

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 258 of 2009

with

Original Application No. 264 of 2009

with

Original Application No. 272 of 2009

FRIDAY , this the 10th day of JULY , 2009

CORAM:

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

1. Original Application No. 258 of 2009

1. S.P. Mohanakumar,
Telephone Supervisor (Operative),
Customer Service Centre,
BSNL Perumbavoor residing at
"Ushas", Pattal, Iriginal P.O.,
Perumbavoor – 683 548.
2. P.J. Xavier,
Section Supervisor (Operative),
AOTR III Section, Office of the PGMT,
BSNL, Catholic Centre, Kochi - 682 031,
residing at C.R.5 P&T Quarters,
Thevara, Kochi – 682 013.
3. Bijumon M.P.,
Senior Telecom Operative Assistant,
Office of AO TR-VAS, Catholic Centre,
Ernakulam, Kochi – 682 031,
residing at Muttath House,
South Paravoor P.O. - 682 320.
4. Ramachandran M.G.,
AD Liaison Section,
O/o. PGMT, Catholic Centre,
Broadway, Kochi – 682 031,
residing at Madathiparambil House,
Chittoor Road, Kochi – 682 031.
5. V.V. Saniraj,
Section Supervisor (Operative),
TR VAS, Office of the PGMT,
Ernakulam, Kochi – 682 031,
residing at Kunnalakkattu House,
Maradu P.O. - 682 304.

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6. Venugopal A.K.,
 Senior TOA (G),
 Office of the PRO, BSNL,
 Ernakulam, Kochi – 682 016,
 residing at 12/37, Nandanam,
 Panayappilly, Kochi – 682 002.

..... **Applicants**

(By Advocate Mrs. Sumathi Dandapani, Sr.
 with Mr. A.G. Aditya Shenoy)

V e r s u s

1. The Deputy General Manager (A&OP),
 Office of the Principal General Manager,
 Telecom, BSNL Bhavan, Kalathilparambil Road,
 Ernakulam, Kochi 682 016.

2. The Assistant General Manager (Admn.)
 Office of the Principal General Manager,
 Telecom, BSNL Bhavan, Kalathilparambil Road,
 Ernakulam, Kochi 682 016.

..... **Respondents**

(By Advocate Mr. Sunil Jose, ACGSC)

2. Original Application No. 264 of 2009

1. Shri. P.K. Vishwanathan Nair,
 Telephone Supervisor (OP),
 HR No. 198408274,
 O/o. Customer Service Centre,
 BSNL, Perumbavoor – 683 548,
 residing at Panambilly House,
 Near Pisharickal House,
 Elambakapilly P.O. - 683 544.

2. P.C. Cherian,
 Section Supervisor (OP),
 HR No. 198607136,
 Customer Service Centre, BSNL,
 Perumbavoor – 683 548,
 residing at Palaparambil House,
 Iringole P.O., Perumbavoor - 683 548.

..... **Applicants**

(By Advocate Mrs. Sumathi Dandapani, Sr.
 with Mr. A.G. Aditya Shenoy)

V e r s u s

1. The Deputy General Manager (A&OP),
 Office of the Principal General Manager,
 Telecom, BSNL Bhavan, Kalathilparambil Road,
 Ernakulam, Kochi 682 016.

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2. The Assistant General Manager (Admn.)
 Office of the Principal General Manager,
 Telecom, BSNL Bhavan, Kalathilparambil Road,
 Ernakulam, Kochi 682 016.

..... Respondents

(By Advocate Mr. Sunil Jose, ACGSC)

3. **Original Application No. 272 of 2009**

1. Shri. K.A. Babu II,
 Telecom Mechanic,
 HR No.1988 09149,
 SDE (Extl) Kaloor Sub Division,
 Ernakulam, Kochi – 682 017,
 residing at Kappatti House,
 Deshabhimani Road,
 Kochi – 682 017.

2. P.G. Sebastian,
 Telecom Mechanic,
 HR No. 1994 13271,
 Panampilly Nagar,
 Ernakulam, Kochi – 682 016,
 residing at Pozhamangalath House,
 Vaduthala, Kochi – 682 023.

