

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

OA No.169/2012

Thurs day this the *14th* day of March, 2013.

CORAM

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

Haridas K, age 53 years
 S/o Divakaran Nair (late)
 Senior Accountant
 Office of the Controller of Communication Accounts
 Department of Telecommunications
 Ministry of Communication & IT
 Door Sanchar Bhavan, Ker5ala, PMG Junction
 Thiruvananthapuram-695 033.
 Permanent Address: Kummanat House
 Mannur, Nagaripuram P.O.
 Palghat District-678 642

Applicant

[By advocate: Mr.T.C.Govindaswamy]

Versus

1. Union of India represented by
 the Secretary to the Government of India
 Ministry of Communication & Information Technology
 Department of Telecommunications
 No,28, Asoka Road
 New Delhi-110 001.
2. The Deputy Director General (Finance, Estimates & Budget)
 Ministry of Communication & Information Technology
 Department of Telecommunications
 No.28, Asoka Road, New Delhi.
3. The Director (SEA)
 Office of the Deputy Director General
 (Finance, Estimates & Budget)
 Ministry of Communication & Information Technology
 Department of Telecommunications

No.28, Asoka Road,
New Delhi.

4. The Controller of Communication Accounts
Department of Telecommunications
Ministry of Communication & IT
Door Sanchar Bhavan, Kerala, PMG Junction
Thiruvananthapuram-695 033.

5. The Deputy Controller of Communication Accounts (Admn)
Department of Telecommunications
Ministry of Communication & IT
Door Sanchar Bhavan, Kerala, PMG Junction
Thiruvananthapuram.

6. The Principal Controller of Communication Accounts
Maharashtra Circle, C-Wing, 3rd Floor,
Administrative Building
Telecom Complex, Juhu Road
Santacruz (W), Mumbai-400 054. Respondents

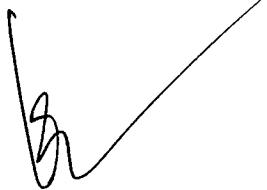
[By advocate: Mr.Asif for Ms.Deepthi Mary Varghese]

This Original Application having been heard on 12th March, 2013, this Tribunal on ...14th...March, 2013 delivered the following:

O R D E R

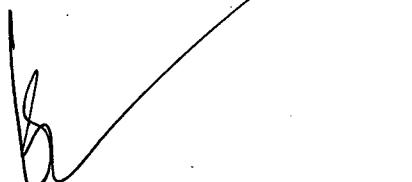
HON'BLE DR.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant, an ex-serviceman was appointed in the Canteen Stores Department of the Ministry of Defence as a Lower Division Clerk in March, 1989; later on, promoted as Upper Division Clerk in April, 1998 and entered into the service of the Respondent BSNL on deputation basis in September, 2010. He had opted for Kerala Circle and later on preferred Mumbai Circle. However, he was offered the post only at Kerala Circle and accordingly he had accepted the same, leaving his request for posting in



Mumbai Circle pending consideration by the respondents. His request for posting at Mumbai Circle was renewed periodically which was forwarded to the higher authorities vide annexure A-6 to A-13. While so, the applicant could spot out a notification calling for applications for filling up of as many as 46 posts of Senior Accountant on deputation basis for the Mumbai Circle and zealously, he preferred his application, which however, was not forwarded by his office giving the reason of acute shortage of Senior Accountants at Kerala Circle. The applicant thereafter submitted an application for transfer under Rule 38 of the P & T Manual, vide application dated 30-11-2011 at Annexure A-16, which was duly forwarded. While considering the application, the respondents, vide Annexure A-1 have stated that the post of Senior Accountant is the promotional post of Junior Accountant and as such, the applicant if transferred will rank junior to all the Junior Accountants in the new Unit. If the same is acceptable to the applicant, he could submit a revised declaration/willingness.

