

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH**

OA/021/00239/2015

Date of CAV : 18.03.2021

Date of Pronouncement : 29.03.2021



**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

G. Ratna Kumar, S/o. G.V. Ratnam,
Aged about 48 years,
Occ: Junior Administrative Grade Officer,
Indian Telecom Services, Group A,
Department of Telecommunications,
Under orders of deployment to BSNL,
R/o. Plot No. 5, Road No. 5, Trimurthi Colony,
Mahendra Hills, Secunderabad.

...Applicant

(By Advocate : Mr. B. Pavan Kumar, proxy counsel for
Dr. A. Raghu Kumar)

Vs.

1. Union of India, Represented by
Its Secretary,
Department of Communications and IT,
Sanchar Bhavan, 20, Ashoka Road, New Delhi -1.
2. The Under Secretary to the Government of India,
Department of Telecommunications,
Ministry of Communications and IT,
Sanchar Bhavan, 20, Ashoka Road, New Delhi -1.
3. The Secretary,
Department of Personnel and Training,
Ministry of Personnel, PG and Pensions,
New Delhi – 110 001.

....Respondents

(By Advocate : Mrs. K. Rajitha, Sr. CGSC)

ORDER
(As per Hon'ble Mr.B.V.Sudhakar, Administrative Member)

2. The applicant filed the OA challenging the order dt.08.12.2014 placing his services at the disposal of of BSNL unilaterally and the OM dt. 11.12.2014 whereby his name was struck off from the strength of DOPT Headquarters w.e.f. 11.12.2014 and seeks a consequential direction to the respondents to retain him in DOT at Hyderabad.



3. Brief facts of the case are that the applicant belongs to the 1988 batch of Indian Telecom Services (ITS) Group 'A' and after working on deputation with the State of A.P for the period 2008 to 2014, he was repatriated to the parent department in July 2014. In the meanwhile, certain policy decisions were taken in regard to absorption of the DOT staff in the new organizations viz., BSNL/MTNL, vide letters dated 22.9.2011 & 30.9.2011. The respondents decisions were contested in Courts and finally, Hon'ble Delhi High Court adjudicated and issued certain directions on 17.4.2012 in WP (C) No.22515-22518/2005. However, contrary to the directions of the Hon'ble High Court, 1st respondent vide multiple letters of even dated 11.3.2013 extended the deemed deputation period of all the Group 'A' officers unilaterally and thereafter, contempt petition was filed in the Hon'ble High Court of Delhi in 2013. At this juncture of time, applicant sought posting at Hyderabad in DOT, which was not only turned down by deploying him in BSNL on 8.12.2014 based on the terms and conditions laid in letter dated 11.3.2013, but his name was also struck off the rolls of DOT on 11.12.2014. Aggrieved, the OA is filed.

4. The contentions of the applicant are that as per Recruitment Rules of ITS 1992, decrease of the reduction of the posts of ITS has to be done in consultation with UPSC. Deputation of employees has to be done as per law. In a similar case, the Hon'ble Patna Bench of this Tribunal in OA No. 50/871/2014 has granted stay in Dec. 2014. The applicant is similarly placed as he has not requested for deputation to BSNL and that the respondents violated the orders of Hon'ble Delhi High Court as well as Principles of Natural Justice and Articles 14 & 16 of the Constitution.

5. Respondents, *per contra*, state that MTNL & BSNL Corporations were formed in 1986/2000 and employees of DOT were transferred on deemed deputation basis to these Corporations without any deputation allowance. The staff were expected to give their option for absorption in the Corporations and the last date to exercise the option was extended from time to time and finally up to 22.9.2011. Besides, to regulate absorption, Rule 37-A of CCS (Pension) Rules 1972 was brought into vogue. However, after the last date, some officers were repatriated to DOT and some others were retained to run the Corporations. The retention was challenged before the Hon'ble High Court of Delhi and the matter was adjudicated in April 2012. Further, as the response for absorption was poor amongst officers, a Committee of Secretaries was formed and its recommendations were approved by the Cabinet on 13.2.2013. Keeping the Delhi High Court orders and the Cabinet decision in view, letter dated 11.3.2013 was issued on the subject and action was taken accordingly.

