

**URGENT
COURT CASE**



Bharat Sanchar Nigam Limited

(A Government of India Enterprise)

**Corporate Office
Personnel-IV Section**

**5th flr. Bharat Sanchar Bhawan, Janpath,
NEW DELHI-110001
Website: www.bsnl.co.in**

No. 3-Gen/3/2010/Pers-IV

Dated: February 08th, 2010

To

All Heads of BSNL Telecom Circles/Telecom Districts.

Subject: Employee Transfer Policy-Judgment of Hon'ble High Court of Andhra Pradesh-reg

This office is in receipt of some cases from Telecom Circles/Districts where employees are challenging the BSNL Transfer Policy due to various reasons. In this regard a copy of the judgment dated 04.11.2009 of the Hon'ble High Court of Andhra Pradesh in Writ Appeal No.792, 795 and 796 of 2008, communicated by Restructuring Cell of BSNL CO vide Letter No. 6-1/2007-Restg. dated 18.01.2010, is forwarded for your information and necessary action.

In this regard, it is requested that the above mentioned Court decision/order may be brought to the notice of other subordinate units & defending counsels of BSNL in your Circles who may be contesting similar pending cases in various Courts, if any.

Encl: - As above.


08.02.10
(P.M. VERMA)
Assistant General Manager (Pers-IV)
Ph. 23734152 & Fax: 23734051

**BHARAT SANCHAR NIGAM LIMITED
(CORPORATE OFFICE)**
Bharat Sanchar Bhavan, Janpath,
New Delhi-110 001.



No. 6-1/2007-Restg.

Date: 18th January 2010.

Subject: Employee Transfer Policy – Judgement of Hon'ble High Court of Andhra Pradesh.

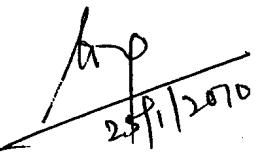
Please find attached a copy of a judgement of the Hon'ble High Court of Andhra Pradesh in Writ Appeals No.792, 795 and 796 of 2008, upholding the provisions of BSNL's Employee Transfer Policy, for reference and record.


(Madhu Arora)
GM (Restructuring)

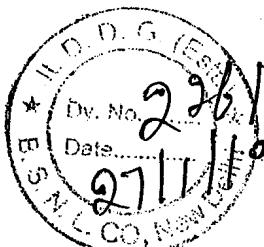
Encl: a.a.

1. GM (Personnel)

✓ 2. GM (Establishment)


Arun (P-II) ✓
27/1/2010


Arun (P-IV) ✓
27/1/10.



15/11/10



IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

WEDNESDAY, THE FOURTH DAY OF NOVEMBER
TWO THOUSAND AND NINE

PRESENT
THE HON'BLE SRI JUSTICE D.S.R.VARMA
and
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

WRIT APPEAL NO : 792, 795 and 796 of 2008

WRIT APPEAL NO : 792 of 2008 :

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/07/2008 in WP NO : 13014 OF 2008 on the file of the High Court.)

Between:

1. Bharat Sanchar Nigam Limited, rep. by its Deputy Director General (Restructuring), Bharat Sanchar Bhavan, Harishchandra Mathur Lane, Janapath, New Delhi-110001
2. Chief General Manager, AP Telecom, Door Sanchar Bhavan, Opp: Annapurna Hotel, Abids, Hyderabad-I
3. Principal General Manager, Hyderabad Telecom District, Telecom Bhavan, Adarshnagar, Hyderabad
4. The General Manager, Mobile Services, C.T.O. Compound Secunderabad
5. The General Manager, Telecom District Visakhapatnam

