

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA K 510/88, OAK-572/88, OAK 509/88, OAK 511/88, OAK-549/88
OAK-593/88, OAK-595/88, OAK-596/88, OAK-594/88, OAK-613/88
OAK-615/88, OAK-616/88, OAK-617/88, OAK-622/88, OAK-624/88
OAK-626/88, OAK-627/88 and OA -128/89

PRESENT

HON'BLE SHRI S. P. MUKERJI, VICE CHAIRMAN

N. Bhaskaran

&

T. Rajan

Applicants in
O.A. 572/88

P.A. Vijayakumaran Nair,

Salim P. Sebastian,

C. Narayanan,

M. Sathyabhushanan,

N. Kumaran,

M. Hamza and

Union Secretary, Bharatiya
Telecommunications Technicians Union
Kerala Circle, represented by its
Secretary, Technical Supervisor,
Telephone Exchange, Mangeri

Applicants in
O.A. K-509/88

C. N. R. V. Raja

Applicant in
O.A. K-594/88

K. Balakrishnan

&

C. P. Venugopalan

Applicants in
O.A. K-549/88

T. Raghunandana Menon

Applicant in
O.A. 128/89

K.P. Somasekharan Nair

Applicant in
O.A. K-613/88

P. B. Mohanan

Applicant in
O.A. K-615/88

A. Vinod

Applicant in
O.A. K-616/88

A. D. Sasidharan Nair

Applicant in
O.A. K-624/88

N. J. Peethambaran

Applicant in
O.A.K-626/88

P. K. Sreedhara Sarma

Applicant in
O.A.K. 627/88

N. K. Ramachandran

Applicant in
O.A.K-617/88

A. M. Thomas

Applicant in
O.A.K-622/88

K. Vasudevan,

I

P. P. Balan,

I

P. K. Chandra Mohanan Achary, and

I

J. Sivasankara Pillai,

I

Bharatiya Telecommunications
Technicians Union, Kerala Circle
rep. by its Secretary, N. Kumaran
Technical Supervisor, Telephone
Exchange, Manjeri

I
I
I
I

Applicants in
O.A.K. 510/88

K. Abraham,

I

G. Gangadharan

I

C. C. Job and

I

Bharatiya Telecommunications T
Technicians Union, Kerala Circle,
rep. by its Secretary, Technical
Supervisor, Telephone Exchange,
Manjeri

I
I

Applicants in
O.A. K-511/88

N. P. Onachan & Ramachandran P.

Applicants in
O.A. K-593/88

A. V. Balan

Applicant in
O.A.K595/88

K. Raghavan

Applicant in
O.A.K 596/88

Vs.

1. Government of India, Ministry of
Communications, Department of Tele-
communications represented by Secretary,
Telecommunications, Sanchar Bhavan,
New Delhi

Respondent
in all
cases

2. Chief General Manager, Telecommunications,
Kerala Circle, Trivandrum

Telecommunication & District Engineer,
Kottayam Secondary Switching Area
(SSA), Kottayam

Respondent in
OAK 509/88,
OAK 510/88,
OAK 510/88

Telecommunication & District
Engineer, Cannanore

Respondents in
O.A. K-572/88

Telecommunication & District
Manager, Calicut Secondary
Switching Area (S.S.A),
Calicut

Respondent in
O.A.

Telecommunication District
Engineer, Kottayam

Respondent in
O.A.K-615/88, 616/88
624/88, 626/88,
613/88, 594/88,
627/88, 617/88 &
622/88

Assistant Engineer, Department of
Telecommunications, Office of the
Assistant Engineer, External (East)
Ernakulam

Respondent in
O.A. 128/89

Telecommunication & District
Engineer, Calicut

Respondent
O.A. K-593/88

Sub Divisional Engineer,
Telephones, Trichur

Respondent in
K-595/88

Telecommunication & District
Engineer, Cannanore 670 001

Respondent in
K-596/88

M/s. K. S. Rajamony &
M. Lalitha Nair

Counsel for
applicants in
O.A. K-572/88,
509/88, 510/88,
511/88, 549/88,
595/88, 593/88,
596/88,

