

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 4364/2013

Reserved on:15.01.2016
Pronounced on:21.01.2016

**Hon'ble Mr. A.K. Bhardwaj, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)**

Ritu Raj Basant
S/o Shri Kali Ram
R/o G-6/91-92, First Floor,
Sector-11, Rohini, Delhi-110085
Working as AM (NWPM-III) with
the respondent no.2 ... Applicant

(Through Shri S.S. Dahiya, Advocate)

Versus

1. Union of India
Through its Chief Secretary
Department of Telecom
Sanchar Bhawan, New Delhi-110001
2. Bharat Sanchar Nigam Ltd.
Through its Chairman cum Managing Director,
Bharat Sanchar Bhawan
Harish Chander Mathur Lane,
Janpath, New Delhi-110001 ... Respondents

(Through Shri Puneet Taneja, Advocate)

ORDER

Mr. P.K. Basu, Member (A)

The applicant, who is a Junior Telecom Officer (JTO), had been promoted along with others to the grade of Sub Divisional Engineer (SDE) in Bharat Sanchar Nigam Limited (BSNL) under competitive quota (33%) on the basis of Limited Departmental Competitive Examination (LDCE) held on 4.03.2012 vide office order dated 2.07.2013. He was posted in tenure circle North

East-I. Regarding joining time, the office order provided as follows:

"3. All CGMs concerned may please ensure that the promotion/ posting orders in respect of officers found eligible after fulfilling the above conditions are issued in time to enable the officers to join their promotional assignment, and the officer is relieved within the prescribed time limit of 40 days (including the joining time) from the date of issue of this order.

4. In case the officer concerned fails to join the promotional assignments within the prescribed period of 40 days, he/ she should not be allowed to be relieved or join the post thereafter. In such a case, the promotion order shall become inoperative and the matter shall be reported to this office for further necessary action."

Thus, this was both a promotion and posting order.

2. The officials so promoted had two options. Either they comply with the order and join the new place of posting or they could forgo the promotion and continue in the present post in the lower grade.

3. The applicant, however, wishes to avail promotion but continue in Delhi i.e. headquarters of BSNL and here lies the controversy. In fact, the applicant's request was considered by the BSNL and rejected vide letter dated 10.12.2013 with a direction to the concerned officer to relieve the applicant immediately. The applicant, admittedly, has not complied with this order. This OA, therefore, has been filed seeking the following reliefs:

(i) direct the respondent to cancel the impugned posting order dated 2.07.2013 bearing office

order No.2-16/LDCE/2012-Pers-II qua the applicant and consequently declare the impugned order dated 10.12.2013, letter No.2-16/LDCE/2012-Pers-II as null and void; and

- (ii) direct the respondent to retain the applicant at Delhi unit/ circle only after promotion, where the applicant is presently posted.

4. The applicant has taken the following grounds for seeking such reliefs:

- (a) In case of another employee who is junior to the applicant namely Shri Vasanth Kumar R.C., his transfer has been modified on the 'spouse' ground.

The spouse ground basically is that as far as possible, the requests for posting of husband and wife at the same station shall be considered if the employee's spouse is serving in Central/ State Government or Public Sector Undertaking. The applicant states that his wife is working at Delhi and, therefore, on this ground, his transfer should have been stayed;

- (b) According to note filed by the respondents at Annexure R-1, the transfer/ posting guidelines stipulate that:

- (i) The JTOs, who are presently working on deputation/ temporary transfer basis in BSNL C.O. from other recruiting circle, who have requested for retention in BSNL C.O.

may be retained in BSNL C.O. itself on account of administrative requirement.

It is stated that the applicant's department had made a strong recommendation for retention of the applicant in the same unit as there is severe shortage of staff but that was not considered.

