

Central Administrative Tribunal
Madras Bench

Monday, the 19th day of July, 2010.

Present: Hon'ble Mr. M. Kanthaiah, Judicial Member
&
Hon'ble Mrs. O.P. Sosamma, Administrative Member.

TA No. 86 of 2009

Surinder Kumar Applicant

-Vs-

1. Bharat Sanchar Nigam Ltd., rep.
By its Assistant Director General(SEA)
Having its Regd. Office at 7th Floor
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane,
Janpath
New Delhi.
2. Bharat Sanchar Nigam Ltd.,
Office of Chief General Manager(MTCE)
Southern Telecom Region,
No.11, Link Road
Ganapathy Colony
Chennai 600 032
3. Bharat Sanchar Nigam Ltd.
Office of Chief General Manager
Tamil Nadu Telecom Circle
No.80 Anna Salai
Chennai 600 002.
4. S.D. Saxena
3rd floor Bharat Sanchar Bhavan
Harish Chandra Mathur Lane, Janpath New Delhi 110 001
5. Mrs. Nalini Rao
General Manager(Finance)
Tamilnadu Circle Office BSNL
80 Anna Salai Chennai-600 002
6. N. Reguraman
No.22, 13th Sector, 84th Street
Sivalingapuram
K.K Nagar Chennai-600 078
7. N. Kalyan Sagar Respondents
3rd Floor Office of CGM (Mtce)
11. Link Road Ganapathy Colony
Guindy, Chennai-600 032.

M/s V.P. Raman ... Counsel for Applicant

Mr. M. Govindaraj ... Counsel for Respondents 1 to 3



Order:Pronounced by the Hon'ble Mr. M. Kanthaiah, Judicial Member.

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The applicant, who is working as JAO in BSNL has filed this application challenging the impugned transfer order bearing No.4-1/2008-SEA dated 12.8.08, consequential letter of posting in Memo NO.TSA(F)/44-7/2008 dated 18.8.08 and relieving order of the applicant in No.CGM/STA/T&P/JAO/2008-09 dated 19.8.08, transferring the applicant from STR(Pool of TNT Circle Chennai to Tamilnadu Circle, Cuddalore, on the ground that the transfer is violative of transfer policy and on the ground of malice.

2 The official respondents have filed reply denying the claim of the applicant stating that the impugned orders have been passed as per the rules and there is no violation of transfer policy or any act of malice on the part of the respondents.

3. The private respondents have filed separate replies denying the allegation of malice attributed to them and to the authorities.

4. The applicant has filed rejoinder, denying the stand taken by the respondents and also reiterated the pleas taken in the OA.

5. Heard both sides.

6. The point for consideration is whether the applicant is entitled for the relief as prayed for.

7 The brief facts of the case are that the applicant was selected as JAO in the respondents company and after completion of Pre Appointment Training, he was appointed as JAO on 24.6.04 in the office of the Deputy General Manager STSR, Madurai. Thereafter, he was transferred from Madurai to Chennai vide order dated 23.5.06(page 11) and posted as Officer on Special Duty(OSD) to the General Manager, Finance in the office of the second respondent. Thereafter on 9.11.2006(page No19) he was transferred from the office of the Chief General Manager Chennai to the office of Dy. General Manager (Maintenance) STSR, Chennai and thereafter transferred to the office



of General Manager (NMS) Flower Bazaar Chennai on 6.12.07 (Page No. 41). Admittedly all these transfers are local transfers in Chennai. Thereafter, by way of the impugned transfer order dated 12.8.08, the applicant has been transferred to another circle ie Tamilnadu Telecoms Circle and posted at Cuddalore, at a distance of 200 Kms away from Chennai.

8 The applicant has challenged the impugned transfer order and consequential posting order and relieving order on the ground of violation of transfer policy and also attributing motives to the respondents that they have effected this transfer and also earlier four transfers within two and half years and thus attributed motives. The respondents have categorically denied the said allegations of the applicant.

