

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.No. 33/2003

Wednesday, this the 9th day of April, 2003

C O R A M

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

Elizabeth C. John,  
W/o. Flt. Lt. K.P. Jacob,  
Junior Telecom Officer,  
Telephone Exchange,  
Kulakada P.O.,  
residing at Palamoottil House,  
Kalayapuram P.O.,  
Kottarakkara.

..Applicant

[By Advocate Mr. P.C. Sebastian.]

v e r s u s

1. The General Manager,  
Telecom District, Kollam (BSNL),  
Kadappakada Junction,  
Kollam-1
2. The Sub Divisional Engineer,  
Telephone Exchange,  
Puthoor P.O.,  
Kottarakkara.
3. The Chief General Manager,  
Telecom Circle Kerala (BSNL),  
Thiruvananthapuram.
4. The Union of India,  
represented by Secretary,  
Ministry of Communciations,  
Department of Telecommunications,  
New Delhi.

Respondents

[By Advocate Mr. C.Rajendran, SCQSC.]


(Application having been heard on 9.4.2003, this Tribunal  
on the same day delivered the following)

O R D E R


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

Applicant is working as Junior Telecom Officer (JTO, for  
short) in the Telecom Department with effect from 11.10.1997.  
She commenced service in Telecom District, Trichur, and was later  
transferred to Kollam District on compassionate ground. He is  
working as JTO, Kulakada with effect from September, 2001. She

is married and her husband's house is at Kalayapuram, nearby Kulakada. Applicant's husband is a permanent Commissioned Officer in Indian Air Force recently posted at Guwahati (Assam) for the usual tenure of two and a half years. She resides in her husband's house and has a child, aged 2 years. She contended that in the absence of her husband, applicant has to look after husband's widowed mother and an unmarried sister-in-law. There is no male member in applicant's house. In these circumstances, applicant submitted a representation (Annexure A/1) dated 24.1.2002, requesting to grant her extra ordinary leave for a period of five years with effect from 1.5.2002. But her request has not been acceded to by the GMT, Kollam and she was informed of the same vide Annexure A/2 letter dated 24.4.2002. Applicant thereafter submitted a representation (Annexure A/3) dated 24.6.2002 to the Chief General Manager, , Telecom, BSNL, Thiruvananthapuram, requesting to grant her extra ordinary leave atleast for two years since the earned leave on her credit was less than 20 days. Applicant has not received any reply from the third respondent. She also submitted leave application praying for extra ordinary leave for two years with effect from 15.07.2002 and the same remain unattended. Thereafter, the applicant met the first respondent in person and requested to grant with effect from 29.07.2002 to join her husband. The 1st respondent directed her to apply for earned leave. Accordingly, she submitted leave application for 14 days, but no order sanctioning the leave was received. However, applicant's then immediate controlling authority, i.e. the SDOT, Kottarakkara, allowed the applicant to avail leave in anticipation of formal sanction orders in accordance with the prevailing practice. Applicant, with the knowledge and consent of her immediate controlling authority, proceeded on leave and joined her husband at Guwahati in Assam alongwith her tender child. On expiry of the leave, the applicant could not return and rejoin duty since



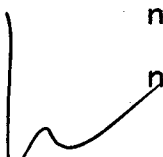
she fell ill at Guwahati and was under medical treatment at Guwahati Medical College Hospital. She was advised to take rest for three months from 13.8.2002 and thereafter, it was extended for further two months. Applicant sent the leave application supported by medical certificates (Annexures A/4 and A/5) to the first respondent. Thereafter, she did not receive any communication from the first respondent regarding grant of leave or rejection of medical certificates. In the meantime, applicant received Memo dated 31.10.2002 (Annexure A/6) issued by the first respondent asking her to explain why disciplinary action should not be taken for the alleged unauthorised absence from duty with effect from 29.7.2002. She submitted a representation dated 14.11.2002 (Annexure A/7) explaining the circumstances and true facts of the case. Applicant returned to Headquarters though she had not fully recovered from her illness and reached Kulakada on 4.1.2003 in order to rejoin her duty. The very day, she received a Memo dated 2.1.2003 issued by the first respondent by post proposing to hold an enquiry under Rule 14 of the CCS (CCA) Rules, 1965, on the articles of charges appended to the same. Applicant along with her husband met the 1st respondent and tried to convince him the problems which the applicant was facing. The first respondent was unsympathetic towards the applicant and took a decision that she would be transferred from the present station of posting. It was alleged that on the next day, the second respondent called the applicant over telephone informing that she has been transferred with immediate effect as per Memo dated 9.1.2003 and directed her to report before him and get relieved immediately. As applicant's physical condition became worse, she was constrained to seek medical treatment for a further period of seven days. She has applied for extension of leave upto 20.01.2003 on medical ground. Aggrieved by the unjust and unsympathetic action of the first respondent the applicant has submitted a petition dated 14.1.2003 (Annexure A/10) to the third



