiruvalla. However, A1 order was not implemented even though A2 order dated 8.2.2000 was issued by 4th respondent striking off her name from the afternoon of 8.2.2000. Again by A3 dated 25.4.2000 order issued by the second respondent the applicants were transferred to different sections in the office of the General Manager (T). However, A3 was modified by A4 order dated 1.5.2000 by which the applicants were transferred and posted to the office of the General Manager (T), again. The applicants were struck off from the strength of Trunk Exchange, Thiruvalla with effect from 2.5.2000 by A5 order issued by the 4th respondent. Applicants claimed that A5 order was not implemented. Applicants submitted A6 representation dated 3.5.2000 to the second respondent requesting to cancel the



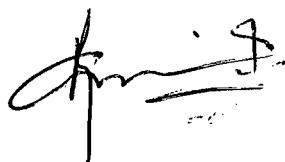
transfer order pointing out that they were trained for operative work and that as a matter of fact there was acute shortage of staff in the Trunk Exchange, Thiruvalla. Further, they submitted that on 4.5.2000 the second respondent called volunteers by A7 from Sr. TOA's (P) and Sr. TOA's(G) for working in various units as detailed therein. It was stated therein that transfer of such willing officials would be made on need based requirements in various units. Applicants stated that they had submitted their willingness to be posted to nearby Telephone Exchanges. Notwithstanding that A-8 order was issued by the 4th respondent on 16.5.2000 striking them off from the strength of Trunk Exchange, Thiruvalla on the afternoon of 16.5.2000. Applicants claimed that they had submitted detailed representations such as A-9 submitted by the third applicant to the first and third respondents requesting for cancelling the alleged illegal transfer orders and permitting them to continue in the present cadre. They also submitted A-10 joint representation to the first respondent requesting to intervene in the matter at the earliest by cancelling the alleged illegal transfer order. According to the applicants when they had a lien in the category of Telephone Operators and they were holding the re-designated posts of Sr. TOA(P) they could not be transferred to another cadre like Clerk without a request for inter-cadre transfer. Further, they were trained to work as operators and they were absolutely ill- equipped to work in the general/cash /planning sections of an administrative office. Hence, they claimed that the impugned orders of their transfer were not in the interest of service or public interest. It was further submitted that Telephone Trunk Exchange, Thiruvalla there was shortage of TOA(P). According to them minimum required strength was



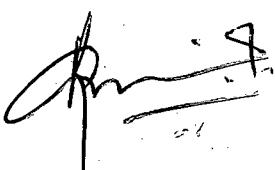
maintained by incurring expenditure towards payment of over-time allowance and therefore, it was not a case where there was surplusage. Even if it was assumed that there was surplusage, the applicants were liable only to be transferred to any nearby Telephone exchange and transfer out of the cadre in which they held lien was absolutely unjust and illegal. Hence, they sought the following reliefs:

- (i) To declare that the applicants are not liable to be transferred to a post outside the cadre in which they hold a lien and to direct the respondents to allow the applicants to continue in service in a post within the cadre to which they belong and
- (ii) To quash Annexure A4 and A8
- (iii) Grant such other reliefs as may be prayed for and the Court may deem fit to grant, and
- (iv) Grant the cost of this Original Application.

3. Respondents filed reply statement resisting the claim of the applicants. Basing on R-2(a) Recruitment rules they admitted that Sr. TOA's (P) and Sr. TOA's(G) were two different non-gazetted non-ministerial classifications with the same scale of pay, eligibility conditions, etc. At the time of original recruitment the cadres namely Telephone Operators and clerks were equivalent in all matters. The Govt. of India Department of Telecommunications by R-2(b) order dated 3.4.96 defined the duties of Sr. TOA (P) which included many works of Clerical nature. They submitted that their duties overlap in many areas with the duties of Sr. TOAs(G). By A1, A3 and A4 the applicants were transferred to another unit in the same town in the same cadre and not to any other cadre and hence no cadre conversion was ordered. They would maintain their lien and seniority in their cadre only and the transfer would not in any way



