O.A.NO. 122 of 2007

P.K.P.Khosla ..... Applicant

Vrs.

Union of India and others..... Respondents

ORDER DATED 3rd OCTOBER 2007

This Original Application was filed on 20.3.2007 and placed before the Bench for considering the question of admission on 3.4.2007 when notices on the question of admission were directed to be issued to the Respondents and the O.A. was posted to 8.5.2007. On 8.5.2007 at the request of the learned counsel for the applicant and M/s S.B.Jena and P.R.J.Dash, the learned Additional Standing Counsels for the Respondents, the O.A. was adjourned to 11.7.2007. On 11.7.2007 at the request of the said learned counsels, the O.A. was adjourned to 24.8.2007. On 24.8.2007 the O.A. along with MA No. 432 of 2007 was listed before the Bench and when the learned Additional Standing Counsels for the Respondents prayed for adjournment, to which the learned counsel for the applicant did not object subject to the condition of the Tribunal passing an interim order of status quo. Accordingly, by order dated 24.8.2007 status quo was directed to be maintained and the O.A. was adjourned to 27.8.2007 for considering the question of admission of the O.A.

2. On 27.8.2007 the applicant in person was present and the learned counsels M/s D.P.Dhalsamant and P.K.Behera for the applicant and M/s P.R.J.Dash and S.B.Jena, the learned Additional Standing Counsels for the Respondents, including the Respondents in person of the Bench remained absent due to ~~due to~~ Advocates' strike on Court work before this Bench purportedly on the basis of the CAT Bar resolutions passed without any basis, substance or value but violating principles of natural justice too. In this connection, I would like to refer to the decision in the case of **Ramon Services Private Limited Vrs. Subash Kapoor and Others,** reported in JT 2000 (Suppl. 2) Supreme Court 546, holding as follows:

"When the advocate who was engaged by a party was on strike, there is no obligation on the part of the court either to wait or to adjourn the case on that account. It is not agreeable that the courts had earlier sympathized with the Bar and agreed to adjourn cases during the strikes or boycotts. If any court had adjourned cases during such periods, it was not due to any sympathy for the strikes or boycotts, but due to helplessness in certain cases to do otherwise without the aid of a Counsel."

(Judgment Paras-5 & 14)

"In future, the advocate would also be answerable for the consequence suffered by the party if the non-appearance was solely on the ground of a strike call. It is unjust and inequitable to cause the party alone to suffer for the self imposed dereliction of his advocate. The litigant who suffers entirely on account of his advocate's non-appearance in court, has also the remedy to sue the advocate for damages but that remedy would remain unaffected by the course adopted in this case. Even so, in situations like this, when the court mulcts the party with costs for the failure of his advocate to appear, the same court has power to permit the party to realize the costs from the advocate concerned. However, such direction can be passed only after affording an opportunity to the advocate. If he has any justifiable cause, the court can certainly absolve him from such a liability. But the advocate cannot get absolved merely on the ground that he did not attend the court as he or his association was on a strike. If any Advocate claims that his right to strike must be without any loss to him but the loss must only be for his innocent client, such a claim is repugnant to any principle of fair play and canons of ethics. So, when he opts to strike work or boycott the court, he must as well be prepared to bear at least the pecuniary loss suffered by the litigant client who entrusted his brief to that advocate with all confidence that his cause would be safe in the hands of that advocate."

(Para-15)

"In all cases where court is satisfied that the ex parte order (passed due to the absence of the advocate pursuant to any strike call) could be set aside on terms, the court can as well permit the party to realize the costs from the advocate concerned without driving such party to initiate another legal action against the advocate." (Para-16)

"Strikes by the professionals including the advocates cannot be equated with strikes undertaken by the industrial workers in

accordance with the statutory provisions. The services rendered by the advocates to their clients are regulated by a contract between the two, besides statutory limitations, restrictions, and guidelines incorporated in the Advocates Act, the Rules made thereunder and Rules of procedure adopted by the Supreme Court and the High Courts. Abstaining from the courts by the advocates, by and large, does not only affect the persons belonging to the legal profession but also hampers the process of justice sometimes urgently needed by the consumers of justice, the litigants. Legal profession is essentially a service oriented profession. The relationship between the lawyer and his client is one of trust and confidence."

(Para-22)

"No advocate could take it for granted that he will appear in the Court according to his whim or convenience. It would be against professional ethics for a lawyer to abstain from the Court when the cause of his client is called for hearing or further proceedings. In the light of the consistent views of the judiciary regarding the strike by the advocates, no leniency can be shown to the defaulting party and if the circumstances warrant to put such party back in the position as it existed before the strike. In that event, the adversary is entitled to be paid exemplary costs. The litigant suffering costs has a right to be compensated by his defaulting Counsel for the costs paid. In appropriate cases, the Court itself could pass effective orders, for dispensation of justice with the object of inspiring confidence of the common man in the effectiveness of judicial system. Inaction will surely contribute to the erosion of ethics and values in the legal profession. The defaulting Courts may also be contributory to the contempt of this Court."