2. The applicant applied under Right to Information Act and collected certain statistics regarding the total number of posts of Junior and Senior Accountants in the Mumbai Circle when he was informed that there are as many as 51 posts of Senior Accountants and 13 posts of Junior Accountants, of which none of the senior Accountant post has been filled up, while, out of 13, only five posts of J.As have been filled up. The applicant having been directly absorbed as Senior Accountant without going through the process of promotion from Junior Accountant, contends that his posting should be treated as a relaxation of rules and he should be permitted to retain his post of Senior



Accountant on transfer to Mumbai Circle. Hence, this O.A. seeking the following reliefs:-

- i) "Call for the records leading to the issue of Annexure A-1 and quash paragraphs 3 & 4 of the same;
- ii) Declare that the non-feasance on the part of the respondents to take appropriate action on A16 and to consider and transfer the applicant to Mumbai Circle as a Senior Accountant in the office of the Principal Controller of Communication Accounts at Mumbai is arbitrary, discriminatory and unconstitutional;
- iii) Direct the respondents to consider A16 and to grant the applicant the benefit of transfer as Senior Accountant against one of the existing vacancies of Sr. Accountants in Mumbai Circle in the office of the Principal Controller of Communication Accounts, with all consequential benefits arising therefrom;
- iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case."

3. Respondents have contested the OA. They have relied upon the provisions of Rule 38 which, inter-alia, provides that such unilateral transfer should be such that the same does not adversely affect rights of other employees of that cadre in the new place of posting. The reluctance in forwarding the application of the applicant on deputation basis was also explained that since such a deputation would disable the Kerala Circle in filling up the post of Senior Accountant, in view of shortage of manpower, it was decided not to forward the application. Such a compulsion being not there in respect of Rule 38 transfers, his application under Rule 38 was forwarded. Since the Mumbai Circle has only one gradation list of Junior Accountant, in terms of Rule 38, the applicant's move to Mumbai under the said Rule could be permitted only if he accepts to function as Junior Accountant, that too, accepting the bottom seniority.

4. The applicant produced a copy of the Gradation lists maintained at Kerala Circle, which does provide for independent Gradation List, one for Senior Accountant and the other for Junior Accountants.

5. Counsel for the applicant argued that the case of the applicant has to be

considered keeping in view certain peculiar facts. His entry in BSNL was not in the post of Junior Accountant but as Senior Accountant on deputation basis. Notwithstanding the fact that the post of Senior Accountant is a promotional post, he was absorbed in that post itself directly. Thus, his entry as Senior Accountant should be deemed as a direct entry. There are as many as 51 posts of Senior Accountants at Mumbai Circle and the respondents have chosen to keep five posts vacant and called for applications on deputation basis for the rest of the 46 posts. Presumably, the said 5 posts have been kept vacant which could at a later point of time be filled up by promotion of the Junior Accountants, as and when they become due for such promotion. Thus, the interest of the five individuals who are at present functioning as Junior Accountants has been adequately safeguarded. The respondents could well consider the case of the applicant for transfer under Rule 38 against one of the remaining 46 posts which have not so far been filled up. The counsel further argued that in the event of any of the junior accountants being promoted as Senior Accountant, the applicant is prepared to accept the bottom seniority at that time. His anxiety is that in case he is taken only as Junior Accountant, while there would be pay protection in the PB-2, there is no such protection of Grade Pay of Rs 4,200 since the grade pay for Junior Accountant is only Rs 2,800/-.

6. Counsel for the respondents submitted that Mumbai Circle having only one gradation list, the applicant cannot be appointed as Senior Accountant in terms of Rule 38 of the P & T Manual.

7. Arguments were heard and documents perused. Both the applicant as well as the respondents rely upon the aforesaid Rule 38 of the P & T Manual which reads as under:-

38. Transfer at one's own request.

(1) Transfers of officials when desired for their own convenience should not be discouraged if they can be made without injury to the rights of others. However, as a general rule, an official should not

be transferred from one unit to another, either within the same Circle, or to another Circle unless he is permanent. As it is not possible to accommodate an official borne on one gradation list into another gradation list without injury to the other members in that gradation list such transfers should not ordinarily be allowed except by way of mutual exchange. Transfers by way of mutual exchange, if in themselves inherently unobjectionable, should be allowed, but in order to safeguard the rights of men borne in the gradation lists of both the offices, the official brought in should take the place, in the new gradation list; that would have been assigned to him had he been originally recruited in that unit or the place vacated by the official with whom he exchanges appointment, whichever is the lower.

Note:-Transfer of officials, who are not permanent in the grade, may, in deserving cases, be permitted with the personal approval of the Head of Circle/Administrative Office.

(2) When an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order issued, including also all persons who have been approved for appointment to that grade, as on that date.

