

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00778/2019

Thursday, this the 28th day of November, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member
Hon'ble Mr. Ashish Kalia, Judicial Member

Vijayan P.R., aged 57 years, S/o. Raghavan,
Junior Telecom Officer, Bharat Sanchar Nigam Limited (External),
Kothamangalam, Ernakulam Dt., residing at : Purathel House,
Thrikkariyur PO, Kothamangalam, Ernakulam District,
Pin – 686 692, Mob. No. 9446324488. **Applicant**

(By Advocate : Mr. T.C. Govindaswamy)

V e r s u s

1. The Chairman and Managing Director,
Bharat Sanchar Nigam Ltd. (BSNL), Corporate Office,
New Delhi – 110 001.
2. The Chief General Manager, (Telecom),
Bharat Sanchar Nigam Ltd., Kerala Circle,
Trivandrum – 695 033.
3. The Principal General Manager (Telecom),
BSNL Bhavan, Ernakulam, Kochi – 682 016.
4. The Assistant General Manager (Administration),
Office of the Principal General Manager (Telecom),
BSNL Bhavan, Ernakulam, Kochi-682 016. **Respondents**

(By Advocate : Mr. George Kuruvilla)

This application having been heard on 22.11.2019 the Tribunal on 28.11.2019 delivered the following:

ORDER

Hon'ble Mr. Ashish Kalia, Judicial Member –

The relief claimed by the applicant are as under:

“(i) Call for the records leading to the issue of Annexures-A1 and A9 to the extent they relate to the applicant and quash the same;

(ii) Direct the respondents to allow the applicant to continue at Kothamangalam, as if Annexure A1 and A9 had not been issued at all;

(iii) Award costs of and incidental to this application;

(iv) Pass such other orders or directions as deemed just fit and necessary in the facts and circumstances of the case.”

2. The brief facts of the case are that the applicant joined the service as a Technician and later promoted as Junior Telecom Officer during 2005 and posted at Kalady. Thereafter he was transferred to Neriyamangalam and further to Perumbavoor. At present he is working as a Junior Telecom Officer/External at Kothamangalam, BSNL. The applicant is aggrieved by an arbitrary and illegal order of transfer by which he is posted to Santhanpara, Idukki district which is about 120 Kms. away from his present posting. The applicant's wife is employed in a Government LP School at Kuttampuzha, Ernakulam District and the applicant's father is presently aged 92 years suffering from acute diabetics is staying with the applicant. The applicant has two children. The applicant submits that as per Annexure A2 posting of husband and wife at the same station shall be considered as far as possible, if the employee's spouse is serving in Central/State Government or a Public Sector Undertaking. Further the applicant is a 57 year old person and the action of the respondents in posting him to the high ranges is arbitrary, discriminatory and unconstitutional. Moreover, as per paragraph 11(k) of Section B of Annexure A2 generally transfer of officers up to JAG level who are more than 55 years of age would be avoided for posting to hard tenure stations. Similarly, transfer of officers up to the SAG

grade would generally be avoided in case of more than 58 years of age. However, up to STS level, transfer of officers involving change of station would normally be avoided after 56 years for inter-circle transfers and after 57 years for intra-circle transfers. The applicant submits that in the light of Annexure A4, tenure plus one being three years, those who have attained the age of 57 years are being exempted from transfer to high ranges. In fact even going by Annexure A2 transfer policy, employees after 57 years are normally avoided for intra-circle transfers, if change of station is involved. The applicant submitted representation against the transfer order but the respondents have not yet taken any decision on the same. Hence, this OA.

3. Notices were issued to the respondents. They entered appearance through Shri George Kuruvilla who filed a reply statement contending that the applicant's present transfer vide Annexure A1 order from Kothamangalam to Santhanpara is in the interest of service and in accordance with the BSNL transfer policy guidelines. Annexure A1 transfer is necessitated due to the requirement of staff at high range areas, to ensure proper service to customers and also to bring back those JTOs who were transferred earlier and completed their tenure in the high ranges especially the officers working there even after the age of 59 years, who were transferred earlier. As per Annexure A3 guidelines, after the tenure period, the officials who have been transferred to high range areas have to be necessarily transferred back to the places of their choice as far as possible by displacing officials based on their long stay in the station. In the instant case the applicant's transfer along with several others have been

necessitated to transfer back those JTOs who were transferred to high range areas during 2017 and earlier.

4. The applicant has been working in the plain area since 2011 and considering his long stay in the plain area and strictly adhering to the transfer policy guidelines, Annexure A5 probable list was prepared and based on the same Annexure A1 transfer was ordered. The present transfer is not coming under inter circle or intra circle or not even under inter business area transfer. Since high ranges is coming within the business area of Ernakulam SSA, Annexure A1 transfer order can only be considered as a transfer order issued within the Ernakulam business area to meet the optimum administrative requirement as staff requirement in Idukki area is managed by staff from plain area of Ernakulam business area. The respondents submitted that transfer is not a punishment and is a right of the Department to transfer and post its officers as per the requirement and competency. The applicant who is holding a transferable post has no vested right to remain posted at one place or the other. Respondents have relied upon the judgment of the apex court in ***Tabasum Rashid v. State of J&K and Ors.*** - AIR 1991 SC 532 and ***Gujarat Electricity Board & Anr. v. Atmaram Sungomall Poshani*** – AIR 1989 SC 1433. Respondents pray for dismissing the OA.

