

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.274/09

Friday this the 15th day of May 2009

C O R A M :

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

A.Hifsur Rahiman,
S/o.late Abdul Rahiman,
Sub Divisional Engineer, Tech.,
BSNL, Perumbavoor.
Residing at Karoly House,
YWCA Road, Perumbavoor.

...Applicant

(By Advocate Mr.Shafik M.A.)

Versus

1. The Chief General Manager Telecom,
Bharat Sanchar Nigam Ltd. Kerala Circle,
Trivandrum.
2. The Principal General Manager Telecom,
Ernakulam, BSNL, BSNL Bhavan,
Kalathilparambil Road, Ernakulam.
3. The Assistant General Manager (Admn.)
O/o.Principal General Manager Telecom,
Ernakulam Telephones, BSNL Bhavan,
Kalathilparambil Road, Ernakulam.

...Respondents

(By Advocate Mr.Dinesh R Shenoy)

This application having been heard on 13th May 2009 the Tribunal on 15th May 2009 delivered the following :-

ORDER

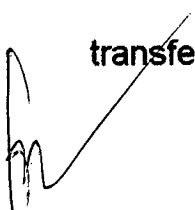
HON'BLE Dr.K.B.S.RAJAN, JUDICIAL MEMBER

The applicant has filed this OA challenging Annexure A-1 order dated 5.5.2009 whereby he stands transferred from SDE Tech Perumbavoor to SDE CTO Kavarathy. The grievance of the applicant is that he has undergone medical treatment and has been on leave for about two years and he could join only as recently as January, 2009. In addition,

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his children are in 10th and 12th Standard and as per the norms/guidelines exemption from transfer is available if the wards of the employees are studying in the 10th and 12th Standard. Yet another grievance of the applicant is that the rotational transfers are normally confined to area of about 20 Kms radius whereas in the case of the applicant he stands transferred to Lakshadweep Island (Kavarathy).

2. When the case came up for admission hearing and for interim relief, counsel for the respondents sought time to get instructions to ascertain whether the individual stood already relieved. According to the information furnished, as on 8.5.2009 the applicant stood relieved of his duty. Counsel for the respondents submitted that the need to shift the applicant from Perumbavoor has arisen as he has been at that place right from 1995, save, for a short spell when he was away on medical leave. (Counsel for the applicant supplemented the above stating that the applicant had spent two years during this period at Trivandrum.) Counsel for the respondents further submitted that there was an immediate necessity to move the individual posted at Kavarathy out of Kavarathy on administrative grounds and hence he stood transferred from Kavarathy to Aluva which resulted in the vacancy at Kavarathy. Further the post at Kavarathy which is vacant belongs to Telegraphist post and the applicant is the junior most among the available Telegraphists for being posted there. Kavarathy is falling under the unpopular area and no lady candidates can be posted there. Guidelines provide for such a transfer (of the applicant) and as such the transfer be not interfered with.




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3. Counsel for the applicant submitted that the applicant has submitted representation dated 10.5.2009 to the Chief General Manager Telecom, Trivandrum which was preceded by representation dated 5.5.2009 addressed to the Principal General Manager Telecom, Ernakulam. According to the counsel for the applicant, it would be in the fitness of things if a decision is taken on the representation made by the applicant as stated above and till then the applicant be not shifted. It has also been submitted by the counsel for the applicant that the post where the applicant is now serving (ie the post from where the applicant has been transferred) has not been filled up nor has the applicant been supplied with a copy of the relieving order.

4. Arguments were heard on interim relief. Interim relief is granted when there is a prima facie case and balance of convenience and interest of justice is in favour of interim relief being granted. Such relief could be granted even if relieving order has been issued subject only to the condition as spelt out in the case of **Dorab Cawasji Warden v. Coomi Sarob Warden, (1990) 2 SCC 117** wherein the Apex Court has held as under :-

16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:



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(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.

