

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO.231 OF 2011

Tuesday, this the 15th day of November, 2011

CORAM:

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

P.V Saify, S/o.Late P.T Varkey
aged 51 years, S.D.E Tech
O/o Area Manager/DGM
BSNL Thodupuzha, residing at
Puthusseri, Thalayolaparambu
Kottayam District

Applicant

(By Advocate – Mr.V Sajith Kumar)

Versus

1. The Bharath Sanchar Nigam Limited
represented by its Chairman,
Managing Director,
New Delhi – 1
 2. The Chief General Manager,
Bharath Sanchar Nigam Limited
Trivandrum – 33
 3. The Principal General Manager
Telecom, BSNL Bhavan
Ernakulam, Kochi – 682 016
 4. The Principal General Manager
Telecom, BSNL Bhavan
Malappuram – 682 016
 5. Assistant General Manager Telecom (Admn)
O/o.The Principal General Manager
Telecom, BSNL Bhavan
Ernakulam, Kochi – 862 016
- Respondents

(By Advocate Mr.V.Santharam)



The application having been heard on 15th November 2011, the Tribunal on the same day delivered the following:

ORDER

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

1. The applicant has challenged Annexure A-1 transfer order whereby he stands shifted from SSA(U) Ernakulam to SSA(U) Malappuram.
2. Briefly, the applicant is working as SDE (Tech) in the office of Area Manager, BSNL, Thodupuzha. He was posted to the High Range area at Thodupuzha about 10 years ago. Vide Annexure A-5 order dated 22.05.2010, all places in Thodupuzha area, except Thodupuzha Telecom, Phones & Karimanoor Division will be treated as High Range Area. Thus from 22.05.2010, the applicant cannot be said to be functioning in a high range area.
3. Earlier the applicant had moved O.A No.597/2010 challenging his transfer from Idukki to Thodupuzha and this was disposed of vide order dated 02.09.2010. Paras 6 & 7 thereof read as under:-

"6. On considering the rival contentions the rival contentions of both the parties carefully, I find that the respondents are within their right to transfer the applicant to any place in the interest of administration. But having regard to the fact that the applicant was working for the last nine years in Thodupuzha, which was considered as hard station for quite some time and that Annexure A-3 transfer policy was valid till it was revised and that the applicant was eligible to be considered as on 31.03.2010 for a choice posting and that Annexure A-11 assures that all who were transferred as per local transfer policy will be considered for transfer back to plain



areas and above all the fact that the applicant is a chronic kidney disease patient, it would be in the fitness of things and fair and just if the respondents consider his Annexure A-8 representation dated 01.07.2010 for a transfer to Tripunithura/Ernakulam sympathetically. The said representation has been recommended by the Area Manager Telecom, BSNL, Thodupuzha for sympathetic consideration. The respondents have been considerate towards widows and officers who were transferred to Malappuram and Lakshadweep. The transfer policy exempts from transfer to hard areas those employees who have serious ailments such as cancer/renal failure etc. The applicant, by all accounts, deserves to be given utmost sympathy in the matter of a transfer to Ernakulam or nearby areas. Accordingly, the O.A. is allowed to the extent shown below.

7. The respondents are directed to consider Annexure A-8 representation dated 01.07.2010 of the applicant with utmost sympathy having due regard to his personal difficulties within a period of 45 days from the date of receipt of a copy of this order. Till a fresh order is passed as per the above direction, the stay granted on 09.07.2010 on the order transferring the applicant to Idukki will continue. No order as to costs. "

4. In pursuance of the aforesaid order, the applicant has been exempted from transfer to high ranges and accordingly his transfer to Idukki has been cancelled. His representation dated 20.07.2010 for a transfer to Kottayam SSA was recommended by the Principal General Manager, BSNL, Ernakulam vide Annexure A-10. Vide Annexure A-8 dated 01.07.2010 the applicant in his request for exemption from transfer to Idukki also stated that he was detected to have Systemic Hypertension and under treatment for Kidney functioning. This aspect was stated to have been known to the Area Manager, Telecom as could be seen from the endorsement underneath Annexure A-8.

5. By Annexure A-1 order, the respondents have posted the applicants from Ernakulam SSA to Malappuram SSA. The applicant has challenged the

b

same and by an interim order vide order dated 22.03.2011, the Tribunal had stayed Annexure A-1 transfer order in so far as it relates to the applicant. Thus the applicant continues at the same place (Thodupuzha).