..... Applicants

(By Advocate Mrs. Sumathi Dandapani, Sr.
 with Mr. A.G. Aditya Shenoy)

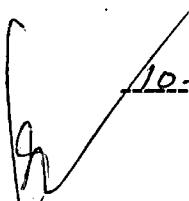
V e r s u s

1. The Deputy General Manager (A&OP),
 Office of the Principal General Manager,
 Telecom, BSNL Bhavan, Kalathilparambil Road,
 Ernakulam, Kochi 682 016.

2. The Assistant General Manager (Admn.)
 Office of the Principal General Manager,
 Telecom, BSNL Bhavan, Kalathilparambil Road,
 Ernakulam, Kochi 682 016.

..... Respondents

(By Advocate Mr. Sunil Jose, ACGSC)


 These applications having been heard on 04.06.2009, the Tribunal on
 10-07-09 delivered the following:

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

As the question involved in these 3 OAs is one and same, all the 3 OAs are dealt with in this common order.

2. In all the above OAs, challenge has been made against the transfer of the applicants therein as per order dated 24.04.2009 (Annexure A6 in OA No. 258/2009, 264/2009 and Annexure A2 in OA No.272/2009). The other details of various applicants in these OAs have been given in paragraphs 6 to 15 below.
3. In all these matters an interim stay has been granted.
4. The respondents have formulated certain guidelines in respect of tenure transfer for solving long standing transfer requests of non executives from high ranges. The guidelines have been framed in consultation with the Unions concerned. Memorandum dated 7th October, 2008 (Annexure A1) in OA No. 258/2009 is as under :-

BHARAT SANCHAR NIGAM LIMITED
(A Govt.of India Enterprise)

OFFICE OF THE PRINCIPAL GENERAL MANAGER
TELECOM, BSNL BHAVAN, KALATHILPARAMBIL ROAD.
ERNAKULAM, KOCHI-682 016.

No. DGM(A&OP)/General/2008/ Dated at Ernakulam the 7th Oct, 2008.

Sub: Policy for introducing tenure transfer for solving long standing transfer requests of Non executives from high ranges.

Shortage of adequate willing staff to the difficult areas like high ranges has been a major issue for the proper maintenance

of the system. It is needless to say that proper staffing is necessary for ensuring required service to the customers. It is also important to ensure that employees are maintained at proper spirits to ensure best service to the customers in this competitive era.

Utilizing the employees posted on promotion such requirements were being met so far. But for some time now such postings are not taking place in adequate number and Administration is not able meet the transfer request given by the non executives even after completing 4 years.

In view of the above, to over come the difficulties experienced in manning posts in the difficult areas and ensuring proper service to the customers these areas, a policy of tenure transfer among the same cadres of non executives has been evolved in consultation with unions concerned. Following are the highlights of the Policy.

A) It has been decided to evolve a transfer system between the Non executive employees working in plane areas of the SSA and High range areas as per the following guidelines.

1. This arrangement will be for all cadres of Non executives, to be used in case of a crisis that Administration is not able to act on request transfers given by Non executive employees of high ranges for a long time and also for meeting the operational requirements.

2. Non executive employees who have completed one year of actual working in high ranges only will be normally considered under this arrangement. Leaves more than eligible in a year / training for periods more than 6 days at a stretch during this period will have to be compensated by working for additional duration in high ranges.

3. Non Executive employees coming after High range posting will be accommodated at their place of choice as far as possible considering the interest of the company also.

4. To consider the choice place and also to maintain an equilibrium with respect to the number of Non executives of particular cadre on such transfers across the SSA, entire SSA has been divided into zones as given below.

- i) Urban & Central together as one zone,
- ii) Kochi area one zone
- iii) AL V area as one zone
- iv) Each Division of MPZ & TDP areas independent zones

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5. Non executive employees will have to give 3 choice zones in the order of preference for consideration. All out efforts will be made to accommodate them in their better preferred choices considering the administrative requirements. Choices will also be used to see that the out going transfers for this purpose also best matches with the policy of selecting out going Non executive as given SI No 7 below.

