



No. 211-10/2009-PERS-III

Dated: 30.06.2009

To

**All Heads of the Telecom Circles,
Bharat Sanchar Nigam Limited.**

Sub: Forwarding of Hon'ble Principal CAT, New Delhi Judgment in OA No. 1058/2009 regarding redeployment of excess Telegraph Staff from CTO/DTO, Delhi.

A Committee was constituted to look into the issue of surplus staff working in CTO/DTOs, Delhi and its gainful redeployment. Consequent upon the recommendation of the Committee to redeploy the excess staff belonging to CTO/DTOs, Delhi, the Corporate Office, with the approval of the competent authority, laid down certain modalities for transfer of excess staff from CTO/DTOs, NTR, Delhi to nearby SSAs located in NCR. Accordingly, the CGM, NTR issued transfer orders of several such officials to the nearby SSAs. Being aggrieved, some transferred officials challenged their transfer order in the CAT, PB, New Delhi. The Hon'ble Court vide its judgment dated 26.05.2009 has upheld the BSNL's decision to redeploy the excess staff working in CTO/DTOs, Delhi in nearby SSAs of other Recruiting Circles.

The undersigned is directed to forward a copy of the said judgment to all the Heads of Circles for examining the position in their Circles for further necessary action and to send a action taken report on the same so that it can be submitted to CMD, BSNL.

Encl: As above.

(R.K. GUPTA)

Asstt. General Manager (Pers.-III)

☎ : 23310401, FAX: 23725255

Copy to:

1. PPS to CMD, BSNL.
2. PPS to Director (HR) BSNL.
3. CS & GM (Legal), BSNL CO.
4. Intranet Portal.
5. Guard file/Order Bundle.
6. Copy to File No. 250-15/2008-Pers-III.

Central Administrative Tribunal
Principal Bench

OA No.1058/2009
MA No.705/2009

New Delhi, this the 26th day of May, 2009.

Hon'ble Dr. Ramesh Chandra Panda, Member (A)

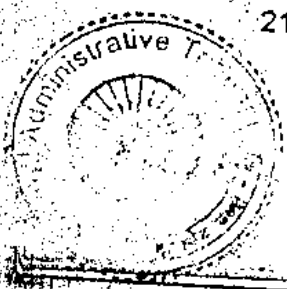
1. Sh. T.C. Nagar [Sr TOA(T)]
S/o Late Sh. Chhole Singh
B-63, Ganesh Nagar,
Pandav Nagar Complex,
Delhi-110092
2. Sh. R.D. Ram [Sr TOA(T)]
S/o Sh. K.P. Ram
E/255G, Sector-12, Vijay Nagar
Ghaziabad
3. Sh. I.P. Verma [Sr TOA(T)]
S/o Sh. Bedu Ram
Village Dheda, P.O. Murad Nagar
Distt. Ghaziabad
4. Sh. Manvir Singh [Sr TOA(T)]
S/o Sh. Nawab Singh
K-155, Sector-9
Vijay Nagar, Ghaziabad
5. Sh. Nawal Kishore A.S. [Sr TOA(TG)]
S/o Late Sh. Amarn Singh
Village Indergashi
P.O. Adhyatmik Nagar
Ghaziabad
6. Sh. Jai Prakash Singh [Sr TOA(TG)]
S/o Sh. Shiv Charan Singh
House No.436, Sector -2B
Vasundhara, Ghaziabad
7. Sh. Puran Singh Karkee [Sr TOA(TG)]
S/o Sh. Prem Singh Karkee
C-399, Brij Vihar, P.O. Chander Nagar
Ghaziabad
8. Sh. L.C. Gupta [Sr TOA (T)]
S/o Late Sh. R.G. Gupta
27, Ashirwad Vidya Vihar
Near S. College, Ghaziabad
9. Sh. R.K. Bansal [Waterman]
S/o Sh. Raghuraj Singh
Village & P.O. Dadri
Gautam Budh Nagar
Distt. Noida
10. Sh. Satish Kumar S.L. [Sr TOA (T)]
S/o Sh. Sural Lal Kanth
433, Vivekanand Nagar