affect their salary, seniority, promotion, etc. adversely. and the allegation that the transfer was from one cadre to another was not sustainable. They further submitted that the third applicant was merely performing clerical duties in Trunk Exchange for the last one year and the second applicant also had performed clerical duties in the past. They pleaded unawarenes of any representation said to have been submitted vide A9 and A-10 since no such representations were received by them. According to the respondents there was no shortage of Sr. TOAs(P) in Trunk Exchange, Thiruvalla. The average number of trunk calls per day being booked in the truck exchange had come down from 1200 to 250. Therefore, staff available in the Trunk Exchange at Thiruvalla at present would be in excess of the justified strength. According to R2(c) order dated 14.5.97 during such occasion re-deployment of excess staff for optimum utilisation of staff was permissible and accordingly A1, A2 and A3 transfer orders were issued for meeting other operational requirements by temporary working arraangements of the Sr. TOAs(P) namely to work in various sections of the office of the General Manager, Telecom, Thiruvalla. It was further submitted that computerisation of trunk exchange was also being implemented and on completion of which 95% of the existing Sr. TOAs(P) would become surplus. Redeployment of excess staff for other works was permitted vide R2(d) order dated 16.10.97 and the third respondent was competent to decide such redeployment. In addition, further interchanging of various streams of Sr.TOAAs was permitted by R-2(e) order dated 27.12.99. Sr. TOAs(P) were doing clerical works in Trunk Exchange also in staff matters, trunk calls ticket works, etc. which was merely a clerical work. Further, it was submitted that by transferring them to Administrative office the applicants need to work only 5



days in a week in which there was no liability of rotation of night duty etc. and they would also be more conveniently placed.

4. Applicant submitted rejoinder reiterating the points made in the O.A.

5. Respondents filed additional reply statement covering the points raised in the rejoinder.

6. Heard learned counsel for the parties. Shri M.R. Rajendran Nair learned counsel for the applicant reiterating the pleadings in the O.A. submitted that the applicants were willing to perform the duties of TOAs(P) wherever they were posted. However, in case of surplusage, retrenchment and redeployment must be done in the manner indicated in the Govt. instructions by transferring the juniormost in the cadre. The applicants were willing to be transferred as TOA(P) in any of the Telephone exchanges as stated in the rejoinder.

7. Learned Senior Central Government Standing Counsel Shri Govindh K. Bharathan for the respondents drew our attention to the list of duties of Sr. TOAs (P) and Sr. TOAs (G) and the similarities of the clerical nature of duties of both categories. It was submitted that the average number of trunk calls made every day was less than 250 which would be evident even from the statement in rejoinder. It was submitted that A1, A3 and A4 were issued on a temporary functional basis to meet the urgent requirements in the office of General Manager (Telecom), Thiruvalla and that the pre-appointment training imparted to the applicants before their promotion to Sr. TOA(P) was



sufficient for their functioning in the new units under the proper guidance of the Controlling Officers and no other training was warranted. He reiterated the pleadings in the reply and additional reply statements.

8. We have given our thoughtful consideration to the submissions made by the learned counsel for the parties and the rival pleadings and have also perused the documents brought on record. From the impugned order A4 we find that the applicants were not transferred from Sr. TOA(P) to any other cadre. They have only been transferred from the Trunk Exchange Thiruvalla to three different sections of the office of the GM(T), Thiruvalla. Therefore, in our view the first ground advanced by the applicants that they could not be transferred to another cadre like the cadre of Clerk without a request for inter-cadre transfer do not have any force.

