

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.262/2003.

Tuesday this the 29th day of July 2003.

CORAM:

HON'BLE MR.K.V.SACHIDANANDAN, JUDICIAL MEMBER

1. Abdul Razack A.S.,
SDE (Phones) Kaloor.
2. K.J.Steephene,
SDE, Cusat Exchange, Thrikkakara,
Cochin-22.
3. Joseph Varghese,
SDE (External), Perumbavoor.
4. Rajan K. Paul,
SDE, Cherai, North Parur.
5. K.B.Baby,
SDE (Installation),
Ernakulam. Applicants

(By Advocate Shri.Shafik M.A.)

Vs.

1. Union of India represented by the Secretary,
Department of Telecommunications/Chairman,
Telecom Commission,
Ministry of Communications,
Sanchar Bhavan, New Delhi.
2. The Chief General Manager, Telecom, BSNL,
Kerala Circle, Trivandrum.
3. The Principal General Manager Telecom, BSNL,
Ernakulam Telephones, Cochin.

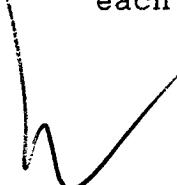
(By Advocate Shri C.Rajendran, SCGSC)

The application having been heard on 25.6.2003,
the Tribunal on 29th July 2003 delivered the following:

O R D E R

HON'BLE MR.KV.SACHIDANANDAN, JUDICIAL MEMBER

The applicants, five in number are working as SDEs in different stations under the BSNL. This O.A. has been filed by the applicants challenging the order A-1 to the extent it relates to the transfer of the applicants at the stations shown against each in the said order permanently and also to declare that the

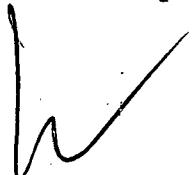


applicants are entitled to retain at the Headquarters of their regular postings as Junior Telecom Officers while on local Officiating promotions as SDEs till they are regularly promoted to TES Group B and for other consequential reliefs.

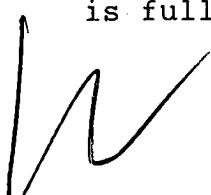
2. One of the main grounds that is being taken in this application is that the 3rd respondent has no power and jurisdiction to convert an officiating promotion granted by the 2nd respondent to a transfer. Aggrieved by the said Annexure A-1 order, the applicants have filed this OA praying for the following reliefs:

- i) To call for the records relating to Annexures A-1 to A-5 and to quash Annexure A-1 to the extent it transfers the applicants against the stations shown in Annexure A-1 permanently;
- ii) to declare that the applicants are entitled to retain the Headquarters of their regular postings as JTOs while on local officiating promotions as SDEs, till they are regularly promoted to TES Group B;
- iii) to issue such other appropriate orders or directions this Honourable Court may deem fit, just and proper in the circumstances of the case;
- iv) To grant the costs of this Original Application.

3. The 3rd respondent has filed a reply statement on behalf of all the respondents contending that he is competent to issue such orders. As per Annexure R-1, the 2nd respondent is empowered to grant local officiating promotion to various posts available in the Circle to the eligible officers working under him to meet the exigencies of service on stop-gap arrangement till regular promotions are ordered on All India basis after meeting a Departmental Promotion Committee (DPC for short) in the Ministry of Communications, DOT, New Delhi. The 3rd respondent is empowered to transfer and post an officer under his control to



