

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 343/2009.

this the 24th day of July, 2009

C O R A M

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

K.K.P. Attakidavu S/o late Ibrahimkutty
Kattikulam Sub Divisional Engineer
CTO, BSNL, Kavaratti
residing at Keelakochiththiyapura
Kavaratti, U.T. Of Lakshadweep.

.. Applicant

By Advocate Mr. Shafik M. Abdulkhadir,
Vs.

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

By Advocate Mr. T.C. Krishna.

The Application having been heard on 16.7.2009 the Tribunal delivered
the following

O R D E R

HON'BLE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant challenges Annexure A-1 order transferring him
from Kavaratti to Aluva before completion of his tenure, without

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following the norms and rules.

2 The applicant a native of Kavaratti joined erstwhile Department of Telecommunications as a Time Scale Clerk at Calicut TRA unit on 7.9.1979. He was promoted to Phone Inspector, Junior Telecom Officer, officiating SDE and was regularly appointed as SDE. During the entire service he was posted at various Islands of U.T. of Lakshadweep and mainland intermittently. While so, in the year 2005 volunteers were called for working in Chetlat Island, he volunteered and was selected and posted. After completion of the two year tenure at Chetlat, he sought for a transfer to Kavaratti, his native island as he was nearing the age of superannuation. But he was posted at Agatti Island. After one year and three months he was posted to Kavaratti w.e.f. 27.1.2009. While so, the 2nd respondent made a private visit to Lakshadweep Island along with his family including his brother and family. The applicant was directed to make all arrangements and he did it at his best to organise transportation and stay. Immediately thereafter, he was given a charge sheet alleging absence and dereliction of duties on 2.1.2009 (A3). The applicant denied the charges and submitted representation (A-4). Immediately on receipt of the representation, he was given a show cause notice for active political involvement and making a public speech. On submission of his reply one more Memo was issued (A-7). Applicant again submitted his reply (A8). Thereafter explanation was called for from the applicant for unauthorised absence from 14.4.2009 to 17.4.2009 (A9). He submitted his explanation (A-10). While so he was transferred along with 58 others, to Ernakulam SSA. He submitted that neither he is the junior or senior nor has he completed the tenure

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in the present station. He submitted representation A-11, but no action was taken on the same till date. Meanwhile, he was sent for training at Chennai (A-12). On return he would be relieved to join the new place. Hence he filed this O.A. to quash A-1 to the extent it transfers the applicant and for a declaration that he is entitled to be retained at Kavaratti.

The main grounds urged by the applicant are that (i) it is against the transfer policy published by the BSNL (ii) a number of his juniors/seniors are continuing at the island it is highly illegal, arbitrary and violative of all canons of service jurisprudence, with the malafide intention to harass him (iii) only the applicant has been transferred to a far off place without calling for option and (iv) due to personal problems/illness he is not able to shift his residence.

3 The respondents filed reply statement opposing the averments in the O.A. They submitted that the competent authority decided to initiate disciplinary action against the applicant under Rule 35 of BSNL CDA rules 2006 **for unauthorised absence**. The applicant refused to comply with the direction of the PGMT to prepare Utilisation scheme of existing cable. They submitted that the 2nd respondent was on official visit to Kavaratti and that the transfer was made for meeting the operational exigencies. They submitted that the disciplinary proceedings are in progress and most of the issues and suitable action will be taken based on the decision of the competent authority. The applicant's transfer was necessitated so as to avoid operational crisis. They denied any violation of norms or malafide in the transfer, which is purely based on exigencies of service.

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4 The applicant in his rejoinder denied the allegations in the reply statement. He stated that he had no information regarding the visit of 2nd respondent for inspection. Copy of the inspection report was not given to the applicant. He has not been informed of any utilisation of scheme of existing cable as alleged in the reply statement.

5 We have heard learned counsel for the parties and perused the records produced before us.

6 The learned counsel for the applicant submitted that the transfer of the applicant is against all accepted norms of transfer, highly illegal, arbitrary and violative of the principles of natural justice and equity, it is issued not as a routine one after consideration of all facts but a punishment for inviting the wrath of the 2nd respondent for reasons best known to him, he has hardly completed 5 months at his present station after serving outside for more than two years at Chetlat island, an unpopular station where nobody volunteered to work and the applicant's personal difficulties to move out having two aged dependent sisters and illness of the applicant himself and that the applicant is at the verge of retirement. The learned counsel for the respondents on the other hand, argued that the transfer of the applicant is not done as a punishment, the competent authority is yet to decide on the disciplinary action to be taken against the applicant and that transfer is an incident of service, it is open to the employer to transfer an employee to any place, in the interest of administration.

7 True, transfer is an incidence of service. It is for the Administration to take right and proper decisions and ordinarily the

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Courts shall not interfere in such decision of the Administration unless they are violative either by malafide or by extraneous consideration. In this case, it is seen from the reply statement that this is not a general rotational transfer. The respondents have not followed the guidelines of transfer in the case of the applicant.

8 As per the guidelines on rotational transfer issued by Government of India, the employees are permitted to submit a choice of three stations, out of the vacancies notified or request for retention for one more year, in the same station on personal grounds. All these are duly considered by the Administration before general transfer orders are issued. But in this case no such option was called for from the applicant.

