

CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O.A.Nos.492, 750, 759, 783, 804, 837,  
861, 870, 873 of 2002 and O.A.Nos.19 and 47 of 2003

Thursday, this the 15th day of May, 2003.

CORAM;

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

HON'BLE MR K.V.SACHIDANANDAN, JUDICIAL MEMBER

O.A.492/2002

1. Vineetha Sathish.P.P.  
Senior TAO(G),  
O/o Divisional Engineer(EXIL),  
BSNL, Calicut.
2. Sunil Kumar.K.  
Senior TAO(G),  
Telecom Computer Centre,  
Calicut.
3. R.Sudeav,  
Senior TAO(G),  
TRA Unit, Calicut. - Applicants

By Advocate Mr GD Panicker

Vs

1. Union of India  
represented by Secretary,  
Ministry of Communications,  
Sanchar Bhavan, New Delhi.
2. The Chairman & Managing Director,  
BSNL, New Delhi.
3. General Manager,  
Telecommunications, BSNL,  
Calicut.
4. General Manager,  
Telecommunications, BSNL,  
Malappuram. - Respondents

By Advocate Mr C Rajendran, SCGSC .

O.A.750/2002

Ramachandran.P.,  
TTA OFS-Mtce, Digital Tax,  
Ernakulam. - Applicant

By Advocate Mr Saji Isaac K.J.

Vs

1. Union of India represented by  
Secretary to Government,  
Ministry of Communications,  
New Delhi.
2. The Chief General Manager,  
Telecommunications,  
BSNL, Kerala Circle,  
Trivandrum.
3. The Principal General Manager,  
BSNL, Telecom Dist.  
Ernakulam.

- Respondents

By Advocate Mr C Rajendran, SCGSC

O.A.759/2002

K.K.Sasidharan,  
TTA, Telephone Exchange,  
Chingavanam. - Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. Union of India represented by  
the Secretary to Government of India,  
Ministry of Communications,  
New Delhi.
2. The Chief General Manager,  
BSNL, Telecom District,  
Kottayam.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.783/2002

1. Usha David,  
Senior Telecom Operating Assistant(G),  
O/o Principal General Manager,  
Telecom, Alappuzha.

2. Beena Devaraj,  
Senior Telecom Operating Assistant,  
O/o the General Manager, Telecom,  
Kottayam.

3. Sajan Varkey,  
Senior Telecom Operating Assistant,  
O/o the General Manager, Telecom,  
Alappuzha.

- Applicants

Vs

1. Union of India represented by  
the Secretary,  
Department of Telecommunications,  
Sanchar Bhavan, Ashoka Road,  
New Delhi-110 001.

2. The Chairman-cum-Managing Director,  
Bharat Sanchar Nigam Limited,  
Sanchar Bhavan,  
New Delhi.

3. The Chief General Manager, Telecom,  
Kerala Circle, Trivandrum-33.

4. The Assistant Director General(SEA),  
Recruitment & Examination Wing,  
BSNL, Sanchar Bhavan, New Delhi.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.804/2002

1. C.K.Madhavan,  
TTA, CDTMX, Telephone Exchange,  
Ernakulam.

2. Soosa.P.C.  
TTA, Telephone Exchange,  
Angamaly.

3. Lilly Francis,  
TTA, O/o Sub Divisional Engineer,  
Phones, Thevara.

4. V.Omanakuttan,  
TTA, O/o Sub Divisional Engineer,  
Phones, CUSAT Telephone Exchange,  
Kochi University P.O.  
Kochi.

- Applicants

By Advocate Mr MR Rajendran Nair

Vs

1. Union of India represented by  
the Secretary to Government of India,  
Ministry of Communications,  
New Delhi.

2. The Chief General Manager, Telecommunications, BSNL, Kerala Circle, Trivandrum.
3. The Principal General Manager, BSNL, Telecom District, Ernakulam.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.837/2002

K.C.Muralee Mancharan,  
Sr.Telemco Operating Assistant(Phones),  
O/o the General Manager(Telecom),  
Tiruvalla.