6. The pool of Non executive employees to be considered for this rotational transfer for relieving Non executive employees from high ranges will be normally on a one to one basis of incoming requests for a given zone.

7. Non executive employees in a given zone for replacing the Non executive employees of High ranges will be identified in the order of following priority.

i) Junior most in the cadre amongst those who have not worked in high ranges or Out side the SSA throughout their career will be considered first.

ii) On exhausting all of Non executive employees under the list at (i) above, junior most Non executive employees who have worked less than the tenure period i.e., one year, in high ranges or out side the SSA will be considered for transfer to high ranges.

iii) On exhausting all Non executive employees under list at (ii) above, junior most Non executive employees who have worked more than the tenure period i.e., two years, in high ranges or out side the SSA will be considered.

iv) On completing all Non executive employees under list at (iii) above, the cycle will be repeated from the Non executive employees in the list at (i) above.

v) All non executives employees worked for more than 4 years in a stretch in high ranges / out side the SSA will be skipped for first cycle of rotational transfer.

8. Out going transfer will be in the interest of service. In case of incoming transfer within a period of 2 years will be on request of the employee and will not be eligible for Transfer grant and other related benefits.

9. New Non executive employees coming from out side the SSA will be normally posted as per the Administrative requirements at that time. However new

corner posted in planes / high ranges will be first considered for transfer under this policy during the immediate review after joining the SSA.

10. Exemptions

- i) In extremely exceptional situations. Specifically skilled Non executive employees working in some of the sections like computers, Broadband, Installation, transmission, LD etc will have to be exempted from this scheme in this larger interest of the company. However such exemptions will be normally limited for a period not more than 1 year.
- ii) Non executive employees / their spouses suffering from Cancer, acute renal problems, heart ailments and non executive employees having Mentally Retarded children
- iii) Non executive employees having their children studying in 12th standard for one year.
- iv) All Non executive employees aged more than 56 years
- v) All lady non executive employees .

11. At a time more than 50% of the Non executive employees of a section will not be included in the transfer list.

12. Non executive employees now working in peripheries of EKM, after a tenure in high ranges, also will be brought to their Zone I Place of choice as far as possible during these transfers. However if the same is not possible in the natural course of re arrangement during this transfer, their requests will be considered under BSNL transfer Policy for which substitutes also will be decided as per that policy. However such employees transferred out of their place of choice under BSNL transfer policy will be skipped for that cycle of transfers under local transfer policy.”

5. It was in pursuance/on the basis of the above guidelines that transfer orders were issued vide Annexure A6/A2 as the case may be.

6.

In respect of applicants in OA No.258/2009 (6 in No.), all have

filed their respective representations. Applicant No.1, Shri. S.P. Mohanakumar has initially filed representation dated 26.03.2009 followed by another one dated 29.04.2009 and his difficulties in undertaking the transfer include :-

- (a) Retina detachment of his right eye
- (b) Admission in Angamaly Hospital for heart disease.
- (c) He is the only male member to look after his spouse, daughter and 86 year old mother.
- (d) He had worked for 14 years out of Ernakulam.

In addition, he has stated that juniors who are working in the office of Circle Telecom Store Depot, GM Transmission Project and GM STSR have all been exempted. Further when only 15 officials have been transferred from High Range, as many as 28 officials have been transferred to High Range. Had 1:1 ration is followed, the applicant could have escaped the transfer.

7. Applicant No.2, Shri. P.J. Xavier, has submitted a representation in which he expressed his difficulties stating that he is undergoing medical treatment for Cholesterol and Diabetics. He had met with an accident 2 years ago and has to consult the Doctor periodically. Recently he has some problem relating to Varicose Vein. His only daughter is stepping into 11th Standard.

8. Applicant No.3, Shri Bijumon M.P. in his representation has stated that he is the lone earning member of his family and there is none to look after his family members. Again, the fact of juniors having been retained and 1:1 ratio not being followed (as submitted by the 1st applicant)

have also been reflected in his representation.

