

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 285 of 2010

Friday, this the 25th day of June, 2010

CORAM:

Hon'ble Mr. Justice K. Thankappan, Judicial Member
Hon'ble Ms. K. Noorjehan, Administrative Member

P.C. Mani (HR No. 198406855),
SDE (External), BSNL, Guruvayoor.

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Applicant

(By Advocate – Mr. K.A. Abraham)

V e r s u s

1. The Chief General Manager, Telecom, Bharath
Sanchar Nigam Limited, Kerala Circle, Trivandrum-33.
2. The Principal General Manager, BSNL, Thrissur-680022.
3. The Area Manager, Office of PGM, BSNL,
Thrissur 680022.
4. The Divisional Engineer, Telecom, BSNL,
Guruvayoor.

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Respondents

(By Advocate – Mr. George Kuruvilla)

This application having been heard on 25.6.2010, the Tribunal on the same day delivered the following:

O R D E R

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

The applicant a Sub Divisional Engineer of the BSNL, Guruvayoor filed this Original Application challenging Annexure A-1 transfer order dated 22.3.2010. The case set up by the applicant is that while he was working at Guruvayoor the then Chief General Manager, Telecom, Trivandrum, BSNL passed Annexure A-1 transfer order transferring the

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applicant to Malappuram without assigning proper reason for such transfer. The further case of the applicant is that even though Annexure A-2 was made as the basis for Annexure A-1 transfer, Annexure A-2 does not contain any material to issue such a punishment transfer. On reading of Annexure A-2, the case set up by the applicant would show that, the default for the period January to March, 2009 was not due to personal fault of the applicant but for other reasons and further it is to be seen from Annexure A-2 that even though spare cable is available in the pillar land line connection was not given because of the non-availability of distribution cable. Hence, the applicant submits that the two grounds based for transferring him from Guruvayoor to Malappuram was not sustainable especially when he was transferred and posted to Guruvayoor only on 27.8.2009 on spouse ground.

2. We have admitted the Original Application on 1.4.2010 and on hearing the counsel appearing for the parties, this Tribunal has already issued an interim stay of the implementation of Annexure A-1. Notice was also ordered to the respondents. In pursuance to the notice issued a reply statement has been filed for and on behalf of the respondents. It is submitted in the reply statement that the applicant has miserably failed to explore the possibilities of using all the cable pairs available effectively for giving new connections which resulted in the rush of subscriber complaints and huge revenue loss to the Department. Further it is stated that on the basis of the complaint received a vigilance investigation has been conducted regarding the work of the applicant by the BSNL Protection Wing of Edakkazhiyoor and as per the report it was found that there was more default during the

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relevant period and also the connections were not given by the applicant who was having overall additional charge in the area.

3. On getting the reply statement the applicant has filed a rejoinder on 23.6.2010. In the rejoinder the applicant had stated that the transfer effected by Annexure A-1 is a punitive measure vitiated by malafide and the default which pointed out by the BSNL Protection Wing was not due to any of the personal fault on the part of the applicant whereas there was climate and weather change during April to July, 2009. Further the applicant had submitted in the rejoinder that the alleged duration of default is also not much comparing to previous months of the year 2009 for which the applicant has narrated the durations of defaults from January to July, 2009. Further it is stated in the rejoinder that as Annexure A-1 has been passed without giving a notice to the applicant regarding the allegations contained in the vigilance report the same is in violation of principles of natural justice.

4. We have heard the counsel appearing for the applicant Mr. K.A. Abraham and also Mr. George Kuruvilla, counsel appearing for the respondents. The counsel for the applicant Mr. Abraham invited our attention to the Annexure A-2 once again, the report which was made as a basis for Annexure A-1. The counsel submits that even the Annexure A-2 report itself shows that the applicant could not take steps for new connections only because of the non-availability of distribution cable in the area even though there were spare cables available in the pillar and that by



itself would show that the alleged default now thrust on the applicant is not justifiable as there was no distribution cable available in the area. Further, it is the case of the counsel appearing for the applicant that even if there is any complaint received from any complainant on which report has been received from the vigilance as Annexure A-2, before passing Annexure A-1 order, the applicant should have been given a chance for explaining his stand in the matter. As the applicant was not given such chance, Annexure A-1 is passed in gross violation of principles of natural justice. On that ground alone this Tribunal is justifiable in interfering with this transfer order.

5. To the above arguments the counsel appearing for the respondents relying on the reply statement submits that even though the applicant had stated in the rejoinder that there was no distribution cable available it is his duty to explore the possibility of using all the cable pairs available effectively for giving new connections. That apart the counsel for the respondents submits that the BSNL Protection Wing, Edakkazhiyoor gave a report that there was much increase in the external fault rate during April to March, 2009 and the performance of the applicant to set right the defaults is also not up to the standard. In the above circumstances on receipt of complaint from the vigilance as given by Annexure A-2 report, it is only proper for the respondents to pass Annexure A-1 transfer order transferring the applicant from Guruvayoor to Malappuram.

6. On anxious consideration of the arguments on behalf of the counsel



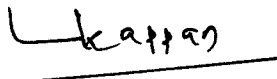
appearing for the parties and also on perusing the documents the question to be considered is that whether Annexure A-1 is justifiable or not. For the answer to this question we have to go to the background of the posting of the applicant at Guruvayoor and giving of charge of Edakkazhiyoor to the applicant. Actually the applicant was transferred and posted to Guruvayoor on 27.8.2009 on spouse grounds and that apart the applicant was on additional charge of Edakkazhiyoor during the relevant period and further it is an admitted fact before this Tribunal that the weather change was there during the relevant period especially during March to July, 2009 because of the lightning and heavy rain caused during that period. The applicant has also produced a chart of the duration of the default rate and the rating of chart would show that due to the natural reasons and beyond his control the default rate has increased during the relevant period especially when lightning and heavy rains were there. It is a usual phenomenon which we could also from our experience that during the season change especially in rainy seasons all electronic equipments will be affected easily than in other periods. In the above circumstances the default rate during April to July, 2009 is not due to any personal default on the part of the applicant. The next question to be considered is that he has not given land line connections to the public. In this context the applicant has got a case that there was no distribution cable available in the area for giving connections to the customers. We are of the view that without giving or providing materials to the applicant or any other officers working in the Department cannot be found at faulty for not giving any connection to the customers. Especially for getting new connections there is several formalities to be followed or



practiced by the Department. Apart from that on every month BSNL Thrissur is conducting SDCA level management meetings headed by the General Manager (Development), all the DGMs, Area Managers, Divisional Engineers and Sub Divisional Engineers and all the aforesaid matters might have been coming for discussion in such meetings. If so, the reasons now find fault with applicant alone cannot be taken as a ground for transferring him as a punishment. The next question is to be considered is that even if there is some default on the part of the applicant on the basis of the report of vigilance it would have been proper for the respondents to give him the chance to explain his case before punishing him by transferring in a distance place. This itself shows the hasty steps taken by the Department to transfer the applicant on the basis of the report of the vigilance.

7. In the light of the over all discussions made in this Original Application, we are of the view that the Original Application succeeds and accordingly, the Annexure A-1 transfer order stands quashed. Ordered accordingly. OA is allowed with no order as to costs.


(K. NOORJEHAN)
ADMINISTRATIVE MEMBER


(JUSTICE K. THANKAPPAN)
JUDICIAL MEMBER

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