- Applicant

By Advocate Mr TC Govindaswamy

Vs

1. Union of India represented by the Secretary to Government of India, Ministry of Communications (Department of Telecommunications), New Delhi.
2. The Chief General Manager, Telecom, Bharat Sanchar Nigam Ltd., Kerala Circle, Trivandrum.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.861/2002

1. K.O.Mathew,  
SG Transmission Assistant,  
Telephone Exchange, Kuzhur,  
Trichur.
2. A.K.Jagannivasan,  
Transmission Assistant,  
O/o SDOT Parapanangadi,  
Malappuram.
3. E.M.Padmajan,  
Phone Inspector,  
Telephone Exchange,  
Valappad.
4. P.R.Sadasivan,  
Transmission Assistant,  
5 ESS MDF, Guruvayoor,  
Trichur.

- Applicants

By Advocate Mr Shafik.M.A.

vs

1. Union of India represented by Secretary to Government of India, Department of Telecommunications, Ministry of Communications, New Delhi.
2. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, Sanchar Bhavan, New Delhi.
3. The Chief General Manager, Telecommunications, Kerala Circle, Trivandrum.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.870/2002

M.K.Lukachan,  
Telecom Technical Assistant,  
Cochin Radio,  
W.Island, Cochin-9.

- Applicant

By Advocate Mr MR Rajendran Nair

vs

1. The Chief General Manager, Telecommunications, BSNL, Kerala Circle, Trivandrum.
2. Union of India represented by the Secretary to Government of India, Ministry of Communications, New Delhi.
3. Bharat Sanchar Nigam Limited, represented by its Director General, BSNL, New Delhi.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.873/2002

Easwaran Nampoodiri.V.P.  
Transmission Assistant,  
Telephone Exchange,  
Taliparamba, Kannur.

- Applicant

By Advocate Mr Shafik.M.A.

Vs

1. Union of India represented by Secretary to Government of India, Department of Telecommunications, Ministry of Communications, New Delhi.
2. The Chairman-cum-Managing Director, Bharat Sanchar Nigam Limited, Sanchar Bhavan, New Delhi.
3. The Chief General Manager, Telecommunications Kerala Circle, Trivandrum.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A.19/2003

1. K.C.Chandran, Telecom Technical Assistant(TTA), SDE Installation, Thrissur.
2. V.K.Manoj, Telecom Technical Assistant(TTA), Telephone Exchange, Irutti.
3. K.K.Prakash, Telecom Technical Assistant, Telephone Exchange, Kozhuvanal, Kottayam.
4. V.K.Raghavan, Telecom Technical Assistant, O/o SDE, E-10 B Telephone Exchange, Kottayam.
5. T.Chitrangada, Telecom Technical Assistant, Telephone Exchange, Thaliparamba.
6. K.P.Santha, Telecom Technical Assistant, Telephone Exchange, Thiruvallam, Trivandrum.
7. K.A.Venunath, Telecom Technical Assistant, Telephone Exchange, Kothamangalam.

- Applicants

By Advocate Vellayani Sundara Raju

Vs

1. Union of India represented by  
Secretary to Government,  
Ministry of Communications,  
New Delhi.
2. The Chief General Manager,  
Telecommunications,  
Kerala Circle,  
Thiruvananthapuram.

- Respondents

By Advocate Mr C.Rajendran, SCGSC

O.A. 47/2003

K.Sujith,  
Telecom Mechanic,  
Telephone Exchange,  
Ramanthali, Payyannur,  
Kannur.

- Applicant

By Advocate Mr MR Rajendran Nair

Vs

1. The General Manager,  
Telecom District,  
Bharat Sanchar Nigam Limited,  
Kannur.
2. The Chief General Manager,  
Telecom, Kerala Circle,  
Bharat Sanchar Nigam Limited,  
Trivandrum.
3. Union of India represented by  
the Secretary to Government of India,  
Ministry of Communications,  
Department of Telecom,  
New Delhi.

- Respondents

By Advocate Mr TC Krishna, ACGSC

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

In this batch of Original Applications, the primary question that arises for consideration is, whether the Central

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Administrative Tribunal has jurisdiction to entertain the applications and adjudicate the issues in terms of the provisions of Section 14 of the Administrative Tribunals Act, 1985. Since in all the above cases the basic question of jurisdiction has to be answered before entering the question of merit in each case, we consider it proper to take up all the cases together with reference to jurisdiction.

