

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

O.A. No.021/00748/2016

&

M.A.No.1152/2016 in O.A.No.021/00748/2016

Date of CAV:24.10.2017.

Date of Order :09.11.2017.

Between :

1. N.Prashanth Rao, s/o late N.Prakash Ramulu,
aged about 53 yrs, Occ:Sub-Divisional Engineer,
O/o Senior General Manager (Maintenance),
Southern Telecom Region, BSNL Bhavan,
Adarshnagar, Hyderabad.
2. M.V.S.Ravichandra, s/o M.Suryanarayana Murthy,
aged about 48 yrs, Occ:Sub Divisional Engineer,
Optical Fiber Cable Maintenance, Telephone Exchange,
Bhimavaram, West Godavari District-534 202.
3. J.Dattatri Rao, s/o J.Hanumantha Rao,
aged about 49 yrs, Occ:Sub Divisional Engineer (OP),
O/o General Manager (Development), ITPC,
RTTC Campus, Gachibowli, Hyderabad-500 032.
4. M.Raja Rathnam, s/o Balanagaiah, aged about 52 yrs,
Occ:Sub Divisional Engineer,
Optical Fiber Cable Maintenance, Telephone Exchange,
Mahaboobnagar, Mahaboobnagar District-509 001.
5. N.Ravi Kumar, s/o late Narsappa,
aged about 52 yrs, Occ:Sub Divisional Engineer,
Telephone Exchange, Chevella, Ranga Reddy District.
6. K.Purnachandra Rao, s/o late J.K.Setty,
aged about 50 yrs, Occ:Sub Divisional Engineer,
Optical Fiber Cable Maintenance, Telephone Exchange,
Kodad, Nalgonda District-508 206.
7. T.Satyanarayana, s/o T.Narsaiah,
aged about 50 yrs, Occ:Sub Divisional Engineer(SS),
O/o General Manager Development Centre, 6th Floor,
Telephone Bhavan, Hyderabad-500 004.

(Applicant No.2 was permitted to withdraw OA by order
dated 08.09.2016).

... Applicants

AND

1. The Bharat Sanchar Nigam Limited,
rep., by its Chairman-cum-Managing Director,
BSNL Corporate Office, Barakumba Road,
Statesman House, New Delhi-1.

2. The Chief General Manager,
Andhra Pradesh Telecom Circle (BSNL),
Door Sanchar Bhavan, Nampally Station Road,
Abids, Hyderabad-500 001.

3. The Chief General Manager (Maintenance),
Southern Telecom Region, 11, Link Road,
Ganapathy Colony, Guindy, Chennai-600 032.

4. The Chief General Manager,
Information Technology Project Circle,
BSNL, 2nd Floor, RTTC Building, MIDC,
Chinchwad, Pune-400 019. ... Respondents

Counsel for the Applicants
Counsel for the Respondents

... Dr.A.Raghu Kumar
... Mrs.K.Sridevi, SC for BSNL

CORAM:

**THE HON'BLE MR.JUSTICE R.KANTHA RAO, MEMBER (JUDL.)
THE HON'BLE MRS.MINNIE MATHEW, MEMBER (ADMN.)**

ORDER

{ As per Hon'ble Mrs.Minnie Mathew, Member (Admn.) }

The applicants are Sub-Divisional Engineers in the A.P.Telcom Circle/BSNL. They are governed by the Annexure-II BSNL Transfer Policy for the purpose of transfer within the circle and also for inter-circle transfers. The circle tenure for the purpose of transfer is 18 years. As per Para 11 (f) under Section-B the executives with longest stay in a particular circle would be considered first. While female executives are also encouraged to serve in tenure postings, the policy contemplates that posting of unwilling female executives to hard tenure stations would be avoided. The hard stations have been identified as North-East, Assam, Jammu & Kashmir, Andaman & Nicobar Islands. In the recent past, Bihar and West Bengal other than Calcutta Telecom District (CTD) have also been identified as hard tenure stations. Thus, a CTD is not a hard tenure station and transfers to CTD shall be based on the All India Seniority subject to exemptions, if any.

2. After the filing of the OA, the 2nd applicant prayed for permission to withdraw the OA. Accordingly, the OA was dismissed as withdrawn insofar as the 2nd applicant was concerned.