M/s. K. Ramakumar &
V. R. Ramachandran Nair

Counsel for
applicants in
O.A.K 594/88,
613/88, 615/88,
616/88, 617/88,
622/88, 624/88,
626/88, 627/88 &
OA 128/89

Mr. K. Karthikeya Panicker, ACGSC

Counsel for
respondents in
OA K-572/88, 509/88
510/88, 511/88,
549/88, 595/88,
596, 88, & 594/88

Mr. Thomas John, AC3SC

Counsel for
respondents in
O.A. K-613/88,
615/88, 616/88 &
617/88

Mr. P.V. Madhavan Nambiar, SCGSC

Counsel for
respondents in
OAK-622/88,
624/88, 626/88,
627/88 & 128/89

O R D E R

Hon'ble Shri S. P. Mukerji

facts

Since common questions of law and reliefs are involved in these eighteen applications filed under Section 19 of the Administrative Tribunals Act, they are being disposed of by a common judgement as follows.

2. The applicants who are working as Technicians/ Technical Supervisors in the Telecommunication Department, in Kerala Circle, ~~working~~ either at Telephone Exchanges or Secondary Switching Area (S.S.A) at Calicut, Quilon, Kottayam, Trichur and Cannanore Districts, have challenged their transfer within and outside the Telecommunication Districts. As an interim relief, the respondents were directed to post them as far as possible near their last place of posting but within the same Telecommunication Districts where they were posted. It was found that in accordance with Government of India's letter dated 28.2.1986, transfer of the applicants could not normally be made outside the Telecommunication Districts.

Accordingly, the respondents in respect of those applicants who had been posted outside the Telecommunication Districts of their last posting have been brought back within that District. As a result, the applicants are now posted at places mostly within one hundred Kilometres of their last place of posting. The brief material facts of these cases are as follows. The applicants are all

either the Office holders or activists of Bharatiya Telecommunications Technicians Union of Kerala Circle. The Union has been at an All India Level and otherwise also, ~~excess~~ agitating about improvement in their scale of pay. According to them while after the Fourth Pay Commission's Report, similarly placed Technical personnel in other Departments have been given a pay scale of Rs. 1400-2300, the Technicians in the Telecommunication Department are paid only in the pay scale of Rs. 975-1600. They have indicated that ever since 1981, they have been expressing their grievances through peaceful methods of doing two hours of extra work through-out the country, giving up weekly off days, by relay fast while on leave. But there was no response from the respondents. In 1986, thirty leaders of the Union sat on fast followed by lunch hour rallies. In August, 1986, and later in November, 1986, the Department entered into agreements but the agreements were not implemented and the promises made by the respondents were not fulfilled. Eventually, in February, 1988, they started work-to-rule agitation from 27.1.1988. They worked during the prescribed eighty hours but declined to do overtime beyond eighty hours. According to the applicants, conciliation proceedings under the Industrial Disputes Act were initiated by the Deputy

Chief Labour Commissioner and the Hon'ble Minister for Communications and the Departmental Secretary invited the Union Leaders for discussions. The Department suggested during the discussions that the Technicians will be given a pay scale of Rs. 1320-2040 and Technical Supervisors the pay scale of Rs. 1600-2660 after examination/fitment training of individual employee. On 7.3.1988, an agreement was signed by the Management and the Union indicating that the Department would make all sincere efforts and get Government's concurrence on the pay scale in six weeks time. The applicants record of have enclosed copies of the/discussions held on 7.3.1988 (ext. A-1 in O.A. K-509/88) as also the letter from Shri C. K. Reddy, Member (Personnel) of the Telecommunications Board dated 6.3.1988 addressed to the Secretary General, Bharatiya Telecommunication Employees Federation in which a reference was made to the meeting held by the Federation representatives with the Hon'ble Minister for Communications and Secretary, Department of Communications. It was indicated in that letter that the Department was expediting action on the various issues and it was suggested that "in view of the Hon'ble Minister's appeal, it will be proper to withdraw the agitation." As a result of these developments, the work-to-rule agitation was totally withdrawn

from the midday of 6.3.1988. The applicants have stated that after waiting for six months thereafter, when they found that nothing was done by the Department to implement the promises made in the agreement dated 7.3.1988, the Union issued notice to the Department to resume agitation with effect from 1.7.1988. On Minister's suggestion, they waited for four weeks more but when nothing materialised, the agitation was resumed from 26.7.1988.

