

CENTRAL ADMINISTRATIVE TRIBUNAL
BENCH AT MUMBAI

ORIGINAL APPLICATION No. 92 /1997

Date of Decision: 7.3.97

D. Pushparaj

Petitioner/s

Shri A.I. Bhatkar

Advocate for the
Petitioner/s

V/s.

Union of India & 3 Ors.

Respondent/s

Shri S.S. Karkera for R-1 and 2.

Shri R.K. Shetty for R-4.

Advocate for the
Respondent/s

CORAM:

Hon'ble Shri B.S. Hegde, Member (J).

Hon'ble Shri

- (1) To be referred to the Reporter or not ?
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

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(B. S. Hegde)
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG. NO.6, PRESCOT RD, 4th FLR,

MUMBAI - 400 001.

ORIGINAL APPLICATION NO. 92/97.

DATED THIS 7th DAY OF MARCH, 1997.

CORAM : Hon'ble Shri B.S.Hegde, Member (J).

D. Pushparaj,
Accounts Officer in the Office of
Chief General Manager,
Maharashtra Telecom Circle,
residihg at A-51,
Transit Quarters, P. K. Road,
Mulund, Mumbai - 400 080.

... Applicant.

By Advocate Shri A.I.Bhatkar.

Vs.

1. Union of India,
through Deputy Director General,
Telecom Commission,
Staff Establishment - Accounts,
Sanchar Bhavan, 20, Ashoka Road,
New Delhi - 110 001.

2. Chief General Manager,
Maharashtra Telecom Circle,
GPO Bldg, Mumbai - 400 001.

... Official
Respondents

By Advocate Shri S.S.Karkera (R-1 and 2).

3. S.Rosi,
Accounts Officer,
Office of the Chief General Manager,
(Telecom) Quality Assurance Circle,
Viswas Bhavan, Cock Burn Road,
Bangalore.

4. M.S.Ragini,
Accounts Officer,
Office of General Manager(North),
Wadala Telephone Exchange,
Wadala, Mumbai - 400 031.

... Private
Respondents.

By Advocate Shri R.K.Shetty (R-4).

I O R D E R I

I Per Shri B. S. Hegde, Member (J) I

Heard Shri A.I.Bhatkar for Applicant, Shri Karkera
for Official Respondent Nos.1 and 2 and Shri R.K.Shetty for
Respondent No.4.

2. The short point for consideration in this OA is that
the applicant has challenged the transfer order issued by respondent

(Signature)

dated 8/1/97 and urged that suitable direction be issued to respondents to transfer the applicant to his Home Circle, i.e. Tamil Nadu Circle against the first vacancy available at Tamil Nadu Circle.

3. The applicant has heavily relied upon the policy guidelines adopted by the respondents' department in the case of transfers and Postings in respect of Accounts Personnel in the cadre of Junior Accounts Officers and above. According to him, he should have been transferred first to Tamil Nadu circle as per the policy norm. Since the respondents have issued the transfer order in favour of respondent Nos. 3 and 4 vide their order dated 8/1/97, against which he filed OA and obtained exparte Interim Order and the matter came for further hearing on 5/2/97. The respondent No.4 had filed an application for vacation of Interim Order. The Official respondents have not filed any reply so far and accordingly exparte stay was further continued. The matter was fixed for hearing on 13/2/97. During the course of hearing a query was posed to the Counsel for Official respondents, as to whether respondent No.4 has been relieved subsequent to the transfer, the answer given was in the negative. Accordingly, the Official respondents had therefore been directed to file reply stating the correct state of affairs. Today when the matter came for hearing, counsel for official respondents again submitted that they were unable to file reply and sought for further time. In that connection, the learned counsel for official respondents draws my attention to the earlier decision of this Tribunal and submitted ~~x~~ suitable orders be passed.