3. The applicants submit that except for the 5th applicant, none of the applicants were within the zone of consideration for transfers based on seniority. While so, the 2nd respondent issued Annexure-III orders dated 4.3.2016 mentioning the date of entry in the territorial jurisdiction from the cadre of Junior Telecom Officer. As per the said order, the applicants are at Serial Nos.13, 48, 55, 68 and 69 respectively. The first respondent thereafter issued the inter-circle transfers in the cadre of SDE, vide office order dated 23.05.2016 transferring them from the A.P. Territorial Circle to Calcutta Telecom District. The applicants figure at Serial Nos.3, 7, 10, 11 and 16 in the transfer list.

4. It is the case of the applicants that the CTD is not a tenure station and any transfer shall be based on the All India seniority and all the SDEs in other circles are also to be subjected to transfer on the ground of equality. However, the respondents have exclusively considered the SDEs working in Andhra Pradesh, Tamilnadu and Karnataka only and ignored the senior most SDES in other circles. Further, within the A.P.Circle also there are several seniors to the applicants who have not been touched. Thus, the respondents have ignored many executives within A.P. circle and also in other circles for the purpose of transfers and adopted a pick and choose policy for effecting transfers.

5. The applicants point out that the representative Associations of the applicants made a common representation and also submitted individual representations, vide

Annexure.A-XI. It is also submitted that the respondents have declared West Bengal Telecom Circle (Except Calcutta Telecom District) as a tenure station. By virtue of not being a tenure place, there is no guarantee that the applicants once posted to CTD would be able to return back to A.P.Circle at any future point of time.

6. On 22.07.2016, this Tribunal granted interim relief by way of a status quo order in respect of the applicants and the same continues to be in force.

7. The respondents have filed a reply statement contesting the OA. They submit that as per the tenure guidelines contained in Para 11 (e) of Section-B of the Rules and guidelines of the BSNL Transfer Policy, executives would have to normally serve one hard tenure and one term in other tenure circles/SSAs. After completion of tenure, the executives would be accommodated at the choice station as far as possible and not generally disturbed for the next four years. Accordingly, the applicants' transfer orders issued on 23.05.2016 are in accordance with the BSNL Transfer Policy. As per Section-B Para 11 (d) the period of service rendered in the previous cadres/grades would also be counted for Stations/SSA tenure. For inter-circle transfer, stay will be counted from the date of regular promotion/recruitment into the grade of JTO/JAO and others equivalent to the first level of Executive hierarchy. Further, the number of officers transferred out of Circle at any time would not generally exceed 10% of the sanctioned strength in the Circle for officers up to STS level. For non-territorial Circle executives, stay of territorial circle shall be counted while computing Station/SSA/Circle tenure.

8. The respondents further submit that the stay particulars of the SDES working in A.P.Telcom Circle Territorial Jurisdiction vide its letter dated 4.3.2016 shows that all

the applicants in the present OA have rendered more than 18 years of circle tenure and are liable for inter-circle transfer. Further, though CTD circle is not a tenure circle, the management has taken a stand that if any executive want to go back to their circle of choice, the same number of executives should be substituted so that the BSNL can run the Telecom installation efficiently. Therefore, BSNL has formulated a criteria that those executives who want to come back to their circles are substituted by the executives from the circles like Andhra Pradesh, Tamilnadu, Karnataka and Kerala, which have less shortage of manpower and which contain all non-territorial circles like STR, STP and ITPC etc. It is also pointed out that the shortage of SDEs in CTD circle is 80.19%, whereas in A.P.Telcom Circle it is around 32.37% only.

