

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

Original Application No. 040/007/2018

Date of Order: This, the 14th Day of September, 2018

THE HON'BLE SMT. MANJULA DAS, JUDICIAL MEMBER

- 1 Shri Khomdram Rajendra Singh,
Aged about 53 years, S/O (L) Kh.Brajamani Singh, resident of
Kwakeithel Thounaojam Leikhi
P.O. Imphal, P.S.Lamphel,
Imphal West District,
Manipur-795001, and
presently working as SDE (South West), Manipur SSA.

APPLICANT

By Advocae Mr.N.A.Singh

-AND:-

1. The Union of India, represented through its Secretary,
Government of India,
Ministry of Telecommunication,
New Delhi-110048
2. The Bharat Sanchar Nigam Limited (BSNL),
represented through
Its CGMT, NE-II Telecom Circle,
Telephone Exchange Building,
Dimapur- 797112, Nagaland
3. The CGMT, NE-II Telecom Circle,
Telephone Exchange Building,
Dimapur -797112 Nagaland

- 4 The Assistant General Manager (HR),
CGMT, NE-II Telecom
Circle, Telephone Exchange Building,
Dimapur -797112,
Nagaland
- 5 The Sr. GMTD,
Telephone Exchange Building,
Imphal -795001,
Manipur
- 6 The GMTD,
Telephone Exchange Building,
Itanagar- Arunachal
Pradesh
- 7 Smt. K.T. Mate, Presently working as
SDE(CM-CCN), Manipur SSA
- 8 Smt. Jacinta Kamei, presently working
as AD (Admn), Manipur SSA
- 9 Smt. A. Renubala Devi,
presently working as AD (MIS),
Manipur SSA
10. Smt. M. Asha Devi,
presently working as AD (COLL),
Manipur SSA
11. Shri Th.Gopilal Singh,
presently working as SDE (CDMA-O/D),
Manipur SSA
12. Shri Ch.Jiten Singh,
presently working as SDE (North), Manipur SSA.

.....**RESPONDENTS**

By Advocate Mr.B.C.Pathak, BSNL

ORDER (ORAL)

Per Mrs.Manjula Das, Member (J):

The applicant herein approached before this Tribunal under Section 19 of the Administrative Tribunal Act, 1985 with the following reliefs:

8. I) Call for the records of the case and issue rule nisi calling upon the official Respondents to show cause as to why the prayer prayed for by the Applicant should not be granted. And, after hearing them your Lordship may make the rule absolute;

II) Issue any appropriate order/direction to quash or set aside the Orders No. CGMT/NE-II/Admn./Intra-Circle Tenure/Rotational Transfer/SDEs/ 2017-18/22 dated 09.11.2017(ANNEXURE- A/1), issued by the Assistant General Manager (HR), O/o the CGMT, NE-II Circle, Dimpur, transferring the Applicant to NLD SSA;

III) In the alternative, pass any appropriate writ/order/direction so that the Hon'ble Tribunal may be pleased to direct the official Respondents to keep the impugned orders dated 09.11.2017 in-operational till a final decision is reached on the transfer of the private Respondents;

IV) Pass any appropriate writ/order/direction so that the Hon'ble Tribunal may be pleased

to direct the official Respondents to adhere to the transfer and posting policy as per the stay Seniority List of the SDEs/ ADs issued by the AGM (Admn. &plg.), O/o the GMTD, BSNL, Imphal;

V. Pass any appropriate writ/order/direction so that the Hon'ble Tribunal may be pleased to direct the official Respondents not to deviate from the rationale and basis for transfers and posting of employees and be in line with the Employee Transfer Policy of the organization;

2 Mr.N.A.Singh, learned counsel for the Applicant submitted that the applicant is presently working as Sub-Divisional Engineer (South West) in the Office of the Manipur SSA, Bharat Sanchar Nigam Limited (BSNL), Manipur. As per the list of officers in terms of their length of stay in the Manipur SSA (Stay Seniority List) as on 09.08.2017, the Applicant is placed at serial 7, whereas Respondent Nos. 7,8,9,10,11 and 12 are placed at serial nos. 1,2, 3, 4, 5 and 6 respectively of the said list.