9. Now the issue for consideration is whether A-4 and A-8 orders are legal. Respondents have categorically stated that it was due to reduction in the work in the Trunk Exchange Thiruvalla that the applicants had been transferred to the office of the GM(T) Thiruvalla. According to them as against 1200, the effective trunk calls booked in Thiruvalla Exchange had come down to 250 per day. They also stated that the applicants were the juniormost Sr. TAOs(P) at Trunk Exchange, Thiruvalla barring one TOA(P). They had submitted that this Sr. TOA(P) had the privilege of immunity of transfer being the Divisional Secretary of one of the trade unions. They relied on R-2(c), R-2(d) and R-2(e) for their action. We have perused R2(c) order dated 14.5.97 issued by the Chief General Manager, Telecom,



Trivandrum to the Principal General Manager, Telecom Ernakulam and the other General Managers in Kerala Circle. The same reads as under:

With the commissioning of electronic Exchanges/CTMX and closure of Strowger/Crossbar/Manual Trunk exchanges in SSAs the TOA (Phones) have become excess in such places and redeployment of the excess staff have become essential.

Since redeployment of such excess staff is to be done to take care of the operational requirement in other places within the SSA, the following guidelines are given:

1. Excess TOA(Phones) will work as TOA(General) on functional basis and retain their seniority as TOA (Phones) subject to the condition that such posts of TOA (General) are available in the same station.

2. For transfer of excess staff to other stations, seniority will be the criteria i.e. transfer will be effected starting from the junior most official in the gradation list as per DOT letter No. 256-25/86-STN dated 25.11.88 provided there are no volunteers asking for postings to other stations.

10. We find that A-4 order issued by the second respondent is in line with the above letter. We also find from the statement given in the rejoinder that there is no dispute regarding the average number of Trunk Calls booked per day in the Telephone exchange, Thiruvalla which is less than 250 per day.

We have also perused R-2(d) order dated 16.10.97 issued by the Department of Telecommunication to all the Chief General Managers of the Circles. The same is reproduced below:

As per the present policy of the department, trunk exchanges are to be retained only at the SSA and Revenue Distt. Headquarters. All other trunk exchanges located at other stations are to be gradually closed down.

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Numerous representations are being received by this office from Service Unions against the closure of trunk exchanges on the ground that the staff deployed in trunk exchanges would have to face serious problems due to their transfer to other locations. The matter has been examined and it is to state that instructions were already issued vide DOT No.256-25/86-STN dated 19.11.86 regarding transfer of surplus staff (Telephone Operators) to avoid inconvenience to the surplus Operative Staff.

It is now reiterated that the staff rendered surplus due to closure of trunk exchanges may be redeployed for some other works in such a way, as to be decided by the CGMs of the concerned Telecom . Circles, to ensure minimum inconvenience to these staff. The Personnel Branch of the Telecom Dte. may also be consulted, if needed.

We find from the above that even though the above letter was issued in the context of closure of trunk exchanges, on the basis of the concern expressed by the service unions, the reiteration was as indicated in the last para of the above letter. It was pleaded by the respondents, that by the action taken by the impugned order A-4, the applicants will be more conveniently placed. This had not been specifically denied by the applicants in the rejoinder. Thus, we find even though the above letter is not strictly applicable, in that the Thiruvalla Trunk Exchange is not closed, in the matter of utilisation of the applicants not required in the Trunk Exchange, the underlying idea of the department had been followed. R-2(e) order dated 22.12.99 issued by the Department of Telecommunication reads as under:

With the introduction of computerisation, the nature of work in various cadres of Sr. TOA are merging. This has resulted into the need for optimum utilisation of the various cadres of Sr. OA viz. Sr. TOA(P), Sr. TOA(G), Sr. TOA(TL) and Sr. TOA(TG) and reduction in number of cadres

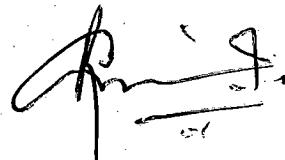
2. It has been decided that the surplus in any stream of Sr. TOA may be gainfully utilised in other streams where there is shortage by imparting suitable training as warranted.

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3. This shall be done without prejudice to their seniority in their respective stream.

