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CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH.

O.A.No. 176 of 2003

Date of order: July 28, 2004

CORAM : HON'BLE MR.J.K.KAUSHIK, MEMBER (JUDL.)
HON'BLE MR.M.K.MISRA, MEMBER (ADM.)

M. Jagdish Vyas S/o Sh. Mangi Lal Ji Vyas, Aged about 45 Years, R/O Dadhich Colony, Sur Sagar, Jodhpur, District: Jodhpur, (Rajasthan).

Presently working on the post of Junior Accounts Officer (T R) in the office of General Manager Telecom. District (GMTD) BSNL Manji ka Hattha, Jodhpur, (Rajasthan).

.... Applicant

Mr. S. K. Malik, Counsel for the applicants.

Versus



1. Union of India through the Secretary, Ministry of Communications, Sanchar Bhawan, 20, Ashok Road, New Delhi – 110001
2. Chairman & Managing Director, Bharat Sanchar Nigam Limited (BSNL) Room No. 901, Statesman House, Barakhambha Road Cannaut Place, New Delhi – 110001.
3. Assistant Director General (DE) Bharat Sanchar Nigam Limited (BSNL) Department of Exam, Section, Dak Bhawan Sansad Marg, New Delhi – 110001.
4. General Manager Telecom, District (GMTD) BSNL, Kamala Nehru Nagar, Jodhpur, (Rajasthan).

.... Respondents

Mr. B.L. Bisnoi : Counsel for the respondents.



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ORDER (ORAL)
[by M.K.Misra, Member (A)]

The applicant, Shri M. Jagdish Vyas, an employee of Department of Post, Govt. of India, having passed JAO Part-II examination in 1991, filed this Original Application under Section 19 of the Administrative Tribunals Act, 1985 seeking relief by way of issuance of direction to the respondents in respect of his name to be included in the impugned order containing declared result dated 29.08.2002 (Annexure A/1).

2. The main dispute is regarding the jurisdiction as to whether Central Administrative Tribunal has jurisdiction on BSNL and whether the relaxation as contained in circular dated 23.07.2002 (Annexure A/5) is available to the applicant who worked on deputation in Department of Telecommunication (DoT) during the period from 1993 to 1996 at Bombay. He was again went on deputation as JAO in DoT at Jaipur vide order dated 04.09.2000 (Annexure A/2). As per the notification dated 30.09.2000 (Annexure A/3), the applicant was permitted to appear in paper VII & VIII of JAO part-II examination for the purpose of become eligible for absorption in DoT. He appeared in the examination and obtained marked 47 and 36 in paper VII and VIII, respectively. As per criteria laid down in circular dated 24.06.2002 (Annexure R/1), the deputationists will be qualified only when they obtain 40% marks in each subject and 45% in aggregate in paper VII & VIII.

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3. The learned counsel for the applicant contended that this circular has been superseded by another circular dated 23.07.2002 (Annexure A/5) where the relaxation was given to all the candidates whether officials of the DoT or they are the deputationists. Accordingly, as per the relaxation circular dated 23.07.2002, the applicant stands qualified to become eligible for the purpose of absorption in DoT and his name ought to have been included in the impugned declared result.

4. The learned counsel for the respondents submitted that the deputationists were exempted from appearing in JAO part-I examination which is in the nature of relaxation already given to the deputationists, therefore, further asking for another relaxation as per relaxation circular dated 23.07.2002 is improper and since qualifying circular dated 24.06.2002 (Annexure R/1) is applicable in the case of deputationists, therefore, his request for further relaxation as per relaxation circular dated 23.07.2002 (Annexure A/5) is not acceptable being unreasonable.



5. We have considered carefully the averments made by the learned counsel for both the parties as well as have perused the material available on record.

6. Before we decide this Original Application on merits, it is necessary to adjudicate on the issue of jurisdiction of this Tribunal over the applicant.