any station under his jurisdiction in the interest of service and in this case, such an order was passed, which cannot be said to be illegal. The 3rd respondent is competent to transfer and post an officer allotted to the SSA under his jurisdiction at any place in the same SSA and the order of transfer implies the change of Headquarters also. The promotion and transfers are two separate things. The promotion orders are issued by the 2nd respondent for the limited period, while transfer orders are issued by the 3rd respondent. In all such cases, the officers continue to work at same place where they were ordered to transfer for the first time. Hence, their normal place of work continues to remain their Headquarters. When an officer is transferred from a post in one place to another post in a second place, he has no lien to the first post and the place as stated by the applicants. When an officer is transferred out, the post held by him considered as vacated and ordered to be filled up with other officers in JTOs cadre. He continues to work at the new place only and the officers are entitled to draw TA & DA, if they go on tour outside their headquarters for office work. The holding of DPC and regular promotions to SDE cadre are being done by the Chairman, Telecom Commission/BSNL Headquarters (1st respondent). Annexure A-1 was issued to clarify that their normal places of work are their headquarters, to avoid any confusion. As per the DOT clarificatory order dated 7.7.2000, it is clear that the circle heads are empowered to issue local officiating promotion order for JTOs also, even after classifying the JTO as GCS group 'B' (Gazetted). Accordingly, the 2nd respondent issues order for local officiating promotion and places the officer under the control of the 3rd respondent, who is fully competent to decide further place of posting under his



jurisdiction. The action of the 3rd respondent is not a conversion of local officiating promotion to transfer and posting. He is fully competent to transfer and post any officer placed under him by the 2nd respondent. The local officiating promotions to JTS & STS cadre of ITS can be done only by the head of the circle, the 2nd respondent, but the 3rd respondent is fully empowered to transfer and post the officials allotted to him by the 2nd respondent within his jurisdiction. The applicants are posted against regular vacancies in the stations shown in the order at Annexure A-1 and normally they have to continue there itself for more than 180 days. The promotions and transfers are to be viewed separately. Annexure A-1 deals with transfers of the officers of SSA and not with their promotions. The applicants are trying to confuse this Tribunal by mixing the issues of their promotions with their transfers. The 3rd respondent has not overstepped his authority and jurisdiction by issuing Annexure A-1. The applicants have not fully exhausted the departmental remedies available to them as they have not sought for settling of their grievances through normal administrative channel by sending individual representation to the 2nd respondent. It is further submitted that the O.A. is devoid of merit and is to be dismissed.

4. The applicant has filed a rejoinder contending that the contentions raised by the respondents in the reply statemennt are incorrect which were made with an ulterior motive to mislead this Tribunal. The action of the 3rd respondent cannot be justified, since A-1 was not based on any rules. The 3rd respondent has no power even for posting an officer below the rank of SAG. It has to be done by the 2nd respondent. The tenure of a TES Group B



officer is 9 years in one station. None of the applicants have completed not even half of such allowed tenure in their regular posting as JTO. The 3rd respondent is not having powers to convert officiating promotion of the applicants to a transfer. It can be seen from A-1 transfer order itself that the DEs are transferred and posted as DGMs and JTOs are transferred as SDEs. The JTOs cannot be transferred and posted as SDEs at all and no official cannot be granted a transfer to the next higher post. The promotion and transfer are not separate but are intertwined. No official has lien to any post where he is posted for a short period, but has lien only against the substantive post which he is holding regularly. In this case, the applicants have no lien in the posts of SDEs where they are officiating for periods not exceeding 179 days, but their lien is against their own JTO posts where they are appointed regularly. The applicants are not transferred as JTOs or SDEs but have been directed to officiate in the higher posts that too for a period not exceeding 179 days. Their officiating spells can be terminated even before the period of 179 days, according to the requirement of their services. The officiating spells are ordered even for 90 days when the requirement is unspecific as to the days required to complete the work. Without considering all these things, A-1 order has been issued whimsically. Even a retired employee on superannuation is included in the list which itself shows the hollowness of A-1 order. It is averred that the 3rd respondent is again trying to mislead this Court by stating that the applicants are posted against regular vacancies, which is absolutely incorrect and absurd. If there are regular vacancies, regular promotions will be effected by the 1st respondent. The contention of the



respondents that the present action is to save BSNL from financial burden is also made without any application of mind. Under these circumstances, it is requested that the O.A. may be allowed.