6. Heard both the counsel and perused the pleadings on record.



7. I. The issue is about repatriation of the applicant from BSNL to DOT, his parent department. MTNL/BSNL Corporations were formed in 1986/2000. Applicant belongs to ITS and he was deputed to BSNL on 8.12.2014. With the formation of the new Corporations, around 3.97 lakh employees of Group 'B', 'C' and 'D' cadres were absorbed from 1997 to 2004. However, when it came to the officers, the matter in regard to the deputation to the new corporations was carried to the Hon'ble High Court of Delhi in W.P.(C) No.22515 of 2005 wherein directions were issued on 17.04.2012 as under:

"For the reasons stated herein above, we dispose of these writ petitions in terms of the following directions:

- (i) *The deemed date of absorption of the petitioners fixed as 1.10.2020 is held to be illegal, being contrary to Rule 37-A (4) of CCS (Pension) Rules;*
- (ii) *The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005.*
- (iii) *The petitioners before this Court are given an option, to be exercised within two weeks from the date of this order, to revert to the Government or to seek permanent absorption in BSNL/MTNL as the case may be;*
- (iv) *Those Government servants who have already accepted permanent absorption w.e.f. 01.10.2000 will not be entitled to exercise a fresh option in terms of this order;*
- (v) *BSNL/MTNL shall relieve such of the petitioners, who opt to revert to Government service within 2 weeks of receipt of options from them;*
- (vi) *Such of the petitioners who opt to revert to the Government shall be appropriately redeployed by the Government in Government service through surplus cell of the Government. We have no doubt in our mind that the Government would not like to keep such of the petitioners who opt to revert to the Government idle and subject to availability of the positions with it, give them such work as is deemed appropriate to be performed by them. "*

The contention of the applicant is that the orders of the Hon'ble High Court have not been followed which is not true, as is explained in the paras to follow.



II. Taking note of the fact that there was poor response from the ITS officers, despite extending the last date for absorption several times and granting additional incentives, a Committee of Secretaries was formed and the Committee's recommendation were approved by the Cabinet on 13.2.2013. Keeping the orders of the Hon'ble Delhi High Court cited and the Cabinet Decision in view, respondents put in place the process of repatriation as under, vide letter No.A-11013/64/2012-Abs. Cell (II-A) dated 11.3.2013 (Annexure A-IX) of the Department of Telecommunications, as under:

"Sub: Absorption of Group 'A' officers including Indian Telecom Service (ITS) in Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL) and requirement of such officers in these organizations.

Though Office Memorandum No. A-11013/64/2012-Abs. Cell (II-A) dated 11.3.2013 issued by Department of Telecommunications, all Group 'A' officers including ITS officers working on deemed deputation in BSNL and MTNL who have not opted for absorption in these organizations have been ordered to be repatriated to the Department with immediate effect.

2. It has been decided that all the ITS officers repatriated from BSNL to this Department through the above-said repatriation order dated 11.03.2013 be deployed in BSNL for a period of 10 years on year to year diminishing basis with effect from 11.03.2013 (AN) as per the requirement plan already given by BSNL to meet its exigent requirements. Officers who are being deployed in BSNL by virtue of this order are liable to be recalled from time to time based on the requirements of the Department of Telecommunications. A copy of the requirement plan of BSNL and the terms and conditions of deployment of ITS officers in that organization, as approved by the Cabinet is enclosed as Annexure 'A' and 'B' respectively. The list of officers so repatriated and deployed is at Annexure 'C'.

3. All the ITS officers repatriated to the Department of Telecommunications vide above-mentioned OM dated 11.03.2013 will be deemed to have joined this Department on repatriation

before their deployment in BSNL as ordered above. As such, these ITS officers are not required to physically report to the Department of Telecommunications on their repatriation.

4. Above order is subject to any interim/ stay orders passed by High Courts/ CAT Benches in certain cases filed by ITS officers.”



As can be seen from the above, it is clear that the respondents have in the first para of the letter ordered that all those officers, who have not opted to be absorbed in BSNL/MTNL are to be repatriated with immediate effect. Thereafter, the 2nd para clarifies that all such officers repatriated to DOT are redeployed to BSNL for a period of 10 years on a diminishing basis w.e.f. 11.3.2013. Hence, the respondents have complied with the order of the Hon'ble High Court of Delhi in regard to repatriation of the unwilling officers to DOT. The Honble High Court has also observed that the officers who have been repatriated to DOT have to be used effectively, at para (vi) of the judgment extracted supra, and therefore, respondents have redeployed the officers to BSNL in order to operate the new Corporations formed. Hence, the contention that the Hon'ble Delhi High Court order was violated is not maintainable.

III. Further, the redeployment is on a diminishing basis from 2013 onwards for a period of 10 years, upto 2023 as per the recruitment plans envisaged. The Committee of Secretaries has gone into the intricacies of the issue in depth and after its recommendations were approved by the Cabinet, the letter dated 11.3.2013 was issued, by carefully ensuring that the directions of the Hon'ble Delhi Court are not infringed, as explained supra.