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7. The learned counsel for the respondents in their reply vociferously challenged, in all humility, firstly that the Central Administrative Tribunal as such as a matter of policy has no jurisdiction over the Bharat Sanchar Nigam Ltd. (BSNL, for short). In support of the contention, the learned counsel for the respondents cited the decision of the Jaipur Bench of the Tribunal in O.A. No. 250/2002 (**Lalchand Saini vs. UOI & Ors.**) order dated 31.05.2002 wherein it was held that this Tribunal did not have jurisdiction over BSNL because the applicant Shri Lalchand Saini was absorbed on permanent basis in the BSNL. Similarly, the learned counsel for the respondents took the support of the decision of the Jaipur Bench of CAT in the case of **Bhanwar Lal Makwana vs. UOI & Ors.** (O.A. No. 516/2002) order dated 05.06.2003 wherein it was decided that on the date of filing of the O.A. by the applicant, Shri Bhanwar Lal Makwana was not the employee of the Govt. Of India and was not holding a civil post, therefore, the matter could not be entertained keeping in view the provision of Section 14 of the Administrative Tribunals Act, 1985. Further another case of **Laxman Singh Asnani vs. Shri Prithpal Singh, CMD, BSNL and Ors.** (C.P. No. 05/2003 in O.A. No. 03/2001) order dated 11.05.2004 was quoted by the learned counsel for the respondents in support of his contention on the issue of jurisdiction, the Hon'ble Tribunal of the Jaipur Bench held that the Tribunal did not have jurisdiction over BSNL because the contempt petition was filed against the corporate body. *M*



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8. The learned counsel for the respondents further submitted emphatically that BSNL is a corporate body and there is no notification issued by the Competent Authority under Section 14 (2) of the Administrative Tribunals Act, 1985, therefore, the Central Administrative Tribunal has no jurisdiction over the corporate body i.e. B.S.N.L., hence, the O.A. of the applicants is not maintainable at all. The learned counsel for the respondents also submitted that all the necessary orders were issued by the B.S.N.L. and since B.S.N.L. has not been notified under Section 14 (2) of the Administrative Tribunals Act, 1985, this Tribunal is not competent to adjudicate on any service matters pertaining to them.



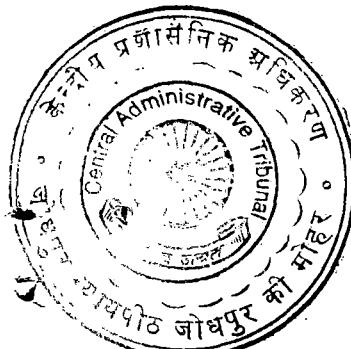
9. We have heard the learned counsel for both the parties and have gone through the averments made by them during the course of hearing of the case and also perused the material available on record. It has been observed that the learned counsel for the respondents raised an objection that this Tribunal has no jurisdiction to entertain the OA of the applicants as there has been no notification to this effect under Section 14 (2) of the Administrative Tribunal Act, 1985. In support of his contention the learned counsel for the respondent quoted the decision of a full Bench of C.A.T at Jaipur in the case of **B.N. Sharma etc. versus Union of India and others** [2004(2), ATJ 11] wherein the following questions were framed for consideration of the Full Bench. *ANM*

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"1. Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees who are on deemed deputation of BSNL or only in respect of cause of action relating to their parent department e.g. disciplinary proceedings, retiral benefits, promotions, in their department etc. and not for the cause of action wholly arisen from BSNL e.g. transfer, promotion etc by BSNL."

"2. Whether the Tribunal has jurisdiction on all service matter in respect of service matter of central government employees, the cause of action for which related to a period prior to the absorption of such employees in BSNL."

As regards questions 1 & 2 above the Full Bench opined as under:



"We do not dispute the importance of the above-said question, but keeping in view the nature of the controversy, we are not answering the dispute as to the jurisdiction of this Tribunal which a Government employee is on deemed deputation with the BSNL because it did not arise during the course of submissions and we had made ourselves clear to the Members of the Bar that this question can be gone into whenever it arises. We are

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also, therefore, not inclined to go into the other questions which are co-related has thereto and are confining ourselves to the controversy as to if this Tribunal has the jurisdiction on service matters with respect to the Central Government employees, who have been absorbed in the BSNL."