Here again we find that even though the above letter is not applicable in the context of the O.A. in that the applicants are not declared as surplus because of computerisation, the action taken by the respondents in accordance with the principle laid down therein which is optimum utilisation of available manpower. The applicants were the juniormost in the Trunk Exchange, Thiruvalla and hence they were transferred. We are unable to accept the plea of the respondents that juniormost in the SSA should be transferred as that would involve dislocation of more number of employees and hence inconvenience to more number of employees. Of course such a course of action will have to be taken if the applicants were being redeployed permanently in another cadre but such is not the position in this case. In view of the above we do not find any illegality in A-4 order and the consequential A-8 order.

11. We have considered the next ground raised by the applicants that they were illequipped to work in the different sections of the administrative office. We have carefully gone through R2(b) list of duties of Sr. TOA(P) and Sr. TOA(G) submitted by the respondents along with reply statement. We find that a number of duties of Sr. TOA(P) are clerical in nature. In any case, the respondents had averred that in case any training is required the same would be imparted by on the job training. Hence, we are of the view that this ground advanced by the applicants have no force.

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12. The third ground advanced by the applicant regarding the payment of Over Time Allowance. It had been clarified by the respondents that Over Time Allowance was incurred only in cases when absence on leave etc. were on the higher side. In the light of this we do not find any force in this ground.

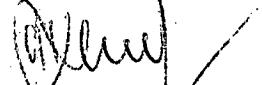
13. We also note from A-7 circular dated 4.5.2000 that the second respondent had called for willingness from the Sr. TOA's(P) and Sr. TOA's(G) for working in various units as detailed therein with the stipulation that the transfer of the willing officials would be made on need based requirements in the units. The applicants state that they had given their willingness to be posted to nearby Telephone exchanges in the SSA. According to the respondents the arrangements made by A-4 is temporary in nature. The question that may arise would be as to when the applicants have expressed their willingness for transfer to other nearby Telephone exchanges why not transfer them there straight away. We find that A-7 itself states that the transfer of the willing officials to the place/unit of their choice would be need based. In such a situation we are of the view that in the absence of A-4 and A-8 in the context of the reduced work of Thiruvalla Trunk Exchange the applicants may remain idle which is not in public interest. In such a situation and in the light of our findings in the foregoing paragraphs we do not find any reason to interfere in A-4 and A-8 orders. We hope that in due course respondents will take follow up action on the willingness received from the officials in response to A-7 circular.

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14. Under the circumstances, this O.A. fails.
Accordingly we dismiss this O.A. with no order as to costs.

Dated the 5th July, 2000.


G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER


A. V. HARIDASAN
VICE CHAIRMAN

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List of Annexures referred in this Order

A1 True copy of the order No. E 14/Tfr/99-2000/TLA/1 dated 7.2.2000 issued by the Asst. General Manager (Admn) Office of 2nd respondent

A2 True copy of the order No. E-I/ICP/99-2000 dated 8.2.2000 issued by the 4th respondent.

A3 True copy of the order No. E-14/TFR/99-2000/8 dated 25.4.2000 issued by the 2nd respondent.

A5 True copy of the order No. nil dated nil issued on 2.5.2000 by the 4th respondent

A7 True copy of the Memo No. E-14/TFR/99-2000/10 dated 4.5.2000 issued by the 2nd respondent

A9 True copy of the representation dated 22.5.2000 submitted by the 3rd applicant to the 3rd respondent.

A-10 True copy of the representation dated 22.5.2000 submitted by the applicants to 1st respondent.

A4 True copy of the order No. E.14/Tfr/99-2000/9 dated 1.5.2000 issued by the 2nd respondent.

A8 True copy of the order No. nil dated nil issued on 16.5.2000 by the 4th respondent

R2A Photocopy of the letter No. 252-1/91-STN dated 31.5.96 issued by the Asst. Director General.

R2B Photo copy of the order No. 29-1/96-TE-II dated 3.4.96

R2C Photocopy of the order No. STA/40-5/Rlgs/96 dated 14.5.97

R2D Photocopy of the order No. 15-6/97-PHT dated 16.10.97 issued by the Asst. Director General

R2E Photocopy of the order No. 27/8-97/TE-II dated 27.12.99 issued by the Director.