IV. True to speak, the respondents have, in fact, introduced Rule 37-A of CCS (Pension) Rules 1972 to work out the absorption of



employees of Govt. Departments in Corporations. It was not that the respondents were not oblivious of the difficulties of the employees, but when decisions are taken in public interest, they have to be respected. In the instant case, when the Corporations were formed, the staff of DOT were *enmasse* transferred to the new Corporations on deemed deputation basis without deputation allowance, in order to man the Corporations. Nearly 3.97 lakh employees were absorbed from Group B to Group D cadre in the corporations over the years. Further, 434 Group A officers were repatriated to DOT and 1028 officers had to be retained to run the Corporations. It is understandable that the new Corporations would not be able to fetch manpower from the market immediately since it is a time taking process. Therefore, some officers had to be retained including the applicant albeit unwilling, in public interest, because of the poor response from the officers for absorption in the Corporations and to ensure public services are uninterrupted offered as well as to ground new projects. When the deputations were challenged legally, especially in regard to ITS officers, solution was found by forming the Committee of Secretaries by adopting the process of repatriation in a diminishing manner for 10 years up to 2023, while taking care that the orders of the Hon'ble High Court of Delhi are abided by.

V. Thus, the facts of the case reveal that the officers have been given option for absorption or otherwise, by extending the last date several times and the last one up to 22.09.2011. The last date to exercise the option was postponed several times. Therefore, it is not correct to state that the officers were not given opportunity to exercise the option. The request of

the officers was considered by directing repatriation of the ITS officers vide letter dated 11.3.2013 and thereafter, redeployed them to BSNL including the applicant in public interest. When public interest is involved, Rules recede to the background. In the instant case, on one hand, the ITS officers from JAG to HAG could not be redeployed in Govt. organizations and on the other hand, the new Corporations needed their services badly. It was a catch-22 situation. Hence, in such a situation, the only option open to the respondents was to come out with an order which is in compliance with the Hon'ble Delhi Court order as well as to ensure that the new Corporations are made operational and therefore, the order dated 11.3.2013. The Cabinet has taken due note of the situational circumstances and hence, given the green signal, which has been codified in the cited letter. We are of the view that when a decision is taken in public interest, it has to be upheld because public interest is paramount and individual interests are subservient to public interest. The overarching requirement of the Constitution is that every action of the State must be in public interest as observed by the Hon'ble Apex Court in *Nidhi Kaim & Another vs State of Madhya Pradesh & Ors Etc* in Civil Appeal No. 1727 of 2016, as under:

No doubt, that the overarching requirement of Constitution is that every action of the State must be informed with reason and must be in public interest.

In the instant case, the respondents have to functionalise the Corporations for rendering public service and for doing so, they need to have manpower. To meet the compelling requirement, respondents have framed the sensible policy of continuing the unwilling officers on a diminishing basis as per the recruitment plans formulated, till the respondents could induct fresh blood



to replace those who want to revert to DOT. We do observe that care was taken to meet the legal requirements in the process. Therefore, the decision of the respondents was in public interest, which cannot be questioned since it is a Constitutional requirement. Applicant is one among the many who were proposed to be retained in BSNL, but for the interim order of the Tribunal providing interim relief to him on 20.02.2015 as under:



"The applicant has prayed for an interim direction to the Respondents to stay the operation of both the impugned orders No. 12-15/2014-STG-I dated 8.12.2014 and Office Memo. No. 12-15/2014-STG-I dated 11.12.2014, pending finalization of the OA."

"By considering the submissions of the learned counsel for the applicant, interim relief is granted as prayed by the applicant in the OA for a period of two weeks."

The said interim order has been extended further and is still subsisting.

VI. Nearly 5 years have passed since the issue of the interim order. Respondents have not even filed MA for vacating the stay. Maybe, it is an indication that the respondents may not require the services of the applicant in BSNL. Further, we gather that BSNL in order to reduce the establishment costs has come with the VR scheme in 2019. In these circumstances, we have our own doubts as to whether BSNL would like to add further burden on itself by having the applicant on its rolls. Nevertheless, as was observed by us in paras supra, when the question of public interest is involved, it may not be fair on our part to restrain the respondents to engage the services of the applicant in BSNL, as per the terms and conditions of the letter dated 11.3.2013, provided they are badly required. We note that the applicant was allowed to go on deputation for a period of 6 years to the Govt. of A.P to enable him to enrich his career and

when the respondents need him, it is equally expected of the applicant to come forward to accept the deputation. With the passage of time, the situations have changed and we leave it open to the respondents to take a decision in regard to using the services of the applicant on deputation basis in BSNL in terms of the policy decision of the respondents as approved by the Cabinet. To enable the respondents to take a decision in the matter, the interim order passed on 20.02.2015 by the Tribunal is vacated. However, the decision has to be taken within a period of 3 months from the date of receipt of this order.



With the above direction, the OA is disposed of with no order as to costs.

(B.V.SUDHAKAR)
ADMINISTRATIVE MEMBER

(ASHISH KALIA)
JUDICIAL MEMBER

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