(4) XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX XXXXXXXXXXXXXXX

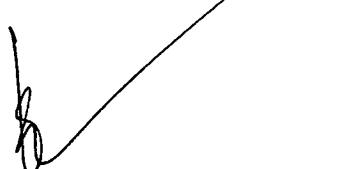
8. The rules clearly provide that such unilateral transfers should not be discouraged but at the same time, such a transfer should not cause injury to the rights of others. Generally, such unilateral transfers are admissible in such posts where there is an element of Direct Recruitment, so that the promotion prospects of those in the feeder grade are not impeded. Again, lest the transferred individual could march over the others at the time of further promotion, provision has been made to place the transferred individual at the bottom most in the gradation list. In the instant case, the Mumbai Circle maintains Gradation list of Junior Accountants. Admittedly, there is no one functioning as Senior Accountant. Obviously, there could not be a gradation list of Senior Accountant as on date. It is trite law that in so far as administrative matters are concerned, uniformity shall prevail in the entire organization. Thus, when in Kerala Circle, there are different gradation lists, obviously, such a position would alone prevail in other Circles too. Absence of a separate gradation list as on date at Mumbai Circle cannot be on account of a rule that there shall be only one gradation list. Though the list has not been produced, in all expectation, the appellation of the gradation list maintained at

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Mumbai Circle would only be in respect of Junior Accountant, without any reference to Senior Accountant. If today, there is no gradation list of Senior Accountant at Mumbai Circle, it is purely on account of the fact that none is manning any such post there. Once the posts are filled up on deputation basis as proposed or by promotion as and when the present incumbents to the post of Junior Accountants become eligible for consideration to that post, they would be shown in a separate Gradation list. There cannot be two opinions about the same

9. The contention of the applicant is that since he had been directly absorbed as Senior Accountant, his appointment should be treated as Direct Recruitment only in which event, he could be shifted to Mumbai as Senior Accountant. And in the event of any of the Junior Accountants being promoted and posted as Senior Accountant, he is prepared to be placed at the bottom seniority at that time.

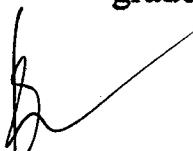
10. The above submission has substance. As there are as many as 51 posts of Senior Accountants at Mumbai Circle, whereas the posts of Junior Accountants is only 13, and thus, save thirteen posts of Senior Accountants, the rest of the other posts cannot be filled up by promotion. Thus, an element of deputation or direct recruitment is a must and the respondents have adopted the course of deputation in this regard. The reservation by the respondents at Kerala Circle in forwarding the application of the applicant on deputation basis is on account of the fact that the applicant would then hold a lien here and thus, it may not be possible for the respondents to fill up the vacancy caused by the applicant's move which would truncate the strength of the senior Accountants at Kerala Circle, which is already a depleted one. The Kerala Circle has no hesitation in sparing the applicant if the transfer is one under Rule 38 since, the same would enable them to fill up the post as the applicant would not be holding any lien there in that event.

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11. Since the Rules give equal priority to entertain unilateral transfer requests (by use of the word, '*should not be discouraged*' in the said Rule 38), the case of the applicant has to be considered by searching a via-media. It has to be kept in mind that the appointment of the applicant as Senior Accountant itself is by way of relaxation of rules, relaxation being either specific or implicit, for there cannot be a direct absorption to the promotional post of Senior Accountants. Likewise, if there be a one time relaxation to the rule which prohibits filling up the post when the applicant is sent on deputation, the Kerala Circle cannot have any inconvenience in sparing the services of the applicant on deputation basis. The post could well be filled up by deputation for the same period as of the applicant to Mumbai. Even on an officiating basis, the post could be filled up at Kerala Circle. This would then not affect the vested rights of any of the junior accountants at Mumbai Circle as well since, the applicant could then be treated only as a deputationist. Compelling the applicant to take the post of Junior Accountant would mean truncation of his Grade Pay to the tune of Rs 1,400/- which he has to suffer in addition to his seniority.

