

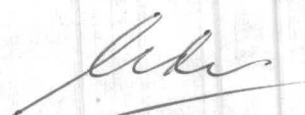
3

O.A.NO. 182 OF 2007

ORDER DATED 25th May 2007

This is an application under Section 19 of the Administrative Tribunals Act, 1985 (hereinafter referred to as "the A.T. Act"). The matter came up for hearing on the question of admission and interim relief on 17.5.2007 and after hearing the learned counsel, order was reserved.

2. The facts leading to ~~the~~² approaching this Tribunal by the applicant, as averred in the O.A., are that he is presently working as Sub Divisional Engineer (Commercial III) under the General Manager, Teleco, Bharat Sanchar Nigam Ltd. (in short "B.S.N.L."), Bhubaneswar. It is the case of the applicant that in consequence of splitting up of the Department of Telecommunication and formation of B.S.N.L. and M.T.N.L., a ^Circular dated 14.01.2002 (Annexure-1) was issued by the B.S.N.L. calling for option from all Group B officers (who were transferred to B.S.N.L. on deemed deputation basis, i.e., 01.10.2000) for absorption in B.S.N.L. Thereafter another ^Circular dated 02.09.2003 (Annexure-2 series) was issued by the B.S.N.L. in compliance with the directions of the Principal Bench of the Central Administrative Tribunal, New Delhi, in its order dated 8.8.2002. The applicant is stated to have exercised his option on 10.10.2003 in pursuance of the said ^Circular dated 02.09.2003 (Annexure-2



series) for being absorbed in B.S.N.L. w.e.f. 1.10.2000. The claim of the applicant is that he, having exercised his option for being absorbed in B.S.N.L. w.e.f. 1.10.2000, should be deemed to be an employee of B.S.N.L. It is the case of the applicant that in view of recent decision taken by the Respondents that those officers who did not exercise their option for absorption in B.S.N.L. would be transferred to New Delhi as employees of the Department of Telecommunication, he is apprehensive of his transfer to New Delhi and to this effect, he has also ^{— made *libr* —} a representation dated 25.4.2007 (Annexure A/7) to the C.G.M.T., Orissa, Bhubaneswar (Respondent No.3). Thus the applicant has filed this O.A. with the following relief and interim relief::

“8. Relief(s) sought for:

In view of the facts stated in Parar 4, the applicant seeks the following relief(s):

- (a) To direct the Respondent No.1 to treat the applicant as an employee of BSNL with effect from 1.10.2000 in view of exercise of option by the applicant on 10.10.2003 under Annexure 2 series.
- (b) To pass such other order/orders as this Hon'ble Tribunal may deem fit and proper.
And for this act of kindness the applicant shall as in duty bound ever pray.

9. Interim relief if any prayed for:

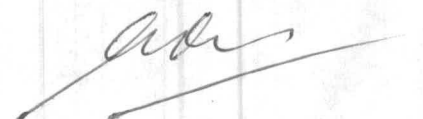
- (a) To direct the Respondents not to transfer the applicant as an employee of Department of Telecommunication.
- (b) To direct the Respondent not to treat the applicant as an employee of Department of Telecommunication.”

libr

5

3. We have considered the submissions made by the learned counsel for the applicant. The points those emerge for consideration at the very threshold are as under:


- (i) Whether there is any cause of action for the applicant to maintain this O.A. before the Tribunal?
- (ii) Whether the applicant can be said to be a person aggrieved so as to make an application before the Tribunal under Section 19 of the A.T.Act?
- (iii) Whether any wrong has been done to the applicant by the Respondent No.1, Union of India, represented by the Secretary, Department of Telecommunication, New Delhi and the applicant has a right to remedy such wrong?
- (iv) Whether the Tribunal can grant the relief of a direction to the Respondent No.1 to treat the applicant as an employee of B.S.N.L. with effect from 1.10.2000 in view of exercise of option by the applicant on 10.10.2003 vide Annexure 2 series?
- (v) Whether the Tribunal has got jurisdiction over B.S.N.L., which is a Government of India enterprise so as to redress the applicant's grievance, if any?