(Paras-24, 27 & 28)

3. Keeping in view the aforesaid case law laid down by the Hon'ble Supreme Court, condemning severely such strike as contempt of Court particularly Hon'ble Supreme Court itself and leaving the Ld. Counsels including those representing Government at the peril of facing the consequences thereof, the the applicant in person has been heard and available record on hand has been perused for adjudicating the issue as below.

4. Brief facts of the applicant's case are that he is presently working as a Group-D employee (Messenger) under Bharat Sanchar Nigam Ltd. (BSNL)-Respondents on deputation basis. He had joined as a Group D on 8.5.1980 in

the Postal Department. On his appointment as Messenger (Group D) on **deputation basis**, the applicant joined Telecom Department on 27.3.1995 and has been continuing as such till date. He had made application on 22.9.1995 for his permanent absorption in the Telecom Department. Thereafter correspondences were made between the lending department (Postal Department) and the borrowing Department (Telecom Department). As it now stands, the applicant is presently continuing as Messenger (Group D Post) on deputation basis in the BSNL.

5. The applicant has filed this O.A. for a direction to the Respondents-BSNL to absorb him forthwith retrospectively and further direction to Respondent-Postal Department to send the Service Book, Personal File, Leave Account, etc., to the Respondent-BSNL. He has also prayed for a further direction to Respondents-BSNL to grant him all financial benefits.

6. From the above it is clear that the applicant, while continuing as Messenger on deputation basis in BSNL, is claiming **absorption on permanent basis in a post borne in the establishment of BSNL** and consequential service benefits.

7. The Telecom organization in which the applicant has admittedly been working on deputation basis, has since become Bharat Sanchar Nigam Limited (BSNL), a Government of India Enterprise. Under sub-section (3) of Section 14 of the Administrative Tribunals Act, 1985 the Central

Administrative Tribunal shall exercise, on and from the date with effect from which the provisions of the said sub-section apply to any local or other authority or corporation or societies, all the jurisdiction, powers and authority exercisable immediately before that date by all Courts except the Hon'ble Supreme Court in relation to recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation or society and all service matters concerning a person appointed to any service or post in connection with the affairs of such local or other authority or corporation or society and pertaining to the service of such person in connection with such affairs. Under sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985, the Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporation or societies owned or controlled by Government, not being a local or other authority or corporation or society controlled or owned by a State Government.

8. Though the question of jurisdiction of the Tribunal was put to Mr.D.P.Dhalsamant, the learned counsel for the applicant on 3.4.2007, 8.5.2007, 11.7.2007 and 24.8.2007 when the O.A. was listed for considering the question of admission, ~~the learned counsel~~ he - he avoided to make his submission on the point of jurisdiction. He also could not submit as to whether or not any notification under Section 14(2) of the Administrative Tribunals Act, 1985 has

been issued by the Central Government conferring jurisdiction, power and authority on the Central Administrative Tribunal exercisable in relation to the matters, as specified in sub-section (3) of Section 14 of the Act, in connection with the affairs of the Bharat Sanchar Nigam Ltd. Therefore, in the absence of a notification being issued under sub-section (2) of Section 14 of the Administrative Tribunals Act, 1985, the BSNL is not amenable to the jurisdiction of the Central Administrative Tribunal.

6. The other aspect of the matter is that since the applicant is still continuing as a Government of India employee under the Postal Department and working under the BSNL on deputation basis, under Section 14(1)(b)(iii) of the A.T.Act, 1985, the Tribunal has jurisdiction regarding the service of the applicant who is holder of a civil post under the Central Government placed at the disposal the BSNL owned/ controlled by Government of India. This view is supported by the decision taken by the Bangalore Bench in the case of M.Balu and others v. Union of India and others, 2003(1) SLJ 64(CAT) following the case of C.P.Mathur v. Union of India and others, (1992) 21 ATC 185(decided by the Principal Bench, New Delhi) and the judgment dated 2.5.2002 rendered by the Bangalore Bench in O.A.No.58 of 2001.