3. Against the background according to the applicants from 26.7.1988, the members of the Union were debarred from working in their places and not allowed to enter their workplaces. They were kept out for fifty four days. In Madras Circle, the Madras High Court allowed them the salary for this period but in other Circles including Kerala, they have not been paid any salary for these fifty four days. Further, on 12.9.1988, the respondents de-recognised the Union. The applicants' case is that in order to harass and victimise the Office bearers of the Union, respondents have abused their power of transfer and have handpicked the Office bearers and active members of the Union to transfer them from one District to another in retaliation of the agiation launched by them. They have further challenged the impugned orders in some cases by saying that they have

52

not been passed by the competent authority. The transfer orders have been attacked by them by alleging that they are illegal, malafide, not in public interest and are against the provisions of Rule 37 and 37 A of Chapter II of Vol. 4 of the P & T Manual in as much as they are not in public interest as prescribed in Rule 37 and made not in April after the Academic session as prescribed in Rule 37 A. The applicants have also indicated their personal problems besides the education of their children suffering due to the mid-session transfer. They have referred to their wife being employed near the place of their posting, their old ailing parents and other domestic problems and tragedies.

4. The respondent's case is that the work-to-rule agitation by the BTTU had caused substantial cessation and retardation of the essential public services of telephones and the Government of India had by their order dated 12.9.1988 prohibited strikes in Telephone services in the whole of India and withdrew the recognition of the BTTU simultaneously. According to the respondents, the applicants of the derecognised Union continued to be on/war path collectively and deliberately tried to dislocate the Telephone services causing widespread public criticism in news papers. According to them, it was "clearly and unequivocally established that some of the Technicians were meddling

with the sophisticated equipments in the Telephone Exchanges. As it was a collective action, identification of individuals responsible for the mischief became difficult. In these circumstances, in the exigencies of public service the department had no other alternative but to keep suspected Technicians and Technical Supervisors away from their present work places. The department cannot be a silent on looker when the services are essential affected. There was no abuse of power or malafide intention or act of victimisation, anti labour practice etc. in transferring the applicants." They further clarified that when the agitation was declared to commence from 26.7.1988, as a measure of security, they were asked to sign a declaration of non-participation in the strike before they entered the work. Since they did not give any declaration, they were debarred from entering the work places. The respondents withdrew the condition of signing the declaration when the Union was de-recognised. The respondents have stated that in accordance with Rule 37 of P & T Manual, " all officials of the department are liable to be transferred to any part of India unless it is expressly ordered otherwise for any particular class or classes of officials. Transfers should not however be ordered except when advisable in the interest of public services." Rule 37-A pertains to general transfer but even under this

Rule, according to the respondents " in any emergent cases or cases of promotion, the restriction that one should be transferred in April only is not applicable." The respondents have argued that the transfers were ordered purely in the public interest for maintaining the essential services of ^{tele-} communications and were therefore fully justified. They have referred to the order of the Madras Bench of this Tribunal dated 23.1.1989 in which similar transfers of Technicians and Technical Supervisors ordered under similar circumstances were upheld on the ground that the department is running a public utility service, and in the larger interest of provision of smooth and efficient service in such an organisation, the transfers of the applicants were necessitated. The respondents have averred that by keeping away the applicants by the impugned transfers, " the services have improved considerably which indicates that the power was exercised correctly and for the public interest." They have argued that the transfer being in exigency of service, personal hardship if any, cannot be termed as punishment and personal grievance has to be weighed against interest of public service and where the latter weighs more, individual grievances cannot be held to be discriminatory or penal.

5. In O.A. K-549/88. the respondents have further clarified that the Technicians unlike a Clerk, occupy

a key position in the Telecommunication net-work.

He has to adjust the various switches in the Exchange periodically so as to allow the calls to pass through.

