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O.A. No. 63 of 2009

Order dated: 05.08.2009

CORAM:

Hon'ble Mr. Justice K. Thankappan, Member(J)

Hon'ble Mr. C.R.Mohapatra, Member (A)

The applicant, presently working as Sub-Divisional Engineer at the office of the General Manager, Telecom District, BSNL, Bhubaneswar, has filed this O.A. with the following prayers:

"8(A) To quash Annexure-A/8 in respect of the rejection of the request of the applicant for his absorption in BSNL retrospectively w.e.f. 11.10.2000.

(B) To direct the respondents to issue presidential orders of transfer of the applicant to BSNL on permanent absorption w.e.f. 1.10.2000 onwards.

(C) To quash the relieving order of the applicant on his transfer from Bhubaneswar to New Delhi as per Annexure-A/9."

2. The few facts relevant for the decision of the O.A. are as follows:

The applicant originally joined as Transmission Assistant during 1983 and subsequently promoted as Jr. Telecom Officer in the Department of Telecommunication w.e.f. February, 1992. Subsequently, the applicant was also



promoted to the post of Sub-Divisional Engineer w.e.f. 1999. Initially, the Department of Telecom Operations (DTO) and Department of Telecom Services (DTS) were working as separate department but later on they were corporatised and known as Bharat Sanchar Nigam Limited (BSNL) w.e.f. 1.10.2000. By an order dated 10.09.2003, the Assistant General Manager issued a Circular No. ST/103-57/2002 calling upon options for absorption of employees, namely from Group-B to BSNL and the last date for filing such option has been fixed as 10.10.2003. It was directed by the BSNL that all the information regarding option shall be intimated to the office of BSNL by 14.04.2004. Consequent to the above circular, the applicant filed an option as per the option statement dated 10.10.2003. However, the application or the option statement filed by the applicant has not been received and by Annexure-A/8 the option for absorption of the applicant has been rejected. That apart, the applicant was transferred as per the order dated 17.05.2007 from Bhubaneswar to New Delhi vide Annexure-A/9. Aggrieved by the above two orders, the applicant filed this O.A. with the reliefs mentioned above.



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3. The O.A. has been admitted by this Tribunal and notice has been ordered on 11.2.2009. On that day, this Tribunal had passed an interim order staying the operation of the relieving order dated 24.01.2009 of the applicant.

4. On receipt of notice issued from this Tribunal, a reply statement has been filed for and on behalf of the Respondents. In the reply statement the stand taken is that the applicant has not submitted his option within the cut off date, namely on 10.10.2003 and further as his case for option has been rejected, he has to be transferred from Bhubaneswar to New Delhi under the order of transfer dated 17.05.2007. The further case set up in the counter affidavit is that the document now relied on by the applicant to show that he had filed his option within the cut off date, namely on 10.10.2003, is concocted one and is not correct.

5. The aforesaid stand has been objected by filing a rejoinder. Additional reply statement also has been filed after filing of rejoinder.

6. We have heard Mr. G.Rath, Ld. Counsel for the applicant and Mr. B.K.Mohapatra, and Mr. S.B.Jena, Ld. Counsel for the Respondents and perused all the documents submitted before this Tribunal.



7 On our anxious consideration of the arguments of the Ld. Counsel for the parties as well as documents, the question to be considered is whether the applicant is justified in approaching this Tribunal for quashing Annexure-A/8 and A/9 orders.

8. Ld. Counsel appearing for the applicant had taken mainly three grounds before us to interfere with the orders passed by the authorities. Firstly, the Ld. Counsel had taken us to Annexure-A/2 by which it is clearly shown that the applicant himself had filed his option statement on 10.10.2003, which was signed by the superior officer, one Rabindra Sethi. If so, the Ld. Counsel submits that the stand taken that he has not filed option statement in time is incorrect. Further, Ld. Counsel submits that on the basis of Annexure-A/3, a letter dated 7.4.2004, the date for discharging all the names of the officers who have opted has been fixed as 14.04.2004 and this document along with Annexure-A/5 letter would show that all the officers of the DOT, Bhubaneswar has filed their option in time. Further, it is the case of the Ld. Counsel for the applicant that as per Annexure-A/6 it is discernible that as the applicant has filed his option statement in time, however there occurred some



delay in discharging the same to the authorities due to misplacement of the same in the office of the General Manager, Telecom District, Bhubaneswar that by itself cannot be concluded that the applicant has not filed option within the stipulated time, namely on or before 10.10.2003. Ld. Counsel for the applicant also relies on Annexure-A/7 in which it is categorically stated that the applicant has filed his option in time to his superior officer but has not forwarded the same in time. In the light of above, Ld. Counsel submits that Annexure-A/8 has no stand in the eye of law. Even if the stand taken in the counter affidavit is to the effect that the applicant had filed the option before the senior officer, Mr. Sethi and the Sethi had kept it somewhere else in the office or misplaced it that cannot be considered as disfavour of the applicant at all. With the above arguments, the Ld. Counsel submits that Annexure-A/8 has to be quashed and this Tribunal should direct the Respondents to reconsider the case of the applicant allowing him to be absorbed w.e.f. the date of which other official already been absorbed in the BSNL service.

9. The second limb of the argument of the Ld. Counsel is that if the position is taken that the applicant has



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filed his option in time, he shall not be transferred from Bhubaneswar to Delhi as per Annexure-A/9 order as the officer deemed to have been absorbed in the BSNL cannot be transferred. In the above circumstances, Annexure-A/9 also shall be quashed.

10. Refuting the above argument, Ld. Counsel for the Respondents Mr. Jena, relying on the counter affidavit submits that though Annexure-A/2 and A/5 would show that the applicant had given his application for option on 10.10.2003, there is no evidence on record before the office to find that the applicant has filed his option in time as stipulated in Annexure-A/1. That apart, the Ld. Counsel relies on the additional reply statement in which he has produced certain documents to show that the document now relied on by the applicant is concocted one by him. To substantiate his contention Ld. Counsel invites our attention to Annexure-A/5 in which it is seen that the applicant himself has signed the application for option and forwarded but in the other cases Head of Department has signed it. But in the light of the arguments, we are of the view that if we accept Annexure-A/2, A/3 and A/4, we can conclusively and legally hold that the applicant has filed his option within the

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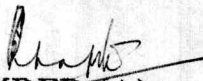
stipulated time as per Annexure-A/1 circular. The question whether the Head of Department has recommended it or not or kept in some other place or displaced is not the fault of the applicant at all. That apart there is no whisper in the counter affidavit or additional counter affidavit that any step has been taken against the Head of Department, namely Mr. Sethi, regarding the non-sending of the application filed by the applicant. All the documents now relied on by the applicant would show that the applicant has filed his option on 10.10.2003 itself. If so, the stand taken in Annexure-A/8 cannot be justified and we are of the view that it has to be quashed by this Tribunal, we are doing so.

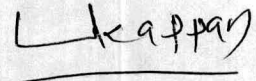
11. With regard to other question, Ld. Counsel for the Respondents supports the transfer order on the ground that as his case has not been considered for absorption by the BSNL, he should obey the transfer order passed by the authorities and this Court cannot interfere in this. But, we have already taken the view that the option of the applicant has been filed within time and he ought to have been absorbed in the BSNL service. If so, it has also to be reconsidered by the authorities within a period of one month from the date of receipt of a copy of this order. Till final

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decision is taken by the DOT on his application for absorption, Annexure-A/9, transfer order, shall be kept in abeyance.

12. With the above observation and direction, the O.A. stands disposed of. No costs.


MEMBER (A)


MEMBER (J)

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