9 It is worthwhile to examine the guidelines published by the BSNL as per notification dated 7.5.2008.:

5 **Basis of transfer:** Transfer shall not be purely based on tenure decided by the transfer policy. Transfers shall also be based on competencies and skills required to execute the work or to provide an opportunity to employees to develop competences as per job rotation requirement. Transfers shall be based on:

(a) Vacancies created due to promotions, creations of posts and retirement;

(b) Job rotation requirement in synchronization with period specified for post, station/and circle tenure;

(c) Past experience in various functions and nature of jobs handled

(d) Surplus and/or shortages at any location.

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Transfer can be effected due to any one of the following criterion:

- (a) to provide replacement for a specific post/cadre with a specialised or desired qualification and/or suitable experience as per company need
- (b) to meet the business requirement of BSNL
- (c) to bridge manpower deficit or to provide reinforcement in view of business requirement.
- (d) placement under compassionate grounds
- (e) to adhere to government regulation /ruling/ guidelines as applicable (as amended from time to time).

None of the grounds listed above applies in applicant's case.

The case of the applicant is that he wanted to continue in his native place as many of his juniors and seniors are continuing at the Lakshadweep islands, he has only about 3 years left for superannuation, no option was called for from him as required under the guidelines in the case of a general transfer.

10 It is seen from the impugned transfer order that all the 59 employees except the applicant and another official at Serial No. 4, as his replacement are transferred from one floor to another floor in the same building or to the nearby places, therefore, they are not adversely affected by the impugned transfer order. Only in the case of the applicant that the transfer is being ordered to a far away mainland which would affect him adversely.

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11 The respondents in their reply statement made it clear that the transfer order was necessitated due to the stand taken by the applicant on various occasions. Having heard the counsel on either side and after perusal of the pleadings we are of the view that though the transfer looks like a rotational transfer it is not a transfer simpliciter. The respondents in the reply statement submitted as follows:

"3 It is true that the applicant was transferred from Kavaratti to Aluva vide Annexure A-1 order. The said transfer was not done as a punishment. It was necessitated due to the stand taken by the applicant on various occasions. There was total failure from the side of the applicant in complying with the orders as well as reporting and attending duties properly. The transfer was made on unavoidable circumstances so as to meet the operational exigencies and to avoid operational crisis."

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11 As already pointed out the order was issued under some special circumstances for meeting the operational exigencies. The disciplinary proceedings are in progress on most of the issues highlighted here and suitable action will be taken based on the decision of the competent authority. Applicant's transfer was necessitated so as to avoid operational crisis. Transfer is an incident of service. It is open to the employer to transfer the applicant to the best suited place. There is no violation of any norms and there is no malafides. It was purely based on exigencies of service...."

12 The learned counsel for the respondents relied on the judgment of the Apex Court in Mohd. Masood Ahmad Vs. State of UP (2007 (4)KLT 457) and vehemently argued that the order of transfer is a part of the service conditions of an employee which should not be

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interfered with ordinarily by a Court of law unless the court finds that either the order is malafide or that the service rules prohibit such transfer or that the authorities who issued the orders were not competent to pass the orders. I am in full agreement with submission of the learned counsel for the respondents.

13 From the averments in the reply statement it emerges that extraneous considerations have weighed heavily in precipitating the transfer order of the applicant to the mainland. In favour of the applicant it has to be stated that when no one was willing to take on a hardship posting to Chetlat, he alone volunteered to do so and excelled in discharging his duties there, as evidenced by A-2. Para 8 of A-2 which is part of the circular issued by TDM Kavaratti, who is the controlling officer of BSNL for Lakshadweep Islands is extracted below"

"On analizing the fault rates it is seen that only Chetlat Exchange has achieved the target of 5%...All are requested to see that the fault rate at 5% is reached at the earliest."

The applicant worked in Chetlat from April 2005 to September, 2007. He explains the many items of work, he could successfully do, during his tenure at Chetlat which is not controverted by the respondents. Even after completion of the two year tenure at Chetlat, he could not be posted to Kavaratti but only to Agati in the first instance and to Kavaratti only in January, 2009. The circumstances and the reasons leading to an able and sincere officer changing in to an irresponsible one within an year, is not stated by the respondents.

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14 Having heard the learned counsels for the parties and and having gone through the pleadings carefully, I am satisfied that this is not a transfer simpliciter. The transfer has been ordered on extraneous grounds as stated by the respondents in the reply statement. They have not followed the norms of general transfer in the case of the applicant. It has been clubbed with transfer of others to make an impression that it is a general transfer.

15 In this view of the matter, I am of the view that the transfer of the applicant is made on extraneous consideration and as such this is a fit case for the Tribunal to interfere with the impugned transfer of the applicant. Accordingly the O.A. is allowed, Annexure A-1 order to the extent it relates to the transfer of the applicant is quashed and set aside.

16 The O.A. is disposed of as above. No costs.

Dated 24th July, 2009


K. NOORJEHAN
ADMINISTRATIVE MEMBER

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