..... APPELLANTS

AND

1. N.Rajaiah S/o.Late N.Satyanarayana O/o.SDOP,BSNL, Amberpet, Hyderabad
2. M.S.V.Charpathi Rao S/o.Late M.Ranga Rao O/o.SDOP,BSNL, Vanasathalipuram Hyderabad
3. Md.Abdul Rahaman S/o.Late Raj Mohammed O/o.SDEEIOB-II,BSNL, Golconda Hyderabad
4. A.Durga Rao S/o.Late A.Sreerama Murthy O/o.SDOP,BSNL Golconda Hyderabad
5. K.Sivaji Rao S/o.Nagabhushanam O/o.GM,Cellone BSNL Secunderabad
6. Ramachandrudu S/o.Balaiah O/o.SDOP,BSNL(E) Saifabad Secunderabad
7. M.Muzeer S/o.M.A.Sattar O/o.SDOP, BSNL West Secunderabad
8. P.Prakash Ananda Kumar S/o.P.Samuel O/o.DELL, Telephone Bhavan Hyderabad
9. Namana Venkata Brahma Rao S/o.Late Kanaka Rao O/o.SDE, (OCB),SM Visakhapatnam
10. Keerti Appa Rao S/o. late Nooka Raju O/o.SDE,Outdoor,K.P. Visakhapatnam
11. Kundradu Satyanarayana S/o.Chinnamu Naidu O/o.SDE, Balacheruvu Visakhapatnam

.....RESPONDENTS

WRIT APPEAL NO : 795 of 2008

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/07/2008 in WP NO : 15065 OF 2008 on the file of the High Court.)

Between:

1. Bharat Sanchar Nigam Limited, rep. by its Deputy Director General (Restructuring), Bharat Sanchar Bhavan, Harishchandra Mathur Lane, Janapath, New Delhi-110001
2. Chief General Manager, AP Telecom, Door Sanchar Bhavan, Opp: Annapurna Hotel, Abids, Hyderabad-I
3. Principal General Manager, Hyderabad Telecom District, Telecom Bhavan, Adarshnagar, Hyderabad
4. The General Manager, Mobile Services, C.T.O. Compound Secunderabad
5. The General Manager, Telecom District, Ongole.
6. The General Manager, Telecom District Visakhapatnam

.... APPELLANTS

AND

1. Smt. P. Jyothi W/o I. Venkateswara Rao Occ SDE (MIS). O/o CGMT. BSNL, Nampally, Hyderabad,
2. Smt. K. Lalitha W/o B. Chaitanya O/o OCB Switch Room, Telephone Exchange, Kavadi Guda, Hyderabad.
3. Smt. S. Govardhana W/o Ch. Srinivasa Rao O/o DEP (In TC) KVG, Telephone Exchange, Kavadi Guda, Hyderabad.
4. K. Rajender Rao S/o K. Padma Rao O/o Planning Section, Cellone, Secunderabad.
5. P.V. Srinivasulu S/o P. Pursushotham O/o CGMT., A.P. Hyderabad.
6. P. Sarat Babu S/o P. Ranganadha Charyulu Vanasthalipuram, Hyderabad.
7. S.V.S.N. Murthy S/o Late S. Surya Prakash Rao O/o TD BSNL, 2nd Lane, Dwarakanagar, Visakhapatnam.
8. B.N. Satyanarayana S/o Mallayya O/o RLU, Saifabad, Hyderabad.
9. C.V. Ramakrishna Rao S/o Nagabhushana Rao O/o GM Telecom, BSNL, Ongole.
10. A.M. K. Dikshitulu S/o Late A.K. Jaganatha Charyulu, SDE. CTO. Velampeta, Visakhapatnam.

...RESPONDENTS

W.A.NO.796 OF 2008 :

(Writ Appeal under Clause 15 of the Letters Patent against the Order dated 15/07/2008 in WP NO : 11490 OF 2008 on the file of the High Court.)