9 It is the case of the applicant that the impugned transfer is the 4th transfer order in the last two and a half years and such frequent transfers itself shows the mala fide attitude of the authorities against him. From the pleadings of the parties it is clear that the applicant, while working as JAO STR Madurai, was transferred and posted as JAO, OSD to GM Finance office of Chief General Manager STR Chennai vide order dated 23.5.2006 (page 11) Thereafter he was transferred and posted as JAO office of DGMM, STSR Chennai vide order dated 9.11.06(page 19) and again transferred as JAO Office of GM, NMS Chennai vide order dated 6.12.07(page 41) And by way of impugned order dated 12.8.08(Page 63), the first respondent posted the applicant from the STR (Pool TNT Circle) to Tamilnadu Circle and consequently the second respondents office of Chief General Manager Tamilnadu Telecom Circle,(CGM TN Circle) transferred and posted the applicant in the office of GM, BSNL, Cuddalore vide order dated 18.8.08(Page 64).

10 Admittedly all these orders are the transfer orders which clearly shows and proves that the applicant was effected with four transfer orders during the period of two and a half years. Though the applicant has been shifted



within Chennai city, by way of orders of transfers and not by way of any other arrangement, effecting such transfers within in a period of two and a half years nothing but frequent transfer of the applicant and no public interest and administrative exigency involving in these transfers and such frequent transfers, without any valid reasons naturally causes prejudices to the applicant and also leads to an inference of victimizations.

11 The applicant has taken a ground that the impugned transfer order dated 12.8.08 followed by letter dated 18.8.08 is in violation of transfer policy of the respondents. Page 31 to 37 is the transfer policy of the respondents (BSNL) dated 5.9.07, whereas page 38 to 40 is the modification of transfer policy dated 13.8.08 in respect of certain clauses of transfer policy ie 6a, 10, 11a, 11e and clause 13 and 14.

12 It is the case of the applicant that Cuddalore station is unpopular station and posting him to Cuddalore stations is violative of the transfer policy stating that the employees who have been enjoying a much longer stay (10 years) in Chennai office, the action of the respondents is vindictive attitude. The respondents replied that Cuddalore is not an unpopular station as contended by the applicant stating that the same is at a distance of 200 kms from Chennai and having well knitted transport system. But the applicant has not placed any material to satisfy that Cuddalore town falls within the definition of unpopular station for questioning the validity of such transfer order.

13 In respect of other violation of transfer policy, it is the case of the applicant that the transfer policy of the respondent dated 5.9.07 which specifically stipulates that executives who have completed 4 years of stay on a post or 10 years of posting in a station may be transferred. Moreover clause 9(b) of the policy states that a minimum period of 3 years at a location shall be maintained as far as possible in order to avoid the hardship of the employees and in the instant case when the applicant completed only 2 years of service



he has been transferred which is against the guidelines of the transfer policy of the respondent.

14 The applicant further stated that many of his seniors have not been transferred though they have completed more than 10 years of service at a station which goes to show discriminatory attitude of the respondents towards the applicant. The respondents filed reply stating that as per clause 3 of the transfer policy, BSNL reserves the right to transfer of executive in a place to suit its requirement and in respect of JAO/AO who have completed 10 years of service in a station, they have stated that they were in the way of getting promotion as AO and in the event of their transfer, the entire exercise would have become futile and thus denied the stand taken by the applicant.

15 Though the respondents reserve such right to transfer any executive to any post to suit their requirement, it is also their duty to honour the remaining provisions made in for the purpose of employees when clause 9(b) states that a minimum period of 3 years at location shall be maintained as far as possible in order to avoid hardship to the employees but in the instant case the authorities have not followed the same and further effected transfer of the applicant four times in a period of two and a half years itself shows violation of transfer policy of the respondents dated 5.9.07.

16 The applicant has also taken a ground that his transfer from STR BSNL Chennai to Tamilnadu Circle is a transfer from one circle to another and because of such transfer his seniority and other promotional chances will be affected. The respondents have denied the same stating appointment order issued to the applicant clearly shows that he is liable to be transferred to an place within Tamil Nadu (Territorial Circle, the next promotional post is an All India cadre post, the seniority is maintained on All India level only and thus denied the allegation of loss of seniority because of shifting form one circle too another by the competent authority.



17 Admittedly, when the seniority list of JAOs are maintained separately at each circle level, transferring from one circle to another circle, definitely touches the issue of seniority of employee. The reply of the respondent is that the seniority is maintained at All India level in the case of next promotional post but not the post of JAOs. In such circumstances, transferring of JAO from one circle to another naturally affects seniority and thus the argument of the applicant on this issue is having force and validity in questioning the impugned transfer transferring him from a Non Territorial Circle a Territorial Circle.

