

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN
&
THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

WEDNESDAY, THE 23RD DAY OF SEPTEMBER 2015/1ST ASWINA, 1937

O.P. (CAT).No. 153 of 2015 (Z)

AGAINST THE ORDER IN OA NO.180/00734/2015 of CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH DATED 18-09-2015.

PETITIONER(S):

M. SOMA SUNDARA RAO,
CHIEF GENERAL MANAGER, KERALA CIRCLE,
BHARAT SANCHAR NIGAM LIMITED,
PMG JUNCTION, THIRUVANANTHAPURAM - 695 033,
RESIDING AT E5, BSNL CGM QUARTERS,
BARTON HILL, LAW COLLEGE JUNCTION,
THIRUVANANTHAPURAM - 695 033.

BY ADVS. SRI. P. JACOB VARGHESE (SR.)
SRI. VIVEK VARGHESE P.J.
SRI. VARUGHESE M. EASO

RESPONDENT(S):

1. THE JOINT GENERAL MANAGER (PERS.),
BSNL CORPORATE OFFICE, 4TH FLOOR,
BHARAT SANCHAR BHAVAN, JANPATH,
NEW DELHI - 110 001.
2. THE CHAIRMAN & MANAGING DIRECTOR,
BHARAT SANCHAR BHAVAN,
HARISH CHANDRA MATHUR LANE,
JANPATH, NEW DELHI - 110 001.
3. MR. J. ANANTHARAM,
SENIOR GENERAL MANAGER TELECOM DISTRICT,
WEST GODAVARI, ELURU,
ANDHRA PRADESH - 534 002.

P.T.O.

4. UNION OF INDIA, REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF TELECOMMUNICATIONS, SANCHAR BHAVAN,
RAFI MARG, NEW DELHI - 110 001.
5. THE MEMBER (SERVICES),
DEPARTMENT OF TELECOMMUNICATIONS, SANCHAR BHAVAN,
RAFI MARG, NEW DELHI - 110 001.

R1 & R2 BY ADVS. SRI.PREMJIT NAGENDRAN, SC, BHARAT SANCHAR NIGAM
LTD.
SRI.MATHEWS K.PHILIP, SC, BSNL

R4, & R5 BY ADV. SRI.N.NAGARESH, ASSISTANT SOLICITOR GENERAL OF INDIA

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 23-09-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

P.T.O.

APPENDIX

PETITIONER'S EXHIBITS/ANNEXURES:

- EXHIBIT P1: TRUE COPY OF THE ORDER NO.317-04/2012-PERS. (I) (PT) DATED 16.09.2015 ISSUED BY THE 1ST RESPONDENT.
- EXHIBIT P2: TRUE COPY OF ORIGINAL APPLICATION, O.A.NO.180/00734 OF 2015 OF CAT, ERNAKULAM BENCH.
- ANNEXURE A1: TRUE COPY OF THE ORDER NO.317/07/2012-PERS.I(P.T) DATED 16.09.2015 ISSUED BY THE 1ST RESPONDENT.
- ANNEXURE A2: TRUE COPIES OF APPRECIATION LETTERS ISSUED TO THE APPLICANT.
- ANNEXURE A3: TRUE COPY OF THE MINUTES OF THE MEETING DATED 20TH AUGUST, 2015.
- ANNEXURE A4: TRUE COPY OF TRANSFER POLICY OF BSNL.
- ANNEXURE A5: TRUE COPY OF PROFIT AND LOSS STATEMENT IN RESPECT OF BSNL KERALA CIRCLE FOR THE YEARS 2013 TO 2015.
- EXHIBIT P3: TRUE COPY OF INTERIM ORDER DATED 18.09.2015 IN O.A.NO.180/00734 OF 2015 OF CAT, ERNAKULAM BENCH.
- EXHIBIT P4: TRUE COPY OF THE WITHDRAWAL NOTICE OF AGITATION NO.AGITATION/KERALA/2015-02 DT. 16.09.2015 BY BSNL EMPLOYEES UNION, SANCHAR NIGAM EXECUTIVES' ASSOCIATION, BSNL CASUAL CONTRACT WORKERS FEDERATION, NEW DELHI.
- EXHIBIT P5: TRUE COPY OF OFFICE MEMORANDUM, O.M. NO.105/1/66/AVD-I DATED 28TH OCTOBER, 1969.
- EXHIBIT P6: TRUE COPY OF THE AGREED LIST 2015 OF DELHI CIRCLES ALONG WITH LETTER NO.21-9/2015-VA DATED 27.05.2015.
- EXHIBIT P7: TRUE COPY OF THE MINUTES OF THE MEETING WITH ASSOCIATION/UNIONS & OFFICER OF KERALA TELECOM CIRCLE HELD ON 20TH AUGUST, 2015.
- EXHIBIT P8: TRUE COPY OF REPRESENTATION DATED 19.09.2015 BY THE PETITIONER TO THE 5TH RESPONDENT.

