

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE K. SURENDRA MOHAN

&

THE HONOURABLE MR. JUSTICE SHAJI P. CHALY

MONDAY, THE 7TH DAY OF DECEMBER 2015/16TH AGRAHAYANA, 1937

OP (CAT).No. 195 of 2015 (Z)

AGAINST THE ORDER IN OA 180/00817/2015 of CENTRAL ADMINISTRATIVE
TRIBUNAL, ERNAKULAM BENCH DATED 19.11.2015.

PETITIONER:

FRANCIS XAVIER P.J, AGED 53 YEARS
S/O.P.P.JOSEPH, DRIVER GR.I
OFFICE OF THE SUB DIVISIONAL ENGINEER/WLL/INSTALLATION
BHARAT SANCHAR NIGAM LTD, PALARIVATTOM, ERNAKULAM
RESIDING AT: PUNATHIL HOUSE, MAY 1ST ROAD, THAMMANAM
KOCHI-35.

BY ADVS. SRI.T.C.GOVINDA SWAMY
SMT.KALA T.GOPI
SMT.T.N.SREEKALA
ADV.SRI.KARTHIKA.S

RESPONDENTS:

1. THE CHIEF GENERAL MANAGER (TELECOM),
BHARAT SANCHAR NIGAM LTD, KERALA CIRCLE
TRIVANDRUM-695033.
2. THE PRINCIPAL GENERAL MANAGER (TELECOM),
BHARAT SANCHAR NIGAM LTD, KALATHIPARAMBIL ROAD
ERNAKULAM-682016.
3. THE ASSISTANT GENERAL MANAGER (ADMN),
BHARAT SANCHAR NIGAM LTD, KALATHIPARAMBIL ROAD
ERNAKULAM-682016.
4. THE DEPUTY GENERAL MANAGER,
BHARAT SANCHAR NIGAM LTD, KALATHIPARAMBIL ROAD
ERNAKULAM-682016.
5. JOHNSON.E.A, DRIVER GR.I
OFFICE OF THE SUB DIVISIONAL ENGINEER/WLL/INSTALLATION
BHARAT SANCHAR NIGAM LTD, PALARIVATTOM, ERNAKULAM.

R1 TO R5 BY SRI.JOHNSON GOMAZ

THIS OP (CAT) HAVING COME UP FOR ADMISSION ON 07-12-2015, THE COURT
ON THE SAME DAY DELIVERED THE FOLLOWING:

OP (CAT).No. 195 of 2015 (Z)

APPENDIX

PETITIONER'S EXHIBITS :

- P1 : A TRUE COPY OF THE O.A.180/00 817/2015 DATED 12.10.2015,ALONG WITH ITS ANNEXURES
- P2 : A TRUE COPY OF THE INTERIM ORDER IN O.A.180/00817/2015 DATED 13.10.2015
- P3 : A TRUE COPY OF THE COUNSEL STATEMENT IN O.A.180/008176/2015 DATED 15.10.2015 FILED BEFORE THE HON'BLE CAT,ERNAKULAM BENCH
- P4 : A TRUE COPY OF THE ORDER IN O.A.180/00 817/2015 DATED 19.11.2015
- P5 : A TRUE COPY OF THE M.A.1187/2015 IN O.A.180/00817/2015 24.11.2015 ALONG WITH ITS ENCLOSURE.

RESPONDENTS' EXHIBITS : NIL

//TRUE COPY//

P.A. TO JUDGE

smv

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

O.P.(CAT) No.195 of 2015

Dated this the 7th day of December, 2015

JUDGMENT

Surendra Mohan,J.