5. Heard Shri T.C. Govindaswamy, learned counsel for the applicant and Shri George Kuruvilla, learned counsel appearing for the respondents at length. Perused the record and appreciated the legal position.

6. The applicant sought relief to quash his transfer order posting him from Kothamangalam to Santhanpara which is issued contrary to the department's own transfer guidelines. Paragraph 11 (k) of the transfer guidelines produced as Annexure A2 reads thus:

“(k) Generally, transfer of officers up to JAG level who are more than 55 years of age (as on 31st March of that particular financial year) would be avoided for posting to hard tenure stations. Similarly transfer of officers up to SAG grade would generally be avoided in case of more than 58 years of age. However, up to STS level, transfer of officers involving change of station would normally be avoided after 56years for inter circle transfers and after 57 years for intra circle transfers.”

The applicant who has crossed the age of 57 years as on 5.6.2019 is unwilling to go to Santhanpara due to his domestic and personal problems and being high range area. He is also planning to take VRS (Voluntary Retirement Scheme) under the latest scheme offered by the Department for the employees of the BSNL who wants to take retirement.

7. On the other hand respondents submit that the cut off date as per the transfer policy is 31st March and when the name of the applicant was considered he was below the age of 57 years of age and thus transfer of the applicant is as per the transfer guidelines. There is nothing wrong in it. As per the guidelines who is having longest stay shall be transferred to the tenure station for two years after considering all the factors in to account. Due to non-availability of adequate willing staff to work at difficult area like high ranges and also for proper staffing and in order to ensure required service to customer at such difficult areas like high ranges it was necessary for the respondents to transfer the applicant.

8. After considering the relevant contention of the parties, the fact remains that as per policy of the Government at the fag end of the career an employee is given the choice posting. The applicant is also nearing his retirement and is also seeking VRS as informed by the counsel appearing for the applicant. In response to this learned counsel for the respondent submitted that let the applicant join the new place of posting and then take VRS etc. In our view the applicant who has rendered 35 years of service with respondent wants choice posting and is also seeking VRS under the scheme of the respondents. No fruitful purpose would be served if the respondents insisted that he should join the post at the transferred place and then place application for VRS. It would only further burden the public exchequer as for transfer he is entitled for certain perks and allowances which can be avoided considering him to stay till his application for retirement under VRS is considered or otherwise. No doubt he was considered for transfer as he was short for few months for completing 57 years of age to seek the benefit of the transfer guidelines. But fact remains that when the applicant received the transfer order he had already completed the requisite age of 57 years.

9. In view of the above, we are of the opinion that the respondent shall keep the transfer order of the applicant (though he has been relieved from the present post) in abeyance till his VRS application made/to be made is considered. Ordered accordingly. It would serve the interest of both the parties. The applicant should be allowed to join the present place of posting at Kothamangalam forthwith.

10. The Original Application is disposed of as above. There shall be no order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

(E.K. BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

“SA”

Original Application No. 180/00778/2019

APPLICANT'S ANNEXURES

Annexure A1 - True copy of transfer order bearing No. ST/EK-214/7/HR/2019-20/JTOs/01 dated 28.9.2019, issued from the office of the 3rd respondent.

Annexure A2 - True copy of transfer policy communicated under No. 6-1/2007-Restg., dated 7th May, 2008 from the office of the 1st respondent.

Annexure A3 - True copy of High Range transfer policy evolved by the 3rd respondent under No. DGM(A&OP)/General/2008 dated 29.2.2008.

Annexure A4 - True copy of modification to A3 bearing No. HR-III/3-2/2009/Pt. Dated 26.5.2010 issued from the office of the 3rd respondent.

Annexure A5 - True copy of letter bearing No. ST/EK-202/LS-SDE/JTO/2019/21 dated 26.7.2019, issued from the office of the 3rd respondent.

Annexure A6 - True copy of representation dated 29.7.2019 submitted to the 3rd respondent.

Annexure A7 - True copy of representation dated 3.10.2019 submitted to the 3rd respondent.

Annexure A8 - True copy of representation dated 9.10.2019 submitted to the 2nd respondent.

Annexure A9 - True copy of e-mail communication bearing No. ST/EK-214/HR/JTOs/2019-20/07 dated 24th October, 2019, issued on behalf of the 3rd respondent.

Annexure A10 - True extract of details of infonet ID 29544 dated 29.10.2019 down loaded form the website of the respondents.

Annexure A11 - True copy of mobile message received by the applicant.

Annexure A12 - True copy of BSNL Voluntary retirement

scheme issued under No. 1-15/2019-PAT(BSNL) dated 4.11.2019 the first respondent.

RESPONDENTS' ANNEXURES

Annexure R3(a) - True copy of the order dated 14.3.2019 of the BSNL Corporate office.

Annexure R3(b) - True copy of the order dated 8.8.2019 of the BSNL Circle Office.

Annexure R3(c) - True copy of the order dated 24.10.2019 issued by the Asst. General Manager (Admn) BSNL.

Annexure R3(d) - True copy of the order dated 26.10.2019 issued by the Asst. General Manager (Admn) BSNL.

Annexure R3(e) - True copy of the office note sheet.

Annexure R3(f) - True copy of the letter dated 5.8.2014 of the BSNL circle office.

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