5. In the instant case, it is seen that the posting is at Kavarathy and as such, in case if the applicant is forced to move to Kavarathy and at a later stage if the application is allowed on its merit, the hardship to the applicant could have been more than the hardship that could be faced by the department in case if the interim relief is granted. Had the department felt that the post at Kavarathy cannot be kept unfilled, they would not have relieved the earlier incumbent there prior to replacement. As such, from this point of view, the balance of convenience is in favour of the applicant.

6. Notwithstanding the above, as suggested by the counsel for the applicant, it could be appropriate that the Chief General Manager is directed to consider the representation pending before him vide Annexure A-6 and if the decision is favourable to the applicant, this application may be rendered infructuous and if the decision goes against the applicant's interest, the applicant may contest the same. In view of the above, this Court is of the considered opinion that the transfer of the applicant may be stayed for a very limited period of, say, 15 days by which time the Chief



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General Manager Telecom, Kerala Circle, BSNL, Trivandrum will consider the representation at Annexure A-6 and arrive at a judicious decision taking into account all the factors stated therein and also the guidelines and the general practice being followed. It is accordingly ordered. The Chief General Manager may decide the representation on or before 29.5.2009 and communicate the same to the individual as well as to this Court. Till then, notwithstanding the fact that the applicant stood relieved, he shall not be compelled to join the new duty station and if he is physically fit enough, he may be allowed to function at Perumbavoor where the vacancy has not been filled up. Call the case on 2.6.2009. I.R will continue till then.

(Dated this the 15th day of May 2009)


K.B.S.RAJAN
JUDICIAL MEMBER

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**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.274/09

Tuesday this the 4th day of August 2009

C O R A M :

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

A.Hifsur Rahiman,
S/o.late Abdul Rahiman,
Sub Divisional Engineer, Tech.,
BSNL, Perumbavoor.
Residing at Karoly House,
YWCA Road, Perumbavoor.

...Applicant

(By Advocate Mr.Shafik M.A.)

V e r s u s

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O/o.Principal General Manager Telecom,
Ernakulam Telephones, BSNL Bhavan,
Kalathilparambil Road, Ernakulam.

...Respondents

(By Advocate Mr.Dinesh R Shenoy)

This application having been heard on 4th August 2009 the Tribunal on the same day delivered the following :-

O R D E R

HON'BLE Mr. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed this Original Application aggrieved by the Annexure A-1 order dated 5.5.2009 by which the respondents have transferred 59 officials under them including the applicant. The applicant is at Sl.No.14 and he has been transferred from SDE Tech, Perumbavoor to SDE, CTO, Kavarathy.





2. When this matter was initially heard by the Tribunal on 15.5.2009, the aforesaid impugned order was stayed in respect of the applicant with a direction to the 1st respondent, namely, the Chief General Manager Telecom (CGMT for short) Kerala Circle, BSNL, Trivandrum to consider his Annexure A6 representation dated 10.5.2009 pending before them. Pursuant to the aforesaid order, the said respondent considered the aforesaid representation and passed the Annexure A1 order dated 27.5.2009 in MA 398/09 permitting him to continue on the main land (Ernakulam Secondary Switching Area) till the end of the academic year 2009-2010, with a copy to the 2nd respondent, namely, the Principal General Manager, Telecom (PGMT for short) Ernakulam. Thereafter, the 2nd respondent issued the Annexure A2 order dated 29.5.2009 in MA 399/09 posting him to SDE (Tech) PGMT, Ernakulam till 31.3.2010 with the remarks that his name will stand struck off from the post of SDE (Tech) PGMT, Ernakulam on the afternoon of 31.3.2010 without any further notice. When the aforesaid order of the department was brought to the notice of this Tribunal by the counsel for the applicant, this Tribunal vide its order dated 2.6.2009 granted liberty to the applicant, on his request, to move an application against the same to the higher authority. This Tribunal has also extended the stay till the next date of hearing ie. 26.6.2009.