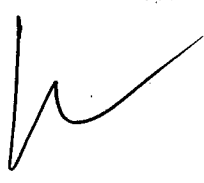
respondent, the Chief General Manager, Thiruvananthapuram, mentioning her personal problems. No reply to the said representation has been received by the applicant till date and the second respondent is compelling the applicant to get relieved and join at Kulathupuzha as per direction of the 1st respondent. Applicant further submitted that the impugned transfer order has not been served upon her and hence, she could not annex the same in the OA. Aggrieved by the impugned transfer order, the applicant has filed this OA seeking the following reliefs:-

- "(i) To call for the files leading to the issue of order No. STG/JTOs/T&P/00-02/Pt/64 dated 09.01.2003 issued by the first respondent and quash that order;
- (ii) to direct the respondents to allow the applicant to continue as JTO, Kulakada Telephone Exchange till completion of her normal tenure;
- (iii) to direct the third respondent to consider Annexure A-10 representation submitted by applicant and dispose of the same with a speaking order;
- (iv) to grant such other relief which may be prayed for and which this Hon'ble Tribunal may deem fit and proper to grant in the facts and circumstances of the case;
- (v) to award costs in favour of the applicant."

2. Respondents have jointly filed a detailed reply statement contesting the matter and denying the averments made in the OA. They submitted that the applicant was unauthorisedly absent and left the Headquarter without prior permission which is in violation of CCS Conduct Rules, 1964. Accordingly, a show cause notice was issued to her and the reply (Annexure A/7) to the said notice did not contain any facts justifying her actions satisfactorily. Therefore, Annexure A/8 memorandum was issued to initiate Rule-14 proceedings as per CCS (CCA) Rules, 1965. This is continuing. It is submitted that it was not proper for the first respondent to intervene in the matter especially when no new facts or any extenuating circumstances were brought into his notice by the applicant. According to them, the averments of the

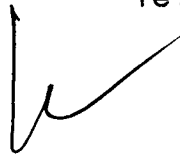


applicant about rude and unsympathetic attitude of the first respondent is totally false and hence denied. Respondents took a specific plea that there is an acute shortage of JTOs in Kollam SSA and Kulathupuzha Sub Division is at present having no JTO. The JTO, Kulathupuzha is having control of two exchanges, i.e. Kulathupuzha and Chozhiakode. Both the exchanges are to be expanded and the phone connections are to be given to the long waiting applicants in that sub division. Therefore, a JTO was to be posted urgently to fill up the vacancy. The charge of Kulakkada exchange was given to another JTO who is working in the same division. The case of Kulathupuzha was different where no JTO is available. Therefore, the General Manager, Telecom District, Kollam, has transferred the JTO, Kulakkada (the applicant) to Kulathupuzha by the impugned order dated 9.1.2003. This is done due to administrative exigencies and also in public interest. Respondents contended that the transfer of the applicant will, in no way affect the applicant prejudicially since she is not transferred at a long distant place. Respondents denied the averment of the applicant that she was singled out and transferred. Applicant's transfer is necessitated due to exigencies of service and therefore, it is not vitiated by malafides. It is further averred that it is open for the applicant to make a representation to the competent authority for stay, modification or cancellation of her transfer order. In the absence of any stay order, the concerned public servant has no justification to avoid or evade the transfer order merely on the ground of his/her personal difficulty in moving from one to the other. If the employee fails to proceed on transfer in terms of the transfer order, he/she would expose himself/herself to disciplinary action under the relevant rules. The applicant has no legal right to approach the Court/Tribunal




for a posting to the place of her choice. Hence, it is urged on behalf of the respondents that the OA is devoid of any merit and substance and it deserves to be dismissed.

3. Applicant filed rejoinder contending that she had availed leave with the knowledge of the first respondent and she left the place with the permission of his immediate controlling officer, namely Shri Rajendran Pillai, SDOT, Kottarakara. Applicant also met the first respondent in person and had apprised him of her pressing personal problems and necessity for the leave to join her husband for a short period. The first respondent though refused to recommend applicant's request for EOL for a long period, he expressed his no objection for availing the earned leave by the applicant at her credit. Applicant applied for 14 days earned leave with a request to permit to leave Headquarter with effect from 29.07.2002. She proceeded on leave in anticipation of sanction of leave by the competent authority. But the applicant could not rejoin on duty after expiry of leave, since she fell ill. She submitted application for extension of leave supported by medical certificates. Nothing has been heard on that. Meanwhile, the applicant received a show cause notice for which she sent a detailed reply explaining her personal problems. But the first respondent did not accede to her request and initiated disciplinary proceedings. Again the applicant met the first respondent on 9.1.2003 explaining all the facts before him and requested to allow her to resume duty. But the first respondent was not in favour of the applicant and he wanted to transfer her to a distant place as a penal measure. Applicant urged that the averment that Kulathupuzha Sub Division is at present having no JTO, is a deliberate misstatement in order to mislead this Tribunal. Shri O. Yousup is the regular incumbent in the post of JTO, Kulathupuzha. He has been working as JTO Telegraphs, Punalur, coming under the Sub Divisional Officer



