

CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH

Second Floor,  
Commercial Complex,  
Indiranagar,  
Bangalore-560038.

Dated: **9 SEP 1993**

APPLICATION NO(S) 669 of 93

APPLICANTS: D. Subbaiah

RESPONDENTS: Chief General  
Manager, Telecom, Karnataka  
Circle and others.

TO.

① Sri. P.A. Kulkarni  
Advocate, 48, 57<sup>th</sup> A' Cross,  
4<sup>th</sup> Block, Rajajinagar  
Bangalore-560010.

② Sri. M.S. Padmarajiah,  
Central Govt Stng Counsel,  
High Court Building,  
Bangalore-1

Subject:- Forwarding of copies of the Order passed by  
the Central Administrative Tribunal, Bangalore.

Please find enclosed herewith a copy of the  
ORDER/~~STAY~~/INTERIM ORDER, passed by this Tribunal in the  
above said application(s) on 20-8-93.

gm\*

*for* N. Anand  
DEPUTY REGISTRAR  
JUDICIAL BRANCHES.

9/9/93

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BANGALORE BENCH, BANGALORE

DATED THIS DAY THE 20TH OF AUGUST, 1993

Present: Hon'ble Justice Mr.P.K. Shyamsundar Vice Chairman

APPLICATION NO.669/1993

Shri D. Subbaiah  
Aged about 48 years,  
Selection Grade Sweeper,  
O/o the Assistant Engineer,  
Circle Telecom Stores Depot,  
Bangalore - 560 079

Applicant

( Shri P.A. Kulkarni - Advocate )

v.

1. Chief General Manager  
Telecom, Karnataka Circle,  
Telecom Building,  
No.1, Old Madras Road,  
Ulsoor,  
Bangalore - 560 008
2. General Manager,  
Bangalore Telecom District,  
Bangalore - 560 009
3. Assistant Engineer,  
in Charge of Circle  
Telecom Stores Depot,  
Bangalore - 560 079

Respondents

( Shri M.S. Padmarajaiah - Advocate )

This application has come up today before  
this Tribunal for orders. Hon'ble Justice Mr.P.K.  
Shyamsundar, Vice Chairman made the following:

ORDER

In this application no serious question  
of law or something that needs to be debated arises  
for consideration. The problem is one of settling

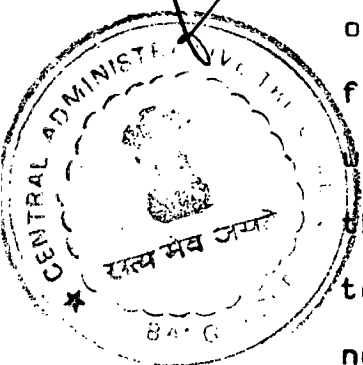


administrative matters pertaining to the respondents institution stated to be over staffed with 8 sweepers working against the sanctioned post of 7 sweepers. This state of affairs has apparently prevailed from quite a long time. It shows that from the year 1972 to 1985, 8 people were working as Sweepers against the sanctioned strength of 7 Sweepers.

2. This imbalance appears to have been noticed or taken note of by the administrative top brass who suggested that out of the sweepers working in this office one of them should be shifted with the post to a sister unit at Bangalore Shankarapura Telephone Exchange. Incidentally, I may mention that the controversy herein pertains to a Sweeper hailing from the Telephone Department at Bangalore. I have perused the files pertaining to this controversy and have found that when none of the 8 sweepers working at the CTSD volunteered for being shifted to the Shankarapura Exchange in terms of the directions issued by the administrative head, the official who was working longest in the establishment was picked up and transferred to the Shankarapura Exchange and was asked to report there and that is the gist of the impugned order.

3. Heard Shri P.A. Kulkarni for the applicant and learned Standing Counsel Shri M.S. Padmarajaiah

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for the respondents. Room for interfering in these matters of transfers is very limited. Galore of authorities of the Supreme Court lay down that unless an order of transfer is mala fide and has been passed on collateral considerations, Court should not interfere in these matters which purely dwell within the sphere of the administrative domain of the Department. Of course the Court can always interfere if it is found that the transfer itself is not on public interest. The above is an admitted position in law. Neither side dispute it. I do not also wish to cite any authorities in this context. Suffice it to notice that it is no part of the applicant's case that the order is the result of mala fide exercise of power but it does say that it is done to accommodate one Narasimhaiah who was working as a Watchman etc. etc. The strongest argument by the learned counsel for the applicant is that if the entire exercise is undertaken to ensure maintenance of parity vis-a-vis the posts and the people manning the posts, the latest entry into the cadre should have been removed and posted outside. That of course is a principle generally followed in the case of retrenchment of an employee with the management being always enjoined to follow the last come first go policy. There is no room to adopt that principle because the instant case is not one of retrenchment. I see from the file 8 people are working against 7 posts with one of them being paid against the post of a Chowkidar. This imbalance had to be corrected and that is the reason why the head of office suggested that one post should