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Ghaziabad

11. Sh. A.K. Verma [Sr.TOA (T)]
S/o Sh. S.K. Verma
G-144/A, Sector-9
New Vijay Nagar, Ghaziabad
12. Sh. Virender Singh [TM/I]
S/o Sh. Vijay Pal Singh
D-17, Sector-11, Vijay Nagar
Ghaziabad
13. Sh. Ram Singh Negi [Sr.TOA (T)]
S/o Sh. J.S. Negi
House No.360, Sector-15
Vasundhara, Ghaziabad
14. Sh. Salender Kumar Singh [Sr.TOA (TG)]
S/o Sh. O.P. Arya
N-107, Sector-12
Pratap Vihar, Ghaziabad
15. Sh. Sharda Nand [TM/O]
S/o Sh. Suraj Mal
Village Jan Siwana, P.O. Dhoom
Distt. Ghaziabad
16. Smt. Nirmal Mehton [Sr.TOA (T)]
W/o Sh. Sarwan Singh
B-145, Shalimar Garden
Near New Simapuri Depot
Sahibabad, Ghaziabad
17. Sh. Rajender Singh Saini [Sr.TOA (TG)]
S/o Late Sh. D.C. Saini
Village & P.O. Jhara
Mohalla Sainipura, Gurgaon
18. Sh. Attar Singh [TM/O]
S/o Sh. Mange Ram
House No.133, Daultabad
Panchowali Gali-3
Distt. Gurgaon
19. Sh. Dev Raj [TM/I]
S/o Late Sh. Dilver Singh
221-B, Shakti Khand-I
Indirapuram, Ghaziabad
20. Sh. Ramdhari R.J. [TM/O]
S/o Late Sh. Ramjiyawan Maurya
House No.23, Moh. Swadesh Vihar
Near DLF Water Tank
Ankur Vihar Loni, Ghaziabad
21. Smt. Renu Khurana [Sr.TOA (T)]
W/o Sh. R.K. Khurana
A-159, M.I.G. Flats
Brij Vihar, Ghaziabad



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Smt. Veena Marwah [Sr. TOA (T)]
W/o Sh. Raman Marwah
House No.350, Sector-1
Vaishali, Ghaziabad

23. Sh. Shafiq Ahmed [Sr. TOA (T)]
S/o Sh. Abdul Hamid
60, Kailash Park
Arthla, Ghaziabad

24. Sh. Jadu Nath [Sr. TOA (TG)]
S/o Sh. Narottam
Village & P.O. Beharipura
Ghaziabad

25. Sh. Mom Raj [TM/O]
S/o Sh. Hoti Lal
E-89, Lalbagh
Loni Road, Ghaziabad

26. Sh. Narayan Sharma [R/M]
S/o Sh. Gajo Mistry
RC-350, Deepali, Vasundhara
Ghaziabad

Applicant.

(By Advocate: Sh. Satender Kumar)

Versus

1. Union of India
Through Secretary
Department of Telecommunication
Sanchar Bhawan
20, Ashoka Road
New Delhi

2. Bharat Sanchar Nigam Limited
Through Chief General Manager
Northern Telecom Region
Kidwai Bhawan, 2nd Floor
New Delhi

3. Chief Managing Director (CMD)
Bharat Sanchar Nigam Limited
Bharat Sanchar Bhawan
H.C. Mathur Lane
Janpath, New Delhi-110001

Respondents.

(By Advocate : Shri M. M. Sudan)

ORDER :

Dr. Ramesh Chandra Panda, Member (A) :

All the Applicants presently working in Bharat Sanchar Nigam Limited (BSNL) have challenged the transfer/posting orders dated 2.4.2009 issued for transferring and posting about 70 persons to Ghaziabad, Faridabad, Noida and

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Gurgaon. They prayed for interim relief which was considered at the admission stage and the orders transferring the Applicants were stayed and same is continuing. The Applicants have approached this Tribunal under Section 18 of the Administrative Tribunals Act, 1985 with the following prayers :-

"(a) quash the transfer orders No.20-05/2008-Soil Survey Officer (STA)/Part-II/27, 20-05/2008-Soil Survey Officer(STA)/Part-II/28 and 20-05-2008-Soil Survey Officer(STA)/Part-II/29, all dated 2nd April, 2009 insofar as they relate to the applicants herein.

(b) any other relief/reliefs which this Hon'ble Tribunal may deem fit and proper in the facts and proper in the facts and circumstances of the case." another orders dated of same date posting 12 persons to Gurgaon.

2. Shri Satender Kumar, learned counsel for the Applicants very extensively argued that the Respondents (BSNL) has drawn up a detail transfer policy which was amended on 13.8.2008. As per the clause 6 (h) of the transfer policy indicated that in respect of matters which are not specifically covered in the rules, the Central Government Rules will apply. In this context, my attention was drawn to Para 4.4 (a) of the Government of India Policy on Redeployment of surplus employees, which stipulates that ordinarily junior most temporary persons should be surrendered against the reduced cadre strength, followed if necessary by the junior most quasi permanent and thereafter permanent staff. He contended that out of 567 employees the Respondents should have identified the junior most and transferred them. I have closely analysed the Para 4.4(a) and found that situation in the said para related to surrender and not transfer. Further, the transferred employees belong to different trades/functions and do not belong to one cadre and as such a list of 567 employees cannot possibly come in one hierarchy and shown 1 to 567. I, therefore, do not find any sound logic in the argument of Shri Satender Kumar and in my considered opinion, this Para will not be applicable in the present case.