RESPONDENTS' EXHIBITS/ANNEXURES: NIL

//TRUE COPY//

P.S. TO JUDGE

St/-

**K. SURENDRA MOHAN
&
SHAJI P. CHALY, JJ.**

O.P.(CAT) No.153 of 2015

Dated this the 23rd day of September, 2015

JUDGMENT

Surendra Mohan, J.

The petitioner who is the applicant in O.A.No.180/00734 of 2015 of the Central Administrative Tribunal, Ernakulam Bench, has filed this Original Petition, being aggrieved by an order of the Tribunal refusing to grant an interim order. The petitioner had filed the Original Application challenging Ext.P1 order dated 16.09.2015 of the 1st Respondent by which, he has been transferred from the post of Chief General Manager, Kerala Circle of the B.S.N.L. As per Ext.P1, one Mr. J. Anantharam, who is the 3rd Respondent herein has been posted as the Chief General Manager in the place of the petitioner. Ext.P1 order is dated 16.09.2015.

2. The case of the petitioner is that, while functioning as the Chief General Manager, he had initiated disciplinary action against a number of employees, some of whom happened to be powerful office bearers of the Trade Unions of

the employees. The allegation of the petitioner is that, his transfer has been at the behest of the leaders of the Trade Unions. Ext.P4 letter dated 16.09.2015 addressed by the office bearers of the Union to the 2nd Respondent is relied upon, to contend that the said allegation of the petitioner is substantiated by the said document. The petitioner also places reliance on Ext.P7 Minutes of a meeting that the 2nd Respondent had with the Unions on 20.08.2015, when the petitioner was away on leave. According to the petitioner, it was pursuant to an assurance given by the 2nd Respondent at the said meeting that, Ext.P1 transfer order has been issued. The petitioner is a person, who has had an unblemished record of service, spanning a period of more than three decades. He is at the fag end of his career and due to retire on 31.12.2015. Therefore, his transfer at this point of time, according to him, is absolutely uncalled for and unjustified. It is further pointed out that as per Ext.P1, the petitioner has been placed under "compulsory wait" without being posted anywhere else, casting a stigma on him. Therefore, it is contended that Ext.P1 is unsustainable and liable to be set aside.

3. Advocate Sri. P. Jacob Varghese, the learned Senior Counsel, who appears for the petitioner, takes strong exception to the manner in which the Central Administrative Tribunal has declined an interim order to the petitioner pointing out that, the Standing Counsel for the B.S.N.L had handed over a list, which purportedly showed that the petitioner's name had been included in what is called an "Agreed List". A copy of the said document furnished to the learned counsel for the petitioner has been produced as Ext.P6. Since the document was not produced, but was only handed over across the bar at the time of the arguments, according to the learned Senior Counsel, the purport of the said order could not be explained properly to the Tribunal. It was for the said reason that, the contention of the petitioner had not been accepted and the order declining an interim order was passed. The learned Senior Counsel further points out that, the situation that was in existence triggered by the initiation of disciplinary action against certain employees, was of such a nature that there were prevailing threats of violence and other disruptive activities at the instance of the Trade Unions. The situation had compelled the petitioner to

