

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD.**

OA No.22/2020 with MA No.53/2021

This the 12th day of February, 2021.

**Coram : Hon'ble Shri Jayesh V.Bhairavia, Member (J)
Hon'ble Dr. A.K.Dubey, Member (A)**

Girish Narsinhbhai Kataria

Aged : 51 age (DOB : 02.02.1968)

Son of Shri Narsinhbhai Kataria

Presently serving as Senior General Manager (on deputation basis)

Bharat Broadband Network Limited (BBNL), Ahmedabad

Address : C-205, Royal Chinmay Appartments

Bodakdev, Ahmedabad 380 054..... Applicant

(Advocate : Shri M.S.Rao)

VERSUS

1. Union of India
(To be represented through its Secretary to the Govt. of India
Ministry of Communications & Information Technology,
Departmental of Telecommunications,
Govt. of India,
915, Sanchar Bhavan, 20 Ashoka Road,
New Delhi 110 001.
2. The Director (Staff)
Department of Telecommunications
Ministry of Communications, Govt. of India
419, Sanchar Bhavan, Ashoka Road,
New Delhi – 110 001.
3. Bharat Broadband Network Limited
(To be represented through its Chairman & Managing Director)
BBNL Hqrs, Corporate Office
Bharat Sanchar Bhavan, 3rd Floor, Office Block-1,
East Kidwai Nagar, New Delhi – 110 023.
4. The Chief General Manager (Projects)
Gujarat State Head,
Bharat Broadband Network Limited.
4th Floor, Vasna Telephone Exchange Bldg.,
Vasna, Ahmedabad 380 007. Respondents
(By Advocate : Ms. R.R.Patel – Respondent Nos.1 & 2 &)
Shri Joy Mathew – Respondent Nos.3 & 4).

ORDER (ORAL)

Per : Hon'ble Shri J.V. Bhairavia, Member (J)

1. Aggrieved by the order dated 09.01.2020 (Annexure A/1) whereby the request for extension of applicant's deputation was not acceded to by the respondent No.2 on the ground that the applicant's case was not clear from vigilance angle and accordingly, his repatriation to the Parent Department i.e. DOT was directed, the applicant herein has filed the present OA under Section 19 of the A.T.Act, 1985 seeking the following relief :

- “(A) call upon the respondents herein to produce before this Hon'ble Tribunal all the original files, noting, correspondence exchanged amongst them, giving rise to the issuance of the impugned communication dated 09.01.2020 at Annexure A/1 hereto for the kind perusal of this Hon'ble Tribunal, in so far as the DoT seeks to refuse to grant extension of the period of deputation in BBNL in the case of the applicant herein;*
- (B) upon its perusal of the aforesaid original documents, your Lordship may be further graciously pleased to :*
- (B-1) quash and set aside the impugned communication bearing No.F. Director (Staff)/ Misc./ 2016/ (Pt.), dated 09.01.2020 at Annexure A/1 hereto issued by the Director (Staff) , DoT New Delhi in so far as it seeks to advise the Respondent No.3 herein to repatriate the applicant herein back to the DoT on the specious plea that no further extension of the applicant's deputation to BBNL is granted in view of the applicant's case is not allegedly clear from vigilance angle;*
- (C) award exemplary costs;*
- (D) grant such other and further relief/s as may be deemed fit and proper in the peculiar facts and circumstances of the present case.”*

2. The facts of the case, in brief, are as under :
- 2.1 The applicant herein is an Indian Telecom Service (ITS) Officer of 1991 Batch. While officiating in Senior Time Scale Grade on adhoc

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basis, he was promoted to STS Grade w.e.f. 29.05.2000 vide order dated 16.6.2000 issued by DoT. Thereafter, on and from 16.11.2000, the services of the applicant came to be placed at the disposal of the BSNL on deemed deputation, in pursuance of the transfer of business of DoTO & DTS to the newly incorporated 100% Government entity i.e. Bharat Sanchar Nigam Limited w.e.f. 01.10.2000.

- 2.2** While the applicant was working as DGM in Gujarat Telecom Circle at Junagadh, he came to be issued a chargesheet dated 31.8.2004 for major penalty with regard to the alleged misconduct during the period between 27.05.2002 to 05.06.2002. After conclusion of the departmental inquiry, the Inquiry Officer held that the charges were not proved. However, the disciplinary authority issued disagreement notice to the applicant. In response to it, the applicant submitted his detailed representation dated 15.10.2007 and the case was referred to the UPSC for its advice. On receipt of the UPSC's advice, the Disciplinary Authority vide its order dated 23.05.2008 awarded the penalty of reduction of pay of the applicant by two stages in the Time Scale for a period of two years, with further direction that he would not earn increment of pay during the period of such reduction and on expiry of the period, the reduction will have the effect of postponing future increment of his pay (Annexure A/3). Aggrieved by the said punishment order, the applicant had approached this Tribunal by way of filing OA No.491/2012.