2. It is felt necessary to narrate the brief facts in respect of each of these cases, in order to have a clearer idea as to the position of the applicants concerned with regard to the jurisdiction of this Tribunal:

- (i) O.A.759/2002
- (ii) O.A.804/2002
- (iii) O.A.870/2002
- (iv) O.A.861/2002
- (v) O.A.873/2002
- (vi) O.A.750/2002

The applicants in all the above cases were Group'C' employees of the Telecom Department, Government of India. They had appeared for the qualifying screening test for the Group'B' post of Junior Telecom Officers(JTO for short), 1995 against 35% quota. All the Group'C' employees have since been absorbed in the newly constituted Bharath Sanchar Nigam Limited, (BSNL for short), a corporate body with effect from 1.10.2000. The Group'B' posts as on the date of corporatisation of the Telecom Department as BSNL were not

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absorbed in the BSNL. Some Group 'C' candidates who had appeared for the qualifying screening test (35% quota) for the promotion to JTO post in 1995 had approached the Central Administrative Tribunal for relief by way of a declaration that they had passed the screening test in view of serious mistakes in the relevant question papers. In O.A.552/1999, this Tribunal directed the respondents to consider the matter and pass appropriate orders on their representations. The respondents considered the representations and awarded 7 grace marks to the candidates who represented. Thereafter, some other candidates who had similar grievance, made similar representations and eventually got favourable directions from this Tribunal as in O.A.552/1999. This Tribunal's order in O.A.528/2002 dated 26.7.2002 is one such order. The applicants in the abovementioned O.A.s are also similarly placed as the applicants in O.A.552/1999 and O.A.528/2002, and seek similar remedy. Although the question of jurisdiction had never been raised earlier, when these applications are taken up for consideration for admission, the respondents have strongly opposed admission on the ground that this Tribunal could not exercise jurisdiction over Group 'C' employees who had been absorbed in the BSNL with effect from 1.10.2000.

vii) O.A.783/2002

In this case, though the grievance raised relate to the refusal of the third respondent, viz, the Chief General Manager, Telecom to revalue the Answer Books pertaining to JAO Part-I Examination held in 1999, the basic fact is similar to

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the one mentioned in the cases above, inasmuch as the applicants are Senior Telecom Operating Assistants who are in the Group'C' category absorbed in the BSNL. The applicant's case is that the departmental examination having been held prior to absorption and the post for which the departmental examination was held were in Group'B' category which are yet to be absorbed, the applicant's grievance can be addressed to the Tribunal.

(viii) O.A.837/2002

Here also, the facts with regard to the grievance may be different but the basic fact germane to the question of jurisdiction is the same: The applicant is a senior Telecom Operating Assistant, (Phones) who had taken the Departmental Competitive Examination for promotion to the post of JTO in Group'B' category against 15% competitive quota for the year 1992. As per A-1 list, there were 41 General Category vacancies out of which only 38 were enlisted. The remaining 3 vacancies were earmarked for Reserve Trained Pool(RTP). According to the applicant, RTP candidates were not entitled to be considered in the light of the Supreme Court's ruling. The applicant would place reliance on this Tribunal's order in O.A.411/2000 and O.A.436/2000 dated 25.3.2002(A-3). The applicant's case is that the event of dispute having arisen prior to the formation of BSNL, the matter fall within this Tribunal's jurisdiction.

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(ix) O.A.492/2002

There are 3 applicants in this case who are Senior TAO(G). The dispute is with regard to the seniority of the applicants in the light of the cadre change allowed though belatedly as per A-3 order in pursuance of A-1 and A-2 orders. The applicants are aggrieved by A-5, A-7 and A-9 orders which in effect, turn on the gradation position of these applicants as Group'C' employees who stood absorbed in the BSNL though the question of gradation and revision of seniority position would relate to a period prior to the formation of the BSNL.