Telegraph, Punalur, on deputation from the month of June, 2002. Applicant contended that this will show that there is no exigency nor any public interest involved in this case. Applicant further submitted that she has not completed even half of her normal tenure at the present station and there are number of other JTOs in the Division who had already completed their normal tenure, but still continuing in the same place. The names of two such employees have been quoted by the applicant as an example, viz Shri Philip, JTO, Puthur Telephone Exchange, and Shri M.N. Sasidharan, JTO, Valakom. A number of JTOs who had completed their tenure, have even been retained in the office of the General Manager Telecom itself. The reason for the impugned transfer of the applicant is nothing but the vindictive attitude of the first respondent. There is absolutely no exigency or public interest in transferring her to Kulathupuzha. Applicant submitted that there is no cable work pending at Kulathupuzha whereas the shifting work of underground cable and telephone alignment along Chengannur Trivandrum M.C. Road comprising of Kulakada Telephone Exchange is to be undertaken as per the requirement of PWD under a World Bank assisted project. There is no such outdoor work at Kulathupuzha.

4. The respondents have filed additional reply statement contending that in order to meet the acute shortage of JTOs in Punalur, the Divisional Engineer Telecom was permitted to make local arrangement by shifting JTOs under his control. Consequent to this, Shri O.Yousuf, JTO(G), Kulathupuzha was relieved of his duties on 11.6.2002 with an instruction to report to SDOT, Punalur, as per Annexure A/11. This arrangement continued upto December, 2002. During January, 2003, the first respondent had to consider filling the vacancy of JTO (G), Kulathupuzha due to the ensuing expansion of exchanges under SDE(G), Kulathupuzha. Considering this exigency, the applicant was transferred on



9.1.2003 to Kulathupuzha purely in the exigencies of service. It is further reiterated that the transfer of the applicant was ordered in the interest of service and they contended that applicant's apprehension that the transfer was ordered as a penal measure, is incorrect and denied. The transfer will not in any way prejudice the interest of the applicant since she will be provided with the eligible type of residential quarter and service telephone connection at Kulathupuzha on her assuming the charge.

5. I have heard Shri P.C. Sebastian, learned counsel for the applicant and Shri C. Rajendran, learned SCGSC, appearing for the respondents.

6. I have given thoughtful consideration to the pleadings, material placed on record and the elaborate arguments advanced by both the learned counsel. To begin with, the impugned transfer order dated 9.1.2003 is reproduced below for the sake of convenience.

"Memo No.T-G/JTOs/T&P/00-02/Pt/64 Dt.at Kollam 9.1.2003

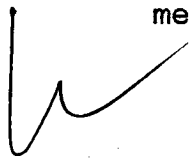
Sub: Transfer and Posting in the cadre of Junior Telecom Officers - reg.

Smt. Elizabeth C John, JTO, Kulakkada, is transferred and posted as JTO Phones, Kulathupuzha, Under SDE (Groups) Kulathupuzha with immediate effect. This transfer and posting is ordered in the interest of service.

Necessary charge report may be furnished to all concerned.


Assistant General Manager (Admn.),  
O/o. GM TD Kollam

7. Learned counsel for the applicant reiterating the averments made in the OA, vehemently argued that the applicant has been transferred much before completion of normal tenure (i.e. 4 years) of service at a station, solely as a punitive measure. Transfer of the applicant at a distant place is made on






the strength of malafide intention of the respondents so as to put the applicant in great difficulty. Impugned transfer order has been issued closely on the issue of charge memo levelling the allegation of unauthorised absence from duty. It is further argued on behalf of the applicant that the intention of the 1st respondent behind the impugned transfer is to victimise the applicant. On the other hand, the learned counsel for the respondents submitted that the transfer of the applicant was ordered purely on exigencies of service and all the averments made by the applicant were denied. Learned counsel for the respondents stated that the applicant left the Headquarter for joining her husband without taking prior permission from the competent authority and even after expiry of the first spell of leave she did not care to join her duty. In this context, it is to observe that whether the applicant could join at the appropriate time or she proceeded on leave with sanction of the appropriate authority, all these are the matters to be enquired into. The fact that is to be looked into by this Court is that whether such an action is taken on the basis of an influence by any authority or as a routine nature. The impugned transfer order which has been said to be forwarded to the applicant, shows that " she is transferred as JTO Phones, Kulathupuzha, with immediate effect". The question comes before me is that when the impugned transfer order has been issued, the applicant was absent whether unauthorised or otherwise, and issuance of a copy of that order in anticipation that she will come and join in the new place of posting, cannot be said to be a sure ~~fraternity~~ <sup>✓</sup>. This shows that there is an element of influence by the respondents in passing the impugned transfer order when a disciplinary proceedings that is already proposed to initiate against the applicant. Moreover, there is a specific plea of the applicant in the OA that she has not completed the tenure of her services and transferring her to a new place much earlier to completion of



