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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Friday, the fourteenth day of November, two thousand three.

ORIGINAL APPLICATION No. 319/2001.

CORAM

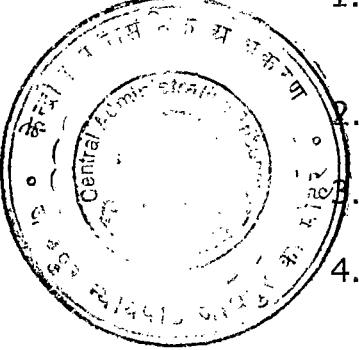
The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. G.R. Patwardhan, Administrative Member.

Vijay Dixit S/o Shri Ghan Shyam Dixit by caste Dixit, aged about 25 years resident of House No. T-II-11, New Pant Colony, Pawanpuri, Bikaner, presently working as Sr. TOA(t), O/o SDO, Phones, Bikaner.

: Applicant.
None for the applicant.

Versus



1. Union of India, through the Secretary to the Government of India, Department of Telecom, Sanchar Bhawan, New Delhi.
2. Chief General Manager, Telecom, Rajasthan Circle, Jaipur.
3. General Manager, Telecom District, Bikaner.
4. Sub Divisional Officer (Phones) Bikaner.

: Respondents

Mr. Vinit Mathur: Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri Vijay Dixit has assailed the order dated 28.08.2000 (Annex. A.1) and has further prayed for restoring his pay to Rs. 4600/- instead of Rs. 4200/-

[Signature]

2. The facts of this case are that the applicant was appointed in the Department of Telecom in 1994. He exercised his option and as per his option he was ordered to work on the post of Sr. TOA (TG) in the scale of pay of Rs. 1320-2040 with effect from 09.05.95, vide Annex. A.2. Subsequently, an order dated 18.08.2000 was passed vide which, the effective date of aforesaid order has been changed to 03.08.98 instead of 09.05.95. The OA has been filed primarily on the ground that the applicant was not given any opportunity of hearing before passing the impugned order. It is also stated that the respondents have started recovering an amount Rs. 1000/- per month from his pay from September 2001. Thus there has been violation of principles of natural justice. He also submitted a representation in the matter. But instead of taking any action on the representation, the respondents started recovering Rs. 1000/- per month.

3. The respondents have contested the case and have filed a detailed reply to the OA. It has been averred that the applicant has passed the confirmation test held in September 1998 and a clarification was sought from the higher authorities as to whether a person who has not passed the confirmation test would be entitled for placing in Sr. TOA cadre. Vide communication dated 25.04.2000, a clarification was issued stating that employees who have not passed the confirmation test cannot be allowed to work in the cadre of TOAs. It is further averred that the applicant was incorrectly granted the scale of pay of the post of Sr. TOA, before passing the conformation

test. The respondents have prayed for dismissal of the O.A. No rejoinder has been filed.

4. We have heard the learned counsel for the respondents and have carefully perused the records and pleadings of the case.

5. The learned counsel for the respondents has reiterated the pleadings in the reply and submitted that in view of the clarification dated 25.04.2000, Annex. R.1, the impugned order had to be passed. He also submitted that there was no need to issue show cause notice in as much as the department has every right to rectify its mistake. He relied on the judgement of the Jaipur Bench of this Tribunal in Lal Chand saini vs. Union of India and others [O.A. No. 250/2002 decided on 31.05.2002] and submitted that this Bench of the Tribunal has also no jurisdiction to entertain this case since the applicant herein has been absorbed in the BSNL which is a corporation for which no notification under Sec. 14 of the AT Act has been issued and therefore the O.A is not maintainable.

6. We have considered the rival contentions involved in this case. As regard the preliminary objection, that this O.A is not maintainable, is concerned, we find that the impugned order in the present case was passed on 28.08.2000, whereas the BSNL came into existence only with effect from 01.10.2000. At the time when this O.A was filed, this Bench of the Tribunal had jurisdiction to entertain

this case. We also find that the impugned order has been passed by the Department of Telecom. Otherwise also since the very BSNL was not in existence, there was no question of passing any order by the BSNL.

7. As regards the judgement in **Lal Chand Saini's case** (supra) the impugned order was passed on 18.03.2002, on which date BSNL was very much in existence, and the impugned order therein was also passed by BSNL and the applicant therein was permanently absorbed in the said Nigam. Thus the said case is distinguishable on facts and it does not support the case of the respondents. Otherwise also, the respondents herein in the reply have taken no such objection of jurisdiction of this Tribunal for entertaining the instant case.

8. Now adverting to the facts in this case, admittedly no show cause notice was given to the applicant prior to the passing of the impugned order dated 28.08.2000 (Annex. A.1). The law is well settled on the point that if any order is required to be passed involving civil consequences detrimental to the interest of an employee it would be necessary to give a pre-decisional hearing before passing any such order. We get support of our view from a celebrated judgement of the Supreme Court in the case of H.L. Trehan and others vs. Union of India and others [1989 SCC (L&S) 246, wherein their Lordships has held as under at para 11

" It is now a well established principle of law that there can be no deprivation or curtailment of any existing right, advantage or benefit enjoyed but a government servant without complying with the rules of natural justice by giving the

government servant concerned an opportunity of being heard. Any arbitrary or whimsical exercise of power prejudicially affecting the existing conditions of service of a government servant will offend against the provision of Art. 14 of the Constitution."

Keeping in view the aforesaid principle of law, the respondents were required to adhere the rule of principles of natural justice in as much as the impugned order definitely visited the applicant with civil consequences but they have not found it expedient to give any hearing to the applicant prior to passing of the impugned order. The in-escapable conclusion is that the action of the respondents has offended Art. 14 of the Constitution of India.

9. In the premise, the O.A merits acceptance and the same stands allowed. The impugned order dated 28.08.2000 is hereby quashed. The applicant will be entitled to all consequential benefits. In case any recovery has been made in pursuance with the impugned order, the amount so recovered shall be refunded to the applicant within a period of three months from the date of receipt of a copy of this order. We make it clear that this order shall not preclude the competent authority from passing any fresh order in the matter but in accordance with law. No costs.

→ R
(G.R.Patwardhan)

Administrative Member


(J.K. Kaushik)

Judicial Member.

jsv.

Regd A.D. Copy 07
order dt. 14/11/2003
Sent to Applicant
Bidegaon 385 dt 16/12/03

Copy
3/12/03

Part II and III destroyed
in my presence on
Under the supervision of
section officer () as per
order dated/.....

Section officer (Record)