

R.K. MISHRA
GM(Pers.)



भारत संचार निगम लिमिटेड
(भारत सरकार का उद्यम)

BHARAT SANCHAR NIGAM LTD.
(A Government of India Enterprises)

D.O. No. 15-5/2009-Pers.II

Dated: October 31st, 2009

Dear Sir

Kindly refer to the Court cases regarding intra-Circle transfer in the SDE(Telecom.) grade ordered by the Circles in accordance with BSNL's Employees Transfer Policy. In Karnataka Telecom. Circle, some SDEs had challenged the intra-Circle transfer orders inter-alia alleging that their intra-Circle transfer from Bangalore is arbitrary and discriminatory on the ground that in computing the stay, the services put in the Group 'C', a divisional/unit cadre, has been taken into account for effecting transfer in SDE grade and for also taking into account the cut-off date for transfer for 2009-10 as 31.3.2009 instead of 31.3.2010.

Such cases were defended by the Karnataka Telecom. Circle in consultation with Personnel Branch of Corporate Office and the arguments were put forth vehemently justifying the provisions of BSNL's Employees Transfer Policy in general and paras 1, 2, 3, 6(a) & (b) of Section-A, para 11(a), 11(d) & 11(k) of Section-B in particular. Vide order dated 28.7.2009, the Hon'ble CAT, Bangalore bench dismissed one such O.A. No. 143/2009 filed by Smt. R.N. Lalitha, SDE & others being without any merit. Further, the interim stay granted earlier with regard to the transfer in respect of the applicants only, which was extended from time to time, was also directed to be vacated. The applicants filed Review Application No. 10/2009 and the same was also rejected by Hon'ble CAT, Bangalore bench vide order dated 11.9.2009.

I shall be grateful if similar Court cases on BSNL's Employees Transfer Policy filed by the petitioners may accordingly be defended, in consultation with the Counsel, by taking the pleas on the above lines and prayer be made for dismissal of the pending Court cases. The copies of the aforesaid orders dated 28.7.2009 and 11.9.2009 are enclosed for reference/guidance.

With regards,

Encl: As above.

Yours Sincerely,

(R.K. MISHRA)

To :

All Heads of Telecom. Circles/Metro Districts/Maintenance
Regions/Projects/Stores/Factories/BRBRAITT/ALTTC & All other Administrative Units
Bharat Sanchar Nigam Limited.

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**CENTRAL ADMINISTRATIVE TRIBUNAL : BANGALORE BENCH
AT BANGALORE.**

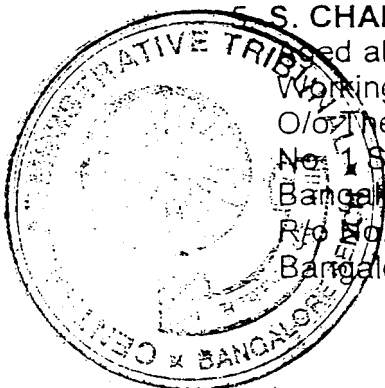
No. O.A. 143 of 2009.

DATE OF ORDER : 28.7.2009.

Hon'ble Shri B. Venkateswara Rao, Member (J)

BETWEEN :

1. **R.N.LALITHA** W/o Machendiran,
Aged about 52 years,
Working as Sub-Divisional Engineer,
O/o The Divisional Engineer (Internal),
Telephone Exchange, Vijayanagar,
Bangalore-560 040.
R/o C-2, BSNL Staff Quarters,
Telephone Exchange Compound,
Vijayanagar,
Bangalore-560 040.
2. **S.NARAYANAN** S/o Late Subramaniam,
Aged about 50 years,
Working as Sub-Divisional Engineer,
O/o Principal General manager,
Bangalore Telecom, Raj Bhavan Road,
Bangalore-560 001.
R/o No. 16, 1st Cross, PNS Layout,
Subbainapalya, Bangalore-560 033.
3. **GEETHA BAI R.** W/o Sreedhara, C.T.,
Aged about 51 years,
Working as Sub-Divisional Engineer,
O/o The Divisional Engineer (External Stores),
Chandra Layout, Bangalore-560 040.
R/o No.394, 5th Main, 7th Cross,
NGEF Layout, Marathalli,
Bangalore-560 056.
4. **K.DEEPAK** S/o Nandakumar S. Kankanwadi,
Aged about 53 years,
Working as Sub-Divisional Engineer,
O/o AGM (EP), BGTD, Telephone House,
Raj Bhavan Road, Bangalore-560 001.
R/o No. 2, 2nd Floor, BSNL Staff Quarters,
Nandini Layout, Telephone Exchange,
Bangalore-560 096.
5. **S. CHANDRASEKARAN** S/o P. Sethuraman,
Aged about 56 years,
Working as Sub-Divisional Engineer,
O/o The Chief General Manager, Telecom,
No. 1 Swamy Vivekananda Road, Ulsoor,
Bangalore-560 008.
R/o No. 607A, 8th Main, HAL 3rd Stage,
Bangalore-560 075.