be shifted to the Shankarapura Exchange and one Sweeper also transferred with or without consent of the person making it clear that if it without consent then the Sweeper who was long standing in the establishment should be disturbed. Well the order could have been otherwise making the person who entered the cadre more recently to be sent over to the other institution instead of one who was long standing but this being a case of transfer and in the case of transfer the principle is as I have understood is that one who is long standing is transferred as against those whose tenure is comparatively lower. Be that as it may, whether it is long standing or short standing it is purely a question of policy. There probably is nothing wrong with in ordering shifting of the person who has stayed longest in a particular post. So long as somebody has not been deliberately picked and chosen for being uprooted nobody can possibly complain of any injury inflicted by a plain and simple order of transfer from one office to another in the same town taking note of the fact that a person has stayed in a particular position for a long time.

4. But then this shifting involves some consequences for the transferred official who in this case finds to be somewhat difficult to contend with. Although I have been hearing this matter off and on when it started before me on 6.8.93, I was never told that the applicant's wife is a paralytic and is completely bed ridden with the result the presence of the applicant is required

for giving attention to her. The applicant's transfer to Shankarapura Exchange which is quite far off from the place where the applicant is presently working it is urged would result in considerable hardship because he will not be able to devote much attention to his wife. If that is so, it is certainly open to the applicant to tell the Department that he has this problem on hand and, therefore, it will be difficult for him to give full attention to his bed ridden wife if he is shifted from the office where he is now working to the office at Shankarapura. He could have stated this even at the time when options of transfer were called by the office. He could have certainly represented to the office bringing to their notice that he is not able to go to Shankarapura Exchange because he has got to stay nearby to his house to attend on his bed-ridden wife. Well, I am not in a position to investigate these matters and nor does all these lie within my purview. But actually it is a matter for the Department. If the Department is told about these difficulties, I am quite sure they might lend a sympathetic ear and substitute somebody else in place of the applicant to take position at the Shankarapura Exchange but then the ball lies in the applicant's court. He will have to make a suitable representation to the Department setting out his problems. Instead of representing to the departmental authorities, he has come to this Tribunal complaining that he had been hit by an earthquake an argument



I cannot appreciate. However, such order will not come in the way of applicant in making a representation to the Department and asking the Department to cancel the order of transfer so that he can continue in the CTSD office itself. If he makes such a representation within a week, I direct the Department to dispose it off within two weeks thereof after giving genuine and earnest consideration to the grounds urged by the applicant seeking cancellation of the transfer order. No costs.



*Dr. ...*  
*Sd/-*  
VICE CHAIRMAN

**TRUE COPY**

SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL DEPT.  
BANGALORE

B-638

CENTRAL ADMINISTRATIVE TRIBUNAL: BANGALORE

DATED THIS THE 8TH DAY OF OCTOBER, 1993.

PRESENT:

Hon'ble Mr. Justice P.K. Shyamsundar,

.. Vice-Chairman.

And

Hon'ble Mr. V. Ramakrishnan,

.. Member (A).

CONTEMPT PETITION NUMBER 33 OF 1993 IN O.A. No. 669/93

Sri D. Subbaiah,  
S/o Channaiah, Aged about 48 years,  
Occ: Selection Grade Sweeper,  
O/o the Assistant Engineer,  
Circle Telecom Stores Depot,  
Bangalore-560 079.

.. Petitioner.

(By Sri P.A. Kulkarni, Advocate)

v.

1. Shri Jitendra Mohan,  
Chief General Manager,  
Telecom, Karnataka Circle,  
Telecom Building No.1,  
Old Madras Road,  
Ulsoor, Bangalore-8.
2. Shri N.S. Ramachandra,  
General Manager,  
Bangalore Telecom District,  
Bangalore-560 009.
3. Shri M.L. Prasad,  
Assistant Engineer in-charge of  
Circle, Telecom Stores Depot,  
Bangalore-560 079.

.. Respondents.

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This application having come up for admission to-day,  
Hon'ble Vice-Chairman made the following:-

ORDER

Having heard Mr. P.A. Kulkarni, learned counsel for the  
petitioner, we see no contempt to take action against the respon-  
dents for having disobeyed our order. If the petitioner is





aggrieved by the latest order it is open to him to challenge that order in an independent application. With this observation we dispose of this petition making it clear to the petitioner to challenge the latest order of the department in a separate application, if he so desires.

Sd/-  
MEMBER(A)

Sd/-  
VICE-CHAIRMAN.



TRUE COPY

Sd/-  
SECTION OFFICER  
CENTRAL ADMINISTRATIVE TRIBUNAL  
ADDITIONAL BENCH  
BANGALORE  
18/10/93