

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 460/2016.

Dated this the 19th day of December, 2017.

CORAM:- HON'BLE SHRI ARVIND J. ROHEE, MEMBER (J)
HON'BLE SHRI R. VIJAYKUMAR, MEMBER (A)

- 1) Pawar Suryakant Baburao
Age: 52 years, Occ: Service,
"Sunit" Opp. Ramji Apartment,
Nr. SathTarka Society,
Dawkhariwadi, Nashik Road,
Nashik- 422 101.
- 2) Tantak Chandravadan Dattatray,
Age: 53 years, Occ: Service,
Minal, Plot No.9, Canada Corner,
Sharanpur Road, Nashik- 422 002.
- 3) Bhavsar Rajendra Shankar,
Age: 53, Occ: Service,
B-42/JBI/30/1 Pavan Nagar,
Cidco, Nashik- 422 009.
- 4) Ghuge Balu Dagaji,
Age: 53, Occ: Service,
Bhushan Bungalow,
Makhamalabad Road,
Nashik- 422 003.
- 5) Smt. Jayshri Jagannath Patil,
177, DGP Nagar, Kamat wadi,
Ambad Nashik- 422 010.

...Applicants

(By Advocate Shri N M Pujari)

Versus

- 1) The Office of General Manager,
Nashik Telecom District
Sanchar Bhavan, Bharat Ratna
Sir Vishveshraya Marg,
Nashik- 422 002.
- 2) Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhavan,
Janpath, New Delhi- 110 001.
- 3) Chief General Manager,
MHT Circle,
Bharat Sanchar Nigam Limited,
Telecom Circle, Santacruz,
Mumbai- 400 054.
- 4) The Deputy General Manager,
O/o. CGMT-MHT Circle,
Mumbai- 400 054.

...Respondents

(By Advocate Shri V S Masurkar)

Reserved on :- 06.12.2017.

Pronounced on:- 19.12.2017

O R D E R

Per:- Hon'ble Shri R. Vijaykumar, Member (A)

This Application was filed on 08.06.2016 against impugned orders of transfer No:- Staff-10/TTA/WD/2016/F/18 dated 23.05.2016 [Annexure A-1] of the applicants who had reverted to their substantive posts of TTA from the city area to the outer city-cum-rural areas

within Nashik secondary switching area in the same administrative jurisdiction. In the initial application, multiple reliefs were sought, restraining the transfer order and also to permit them to continue as Officiating Junior Telecom Officers (JTO). When the case was heard on 18.07.2016 on the issue of interim relief, the respondents were directed not to give effect to the transfer orders. During the hearing on 23.08.2016, the applicants complained that they were not being allowed to work at their previous offices at Nashik whereupon this Hon'ble Tribunal noted the fact that the applicants had already been reverted to their substantive posts of TTA and directed that they may be given work at Nashik and, for this purpose, continued the orders not to give effect to the transfer orders impugned in this application. The Court also noted that the reversion as TTA would be without prejudice to their rights and contentions for regularization in the post of JTO in which they had officiated at Nashik for more than 12 years.

On 17.11.2016, an MA was filed by applicant seeking amendment of his pleadings to incorporate an order No. A/STC/AE-2/JTO-OFFTG/IV/2014-15/153 dated 24.02.2016 [Annexure A-6] reverting JTO (officiating) to their substantive cadre which is of TTA w.e.f. 29.02.2016 for the purpose of attending JTO phase-I training. This MA was allowed and the applicants were asked to amend their pleadings, then read as under:

B(i) *The order dated 24.02.2016 passed by Assistant General Manager and Assistant Director in Application No. A/STC/AE-2/JTO-OFFTG/IV/2014-15/153 may kindly be quashed and set aside.*

B(ii) *Pending the hearing and disposal of the main Application, execution, operation and implementation of the order dated 09.02.2016 and 24.02.2016 passed by the respondent No.3 and 4 may kindly be stayed.*

B(iii) *Pending the hearing and final disposal of present Application to no reversion/transfer of the Applicants be done, in the cadre of TTA and applicants may be permitted to discharge their duty on the post of officiating JTO.*

A(i) *Pending the hearing and disposal of the main Application,*

execution, operation and implementation of the order dated 09.02.2016 and 24.02.2016 passed by the respondent No.3 and 4 may kindly be stayed.

A(ii) *Pending the hearing and final disposal of present Application no reversion/transfer of the Applicants be done, in the carder of TTA and applicants may be permitted to discharge their duty on the post of officiating JTO.*

B(i) *Ad-interim orders in terms of prayer clause A(i) and A(ii)."*

2. The applicants also added Para 4.6-A to their application to include these as impugned orders. This amendment related to their regularization as JTO from the post of Officiating JTO. However, another application has been filed for this very purpose in **OA 675/2016** which is being separately heard and is considering the issue of whether the applicants and others who were permitted to officiate in posts of JTO against vacancies to be filled up by direct recruits in the period between creation of BSNL and transfer of assets and staff to BSNL took place. Since that issue is

being heard separately, the issue of transfer needs to be _____ and in consequence, the original reliefs cited by applicants of A, B, C, D(deleted), E & F alone need to be considered as below:

"A. This Hon'ble Court be pleased to Admit the Application.

