

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 617 of 2003

Friday, this the 8th day of August, 2003

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HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER
HON'BLE MR. K.V. SACHIDANANDAN, JUDICIAL MEMBER

1. S. Rajendrasekharan Pillai,
S/o Sreedharan Pillai,
Sub Inspector (Operative),
Telephone Exchange, Mukhathala, Kollam
residing at Chandravilasom Veedu,
Nedumpana, Kannanelloor.Applicant

[By Advocate Mr. Vishnu S Chempazhanthiyil]

Versus

1. Sub Divisional Engineer (Groups),
Telecom, Kottiyam, Kollam.
2. General Manager, Telecom,
BSNL, SSA Unit, Kollam.
3. Chairman, BSNL, New Delhi.
4. Director General,
Telecom Department, New Delhi.
5. Union of India, represented by its
Secretary, Ministry of Communications,
New Delhi.Respondents

[By Advocate Smt. P. Vani, ACGSC]

The application having been heard on 8-8-2003, the
Tribunal on the same day delivered the following:

O R D E R

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

The applicant, Shri S.Rajendrasekharan Pillai,
described as Sub Inspector (Operative), Telephone Exchange,
Mukhathala, is infact a Lineman (Phones) working at Telephone
Exchange, Mukhathala under the BSNL. It would appear that the
applicant had been paid the pay and allowances (Industrial
Dearness Allowance - IDA) at the BSNL rates ever since he
started functioning under the BSNL. The applicant claims that
he was provisionally absorbed with effect from the date of

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corporatisation of the Department of Telecom (DOT for short) and formation of the BSNL taking over the business of the DOT because of the pendency of disciplinary proceedings against him initiated by the DOT. As per Annexure A1 dated 2-1-2001 containing the Record of discussions held on 2-1-2001 in the meeting with the three Federations presided by CMD, BSNL regarding terms and conditions for absorption of Group C and D staff in BSNL, it was agreed that employees with ongoing disciplinary cases could also opt for absorption in BSNL but their absorption would be subject to the outcome of the vigilance case. Their pending cases were to be expedited on a fast track mode by the DOT and their appeals and revision petitions were also to be decided by the DOT authorities only. The BSNL, however, was of the view that the pay and allowances at the BSNL rate allowed to the applicant with effect from 1-10-2000 onwards was erroneous in as much as there was no Presidential order absorbing the applicant in the BSNL. This led to an order of recovery of the balance between the pay and allowances attributable to a Lineman under the DOT and those admissible under the BSNL, held as excess paid to the applicant. The applicant, thereupon, moved this Tribunal by filing OA No.308/2003, which was disposed of by order dated 17-4-2003 directing the respondents to consider the applicant's representation and pass expeditious orders thereon. By Annexure A2 order dated 4-7-2003, stated to be made in deference to the orders of the Tribunal, while the respondents restored the applicant's pay in full in accordance with the IDA scale from March, 2003 onwards, it was held that employees against whom disciplinary case was pending or penalty imposed on the conclusion of disciplinary proceedings is current, were not eligible for IDA pay scale till the issuance of Presidential orders in respect of their absorption. Consequently, it was proposed to rectify the erroneous payment

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at IDA scale and to recover Rs.72058/- described as the excess payment of salary made to the applicant in IDA scale from 1-10-2000 to 30-6-2003. The alleged excess payment was proposed to be recovered in monthly instalments of Rs.2000/- commencing from July, 2003. The applicant, aggrieved by Annexure A2 order dated 4-7-2003, has filed this OA seeking the following main reliefs:-

- "1. Call for the records and quash Annexure A2.
2. Direct the 5th respondent to take appropriate action on Annexure A3 and direct the 2nd respondent to keep in abeyance any recovery on account of Annexure A2 till this is done.
3. Direct the 2nd respondent to keep in abeyance recovery from the salary of the applicant pursuant to Annexure A2.
4. Direct the 1st and 2nd respondents to dispose of the disciplinary proceedings pending against the applicant expeditiously as directed in para 5 of Annexure A1."

2. A statement has been filed on behalf of the respondents by Smt.P.Vani, learned ACGSC pointing out that the applicant's correct designation was Lineman (Phones), that he could not be absorbed with effect from 1-10-2000 on account of the fact that disciplinary proceedings were pending against him that, as such, a Presidential order in that regard was necessary and that having not received any presidential order absorbing him in BSNL, the applicant could not be treated as an employee of the BSNL. According to the learned ACGSC, therefore, the process of absorption was to be completed by issuance of a Presidential order and in the absence of such an order in his favour, the applicant remained unabsorbed in BSNL and in this view of the matter, the applicant was eligible to pay and allowances at scales applicable to DOT only. The proposed recovery was, therefore, in strict adherence to the existing rules, the counsel has pleaded.