3. Other points raised by Shri Satender Kumar relates to the Para 13 (iii) of the BSNL Transfer Policy, as per which the employees of more than 55 years of age as on 31st March should not be transferred. Further, he submitted that the Respondents have followed pick and choose policy and even the Respondents



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transferred employees having less than 2 years of service. On a query, the learned counsel for the Respondents clarified that (i) there is only one Applicant (No.15) who has less than 2 years of service and (ii) there are 6 Applicants (Sl. No.3,11,15,17,18 and 20) who are more than 55 years of age. The Applicant No.18 has joined the place of transfer and has sought of his LPC and not pressing his request in the OA.

4 Shri M. M. Sudan, the Learned Counsel for the Respondents, narrated the historical background of the telecom sector in the country to bring home the fact that the BSNL had been carrying on the past legacy and the associated issues. To compete with the Private Telecom Companies in the country, the BSNL has to pull up its socks to identify its weak points in order to correct the same. He highlighted the steps BSNL had already taken to compete with the Private Players in the Sector. He submitted that the place of residence of the transferred employees had been one of the main principles. He hastened to add that BSNL had been very responsive to the employees' grievances and handed over copy of 2 orders issued on 1.5.2009. He also contended that the transfer orders were issued after full fledged administrative process followed by the Respondents step by step. On instructions from the Respondents, Shri Sudan informed that the Applicants' genuine grievances/requests would also be considered by the Respondents.

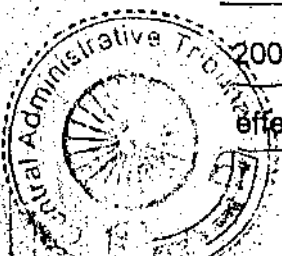
5 Having heard the rival contentions and having perused the pleadings, it is noted that transfer is exigency of service and the employees of BSNL are liable to be transferred to the area of operation of BSNL. It is apt for me to capture the perspective of the case to appreciate the action of the Respondents for proper adjudication of the issues posed before me.

6 BSNL was carved out of the Department of Telecom (DOT) with effect from 1.10.2000 and is presently a Central Public Sector Enterprise. All the Applicants belonging to the Telegraph Traffic Division, Delhi, of DOT were absorbed as employees of BSNL. Earlier, DOT was providing telephone,

telegraph and other associated facilities through out the country. Mahanagar Telephone Nigam Limited (MTNL) and BSNL were created some years back. The MTNL coming into existence w.e.f. 1.11.1998, prior to BSNL, has been providing telephone and other related services except telegraph facility in Delhi and Mumbai. The Telegraph services were then looked after at Delhi and Mumbai by DOT which was taken over by BSNL from 1.10.2000. In the meantime, technological development in the telecom sector like mobile telephones, internet, e-mails, SMS etc. have impacted/affected the telegraph traffic. So much so, the Respondents in their written submissions have reported that average monthly loss to BSNL was about Rs.1.95 crore because the average monthly expenditure being Rs.2.08 crore and income being Rs.13.2 lakh, loss has been very high. It was submitted that as on 15.4.2009 there were 567 total telegraph staff with average number of telegrams booked per day was about 661. This, the Respondents aver, necessitated the BSNL to re-deploy telegraph staff for other services. BSNL constituted a committee to examine inter alia the said excess staff issue. On the representation from the BSNL Employees Union, 2 nominees of the employees were included in the Committee. These 2 nominees raised some objections, which were checked by the Committee before finalizing the Report (Pages 48-58). However, the nominees of the Union did not sign the Report and submitted a separate note (Annexure A/6). However, the Committee submitted its report dated 31.8.2008 (Annexure A/5) on the basis of which BSNL issued guidelines vide letter dated 27.11.2008 for redeployment of 338 excess staff.

7. As per the guidelines and instructions, option of the employees working in New Delhi/Delhi Telegraph Offices was called for their permanent transfer to any SSA under any circle in the Country with the commitment to keep their seniority in tact. The last date of the said option was extended 4 times from December,

2008 to April 2009 and only 11 officials opted for which their transfers were effected.