However, the Full Bench observed in end as under: -



"1. Resultantly, we answer the controversy, as already referred to above, holding that in cases in which the employees had been absorbed permanently with the BSNL, the Central Administrative Tribunal has no jurisdiction to adjudicate upon their service matters till a notification under sub-section(2) to Section 14 is issued."

"2. In fact of the findings we have recorded above, it becomes unnecessary for us to remit the matter back to the relevant Bench. Since this Tribunal has no jurisdiction to entertain the applications, the same are dismissed. No costs."

We have carefully gone through the above decision. From the above findings, it is observed that this Tribunal has no jurisdiction over employees who had been absorbed permanently with the BSNL. At the same time as regards question No. 2 the employees who are on deputation with the DOT/BSNL, the C.A.T. has jurisdiction as held by the Chandigarh Bench of the C.A.T in the case of **Phulishwar Prasad Singh versus Union of India and others** [2003(2) ATJ 297,] The Tribunal held in the above case that as per the provision of Section 14(1) of the Act, the jurisdiction is determined with reference to a particular class

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or categories of employees and subject matter of grievance and not with reference to the employer /parties against whom the grievance is raised or the relief is claimed. In this case the applicant is employee of the Postal Department of Government of India and are on deputation with the Department of Tele-Communication later on a part of which became the BSNL and they have not yet been absorbed in the BSNL hence this Tribunal has got, in all aspects, the jurisdiction over such employees because it is the status and the character of the employee which determines the jurisdiction of the appropriate forum. The jurisdiction of the Tribunal does not depend upon the character of the party against which a relief is claimed once it is established that the person is holding a public post and that the relief claimed is in respect of service conditions then the question whether he is seeking remedy against the Government or against any other party or both is immaterial. The provisions of Section 14(1) of the Act have no reference to the body organization or establishment where the employees of the categories specified therein have been posted, deputed or detailed to work. Once it is determined that an employee is a Central Government employee or falls within the categories specified in Clauses (b) & (c) of sub-section (1) of Section 14, he can straightaway approach this Tribunal for the redressal of his grievances in relation to his service matters. It may also be noticed that as per notification dated 30.09.2000 (Annexure A/3), the deputationists were to be absorbed as JAO in DoT/DTS/DTO as one time measure. Their transfer/absorption

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in BSNL might be subsequent exercise. The D.O.T. is definitely a Central Government Department and the employees of it are Central Government employees, therefore, this Tribunal has jurisdiction to entertain their case relating to service matters.

10. We would like to mention here that the learned counsel for the respondents referred to three judgements of the Jaipur Bench of the Tribunal with regard to the jurisdiction of this Tribunal on the BSNL. We would like to hold that all the three decisions quoted by the respondents as Annexures R/2, R/3 and R/4 are not applicable because in two cases, the applicants were not the employees of the Union Govt. and were not holding a civil post and in the third case, the C.P. was filed against the BSNL therefore, the decision taken in that C.P. is also not applicable in this case because the CAT has no jurisdiction on BSNL.



In the present case, the applicant is still the employee of the Department of Posts, Govt. of India, he has yet not been absorbed in the BSNL, his grievance is that he should get absorb in the DoT which is a department of Govt. of India, on the basis of the examination held for paper VII and VIII of JAO part-II examination which he cleared as per communication/circular/notification dated 23.07.2002 (Annexure A/5) and he is legally entitled to be included in the impugned declared result as a candidate becoming eligible for absorption in the DoT. *(M/S)*

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11. We have, therefore, of the firm view that this Tribunal has jurisdiction over the applicants hence we proceed to decide this O.A. on its merits.

12. Learned Counsel for the applicant submitted that the basic order dated 30/9/2000 (Annex. A/3) was issued by the Government of India, Department of Telecommunication and the applicant has not yet been absorbed in the BSNL. He has qualified in the examination to become eligible for absorption in the DOT/BSNL. He has secured more marks than the minimum prescribed marks in paper VII & VIII as per criteria given in the letter dated 23.7.2002. The impugned order dated 29.8.03 refers to the letter of even number dated 23.7.2002 which indicates that the concessions were meant for deputationists also therefore the applicant is legally entitled to get his name included in the impugned declared results enclosed with letter dated 29.8.02 (Annex A/1).