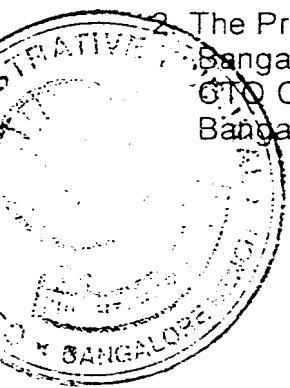
6. **M.C.SUJAI** W/o M. Raviraj,
Aged about 49 years,
Working as Sub-Divisional Engineer,
O/o AGM (BD), Karnataka Circle, Bangalore.
R/o No. 107/3, 8th Cross,
6th Main, Malleswaram, Bangalore-560 003.
7. **Palani T.,**
S/o Late Thangavelu,
Aged about 50 years,
Working as Sub-Divisional Engineer (TM),
O/o Bangalore East Telephone Exchange,
Lazar Road, Bangalore-560 005.
R/o No. 304, 'Z' Cross, HRBR III Block,
Kalyan Nagar, Bangalore-560 084.
8. **M.S.Anandajothi,**
S/o S. Shivakumar,
Aged about 49 years,
Working as Sub-Divisional Engineer,
O/o The Divisional Engineer,
2nd Main, 2nd Cross, Vidyapeetha Road,
Bangalore-560 085.
R/o No. 401, BSK 3rd Stage, 3rd Phase, 2nd Cross,
5th Block, Bangalore-560 085.
9. **V.S.LALITHA DEVI** W/o Y.S.Satish Chandra,
W/o Y.S.Satish Chandra,
Aged about 50 years,
Working as Sub-Divisional Engineer,
O/o The Deputy General Manager (Transmission Maintenance),
New Telecom Building, 1st Floor,
Basaweswara Circle, Bangalore-560 001.
R/o No. 62/89, East End 'B' Main Road,
Jayanagar IX Block, Bangalore-560 069.

... Applicants

(Shri B. Veerabhadra, Counsel.)

A N D

1. The Chief General Manager,
Telecom, Karnataka Circle,
No. 1, Swamy Vivekananda Road,
Halasuru,
Bangalore-560 008.
2. The Principal General Manager,
Bangalore Telecom District,
GTO Complex, No. 1, Cubbon Road,
Bangalore-560 001.



3. The Managing Director cum Chairman,
Bharat Sanchar Nigam Limited,
Bharat Sanchar Bhavan,
H.C. Mathur Lane, Janpath,
New Delhi-110 001.

... Respondents

(By Shri Vishnu Bhat, Counsel.)

ORDER

(*B. Venkateswara Rao, Member (J)*)

This application filed u/s 19 of the A.T. Act, 1985, is against the action of the respondents in not adopting the cut of date 31st March of the financial year for the purpose of transfer, 6(b) of Transfer Rules and guiding principles and in framing the provisions for computing the service belonging to previous cadre(s)/ grade(s) irrespective of non-executive/executive for Intra-Circle Transfer Para 12 (i) (Annexure-A/3) and consequently transferring and posting the applicants under letter dated 28.3.2009 of Respondent No. 1 (Annexure-A/8).

2. The applicants have through this O.A. sought for the following reliefs :

(i) Call for the records and thereafter to quash and set aside the action of the respondents in not adopting the cut of date 31st March of the financial year for the purpose of transfer 6(b) of Transfer Rules and guiding principles and in framing the provisions for computing the service belonging to previous cadre (s)/grade(s) irrespective of non-executive/executive for Intra-Circle Transfer Para 12(i) (Annexure-A/3) and consequently transferring and posting the applicants under letter No. Staff/3-2/RR Tfrs./2009 dated 28.3.2009 of Respondent No. 1 (Annexure-A/8) as arbitrary, discriminatory and void for the reasons stated in the O.A.