The petitioner, a Driver Gr.I in the office of the Sub Divisional Engineer of Bharat Sanchar Nigam Limited, Palarivattom is before us challenging an interim order dated 19.11.2015 of the Central Administrative Tribunal in the Original Application No.180/00817/2015. As per Annexure A1 proceedings, that form part of Ext.P1, the petitioner was transferred by the 3rd respondent and posted to work under the Sub Divisional Engineer, Vyttila. The order is dated 18.9.2015. The said order was challenged before the Central Administrative Tribunal. Though initially an interim order of stay was granted, after hearing both parties, by Ext.P4 the interim order has been vacated. The Central Administrative Tribunal has also directed the petitioner to join duty at the transferred post, with immediate effect. The petitioner is aggrieved by Ext.P4.

2. According to Adv.Sri.T.C.Govindaswamy who appears for

the petitioner, the petitioner has been transferred by an authority who is not empowered to issue the transfer order, going by Annexure A3 guidelines. Our attention has been drawn to Annexure A3 to point out that, the petitioner could be transferred only by a Circle Head/SSA or their delegated authority. According to the learned counsel, the authority who had issued Annexure A1 has not been authorised or delegated the power to issue the same. It is contended that there is no statement in Annexure A1 order to the effect that he was exercising a power delegated to him. The counsel has a further contention that the petitioner had been working at his present post only for the last 4 years while there are other employees who have been stationed at the same place for more than 10 years. If the transfer is in accordance with the transfer policy, persons who had stayed at the station for the longest period should have been shifted first.

3. Adv.Sri.Johnson Gomaz appears for the respondents. The counsel points out that, the petitioner's address in the Original Petition shows his place of residence to be at Thammanam. He has been shifted from Palarivattom to Vyttila. Thammanam is located midway between the two places. Therefore, absolutely

no prejudice has been caused to the petitioner by the transfer. It is the further case of the counsel that the vehicle that the petitioner had been driving has been scrapped and therefore, petitioner had been idling for the past 5 months. It was in the above circumstances, he was shifted to Vyttila where a driver was necessary to drive the vehicle that was available. It is the case of the learned counsel that, the authority who has issued Annexure A1 was empowered to issue the same. The Central Administrative Tribunal was convinced that the authorities were sufficiently empowered. It is also pointed out that, the Original Application is still pending and that the petitioner was at liberty to workout his remedies in the Original Application.

4. It is worth noticing that, the Central Administrative Tribunal has considered the issue elaborately. It has been found that, the authority that has passed Annexure A1 had ample powers to issue the same. At any rate, the question as to whether the authority had the necessary power or not, is a matter on which, a decision would have to be taken at the time of final hearing of the matter, depending on the documents to be produced by the respondents also. Suffice it to notice for the present that, the petitioner has been transferred only from

Palarivattom to Vyttila. Both places are at Ernakulam and are not far away. Petitioner is residing at Thammanam which is also a place that is located close by. In the face of the contention of the counsel for the respondent that the petitioner was idling since the vehicle that he was driving was scrapped, we do not find anything wrong in the action of the authorities shifting the petitioner to a place where a vehicle was idling so that his services could be utilised for driving the same. However, the genuineness of the assertion would have to be determined by the CAT at the time of final hearing. We notice that the Tribunal has only considered the matter for the purpose of deciding whether the interim order should continue or not. It has been found that, the petitioner had not made out a prima facie case and that the balance of convenience was not in his favour. The above being the position, we do not find any grounds to admit this Original Petition or to grant any of the reliefs sought for.

5. The learned counsel for the petitioner expressed an apprehension that, the matter that has now been posted before the Registrar of the CAT would get protracted, ultimately resulting in the entire OA becoming infructuous. The counsel for the respondent submits that, they would file their reply within a

period of two weeks.

In view of the above, while dismissing the Original Petition, we direct the CAT to finally dispose of Original Application No.180/00817/2015 as expeditiously as possible and at any rate, within a period of six weeks of the date of receipt of a copy of this judgment. We make it clear that we have not expressed any opinion on the legal questions raised.

Sd/-
K. SURENDRA MOHAN
JUDGE

Sd/-
SHAJI P. CHALY
JUDGE

//true copy//

P.A. To Judge

smv
8.12.2015