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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 175 of 1994

New Delhi this the 20th day of May, 1994

HON'BLE MR. S. R. ADIGE, MEMBER (A)

Kaushal Kumar, J.T.O.,
M.T.N.L., DE (ID),
Shakti Nagar Exchange,
Delhi.

... Applicant

By Advocate Shri G. D. Chopra

Versus

1. Union of India through
Secretary, Ministry of
Communications,
Sanchar Bhawan,
New Delhi.

2. General Manager (N),
M.T.N.L. Telephones,
I.S.B.T., Delhi.

3. Dy. General Manager (N),
M.T.N.L. Telephones,
Shakti Nagar, Delhi.

... Respondents

By Advocate Shri A. K. Sikri

O R D E R

In this application, Shri Kaushal Kumar, JTC, Mahanagar Telephone Nigam Ltd., Shakti Nagar Exchange Delhi, has impugned the order dated 10.1.1994 (Annexure A-1) transferring him to Srinagar (J & K).

2. The applicant states that he was appointed as Junior Engineer vide letter dated 7.5.1984 (Annex. A-1) issued by the Dy. General Manager (Admn.), office of the General Manager Telephones, Indian Posts & Telegraph Department, New Delhi, and terms Nos. 4 and 6 of the terms of appointment are relevant, which read as follows :-

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"4. The appointment carries with it the liabilities to serve in any part of Delhi Telephones District and in special circumstances of which the Department will be the sole judge, if any part of India. They will be liable for field service within India in time of war or National Emergency."

"6. They are expected to serve in the Unit of recruitment as long as they remain in the J.E. Cadre and requests for transfer to another unit, will ordinarily not be entertained."

3. Admittedly, upon the creation of the Mahanagar Telephone Nigam Limited (for short MTNL), the services of the applicant along with others similarly placed were transferred to the MTNL on deemed deputation. It appears that on 24.6.1993, the CBI conducted a raid on the Shakti Nagar Telephone Exchange where the applicant was posted in connection with a large scale STD/ISD racket, and five officials including the applicant who were alleged to have been involved in this racket, were placed under suspension. On 29.6.1993, the applicant was suspended. The suspension was revoked on 10.1.1994, and on the same date he was transferred to Srinagar. It is the transfer order which is now impugned in this O.A.

4. The first question that arises is as to whether the Tribunal has jurisdiction to entertain this application. Shri G. D. Choopa, learned counsel for the applicant, states that the respondents have not denied that the applicant is a civil servant holding a civil post under the Union. He has pointed out that the applicant was appointed as Junior Engineer

under the Government of India (Posts & Telegraph Deptt.) and the respondents have also admitted in their counter affidavit that it is the Department of Telecommunications which took the decision and conveyed their sanction for transferring the applicant, along with the other employees alleged to have participated in the STD/ISD racket to Srinagar. Hence, this O.A. is very much within the jurisdiction of the Tribunal under sec. 14(b)(ii) A.T. Act.

5. On the other hand, Shri A.K. Sikri, learned counsel for the respondents, has raised the preliminary objection of lack of jurisdiction and has stated that notwithstanding the fact that the applicant's transfer to Srinagar had the approval of the Department of Telecommunications, the order impugned is the one dated 10.1.94 (Annexure-A1) passed by the MTNL, which is a Company incorporated under the Companies Act and an autonomous body, not covered by the notification under Sec. 14(2) of the Administrative Tribunals Act, 1985. He asserts that unless the MTNL is covered by a notification under Section 14(2) of the Act, any judgment of the Tribunal adjudicating the impugned order dated 10.1.94 passed by the MTNL would be without jurisdiction and unenforceable. In this connection, Shri Sikri, has referred to certain judgments of the Tribunal, wherein it has been held that as the MTNL is not covered by the notification under Section 14(2) of the Act, it does not come within the jurisdiction of the Tribunal. One such judgment is dated 8.2.93 in O.A.No. 1560/92 -Shri Krishan Lal & another Vs. Union of India & others. A similar view has been taken in O.A.No. 2322/92 -Smt. Shakuntala Vs. Union of India decided on 18.12.92, and in O.A.No. 931/92 -Bhoop Singh Sehrawat Vs. Union of India & others decided

on 8.7.93. In O.A.No.16/92-Smt.Raj Kumari Vs. Union of India & others, decided on 13.7.92 also a similar view has been taken.

6. Shri Chopra has sought to draw a distinction between the persons directly recruited by MTNL after its creation and those recruited by Government whose services were later transferred to MTNL on deemed deputation. He states that the cases cited by Shri Sikri relates to the former category of employees, while the applicants belongs to the latter category over whom the Tribunal still has jurisdiction. He has urged that there have been cases filed by such persons of the latter category, before the Tribunal where the objection of jurisdiction has not been raised. To this, Shri Sikri has replied that in case of such persons belonging to the latter category, where the cause of action relates to the period of their service in Govt., prior to their going on deemed deputation to MTNL, no such objection of lack of jurisdiction has been raised, and rightly so, because in respect of ^{such} ~~that~~ cause of action, the Tribunal does have jurisdiction. In the present case, however, no jurisdiction vests in the Tribunal as the impugned order has been issued by the MTNL, which is not covered by the notification under Section 14(2) of the Administrative Tribunals Act.

7. Shri Sikri's contention has ^{is} considerable merit. Notwithstanding the fact that the applicant was initially appointed by the Posts & Telegraph Department, admittedly his services were transferred to the MTNL on deemed deputation, consequent to its creation. The MTNL is a Company, set up under the

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Companies Act and it is not covered by the notification under Section 14(2) of the AT Act. Even if the applicant's transfer to Srinagar has the approval of the Department of Telecommunications, the impugned order has been passed by the MTNL, ^{and as} it is they who would have to implement any judgment in respect of that impugned order. As the Tribunal has no jurisdiction over the MTNL in the absence of a notification under section 14(2) of the AT Act, a situation might well arise where the Tribunal would be unable to enforce its judgment in respect of the impugned order, owing to ~~have~~ ^{having no} its jurisdiction over the MTNL.

8. Under the circumstances, the preliminary objection raised by the respondents regarding lack of jurisdiction is sustained, and without going into the merits of the case, this application is dismissed at the admission stage itself, leaving it open to the applicant to seek redress of his grievances in the appropriate forum in accordance with law, if so advised. No costs.

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

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