

Date of decision: 25.10.2005.

Hon'ble Mr. Kuldip Singh, Vice Chairman.

Yogesh Kumar Maurya and 58 others.

: Applicants.

Mr. P.S. Bhati : Sr. Counsel for the applicants.

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Union of India rep. By the Secretary Department of Telecommunications, Government of India, Sanchar Bhawan, New Delhi and three others.

: Respondents.

Mr. Vinit Mathur: Caveator : Counsel for the respondents.

ORDER

Per Mr. Kuldip Singh, Vice Chairman.

The learned counsel for the applicants seeks permission to file a joint O.A as the cause of action and relief prayed for are the same. The permission is granted to file single O.A.

The applicants are members of Group 'A' Officers of the Indian Telecom Service, Assn. . They have challenged the office memorandum dated 24.03.2005, issued by the Joint Secretary, Ministry of Communications & Information Technology, Deptt. Of Telecommunications (Annex. IV) and also another order dated 18.10.2005 (Annex. XXVI), issued by the Deputy Secretary,(Absorption Cell) of the same Ministry. They have initially filed Writ

recon before the Hon'ble High Court of Rajasthan, Jodhpur, but the Hon'ble High Court finding that the matter pertains to service conditions of the Government employees and the High Court had no jurisdiction to adjudicate such matter as per Sec. 28 of the Administrative Tribunals Act, 1985, and since the matter involved is of urgent nature the Writ Petition had been returned to the applicants (Writ Petitioners before the Hon'ble High Court of Rajasthan, Jodhpur). The applicants have presented the same before this Bench of the Tribunal and it has been treated as O.A. The learned counsel for the applicant has undertaken to file application in the proper format prescribed by the A.T. Act during the course of the day and he insisted that the issued involved is of urgent nature matter may be heard in the present format regarding the grant of interim stay as prayed for by the applicants.

Shri Vinit Mathur, Sr. Standing counsel for the Union of India has entered appearance as a caveator for the respondents and accepted the Notices.

I heard the learned counsel appearing for both the parties in extenso for the grant of interim relief.

The applicants have basically impugned the order dated 18.10.2005 (Annex. XXVI) on the subject of '**Repatriation of Group 'A' officers of various services working in MTNL/BSNL back to their parent Department of Telecommunications (DOT) after completion of their deemed deputation in MTNL/ BSNL on 15.10.2005'**

The learned counsel for the applicants drew my attention to para 6 of the impugned order dated 18.10.2005, stating that All Group 'A' Officers (on deemed deputation to MTNL/BSNL) excluding those in

Category I & IV thus stand reverted to Government and should report to DOT immediately. They should do so by intimating to the CCA concerned with a copy to the Cadre controlling Authority and Director (HRD) of BSNL/MTNL. They should give their address for correspondence, so as to facilitate further communication with them. Laying emphasis on the above underlined sentence, the learned counsel for the applicants submitted that the applicants in a way are being declared surplus, by directing them leave their address for correspondence, and this would go to show that they were being declared as surplus and they will not be assigned any work and the conditions pertaining to the surplus employees would apply to them. The learned counsel for the applicant further submitted that the applicants are Group A officers and having entered into Government service after appearing in All India Competitive Examination conducted by the UPSC and therefore they could not be declared as surplus in such a slip shod manner. Rather the Government before terminating their deemed deputation should specify the conditions with regard to their absorption in the BSNL/MTNL and in case if an employee does not opt for absorption then on what condition he could be reverted back to the Government of India and what work shall be assigned to them. Since the absorption clause is silent and the Government has not been clearly stating what work would be assigned to them, and they are going to be declared as surplus, it would affect their service career. Hence they prayed that the operation of the impugned order should be stayed.

On the contrary, the learned counsel for the respondents submitted that the services of these applicants were placed on

deputation with BSNL/MTNL on the creation of these two companies and they were sent to these companies with some purpose. They worked there on deemed deputation. They were given several opportunities to opt either for absorption in these two companies or to return to their Parent department DOT, Government of India. They did not give any clear option and therefore the Government had to resort to issue such an order. The learned counsel for the respondents further submitted that even the impugned order says that several orders were issued to the applicants and lastly vide OM No. A.11013/1/2005 dated 30.09.2005, the period of deemed deputation was extended till 15.10.2005 and the extended period of deemed deputation has thus ended. Several officers had given their option for absorption in BSNL/MTNL or for Government service in response to the above said OM and action regarding issue of their allocation order (Presidential Order) has been initiated and appropriate Presidential Orders have been issued or are under consideration. But some of the officers had approached various Courts and therefore no orders were issued in their cases. He further stated that in the cases of officers who have not given their option either for absorption or opted for Government service shall stand reverted to Government and should report to DOT immediately and they should do so by intimating to the CCA concerned with a copy to the cadre controlling Authority and Director (HRD) of BSNL/MTNL and they should give their address for correspondence so as to facilitate further communication with them. It is a case of sheer inaction on the part of the applicants who had not given any option either for absorption in BSNL/MTNL or for ^{to} _{to}

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revert back to DOT, and hence proper action could not be taken in their cases with regard to their posting and allocation of duties etc.