If adjustment of these switches is not accurate, mal-functioning of the Exchange or wrong numbers ensue.

A deliberate and intentional mal-adjustments of the switches by a Technician would put the Exchange in complete disarray. In an Exchange where more than one Technician is working and share joint responsibility it would be impossible for a Supervisory officer to find out who has done the mischief and in the meantime the public at large is put to inconvenience.

Accordingly, it was decided to post leading agitators to Single Technician places so that the responsibility remains specific and undivided. In the same application (O.A. K-549/88), the respondents have stated that in the Automatic Telephone Exchange at Calicut, due to the agitation, as many as thousand and odd items of equipments were put out of service during September-October, 1988. After the transfer of the applicants, the situation started to improve and by the end of November, 1988, the trunk efficiency has risen to more than 70% and the equipments which were out of service were repaired and put back into service. As on 1st December, 1988, the number of equipments which are out of service was only two hundred and twenty six and the effective percentage of trunk calls has risen to more than 74%.

6. In application No. O.A.K-593/88, the respondents have stated that because of the agitation, the telephone services in Calicut Secondary Switching Area were thrown into complete disarray and a major installation work costing rupees five crores and targetted for completion in December, 1988 was seriously affected by the agitational activities of the Technicians including one of the applicants. In Application No. 622/88, the respondents have stated that the Kottayam Telephone Exchange became almost normal within four to five days after the transfer of the applicants.

7. I have heard learned counsel for both the parties and gone through the documents carefully. The respondents have made no secret of the fact that the applicants were transferred in order to blunt the adverse effects of their collective agitation, on the maintenance of the telephonic service which had been declared to be an essential public utility service. One cannot have any quarrel with the action ~~action~~ taken by the respondents who are ultimately responsible to maintain smooth working of telephonic services, to resort to transfer of the ring leaders of the agitation so as to distance them from the vital and sophisticated equipments and exchanges which were being meddled with by them directly or indirectly through collective and concerted actions. There is no doubt from ext R-2

to R-21 available in case No. K-509/88 that the public and the Chamber of Commerce had raised wide spread hue and cry against the dislocated telephone services after the agitation was launched. The respondents have clearly indicated that after the transfers were effected, the telephone services improved considerably. Accordingly, I have no doubt in my mind that the transfers were not actuated by any malafide or vindictive motive but so as had to be resorted to to keep the telephone and connected services going, in the public interest. It would have been a dereliction of duties on the part of the respondents if they had remained a silent spectator to the deliberate attack on an essential service. The transfer of the ring leaders was the first essential and mildest action which could have been visualised in these circumstances. The fact that most of the applicants were transferred within fifty to sixty Kilometres or even less and the services improved thereafter shows that the orders of transfer did not have any element of retribution or were uncalled for. I agree with the respondents that Rule 37-A which enunciated a general principle of transfer to be effected in April, did not visualise emergent situations where for the sake of the very survival of an essential service immediate transfers are called for.

8. It has been held by the Supreme Court in B. Varadarajan Vs. State of Karnataka (A.I.R. 1986 SC 1955) that the transfer is an ordinary incident of service. This view is supported by a catena of other rulings of the Supreme Court and various High Courts. Similar views have been expressed by them indicating that the transfer of an official is primarily for the authorities concerned to be decided. A variety of factors like suitability of the official, his aptitude, past conduct, reputation and a number of other grounds which may be clubbed together as exigency of service may weigh with the authorities while considering the question of transfer. The Court can only interfere if the transfer is violative of any legal provisions or is otherwise malafide (A.I.R. 1967 Punjab 76; 1979 SLJ 592; 1973 (1) SLR Calcutta (Calcutta) 1153, 1979 SLJ 466; A.I.R. 1981 S.C. 1577). In K. B. Shukla and ors Vs. Union of India and others, (1979 (2) SLR 58), the Supreme Court observed as follows:-