12. Thus, interests of justice would be met in this case if a direction is issued to the respondents to -

- (a) treat the posting of the applicant initially as on deputation in which event, the respondents may consider relaxation of the rules in so far as filling up of the post vacated by the applicant at Kerala Circle;
- (b) as and when any of the Junior Accountants in Mumbai Circle is promoted to the post of Senior Accountant, a seniority list be drawn in respect of Senior Accountant;
- (c) At the discretion of the respondents, the applicant be then considered for transfer under Rule 38 and he be afforded the bottom seniority in the grade of Senior Accountant



(d) Once transferred under Rule 38, the applicant be not permitted to seek transfer back to Kerala Circle

13. The OA is accordingly disposed of with a direction to the respondents as above. The case of the applicant be treated along with other applications for deputation. No cost.



Dr K.B.S.RAJAN
JUDICIAL MEMBER

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Contempt Petition No. 82 of 2013
in Original Application No. 169 of 2012

Wednesday, this the 9th day of April, 2014

CORAM:

Hon'ble Mr. Justice A.K. Basheer, Judicial Member
Hon'ble Ms Minnie Mathew, Administrative Member

Haridas K., aged 53 years, S/o. Divakaran Nair (Late),
 Senior Accountant, Office of the Controller of Communications Accounts,
 Department of Telecommunications, Ministry of Communication & IT,
 Door Sanchar Bhavan, Kerala, PMG Junction,
 Thiruvananthapuram – 695 033., Permanent Address : Kummanat House,
 Mannur, Nagaripuram PO, Palghat District,
 Pin-678 642. **Petitioner**

(By Advocate – Mr. T.C. Govindaswamy)

V e r s u s

1. Shri Saurabh Kumar Tewari, Deputy Director General (Finance, Estimates & Budget), Ministry of Communication & Information Technology, Department of Telecommunications, No. 28, Asoka Road, New Delhi – 110 001.
2. Shri Amithab Ranjan Sinha, Director (SEA), Office of the Deputy Director General, (Finance, Estimates & Budget), Ministry of Communication & Information Technology, Department of Telecommunications, NO. 28, Asoka Road, New Delhi -110 001. **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

This petition having been heard on 09.04.2014, the Tribunal on the same day delivered the following:

ORDER

By Hon'ble Mr. Justice A.K. Basheer, Judicial Member-

When this petition is taken up for consideration, learned counsel for the petitioner submits that the respondents have complied with the order

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passed by this Tribunal in the above Original Application. The respondents have filed separate affidavits tendering unconditional apology for the delay in implementing the order. The affidavits are taken on record. Petition for contempt is closed.

M. Mathew
(MINNIE MATHEW)
ADMINISTRATIVE MEMBER

A.K. Basheer
(JUSTICE A.K. BASHEER)
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**
R.A No.29/13 in O.A.No.169/12
Friday, this the 05th day of July, 2013

C O R A M :

HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

1. Union of India represented by the Secretary to the Government of India,
Ministry of Communication & Information Technology
Department of Telecommunications, No.20, Asoka Road
New Delhi
2. The Deputy Director General (Finance, Estimates & Budget)
Ministry of Communication & Information Technology
Department of Telecommunications, No.20, Asoka Road
New Delhi
3. The Director (SEA), Office of the Deputy Director General,
(Finance, Estimates & Budget)
Ministry of Communication & Information Technology
Department of Telecommunications, No.20, Asoka Road
New Delhi
4. Dy. Controller of Communications Accounts (Admn)
O/o Controller of Communication Accounts, Kerala,
Door Sanchar Bhavan, Thiruvananthapuram – 695 033
5. Dy Controller of Communications Accounts (Admn)
O/o Controller of Communication Accounts, Kerala,
Door Sanchar Bhavan, Thiruvananthapuram – 695 033
6. The Principal Controller of Communication Accounts
Maharastra Circle, C-Wing, 3rd Floor, Administrative Building
Telecom Complex, Juhu Road, Santacruz, Mumbai – 400 054

...Review Applicants

(By Advocate Mr.Sunil Jacob Jose, SCGSC)

V e r s u s

Haridas K
S/o.Divakaran Nair (Late)
Senior Accountant
O/o. Controller of Communication Accounts
Department of Communication & IT
Door Sanchar Bhavan, Kerala
PMG Junction, Thiruvananthapuram – 695 033

...Respondent

(By Advocate Mr.T.C.Govindaswamy)

This application having been heard on 05th July 2013 this Tribunal on

the same day delivered the following :-

ORDER

The Review Application has been considered and it is found that there is no good grounds to review the order. As such, the R.A is dismissed.



**Dr.K.B.S.RAJAN
JUDICIAL MEMBER**

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