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8. Respondents submit that they being sensitive, and responsive, consider the grievances of the Applicants in sympathetic manner. I find that their approach has been employee centric. I find that while keeping the transfer policy in the back of their mind, and the Report of Committee plus the corporate guidelines thereon, the Respondents look into account the following while transferring the Applicants. Those are : (a) their convenience to perform duties effectively; (b) minimum displacement from their place of work; (c) place of residence and the place of work to be close by, and (d) getting service benefits and retiral benefits in easy way. So much so in case of some employees transferred out of Delhi, on receipt of representation the Respondents did verify the grounds and have cancelled/kept in abeyance the transfer order. Five cases are worth mentioning (i) In the order dated 27.4.2009 (Annexure R/1) R. S. Shishodia transferred to Noida was modified to Ghaziabad. (ii) Smt. Pushpa Gupta's transfer to Ghaziabad was cancelled vide order dated 27.4.2009 (Annexure R/2) on the ground that she is physically handicapped and her husband is working at Delhi. (iii) In case of Gopichand transferred to Ghaziabad, it was found that he was due to retire on 31.8.2009 and as such his transfer was cancelled. (iv) R. D. Ram who is the Delhi District Treasurer of BSNLEU represented to retain him at Delhi. In the order dated 1.5.2009, his transfer was kept in abeyance till 22.12.2009 when he could complete his 2 years tenure as Treasurer. (v) In case of T. C. Nagar, the Applicant No.1 in this OA, the Respondents checked his residential address and found that he was the resident of Delhi. Thus, the Respondents cancelled his transfer order to Noida and allowed him to continue in his earlier place of work vide order dated 1.5.2009.

9. Since the Applicants were on a transferable post, in my opinion, the Respondents have the authority to transfer them which is an exigency and incidence of service and is an administrative decision. Interference by the Courts with transfer orders should only be in very rare cases. As repeatedly held in several decisions of the Hon'ble Apex Court, transfer is an incidence of service and the Courts and Tribunals should not interfere. The ratio laid in some of the



judgments of the Hon'ble Supreme Court are in the cases between B. Varadha Rao versus State of Karnataka (AIR 1986 SC 1955), Shilpi Bose versus State of Bihar (AIR 1991 SC 532), Union of India versus N.P. Thomas (AIR 1993 SC 1605), and Union of India versus S.L. Abbas (AIR 1993 SC 2444). In this regard while passing this order I have relied on a recent decision of Honourable Supreme Court in Masood Ahmad Versus State of U.P. [2007 STPL(LE) 39042 SC] decided on 18-9-2007 which reads as follows:-

"The scope of judicial review of transfer under Article 226 of the Constitution of India has been settled by the Supreme Court in Rajendra Rao vs. Union of India (1993) 1 SCC 148; (AIR 1993 SC 1236), National Hydroelectric Power Corporation Ltd. vs. Shri Bhagwan (2001) 8 SCC 574; (AIR 2001 SC 3309), State Bank of India vs. Anjan Sanyal (2001) 5 SCC 508; (AIR 2001 SC 1748). Following the aforesaid principles laid down by the Supreme Court, the Allahabad High Court in Vijay Pal Singh vs. State of U.P. (1997) 3 ESC 1668; (1998) All LJ 70 and Onkarnath Tiwari vs. The Chief Engineer, Minor Irrigation Department, U.P. Lucknow (1997) 3 ESC 1866; (1998 All LJ 245), has held that the principle of law laid down in the aforesaid decisions is that an order of transfer is a part of the service conditions of an employee which should not be interfered with ordinarily by a Court of law in exercise of its discretionary jurisdiction under Article 226 unless the Court finds that either the order is mala fide or that the service rules prohibit such transfer, or that the authorities who issued the orders, were not competent to pass the orders."

10. Considering the above facts and circumstances of the case, I find that the Respondent-BSNL is competent to re-deploy surplus staff by adopting employee centric transfer policy keeping in their mind the mandate of commercial activities with human face. I also find that the redeployment based transfer has preceded meticulous, step by step administrative process. Transfer is the culmination of the process. I also find that the Respondents have followed the principle of employees' residence, principle of employees' convenience and the Principle of exigencies in the transfer orders they have passed. The orders of transfer are valid in law as well.

11. However, the transferred employee-Applicants, if have the evidence to show their residence different from the one given in the transfer order, they are given the liberty to submit representation along with evidence to the respondents within 30 days from the date of receipt of a copy of this order and on receipt of



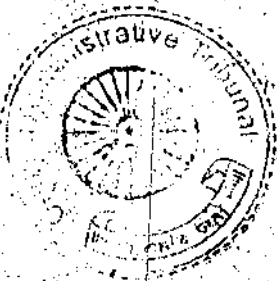
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the same the Respondents-2 and 3 will consider the same and pass order within 30 days from the date of receipt of the representation.

12. In the result, the Original Application is dismissed with the observations and directions as in Para 11 within and the interim stay granted by this Tribunal is vacated. No costs.

(Dr. Ramesh Chandra Panda)
Member (A)

/pj/



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28/5/07
Dr. Ramesh Chandra Panda (A)
Dr. Ramesh Chandra Panda
Central Administrative Tribunal
Prinpal Bench, New Delhi