(ii) For declaring the action of the respondents in computing the services rendered by the applicants as Group-C for the purpose of Intra-Circle transfer in the cadre of SDE as illegal, unjust and unfair and to set aside the provisions of the transfer policy (Annexure-A/3) so far it relates to the provision of cut of date and counting of service of non-executive/executive for the purpose of transfer as

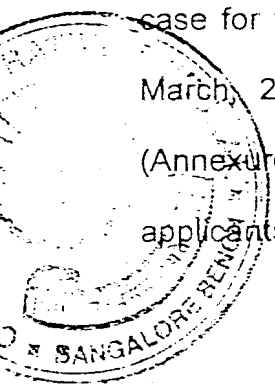


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arbitrary, discriminatory.

(iii) Any other order as deemed fit by this Tribunal.

3. It is the case of the applicants that they were initially appointed as Group-C under the respondents and thereafter earned promotions to the post of Junior Telecom Officer (JTO) and Sub-Divisional Engineer (SDE). Vide Annexure-A/1, respondents framed the policy on Tenures and Transfers which indicates that for counting the station/circle tenure, the period of service rendered in the previous grade(s) would be considered. Thereafter, vide Annexure-A/2 the amended transfer policy framed in the year 2008 was issued. The letter dated 10.2.2009 at Annexure-A/3 indicates that the stay is to be calculated from the date of regular promotion/recruitment in the grade of JTO onwards, the cut of date for computing the Circle/SSA/Station/Post Tenure to be 31st March of that particular financial year and that for intra circle transfers total stay of the executives shall be counted including that spent in the previous cadre(s)/grade(s) irrespective of being non-executive/executive. This, according to the applicants, is contrary to their own transfer policy framed earlier in 2008. The 1st Respondent issued letter dated 11.3.2009 (Annexure-A/4) calling for options from SDEs for transfer from one SSA to another for the year 2009-2010 as per the policy stated therein, with 2 years of service or more as on 31.3.2009. The respondents issued the list of SDEs with long stay including Group-B service which has been annexed as Annexure-A/5. By representations dated 19.3.2009 and 20.3.2009 the applicants have stated to the respondents that they had become SDE during November-December, 2008 and the service they had put in Group-C cannot be taken for computing their stay in Bangalore and further the cut of date in their case for the financial year 2009-2010 should be 31st March, 2010 and not 31st March, 2009 (Annexures-A/6 and A/7). The transfer order dated 28.3.2009 (Annexure-A/8) was issued by Respondent No. 1 and the names of some of the applicants figure at serial Nos. 50, 41, 54, 51, 37, 55, 6, 16 and the names of the



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remaining applicants though not mentioned in the list, they are expecting the transfer on the basis of long stay. The applicants state that though the transfer order mentions that it has been issued in the interest of service, it has in fact been issued to accommodate others. Therefore, they have filed this O.A. challenging the action of the respondents.

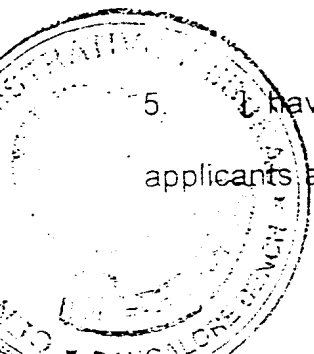
4. The respondents have contested the case by filing a reply. It has been submitted by the respondents that the applicants are all SDEs stationed at Bangalore working for more than 25 years in the same station in various cadres who have challenged the transfer order dated 28.3.2009 issued by Chief General Manager, Telecom, BSNL, Bangalore (Annexure-A/8) on the ground that it is arbitrary and discriminatory in computing the services put in Group-C, a Divisional/Unit Cadre for the purpose of effecting transfer in SDE, which is an All India Cadre stating the cut of date 31.3.2009 for transfer of 2009-2010 to be wrong when in fact it should be 31.3.2010. In support of their case, the respondents have in their reply, placed reliance on BSNL Transfer Policy enclosed as Annexure-A/2 to the O.A. and have stated that the transfers have been effected based on the said policy. They have specifically relied on paras 1, 2(b), 3, 6(a), 6(b), Section-B 11(a), 11(d) and 11(k) and have submitted that the BSNL Transfer Policy is a well defined document with stipulated norms agreed both by Administration and Service Associations of staff side at highest level of policy making body of BSNL Board and modified from time to time with a balanced view of staff welfare and administrative requirements for company running and upliftment. If such well accepted norms are questioned by persons who have been transferred, for their own convenience, there will be no end to it and no transfer can be effected by the administration in the near future. The respondents submit that as per BSNL Transfer Policy, for Intra Circle transfer, the transferable age limit is up to 57 years for which station stay is computed and



