

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

FRIDAY THE 18th DAY OF SETEMBER, 2015

P R E S E N T

Hon'ble Mr.U.Sarathchandran :Judicial Member

ORIGINAL APPLICATION No:180/00734/15

M.Somasundara Rao : Applicant
Versus
The Jt.GM.(Pers.) BSNL,N.Delli & 2 ors. : Respondents
Mr.S.Sreekumar, Senior : Counsel for applicant
Mr.Vishnu S Chempazhanthiyil
Mr.T.C.Krishna, Sr.PCGC : Counsel for respondents

O R D E R

Heard Mr. S. Sreekumar, learned Senior Advocate for the applicant and Mr. TC. Krishna, Senior Panel Counsel on the issue of interim order sought in this O.A.

MA/180/00872/15 (impleading)

Applicant in the O.A has filed the above MA for impleading UOI and Member (Services), Department of Telecommunications as additional respondents. Since the applicant was originally a DOT official working on deputation with the BSNL, some of the questions involved in this O.A need to be answered by the aforesaid two respondents sought to be impleaded as new respondents. Therefore, this Tribunal is inclined to allow MA/872/15.

Registry shall carry out impleadment. Mr. N. Anil Kumar, Sr. PCGC takes notice on behalf of the aforesaid newly impleaded additional respondent Nos. 4 and 5.

Interim relief

By way of interim relief, applicant is seeking a stay of Annexure A-1 order. Annexure A-1 order is styled as "transfer and posting HAG/SAG of ITS Group 'A'". In the tabulated part of the order, respondent No.3 is shown as transferred and posted as the Chief General Manager, Kerala Circle vice the applicant. In para 2 of Annexure A-1, it is stated that

"2. On joining of Shri L. Anantharam as CGM, KRL, Circle, Shri M. Soma Sundara Rao (Staff No. 712), an officer of ITS (Batch 1978) Group A' and presently working as CGM, KRL Circle, will be treated to have been placed on **Compulsory Wait** with Head Quarter at Trivandrum, till further orders".

Learned Senior Advocate for the applicant pointed out that the term "compulsory wait" is a stigmatic term and that the same is not a term present anywhere in the rule books of the BSNL. He referred to a decision dated 12.10.2007 of the Principal Bench of this Tribunal in O.A No. 1415/2007 wherein it was held that the competent authority to issue the orders on compulsory wait is ACC (Appointments Committee of Cabinet) and that the power is not to be exercised by the borrowing ministry.



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Mr. T.C. Krishna, Senior Panel Counsel for respondent No. 1&2 submitted that the BSNL has included the applicant in a list known as "Agreed list 2015". He submitted that the "agreed list" is a list of officers against whom some serious allegations from the vigilance angle are existing. According to the counsel, Annexure A-1 order placing the applicant on 'compulsory wait' has been issued in the circumstance that the applicant is one among those included in 'agreed list' as some serious allegation warranting investigation is existing against him.

Learned senior counsel for the applicant referring to Para No. 6 and Ground 'F' in the O.A submitted that issuance of the Annexure A-1 order has been made at the behest of some Trade Unions in the BSNL and is vitiated by *malafides*. He produced a photocopy of the communication dated 16.09.2015 sent by three trade unions of BSNL addressed to its Chairman and Managing Director stating that in the circumstance that Annexure A-1 order has been issued they have decided to withdraw the notice for "trade union action" with effect from 17.09.2015.

After considering the arguments of both sides it prima facie appears that respondent BSNL has some reasons for keeping the applicant in the "agreed list of 2015" which means that the management is intending to conduct investigation into the allegations against the applicant. This Tribunal feels that the term 'compulsory wait' has been loosely used in Annexure A-2 only to indicate that the BSNL has decided to keep the applicant in waiting until a decision is taken as to where he is to be posted.

Annexure A-1 is indeed a transfer order posting respondent No.3 in the place of the applicant. Applicant has been asked to wait for further orders regarding his next posting. Transfer and postings of officers are acts within the administrative prerogative of the BSNL. Prima facie it appears that there are adequate reasons for the BSNL to transfer the applicant and to keep him on waiting for further orders of posting. Hence this Tribunal is not inclined to interfere with Annexure A-1 order at this stage. Accordingly, the prayer for interim application is not allowed.

MA/180/878/15 & MA/180/879/15 (for impleading)

These M.As have been filed by third parties praying for impleading them in the O.A.

The applicant's counsel opposed the aforesaid impleading applications. Post the M.As for objections, if any, by the applicant.

For reply statements by respondents 1 to 5, list on 16.10.2016.

Issue a copy of this order to the applicant today itself.

Sd/-

U.Sarathchandran
Judicial Member



CERTIFIED TRUE COPY

Date: 18/9/15

Section Officer (Judl.)

To

- 1.M.Somasundara Rao, (applicant) through Mr.S.Sreekumar, Sr. Mr.Vishnu S Chempazhanthiyil, Advocate, Kochi.
- 2.Mr.T.C.Krishna, Counsel for respondents.
- 3.Mr.N.Anil Kumar, Sr.PCGC
- ✓4.Mr.Shafik.M.A, Advocate, Kochi.