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3. When the matter came up for consideration, it was agreed on both sides that the OA could be disposed of on the basis of the available material and pleadings on record.

4. Shri Vishnu S Chempazhanthiyil, learned counsel for the applicant contended that the applicant having exercised an option, it was for the respondents to get specific orders with regard to the absorption of the applicant subject to the outcome of the disciplinary proceedings as enjoined in paragraph 5 of the Record of discussions between the BSNL and various Federations (vide Annexure A1). The BSNL had treated the applicant as a provisionally absorbed employee. The grant of pay and allowances at rates applicable to BSNL in the applicant's case was proper and a decision to the contrary would be unsustainable, it is urged.

5. Smt.P.Vani, learned ACGSC would state that if the applicant is treated as absorbed on the basis of the option given by him and in pursuance of what is contained in paragraph 5 of Annexure A1 Record of discussions, the Tribunal would have no jurisdiction, since from the very outset the applicant would be an employee of the BSNL and the BSNL is an unnotified agency which is beyond the jurisdiction of the Tribunal under Section 14(2) of the Administrative Tribunals Act, 1985. Since the applicant has not been absorbed and since his Annexure A3 representation was yet to be acted upon, it would be idle to contend that the applicant would be entitled to pay and allowance applicable to BSNL without absorption. Therefore, the applicant could not get the benefit of the BSNL scales simply because he had made Annexure A3 representation until Annexure A3 representation is disposed of and a Presidential order is issued.

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6. We have considered the facts and contentions. We have taken note of Annexure A1 which contains Record of discussions amongst the Federations and the BSNL in respect of matters governing conditions for absorption of Group 'C' and 'D' staff in BSNL. Paragraph 5 thereof which deals with 'Options of staff facing disciplinary cases', is reproduced hereunder:-

"It was agreed that the employees with on-going disciplinary cases can also opt for absorption in BSNL but their absorption will be subject to the outcome of the vigilance case. Their pending cases will be expedited on a fast track mode by DOT. The appeal/petition cases for these employees will also be decided by DOT authorities."

7. From the above, it would be clear that employees with ongoing disciplinary cases could also exercise option for absorption in BSNL but their absorption would be subject to the outcome of the vigilance case. Since there was an ongoing disciplinary proceeding against the applicant at the time of formation of BSNL, the applicant exercised his option for absorption. It was for the authorities concerned to have obtained the Presidential order absorbing the applicant in BSNL subject to the outcome of the ongoing disciplinary proceedings. Apparently, this has not happened in this case. Respondents have no case that the applicant has not exercised the option in time. Records would show that the respondents had anticipated such a Presidential order. That was why the applicant was paid at the rates applicable to the BSNL employees. But, in the absence of a clear Presidential order, we are unable to accept that the applicant stood provisionally absorbed with effect from 1-10-2000. According to us, the applicant's status should be taken as on deputation with effect from 1-10-2000 in the absence of a Presidential order absorbing him for that alone would enable the applicant to render service to BSNL and draw his salary. The next question is as to the scale of pay and allowances admissible to the applicant. The applicant who

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should be treated as a deputationist with effect from 1-10-2000 till the Presidential order absorbing him is obtained has to be paid pay and allowances applicable to a deputationist in BSNL. Respondents could not, therefore, treat the applicant as an employee of the DOT and determine his pay and allowances in accordance with the DOT rates alone, although till absorption takes place probably the applicant would not be entitled to the full-fledged rates of salary and allowances applicable to BSNL employees. We would, therefore, hold that the respondents are liable to pay the applicant the salary and allowances applicable to a deputationist till the matter of absorption is decided.

8. Before we part with the case, we have to observe that as per paragraph 5 of Annexure A1 quoted above the pending disciplinary matters were to be "expedited on a fast track mode" in view of the corporatisation of the department and taking over of the activities by the BSNL. The learned counsel of the applicant has pointed out that as per the enquiry report submitted in April, 2003 the applicant is found not guilty. But the disciplinary proceedings are still pending.

9. In the result, the Original Application is disposed of by directing the respondents to re-determine and grant the pay and allowances of the applicant for the period in question, i.e. from 1-10-2000 till a final order on Annexure A3 is passed, as if the applicant is on deputation to BSNL, cause the representation Annexure A3 to be disposed of as expeditiously as possible, and finalise and dispose of the pending disciplinary proceedings without further delay in order that the question of the applicant's final absorption in the BSNL

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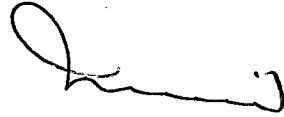
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might be decided. The impugned Annexure A2 order shall not be operative till a final decision is taken on the matter as indicated above. No order as to costs.

Friday, this the 8th day of August, 2003

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K.V. SACHIDANANDAN
JUDICIAL MEMBER

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T.N.T. NAYAR
ADMINISTRATIVE MEMBER

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