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hence the previous service in Group-C is also counted. But for Inter Circle transfers, the stay period is counted from JTO onwards with the prescribed age limit being 55 years for hard tenure stations and 56 years for other stations. As per policy document, for the purpose of effecting Intra-Circle transfer, the station stay period is taken into account, whether it is Divisional/Unit/All India Cadre is immaterial. Though the applicants have become SDEs in November-December, 2008, they have been working in the same station in the previous cadres, including Group-C, for more than 25 years. As per Section-B 11(k), for Intra Circle Transfer upto STS level, the cut-off age is 57 years as of 31st March of that particular financial year, hence it has to be taken as 31.3.2009 only and if it is taken as 31.3.2010, it will be a mistake as the official who has completed only 9 years of service as on 31.3.2009 will be transferred which is contrary to the transfer policy stipulating tenure period of 10 years as per Section-B 11(a). The respondents have justified taking the cut off date as 31.3.2009 for computing the tenure period and age as the transfer orders were contemplated to be issued before 31st March, 2009, i.e. in the particular financial year only. The applicants are less than 57 years of age and now being transferred within Karnataka Circle to meet the shortages, and the provisions of the transfer policy have not been violated in any way. All the applicants were working on the same SSA for more than 10 to 12 years although they have become SDE very recently. The basic intention of the policy is to replace the persons working in the same SSA for a long time before they acquire vested interest in the Unit/SSA. There is no illegality/arbitrariness in the policy decision of BSNL, there is no substance in the claim of the applicants and is liable to be dismissed in limine both on law and facts.

5. I have heard Shri B. Veerabhadra, learned counsel appearing for the applicants and Shri Vishnu Bhat, learned counsel appearing for the respondents.



Perused the O.A. and the annexures enclosed thereto and the reply filed on behalf of the respondents.

6. It is the submission of the learned counsel for the applicant that the cut of date 31st March, 2009, for transfers for 2009-2010 is untenable and liable to be quashed, that the counting of service in Group-C for the purpose of transfer in Group-B cadre is against the transfer policy, that the applicants have got promotions as SDE during November-December, 2008, and have not put in long stay when compared to others who are staying for more than a decade as SDE and DE, that the transfer policy of BSNL clearly indicates that executive/non executive has to be taken into account and hence, computing is only to be done from the date of JTO which was non-executive (Group-C) at a particular point of time, that the impugned transfer order has been issued to accommodate other persons, that the transfer effected by Respondent No.1 is contrary to the transfer policy and the guidelines, that Group-C service is Divisional/Unit Cadre and only from JTO it is Circle Cadre which is the basis of All India Cadre, that the action of the respondents is against the principles laid down by the Hon'ble Apex Court in B.Varadha Rao vs. State of Karnataka (AIR 986 SC 1955) and the decision of this Tribunal in Subramanya vs. State of Karnataka (1987 (5) ATC 677). In support of his case, learned counsel has relied on the following judgments of the Hon'ble Supreme Court and the Tribunal :

(i) E.P.Royappa vs. State of Tamil Nadu (AIR 1974 SC 555).

(ii) H.N.Patro vs UOI & Ors. of the Ahmedabad Bench (1991 (18) ATC 854).

(iii) Mahendra Kishore Kumar vs. UOI (1992 (2)) ATC 66 - Jodhpur Bench.

(iv) K. Ramachandran vs. Director General, All India Radio (1994 (27) ATC 650 of the Ernakulam Bench.

(v) 2009 (1) SCC (L&S) 335 – V.Shiva Murthy vs.



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State of A.P.

(vi) 2009 (1) SCC (L&S) 938 – Dilip Kumar Garg vs.
State of U.P.