6

4

4. If at all, as per his own averment, the applicant has exercised his option for his absorption in B.S.N.L., the decision stated to have been taken by the Respondents is only applicable in respect of the incumbents who have not exercised their option for absorption in B.S.N.L. Be that as it may, the applicant has not filed any such ^circular or order issued by the Respondents. The ^circular dated 2.9.2003 (Annexure-2 series) does not provide that once a Group B officer, like the applicant, exercised his option for permanent absorption in B.S.N.L. he would be deemed to be absorbed and treated as an employee of B.S.N.L. with effect from a particular date and that no specific order absorbing such a Group B officer is required to be issued by the B.S.N.L. Rather paragraph 4.2 of the ^circular dated 2.9.2003 (Annexure 2 series) clearly provides that B.S.N.L. would absorb optees subject to the number of vacancies existing in the B.S.N.L. as on 30.9.2000 in various Grades/Services and that in case, the number of optees is more than the number of vacancies existing on 30.9.2000, the senior most optees in the various Grades/Services would be given preference for absorption. It is thus clear that the applicant cannot claim as a matter of right to be absorbed in B.S.N.L. In view of this, the applicant also cannot claim that he is immune from being transferred as an officer of the Department of Telecommunication. His mere surmise and/or apprehension



will not give rise to a cause of action for the applicant to maintain an application under Section 19 of the A.T.Act.

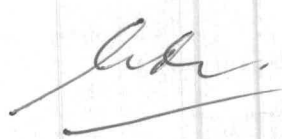
5. The applicant has not prayed for redressal of his grievances against any order issued either by the Government of India or the B.S.N.L. authorities under which he is serving. Even conceding for the sake of argument that the applicant is aggrieved by the inaction of the B.S.N.L. in the matter of his absorption as an employee of B.S.N.L. consequent upon his exercising option, this Tribunal has no jurisdiction to entertain the applicant's grievance in the absence of notification issued by the Central Government under Section 14(2) of the A.T.Act enabling this Tribunal to exercise jurisdiction, powers and authority in relation to recruitment, and matters concerning recruitment, to any service or post or all service matters concerning a person in connection with the affairs of the B.S.N.L. In this view of the matter, we hold that the applicant cannot be said to be a person aggrieved so as to make an application before the Tribunal under Section 19 of the A.T.Act and that the Tribunal has got no jurisdiction over B.S.N.L. in relation to the subject matter.

6. The applicant has also utterly failed to point out in his O.A. any decision taken or order made by the Respondent No.1 Union of India which has adversely affected him or his conditions of service. The applicant




has also not challenged any such decision or order made by the Respondent No.1 by which he is aggrieved. As regards his exercising option for absorption in B.S.N.L., it is the B.S.N.L. to absorb or not to absorb him as per the policy decision taken by them and Respondent No.1 has nothing to do with it. Therefore, the applicant's prayer to give a direction to the Respondent No.1 Union of India to treat the applicant as an employee of B.S.N.L. w.e.f. 1.10.2000 in view of exercise of option by him on 10.10.2003 vide Annexure 2 series, being absurd, is not tenable.


7. Even assuming that the Tribunal has jurisdiction, as per Section 20(2)(b) of the A.T.Act, six months time has not expired on the date of (14.5.2007) filing of this O.A. by the applicant from the date ^{of} ~~(14.5.2007)~~ ^{25.4.2007} his representation to the C.G.M.T. (Annexure 7) which, therefore, makes this O.A. premature ^{- and further late.} ~~of~~ that as per Section 21(1)(b) of the A.T.Act, since the option was exercised on 10.10.2003 by the applicant for absorption in B.S.N.L. the O.A. should have been filed within one year after the expiry of six months from the date of exercising such option and that therefore this O.A. is barred by limitation ^{- by late.} ~~for~~ more than two years.



8. For the reasons aforesaid, we hold that this O.A. is not maintainable as there exists no cause of action and as the Tribunal has also got no jurisdiction over B.S.N.L. in relation to the subject matter.

9. In the result and in any event, the O.A. is rejected in limine.


(B.B. MISHRA)
ADMINISTRATIVE MEMBER


25/05/07
(N.D. RAGHAVAN)
VICE-CHAIRMAN