approach this Court by filing W.P.(C) No.27310 of 2015 seeking orders of Police protection. Accordingly, by an order dated 10.09.2015, it is pointed out that orders for maintaining law and order had been issued by this Court. It is thereafter that, the petitioner has been unceremoniously removed from the post. Therefore, according to the learned Senior Counsel, this is a fit case in which an interim order permitting the petitioner to continue ought to have been granted. His transfer being vitiated by extraneous consideration and *malafides* is liable to be set aside, it is contended.

4. Adv. Sri. Premjit Nagendran appears for Respondents 1 and 2. The learned A.S.G.I appears for Respondents 4 and 5. The matter is posted before us for admission. There is no appearance for the 3rd Respondent.

5. According to Sri. Premjit Nagendran, who appears for Respondents 1 and 2, this is not a case in which the B.S.N.L has taken any action against the petitioner as sought to be made out by the learned Senior Counsel. Ext.P6, according to the learned counsel, is a list that has been prepared by the Central Vigilance Commissioner in consultation with the C.B.I. The learned counsel has handed over to us a

copy of the Office Memorandum dated 17.06.2005 that sets out the procedure to be followed upon information being received that a particular person is included in the "Agreed List". It is submitted that the case of the learned counsel that, Ext.P5 Scheme on which reliance has been placed by the learned Senior Counsel for the petitioner to advance a contention that it contains the procedure to be followed in the cases of persons who have been included in Ext.P6, is not right. There is a difference between an "Agreed List" and "list of public servants of doubtful integrity", it is pointed out. In the case of persons who are included in the "Agreed List", the procedure to be followed has been set out in an O.M. dated 17.06.2005, a copy of which has been handed over to us across the bar. Reference is made to the said O.M. to point out that, such persons are not permissible to be posted to sensitive posts. Therefore, B.S.N.L had to take immediate action to remove the petitioner from the sensitive post that he was occupying. The above being the situation, according to the learned counsel, the Central Administrative Tribunal was right in declining an interim order to the petitioner. For the above reasons, according to the learned counsel, the Original

Petition is only to be dismissed.

6. Heard. It is worth noticing that, the petitioner is a person who has been in service for the past more than three decades. He is due to retire on 31.12.2015. He is occupying the post of Chief General Manager of the B.S.N.L., Kerala Circle. He has been occupying the said post from 2012 onwards. To a pointed question by us to the learned counsel for the B.S.N.L., the answer has been that no disciplinary proceedings whatsoever or any other action, even in the nature of the issue of a show cause notice of any kind has been initiated against the petitioner by B.S.N.L, at any time during his tenure with the said organization. A perusal of Ext.P6 shows that, the same is a communication dated 27.05.2015. The "Agreed List" is with respect to the Delhi Circle. The name of the petitioner who has been shown as Sl.No.6 therein, has been shown designated as the General Manager (Marketing) and his present posting has been shown as the Chief General Manager, Kerala. Therefore, the list Ext.P6 relates to the Delhi Circle where he had been working during 2008-2009. It is further worth noticing that, what was made available for the perusal of the Central Administrative

Tribunal at the time of passing the interim order Ext.P3 was Ext.P6. Before us, the case of the learned counsel for the B.S.N.L. is that, there is difference between persons of "doubtful integrity" and persons who are included in the "Agreed List". It is in support of the said contention that, the copy of O.M. dated 17.06.2005 is handed over to us. Admittedly, the C.A.T did not have the benefit of perusing the said document. We are not able to understand why all the necessary documents were not placed before the C.A.T., at the time when Ext.P3 order was passed. The answer of the learned counsel for the B.S.N.L. is that, the Original Application is dated 17.09.2015 and that the same was moved urgently. Therefore, within the time constraints, for defending the same, only the materials that were readily available could be brought to the notice of the C.A.T.