four years is illegal and unjustified. Neither in the reply statement nor in the additional reply statement, the respondents have rebutted the said allegation of the applicant. If an employee is entitled to continue the 4 years tenure at a place and if it is prescribed in the transfer guidelines/norms and if the applicant has been transferred prior to completion of that period, this Court is of the view that such transfer is bad in law especially when a number of persons who have already completed their tenure, are available in the Division. This court is also not convinced that the transfer of the applicant is necessitated on the exigencies of service. What was projected throughout in the proceedings that there is element of prejudice against the applicant in availing leave which according to the respondents is unauthorised. Therefore, this Court has no hesitation in holding that the impugned order is passed not in accordance with the rules/guidelines in force and the same deserves to be set aside.

8. Learned counsel for the respondents has drawn my attention to the decision reported in Gujarat State Electricity vs. A.R. Sungomal Poshani (AIR 1989 SC 1433) wherein the Apex Court has held as under:

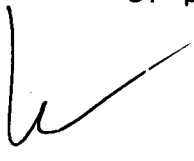
"Transfer from one place is generally a condition of service and the employee has no choice in the matter. Whenever a public servant is transferred he must comply with the order. But if there be any genuine difficulty in proceeding on transfer, it is open to him to make representation to the competent authority for stay, modification or cancellation of the transfer order. If the order of transfer is not stayed, modified or cancelled, the concerned public servant must carry out the order of transfer. In the absence of any stay of the transfer orders, a public servant has no justification to avoid or evade the transfer order merely on the ground of his difficulty in moving from one place to the other. If he fails to proceed on transfer in compliance to transfer order, he would expose himself to disciplinary action under the relevant rules."



In the present case, the applicant submitted a representation Annexure A/10, which has not been replied by the respondents. Further, learned counsel for the applicant drawn my attention to the decision in B. Varadha Rao vs. State of Karnataka and Ors. (AIR 1986 SC 955), contending that the dictum laid down in the said case is very much relevant in the case of the applicant. He has also drawn my attention to another decision of Hon'ble High Court of Kerala in P. Pushpakaran vs. The Chairman, Coir Board, Cochin and others, 1979 (1) SLR 309, wherein Hon'ble High Court has held as under:

"The right to transfer an employee is a powerful weapon in the hands of the employer. Sometime it is more dangerous than other punishments. Resent history bears testimony to this. It may, at times, bear the mask of innocuousness. What is ostensible in a transfer order may not be the real object. Behind the mask of innocence may hide sweet revenge, a desire to get rid of an inconvenient employee or to keep at bay an activist or a stormy petrel. When the Court is alerted, the Court has necessarily to tear the veil of deceptive innocuousness and see what exactly motivated the transfer".

Considering the above decisions, I fully endorse the dictum laid down in Gujarat State Electricity vs. A.R. Sungomal Poshani in a general sense. However, as per the dictum laid down in the case of B. Varadha Rao vs. State of Karnataka and Ors. and in Pushpakaran's case (supra), I am of the opinion that the alleged action on the part of the respondents in transferring the applicant by the impugned order is not in good taste of law and the procedure. In the present case, I could also see that there is an attempt of taking revenge by the employer on account of alleged unauthorised absence of the applicant. The respondents were also not able to convince this Court that the transfer was in fact made due to exigencies of service. The very fact that the person who is working in the transferee's place, was sent on deputation itself shows the lack of bona fide on the contention of public interest. Therefore, I am of the view that the



impugned action on the part of the respondents is not in accordance with the provisions of law and the impugned order deserves to be set aside.

9. Considering the entire aspects as discussed above, I set aside the impugned transfer order No. ST-G/JTOs/T&P/00-02/Pt/64 dated 9.1.2003 with a direction to the third respondent, the Chief General Manager, Telecom Circle Kerala (BSNL), Thiruvananthapuram, to dispose of applicant's Annexure A/10 representation afresh with an open mind and pass appropriate orders as expeditiously as possible, but in any case, within four months from the date of receipt of a copy of this order.

10. O.A. is disposed of as above with no order as to costs.

(Dated, the 9th April, 2003)



(K.V. SACHIDANANDAN)  
JUDICIAL MEMBER

cvr.