9. It is also submitted that the 2nd respondent while issuing the stay particulars of executives who worked in AP.Telcom Circle, has mentioned that if any correction is required, the same should be intimated on or before 8.3.2016 failing which it will be presumed that the data furnished is correct and the same will be sent to the Corporate office, New Delhi, for further action. Therefore, the contention of the applicants that the list dated 4.3.2016 has not attained finality was refuted. Further, although the post of Sub-Divisional Engineer is an All India Cadre, for the sake of inter-circle transfer, the stay will be counted from the date of regular promotion/recruitment to the grade of JTO/JAO. It is also pointed out that in Writ Appeal No.792/2008 & batch, the Hon'ble High Court of Telangana and Andhra Pradesh at Hyderabad held that "*the nature of duties and conditions of service of the employees of the present day, what is relevant is – length of service of the employee at a particular station or particular location, which decides eligibility or otherwise of the employee for transfer but not the nature of duties or the post he was holding*". Thus, the contention of the applicants that all the Sub-Divisional Engineers transfers shall be based on the All India seniority runs

contrary to the findings of the judgment rendered in W.A.No.792/2008. It is also pointed out that there is no provision for preparing All India seniority list for transfer because choice posting is given to the officers in a particular circle after the completion of their tenures vide Rule 11 (e) of Section-B of the Transfer Policy. Accordingly, substitutes are invariably picked from the circle where the officers are to be posted on tenure completion on one to one basis for meeting the manpower requirement wherever shortage is more in SDE cadre. The transfer of the applicants has been ordered having due regard to their long stay at the circle and also due to the requirement that they have to work at one hard tenure and one term in other tenure circles/SSA.

10. With regard to the contention that there is no guarantee of return to their circle after the completion of tenure in any CTD, the respondents submit that the BSNL formulated a criteria under which all requests for transfer after completion of two years of service is strictly followed. They have therefore refuted the contention of the applicants that they may not be relieved after completion of their tenure in CTD. It is finally submitted that there is no violation of rules and that no pick and choose method has been adopted as alleged by the applicants.

11. The applicants have filed a rejoinder refuting the averments made in the reply statement and reiterating the grounds already raised. They point out that the contention of the respondents that there is no provision for preparing All India seniority list is fallacious and that the transfer policy envisages transfer within a SSA/Circle/All India on the basis of the Station/SSA/Circle/All India seniority.

12. Heard the learned counsel on both sides and perused the record.

13. The learned counsel for the Applicants drew our attention to the Annexure.A-III prepared by the A.P.Telcom Circle showing the station seniority. In the said list, the first applicant is in the 13th place, whereas the persons at Serial Nos.3 to 12 who have a longer stay than the first applicant have been exempted from transfer. Likewise, in respect of other applicants also, several persons with longer stay have been exempted from transfer.

14. The learned counsel for the Applicants also pointed out that as per Section 11 (k) of the Transfer Policy, transfer of officers upto STS level involving change of station would normally be avoided after 56 years for inter circle transfers. Hence, the respondents have no justification for exempting persons with longer stay than the applicants on the ground that they are more than 55 years of age.

15. Per contra, the learned Standing Counsel argued that the applicants have completed 18 years of service in A.P.Circle and are liable for inter circle transfer as per the Annexure.A-II BSNL Transfer Policy. She pointed out that as per the transfer policy, the criterion for deciding the longer stay is the number of years in a particular station and not All India seniority list as contended by the applicants. She also drew attention to the fact that in a similar matter, the Chandigarh Bench of this Tribunal had dismissed the OA in which similar grounds had been urged by the applicants therein.

16. The short point for consideration in this OA is as to whether the impugned transfers have been effected in accordance with the transfer policy of the respondents and as to whether there is any arbitrariness in the impugned orders.

17. The main grounds urged by the applicants for setting aside the impugned transfer orders are that -

- (i) As SDE is a All India cadre, transfers should be effected based on an All India seniority list.
- (ii) The respondents have wrongly taken the date of entry in the lower cadre of Junior Telecom Officer for the purpose of reckoning the length of stay in a particular station.
- (iii) The applicants do not fall within the zone of consideration for inter circle transfer as persons who are above them in the Annexure.A-III list dated 04.03.2016 and who have a longer stay in the circle have not been touched. Thus, the respondents have adopted a pick and choose policy, which is against the canons of justice and fairplay.