Between :

1. Bharat Sanchar Nigam Limited, rep. by its Deputy Director General (Restructuring), Bharat Sanchar Bhavan, Harishchandra Mathur Lane, Janapath, New Delhi-110001
2. Chief General Manager, AP Telecom, Door Sanchar Bhavan, Opp: Annapurna Hotel, Abids, Hyderabad-I
3. Principal General Manager, Hyderabad Telecom District, Telecom Bhavan, Adarshnagar, Hyderabad

...APPELLANTS

AND

1. Y.Mohana Rao S/o.Y.Koteswara Rao O/o. SDOP, BSNL, Gowliguda, Hyderabad.
2. D.Sankar Das S/o.D.Balanarasimham O/o. SDOP (East) BSNL, Khairtabad, Hyderabad.
3. Ch.Bhagavanthaiah S/o.Ch.Chatraiah O/o. SDOP Nacharam, BSNL, Habsiguda, Hyderabad.
4. N.S.Krishna Murthy S/o.N.Gopala Rao O/o. Commercial Officer, Central ARea, BSNL, Telephone Bhavan, Saifabad, Hyderabad.
5. K.Sri Ramulu S/o.Raja Ram O/o. AGM (Legal), Circle Office BSNL, Nampally, Hyderabad.
6. S.Bhagya Lakshmi W/o.K.Govardhan Rao O/O. DE (Internal), BSNL, Telephone Exchange, Musheerabad, Hyderabad.
7. K.V.Subba Reddy S/o.K.Laxma Reddy
8. C.Jagannatha Rao S/o.C.Srinivasa Rao
9. P.Narsing Rao S/o.P.Somaiah O/o. SDOP, BSNL, Bowenpally, Secunderabad.
10. D.Jayaraju S/o.D.Venkataiah O/o. Commercial Officer, Telephone Exchange Building, Jeedimetla.
11. A.Satyanarayana S/o.Late A.V.Rama Rao O/o. SDOP Kushaiguda, BSNL, ECIL, Hyderabad.
12. K.Adarsh Kumar S/o.K.Haridarshan O/o. SDOP Banjara Hills, BSNL, Hyderabad.
13. Mari Susai S/o.Anthony O/o. SDOP Banjara Hills, BSNL, Hyderabad.
14. K.Sobha D/o.K.Papaiah O/o SDE (LC) Telephone Bhavan, BSNL, Saifabad, Hyderabad.
15. I.Mallikarjuna S/o.Sitaramayya O/o. SDE (DCB), Musheerabad, Hyderabad.
16. K.Yashwanth Kumar S/o.K.Purnachandra Rao O/o. Area Manager, Trimulgherry BSNL, Secunderabad.
17. A.Krishna Hari S/o.A.Chippa Lingaiah O/o. SDOP, Bowenpally, BSNL, Secunderabad.
18. N.Sri Krishna S/o.N.Sudarshanam O/o DE (LC) Telephone Bhavan, Saifabad, Hyderabad.
19. K.M.M. Krishna Raju S/o.K.P. Pitchi Raju O/o. SDE (INTL), Saifabad, Hyderabad.
20. D.J.D. Vara Kumar S/o.Late D.James O/o. SD (INTL), Telephone Exchange, Tarnaka, Hyderabad.
21. B.Kousalya Devi W/o.N.L.Narasimham O/o. SDE (Internal) Telephone Exchange, Kushaiguda, Hyderabad.
22. B.Sai Bhagavan S/o.B.Venkateswara Rao O/o. SDE (MLLN) Telephone Bhavan, Saifabad, Hyderabad.
23. B.Chandra Sekhar Reddy S/o.B.Subba Reddy O/o. SDOP, Malakpet BSNL, Hyderabad.
24. S.Surender Reddy S/o.Rosy Reddy O/o. SDOP, Kavadiguda, BSNL, Secunderabad.
25. Syed Liaquat Ali Haquavi S/o.Late S.S. Farooq Ali O/o. AGM (OP) Main BSNL Bhavan, Adarshnagar, Hyderabad.
26. K.Venkateswarlu S/o.Late Raja Naidu O/o SDE (Bty/PP) Telephone Exchange, Secunderabad.
27. B.Lakshmi Prasad S/o.B.Koteswara Rao O/o. SDE (Rural Install), Tolichowki, Hyderabad.
28. Vimal Prasad S/o.Late Shiv Narayana O/o. SDOP (South), Saifabad, Hyderabad.
29. G.Sumathi D/o.Late G.Venkatappaiah O/o. SDE (MDF) Telephone Exchange, Saifabad, Hyderabad
30. G.Dhana Lakshmi W/o.M.Suryanarayana O/o. SDE (RLUS), Vivekanandanagar, Hyderabad.
31. K.Narayana Rao S/o.K.Krishna Rao O/o. SDE (Intl) OCB, Jubilee Hills, Hyderabad.

