

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH

O. As. No.: 754 & 755 of 2005

[Patna, this Friday, the 9th Day of December, 2005]

C O R A M

HON'BLE SHRI JUSTICE P.K.SINHA, VICE-CHAIRMAN.

1. O. A. No.: 754 of 2005

Baijnath Singh & 13 [Thirteen] Ors.

Vs.

Union of India & Ors.

2. O. A. No.: 755 of 2005

Shashi Bhushan Das & 4 [Four] Ors.

Vs.

Union of India & Ors.

Counsel for the applicants.: - Shri A. N. Jha.

Counsel for the respondents.: - Shri S. C. Jha, ASC.

O R D E R [ORAL]

Justice P. K. Sinha, V.C.:- This case as well OA 755 of 2005 are placed for admission with defect on the point of jurisdiction. The learned counsel for the applicants as well for the respondents, Shri S. C. Jha, Addl. Standing Counsel, have been heard. The admitted position is that if the relief is granted, the order will have to be recorded by Bharat Sanchar Nigam Limited [for short, BSNL]. Admittedly, the BSNL has not been brought within the jurisdiction of this Tribunal by issuance of a notification by the Central Government under



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provisions of Section 14[2] of the Administrative Tribunals Act, 1985.

2. However, Shri A.N.Jha, learned counsel for the applicants has submitted that for the same purpose the applicants in both the cases had come up before this Tribunal in OA 711 of 2000 and OA 205 of 2001 which were disposed of by almost identical order dated 27.11.2002 in which OAs the case was that the applicants were working as daily rated mazdoors in the Department of Telecommunication, this Tribunal issuing direction to the Telecom District Manager, Katihar Telecom Division, Katihar to examine the matter in the light of the order passed in OA 599 of 1996 and also to see whether any discrimination, as claimed, has been made or not, and while examining the matter the Supreme Court judgment as referred to in connection with regularisation of daily rated workers should also be considered as to whether or not that was applicable, and to pass a speaking order in that regard.

In the instant case out of the 28 applicants, as submitted, 14 were regularised by BSNL but rest were not whereas in the OA 205 of 2001, one applicant was absorbed and others were not for which the respective applicants filed application for punishing the authorities for Contempt of Court, copies of which are also annexed. In the last of the order, though the petitions were rejected, this Tribunal also observed as follows in the concerned CCPA relating to OA 771 of 2000 :-

“However, we are also alive to the fact that BSNL is not a party before us, which is a corporate office owned by the Govt. of India. Therefore, the concerned respondents before us

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can refer the matter to BSNL for necessary compliance of the order passed by this Court for considering the cases of the petitioners for their regularisation.....”

3. In the CCPA. No. 190 of 2003, arising out of 205 of 2001, this Tribunal also observed that it was clear that even though BSNL officials have been made contemnors in the CCPA, they were outside the purview of the Tribunal, also observing that no direction had been issued to the officials of the BSNL on the ground that they were outside the purview and there was only an observation that other concerned respondents [officers of Telecom Department] could refer the matter to BSNL for necessary action.

4. It is admitted that now the regularisation is to be done by BSNL but in these applications no officer of the BSNL has been made party. The plea is that the respondents may be directed to refer the matter to BSNL so that the order might be complied by them. To me it appears that if this is done, that would amount to order for getting a thing done by a particular party to whom directly no such direction could be issued by this Tribunal, i.e., granting the relief indirectly. The argument that earlier such prayer was accepted by this Tribunal, however, would not vest a jurisdiction in the Tribunal which is not there. Every case has to stand on its own footing. If lack of jurisdiction was not considered in the earlier proceeding or even if that point of law was not pressed, that would not vest jurisdiction in the Tribunal in a subsequent proceeding. That the BSNL officials were outside the purview of the Tribunal hence no contempt proceedings could take place against them has also been



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admitted by this Tribunal while deciding CCPA 15 of 2005, Annexure-A/1- to OA 755 of 2005.

5. Learned counsel for the applicants also pointed out that the Chief General Manager, Telecommunication, Bihar Circle, BSNL, Patna, had filed application for review of the orders recorded in those two cases vide R.A. No. 3 of 2005 [at Annexures-A/12 & A/13 respectively] on the ground that the Deptt. Of Telecommunication had become a body corporate in the name of BSNL which has not been notified under Section 14[2] of the A. T. Act, hence the applications were not amenable to the jurisdiction of the Tribunal. That petition was rejected on two grounds, namely, that the Deptt. Of Telecommunication was still in existence which was made a party in the OA as well in the CCPA and taking into consideration that the entire assets and liabilities had been transferred to BSNL, the order was passed after hearing both the sides. The second ground was that if the Tribunal had no jurisdiction to pass any order in the OA or in the CCPA against BSNL then, obviously this Tribunal had no jurisdiction to pass any order or to modify its earlier order in the present Review Application. Thus, holding the application also to be not maintainable, the same was rejected.

6. Obviously, in the earlier OAs while recording order, this point was not considered as to whether passing of the order would amount to a direction to BSNL for compliance, though indirectly. Therefore, rejection of the R.A., as aforesaid, in the circumstances mentioned therein would not tend



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to vest jurisdiction in this Tribunal.

7. Learned counsel for the applicants also argued that since the applicants were not working under BSNL, the point of jurisdiction would not apply in their case. The point as to whether or not they were working under BSNL would not decide the question of jurisdiction, but the point would be as to who should be necessary party in an application and who would be required to carry out the orders of the Tribunals, if passed in favour of the applicants.



8. Learned counsel for the applicants has also based the arguments on a decision of the Mumbai Bench of the CAT, in the case of Shri Eknath Shridhar Dharmadhikari V. U.O.I and others; 2005 [1] ATJ 101. However, that was a case in which charge sheet for minor penalty was issued and a minor punishment was also imposed on 31.08.1999 but no appeal was filed. By order dated 10.03.2000 the appellate authority quashed the punishment and ordered de novo inquiry. No show cause notice was issued or opportunity was given to the applicant. By that order fresh charge sheet was quashed. The argument was accepted that the applicant had not been absorbed in the BSNL by then. But the order dated 10.03.2000 was issued by the General Manager, Telecommunication. Obviously, this decision will not help the applicants.

9. In the aforesaid view of the matter, I hold that this Tribunal has no jurisdiction to entertain these two applications.

10. On this point, the OAs are not fit to be admitted and,

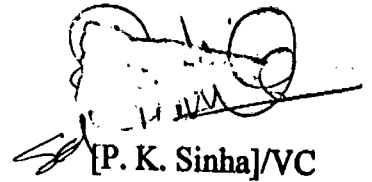
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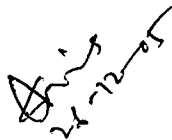
accordingly, are dismissed. The applicants would be free to seek remedy at appropriate forum.

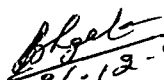

[P. K. Sinha]/VC

skj.

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26-12-05
Section Officer (Judl.)
CENTRAL ADMIN TRIBUNAL
PATNA BENCH