

PETITIONER:
THE UNION OF INDIA & ORS.

Vs.

RESPONDENT:
D. MOHAN & ORS.

DATE OF JUDGMENT 01/02/1995

BENCH:
FAIZAN UDDIN (J)
BENCH:
FAIZAN UDDIN (J)
AGRAWAL, S.C. (J)

CITATION:
1995 SCC (3) 115 JT 1995 (2) 244
1995 SCALE (1) 424

ACT:

HEADNOTE:

JUDGMENT:

1. Leave granted.
2. In this appeal by special leave, the appellants have challenged the order dated 20.8.1993 passed by the Central Administrative Tribunal, Hyderabad Bench at Hyderabad in Original Application NO. 765/1993 filed by the sixteen respondents herein questioning the order dated 26.5.1993 whereby they were transferred from Hyderabad Telecom District to the Telangana District of Andhra Pradesh Telecom Service.
3. The respondents. herein were working as Junior Engineers in the Telephone District, Hyderabad as on 1. 11. 1986 under the administrative Control of the General Manager, Telephone District, Hyderabad. The respondents were either recruited in the Telephone District, Hyderabad or they were transferred under Rule 38 from other districts and had joined Hyderabad district on bottom seniority. Originally the telephone district, Hyderabad was a separate independent unit by itself and the recruitment, transfers and postings of the entire staff including the Junior Engineers were confined to the twin cities of Hyderabad and Secundrabad which were under the jurisdiction and administrative control of General Manager, Telephone District, Hyderabad.
4. The reorganisation of the Telecom Circles took place on 1. II. 1986. Before the reorganisation on 1. II. 1986 the areas other than Hyderabad Telephone District in Andhra Pradesh were under the control of General Manager, Andhra Pradesh Circle, Telecom. The Ministry of Communications evolved National Switching Plan, in pursuance of which a decision was taken for reorganising Telecom Circles on the basis of Secondary Switching Areas (S.S.A) as basic units. Consequently instructions were issued by the Ministry of Communications by letter No. 1. 16/82TE. 1 dated 19.8.1985 according to which Hyderabad Telephone District took over the respective Secondary Area in which it was located. As

per the aforesaid instructions the erstwhile Hyderabad Telecom District was merged with the A.P. Telecom Circle and brought under the administrative control of the Chief General Manager, Telecom, A.P.

5. The Chief General Manager, Telecom, A.P. Circle decided to rotate JTOs and other Circle Cadre Officials and post substitutes in their place from other districts with a view to maintain service efficiency and to help the staff who served in difficult areas of Telangana so as to remove the frustration and to accommodate them at their places of choice. With this object in mind the respondents were transferred from Hyderabad Telecom District to Telangana District of Andhra Pradesh Telecom Circle. Being aggrieved by the said transfers the, respondents approached the Central Administrative Tribunal, Hyderabad Bench. The Tribunal took the view that having regard to the instructions dated 19.9.1986 issued at the time of reorganisation and on consideration of the, transfer liability as per orders of appointment of the respondents they can only be transferred within the erstwhile Hyderabad Telephone District and, therefore, even after reorganisation the respondents could not be transferred to other areas Andhra Pradesh Circle without their

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consent so long as they worked in the category in which they have been recruited. On these findings the Tribunal allowed the application of the respondents and set aside the order of their transfer dated 26.5.1993 except that of respondent No. 13 whose transfer was cancelled during pendency of proceedings before the Tribunal.

6. Learned counsel for the appellants while assailing the impugned order of the Tribunal setting aside the order transferring the respondents to various places shown against their names in the said order of transfer, submitted that after the reorganisation of Telecom Circles with effect from 1. 11.1986 and as per the instructions of the Government of India, Ministry of Communication dated 19.9.1986 the erstwhile Hyderabad Telephone District was merged with the A.P. Telecom Circle and brought under the administrative control of the Chief General Manager, Telecom, A.P. He further submitted that as per reorganisation scheme the seniority lists of all the circle cadre officials, including that of Junior Telecom Officers were merged together and a common gradation list (Junior Telecom Officers) of entire A.P. Circle including those of erstwhile Hyderabad Telecom District was is.sued by the Chief General Manager, Telecom, A.P. vide letter dated 14.8.1992 and the common gradation list so prepared forms the basis for promotion and transfers, etc. It was submitted that since the respondents hold a transferable post and, therefore, they cannot be said to have any vested right to remain posted at one place or the other and they are liable to be transferred according to the administrative exigencies. He also submitted that the Junior Telecom Officers belonging to other than Telangana area are working in those areas under difficult conditions and at personal inconveniences and, therefore, the Chief General Manager, Telecom, A.P. Circle decided to rotate the Junior Telecom Officers and other circle cadre officials every two years and post substitutes in their place from other districts with a view to maintain service efficiency and to help the staff who had served in difficult areas and, therefore, in view of these facts and circumstances the Tribunal should not have interfered in the order of transfer which was made on administrative grounds.

7. As against the aforementioned submissions made by the

counsel for the appellants, learned counsel for the respondents-employees countered by submitting that all the respondents have been working in Telecom District, Hyderabad under the administrative control of Chief General Manager, Telecom District, Hyderabad since their recruitment to the service when the Telecom Department of Hyderabad was a separate and independent unit till the reorganisation of Telecom Circles which took place on 1. 11. 1986. He submitted that as the Telecom District, Hyderabad was separate and independent unit, the recruitment, transfers and postings of the officials including the respondents were confined only to the said Telecom District, Hyderabad, comprising of the twin cities of Hyderabad and Secunderabad and not outside the said Telecom District. It was further submitted that the respondents were either recruited for service in the Telecom District, Hyderabad or some of them came on voluntary transfer to the Telecom District in which they had been recruited. It was, therefore, urged that since they had suffered forfeiture of their seniority and having liability to serve only in Telecom District, Hyderabad they are not liable to

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be transferred outside the said District even after reorganisation except under special circumstances when they could be transferred to any part of India.