18 The applicant has taken a ground stating that the impugned transfer order is violative of CCS Joining Time rules, which stipulates that in the event of transfer, joining time, along with transfer allowance and transfer pay has to be given to the employees but in the case of the applicant, no such joining time is provided and further rejected such allowance which also shows arbitrariness and malafides on the part of the authorities. The impugned transfer and posting order dated 12.8.08 of the applicant from STR (Pool of TNT Circle) to Tamilnadu at page 63 shows such restriction that the applicant is not entitled to TA/TP and Joining time. In pursuance of such orders of the first respondent, the second respondent transferred and posted the applicant in the office of GM BSNL, Cuddalore with immediate effect in the existing vacancy vide proceedings dated 18.8.08 (page 64) and thereafter office of CGM Maintenance, Southern Telecom region, Chennai relieving the applicant on 19.8.08. It is also the specific case of the applicants that he was forced to join at Cuddalore immediately citing stringent action will be taken if he fails to join due to which he was compelled to join at Cuddalore and the same has not been denied by the respondents. From this it is clear that no joining time has been provided to the applicant and also rejected TA/TP on transfer. Admittedly it is not the request transfer of the applicant and in such circumstances, more particularly the first respondent when wanted to shift



the applicant from STR Circle to another circle ie Tamilnadu Circle, imposing such restrictions on the applicant is not at all convincing and also supporting the feeling of the applicant, for attributing motives on the part of the authorities. Such treatment of the authorities towards the applicant impliedly shows mala fides.

19. The applicant also contended that after taking permission from the second respondent, he joined CA course and also completed intermediate level and now going to appear in the final examination and because of this impugned transfer his further education will be affected. Questioning the validity of the transfer order on the ground of his further education is not at all justified and it is the duty of the applicant to convince the respondent authorities for his just and reasonable ground and such ground of further education has no merits in challenging the impugned transfer order.

20. It is the main case of the applicant that the respondents have acted in a mala fide and arbitrary manner by transferring him to Cuddalore since he made complaints to the concerned authorities in reporting the illegalities and irregularities committed by the respondents administration in Employees Provident Fund (EPF) scheme and in support of it, he relied the correspondences made with the respondent authorities and also EPF authorities. The applicant made representation to the Senior Accounts Officer, Circle Office, BSNL Guindy on 19.9.2006(page 14)complaining that a sum of Rs 2600 has been recovered as over payment from his salary for the month of August 2006 upon which sought clarification from the authorities and also requested to deposit the same in his bank account. The applicant also made representation dated 22.9.06(Page 15) to the Director, Corporate Office, New /Delhi stating that in spite of several instructions and clarifications from BSNL, the provisions of EPF & MP Act 1952 have not been implemented and got delayed in some of o the circles including STR Chennai and he also made request to vacate the letter dated 18.7.06 in respect of recovery of



arrears of EPF contributions with a further request to refund the amount recovered so far from the employees and to stop further recovery on account of EPF arrears. The CGM STR Chennai issued letter dated 18.10.06 (page 18) informing the applicant that the recovery of Rs.2600 being the monthly arrears of contribution of EPF for the period from the date of appointment to July 2005 recoverable in 6 equal instalments and in the meantime on 9.11.2006 page (10) the applicant has been transferred and posted as JAO office of DGM STS Chennai.

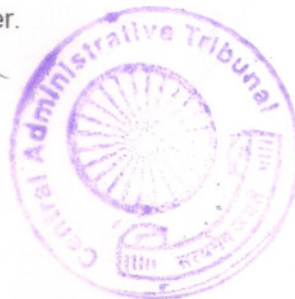
21 After joining there the applicant made representation to DGMM, STSR, Chennai vide letter dated 16.7.2007 (page 24) complaining of gross violation of provisions of EPF and MP Act and sought permission to bring the matter with EPF authorities but the authorities declined such permission vide letter dated 20.7.07 (page 26) In spite of rejection of permission, on 24.7.07 (page 27) the applicant made complaint to EPF authorities regarding violation of various provisions of EPF rules by BSNL authorities and basing on it, the authorities have issued show cause notice.

22 Thereafter, the respondents authorities have issued show cause notice to the applicant on 24.7.07 (page 29) why disciplinary proceedings should not be initiated against him for meeting EPF authorities on 24.7.07 in spite of declining permission to him. Thereafter, the applicant has been transferred from the office of DGM STR Chennai to the office of GM, NMS, Chennai office vide order dated 6.12.2007 (page 41). Subsequently, the EPF authorities informed the applicant vide letter dated 7.2.2008 (Page 43) stating that on his complaint dated 24.7.2007, they have directed the respondent authorities vide letter dated 18.9.07 to refund the retrospective reduction of contribution made from the employees salary within 15 days as it was gross violation of para 32 of the EPF Scheme with further direction to submit a Joint Declaration in the prescribed proforma for contribution EPF over and above Rs. 6500.