The learned counsel for the respondents also pointed out that various applications have been filed before different Courts and interim orders have been issued but in those cases the earlier orders were under challenge and not the impugned order dated 18.10.2005. For example, the Hon'ble Uttranchal High Court had granted stay on 29.10.2005 and therefore the order dated 18.10.2005 was not under challenge before the Hon'ble Uttranchal High Court. Similar is the case before the Hon'ble High Court of Guwahati wherein the interim stay was granted on 06.10.2005 and the impugned order challenged before the Hon'ble High Court of Guwahati was of dated 24.03.2005. Similar stay order has been granted by the Hon'ble High Court of Rajasthan at Jaipur and though before the Hon'ble Rajasthan High Court at Jaipur the order dated 18.10.2005 was also placed, the Hon'ble Rajasthan High Court at Jaipur directed the respondents to maintain status quo ante prior to 18.10.2005.

The learned counsel for the applicant has submitted that another development had taken place in the case of the applicants that after repatriation, new official had been posted in their place and they took charge of the post and repatriation orders were passed on 19.10. 2005 and relieving orders in their cases were also passed.

At this juncture, the learned counsel for the respondents submitted that the very same issue came up for consideration before the Principal Bench on 24.10.2005, and no interim relief had been granted rather the prayer for interim relief had been rejected

by a speaking order and the Principal Bench had categorically held that the balance does not lie in favour of the applicants and sufficient protection had been granted to those employees who had already approached the Court and in the cases of those who are not covered by any stay orders, no irreparable loss shall be caused to them as they can be compensated in case the OA is favourably decided ultimately in their favour. And the M.A was dismissed by the Principal Bench. The learned counsel further submitted that the ^{heavy J} cases shall be taken on day to day basis. The learned counsel also submitted that as the further developments had taken place after the issuance of the order dated 18.10.2005, orders dated 19.10.2005 and 20.10.2005 were issued and the applicants have been ordered to be repatriated to their Parent Department or Department of Telecommunications and therefore the question of resorting to status quo ante would not lie. It is also submitted by the learned counsel for the Central Government that the applicants have been already relieved and new persons have already joined in their places.

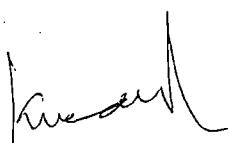
In view of the above discussions, I am of the considered view that the applicants have no case for interim relief because, option either for absorption in BSNL/MTNL or for repatriation to DOT was not given for the first time vide impugned order dated 18.10.2005. Further it is seen from the records filed by the applicants themselves that various letters were issued calling for options from the applicants either for absorption in BSNL/MTNL or for repatriation to Government. The applicants having failed to exercise their option at proper time they rendered themselves in this piquant situation as they have not yet decided whether to remain

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with BSNL/MTNL or returned to Govt. of India. Such persons have no right to ask for stay of the impugned order. The balance of convenience does not lie in favour of the applicants at all. The applicants should have approached the Court when the first letter was issued asking to exercise their option either to absorption in BSNL/MTNL or for repatriation to DOT, by filing O.A to know about their service conditions. Had they opted for repatriation to the Government of India at time of issuance of first letter itself, the result would be different. It appears that the applicants weigh their pros and cons and failed to make up their mind whether to get absorption in BSNL/MTNL or for repatriation to the DOT and the present situation has arisen because of their own act and now, they cannot ask any protection from the Court.

As informed by the Sr. Counsel for the Govt. of India, that the Principal Bench is hearing the similar matter on day to day basis, the decision to be rendered by the Principal Bench would also be applicable to the applicants herein, the prayer for interim relief is rejected.

be listed before D.B.C.
List the O.A on 25.11.2005. In the mean time the respondents are directed to file reply. Copies of the O.A may be given to the learned Sr. counsel for the Central Government Shri Vinit Mathur


Kuldip Singh
Vice Chairman

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