

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

OA No. 572 of 2000

Thursday, this the 1st day of June, 2000

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER  
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. V.V. Thankachan,  
S/o late Shri V.J. Varkey,  
Upper Division Clerk,  
Office of the Chief Engineer (Civil),  
Trivandrum  
(residing at TC-2/3162, Panachimood Lane,  
Pattom PO, Trivandrum) ..Applicant

By Advocate Mr. MR Rajendran Nair

Versus.

1. Union of India represented by the  
Secretary to Government of India,  
Ministry of Communications, New Delhi.
2. The Secretary to Government of India,  
Ministry of Chemicals & Fertilizers,  
Department of Chemicals & Petrochemicals,  
New Delhi.
3. The Secretary to Government of India,  
Ministry of Personnel, Public Grievances  
and Pension, New Delhi.
4. The Chief General Manager,  
Telecom, Trivandrum.
5. Chief Engineer (Civil),  
Department of Telecom Services,  
Thiruvananthapuram. ..Respondents

By Advocate Mrs. Chithra Sunil, ACGSC

The application having been heard on 1st June, 2000,  
the Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to quash A1, to declare that he is  
entitled to be absorbed on a regular basis in the cadre of UDC  
with effect from 24-3-1998 (Civil/Electrical),  
Thiruvananthapuram, and to direct the respondents to absorb

...2.

him as UDC in the office of the Telecommunications on a regular basis with effect from the said date with all consequential benefits.

2. It is the admitted case of the applicant that he was selected to the posting in the office of Chief Engineer (C), DOT, Thiruvananthapuram on a loan basis initially for a period of one year from the date of joining in that office. The applicant now seeks to quash A1 as per which his request for absorption in the Department of Telecommunications has been rejected.

3. Since the applicant was taken to the Department of Telecommunications only on a loan basis admittedly, he has no legal right to continue or to get absorbed in that Department. His position is in no way better than that of a person on deputation. It is for the Department of Telecommunications in this matter to decide whether the applicant is to be absorbed or not. The applicant cannot dictate terms to the Department of Telecommunications just because he was taken only on a loan basis for a certain period. We do not find any legal basis for the claim of the applicant.

4. A1, the impugned order, is dated the 15th of February, 2000. Subsequent to that, referring to A1, as per A8 the applicant has expressed his willingness for the extension of the loan period for one more year after the expiry of the present term. Since A1 says that willingness for extension of the loan period for one more year may be obtained and sent to the Department for further necessary action in the matter, A8 clearly indicates that the applicant has understood the

position that he has no right to get himself absorbed and as such has expressed his willingness for extension of the loan period for one more year.

5. We do not find any ground much less any good ground to admit the application.

6. Accordingly, the original application is dismissed. No costs.

Thursday, this the 1st day of June, 2000



G. RAMAKRISHNAN  
ADMINISTRATIVE MEMBER



A.M. SIVADAS  
JUDICIAL MEMBER

ak.

List of Annexures referred to in this Order:

1. A1 - True copy of the Order No. A-22013/6/96-Admn.II dated 15-2-2000 issued by the 1st respondent.
2. A8 - True copy of the Order No.8(21)/99/(ECC)/TVM/372 dated 1-3-2000 issued by the Executive Engineer (HQ), Thiruvananthapuram.

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No.572/2000

Wednesday this the 23rd day of June, 2004.

C O R A M

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN  
HON'BLE MR.H.P.DAS, ADMINISTRATIVE MEMBER

V.V.Thankachan  
S/o Late Shri V.J.Varkey  
Upper Division Clerk  
Office of the Chief Engineer (Civil)  
Trivandrum  
Residing at :  
TC-2/3162, Panachimood Lane,  
Pattom P.O,  
Trivandrum

: Applicant

[By Advocate Mr.G.D.Panicker ]

Vs.

1. The Union of India represented by  
the Secretary to Government of India,  
Ministry of Communications,  
New Delhi.
  2. The Secretary to Government of India,  
Ministry of Chemicals & Fertilizers,  
Department of Chemicals & Petrochemicals,  
New Delhi.
  3. The Secretary to Government of India,  
Ministry of Personnel, Public Grievances  
and Pension, New Delhi.
  4. The Chief General Manager,  
Telecom, Trivandrum.
  5. Chief Engineer (Civil),  
Department of Telecom Services,  
Thiruvananthapuram
- : Respondents

[By Advocate Mr.Sunil Jose, ACGSC ]

The application having been heard on 23.06.2004, the  
Tribunal on the same day delivered the following:


O R D E R

HON'BLE MR.A.V.HARIDASAN, VICE CHAIRMAN

The applicant while working as Upper Division Clerk in the  
Department of Chemicals and Petrochemicals under the Ministry of  
Chemicals and Fertilisers pursuant to the circular dated  
19.12.1997 (Annexure A-2) calling for willingness of UDCs on

transfer basis applied for transfer. The Ministry of Personnel had no objection in the Telecom Department filling up the vacancy on permanent transfer basis. However, in the O.M.No.22013/6/96-Admn.II dated 13.02.1998 of Department of Telecommunications, New Delhi (Annexure A-4) it was stated that the posting of the applicant was initially on loan basis for a period of one year. Aggrieved by the above condition after joining in the Office of the Chief Engineer (Civil), Department of Telecommunications, Trivandrum on 24.03.1998, the applicant submitted Annexure A-6 representation requesting that further action based on Annexure A-2 circular be taken and favourable order for his transfer to the Department of Telecommunications on permanent basis be issued. In reply to the above representation, the applicant was told by the impugned order, Annexure A-1 that the competent authority did not agree for the absorption of the applicant on permanent basis and that if he was interested in continuing for one year more, his willingness might be intimated. Aggrieved by this, the applicant has filed this Original Application to quash Annexure A-1 impugned order and to declare that the applicant is entitled to be absorbed on regular basis in the cadre of UDC with effect from 24.03.1998 in the Office of the Chief Engineer (Civil), Department of Telecommunications, Trivandrum and for a direction to the respondents to absorb the applicant as UDC in the Office of the Telecommunications on a regular basis with effect from 24.03.1998.

2. It has been alleged that as Department of Personnel and Training had already given their concurrence for filling up the post of UDC on transfer basis and Annexure A-2 notification was issued for appointment on transfer basis, the applicant was



entitled to be transferred on permanent basis and the decision of the respondents not to do so is arbitrary, unreasonable and unjust.

3. The respondents resist the claim of the applicant. They submit that the applicant was taken initially on loan basis for a period of one year and there was no decision to absorb the applicant on transfer basis. They also contend that the applicant has no valid claim for an order that he be transferred on permanent basis from 24.03.1998 as claimed by him.

4. In the rejoinder, the applicant has inter-alia contended that there is no provision for transfer on loan basis and the contention that the appointment initially was for a period of one year cannot stand.

5. The Original Application was earlier disposed of by a Division Bench of this Tribunal vide order dated 01.06.2000 dismissing the application. However, the matter was carried by the applicant before the Hon'ble High Court of Kerala and the Hon'ble High Court of Kerala in O.P.No.25120/2000 vide order dated 14.10.2003 found that the matter required a fresh consideration by the Tribunal as the decision taken earlier was on an erroneous reasoning. The parties were given opportunities to advance further evidence. Thus the matter is again before us for disposal.

6. The only point that arises is whether the applicant has a right for claiming permanent absorption in the Department of Telecommunications w.e.f. 24.3.1998.

*w*

7. Learned counsel for applicant taking us through Annexure A-2 circular and Annexure A-3 concurrence of the Department of Personnel and Training argued that the applicant applied pursuant to Annexure A-2 only for a permanent transfer and would not have applied and joined, if it was made known to him that the posting would be on a loan basis for a period of one year and therefore the applicant is entitled to be transferred on a permanent basis. Shri Sunil Jose, the learned Additional Central Government Standing Counsel appearing for the respondents argued that as the applicant was relieved pursuant to Annexure.A4 order in which it was very clearly told that the posting would be on loan basis initially for a period of one year the claim of the applicant that he was unaware of that and was therefore entitled to claim that he was transferred in terms of Annexure.A2 on permanent transfer is without substance. Shri Panicker pointed out that Annexure.A4 was issued to the Ministry of Chemicals and Fertilisers of which a copy was not given to the applicant and that the applicant was totally unaware of the fact that his transfer was on loan basis. Though we were initially carried away with the above argument a careful reading of the application as also Annexure.A6 representation of the applicant revealed that this argument is not factually correct. It has not been alleged in the application that the applicant never knew before he joined in the office of the first respondent that the posting was on loan basis. Further in his representation Annexure.A6 the applicant had stated as follows:

"However the posting Order  
O.M.No.A.22013/5/97-Admn.II dated 12.2.98  
carried a clause viz., posting on loan basis

.5.

initially for a period of one year from the date of joining. Since the circular dated 19.12.97 calling applications was for transfer on a permanent basis, I was sure that Department of Telecommunications would take further action in the matter and ensure my continuous posting in the o/o CE(C) Trivandrum."

It is abundantly clear that the applicant was neither misled to believe that the transfer was on permanent basis or was not informed prior to his relief from his parent cadre that the posting was only on loan basis. When the Telecommunication Department had decided to take the applicant on loan basis initially for one year even though it had issued Annexure.A2 circular calling applications on transfer basis, the applicant having accepted the posting knowingly has no right to claim that he should be permanently absorbed there. Learned counsel of the applicant could not bring to our notice any rule, instruction or ruling to support the argument that the Telecommunication Department was under a legal obligation to absorb the applicant.

8. In the light of what is stated above, we find that there is no merit in the Original Application and therefore we dismiss the same without any order as to costs.

Dated, the 23rd June, 2004.



H.P.DAS  
ADMINISTRATIVE MEMBER



A.V.HARIDASAN  
VICE CHAIRMAN

vs