

Central Administrative Tribunal
Principal Bench

New Delhi, dated this the 12th October, 2001

33

HON'BLE MR. S.R. ADIGE, VICE CHAIRMAN (A)
HON'BLE DR. A. VEDAVALLI, MEMBER (J)

1. O.A. No. 1252 of 2000

1. Indian Telecom Service Association,
Room No. 101,
Jor Bagh Telephone Exchange,
Lodhi Road, New Delhi-110003.
2. Ashok Kumar Sinha,
General Manager (OP&C),
Mahanagar Telephone Nigam Ltd.,
Khurshid Lal Bhawan,
Janpath, New Delhi-110050. .. Applicants

(By Advocate: Mrs. Meera Chhibber)

Versus

1. Union of India through
the Secretary,
Dept. of Telecommunications Services,
Sanchar Bhawan,
20, Ashoka Road, New Delhi-110001.
2. Chairman,
Telecommunication Commission,
Ministry of Communications,
Sanchar Bhawan,
20, Ashoka Road, New Delhi-110001.
3. Secretary,
Dept. of Telecommunications,
Sanchar Bhawan,
20, Ashoka Road, New Delhi-110001.
4. Union Public Service Commission through
its Chairman,
Dholpur House, Shgahjahan Road,
New Delhi-110011.
5. Secretary,
Dept. of Personnel & Training,
North Block, New Delhi-110001.
6. Jt. Action Committee,
Mahanagar Telephone Nigam Ltd.,
470, Kidwai Bhawan, Janpath,
New Delhi-110001.
7. MTNL Officers Association
8. Joint Action Committee of
MTNL officers through its
Convenor, Shri M.K. Bagchi

2

9. P & T Civil Engineers,
Group 'A' Association,
Central Executive Committee,
Central Headquarters,
New Delhi.

... Respondents

(By Advocates: Shri K.K. Sud, Ld. ASG along with
Shri P.H. Ramchandani,
Sr. Advocate; Shri V.K. Rao,
Shri A.K. Bhardwaj, Ms. Sunita Bhardwaj
Shri Rajeev Mehra and Shri R.K. Kapoor)

ORDER


S.R. ADIGE, VC (A)

Applicants who are members of the Indian Telecom Service Association through its President and one other, impugn Dept. of Telecom. letter dated 8.5.2000 (Ann. A-1) on the subject of permanent absorption of Group 'A' and Group 'B' officers in MTNL which communicates the decision to fill up the posts of Group 'A', 'B' and certain Group 'C' posts having all India liability in MTNL on permanent basis, and calls for option in respect of officers as shown in Annexure A to the letter. It states that the detailed terms and conditions and pay scales for permanent absorption in MTNL are given in Annexure 'B' with letter. All the interested officers have been called upon to exercise their options in prescribed form as at Annexure 'C' latest by 15.8.2000. Options in respect of JTOs for permanent absorption is called from JTOs working in MTNL alone. Para 2 of the letter states that options once exercised shall be final, and all the officers who do not exercise their option will be treated to have opted for Dept. of Telecom Services (DTS).

3. The case of the applicants who are members of the Telecom Service (Group 'A') and, who as per their own averments, are posted in Dept. of Telecommunications is that they were appointed and are governed by the Indian Telecom Service (Group 'A') Recruitment Rules 1992. It is stated that by Notification dated 15.10.99, a New Department called the Dept. of Telecom Service has been carved out of Dept. of Telecom. and through Notification dated 4.11.99 work has been allocated between the two Departments.

4. Applicants are aggrieved with the impugned letter dated 8.5.2000 ^{mainly,} ~~mainly,~~ on the following grounds.

- 1) Because the impugned letter dated 8.5.2000 in effect alters the strength of the service without undertaking consultation with UPSC as in enjoined by the RRs 1992.
- 2) Because applicants are required to be consulted before the aforesaid decision is implemented in the light of the doctrine of audi alteram partem and of legitimate expectation.
- 3) Pertinent information such as pensionary benefits and its appurtenant commutation has not been furnished to the affected members. As regards the choice of absorption in MTNL, as the terms and conditions for absorption to MTNL contained in Annexure to letter dated 8.5.2000 was termed provisional and furthermore the affected members have been left in a state of oblivion as regards their tenure in DTS in as much as the same is to be operational w.e.f. 1.10.2000.

5. This O.A. came up on 11.7.2000 on which date notices were ordered to be issued to respondents. 

6. On 11.8.2000 the O.A. was heard on the prayer for interim relief seeking a direction stay the operation of the impugned letter dated 8.5.2000 till the disposal of the O.A. On that date, besides the ld. counsel appearing for applicants and those appearing for official respondents, 1, 2 and 3, Shri R.K. Kapoor appearing on behalf of Jt. Action Committee of MTNL Officers was also heard. By order dated 11.8.2000, while the prayer for stay of the operation of the impugned letter dated 8.5.2000 in its entirety was rejected, with regard to those officers who did not exercise their options in terms of letter dated 8.5.2000 and who were to be treated to have opted for DTS, the finality of the options stated in Para 2 of the letter was made subject to the outcome of the O.A.

