

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No.45/2013

Jodhpur this the 1st day of July, 2014

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (Judicial),
Hon'ble Ms. Meenakshi Hooja, Member (Administrative)**

Ghewar Chand Jain s/o Shri Chintaman Das, aged about 63 years, Resident of 11/819, Chopasni Housing Board, Jodhpur, retired on superannuation from the post of Divisional Engineer, Department of Telecommunication, on deputation to B.S.N.L.

.....Applicant

By Advocate: Shri Harish Purohit

Versus

1. Union of India through Secretary to the Government of India, Ministry of Communication and Information Technology, Department of Telecommunications, 421, Sanchar Bhawan, 20-Ashoka Road, New Delhi.
2. Director (Estt), Department of Telecommunication, Sanchar Bhawan, 20-Ashoka Road, New Delhi.
3. Chief General Manager Telecom, Rajasthan Circle, Sardar Patel Marg, Jaipur.
4. Chairman & Managing Director, B.S.N.L., Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi.

.....Respondents

By Advocate : Ms. K. Parveen for resp. No. 1
Mr. Kamal Dave for resp. 2 to 4

ORDER (Oral)

Per Justice K.C. Joshi, Member (J)

By way of this OA the applicant seeks to release the withheld Presidential order pertaining to his absorption in Bharat Sanchar Nigam

Limited (BSNL) as well as fixation of pay and issuance of service benefits as also final retirement order with consequential payment of retirement benefits and he has prayed for the following reliefs:-

- i) That respondents may kindly be directed to immediately released the Presidential order passed for the applicant for absorption of his services with effect from 01.10.2000 with all consequential benefits including fixation of pay etc.
- ii) That respondents may further be directed to issue the final retirement order of the applicant and pay all consequential service and retiral benefits withheld on account of pendency of criminal case.
- iii) That respondents may kindly be directed to pay the interest @ 18% per annum on the delayed payment of retiral benefits.
- iv) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.
- v) That the cost of this Application may be awarded.

2. Brief facts of the case, as stated by the applicant, are that the applicant was initially appointed on the post of Junior Telecom Officer (JTO) on 17.05.1972 in the Department of Telecommunication. He earned his promotion to the post of Sub Divisional Officer on 18.12.1989 and thereafter to the post of Divisional Engineer Telecom on 20.09.2002. The applicant retired on superannuation while under suspension w.e.f. 31.12.2006. While he was posted as Divisional Engineer, a trap was conducted by the Anti Corruption Department on 10.11.2003 on the allegation that applicant demanded Rs. 3000/- as bribe from a Contractor for passing the pending bills. Thereafter the applicant was suspended due to above trap w.e.f. 23.2.2004. The sanction of prosecution was obtained by the ACB and challan/charge sheet has been filed against the applicant in the Court. According to the applicant, pursuant to the option for permanent absorption in the B.S.N.L., the applicant has submitted his option and also gave an

undertaking as directed vide letter/undertaking dated 11.03.2003 (Ann.A/3). Individual Presidential order No. 110 is also issued for absorption of the applicant in the BSNL, but the respondent No.3 withheld the Presidential order without any valid reason (Ann.A/6). The applicant filed various representations and requested to issue Presidential order for his absorption in BSNL but after a lapse of four years the applicant was informed vide letter dated 25.11.2008 that as per the report of vigilance cell, due to pendency of vigilance case (chargesheet in court), at present it is not possible to initiate the process for issuing the Presidential order.

The applicant earlier filed OA No.216/2009 before this Tribunal which was disposed of as premature reserving right to approach the Tribunal at appropriate time vide order dated 13.12.2011. The applicant has further averred that after decision of the OA, the learned Special Judgment, Sessions Court (ACD), Jodhpur discharged the applicant for the offence u/s 7,13(1)(d)(2) of the Prevention of Corruption Act, 1988 vide order dated 29.02.2012. In view of the fact that the applicant has been completely discharged of the offences under Prevention of Corruption Act, therefore, it was legal duty of the respondents to have immediately passed necessary orders releasing Presidential order and final retirement order with all consequential benefits. Therefore, being aggrieved with the inaction on the part of the respondents, the applicant has approached this Tribunal praying for the reliefs as extracted above.

3. In the reply to the OA, the respondents have submitted that the applicant does not fall within the eligibility criteria for issuance of Presidential order in respect of permanent absorption in BSNL which is evident from communication dated 08.04.2004 by which it is clarified that the officer in respect of whom criminal cases were instituted and out come may result in

order of removal/dismissal/compulsory retirement, no question of issuance of Presidential order arose. The respondents have further submitted that after being acquitted vide judgment dated 29.2.2012 by the competent Criminal Court, the Assistant Director, ACB, Jodhpur vide communication dated 25.7.2012 intimated about filing of appeal against the said judgment and the Presidential order can only be passed subsequent to finalization of the criminal case which is pending in appeal. The representations of the applicant were decided in view of pendency of appeal against the order of acquittal. Therefore, the applicant is not entitled to any relief.

4. The applicant has filed rejoinder to the reply filed by the respondents reiterating the averments made in the OA.

5. During course of arguments, counsel for the applicant submitted that after discharge by the competent court vide Annex. A/13. the applicant filed representation Annex. A/14 i.e. reminder-I, reminder-II, reminder-III and reminder-IV on various dates and the same are still pending before the competent authority. Counsel for the applicant contended that the respondents are not deciding the representations of the applicant.

6. Per contra, counsel for the respondents conceded that the representations submitted by the applicant are pending before the competent authority.

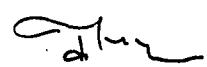
7. In view of the contentions raised by counsel for the applicant, we deem it proper to dispose of this OA with the direction to the applicant that he shall make a fresh representation to the respondents within 2 weeks from the date of receipt of this order and respondent-department shall decide the

representation of the applicant within 6 months from the date of receipt of the representation. Further, if any grievance remains to the applicant, he can file a fresh OA, if so advised.

8. In terms of above directions, OA is disposed of with no order as to costs.



(MEENAKSHI HOOJA)
Administrative Member



(JUSTICE K.C.JOSHI)
Judicial Member

R/ss