9. Applicant No.4, Shri. M.G. Ramachandran has stated that he had undergone a major surgery for colloid cyst in brain and is still undergoing treatment. In addition, juniors having been exempted and 1:1 ratio not having been followed have also been highlighted.

10. The 5th applicant, Shri. V.V. Saniraj has represented in the same fashion as the 3rd applicant, Shri. Bijumon (the body of the representations being identical).

11. The 6th applicant, Shri. A.K. Venugopal has also filed a ditto representation.

12. In so far as OA No. 264/2009 is concerned, the 1st applicant, Shri. P.K. Vishwanathan Nair had made a representation dated 25.03.2009 in which he has stated that he got transfer to Perumbavoor w.e.f. 21.11.1996. In the family, himself, spouse and children alone are staying. He has developed acute pain in his right leg. Also the health condition of his younger son is weak.

13. Shri. P.C. Cherian, the 2nd applicant in this OA in his representation has stated that he had developed terrible back ache and it is only 3 years since he has started working in Perumbavoor. He is also suffering from Rheumatic Infection on his legs. His spouse is working in an office in Perumbavoor in a non-transferable position. His children are also studying in schools near Perumbavoor.

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14. Shri. K.A. Babu, 1st applicant in OA No. 272/2009 had in his representation dated 16.03.2009 stated that his son is studying in Plus Two at Ernakulam during the academic year 2009-2010.

15. Applicant No.2, Shri. P.G. Sebastian in his representation has stated that he has severe chest pain and has been advised to avoid heavy physical strenuous activities.

16. By large the common grounds of challenge to the transfer orders are as under :-

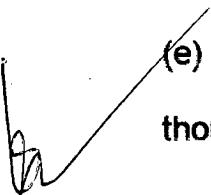
(a) The junior most in the cadre amongst those who have not worked in High Ranges or out side SSA through out their carrier should have been considered. This has not been done.

(b) The transfer is in violation of the prescribed guidelines in respect of children studying in Plus Two or in respect of medical treatment.

(c) 1:1 transfer has not been followed.

(d) Since gradation list was not published, the incumbent had no idea regarding their chance of placement.

(e) Some individuals have been given exemption though not covered under the guidelines.



17. Respondents have contested the OA. According to them the applicants have no case. The OA is experimental in nature and therefore liable to be dismissed. It has been averred by the respondents that the transfer orders have been issued strictly in accordance with High Range transfer policy evolved for non-executives. All transfers have been carried out in public interest keeping in view the administrative requirements of the Department, which is the absolute prerogative of the Department. As regards 1:1 replacement, it is natural for meeting the request transfers only. Other additional requirement is being met from the seniority list prepared as per the transfer policy and requirement/availability in various areas. The respondent, Department has been according top priority for the development of the communication facilities in the High Ranges. In view of the changing commercial transactions and larger welfare obligations of the BSNL to the Nation, it is necessary that the less serviced areas like the High Ranges are serviced more, with the active co-operation of all concerned. As regards, circulation of the transfer policy, all the Controlling Officers were advised to circulate the same, in addition to respective unions having been informed during consultation that any specific complaint regarding non-compliance of instructions on circulation will be dealt with firmly. In fact, filing of representations shows that the applicants are fully aware of the entire subject matter. As regards violation of guidelines relating to exemption on medical grounds, such exemptions are given on the basis of the nature of ailment. In so far as 1st applicant in OA No.258/2009 is concerned, problems relating to eye are not covered in the list.

18. Applicants have filed rejoinder reiterating their stand as in the OA when additional reply has been filed by the respondents.

19. The Senior Counsel for the applicants submitted that a perusal of the guidelines would go to show that :-

(a) Junior most in the cadre amongst those who have not worked in the High Ranges will be considered first. But none has so far been considered.

(b) The general orders on transfer dissuade such transfer when the spouse is employed in the same station.

(c) Children education is one of the recognized aspects to be kept in view while ordering transfer and that has been given a complete go by. The senior counsel appearing for the applicants relied upon the judgment of the Apex Court reported in 1994(6) SCC (Para 23) and also judgment reported in 2007

(4) KLT 699.