(x) O.A.19/2003

All the 7 applicants herein are Group'C' employees(TTAs) absorbed in BSNL. The controversy in this case centres round the determination of vacancies of SC/ST in JTOs cadre against 35% quota of qualifying test pertaining to the period relevant for the screening test held on 30.4.2000. The applicants' case is that the vacancies being in Group'B' post under the Government of India pertaining to the period prior to the formation of the BSNL, the jurisdiction lies with the Central Administrative Tribunal.

(xi) O.A.47/2003

The grievance in this case is that the promotion of the applicant from a Group'D' post to a Group'C' post(i.e. Telecom Mechanic) has been cancelled by A-1 order dated

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20.12.2002. The most important facts to be noted in this case are that the Group 'C' and 'D' posts are absorbed in BSNL with effect from 1.10.2000 and that both the promotion and the cancellation orders have been made by the BSNL.

3. Shri C.Rajendran, learned SCGSC and Shri TC Krishna, learned ACGSC representing the respondents have strongly opposed the Original Applications. They would maintain that the CAT has no jurisdiction over the BSNL inasmuch as Group 'C' and D employees of Telecom Department were absorbed in the BSNL. According to them, once the BSNL has taken over the DOT/DTS/DTO, all officers who are absorbed in the BSNL are employees of the corporate employer and not of the Government of India. They cannot be held as appointed by the Government of India under the BSNL. While those who are yet to be absorbed may have protection of their service conditions as Government of India employees as if they are on deputation, matters concerning further promotions, recruitment etc. determined by the BSNL, cannot be subject matter of adjudication by the C.A.T., learned counsel would maintain. With regard to the specific facts pertaining to the applicants in the individual O.A.s under consideration, learned standing counsel would submit that though the individual grievances raised in some of the O.A.s may be different from each other, the fundamental issue to be considered was whether the C.A.T. had jurisdiction over service disputes raised by the employees of the BSNL without appropriate notification under Section 14 of the A.T. Act. In all these cases, the applicants are employees who had been absorbed as the employees of the BSNL.

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The fact that they were Central Government employees before 1.10.2000 did not confer on them any right to invoke the jurisdiction of the C.A.T. as Central Government employees. They are not appointed by the Government as on the date of filing of the O.A.s, nor were their service matters to be addressed by the C.A.T. under any specific orders. The learned counsel would rely on the decisions of the Delhi High Court reported in Shri Ram Gopal Verma Vs Union of India and another, 2002(1) SLJ, 352, the order of the C.A.T.(F.B.) in K.K.Singh Vs. Union of India, (1997-2001) ATFBJ, 256 and that of the Madras Bench in A.Nicholas and others Vs Union of India and others reported in (1995) 30 ATC, 347. They would also place reliance on this Bench of the Tribunal's order in O.A.811/2002 dated 28.11.2002. They would therefore strongly contend that all these O.A.s preferred by employees of the BSNL and not of the Government of India either on deputation or any other terms of contract, are without jurisdiction and hence cannot be entertained by the Tribunal. Learned counsel would submit that it is not as though the applicants are deprived of any remedy in respect of any genuine grievance, but the C.A.T. is not the appropriate forum for that purpose.

4. S/Shri M.R.Rajendran Nair, counsel for applicants in O.A.Nos.759, 804, 870 of 2002 and O.A.No.47 of 2003, T.C.Govindaswamy ( in O.A.837/2002), G.D.Panicker(in O.A.492/2002), M.A.Shafik( in O.A.Nos.783, 861 and 873 of 2002), Vellayani Sundara Raju( in O.A.19/200) and K.G.Saji Isaac( in O.A.750/2002) would forcefully contend that the Tribunal had the jurisdiction over the cases without any