5. Learned counsel for the respondents pointed out that at Annexure R-1, paragraphs 5 and 8.1 provide as follows:

"5. Cases of transfer request on medical ground or where spouse is working in State Government/ Central Government/ PSUs etc. and requests received for transfer/posting including VIP references will be dealt with separately and subsequently on merits and prevalent instructions as per administrative feasibility by the Competent Authority.

xxxx xxxx xxxx xxxx

8. As regards the requests received/ called for i.r.o. posting on promotion from JTO to SDE (Telecom) Grade, the following is proposed:

(i) The requests of such officers, who are earmarked for posting to tenure circles/ shortage facing circles as per the criteria proposed in para 1&2 above, may not be acceded to."

6. Moreover, it is stated that no change of posting order in case of tenure circle has been entertained. In fact, the applicant had made a representation on 6.08.2013 for being retained at Delhi and vide letter dated 10.12.2013, this was rejected. It is further explained that as per the administrative requirements, the management of BSNL has been posting officers having low rank in the merit list of LDCE, on promotion to tenure circles

such as AS, A&N, J&K, NE-I, NE-II and NETF to bring down the manpower shortage in the said tenure circles. The guidelines/ criteria followed for such posting in tenure circles is the rank in LDCE as well as the seniority quota promotion. In other words, candidates from amongst the promoted JTOs in the order of their merit/ LDCE starting from the bottom of the list are posted/ transferred to tenure circles. However, SC/ST candidates are posted to tenure circle only to the extent of 15% and 7.5% respectively as provided in the promotion policy to ensure that only minimum dislocation takes place in these categories who are normally placed at the bottom of the merit list keeping in view the lower cut off prescribed for such reserved category officers. Hence following the same footsteps of the past, low ranking candidates as per the merit list were provided the posting in tenure circles. In other words, candidates from amongst the promoted JTO's in the order of their merit/ rank in LDCE starting from the bottom of the list, were transferred to tenure circles. As SC/ST officers normally stand in the bottom of the list selected against the reservation norms and are likely to be subjected to large scale transfer under the above criteria, it was decided to effect transfer from amongst junior most candidates in each category i.e. OBC/SC/ST as per percentage prescribed in the reservation norms of government of India i.e. 77.5%, 15% and 7.5% respectively for transfer to tenure circles so that the transfer of reserve category candidates are kept to the minimum and in consonance with the reservations norms.

7. It is further stated that since the applicant herein Shri Rituraj Basant was lower in the merit list and further fell in the category of reserved candidates, as per the norms for posting decided with respect to LDCE held on 4.03.2012, the applicant was given the posting in North-East (NE-II) Circle which is a tenure circle.

8. As regards modifying the posting of Shri Vasanth Kumar R.C., it has been explained by the respondents that Shri Vasanth Kumar was on a non-tenure post and was not on the same footing as the applicant is.

9. We have heard the learned counsel for the parties and gone through the pleadings available on record.

10. It would be clear from the reply of the respondents that they have followed a transparent policy regarding promotion and concomitant posting and transfer of these officials. BSNL has all India operations and have to man their posts all over the country including the north-east and other difficult areas. Following this policy, the applicant along with several others were posted all over the country. The applicant has not been able to convince us that there has been any malafide in his transfer to the new place of posting. In fact, by entering into this litigation, he has managed to delay his movement to the north-east for over two years. Certainly, this would have affected BSNL's work in the north-east. The applicant had clearly two choices before him. Either he could have availed of his promotion and join new place of posting or he could forgo his promotion and continue at Delhi.

He chose to do neither and involved the department in a protracted litigation gaining time so that he does not have to go to north-east.

11. Accordingly, we see no merit in this OA and it is, therefore, dismissed. We also feel that this is an attempt by a government servant to unnecessarily take shelter of the judiciary to avoid following legitimate directions of the government in the national interest and we deprecate this. We impose a cost of Rs.20,000/- (Rupees twenty thousand only) on the applicant to be payable to the respondents.

(P.K. Basu)
Member (A)

(A.K. Bhardwaj)
Member (J)

/dkm/