

CENTRAL ADMINISTRATIVE ITR IBUNAUNAL
BANGALORE DIVISION

Second Floor,
Commercial Complex,
Indiranagar,
Bangalore-38.

Dated: 21 DEC 1993

APPLICATION NO(s) (s) 11 of 1993

APPLICANTS/NTS:

Aruchuthanamachandran Naik / s/s Secretary, Ministry of Communications,
New Delhi and Others, etc.

TO. TO.

1. 1. Dr. M. S. Nagaraaja, Advocate, etc,
No. 11, Second Floor, etc,
First Cross, Sujatha Complex, etc,
Gandhinagar, Bangalore-9.
2. 2. Chief General Manager, etc,
Karnataka Telecom Circle, etc,
Telecom Centre, No. 1, etc,
Old Madras Road, Ulsoor, etc,
Bangalore-8.
3. 3. Sri M. Vasudeva Rao, etc,
Central Govt. Stng. Counsel, etc,
High Court Bldg, etc,
Bangalore-1.

SUBJECT: Forwarding of copies of the Orders passed by by
the Central Administrative Tribunal, Bangalore.

-XXXXXX-

Please find enclosed herewith a copy of the
ORDER/STAY ORDER/INTERIM ORDER/ etc, Passed by this Tribunal
in the above-mentioned application(s) on 01-12-1993.


for DEPUTY REGISTRAR
JUDICIAL BRANCHES.

gm* gm*

O/C Issued



CENTRAL ADMINISTRATIVE TRIBUNAL

BANGALORE BENCH

ORIGINAL APPLICATION No.11/93

THIS THE 1ST DAY OF DECEMBER, 1993

SHRI JUSTICE P.K. SHYAMSUNDAR .. VICE CHAIRMAN

SHRI V. RAMAKRISHNAN .. MEMBER (A)

Sri Achuth Ramachandra Naik,
aged 51 years,
S/o. Sri Ramachandra Purasayya Naik,
C/o. V.S. Desai,
Kencha Road,
Karwar - 581 301. Applicant

(By Advocate Dr. M.S. Nagaraja)

Vs.

1. Union of India
represented by
the Secretary to Government
Ministry of Communication
Sanchar Bhavan
New Delhi.

2. The Director General
Telecommunications
New Delhi.

3. The Chief General Manager,
Telecommunications,
Karnataka Circle,
Gandhinagar,
Bangalore. Respondents

(By Advocate Shri M. Vasudeva Rao)
Central Govt. Standing Counsel.

ORDER

Shri V. Ramakrishnan, Member (A).

The applicant, an Assistant Engineer, Telecom Dept.
has challenged his transfer to Mahanagar Telephone Nigam
Limited (MTNL). We have heard Dr. M.S. Nagaraja, the learned
counsel for the applicant as also Shri M. Vasudeva Rao, the
learned standing counsel. Dr. Nagaraja has brought to our



notice certain communications which make it clear that the requirement of permanent absorption in a public undertaking is exempted so far as Mahanagar Telephone Nigam Limited is concerned initially for a period of five years which was subsequently extended. We are informed that the further extension also has expired on 30.9.1993.

2. Pending the final decision regarding the question of permanent absorption in Mahanagar Telephone Nigam Limited and the modalities thereof, Dr. Nagaraja states that the impugned order is in the nature of transfer on foreign service. It is asserted in the pleadings that Government Servants cannot be transferred to foreign service against their will. Dr. Nagaraja however concedes that in terms of proviso to F.R.110(a), the Government has the authority to transfer a government servant to foreign service such as the present one without taking his consent. He, however, argues that the impugned order has not been issued by the competent authority. We find from Appendix III to F.Rs and S.Rs. - Sl.No.29 that the Head of Department has full power in this regard and the order of transfer has been issued by the Telecom Commission of the Govt. of India as at Annexure-A4 signed by the Assistant Director General presumably with the approval of the Head of Department.

3. The other contention is that persons who have worked longer in Karnataka Circle have not been transferred and this is not a very strong ground for assailing the transfer as it is competent for the department to select suitable people for transfer. The applicant further states that his wife is working in his present place of posting. ~~But~~, ^{also} This will not a total bar to his transfer when the post entails All India Transfer Liability.

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4. Dr. Nagaraja refers to F.R. 115 and apprehends that unless there is a commitment by the Mahanagar Telephone Nigam Limited to pay pensionary contributions to the Govt. or unless the Govt. ~~beats~~ ^{assists} the same, the applicant himself will be called upon to make such payment for reckoning the period of foreign service as qualifying service for Pension. We had enquired from the learned standing counsel the actual position in this regard and for an assurance from the respondents that the period spent on foreign service in M.T.N.L. will count for pensionary benefits without the applicant having to make any pensionary contribution. The learned standing counsel is not able to throw any light on this question, but contends that it is a mere transfer and it is not in the nature of transfer on foreign service. As M.T.N.L. is admittedly a company registered under the Companies Act and the government servant in this organisation will receive his pay from a source other than the Consolidated Fund, the impugned order of transfer is undoubtedly a transfer on foreign service and we do not know the basis for the stand of Shri M.V. Rao.

5. In the circumstances, we direct that the department can implement the order of transfer of the applicant to M.T.N.L. only after they have taken an appropriate decision so as to ensure that the applicant's pensionary interest does not suffer on his transfer to M.T.N.L. after formulating the policy in this regard.

6. With the above observations, this application stands disposed off with no order as to costs.

TRUE COPY

Sd/-

(P.K.SHYAMSUNDAR)
VICE CHAIRMAN

SECTION OFFICER
CENTRAL ADMINISTRATIVE DEPT.
ADDITIONAL MEMBER
BANGALORE

(V. RAMAKRISHNAN)
MEMBER (A)