23 Thereafter the applicant made representation dated 29.3.03 to the Dy. General Manager MTCC Chennai complaining that there are arrears in the annual payment of GPF for the year 2004-05, 2005-06 and also sought permission to inspect all his contribution record to verify the correction of his annual statement and also complaining that he has not received the refund of money with request to make arrangement for refund of the same at the earlier and thereafter he also made representation dated 15.4.08 (page 55) to the Director Finance Corporate Office, BSNL complaining gross violation of other provisions of EPF and Misc. Provisions Act 19952. The DGM STR Chennai vide letter dated 16.4.08 can acknowledge the receipt of complaint of the applicant dated 28.2.2008 stating that the matter will be taken up for consideration after the final disposal of the case filed by him before the EPF authorities Chennai. Thus it is the case of the applicant that because of his complaining of gross violation of provision of EPF and MT Act by the respondent authorities, before the EPF authorities, the authorities bore grudge against him and thus transferred him from STR to Tamilnadu Circle with malice. In the absence of any public interest or administrative exigencies like closure of unit, one has to presume that the impugned order is with malice in nature alone.

24 The respondents have filed reply stating that there is no relevance at all between the EPF issue and the transfer order and the transfer order has been issued by the 1st respondent on the Recommendation of Circle Internal Financial Advisor (IFA) of Southern Telecom Region (STR) since one drawing and dispersing officer (DDO) unit functioning in STR at Chennai was proposed to have wound up for operational reasons due to which one Junior Accounts Officer was to be surrendered to territorial circle and since the incumbent happens to be the applicant has been transferred to Tamilnadu Telecom Circle and thus denied allegation of mala fide intention and also any nexus between the EPF issue and the order of transfer.



25 The applicant filed rejoinder stating when one unit has been proposed to be closed, all the employees working there will become surplus, but the applicant who has been working as JAO has been transferred, without effecting any surrender of other officers and also without effecting transfer of longest stayee in the station. It is also the case of the applicant that 5 to 7 JAO posts are lying vacant and within few days, some more vacancies are coming vacant on promotion to 4-5 AOs and the same is not in dispute.

26 When some vacancies are available and some more are likely to be vacant, because of promotion to JAO, transferring the applicant alone from STR Circle to Tamilnadu Circle on the ground of proposed closure of DDO Unit is not at all convincing and such action of the respondent authorities against the applicant indicates some arbitrariness and also mala fides.

27 All these documents ie the correspondence between the applicant and the respondents BSNL authorities and also in EPF authorities it clearly shows that the applicant started making complaint against the respondent authorities on the ground of violation of provisions of EPF Act and recovery of excess amount from their salaries as arrears of contribution and non refund of the same in spite of repeated request. Admittedly, the respondent authorities have rejected his request to meet EPF authorities and also issued a show cause notice to the applicant on the ground that he met the EPF authorities. When his request was rejected by them and all these circumstances clearly shows that the authorities have taken serious note against the applicant for his attitude in making complaint to the EPF authorities which led to his transfer after a few months and such circumstances clearly indicates the issuance of impugned transfer order with some prejudice against the applicant.



28 From the above discussion, it is clear that there are some circumstances of malice and the same is coupled with other circumstances of violation of transfer guidelines by the respondent authorities while transferring the applicant from STC Circle to Tamilnadu Circle to Non territorial area to Territorial area which clearly establish not only some malafides but also against the transfer policy and as such the applicant is justified in challenging the transfer order from one circle to another circle STR Circle to Tamilnadu Circle. Under the circumstances, the impugned transfer order is liable to be set aside.

29 In the result, the T/A is allowed by setting aside the impugned transfer order bearing No.4-1/2008-SEA dated 12.8.08, consequential letter of posting in Memo NO.TSA(F)/44-7/2008 dated 18.8.08 and relieving order of the applicant in No.CGM/STAT&P/JAO/2008-09 dated 19.8.08, transferring the applicant from STR(Pool of TNT) Circle Chennai to Tamilnadu Circle, Cuddalore. No order as to costs.



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