20. Counsel for the respondents has argued that no malafide has been alleged. None of the legal rights of the applicants has been infringed. As regards exemptions granted, these have been duly considered and on being satisfied that such employees who have been exempted from transfer have fulfilled the conditions relating to exemption. The counsel also has referred to a few decisions of the Apex Court which consistently hold that transfer being an incidence of service, it is purely based on public interest and administrative convenience.

21.

Arguments were heard and documents perused. In so far as

exemption granted to some individuals, note dated 23.04.2009 gives the following details :-

" Note Dated 23.4.2009

The requests for exemption from HR transfer of Sr TOA received were analyzed and following cases proposed for exemption. Cases are indexed as per the serial No given below. All other request that are not considered are kept in the linked file for information.

1. Arun MV, Admn - He is a fresh appointee under compassionate ground and joined only in Nov 2008. PGMT's direction in this regard is enclosed. He is a MCA degree holder and he has been currently attached to the HR package updation work which is a time bound work. His presence in Hq office will help in utilizing his computer expertise in the operations / management of packages. Also as per the transfer policy, such cases are to be considered for HR transfer only after 6 months of joining the SSA.
2. Purushan V K, NS - Spouse is a psychiatric patient. No children. Discussed with the controlling officer and confirmed the genuineness of the deceased.
3. Ciji Antony K J, P&A - Retention requested for administrative reasons by AO P &A and agreed by PG MT.
4. Jayakumar T R, PC - 7 year old Daughter is suffering from Cerebral Palsy and she is unable to walk independently. Regular Physiotherapy is very much essential for recovery. If the same is not done at this stage, it will have a life long impact of the Kid. Case is strongly recommended by controlling officer.
5. Mahesh G Admn - Member of winning Basket Ball team of Kerala Circle. Copy of corporate office guidelines in posting such officials enclosed.
6. Suresh Baboo K K, CTO - Son aged 3 years suffering from Club foot disease and has to undergo multiple operation soon. As per doctor, operation to be done as early as possible. As per the employee the operation scheduled for May 09 was postponed due to the uncertainties regarding his transfer. Being a Kid of 3 years any delay for such procedures will have long lasting impact in its development.
7. Ajayan E K, CTO - Spouse is suffering from Paranoid Psychosis. Having only 2 daughters staying with him. Discussed with the controlling officer. Confirmed genuineness of the disease.

8. Rajan V Antony, PRR CML - Son in 12th Class

9. Ramachandra Pai V S, TC KMX - Son in 12th Class

10. Anilkumar P D, Trunk - CRM for Amrita Hospital. As per the official. He can do better interaction if he is allowed to continue in Trunks. As per him, on availing shift duties he can maintain better interaction with the customer. There is no proper substitute for Shri Anilkumar, considering his contacts with Amrita Authorities.

11. Joy P V, TC KMX - Son in 12th Class.

Proposals above for exemption put up for approval.

DGM (A&O)"

22. In so far as cases rejected are concerned the record revealed that as many as 36 representations were rejected, some of which were due to delayed submission. The records also reveal that the Authority who had rejected the representations, had considered various grounds for retention, which confirm due application of mind.

23. The grounds for rejection in various representations have been compared with the transfer policy. It is seen that in so far as medical treatment is concerned, the ailments that are covered includes cancer, acute renal problems, heart ailments and mental retardation in respect of children. While considering the individual cases, it appears that the respondents had taken into account the gravity of the ailments.

24. In so far as exemption granted is concerned, especially with reference to one Shri. Arun and another Shri. Ciji Antony, note dated 23.04.2009, spells out the reasons. As regards Ciji Antony, the