It is true that formation of opinion by the Central Government as to the existence of "exigencies of the service" requiring appointment by such method, is a pre-requisite for the exercise of the power. But the formation of such opinion is a matter which, in view of the peculiar nature of the function and the language of the provision, has primarily been left to the subjective satisfaction of the Government. Indeed, is as it ought to be. The responsibility for good administration is that of the Government. The maintenance of an efficient, honest and

experienced administrative service is a must for the due discharge of that responsibility. Therefore, the Government alone is best suited to judge as to the existence of exigencies of such a service, requiring appointments by transfer. The term "exigency" being understood in its widest and pragmatic sense as a rule, the Court would not judge the propriety or sufficiency of such opinion by objective standards, save where the subjective process of forming it, is vitiated by a mala fides, dishonesty, extraneous purpose, or transgression of the limits circumscribed by the legislation."

9. Since in the instant case there is no indication of any malafide or arbitrary purpose except the purpose of maintaining an essential service undisturbed, I do not find any justification for interference by the Tribunal. The Madras Bench of the Tribunal faced with similar cases of transfer ordained under identical circumstances discussed same pertinent Rulings and refrained from interfering in their judgement dated 23.1.1989 in O.A. 796 of 1988 and similar applications. The following extracts from the judgement would be extremely useful:-

" According to the respondents, the transfers had been effected in public interest and in the exigencies of service. I would agree with that view. As pointed out by the Full Bench of the Central Administrative Tribunal in Kamlesh Trivedi Vs. Indian Council of Agricultural Research (ATR 1988 (2)-CAT-116) the competent authority may or may not find any truth in complaints, but having regard to the administrative exigency, may be of the view that a more suitable or more efficient person should be posted and for making place for such a person, effect a transfer. Such action was regarded as in order. The same considerations would apply to the facts of this case.

27. The learned counsel for the applicants took pains to urge that if there had been deterioration in the telecommunication service,

it was not due to any fault of the applicants but due to various actions of the respondents themselves. According to him, the various newspaper cuttings and complaints from certain organisations came handy for giving the colour of administrative exigency for ordering the transfers of these applicants. In this connection, it should be observed that this Tribunal is not concerned with the question as to who was responsible for the deterioration in the telecom services in Tamilnadu Circle. In M. Doss Vs. Senior Divisional Mechanical Engineer and others referred to by the learned Advocate General, when there was breach of peace in the workshop when two workers fought with each other and one of them had lodged a complaint with the police against the other, transfer of the complainant was made by the Railway administration. When that was challenged by him, this Tribunal took the stand that it is for the administratively concerned authorities to decide whether in the larger interest of efficiency and smooth functioning of an office, both should be transferred to other places or the transfer of one of them would serve that purpose. The view held in Ashok Kumar Sabharwal Vs. Union of India and other (ATR 1988 (1) CAT-498) that "if a transfer is made even to appease a large number of workers, it would be an administrative order to ensure smoother functioning of the Railways" was endorsed. Here there were complaints against mal-functioning of the telephones from a large number of organisation and the administratively concerned authorities considered that in order to improve efficiency, transfer of certain individuals became necessary. In such matters, I am of the view that this Tribunal cannot interfere and I am in agreement with the principle laid down by the Hon'ble High Court of Madras in Chief Engineer (Personnel), Tamil Nadu Electricity Board, Madras vs. K. Raman. This Tribunal cannot go into the question as to whether the efficiency cannot be improved in the Telecommunication system either without transferring these applicants or by transferring some other persons or by transferring them to some other places instead of to the places to which they have actually been transferred in the impugned orders."

10. In the facts and circumstances, I see no merit in the aforesaid 18 applications and reject the same with the directions that those of the applicants whose transfers were modified to places within the Telecommunication Districts of their original posting

will remain posted there and to that extent the impugned orders of transfer will stand modified. The respondents are also directed to ensure that the applicants who had been given Government accommodation in their original place of posting should be allowed to retain the accommodation till the 31st of May, 1989 if they so desire at normal rent and the members of their family allowed to enjoy the medical and other facilities at normal rates till that date to which they would have been entitled as if the applicants had not been transferred. This would minimise the impact of the transfer on the education of the children and treatment of ailing members of the family.

11. There will be no order as to costs.

(S. P. Mukerji)
Vice Chairman
30.3.1989

knn