7. On 13.10.2000 when the case came up again, the Bench was informed that the option date had been extended firstly upto 30.9.2000 and then again upto 31.10.2000.

8. On 31.10.2000 when the O.A. came up again as regards the interim order passed on 11.8.2000, it was clarified that in respect of those officers who had not exercised their option in terms of letter dated 8.5.2000, the same would also apply to respondents' subsequent order dated 26.9.2000.

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9. Meanwhile when the case came up again on 13.11.2000 the Bench was informed that the option date was further extended upto 31.12.2000.

37

10. The case came up again on 20.12.2000 on which date after noticing the contents of respondents' O.M. dated 30.9.2000, the Bench extended the last date for exercising options till further orders.

11. At about that time the MTNL Officers Association filed M.A. No. 179/2000 and No. 180/2000 seeking impleadment and a direction to DOT to initiate the process of absorption in MTNL of the officers who had exercised their option for absorption upto 15.8.2000. They were allowed to be impleaded, as a proper and necessary party. As regards the prayer for a direction to DOT to initiate the process of absorption in MTNL, by order dated 2.7.2001 it was directed that the same would be disposed of only after hearing all the parties.

12. Meanwhile on 23.8.2001 a prayer made by private respondents represented by Shri Kapoor for an interim direction restraining respondents from implementing their order dated 23.7.2001 and dated 17.8.2001 was rejected, on the ground that they were private respondents and if they had any grievance in regard to orders dated 23.7.2001 and dated 17.8.2001, the proper course for them would be to file a fresh O.A.

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13. The case was thereupon taken up for final hearing. Official respondents were called upon to apprise the Bench of the steps taken to finalise the terms and conditions of absorption to MTNL, as the Annexure to letter dated 8.5.2000 and spelling out the terms and conditions for absorption were termed prrovisional.

38

14. This information has now been furnished by Dept. of Telecommunications vide letter dated 20.9.2001 addressed to the Id. Addl. Solicitor General, a copy of which is taken on record. In this letter it has been stated that the terms and conditions offered to Group 'A' and Group 'B' officers for absorption in MTNL are exhaustive and substantially cover all the areas such as Pay scales; perks and allowances; settlement of pensionary benefits; seniority; age of superannuation; leave; provident fund; promotional avenues; LTC; medical facilities; group insurance; residential quarters etc. Furthermore, terms and conditions prevailing in other Government Public Sector Undertakings are generally known, and as such the officers have adequate information to take a decision in respect of absorption in MTNL. It has been further clarified that the terms and conditions are called provisional, with a view to improve upon them in consultation with those who get absorbed in MTNL. It has also been averred that the legitimate interests of officers would be kept in mind by MTNL while finalising the terms and conditions and on that basis, a prayer has

2

been made to permit the department to continue with the process of calling for options from Group 'A' and Group 'B' officers for absorption to MTNL by vacating the interim orders dated 20.12.2000.

39

15. We have heard both sides and given the matter our anxious consideration.

16. At the outset it was contended on behalf of applicants that the contents of Dept. of Telecom. letter dated 20.9.2001 referred to above, should have been filed by official respondents on proper affidavit, and indeed Shri Sood, Id. ASG appearing for official respondents stated that there should be no difficulty in doing so, but we do not consider it necessary to adjourn these cases yet again, merely for this purpose. We take judicial notice of the contents of letter dated 20.9.2001 and note that thereby the terms and conditions for permanent absorption of officers belonging to applicants Association in MTNL, in terms of the Annexure to letter dated 8.5.2000, has been termed provisional only because they shall operate as a threshold to enable the officers to decide whether they would like to opt or not, and any subsequent change in those terms and conditions would be only by way of improvement.

17. Coming to the grounds taken by applicants to challenge impugned letter dated 8.5.2000 and summarised in Para 4(1) of the O.A. we note from official respondents' reply to the O.A. that in terms of Rule 4 (6) ITS Recruitment Rules,

Government is competent to change the structure of the service and the authorised strength of the posts in various grades shall be such as may from time to time be determined by Government. Furthermore it has also been submitted by official respondents that MTNL was created in 1986 and the posts therein which were held by ITS officers continue to be so held, and posts created in MTNL even after 1.4.86 continue to be filled up through ITS officers, with some exception. As is clear from letter dated 8.5.2000, it only calls for options whether an officer would like to be permanently absorbed in MTNL. If any one amongst the members of the ITS Association are not desirous of opting, the aforesaid letter dated 8.5.2000 does not compel them to do so, and the fact that there is no compulsion to opt is also made clear in respondents' reply. Hence the first ground for challenge, contained in Para 4 (1) above fails.