8. We have given serious consideration to the rival contentions advanced by the learned counsel for the parties. It is an admitted fact that the erstwhile Hyderabad Telephone District was merged with the A.P. Telecom Circle and brought under the administrative control of the Chief General Manager, Telecom, A.P. after the reorganisation of the circles with effect from 1. 11. 1986. It has also not been disputed that after the reorganisation of the circles as aforesaid the seniority lists of all the circle cadre officials including that of the Junior Telecom Officers were merged and a common gradation list of A.P. Circle including those of the erstwhile Hyderabad Telecom District was issued by the Chief General Manager, Telecom A.P., Hyderabad. As per order dated 14.8.1992 the said gradation list was circulated to all concerned including the respondents but none of them put forth any objection to the same. The said gradation list has, therefore, assumed finality. The said gradation list formed the basis for promotion and transfer. In these facts and circumstances it could not be contended that since the respondents were recruited for the service in the Telecom District, Hyderabad or had come on voluntary transfer to the said district foregoing their seniority in the Telecom District in which they had been recruited, they could not be transferred outside the Telecom District, Hyderabad, simply because one of the terms of their appointment order provided that the appointment carried with it the liability to serve 'in any part of Hyderabad Telephone District'. For proper appreciation the said term of appointment as contained in clause 3 (IV) of the appointment order which is annexed as Annexure R-1 in this appeal is reproduced below which reads as under:

"The appointment carries with it the liability to serve in any part of Hyderabad Telephone District and in special circumstances in any part of India". (emphasis supplied)

9. After the merger of Telecom District, Hyderabad with effect from 1. 11. 1986 with A.P. Circle the respondents became liable to be transferred within that circle. Even the aforesaid term of appointment will go to show that their

liability to serve in any part of the original Hyderabad Telephone District carries with it the liability to serve in any part of India in the special circumstances which is clear from the words "in special circumstances in any part of India". After the reorganisation of circles and merger of Telecom District Hyderabad with A.P. Circle as said earlier, the seniority lists of all the circle cadre officials including that of the Junior Telecom Officers (JTO's) were merged and a common gradation list of A.P. circle including those of erstwhile Hyderabad Telecom District was prepared and issued by the Chief General Manager, Telecom A.P., Hyderabad which forms the basis for promotion, postings and transfer. It is, therefore, by itself an instance of one of the special circumstances by reason of which the respondents became liable to be transferred to any place within the A.P. Circle.

10. It would here be relevant to refer to the Government of India instructions dated 19.9.1986. Paragraph 3 of Annexure 2 attached to the said instructions reads thus:-

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Recruitment-Transfers and Postings;

Recruitment for all cadres for the entire Secondary Area will be done by the Telecom District G.M./District Manager District Engineer, according to schedule of powers and, all the new recruits including departmental candidates will have transfer liability over the whole secondary area. The existing staff of the erstwhile Telephone District AND THE Telegraph Engineering Divisions will also have transfer liability over the entire Secondary Switching Area, but to avoid hardship to the individuals, such liability for those recruited already to the specific units may be confined only to those units as far as possible taking into consideration individual options. (Emphasis supplied)

11. As stated earlier learned counsel appearing for the appellant had contended that the Junior Telecom Officers belonging to other than Telangana areas were working in Telangana area under difficult conditions and at personal inconveniences and it was for this reason that the Chief General Manager, Telecom, A.P. Circle took decision to rotate the Junior Telecom Officers and other circle cadre officials every two years and post substitutes in their places from other districts with a view to maintain service efficiency and to help the staff who served in difficult areas. Since the respondents were transferred to Telangana area by order dated 26-5-1993 which has been set aside by the Tribunal and according to the appellants themselves Telangana area is a difficult area and it appears that it is for this reason that the respondents felt aggrieved by the transfer order. It is for the same reason that paragraph 3 reproduced above has been introduced in Annexure 2 of the Government instructions which provides that while transferring the staff of the erstwhile Telephone District who were recruited to the specific units maybe confined only to those units as far as possible taking into consideration individual options when a member of the staff of the erstwhile Telephone District is to be transferred to other areas. Thus, while the instruction contained in paragraph 3 of Annexure 2 provide for the, transfer liability of the existing staff of the erstwhile Telephone District, over the entire Secondary Switching area, it also at the same time provides for taking into consideration individual options.

That being so, the Chief General Manager Telecom Circle A.P. before passing the order of Transfer, ought to have obtained options from those employees and Officers who belonged to the erstwhile Telephone District who were recruited to the specific units and after considering their individual options should have passed the order of transfer, so as to avoid any possible hardship to them. In the present case admittedly no options were taken from the respondents and for this reason alone the transfer order cannot be enforced. But this aspect appears to have escaped the notice of the tribunal.

12. Consequently, the appeal is partly allowed. The impugned order of the tribunal is modified to the extent that in the event the respondents or any of them are proposed to be transferred to the difficult Telangana Areas, the appellants shall obtain options from them and pass the order of their transfer afresh after considering their individual options. In the facts and circumstances of this case the parties are left to bear their own costs of this appeal.

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