administrative reasons have been agreed to by PGMT. A grievance of one of the applicants is that the actual administrative reasons has not spelt out. It is to be stated that the respondents need not have to give the detailed reasons, once the competent authority has satisfied. If the decisions have been taken in bonafide manner although not strictly following the norms, laid down by the Courts, such decisions are upheld on the principle laid down by Justice Holmes, that Courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of "play in the joints" to the executive. (See Sterling Computers Ltd. Vs. M&N Publications Ltd, (1993) 1 SCC 445). In so far as exemption on children education is concerned, such an exemption has been granted if the ward is studying in 12th standard. Note dated 23.04.2009 extracted above refers. When such an exemption is granted, there is no reason as to why it should not be uniformly granted, in respect of those cases wherein the children are studying in 12th standard. It is seen from the application that Shri. KA Babu, applicant No.1 in OA No.272/2009 has his son who is studying for Plus Two at Greets Public School, Kaloor during academic session 2009-10. In his case, the exemption is readily justified. From the pleadings, it is seen that the respondents could not meet one of the grounds which reads as under :-

"C. Since a Policy is evolved, for implementing it, a gradation list was also prepared. The transfer ought to have been carried out in compliance of it. Juniors, who are Sl. Nos. 1, 3, 4, 9, 10, 12, 13, 17, 21, 23, 24, 26, 34, 35, 38, 39, 40, 43, 44, 45, 46 and 47 have been overlooked and 64th person, Shri. P.K. Vishwanathan Nair, is shifted. Further the 2nd applicant's name does not even figure in Annexure A2 and overlooking the entire list, his name has been included in Annexure A6 Transfer order. It is submitted that the transfer must be done honestly, bonafide and reasonably. It should be exercised in public interest. If the

exercise of power is based on extraneous considerations or for achieving alien purpose or an oblique motive, it would amount to malafide and colourable exercise of power."

Reply to the grounds including above is as under :-

"16. As regards the ground urged in the OA, over and above what has been contended by the department, it is submitted that the transfers were issued as per the policy for considering long pending request transfers from high ranges and also for meeting the operational requirements of the company. Hence the contention of the applicants that the orders are issued on a pick and choose manner is not correct. As submitted above the operational requirement of the department was the paramount consideration while issuing the impugned orders. The entire exercise has been transparent with the active involvement and co-operation of the recognized unions in the department. It is submitted that a transfer order issued in public interest for achieving the motto of telecommunication service to the nation the orders are to be implemented with immediate effect. As long as the applicants have no specific allegation of any malafides in the action of the respondents, it is submitted that the transfer orders would not stand judicial scrutiny in the hands of this Hon'ble Tribunal and therefore the OA is liable to be dismissed with cost to the respondents."

25. When the guidelines are specific and elaborate giving the order in which the transfer shall take place, it is not exactly known as to how many of the juniors have been exempted. There are in all 22 juniors who have not been transferred whereas exemptions allowed as per the records is with reference to 11 only (Sl. No.1, 3, 12, 13, 17, 21, 24, 26, 35 and 40). This ground alone has to be properly looked into by the Competent Authority namely the Deputy General Manager, Respondent No.1. If he is satisfied that the reasons for exempting the other persons, then the applicants have no case. It is only when the juniors other than those who

have been specifically exempted could not have been so retained that the applicant can have a grievance that there has been violation of the professed guidelines. Of course, so far as Shri. K.A. Babu is concerned that is a clear case of discrimination as his son was studying in 12th standard.

26. Considering all the above facts, this Tribunal is of the considered view that transfer of Shri. K.A. Babu has to be held as arbitrary, accordingly his transfer is struck down. As regards others, Respondent No.1 shall within a period of 4 weeks from the date of communication of this order, analyze the reasons for retaining many juniors without granting ~~new~~ exemptions and if there are justifications, for such retention of these juniors, the same shall be spelt out in a speaking order and a copy of the same shall be made available to all other applicants. Even if there is any grievance thereafter, such applicants shall have to join duty in the new place of posting and make due representation as held in the case of Gujarat Electricity Board Vs. Atmaram Sangomal Pashani (1989) 2 SCC 602. In the event of such representations being field, the same shall be considered by the respondents and decision communicated. Till such time, the contrast is considered by the Respondent No.1 with reference to juniors not exempted specifically, as stated above, within 4 weeks, the applicants shall not be transferred.

Dated, the 10th July, 2009.



Dr. K.B.S. RAJAN
JUDICIAL MEMBER