3. Learned counsel for the applicant further submitted that as per the transfer and posting policy of the BSNL the basis for transfer of its employees shall be based on inter alia job rotation requirement in Synchronization with period specified for post, station and/or circle tenure, and

surplus and/or shortages at any location. Clause 5 of the BSNL's Employees Transfer Policy dated 05.09.2007 as amended by order No.6-1/2007-Restg. dated 07.05.2008 (the employee Transfer Policy 2008) issued by the DDG (Restructuring), Madhu Arora) to all Chief General Managers Telecom Circles provides the purpose, for such transfers is here under:-

"Transfers are in general necessitated due to requirement of filling up of posts, meeting staff requirements at tenure/hard tenure/unpopular/difficult stations , matching employee's skills with job requirement , gainful deployment of surplus staff, sharing of shortages, even distribution of staff over recruiting zones ,movement of staff from sensitive posts, other administrative requirements or meeting personal or tenure related requests etc."

As a general rule an employee of the BSNL is not transferred unless the employee has completed 5(five) years of service in the cadre.

4. Learned counsel further submitted that the BSNL authority i.e the Asstt. General Manager (HK & Admn) O/O

CGMT NE-II Circle, Dimapur, Nagaland announced its Intra Circle Transfer Policy for the SDEs/DEs in the NE-II Telecom Circle on 09.12.2009. The said Policy provides *inter alia* that an Executive (SDE/DE) will be relieved only after completion of tenure of three years in respective SSA and after the joining of his substitute; and the substitute will be taken from the senior most of the requested SSA as per long stay.

5. The said Policy provides *inter alia* as here under:-

- “1. Minimum tenure at any SSA/Station of SDE/DE will be 3 years.
.....
- 4. The Executive (SDE/DE) will be relieved only after completion of tenure of three years in respective SSA and after the joining of his substitute.
- 5. The substitute will be taken from the senior most of the requested SSA as per long stay. The total stay of the substitute in the SSA shall be counted belonging to previous cadre/grade irrespective of category (Non-executive/Executive) in the SSA.
- 4. For request transfer of JTO within circle, existing BSNL guidelines will be followed.”

6. Learned counsel further submitted that the Intra Circle/Rotational Transfer Policy for Executives as Circular No.CGMT/NE-II/Admn/Tranfer & Posting /Executive within Circle//11-12/4dated 10.04.2012 respectively provide as here under:-

"The CGMT NE-II telecom circle Dimapur is pleased to reduce the minimum tenure period for Intra Circle/Rotational transfer, at any SSA/Station for SDE/DE to 2 (two) years from the existing 3(three) years w.e.f. 09.04.2012.

Other points as per this office ltr.no.CGMT/NE-II/Admn/Trf.& Postg/Executives within Circle/09-10/12 dated 09.12.2009 remains same."

That the CGMT NE-II Telecom Circle Dimapur was pleased to reduce the minimum tenure period for Intra Circle/Rotational transfer, at any SSA/Station for SDE/DE to 2(two) years from the exiting 3 (three) years w.e.f. 09.04.2012.

7. According to the learned counsel, because of the acute shortage of staff strength at the officer level in the

Manipur SSA, the Sr. GMTD, BSNL Manipur SSA on 29.03.2016 requested the CGMT, BSNL NE-II Telecom Circle, Dimapur, not to transfer any officer from Manipur SSA to Arunachal Pradesh SSA or Nagaland SSA. Very recently, the Assistant General Manager (HR), O/o the CGMT, NE-II Circle, Dimapur, issued the transfer and posting of two SDEs who are above the Applicants in the Stay Seniority List. Those two officers obtained a status quo interim order on their transfer and posting to ARP SSA and NLD SSA respectively. The Manipur SSA also provided the list of officers as per stay seniority as on 28.03.2016 in the Manipur SSA. However, the stay seniority list is modified as on 09.09.2017. However, the Applicant was transferred to NLD SSA on 06.11.2017 without providing any reason and without finalizing the transfer and posting of those who are above him in the Stay Seniority List.