18. The applicants' contention that the transfers at the SDE level should be done on the basis of All India seniority list has been countered by the respondents stating that this issue has been considered by the Hon'ble High Court at Hyderabad in Writ Appeal Nos.792, 795 and 796 of 2008. The Hon'ble High Court after examining the transfer policy had held that "*when the transfer policy is evolved to achieve certain avowed objectives as stated in the policy itself, the employees cannot question the same unless it is demonstrably shown that there are mala fides or lack of jurisdiction or apparent arbitrariness, which would cause hardship to the employees*". It was also held that "*the tagging of tenure of service in Category 'C' with the tenure of service in Category 'B' cannot be found fault with inasmuch as such clubbing is intended to serve the stated purpose and objectives of the Transfer Policy*". The Hon'ble High Court finally held that "*having regard to the nature of duties and conditions of service*

of the employees, what is relevant is length of service of the employee at a particular station or particular location, which decides eligibility or otherwise of the employee for transfer but not the nature of duties or the post he was holding".

19. In view of the aforesaid categorical findings that it is the length of service of the employee at a particular station which decides transfer eligibility and also in view of the specific provision in Para 11 (d) of the policy, that for inter circle transfer, stay will be counted from the date of promotion/recruitment to the grade of JTO/JAO, the first two grounds raised by the applicants cannot succeed.

20. The third ground raised by the applicant is that even when there are admittedly persons with longer stay in A.P.Circle, as seen from the Annexure.A-III list, the respondents have picked them up for transfer.

21. Although the applicants have raised specific contentions in this regard in Para 4 (viii) of the OA, the respondents have only submitted that there is no violation of any of the provisions of the transfer guidelines and that the transfer orders of SDEs have been modified from time to time on medical/humanitarian grounds or as per administrative requirements. This is a sweeping statement, which does not address the specific contentions of the applicants that the persons who have had a longer stay than them in the A.P.Telcom Circle have been exempted from the inter circle transfers ordered vide Annexure.A-I dated May 23, 2016. There has been no attempt on the part of the Respondents to disclose the extenuating circumstances, if any, for exempting seniors from inter circle transfer.

22. Section 11 (f) specifically states that "*for considering executives for tenure posting on transfer, the executives with longest stay in a particular circle would be considered first*". When this is the approved guidelines/policy of the Respondent Organization, there is no explanation as to why the seniors of the applicants in terms of longer stay have not been considered first for inter circle transfer.

23. Further, the remarks column in Annexure.A-III list indicates that certain employees who are placed above the applicants, are more than 55 years of age. However, being 55 years of age cannot be a ground for exempting them from inter circle transfer as the policy stipulates that the transfer of officers involving change of station would normally be avoided after 56 years for inter circle transfers. Having regard to the conspectus of the facts of the case, we find there is some merit in the applicants' contention that the respondents have violated their own policy of taking the length of stay in a particular station as the criterion for determining seniority for the purpose of transfer. We further find that some of the applicants have specifically raised this contention in their Annexure.A-VI representations to the authorities that the transfer list was prepared by eliminating the names of women executives and also men executives who have crossed 55 years and that as per inter circle transfer policy they were not the seniors.

24. We have also considered the judgment of the Coordinate Bench of this Tribunal dismissing O.A.No.438/2014 dated 02.02.2016. The grounds raised by the applicants in the aforesaid OA are that the incumbents from only one circle have been taken and other circles have been left out irrespective of All India seniority and stay in a particular circle and that no All India seniority list has been

displayed so as to judge as to whether the persons having longer stay in their respective circles have been transferred. The other grounds raised are that individual circumstances of the applicants such as the education of children etc., have not been taken into account while ordering the transfers. In the said OA, the applicants have no case that the persons with longer stay in the Punjab circle have been exempted while ordering their transfer. In the instant case, the specific ground is that even seniors within the circle have not been considered while issuing the impugned orders. Thus, the aforesaid OA is distinguishable on facts and not exactly applicable to the present case.

25. Thus, on the basis of the material placed before us, we hold that arbitrariness is manifest in the impugned orders and that there is substance in the contentions of the applicants that the pick and choose policy adopted by the respondents is a violation of the transfer policy and also the principles of fair play and justice.

26. In the result, the impugned orders are quashed and set aside in respect of the applicants.

27. The OA is allowed as above.

28. In view of the disposal of the main OA, the M.A.No.1152/2016 stands dismissed.

29. In the circumstances of the case, the parties shall bear their own costs.

Dated: this the 9th day of November, 2017

DSN