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requirement of notification under Section 14 of the A.T.Act. Shri M.R.Rajendran Nair who has also filed argument notes, would point out that two categories of cases were involved in the context of the controversy concerning jurisdiction. In the first category, the dispute primarily centres round recruitment/promotion to a civil post under the Union of India from a post already absorbed in BSNL in pursuance of the corporatisation. The second category throws up issues pertaining to service matters concerning erstwhile Telecom employees since absorbed in BSNL. According to Shri M.R.Rajendran Nair, learned counsel for the applicant, jurisdiction of the Tribunal was not decided with reference to the parties against whom the grievance is raised, but on the subject matter of the grievances. In this connection, the principle laid down by the Full Bench of this Tribunal in T.Shyambhat Vs Union of India and others, 1994-96 AT FBJ, 230 is relied on by the counsel. Thus, although the applicants may be Group'C' employees absorbed in the BSNL, if the dispute pertains to recruitment and matters concerning recruitment to JTOs which is a Group'B' post not yet absorbed in the BSNL, it would be a subject matter within the jurisdiction of the Central Administrative Tribunal. According to Shri M.R.Rajendran Nair, since recruitment covers all the steps from notification of vacancies to appointment, award of grace marks necessitated by mistakes in question papers set for the qualifying departmental promotion test should also be construed as matters concerning recruitment. The learned counsel also would invite our attention to the C.A.T. Full Bench decision in Sushil Kumar Tewari and others Vs Union of

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India & others, (1997-2001) ATFBJ, 30 and contend that the claim of the applicants for grace marks was related to the departmental qualifying test held by the Government of India, DOT and that being so, the jurisdiction of the Tribunal cannot be ousted. As long as certain posts are not absorbed in the BSNL, any dispute centering round recruitment or promotion to such unabsorbed posts should fall within the C.A.T's jurisdiction. To support this argument, the applicants' counsel relies on the decision of the Calcutta High Court in Biswanath Banerjee Vs Union of India and others, 2002(1) SLJ, 5. With regard to the second category of employees, i.e. the absorbed categories, learned counsel would refer to Section 14(1)(b)(ii) of the A.T.Act and urge that once a person is shown to have been appointed to any civil service of the Union or a Civil post under the Union in terms of Section 14(1)(b), the Tribunal would have jurisdiction in relation to all service matters pertaining to the service of such person in connection with the affairs of any Corporation owned or controlled by Government. The learned counsel would try to meet the argument of the respondents' counsel to the effect that a person appointed to, must be read as 'a person appointed and continuing in such appointment', by stating that such a reading was neither based on any accepted principles of interpretation of statutes nor warranted in the circumstances of the case. It is also contended by the learned counsel that the argument that the latter part of Section 14(1)(b) relates only to cases of deputationists, was not correct since it does not make a distinction between the service of a person on deputation or otherwise. It is maintained that clause(c) of

Section 14(1) would refer to cases of deputation. The learned counsel has contended that a notification under Section 14(2) of the Act is required only in respect of cases referred to in Section 14(3). The relevant part of Section 14(3) which applies to the context of the cases on hand is Section 14(3)(b), according to learned counsel. It is pointed out that persons referred to in clauses(a) and (b) of sub section (1) of Section 14 are expressly excluded from the application of Section 14(3)(b). It would not be difficult to see that a person appointed to the service of a Corporation, but not appointed earlier to a civil post of the Union would be amenable to the jurisdiction of this Tribunal only with effect from the date of notification. The sum and substance of the learned counsel's argument is that once a person is appointed to a civil post under the Union, the mere fact of his absorption would not take him out of the jurisdiction of the Tribunal and that there was no need to have a notification in such a circumstance, because of the specific exception of persons referred to in clauses(a) and (b) of Section 14(1) vide Section 14(3)(b) of the ACT. It was possible to envision a circumstance where a person appointed to a post or service in connection with the affairs of a Corporation, could be a person referred to in clause(a) or (b) of Section 14(1) of the Act. Therefore, it cannot be interpreted that the intention of the provision was that a person on his appointment to the corporation would cease to be a person appointed to a civil post under the Union as otherwise, the exception of persons mentioned in clauses(a) and (b) of sub section(1) of Section 14 would not have been made at all, it is urged.