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- 2.3** During the pendency of the said OA, the respondent No.1 vide its letter dated 28.08.2015 (Annexure A/4) addressed to the CMDs of BSNL and MTNL, had directed the said authorities to obtain the bio-data of those ITO Officers, who were willing to go to Bharat Broadband Network Limited (BBNL) on Foreign Service deputation basis.
- 2.4** This Tribunal vide its order dated 05.05.2016 (Annexure A/6) allowed the OA No.491/2012 and quashed the impugned order of punishment dated 23.05.2008; the case of the applicant was remanded to the respondents for providing a copy of UPSC's advice to the applicant and after applicant's response to it within the stipulated time was received, the respondents were to pass speaking order. Being aggrieved by the said order, the applicant had approached the Hon'ble High Court of Gujarat by way of SCA No.14144/2016.
- 2.5** During the pendency of the said SCA before the Hon'ble High Court of Gujarat, since the applicant herein had already undergone the penalty imposed upon him and there was a post vacant in BBNL, Ahmedabad, the applicant had submitted an application dated 01.09.2016 (Annexure A/7) to the CMD, BBNL to consider his case for deputation to BBNL at Ahmedabad.
- 2.6** Meanwhile, since there was an alternative remedy of filing of the Review Application before this Tribunal, the pending SCA was dismissed as withdrawn by Hon'ble High Court of Gujarat vide its

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order dated 12.09.2016 (Annexure A/8) with liberty to the applicant to approach this Tribunal by way of filing Review Application. Pursuant to the said order, the applicant herein had filed a Review Application being RA No.01/2017 and MA No.04/2017 in OA No.491/2012 before this Tribunal.

2.7 During the pendency of the said Review Application before this Tribunal, the applicant was selected for his posting in BBNL on deputation basis for initial period of three years as per O.M. issued by the respondent No.1 dated 30.01.2017 (Annexure A/9). In pursuance of the same and consequent upon the letter dated 09.02.2017, the applicant took over the charge on 13.02.2017 of post of General Manager (Project-II) in BBNL on deputation basis (Annexure A/10).

2.8 It is stated that on 06.03.2017, the applicant had received order dated 15.2.2017 (Annexure A/12 & A/13 Colly.) issued by the respondent No.1, whereby the President being the Disciplinary Authority for the applicant was pleased to quash and set aside the order of penalty dated 23.05.2008 (which the applicant herein had already undergone way back in 2012 itself). The said Disciplinary Authority further directed that the disciplinary proceedings (initiated way back in the year 2004) would continue from the stage of supplying copy of the UPSC advice dated 09.4.2008 and called upon the applicant to submit his representation against the UPSC's advice.

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Since the Review Application No.01/2017 had not been decided by this Tribunal by them, the applicant herein had once again approached the Hon'ble High Court of Gujarat by way of filing SCA No.6048/2017. The said SCA was disposed of vide order dated 23.04.2017 (Annexure A/14) with observation that this Tribunal would disposed of the pending RA at the earliest. Thereafter, vide order dated 31.03.2017, this Tribunal had partly allowed the said RA (Annexure A/15). Pursuant to the said development, the applicant had submitted his formal representation dated 31.03.2017 (Annexure A/16) against the UPSC's advice before the Disciplinary Authority.

- 2.8** The Disciplinary Authority vide order dated 28.07.2017 (Annexure A/18) rejected the representation of the applicant and further imposed the same penalty, which was imposed earlier by the Disciplinary Authority in its order dated 23.05.2008. Therefore, being aggrieved by the said penalty order dated 28.7.2017; once again the applicant approached this Tribunal by way of filing OA No.440/2017.

This Tribunal vide order dated 05.09.2019 (Annexure A/19) admitted the said OA with further direction to list this matter for final hearing before the Division Bench, as and when convened. Due to non availability of the Division Bench, the said OA remained pending for final hearing and disposal, as on today.