7. But the applicant in the present Original Application has raised two grievances, namely, (i) the alleged inaction on the part of the BSNL in the matter of his permanent absorption; and (2) the alleged non-transmission of the Service Book, Personal File, Leave Account, etc., by the Postal Department to

the BSNL for making necessary entries. The relief claimed by the applicant in paragraph 8 of the O.A :

> "(i) To direct the Respondents to absorb the Applicant in the Telecom Department retrospectively forthwith;"

is against the BSNL. The applicant's claim is to be absorbed in the post of Messenger under the BSNL. He thus claims to be appointed, by way of permanent absorption, to the post of Messenger which is borne in the establishment of the BSNL, in relation to which matter the Tribunal has not been vested with the jurisdiction, authority and power in as much as no notification u/s 14(2) of the Administrative Tribunals Act, 1985 appears to have been issued by the Central Government. Therefore, the Tribunal would be wholly without jurisdiction to entertain the O.A. so far as the prayer (i) of the applicant is concerned.

8. Even assuming for the sake of argument that the Tribunal has got jurisdiction, the Original Application appears to be barred by limitation. According to his own admission, the applicant made application on 22.9.1995 for permanent absorption in the Telecom Department. If no decision was taken by the Respondent-authorities within a period of six months from 22.9.1995, the applicant should have approached the Tribunal within one year from the date of expiry of six months from 22.9.1995. The six months period from 22.9.1995 expired on 21.3.1996 and therefore, the applicant should have filed the Original Application by 20.3.1997. His subsequent representations made in 1998, 2001 and 2002 can by no stretch of imagination be held to have saved the limitation.

The applicant has also failed to file an application explaining the delay and praying for condonation thereof. In view of this, the Original Application is also barred by limitation under Section 21(1)(b) of the Administrative Tribunals Act, 1985, so far as the applicant's prayer (i) is concerned.

9. As regards the applicant's prayer (ii) contained in paragraph 8 of the O.A, which reads as follows:

> "(ii) To direct the Respondent Nos. 1 to 4 to send the Service Book, Personal File, Leave Account of the applicant to the Respondent Nos. 5 and 6 and the latter may be directed to make it up-to-date forthwith;"

the Tribunal has jurisdiction to entertain the O.A. and grant the said relief, as observed above because the applicant still continues as a Government of India employee and his service has been placed at the disposal of the BSNL on deputation basis. When a person goes on deputation from his parent Department, the borrowing Department has to make necessary entries in his Service Book, Leave Account, etc. from time to time and the non-transmission of the same by the parent Department to the borrowing Department, in spite of repeated approaches by the person concerned and by the borrowing Department would certainly give rise to a cause of action for the concerned incumbent to file an Original Application under Section 19 of the Administrative Tribunals Act, 1975 seeking a direction to his parent Department to transmit the said records to the borrowing Department. Therefore, the Original Application, so far as the applicant's prayer (ii) is concerned, appears to be maintainable.

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9. It is next to be considered as to whether the applicant has filed the Original Application seeking the relief (ii) within the prescribed period of limitation. The applicant is stated to have made a representation on 24.1.2001 to Respondent No.4, the Senior Superintendent of Post Offices, Koraput Division, Jeypore, Dist.Koraput, to transmit his Service Book and Leave Account to the borrowing Department (BSNL) for making necessary entries. If at all the said records were not sent to the BSNL and the applicant thereby felt aggrieved, he should have approached the Tribunal within one year from the date of expiry of six months period from the date of representation, i.e., 24.1.2001. As observed earlier, no application has been filed by the applicant for condonation of delay. In this view of the matter, the Original Application filed on 20.3.2007, so far as the applicant's prayer (ii) is concerned, is also found to be grossly barred by limitation.

10. Even otherwise the present Original Application appears to be not maintainable as the same is found to be based on two different causes of action and therefore, hit by Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 which mandates that an application shall be based upon a single cause of action and may seek one or more reliefs provided that they are consequential to one another. It can by no stretch of imagination be held that the alleged inaction on the part of the BSNL and the alleged non-transmission of the Service Book, Personal File, Leave Account, etc. of the applicant by the Postal Department to the BSNL constitute a single cause of action. It is amply clear that the applicant, by adopting a subterfuge method, has filed the present

Original Application to mislead the Tribunal on the point of jurisdiction to entertain the same. In view of this, the Original Application in its present form is held to be hit by Rule 10 of the CAT (Procedure) Rules, 1987 and liable to be rejected.

11. In consideration of all the above, the Original Application is rejected, at the stage of admission itself, on the grounds of lack of jurisdiction of the Tribunal and also as being barred by limitation under Section 21(1)(b) of the Administrative Tribunals Act, 1985 and hit by Rule 10 of the CAT (Procedure) Rules, 1987. The interim order passed earlier stands vacated. No costs.

(N.D.RAGHAVAN)
VICE-CHAIRMAN

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on 03 10 07 at pm.
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