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5. S/Shri TC Govindaswamy, GD Panicker, M.A.Shafik and K.J.Saji Isaac have also argued in support of the proposition that the Tribunal has jurisdiction in respect of the grievances raised by the respective applicants. The tenor of their argument, endorsing the contentions of Shri M.R.Rajendran Nair, is also that the applicants in all these cases were appointed to civil posts under the Union of India and that the imperative of a notification in respect of BSNL could be invoked only if the employees were other than those who were appointed to a civil post under the Union. Shri G.D.Panicker, learned counsel appearing for the applicants in O.A.492/2002 would point out that the C.A.T. was intended to be a Court of first instance in respect of service matters and the Tribunal's role as supplemental judiciary for expeditious settlement of service grievances enshrined in the A.T.Act has been recognised by the Apex Court in Chandrakumar's case (AIR 1997 SC 1125).

6. We have considered the relevant facts and examined the contentions put forward by the learned counsel on either side.

7. In all these cases under consideration, it is seen that the applicants who were Group 'C' & 'D' categories of employees under the Union of India have been transferred to and absorbed by the BSNL with effect from 1.10.2000. There is no dispute with regard to their absorption. In Biswanath Banerjee Vs Union of India and others, 2002(1) SLR, 5, the Calcutta High Court was seized of the question whether the C.A.T. had jurisdiction over BSNL. In that case, the



Tribunal had held that though BSNL being a Corporate Body under the Government of India, could be treated as Government within the meaning of Article 12 of the Constitution, there was no notification of BSNL under Section 14 of the A.T. Act and that therefore, the Tribunal had no jurisdiction to entertain the O.A. On examination of the facts and the legal position, the Calcutta High Court held:

"5. There is nothing on record to show that the petitioner has been absorbed in the Bharat Sanchar Nigam Limited and it being the specific case of the petitioner(sic) that he had not given any option as no option has been called for by the Department, the petitioner is to seek redressal of his grievances before the Tribunal as an employee of the Central Government."

The Calcutta High Court took note of the respondents' admission that the petitioner still continued to be an employee of the Central Government and thus held that the C.A.T. had jurisdiction. From the above decision, it would be clear that C.A.T. can exercise jurisdiction over those employees who are not yet absorbed by the BSNL since their position as Central Government employees has not ceased to be. The converse proposition that those employees who are absorbed in the BSNL cannot invoke the jurisdiction of the Tribunal is inherent in the above finding of the Calcutta High Court cited above.

8. We may now turn to the latest decision of the Bombay High Court in A.R.Patil and others Vs BSNL, reported in 2003(1) SLR, 386, on the question of jurisdiction of C.A.T. over BSNL. In that case, the C.A.T., Mumbai Bench did not

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follow its own earlier decision and held that it could exercise jurisdiction over BSNL. The Bombay High Court took note of an earlier order of the Mumbai Bench of the C.A.T. holding that BSNL being a Corporate Body not notified under Section 14(2) of the A.T. Act, the Tribunal had no jurisdiction to entertain the application, and the High Court rejected the assumption of jurisdiction by the Tribunal in the case on hand. It is profitable to quote the Bombay High Court's findings at para 11 of the order:

"11. At page 140 of the writ petition a communication dated 30.9.2000 has been filed in which it is very clearly stated as under:

"(ii) Technical and developments Circle, Quality Assurance Circle(except TEC) training institutions, other units like Telecom factories, stores and organised services and cadres given in Annexur-A to this letter) and posted in these Circle/Officers/Units will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, on as it were is basis, on deemed deputations, without deputation allowance, with effect from 1st October 2000, i.e. the date of taking over of telecom operations by the Company from DTS and DTO. Bharat Sanchar Nigam Limited will exercise control and supervision of staff working against these posts.

(iv) Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants including the CCS(CCA) Rules till such time as they are absorbed finally by the Company after they exercise their options. Their pay scales, salaries and allowances will continue to be governed by the existing rules, regulations and orders."

From the above it will be abundantly clear that the respondents are employees of BSNL and they being officers shall continue to be subject to all rules and regulations as are applicable to Government servants. These clauses clearly meant that they will be employees of BSNL and BSNL will have the right to transfer them as employees but that transfer will be subject to the rules and regulations that are applicable to the Government of India. Even the employees have contended in the transfer applications

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that their transfers are against P and T Manual. In para 7 of the memorandum it is very clearly observed:

"(vii) The management of Bharat Sanchar Nigam Limited shall have full powers and authority to effect transfers of all the staff at all levels working under it."