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- 2.9** It is contended that since the initial period of the applicant for deputation to BBNL, Ahmedabad is coming to an end on 12.02.2020, the respondent No.4 herein had issued letter dated 13.08.2019 (Annexure A/20) requesting the BBNL Headquarter that as per the willingness of the deputed ITS Officers including the applicant herein, they would require to be granted further extension of deputation. Accordingly, vide email message dated 28.8.2019 (Annexure A/21), the applicant was called upon for reconfirmation of his willingness. Again, the applicant submitted his willingness in response to the said email message followed by formal written willingness dated 28.8.2019 (Annexure A/22).
- 2.10.** It is stated that the applicant came to know that the Director (Staff) DoT had issued a communication dated 09.1.2020 (Annexure A/1 impugned herein) to the CMD, BBNL Hqrs., New Delhi whereby the request for extension of deputation of the applicant was not acceded as also no further extension of his deputation was granted since the applicant herein was not clear from vigilance angle and accordingly, the BBNL was directed to repatriate the applicant with instruction to report to DoT Hqrs., immediately. Hence, this O.A. Vide this Tribunal's ad-interim order dated 28.01.2020, the respondents were directed not to repatriate the applicant. The said interim relief continues till date.
- 3.** The learned counsel Mr. M.S.Rao for the applicant mainly submits as under:

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- 3.1** It is not valid and legal for the respondent No.2 to reject the extension of the deputation period and directing premature repatriation on the ground that the applicant is not clear from the vigilance angle. As such, the respondents had obtained vigilance clearance when the applicant was initially taken on deputation in the year 2016-17 and the deputation period was upto 12.02.2020.
- 3.2** The impugned decision dated 09.01.2020 was taken by the Director (Staff) in DoT, New Delhi, which was without any authority since in the case of the applicant, the President of India is the competent authority. Therefore, the impugned order is nullity and is required to be quashed and set aside.
- 3.3** The respondents have not stated any specific reason as to on what ground that the applicant herein was not clear from vigilance angle. As a matter of fact, in the year 2008, vide order dated 23.5.2008, the President of India awarded the penalty and the same had been undergone way back in the year 2010 itself. Since the Disciplinary Authority again imposed the very same penalty vide order dated 28.7.2017, the applicant was compelled to approach this Tribunal against the very said order and had filed OA No. 440/2017. During the pendency of the said OA, the respondents i.e. DoT taking undue advantage of pendency of the said OA, passed the impugned order which is arbitrary, illegal and against the spirit of Articles 14 & 16 of the Constitution of India. It is also submitted that the impugned

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decision caused serious consequence on the education of applicant's son studying in Standard XII.

- 4.** On the other hand, the respondent Nos.1 & 2 i.e. DoT have filed their counter reply and have denied the claim of the applicant. The learned counsel Ms. R.R.Patel for the said respondents while justifying the legality and validity of impugned decision of the respondents, mainly submitted as under :

- 4.1** GOI's instructions regarding grant of vigilance clearance to the members of Central Civil Services/ Central Civil Posts vide O.M. 14.12.2007 (Annexure R/1) clearly specify that these guidelines will be applicable to the cases relating to deputation. Further, para 7 of the said instructions stipulates that in case of imposition of major penalty vigilance clearance will not normally be granted for a period of 5 years after the currency of the punishment. On this premise, vigilance clearance with respect to extension of deputation of the applicant in BBNL was not available, and the applicant was directed to repatriate and to report to the Parent Department i.e. DoT Hqrs.

- 4.2** It is submitted that the decision of the respondent No.1 is commensurate with the rules, regulation and guidelines. In fact, the applicant has not availed the remedy by way of approaching the higher authority before filing the present OA. Even otherwise, the applicant has no vested right to retain at the place or post where he has been deputed. It is further submitted that OM dated 09.01.2020 which is impugned herein had been issued in light of the fact that

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there shall be complete tenure of deputation of the applicant on 12.02.2020. The applicant is not entitled for any relief as prayed for.

5. Learned counsel Mr. Joy Mathew for the respondent Nos.3 & 4 i.e. Bharat Broadband Network Limited (BBNL) submits that separate application being MA No.53/2021 for vacating interim relief has been filed by the respondents on 11.02.2021 in this OA. It is stated that by an order dated 31.01.2017, the Original Respondent Nos.1 & 2 i.e. DoT selected 10 ITS Officers for posting in BBNL on deputation initially for a period of three years. Accordingly, on 13.2.2017 the original applicant of the OA had joined BBNL at Ahmedabad on deputation and the period of deputation was upto 12.02.2020. However, as per the interim direction dated 28.01.2020 issued by this Tribunal, the applicant continued for another year i.e. 4th year of his deputation. The interim relief continued due one reason or another as also due to COVID-19 pandemic situation and the matter could not proceed further. The present respondent Nos.3 & 4 i.e. BBNL is not in favour of any further extension of deputation of the original applicant.