32. V.Seethpathi Rao S/o.Sree Ram Murthy JTO, BSNL DWP, O/o.
SDOP Dwarakapuri, Punjagutta, Hyderabad.
33. Ch.Usha Sree W/o.T.Tyagaraju O/o.SDE (Leased CCTS),
Telephone Bhavan, Saifabad, Hyderabad.
34. K.Vidyachakra Rao S/o K. Elasha R/o Hyd.RESPONDENTS

**Counsel for the Appellants IN ALL: SRI.D.PRAKASH REDDY
SR.COUNSEL FOR SRI B.DEVANAND, STANDING COUNSEL FOR
BSNL**

Counsel for the Respondents IN ALL : SRI.G.VIDYASAGAR

THE COURT MADE THE FOLLOWING COMMON JUDGMENT :

THE HON'BLE SRI JUSTICE D.S.R.VARMA
AND
THE HON'BLE SRI JUSTICE G.V.SEETHAPATHY

Writ Appeal Nos.792, 795 and 796 of 2008

Common Judgment: (per G.V.Seethapathy, J.)

Heard Sri C.Prakash Reddy, learned Senior Counsel, representing Sri B.Devanand, learned Standing Counsel for Bharat Sanchar Nigam Limited (appellants-respondents) and Sri G.Vidya Sagar, learned Counsel for the respondents-writ petitioners.

2. All the three appeals do arise out of the common judgment, dated 15-7-2008, in W.P.Nos.13014, 15065 and 11490 of 2008, respectively, rendered by a learned single Judge of this Court. Since the subject matter in all these appeals is one and the same, these appeals are being disposed of by this common judgment.

3. The respondents herein, who are the writ petitioners, filed the writ petitions seeking Writs of *mandamus* holding that Clauses 11(d) and 12(i) of the Transfer Policy issued in proceedings No.6-1/2007-Restg., dated 07-5-2008, by appellant No.1 and the consequential transfer orders insofar as counting Non-Executive services for the purpose of Secondary Switching Area (SSA) tenure transfers while retaining

Direct Recruits in Grade 'B' officers with longer Secondary Switching Area (SSA) unit tenure as bad, illegal and arbitrary.

4. The writ petitioners assail the Transfer Policy of the appellants-Bharat Sanchar Nigam Limited (BSNL) mainly on the ground that clubbing of the tenure of service in Category 'C' along with the tenure of service in Category 'B' for the purpose of effecting transfers is arbitrary and such clubbing of the tenure in both the Categories has no nexus with the purpose sought to be achieved by the Transfer Policy.

5. The appellants herein, who are the respondents in the writ petitions, on the other hand, contend that the Transfer Policy was avowed with the following purpose and objectives as narrated in the Policy document, dated 07-5-2008.

6. It is useful to extract the stated purpose and objectives of the Transfer Policy, which are hereunder:

"BSNL's Employee Transfer Policy"

1. Purpose:

Transfers are in general necessitated due to requirements of filling up of posts, meeting staff requirements at tenure/hard tenure/unpopular/difficult station, 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.