6. Respondents have contested the Original Application. They had stated that the applicant was directed to present himself before a medical board and since he did not produce the earlier history of his treatment and Lab examination results, the medical board was not in a position to conduct medical examination or issue medical certificates (Annexure R-3 refers).
7. The applicant in his rejoinder submitted that there is no indication in the orders passed by the respondents that the applicant has to produce his previous medical history or Lab test results. He has however produced copies of various Lab reports and medical certificates issued by private hospitals vide Annexure A-19 to A-23.
8. Respondents have filed Annexure A-4 to A-7, which include a communication from them to the applicant dated 01 Aug 2011 asking him to present himself before the medical board again with relevant records and lab examination reports. On his being present, a certificate was issued by the medical board vide Annexure R-6 which certified that the applicant is suffering from Systemic Hypertension and Coronary Artery disease.
9. The applicant had, through Annexure M.A-1, enclosed a copy of order dated 21.04.2011 in respect of some individuals who were exempted from

long stay transfer on account of medical ailments including Kidney diseases.

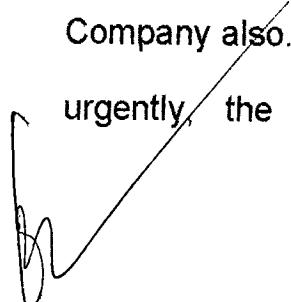
10. Counsel for the applicant argued and arguments could be congealed as hereunder:-

(a) The order of the Tribunal in O.A 597/10 rendered a finding that the applicant is entitled to the benefit of his choice posting by virtue of the fact that he was serving in a high range area for years together as on 31.03.2010 and thus his application could be treated sympathetically in this regard.

(b) Though the applicant has submitted that he has been suffering from acute Kidney ailments, respondents, ignored the same on flimsy ground such as the applicant has not claimed any reimbursement of medical expenses etc.

(c) The medical board does not have any Nephrologist who only would be in a position to confirm the extent of ailment of the applicant relating to Kidney problems.

11. Counsel for the respondents, on the other hand, submitted that vide Annexure A-3, officers coming after high range posting will be accommodated at their place of choice as far as possible considering the interest of the Company also. In the instant case as Malappuram SSA needed the services urgently, the applicant was to be shifted there. As regards, the



compassionate postings, exemptions vide clause 9 of Annexure A-3 would be available only with reference to ailments of Cancer, acute renal problems/heart ailments etc. The gravity of renal problem should thus be comparable to heart ailments etc, but the medical report does not reflect any opinion on that.

12. Arguments were heard and documents perused.

13. This Tribunal has already suggested that the applicant was entitled to the benefit of his choice posting by virtue of the fact that he was serving in a high range area for years together up to 31.03.2010. That benefit has to be given to the applicant, in other words, his request for choice posting should be considered subject to administrative exigencies. In so far as his request for Kottayam is concerned, as per the counsel for the applicant, vacancies are available. If the respondents have some doubts about the extent of ailments of the applicant to qualify for compassionate posting, since the medical board earlier constituted did not have specialists, it would be appropriate that the applicant be subjected to another medical test which may consists of specialist in the relevant area.

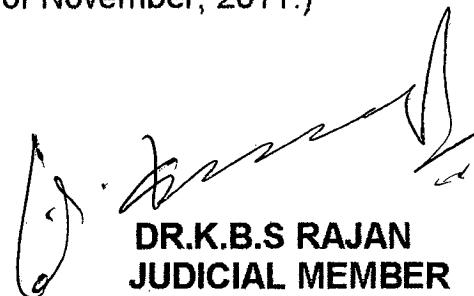
14. Counsel for the respondents has no objection in respect of the applicant being subjected to another medical examination preferably at Kottayam Medical College hospital. Counsel for the applicant also endorsed suggestion in respect of the hospital.



15. in view of the above, this O.A is disposed of with a direction to the respondents to take further action for conducting a medical examination of the applicant with reference to his Kidney ailments and the applicant shall, on the date prescribed present himself with all the relevant medical history and lab test results before the medical authorities at Kottayam Medical College Hospital. The applicant shall be retained at Thodupuzha till such medical examination takes place. If the medical report is in favour of the applicant, respondents may consider transferring the applicant to Kottayam subject to availability of vacancies. If not, the applicant may be retained at Thodupuzha itself, the same being alternative choice station.

16. With the above directions, this Original Application is disposed of.

(Dated, this the 15th day of November, 2011.)



DR.K.B.S RAJAN
JUDICIAL MEMBER

SV