Learned counsel placed reliance on the order passed by the Principal Bench of this Tribunal in case of Smt. Rashmi Jain w/o. Shri Pravesh .. V/s. Union of India decided on 23.5.2008 wherein it was held that deputation could be curtailed even before the expiry of its specified fixed period. Further, it was held that, by

repatriation, neither the service conditions enjoyed by the applicant were affected nor her pay scale had been lowered down. Nor any civil consequences ensued, which would impede observance of principles of natural justice. Therefore, it is submitted that in the present case, interim relief granted by this Tribunal be vacated.

- 6.** The Original Applicant has filed his counter reply to the said MA No.53/2021 of the respondent Nos.3 & 4. The original applicant contended that no plausible reason had been assigned by the original respondents Nos.3 & 4 in support of their prayer in vacating the interim relief. Further, it is stated that even though the Original Respondent Nos.1 & 2 i.e. DoT had filed their written reply dated 24.6.2020 in the present OA and as such, not moved any such MA praying for vacating interim relief. Not only that, nowhere it had been stated that the respondent Nos.1 & 2 urgently required the service of the applicant herein in his Parent Department i.e. DoT. However, with an ulterior motive/ intention the present MA was filed on 11.2.2021 praying for vacating interim relief on the spacious plea that BBNL Co. i.e. respondent Nos.3 & 4 herein did not want any further extension of the applicant's beyond 12.2.2021.
- 6.1** Learned counsel Shri M.S.Rao further submits that on 13.8.2019, the very original respondent Nos.3 & 4 had duly recommended his case along with one Mr. Sharma for extension of his 03 years deputation period beyond 12.2.2020. Recently, in the case of said

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Mr. Sharma, his deputation was extended beyond 4 years upto 26.2.2022, vide Office order dated 04.01.2021 (Annexure MA/5). It is stated that there are instances in BBNL that deputation of ITS Group –A Officers even after the expiry of 7 years of deputation came to be retained in BBNL for the 8 year by way of taking them on loan basis from DoT. In this regard, the original applicant placed reliance on the Office letter dated 10.12.2020 (Annexure MA/6).

6.2 Further, it is stated that the respondent Nos.3 & 4 i.e. BBNL recently issued advertisement dated 7.12.2020 (Annexure MA/7) whereby it indicated that it was in dire need of as much as 21 ITS Grade-A JAG Officers from the DoT to serve as Senior General Manager in BBNL on deputation basis. Therefore, it is stated by the applicant that unless and until the core issue involved in the main OA No.22/2020 is adjudicated upon by this Tribunal, the prayer sought by the respondent Nos.3 & 4 in this MA be rejected.

7. Heard the parties and perused the material on record.

8. In the present case, it is noticed that while applicant was working as Director CS, DoT HQ., the respondent No.2 i.e. Director (Staff), DoT vide order dated 30.01.2017 selected 10 ITS Officers including the applicant for posting in Bharat Broadband Network Ltd. (BBNL) on deputation basis for initial period of 03 years from the date of taking charge of the post or until further orders, whichever event took place earlier. Accordingly, the applicant herein had taken charge as GM (Project-IV) BBNL, Ahmedabad on 13.02.2017. The

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03 years of his deputation would be till 12.02.2020. The applicant herein in response to letter dated 13.8.2019 issued by the respondent No.3 as also email message (Annexure A/20 & A/21) submitted his willingness on 28.08.2019 for extension of his deputation in BBNL, Gujarat. The said willingness of the applicant was forwarded with due recommendation to the Parent Department of the applicant i.e. DoT - the respondent Nos.1 & 2 herein. The said request for extension of the deputation of the applicant was not accepted vide impugned decision dated 09.01.2020 since the case of the applicant was not clear from vigilance angle. Therefore, the respondent Nos.3 & 4 were directed to repatriate the applicant to report at DoT HQ.

9. The learned counsel for the applicant vehemently submitted that this Tribunal vide its order dated 05.05.2016 in OA No.491/2012 quashed the penalty order dated 23.5.2008 awarded against the applicant by the Disciplinary Authority of respondent Nos.1 & 2, the case was remanded back to the respondent No.2 to provide a copy of the UPSC's advice to the applicant and directed that after receipt of representation of the applicant, the respondents would consider it diligently and issue a speaking order. The said order was challenged by the applicant before the Hon'ble High Court of Gujarat and subsequently, on withdrawal of it, the Review Application filed by the applicant before this Tribunal was disposed of on 31.3.2017. In the meantime, by accepting the applicant's application dated 01.09.2016, he was selected for posting in BBNL