3. Against the aforesaid order of this Tribunal dated 2.6.2009, the respondents approached the Hon'ble High Court of Kerala vide WPC No.16100/09 and vide judgment dated 2.7.2009, the High Court quashed the said order of this Tribunal but with the liberty to the applicant to approach the departmental authorities for appropriate reliefs. For the sake of clarity, the said judgment is reproduced below :-



" The respondents in OA.No.274/2009, before the Central Administrative Tribunal, Ernakulam Bench, are the writ petitioners. The applicant in the Original Application is the respondent. Ext.P9 interim order is under challenge in this Writ Petition. The competent authority has transferred the applicant from Perumbavoor to Ernakulam. Earlier, the applicant was transferred to Lakshadweep. But, that was cancelled and he was allowed to remain in the mainland. But, in the mainland, instead of Perumbavoor, his native place, he was posted at Ernakulam. The Tribunal ordered to retain the applicant at Perumbavoor by the impugned order Ext.P9. The writ petitioners submitted that Ext.P9 has been issued without jurisdiction and the Tribunal cannot meddle with the posting of Officers as was done under Ext.P9.

2. We heard the learned counsel for the 2nd respondent/applicant. The learned counsel submitted that the order impugned is only an interim order and therefore, this Court may not interfere with the same. Further, it is submitted that his transfer to Ernakulam is vitiated by malafidies.

3. It is for the BSNL to decide where its Officers should work having regard to its requirement. When the competent authority posts an Officer from Perumbavoor to Ernakulam, no court has any business to meddle in that. The only reason, given in Ext.P9 for interfering with the transfer, is the inconvenience caused to the applicant, who has returned after medical leave. We find that it is not a ground for a court of law to interfere with the transfer of an employee. If the competent authority wants the services of the applicant at Ernakulam, the court cannot say he should be retained in Perumbavoor, where his services are not required, and he should be paid from public funds. The deployment of the Officers according to the requirement of the BSNL is purely an executive function. Normally, a court should keep its hands off from such a decision. The Court can interfere with a transfer if it is shown to be illegal or vitiated by malafidies. The applicant has not a case that the transfer is made in violation of any statutory provision. The bald submission that it is vitiated by malafidies is not sufficient to interfere with the transfer. Ext..P9 has been passed without bearing the above fundamental principles in mind. Accordingly, Ext.P9 is quashed and the Writ Petition is allowed. This order will not affect the rights, if any, of the applicant to approach the departmental authorities for appropriate reliefs."

4. Counsel for the applicant submitted that after the aforesaid judgment of the High Court, the applicant has made a representation dated 4.6.2009 to the CGMT, Trivandrum through proper channel but the Assistant General Manager (Admn.) in the office of the PGMT, Kochi vide letter dated 9.7.2009 stated that PGM has remarked that since the applicant has not given any representation against the posting order as SDE (Tech) to PGMT, Ernakulam till 31.3.2010, it is not possible to forward the same to Circle Office. Counsel for the respondents, on the other hand, submitted that the representation dated 4.6.2009 sent by the applicant was based on the Ext.P-9 order of this Tribunal's order dated 2.6.2009 which has already been quashed by the Hon'ble High Court .



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5. I have considered the submissions made by counsel for the parties. The representation dated 4.6.2009 addressed to CGMT, Trivandrum was in response to the order of this Tribunal dated 2.6.2009. When the said order itself was quashed by the Hon'ble High Court subsequently in WPC No.16100/09 vide order dated 2.7.2009, there is no question of further considering the same by the authorities. At the same time, when the Hon'ble High Court in its order dated 2.7.2009 has observed that the said order will not affect the rights, if any, of the applicant to approach the departmental authorities for appropriate reliefs, we cannot prevent the applicant from making any fresh representations in this regard. I, therefore, hold that the applicant is at liberty to make fresh representation, if any, to the departmental authorities in the matter and the authority concerned shall consider the same in accordance with the rules. The decision taken in the matter shall also be communicated to the applicant within a period of three months from the date of receipt of a copy of such a representation.

6. With the aforesaid directions, this O.A is disposed of. There shall be no order as to costs.

(Dated this the 4th day of August 2009)


GEORGE PARACKEN
JUDICIAL MEMBER

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