In the face of this the Tribunal could not have held that it has the jurisdiction."

The Bombay High Court's decision cited above appears to be the latest on the subject.

9. We may now refer to the C.A.T. Full Bench, (New Delhi)'s decision in KK Singh etc. Vs Union of India etc., (1997-2001) ATFBJ, 256, which practically answers all the arguments raised by Shri M.R.Rajendran Nair, learned counsel for some of the applicants herein. The entire provisions of Section 14 of the A.T.Act have been analysed thread bare by the Full Bench in the case cited above while answering the following reference:

"Whether the Central Administrative Tribunal has jurisdiction to entertain applications from employees of local or other authorities within the territory of India or under the control of Government of India and corporations or societies owned and controlled by the Government of India, not being local or other authorities or corporations or societies owned and controlled by the State Government, irrespective of whether such body has been notified u/s 14(2) A.T.Act or not."

The Full Bench after examining the provisions of Section 14 of the A.T.Act, answered the reference as under:

"Excepting those specifically covered by clauses (b) and (c) of Section 14(1) A.T. Act, the CAT has no jurisdiction to entertain applications from employees of local or other authorities within the territory of India or under the control of the Govt. of India and to corporations or societies owned or controlled by Govt. (not being a local or other authority or corporation or society controlled or owned by a State Govt.) unless the same have been notified under Sec. 14(2) A.T.Act."

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10. From the order of the C.A.T., Full Bench referred to above( 1997-2001) ATFBJ, 256, if the employees working under the BSNL fall within the categories of persons mentioned in sub clauses (a) and (b) of clause(1) of Section 14 of the A.T.Act, the C.A.T. does not cease to have jurisdiction as such employees still continue to be Government servants whose services were seconded to BSNL. If they do not belong to the category of persons mentioned in Section 14(1)(a) or 14(1)(b), the C.A.T. will not have jurisdiction till the BSNL is notified under Section 14(2) read with Section 14(3) of the A.T.Act.  $\bigcirc$  In this case, however, the applicants are Group 'C' and 'D' categories and are full-fledged employees of BSNL. However, if the applicants were holding posts which are not absorbed, the grievance relating thereto could be addressed to the C.A.T. in the light of the Calcutta High Court's decision cited earlier (Biswanath Banerjee Vs Union of India & others, 2002(1)SLR, 5). The argument that the applicants who belonged to the absorbed category should be construed as persons appointed to a civil post under the Union and that therefore, no notification was required for the Tribunal to assume jurisdiction over their service matters deserves to be rejected. In our view, the expression 'a person appointed to any civil post under the Union" does not mean a person who was appointed once upon a time to a civil post under the Union. There must be continuity in respect of such appointment. This is where the concept of 'Secondment' as is referred to by the Full Bench in K.K.Singh's case(supra) is relevant. The subsequent event of absorption would change the very nature of appointment and the Central Government employees, till then on deemed deputation, would become full-fledged employees of the BSNL.  $\bigcirc$

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11. As has been seen earlier, all the applicants in the above O.A.s belong to the absorbed Group 'C' and 'D' categories. Though Group 'B' posts in the erstwhile DOT/DTS/DTO existing as on 30.9.2000 were not absorbed in the BSNL, R-3(in O.A.804/2002) Recruitment Rules dated 26.9.2001 for JTOs take into account all the JTO posts (numbering 19716 subject to variation depending on work load) upto 1999. As per Rule 12(i) of R-3:

"All the officials holding the post of Junior Telecom Officer on regular basis in the erstwhile DOT/DTS/DTO before commencement of these rules and those who have been absorbed in Bharat Sanchar Nigam Limited shall be deemed to have been appointed as Junior Telecom Officers in BSNL."

Similarly, R-3 (in O.A.783/2002) Recruitment Rules dated 31.8.2001 for JAOs refer to Junior Accounts Officer's post numbering 4690, subject to variations depending on work load. Here also, Rule 12(i) is exactly similar to Rule 12(i) of R-3 in O.A.804/2002 Recruitment Rules for JTOs quoted above except that the post mentioned in the former is Junior Accounts Officer. Thus, these Group 'B' posts are transferred to and controlled by the BSNL and the incumbents are deemed to have been appointed in BSNL. Any further action in respect of departmental promotion examinations already conducted or to be conducted, deployment of officers depending on operational requirements, performance evaluation, disciplinary proceedings etc. etc. will have to be carried out by the BSNL alone.