(vii) 2009 (1) SCC (L&S) 999 – APPSC vs. Balaji
Badhavath & Ors.

In view of the said position, learned counsel prays that the O.A. be allowed by granting the reliefs prayed for by the applicants.

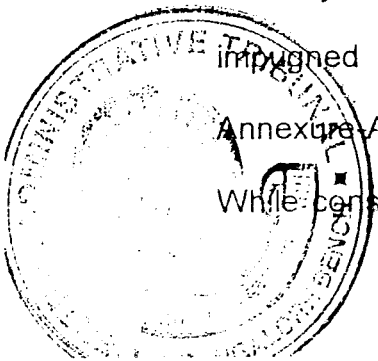
7. Per contra, the learned counsel for the respondents has reiterated the statements made in the reply and further contending that the application is speculative and devoid of merits. It has been submitted by the learned counsel that the applicants are working in Bangalore in different cadres for more than 25 years, that the transfer order dated 28.3.2009 at Annexure-A/8 has been issued in accordance with the Transfer Policy of BSNL, that the action based on such well defined and well accepted norms and procedure cannot be said as arbitrary or discriminatory. The respondents have justified taking the cut off date as 31.3.2009 for computing the tenure period and state that the same is quite in order as the transfer orders were contemplated to be issued before 31st March, 2009 i.e. in the particular financial year only and counting the stay period right from Group-C Cadre for these SDEs is as per the stipulated norms of the BSNL Transfer Policy since the station stay period is to be taken into account for Intra Circle transfer. The impugned transfer order at Annexure-A/8 has been issued by the competent authority based on the provisions of the transfer policy of BSNL to meet the shortages in various SSAs and the same is in order. There is no illegality or arbitrariness in the policy decision of BSNL and hence no substance in the claim of the applicants. He thus prays for dismissal of the O.A.



8. In support of his arguments, Learned counsel for the respondents has placed reliance on the following judgments:

- (i) Government of Andhra Pradesh vs. G.Venkataratnam (2008) 2 SCC (L&S) 900 paras 6, 8 and 11.
- (ii) Mohd. Masood Ahmad vs. State of U.P. (2007) 2 SCC (L&S) 806 paras 4, 5 and 7.
- (iii) State of U.P. & Ors. vs. Gobardhan Lal (2005) SCC (L&S) 55 paras 7, 8 and 9.
- (iv) State of U.P. & Ors. vs. Siya Ram & Ors. (2004) SCC (L&S) 1009 para 5.
- (v) UOI & Ors. vs. S.L.Abbas (AIR 1993 SC 2444 paras 7 and 8.
- (vi) G.B.Mahajan & Ors. vs. Jalangaon Municipal Council & Ors. (AIR 1991 SC 1153) para 14.
- (vii) Food Corporation of India & Ors. vs. Bhanu Lodh & Ors. (2005) SCC (L&S) 433 para 14.
- (viii) Government of Orissa vs. Haraprasad Das & Ors. (1998) SCC (L&S) 382 para 1).

9. I have carefully gone through the pleadings and material on record and considered the submissions of both the parties. It is the main contention of the applicant that the impugned transfer order issued by Respondent No.1 is in contrary to the transfer policy and the guidelines since the cut of date 31st March, 2009 for transfers for 2009-2010 is untenable and counting of service in Group-C for effecting transfer in Group-B cadre is not sustainable under law. The main issue for consideration by this Tribunal is whether the provisions of the transfer policy (Annexure-A/3) so far it relates to the provision of cut of date and counting of service non-executive/executive for the purpose of transfer is arbitrary/discriminatory. The other issue for consideration is whether the impugned transfer order dated 28.3.2009 issued by Respondent No. 1 at Annexure-A/8 is in contrary to the rules and norms of the BSNL transfer policy. While considering the above mentioned two issues, for a better appreciation of



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the case, I feel it is necessary to reproduce the correct Rule position on which the Respondents relied for passing the impugned transfer order. The relevant portion of the Rule is reproduced below :

BSNL's Employees 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 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 of meeting personal or tenure related requests etc.

2. Objectives of transfer policy :

- (a) xxxxx xxxxx
- (b) Transfer/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 fulfill the needs of employees nearing retirement for possible placement close to their home town or a location of their choice.