8. Learned counsel for the applicant submitted that being aggrieved by the said transfer and posting order dated 29.04.2016, the present applicant filed two Writ

Petitions, being W.P.(C) No.326 of 2016 and W.P.(C) No.36 of 2017 before the Hon'ble Manipur High Court challenging the said transfer and posting order inter alia on the ground that the concerned authorities have not followed the transfer and posting policy of the BSNL and in particular those officers who had the longest stay in a particular circle/station were not moved first in violation of the transfer and posting policy of the BSNL.

9. Learned counsel further submitted that vide judgment and order dated 21.12.2016 passed by the Hon'ble High Court of Manipur and W.P.(C) 36 of 2017 was withdrawn with liberty to file afresh, since the concerned authorities of BSNL had reviewed the policy of transfer and posting of the BSNL.

10. Meanwhile, the present respondent Nos.7, 8, 9 & 10 approached the Hon'ble CAT, Guwahati by filing Original Application Nos.358/2016, 375/2016, 378/2016, 08/2017 with a prayer to set aside their transfer and posting issued vide order dated 14.09.2016, 23.09.2016 and

26.09.2016 respectively, Respondent Nos.7, 8 and 9 obtained interim orders. In case of Respondent No.4, filed O.A. before the CAT, Guwahati Bench, which was disposed of on 20.01.2017, where by the Hon'ble CAT was directed the concerned authorities of BSNL to decide his representation dated 09.01.2017 and not to give effect to her transfer order dated 04.01.2017 during the pendency of the representation. The matter is still pending not transferring the said respondents.

11. Because of the acute shortage of staff strength at the officer level in the Manipur SSA, the Sr. GMTD, BSNL Manipur SSA on 29.03.2016 requested the CGMT, BSNL NE-II Telecom Circle, Dimapur, not to transfer any officer from Manipur SSA to Arunachal Pradesh SSA or Nagaland SSA. Very recently, the Assistant General Manager (HR), O/o the CGMT, NE-II Circle, Dimapur, issued the transfer and posting of two SDEs who are above the Applicant in the Stay Seniority List. Those two officers obtained a status quo

interim order on their transfer and posting to ARP SSA and NLD SSA respectively. However, the Applicants were transferred to NLD SSA on 09.11.2017 without providing any reason and without finalizing the transfer and posting of those who are above him in the Stay Seniority List. Being aggrieved, the Applicant filed a writ petition, being W.P. (C) No. 862 of 2017, before the Hon'ble High Court of Manipur and the Hon'ble Court was pleased to dispose of the petition on 15.12.2017, thereby directing the present Applicant to approach the Hon'ble CAT at Guwahati.

12. The operative portion of which is reproduced below:-

“Accordingly, the petitioners are directed to approach the Central Administrative Tribunal (CAT) in the first week of January, 2018. It is however directed that till such appropriate order is passed by the Central Administrative Tribunal (CAT), the order passed by this Court on 10.11.2017 will continue. In other words, order of this court passed on 10.11.2017 will continue to operate subject to such appropriate order that

may be passed by the Central Administrative Tribunal"

13. Hence, the Applicant is filling the present Original Application to address his grievances.

14. Learned counsel for the applicant submitted that the BSNL did not take into consideration the degree of surplus or shortage of employees at the Manipur SSA while issuing the transfer order of the Applicant.

15. That being the position, without going into the merits of the case and in the interest of justice, I direct the respondent authority to take proper decision in accordance with the transfer and posting policy of the BSNL, particularly the Intra Circle Transfer Policy (ICT policy 2009) for the SDEs/Des in the NE-II Telecom Circle i.e the minimum tenure at any SSA/Station of SDE/DE will be 3(three) years and an Executive (SDE/DE) is eligible to apply for request transfer to his choice SSA after completion of two and half years of service in other SSA of NE-II Circle. The decision so arrived, shall be communicated to the

applicant within a period of 4 months by giving adequate opportunity of being heard and pass a reasoned and speaking order within a period of 4 months thereafter.

16. It is made clear that till disposal of the petition and communication of the decision, the applicant shall not be disturbed from the present place of posting.

17. With the above observations and directions O.A. stands disposed of. No order as to costs.

(MANJULA DAS)
JUDICIAL MEMBER

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