12. We consider it pertinent to point out another aspect with regard to the question of jurisdiction which this batch

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of cases has prompted us to take note of. Any recruitment/service matters of the personnel now working under the BSNL would have to be addressed to the C.A.T. or other appropriate forum like the High Court, depending on the nature of the grievance. In certain situations, it may be the C.A.T. that would have jurisdiction. In certain others, the C.A.T. will not have jurisdiction. This is the position that emerges in the light of the Calcutta High Court's decision in Biswanath Banerjee Vs Union of India & others, 2002(1)SLR, 5, the Delhi High Court's decision in Shri Ram Gopal Verma Vs Union of India, 2002(1) SLJ, 352, the Bombay High Court's decision in A.R.Patil's case, 2003(1) SLR, 386 and the various Full Bench decisions of this Tribunal in Sushil Kumar Tewari Vs Union of India, (1997-2001) ATFBJ, 30 and in K.K.Singh Vs Union of India, (1997-2001) ATFBJ, 256 etc. Thus, different grievances arising out of administrative and service matters concerning the BSNL personnel shall have to be addressed to different fora as courts of first instance. Once it is held that service matters of unabsorbed categories of employees like Group'A' and Group'B' officers will fall within the jurisdiction of the C.A.T, grievances arising out of their transfers, evaluation of performance, disciplinary matters, entitlements etc. will have to be adjudicated by the Tribunal as the Court of first instance. On the other hand, similar matters pertaining to the absorbed categories of Group'C' and 'D' will have to be addressed to the High Court as Court of first instance. Yet another situation is with regard to Group'B' officers like JTOs/JAOs recruited by the BSNL under the new Recruitment Rules vis-a-vis the JTOs/JAOs of the

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erstwhile DOT/DTS/DTO etc. who were yet to be absorbed. Arguably, the employees of former category are BSNL appointees falling outside C.A.T.'s jurisdiction while the latter, being unabsorbed, are Government employees coming within the purview of C.A.T.'s jurisdiction. Then, there is the Group 'A' category who, being Central Government employees, come within the C.A.T.'s jurisdiction. All the above classes and categories of employees function under the umbrella of the Corporation, BSNL.

13. It would not be out of context here to refer to certain observations of the Full Bench of the C.A.T. in K.K.Singh Vs Union of India (1997-2001) ATFBJ, 256. At para 18 of the order, the Full Bench observed as under:

"18. Before concluding, we must state that while the pace of the transition has no doubt to be determined by the Central Government, it is not something that was intended to be prolonged indefinitely, considering the reasons for setting up of the Central Administrative Tribunal as a specialised body to decide swiftly and inexpensively, recruitment and service disputes, not only of Central Government employees but those appointed to local or other authorities within India or under the Central Government's control, including corporations or societies owned or controlled by Government. In this connection we cannot but observe that the pace hitherto achieved in this regard, has been tardy which tends to defeat the very objectives of the A.T. Act as set forth in its Preamble."

In our opinion the Central Government ought to have taken steps to avoid the undesirable jurisdictional flux in cases of this type.

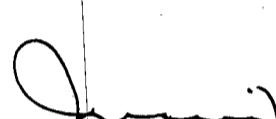


14. In the conspectus of the facts and legal principles discussed in the foregoing paragraphs, we are of the considered view that the grievances raised by the applicants in these O.A.s cannot be addressed by the Tribunal for want of jurisdiction. The applicants are therefore, advised to seek their remedies at the appropriate forum, if they so desire. The Original Applications are, therefore, rejected as not maintainable under Section 19(3) of the A.T.Act, 1985. There is no order as to costs.

Dated, 15th May, 2003.



K.V. SACHIDANANDAN  
JUDICIAL MEMBER



T.N.T. NAYAR  
ADMINISTRATIVE MEMBER

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