5. The respondents have filed an additional reply statement contending that the respondents cannot be a party to enable the applicants or any other officers to draw DA unless it is essential for running the service. The respondents cannot invite loss to the exchequer against the interest of the Corporation or to the Country in general. Whenever the promotions and postings are ordered in the gazetted cadres on All India basis, especially in the Group 'B' and in the lowest rung of Group 'A', the officers are given the place of posting in terms of "Circles". They are in turn given the place of posting in terms of "SSAs" (Telecom District) by the Circle Heads and placed at the disposal of the SSA Heads (Principal GMs or GMs) for further posting under their jurisdiction. In respect of local officiating promotions also, such a practice is followed, placing the officers at the disposal of the Head of SSAs, like the 3rd respondent. The Annexure R-2 is one such order to see the practice in vogue. Such officers posted to the SSAs will be deployed by the Heads of SSAs at the needy places according to justification and exigencies of service. The 3rd respondent is the sole authority to effect the transfers and postings to the officers like the applicants. It is prerogative of the Head of the SSA and it cannot be interfered. A-1 transfer order is not in respect of any of the applicants in isolation and not at all malafide. The applicants had not exhausted all the channels of communication before approaching this Tribunal.



6. Mr. Shafik M.A., learned counsel appeared for the applicant and Shri C. Rajendan, learned SCGSC, appeared for the respondents.

7. I have carefully considered the pleadings, material and evidence placed on record. Learned counsel for the applicant argued that A-1 was an order of promotion and posting and therefore, it could not be said that it can be a transfer and that the applicants are entitled to the eligible benefits attached to it. The impugned order A-1 has been issued with malafide intention for denying the applicants the legitimate TA and DA and other benefits by a short cut method, which is not justified. The learned counsel for the respondents on the other hand submitted that, it is prerogative of the respondents to make postings of the officers like the applicants to the required places as per the exigencies arise. It cannot be said to be faulted and therefore, the O.A. has no merit.

8. I have given due consideration to the arguments advanced by the learned counsel for the parties. For better elucidation, the impugned A-1 order (Covering letter) is reproduced as under :

"Bharat Sanchar Nigam Limited
(A Govt. of India Enterprise)
O/o Principal General Manager
Ernakulam, Kochi-16.

No. ST/EK-202/7/II/50 dated at Kochi-16, the 26th March 2003.

In modification of all the previous orders issued by this office regarding the postings of the officers mentioned in the enclosed list in Ernakulam SSA, it is hereby ordered that they are transferred and posted to the stations shown against their names. Their head quarters shall be the same as the place at which they are working.

This order will be effective from 1st April 2003.

The officers concerned are eligible for the benefits of transfer as per the existing rules.



Sd/-

Encl:List of Officers

Assst. General Manager (Admn)
For Principal General Manager, Telecom
BSNL, Ernakulam, Kochi-16".

9. In Annexure A1(2), different categories of persons, such as JAG Officers, STS Group A Officers, TES Group B Officers have been shown with reference to their names and their designation, post assigned, present place of working and headquarters. Vide A-2 order dated 30.12.2002, some of the applicants have been reverted to their parent cadre as JTOs and again temporarily promoted. The operative portion of the said order is quoted below:

"In accordance with the order contained in CGMT, TVM memo cited above, the following JTOs, now officiating locally in TES Group 'B' stand reverted to their parent cadre as JTOs on the expiry of the officiating spells already ordered and are again temporarily promoted to the cadre of TES Group 'B' and posted to officiate locally as SDEs against the same post from which they are reverted."

Further, at the bottom of A-2 order, it is made clear that the arrangements were made purely on local officiating basis for a period not exceeding 179 days to meet the urgent developmental and operational works and provisional and subject to the outcome of the Court proceedings. Further, vide A-3 order, they have again been promoted to the said post after the expiry of the period of the officiating spells already ordered. The relevant portions of the A/3 order read as follows:

"In accordance with the order contained in CGMT, TVM Memos cited above, the following JTOs now officiating locally in TES Group 'B' stand reverted to their parent cadre as JTOs on the expiry of the period of the officiating spells already ordered and are again temporarily promoted to the cadre of TES Group 'B' and posted to officiate locally as SDEs against the same post from which they are reverted."