4. In this connection, it will be relevant to narrate the contention of the learned counsel for applicant in para 4.9, in which ~~he~~ says that transfers have to be effected of those persons who are away from the Home Circle for the longest duration and applicant is entitled to posting to Home Circle as he has been away from the Home Circle for the longest time. Despite the same, respondents have transferred respondent

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Nos.3 and 4 which is contrary to guidelines. Further he states as per the policy decision, 25% of the vacancies are to be filled up from amongst the ladies, SC/ST employees and those who are due to retire from the service shortly together. The respondents have filled up three vacancies in the Tamil Nadu Circle out of 12 vacancies available i.e. 25% have been filled by posting ladies. The Counsel for applicant submits that at present there are 9 vacancies available at Tamil Nadu Circle and the applicant can be accommodated at Tamil Nadu Circle. He has made representation to the competent authorities which has not been answered positively by the respondents.

5. However, on perusal of the records, I find on the basis of the representation of the applicant, the Chief General Manager forwarded the request of the applicant and others stating that transfer of the above Accounts Officers are recommended with substitute and they will be relieved only on joining of their substitutes. His name has already been enlisted for transfer to Tamil Nadu as and when a substitute is available, he shall be posted at Tamil Nadu Circle. The contention of the Learned Counsel for the applicant is that respondent Nos.3 and 4 are juniors and they have been transferred but he has not been transferred so far.

6. However, on perusal of the policy guidelines of the department, I find the competent authority reserves the right to consider the request for transfer/reallotments/postings on compassionate ground in any cadre in relaxation of the above provisions and each such case will be decided on merits at a senior level. The present respondent No.4 alongwith respondent No.3 were transferred to Madras Circle at their own request on compassionate grounds.

7. In the reply to OA, the respondent No.4 has stated that she was promoted as Accounts Officer and joined at Bombay, she is a married lady and her husband is working for Tamil Nadu State Government services at Madurai. She has two minor children studying at Madurai. She is alone at Bombay for the

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sake of earning her bread and to compensate the family expenditure and to meet the educational expenses of her children, etc. Accordingly, she made an application to the competent authority which has been considered and at her request, she has been transferred on compassionate grounds to Tamil Nadu Circle vide order dated 8/1/97.

8. In this OA, the applicant has not made out how her transfer to Tamil Nadu has in any way prejudiced the interest of the applicant. His name has already been recommended but his case cannot be compared with the case of respondent No.4. Similar issue was raised before the Tribunal in OA Nos.171/96, 173/96 and 365/96 stating that the applicants did not have any legal claim for being transferred to Tamil Nadu as the instructions contained at Annexure A1 and A2 are guidelines and do not give any legal claim to the applicants. However, the applicants have a right to be considered for posting to Tamil Nadu Circle in terms of the guidelines and the respondents counsel has already made a statement that the respondents would be considering the case of the applicants for posting to Tamil Nadu Circle on the basis of the list at Annexure R1. The applicants would be at liberty to submit any representation in as far as there is any mistake in the date of joining as shown in the list at R1 and the case of the applicants for transfer to Tamil Nadu/Madras should be considered by the respondents in terms of list as already agreed by them. The OA is disposed of.

9. In the instant case also, the applicants name has already been recommended and his name is listed for transfer to Tamil Nadu Circle as and when a substitute joins at Bombay but he shall have no grievance for the transfer already effected in favour of respondent No.4 who is to join her children and husband at Madurai as stated earlier. The competent authority after considering the request made by the respondent No.4 and keeping in view her state of

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affairs, have passed the transfer order, which should not come in the way of her being relieved on the basis of the transfer order already issued on 8/1/97.

10. For the reasons stated above and in the facts and circumstances of the case, I am satisfied that there is no justification in extending the stay against the transfer of respondent No.4. Accordingly, the stay is vacated. Accordingly, I hereby direct the respondents to relieve respondent No.4 forthwith and allow her to join at Tamil Nadu Circle by ~~Issue~~ ^{before} 15th of the earlier transfer order dated 8/1/97, preferably on or before 20th of this month.

11. In so far as the applicant is concerned, needless to reiterate, that since the applicants name has already been listed and recommended for transfer to Tamil Nadu Circle on a substitute being available. Accordingly, the respondents are hereby further directed to consider the request of the applicant and shall not transfer any of his juniors to Tamil Nadu Circle before his transfer is effected. The OA is disposed of with above direction but no orders as to costs.


(B. S. HEGDE)
MEMBER(J)

abp.