7. It is not in dispute that, the Trade Unions were at loggerheads with the petitioner and that an agitation of the employees was going on. The Trade Unions had been clamouring for removal of the petitioner from the post he was occupying. They were also demanding that all disciplinary proceedings be withdrawn. The petitioner had to even obtain

orders of Police protection from this Court, a copy of which we have perused. The said order is dated 10.09.2015. The Minutes of the meeting that the 2nd Respondent had with the Unions is dated 20.08.2015 and is produced as Ext.P7. Ext.P6 is dated 27.05.2015. It is not clear when the said document was received by the B.S.N.L. However, the endorsements seen on the face of the covering letter thereof, bears the date, 01.06.2015. Ext.P1 is dated 16.09.2015, months after the receipt of the said order. Therefore, the fact remains that despite the receipt of Ext.P6, the petitioner had continued to function as the Chief General Manager for more than two months thereafter. Ext.P6 shows that the "Agreed List" is in respect of the Delhi Circle and there are no allegations against the petitioner with respect to his functioning as the Chief General Manager, Kerala Circle.

8. Taking note of the entire facts and circumstances of the case, especially in the background of the agitation that was going on at the instance of the employees, and the demands of the trade unions, and in the context of the communication Ext.P4 addressed by the Union leaders to the 2nd Respondent, we are not satisfied that there is *prima facie* justification for

removing the petitioner from the post that he was holding. Admittedly, he had been occupying the said post though Ext.P6 dated 27.05.2015 had been received on 01.06.2015. There are many questions that require to be enquired into and answers found. Whether the petitioner has been guilty of any acts of omission or commission also would have to be examined. If he is guilty, he would certainly have to be dealt with in accordance with law. But only after affording an opportunity to defend himself. The present order Ext.P1 passed in the context in which it has been issued, does not inspire confidence that, it was necessitated solely on the basis of Ext.P6. Therefore, all questions would have to be probed and determined by the competent authority, which in this case is the Central Administrative Tribunal, before the impugned action could be sustained. At present, no such final adjudication has taken place.

9. In view of the above, we do not venture to consider the contentions of either parties on the merits. It is sufficient that, the Central Administrative Tribunal is directed to consider the main application itself expeditiously and in a time bound manner. Since the petitioner had been continuing to function

as Chief General Manager even after the receipt of Ext.P6, it is not necessary to disturb him, until the matter is finally adjudicated by the C.A.T., in accordance with the directions that we propose to issue. In this context, we take notice of the contention of the learned counsel for the B.S.N.L that the 3rd Respondent has taken charge today in the morning. Since he is a junior officer, it is only appropriate that he hands over charge to the petitioner immediately.

10. This Original Petition is accordingly disposed of with the following directions:

(i) Ext.P3 order of the Central Administrative Tribunal is set aside to the extent it has disallowed the interim relief sought for by the petitioner.

(ii) The Central Administrative Tribunal, Ernakulam Bench is directed to take up O.A.No.180/00734 of 2015 on priority basis and to finally dispose of the same within a period of two months, untrammelled by any of the observations made hereinabove. The learned counsel for the B.S.N.L submits that, they would file their responses to the Original Application immediately and shall cooperate, to ensure that the O.A. is finally disposed of within one month. However, we stipulate

the time limit of two months for the reason that we are not aware of the pressure of work before the Central Administrative Tribunal. It is needless to observe that the petitioner shall also cooperate to see that the matter is disposed of within the time limit stipulated above.

(iii) In the meantime, Ext.P1 shall be kept in abeyance and the petitioner shall be permitted to continue as the Chief General Manager of B.S.N.L., Kerala Circle.

Sd/-
**K. SURENDRA MOHAN
JUDGE**

Sd/-
**SHAJI P. CHALY
JUDGE**

//true copy//

P.S. to Judge

St/-
23.09.2015