13. The learned counsel for the respondents contended vociferously that the relaxation as per letter dated 23.7.02 (Annex. A/5) was given by the Cadre Controlling Authority (DoT) in respect of the officials of DoT only who have cleared the JAO Part-I examination (i.e. six papers, four subjects) in DOT syllabus and those who appeared in 5 papers (3 subjects) in the JAO Part II examination of DOT. The impugned result list contained the names of these officials who cleared JAO part-II

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examination after the relaxation was applied to them. This relaxation is not applicable to deputationists because they were exempted to appear in JAO part-I examination. It was also submitted that since the deputationists are not the departmental candidates and they did not appear in the JAO Part-I examinations of the DOT in 6 papers (4 subjects) therefore, they are not competent to avail the above relaxation. Since, he did not secure marks in paper VII & VIII as per Annexure R/1 above (i.e. 40% in each paper and 45% in aggregate) his name was not included in the impugned result.

14. We have anxiously considered the submissions of both the parties. In nut-shell, the dispute is whether or not the relaxation circular dated 23.07.2002 (Annexure A/5) is applicable to the deputationists, or it is meant only for non-deputationists i.e. officials of the DoT etc. As per the respondents, the circular dated 24.6.2002 (Annexure R/1) is applicable to the deputationists and since the applicant could not obtain marks at 45% in aggregate (i.e. a total of 90% marks in both the papers VII & VIII put together, he was not included in the impugned result. We observe while going through the various communications/circulars/notifications issued by the competent authority from time to time that the basic bible for absorption of the deputationists in DoT is notification dated 30.09.2000 (Annexure A/3). We find that nowhere it has been mentioned that for the purpose of eligibility for absorption in DoT, the deputationists are required to clear JAO part-I examination. We

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also find that the relaxation given in the letter dated 23.07.2002 (Annexure A/5) does not prohibit the deputationists to avail the above relaxation as is available to the officials of the DoT etc. We also observe that the communication dated 24.06.2002 (Annexure R/1) had been issued by the DoT wherein the minimum marks obtained in paper VII & VIII of JAO part II examination should be 45% in aggregate and 40% in each paper. This minimum prescribed percentage of marks were relaxed by issuing of another communication/notification dated 23.07.2002 (Annexure A/5) which is also applicable in the case of deputationists. We also anxiously noticed that the deputationists were required to pass only in JAO part-II examination in paper VII & VIII only. As per the circular dated 30.09.2000 (Annexure A/3) wherein the terms and conditions have been laid down in the main body of the notification as well as in Annexure I to IV thereof, stand satisfied & fulfilled. Since the applicant had already cleared the JAO part II examination before deputation in DoT therefore only requirement for the deputationists in DoT for absorption was to pass in paper VII & VIII only.



15. We further observe that the applicant secured marks more than prescribed marks as per circular dated 23.07.2002 (Annexure A/7) i.e. 41.5% therefore, his name ought to have been included in the impugned result declared (Annexure A/1).

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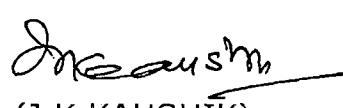
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16. We have extensively considered the various averments made by the learned counsel for both the parties. The inescapable conclusion is that the applicant has fulfilled the conditions as mentioned in letter dated 30.9.2000 (Annex. A/3), letter dated 23.07.2002 (Annex.A/5); he has also secured more than the minimum prescribed marks in aggregate in both the papers VII and VIII as per communication dated 24/27.09.2002 (Annex. A/7). The respondents are therefore, directed to include the name of applicant in list of successful candidates at Annexure A/1, as per their merit position and consider their candidature for absorption on the post of J.A.O. accordingly, within a period of three months from the receipt of a copy of this order of the Tribunal and intimate accordingly to the applicant in this respect. He shall be also entitled to the benefit of seniority as per their merits.



17. Consequently, the Original Application is hereby allowed accordingly. No costs.


(M.K. MISRA)
Member (A)


(J.K. KAUSHIK)
Member (J)

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Part II and III destroyed
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section officer () as per
order dated ... 18/10/13

D. K. S. 25.10.2013
Section officer (Record)