Further, at the bottom of the order A/3, it is stated that:



The above arrangements are purely on local officiating basis for a period not exceeding 179 days to meet the urgent developmental and operational works and provisional and subject to the outcome of O.A.No.1278/2000 and also subject to the outcome of OP No.29044/2000-s in the Hon'ble High Court of Kerala."

Thereafter, vide A-4 order dated 21.11.2002, the local officiating arrangements in the cadre of SDEs are made.

10. The JTOs mentioned in that list were temporarily promoted to the cadre of TES Group 'B' as indicated against each against the existing/installation posts with effect from the dates noted against each of them.

11. Vide A-5 order dated 7.7.2000, the Department of Telecommunications made certain queries and the same has been answered as follows:

"3. Whether the JTO cadre belongs to Circle cadre or All India Cadre

The JTO cadre still remains Circle cadre even after classifying it as (GCS) Group B Gazetted.

4. Whether the JTOs are still covered to be transferred under Rule-39 of P&T (Volume IV):

Since the JTO cadre still remains Circle Cadre. In view of the is, the concerned CGM's are competent to consider the request of JTO's for transfer under Rule 38.

5. Whether heads of Circles are still empowered to issue orders for local officiating from GCS Group B to TES Group B.

Yes, Circle office is empowered to effect the local officiating promotion in the TES Group B Cadre."

12. The learned counsel for the applicant has invited the Court's attention to A-6 O.M. dated 25th February, 2003, the clauses (iv) and (v) of which state as follows:

"iv) Whenever an officer requests for transfer, clear justification must be recorded for accepting the request of the individual officer.

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v) On allocation of officers of all the cadres to various units, the specific posting of SAG level officer and below may be issued by CMDs/CGMs within their delegated powers. This applies to freshly allocated officers as well as to those already working in the respective units."

13. The learned counsel for the applicant argued that the transfer and posting at CGMs grade shall be decided by a committee of officers comprising the Secretary and the Chairman (Telecom Commission), Member concerned and CMDs of the concerned company.

14. The main grievance of the applicant is that by virtue of such an order of promotion/transfer, they are deprived of the TA, DA which otherwise they could have received. The learned counsel for the applicant contended that the respondents are trying to adopt the short cut method for denying such benefits and he further argued that the alleged adhoc promotion can be withdrawn at any point of time which would not confer on them any benefit of service, and for that reason, it was incumbent on the part of the respondents to ascertain whether they are willing to accept the posting order or not, which is not a relief in this case. The submission of the counsel is that had there been such an opportunity, definitely they would have refused the so called promotion which do not grant any benefit to them, and would have retained in their original post. By virtue of the said order, they are being put to great inconvenience and no benefit is given alleging that the post in question is within the SSA. The persons who have been posted on inter-divisional transfer having the benefit of TA, DA etc. Therefore, it is alleged that this is a clear case of deprival of the legitimate right of the applicants.

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15. On going through Annexure R-2, it is clear that the JTOs are temporarily promoted to the cadre of TES Group 'B' and posted to officiate locally as SDEs as indicated against each against the existing/installation posts by the 2nd respondent. It indicates that the order has been passed by the 2nd respondent and should have been allotted to the SSA concerned. It is made clear in Annexure R-2 order that the promotions were made purely on local officiating basis for a period of not exceeding 179 days to meet the urgent developmental and operational works and provisional and subject to the outcome of Court cases pending before the Hon'ble High Court and this Tribunal. The respondents has also produced Annexure R-1 which clearly states that the Head of the Circle of the SSA is the General Manager. The deployment of the employees within the circle by the 3rd respondent vide impugned order cannot be found fault with. On the question of jurisdiction and authority of the 3rd respondent, it may be stated that the same cannot be questioned in view of Annexure-R.1 Schedule (P&T Manual Vol.III, Schedule No.2) on the subject of exercise of Administrative powers of the Head of a Circle in so far as they apply to their respective charges with reference to Rule 5 of the P&T Manual Vol. IV. Therefore, I am of the view that the contention that A-3 order has been passed without authority and jurisdiction, cannot be accepted.