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Ahmedabad on deputation basis initially for 03 years by the respondent No.1 vide its order dated 31.01.2017 (Annexure A/9). Accordingly, he joined his duty on 13.02.2017 at BBNL, Ahmedabad. It is submitted that by the time he joined at BBNL, Ahmedabad, he had duly completed the penalty awarded by the DA in its order dated 23.5.2008 and in fact, he had already undergone in the penalty way back in the year 2010. However, as per the direction issued by this Tribunal in OA No.491/2012 dated 5.5.2016 the respondents by rejecting the representation of the applicant on advice of the UPSC, once again imposed the same penalty vide order dated 28.01.2017 (Annexure A/18) which is under challenge and *sub judice* before this Tribunal in OA No. 440/2017 (i.e. second round of litigation). Therefore, it is submitted that the respondent No.1-DoT ought not to take undue advantage of the pendency of the applicant's OA No.440/2017 for not granting extension of his deputation. It is stated that the reasons assigned by the respondents that case of the applicant is not clear from vigilance angle is erroneous and applicant ought to have been granted extension for his deputation. It is also the case of the applicant that the respondents have granted the extension to other similarly placed officers but the applicant has been discriminated against.

As against applicant's contention, the respondents contested his claim by relying upon the guidelines regarding grant of vigilance clearance to the members of Central Civil Services/ Central Civil

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Posts issued by the DoP&T vide OM dated 14.1.2007 (Annexure R/1) and have argued that vide order dated 28.7.2017 (Annexure A/18), the Disciplinary Authority imposed the penalty against the applicant and the currency period of the said punishment was not over at the time of considering the claim of the applicant for extension of his deputation. As such this Tribunal had not granted any stay or interim relief in favour of the applicant in pending OA No.440/2017 filed by the applicant against the said punishment order. Therefore, the impugned decision was passed in terms of the guidelines in vogue for considering the case of the Civil Service Officers for their deputation.

- 10.** In the present case, it is noticed that undisputedly the punishment awarded against the applicant vide order dated 28.7.2017 by the Disciplinary Authority was challenged by the applicant in OA No.440/2017. After completion of pleadings, the said OA was ordered to be 'Admitted' on 05.9.2019 by this Tribunal and the same is pending for final hearing without there being any order of stay against the impugned order or any interim relief in favour of the applicant.
- 11.** It is further noticed that for consideration of deputation of employees of Central Civil Services/ Central Civil Posts, the vigilance status of such officers / employees is required to be placed before the competent authority before a decision is taken in terms of guidelines / instructions stipulated in OM dated 14.12.2007 issued

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by DoP&T (Annexure R/1),. The para 7 of the said OM reads as under :

“Vigilance clearance will not normally be granted for a period of three years after the current of the punishment, if a minor penalty has been imposed on an officer. In case of imposition of major penalty, vigilance clearance will not normally be granted for a period of 5 years after the currency of the punishment. During the period, the performance of the officer should be closed watched.”

12. In the present case, as noted hereinabove, the major penalty under the provision of Rule 14 of the CCS (CCA) Rules, 1965, was imposed against the applicant vide 28.07.2017 and on the date of issuance of impugned decision dated 09.01.2020 the case of the applicant for his deputation (extension of deputation) was undisputedly covered as per the instruction contained in para 7 of the OM dated 14.12.2007 (Annexure R/1), where under vigilance clearance will not normally be granted for a period of 5 years after the period of currency of the punishment. Under the circumstances, the submission of the applicant is not acceptable.
13. It is the settled principle of law as decided by the Hon'ble Apex Court in catena of Judgment that a deputationist has no legal right to continue in the post when the tenure of the deputation is specified; there can be no indefeasible right to hold the post by the deputationist. {suffices to refer (1997) 8 SCC 372, *State of Punjab & Ors. v/s. Indersingh & Ors.*; (1999) 4 SCC 659, *Umapati Chaudhary & Ors. v/s. State of Bihar & Ors.*, 2015 (4) SCC 164 in case of *Union of India & ors. v/s. S.N.Maity*}. The submission of

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the applicant that the respondents had granted extension to other similarly placed ITS officers and discriminated against him, the said contention is also not tenable in view of the fact that for the purpose of consideration of deputation of Civil service, the concerned appointing authority or lending authority needs to consider the vigilance status of the employee, which is lacking in the case of the applicant, as noted hereinabove.

- 14.** In view of aforesaid discussions and taking into consideration the Government instruction (Annexure R/1 refers) on the issue of consideration of request for deputation by Central Civil Service employees, we do not find any infirmity in the impugned decision. Hence, the OA is dismissed. Interim relief granted earlier by this Tribunal vide order dated 28.01.2020 now stands vacated. MA No.53/2021 accordingly stands disposed of. There shall be no order as to costs.

(A.K.Dubey)
Member (A)

(J.V.Bhairavia)
Member (J)