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18. Similarly the second ground of challenge contained in Para 4(2) above is equally misconceived. The ITS Association cannot claim it² has an enforceable legal right to compel respondents to have consulted them before issue of impugned letter dated 8.5.2000. As it is a letter only inviting options, which individual members of the Association were free to accept or reject, in the absence of any enforceable legal right compelling official respondents to consult applicant Association before issue of impugned letter dated 8.5.2000 the same cannot be assailed on that ground. Hence the second ground, contained in Para 4 (2) above, also fails.

19. In so far as the third ground, contained in Para 4(3) above is concerned, we note that as regards pensionary benefits, DOPT's O.M. dated 5.7.99, enclosed with respondents' reply gives applicants the option to retain the pensionary benefits available to them under Government rules or be governed by the rules of MTNL. Furthermore the terms and conditions for absorption in MTNL as spelt out in the Annexure to respondents' letter dated 8.5.2000 read with respondents' subsequent letter dated 20.9.2001 which make it clear that change if any to these terms and conditions will be only by way of improvement, in our view ^{is} ~~are~~ sufficient to enable applicants to know as to what they can expect to receive if they opt for permanent absorption in MTNL. Furthermore, if at a later stage, any of the terms and conditions are altered to applicants' disadvantage, the same can always be challenged by them in the appropriate forum.

20. There is, however, one aspect of the matter which invites ~~our~~ attention. Applicants are officers belonging to Indian Telecom Service Group A, and are governed by the ITS (Group A) Recruitment Rules. In the impugned letter dated 8.5.2000, it has been stated that those who do not exercise their option for absorption in MTNL will be deemed to have opted for Dept. of Telecom Service. In the reply to the O.A. official respondents have stated that those who do not opt for MTNL will continue to be governed by ITS Rules. If the choice is between opting for MTNL

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~~on~~ being governed by the ITS Recruitment Rules and/or other rules and instructions for the time being in force, applicants cannot complain that they have been kept unaware of the alternatives, but if the words "will be treated to have opted for DTS" used in para 2 of letter dated 8.5.2000 implies that applicants will be governed by terms and conditions other than those contained in the ITS Recruitment Rules and/or any other rules/instructions for the time being in force, we hold that they would be entitled to know the details of the same, to enable them to make an informed choice.

21. This aspect of the matter assumes added importance in view of Dept. of Telecom Serial O.M. dated 30.9.2000 on the subject of setting up of Bharat Sanchar Nigam Ltd. This O.M. states that Government of India has decided to transfer the business of providing telecom services in the country currently entrusted with DTS and Dept. of Telecom, as was provided earlier by DOT, to a newly formed company viz. BSNL w.e.f. 1.10.2000. The O.M. goes on to state that officers and staff belonging to various services (ITS Group 'A' is one such service) providing services to offices/units being transferred to BSNL will stand transferred with their posts on as is where is basis, on deemed deputation w.e.f. 1.10.2000 to the company on existing terms and conditions of service, and further orders in the matter would be decided by DOT in consultation with DOPT.

22. From this it would follow that those who do not opt for permanent absorption in MTNL in terms of respondents' letter dated 8.5.2000, would stand transferred to BSNL along with their posts on as is where is basis on deemed deputation without deputation allowance w.e.f. 1.10.2000 on existing terms and conditions of service, subject to further orders in the matter. In other words the choice for members of applicant association, as of now, would be either to opt for permanent absorption in MTNL on the terms and conditions specified in letter dated 8.5.2000 read with letter dated 20.9.2000, or to stand transferred on deemed deputation to BSNL without deputation allowance on the existing terms and conditions of service. There is nothing in the pleadings which categorically reveals whether eventually officers belonging to applicant Association will be required to opt for permanent absorption in BSNL or not, and if so what the terms and conditions for such permanent absorption will be, to enable them to decide whether they would prefer to opt for MTNL or BSNL.

23. Under the circumstances, while the impugned letter dated 8.5.2000 does not call for judicial interference at this stage we dispose of the O.A. by calling upon respondents to

- i) consider issuing appropriate clarification/ instructions on the issues raised in Paras 20, 21 and 22 above with the utmost expedition.



- ii) consider suitably extending the date for submissions of options in terms of letter dated 8.5.2000 and subsequent letters, till the aforementioned clarifications/ instructions are issued.
- iii) Meanwhile consider initiating appropriate preparatory action in respect of those who have already submitted their options for permanent absorbtion in MTNL.

No costs.



(Dr. A. Vedavalli)
Member (J)



(S.R. Adige)
Vice Chairman (A)

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