16. Another question that arises from the pleadings, arguments etc. is that whether A-1 is faulted on account of the fact that it has been issued with malafide intention to deny the applicants to work elsewhere than their regular office. Having found that A/1 order has been issued with the authority as discussed above, the question whether they are entitled for DA etc, is a matter to

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be considered. Since it is found that the 3rd respondent is competent to pass A-1 order, the entire circumstances leading to issue of A-1 order has to be evaluated. It is a fact that whenever promotions and postings are ordered in the Gazetted cadres on All India basis, especially in the Group 'B' and in the lowest rung of Group 'A', the officers are given the place of posting in terms of "Circles". They are, in turn, given the place of posting in terms of "SSAs" (Telecom District) by the Circle Heads and place at the disposal of the SSA Heads (Principal GMs or GMs) for further posting under their jurisdiction. In respect of local officiating promotions also, such a practice is followed, placing the officers at the disposal of the Head of SSAs and such officer will be the authority to transfer and post the officers like the applicant. Therefore, the posting done by the Circle Head i.e. the 3rd respondent in so far as the posting of applicants within his jurisdiction, cannot be faulted. For that reason, I do not find any reason to interfere with A-1 order and it cannot be said to be unreasonable or malafide. However, there has some force in the arguments of the applicants that by virtue of this officiating promotion for less than 179 days, they did not get any benefit in any manner, since the regular promotions could be finalized only after convening the DPC and considering other material service factors. The applicants are not benefited in any respect, especially when DA and TA are not being granted to them, since their transfer is within the SSA unit. Therefore, the arguments advanced by the applicant's counsel that, had they been given an option as to the acceptance of these posts, they would have sometimes rejected the offer, since it is without any benefit, especially when the applicants are put to some hardship of their



displacement, even though within the same SSA Unit. Therefore, it would have been better on the part of the respondents to ascertain from the applicants, whether they are willing to accept the post or not, and if not, keep them in the same place of the JTO's cadre as they were, and should have placed only those who are willing to accept the post. An opportunity invariably should have been given to the applicants, which is not done in this case. In the administrative parlance in many circumstances, the acceptance of promotion is the choice of an employee. "When a Government employee does not want to accept a promotion which is offered to him, he may make a written request that he may not be promoted and the request will be considered by the appointing authority, taking relevant aspects into consideration." As has already been found in Annexure A/3 that the said promotion of the applicants was purely on temporary basis, the applicants have every privilege to refuse the same if it is not to their advantage or prejudice their interest. No employee should be compelled to accept an adhoc promotion without any benefit to him/her. On evaluating the entire circumstances, this Court is of the view that there is also no such administrative exigency which warrants in issuance of this impugned order.

17. In the conspectus of the facts and circumstances of the case, I dispose of this Original Application with a direction to the applicants to make a representation, if they are not willing to accept the temporary/adhoc promotion granted to them, to the appropriate authority within 15 days from the date of receipt of a copy of this order and if such representation is received by the respondents, they shall consider and dispose of the same in terms of the observations made above and also in accordance with

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rules, regulations and instructions on the subject within one month from the date of receipt of such representations. The decision shall be communicated to the applicants immediately thereafter.

18. The Original Application is disposed of as above with no order as to costs.

Dated the 29th July, 2003.



K.V. SACHIDANANDAN
JUDICIAL MEMBER

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