B. Issue an appropriate Order, quashing and setting aside the Judgment and Order dated 23.05.2016 passed by the Respondent No.1 and may be permitted to discharge their duty on the post officiating JTOs.

C. Pending the hearing and final disposal of the present Application, execution, operation and implementation of the Order dated 23.05.2016 passed by the Respondent No.1 may kindly be stayed.

D. Pending the hearing and final disposal of the present Application, no Transfer of the present Applicants be done on post of TTA and may be permitted to discharge their duty on the post officiating JTOs. **(Deleted)**

E. Ad-interim relief in terms of prayer clause (C) and/or (D) may kindly be granted.

F. Any other relief that may be deemed fit and proper may be granted."

3. In consequence, the grievance of the applicants is that they have been transferred contraversion as TTA [Telecom Technical

Assistant] and has been transferred to various locations within the same Nashik secondary switching area, under the same administrative authority. They have alleged that for three of the applicants, the distance was less than 50 kilometers and 3 lady employees could have been transferred to these locations in accordance with the rules. Further, they have asserted that for two other rural area transfers, nobody from those areas was willing to come to the city. Therefore, there was no need to transfer them to those rural locations. The malafide is urged are accordingly limited to this extent.

4. Respondents have emphasized that transfer for an employee is part of service conditions and cannot be interfered with lightly by a Court of Law unless malafidies are alleged or the service rules prohibit such transfer or that the orders were passed by an authority not competent to do so. They have mentioned that in the normal feature the people working in rural areas want transfer to the city and people

working in city areas resist such transfer. The Respondents have emphasized that transfers are done so as to give relief to those who are working in rural areas cannot be held to constitute any harassment nearly on a hypothetical claim that these persons who were reverted and then transferred.

5. At the local counsel meeting of the employees, it is agreed that female employees would be transferred within 50 kms. In that particular year, only transfers above 50 kms were under consideration. Therefore, female employees were not considered. Other two transfers to Deola and Lasalgaon were due to service requirements because of the super annuation at Deola and because a post at Lasalgaon was vacant. For Lasalgaon, Shri B D Ghuge, applicant No.4, was posted since he had the longest stay at Nashik. The respondents have also urged that all these transfers were within the divisional cadre and entirely based on service requirements. When the matter came

up for final hearing on 06.12.2017, the OA No. 675/2016 which had been tagged with this application was delinked for separate order and learned counsels were heard. The learned counsel for applicants again urged the same issues discussed above that juniors were available for transfer and there was consequent bias. Learned counsel for respondents also urged the same issues discussed above and explained the organisation of the Telecom Circle at Nashik, for this Hon'ble Tribunal to understand why all the transfers were effected within the same administrative jurisdiction and that these were based on service requirements and no bias or harassment involved or intended. The learned counsel for respondents also mentioned that the applicants were staying at Nashik for periods ranging from 9 years to 33 years and, therefore, there was no legitimate case for continuing to stay in Nashik.

6. Meanwhile, during hearing on 05.05.2017, in response to petitions filed by

respondents and replied by applicants, the interim orders issued on 18.07.2016 were withdrawn. The applicants thereafter filed a Writ Petition No. 5699/2017 in Hon'ble High Court which was ordered on 09.06.2017, directing continuance of the interim orders pending hearing on the Writ Petition but without any stay on the proceedings before this Hon'ble Tribunal. This interim relief ordered in that Writ Petition has continued to date.

7. We have heard both the learned counsels and have carefully considered the facts and circumstances of the case, law points and contentions by parties in the case.

8. This Hon'ble Tribunal will not enter into matters that are solely within their administrative jurisdiction unless the facts and circumstances so warrant. In this case, the applicants have been reverted to their substantive posts of TTA from the officiating posts of JTO that they were holding for nearly 12 years, it is stated, in the vacancies of

direct recruitment during the transition period between formation of BSNL and taking over of assets and staff. Upon reversion and considering their long stay at Nashik and administrative requirements, they have been transferred. They have alleged that certain lady employees and others could instead have been shifted or some of them need not have been shifted at all. As mentioned by respondents, it is a common feature for all the employees who wish to stay in urban area but this may not always be administratively feasible especially for a commercial organization such as BSNL, which has a specific charter to not only serve urban areas but also the under served rural areas. The respondents have explained in detail why these persons were transferred in that year and the circumstances such as that there is no bias or any kind of harassment as has been alleged by the applicants. They have been staying in Nashik for a long time and they need to move to accommodate others who have not

similarly benefited. Their objections to transfer are completely lacking in merits or logic and are merely a tactic of undermining or subverting administrative work for their own convenience.

9. In these circumstances, the OA is dismissed and the orders of transfer shall stand. Interim orders that have been issued by this Hon'ble Tribunal have already been vacated and have been continued by the Hon'ble High Court in the aforesaid petition but rules they are basis in the proceedings of this Hon'ble Tribunal accordingly. The parties have not been heard on the issue of costs and, therefore, they will bear their respective costs.

(R. Vijaykumar)
Member (A)

(Arvind. J. Rohee)
Member (J)

Ram.