2. Objectives of transfer policy:

(a) In the changing business environment, role/profile of employees needs to be augmented continuously. Functional managers need to be given on-the-job training and exposure in different types of work situations to develop them to be Business Managers. Similarly, non-executive employees need to be retained and redeployed in new jobs/locations to meet the technology/market related changes in business of the company.

(b) Transfers/job rotation is required to achieve the following objectives:

- (i) To achieve BSNL's corporate goals through well developed personnel with an all around personality.
- (ii) To have a mix of personnel positioned at different locations/jobs who have gained varied experience systematically.
- (iii) To maintain/upkeep the ongoing functional activities/tasks such as, telephone exchanges, customer service centers etc at all times.
- (iv) To distribute the available manpower evenly in the SSA/Circle/service area of Company as per workload, keeping in view the zone of transferability as applicable to specific level/cadre.
- (v) To provide opportunities to work in different disciplines.
- (vi) To enhance productivity and obviate monotony.
- (vii) To ensure rotational redeployment of the personnel from sensitive posts.
- (viii) To ensure continuity of management and systematic succession planning for key posts in middle and senior management level.
- (ix) To fulfil the needs of employees nearing retirement for possible placement close to their home town or a location of their choice.
- (x) To meet the staff requirement of tenure/hard tenure/difficult/unpopular stations.

3. Management's Right:

The management has the right to move or not to move employee(s) from one post/job to another, to different locations, to different shifts, temporarily or permanently, as per business requirements and special needs.

4. Need of transfer:

Transfer can be affected due to anyone of the following criterion:

- (a) To prove replacement for a specific post/cadre with a specialized or desired qualification and/or suitable experience, as per company need.
- (b) To meet the business requirement of BSNL.
- (c) To bridge manpower deficit or to provide reinforcement in view of business requirement.
- (d) Placement under compassionate ground.
- (e) To adhere to government regulation/ruling/guidelines as applicable (as amended from time to time).

5. Basis for transfer:

Transfer shall not be purely based on tenure decided by the transfer policy. Transfers shall also be based on competencies and skills required to execute the work or to provide an opportunity to employees to develop competencies as per job rotation requirement. Transfers shall be based on:

- (a) Vacancies created due to promotions, creation of posts and retirement.
- (b) Job rotation requirement in synchronization with period specified for post, station/and circle tenure.
- (c) Past experience in various functions and nature of jobs handled.
- (d) Surplus and/or shortages at any location."

7. It is not disputed that the writ petitioners, who are working at their present stations since a long time, initially were working as Category 'C' posts and subsequently they were promoted to Category 'B', a couple years of back. The Management, in view of the fact that the writ petitioners have been continuing in the same stations over a very long period and in some cases more than 30 years, by invoking relevant clauses of the Transfer Policy, has sought to effect transfers of the writ

petitioners. In fact, by the date of filing of the writ petitions, no Transfer Policy as such was issued against the writ petitioners. The writ petitioners sought to assail the Transfer Policy itself on the ground that clubbing of their service in Category 'C' with the service in Category 'B' would put them in a disadvantageous position vis-à-vis Category 'B' employees. Though the petitioners have put in less service than Category 'B' Direct Recruitees in the other category, they are being transferred from their present stations while retaining Category 'B' employees, who have put in longer tenure in the said category.

8. Sri C.Prakash Reddy, learned Senior Counsel for the appellants-BSNL, would contend that the objectives of the Transfer Policy are, to meet the staff requirements at tenure/hard tenure/unpopular and 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 and other administrative requirements and also meeting personal or tenure related requests. He would further submit that the writ petitioners have no right to question the Transfer Policy, which is intended to serve various objectives as enunciated in the Policy document and the said

objectives among other things included to distribute the available manpower evenly in the SSA/Circle/service area of Company as per workload, keeping in view the zone of transferability as applicable to specific level/cadre, to provide opportunities to work in different disciplines, to enhance productivity and obviate monotony and to ensure rotational redeployment of the personnel from sensitive posts among other things. He would therefore contend that the Organisation has got every right to effect transfer of the employees in order to achieve the stated purpose and objectives of the Transfer Policy.

9. It can be seen that the writ petitioners have joined in service as Category 'C' employees long ago and they continued as such in their present positions and subsequently they were promoted as Category 'B' employees and they have put in a couple of years of service as Category 'B' employees also in the same stations. It is not disputed that insofar as Category 'B' is concerned, the said posts are filled up not only by promoting the eligible employees from Category 'C', but they are also filled by direct recruitment. As rightly contended by the learned Senior Counsel for the appellants insofar as the direct recruits are concerned,

their very entry level is into Category 'B' posts and therefore, there was no question of their working in a lower category or tagging of their service in any lower category to their present tenure in Category 'B' posts.

10. Thus, insofar as the writ petitioners are concerned, when their service tenure in both Category 'C' and Category 'B' are clubbed, they have completed the prescribed minimum tenure as per the Transfer Policy, and therefore they can be transferred. Similarly, the appellants-BSNL has considered transfer of the direct recruits also, who have duly completed the minimum tenure required, as per the Transfer Policy before their transfer can be effected. Thus, the writ petitioners as also the others who are the direct recruits working in Category 'B' have completed their minimum tenure of three years prescribed as per the Transfer Policy before their transfers are proposed to be effected. The main contention of the writ petitioners is that linking of their tenure in Category 'C' with their tenure in Category 'B' would put them in a disadvantageous position, inasmuch as even before they completed their minimum period of three years in Category 'B' they are being transferred. The said contention has no legs to stand in view of

sub-clauses (b), (c) and (d) of Clause 11 of the Transfer Policy, which are as follows:

"11. ADDITIONAL GUIDELINES SPECIFIC TO TRANSFER OF EXECUTIVE EMPLOYEES WITH ALL INDIA TRANSFER LIABILITY:

(a) Transfer tenure:

(b) Minimum period of three years at a location shall be maintained as far as possible in order to avoid hardship to the employees.

(c) Tenure at a particular location shall include consecutive postings in different field units in the same location.

(d) For counting Station/SSA tenure, the period of service rendered in the previous cadre(s)/grade(s) would be counted. 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. Inter circle tenure based transfer in respect of Executives will continue to be restricted for SDE/Other equivalent levels and above. However, 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 upto STS level. Transfers/Posting history of DOT employment shall be taken into account for the ex-DOT absorbed employees in BSNL. Service period of 2 years or more will only be recognized while computing post/station/SSA/Circle tenure. For Territorial Circle Executives, while computing Station/SSA/Circle tenure, any stay in non-territorial Circle within the territorial jurisdiction of the Circle shall also be counted. Similarly, for non-territorial Circle executives, stay of territorial circle shall be counted while computing Station/SSA/Circle tenure.

(e)

(f)

(g)

(h)

(i)

(j)

(k)

11. It can therefore be seen that as per sub-clause (b) of Clause 11 of the Transfer Policy, minimum period of three years at a location shall be maintained as far as possible in order to avoid hardship to the employees. The writ petitioners have no grievance about the same. Sub-clause (c) stipulates that tenure at a particular location shall include consecutive postings in different field units in the same location. The above sub-clauses (b) and (c) specifically stipulates that it is the location which is to be taken into consideration for computing the period of stay and as per sub-clause (d), for counting Station/SSA tenure, the period of service rendered in the previous cadre(s)/grade(s) would be counted. The above clauses would therefore clearly disclose that it is the location or the place of stay of the employees, which is taken into consideration but not the post or posts he was holding in that particular location.

12. The contention of the learned Counsel for the writ petitioners-respondents herein that the transfer should be relatable to the period of stay in a particular post is untenable, because the transfer is effected on account of the stay of the employee in a particular place for a long period irrespective of the post or posts he was

