

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A.803/96, O.A.1215/96 & O.A.1216/96

pronounced, this the 4th day of March 1997.

CORAM:

HON'BLE SHRI B.S. HEGDE, MEMBER (J)

HON'BLE SHRI M.R. KOLHATKAR, MEMBER (A)

O.A.803/96

1. Suresh Mishra
2. M.Thirumaran
3. Uma Shankar Mishra
4. Phanindra Pandey
5. Nihal Dass
6. K.Chandra Mouli
7. Shrinivas Rai
8. S.Srirama Desikan

By Advocate Shri D.V. Gangal .. Applicants

-versus-

1. Union of India
through
The Secretary,
Ministry of Communication,
Sanchar Bhavan,
New Delhi - 110 001.
2. The Chairman,
Telecom Commission,
Ministry of Communication,
Sanchar Bhavan,
New Delhi - 110 001.
3. The Secretary,
Department of Posts,
Ministry of Communication,
Dak Bhavan, New Delhi - 110 001.
4. The Chief General Manager,
Mahanagar Telephone Nigam Ltd.,
Telephone House, Prabhadevi,
Dadar, Mumbai - 400 028.
5. The Chief General Manager, (Telecom)
Maharashtra Circle, G.P.O.
Mumbai - 400 001.

.. Respondents

2. In this O.A. two Junior Accounts Officers working with MTNL and two Junior Accounts Officers working with Chief General Manager Telecom Maharashtra Circle have prayed as below :

- *(a) That this Hon'ble Tribunal may be graciously pleased to call for the records of the case from the respondents and after examining the same issue a Writ of mandamus directing the respondents to implement the decision of the JCM dated May, 1994 and absorb the applicants as JAOs with the respondents telecom wing;
- (b) To hold and declare that the declaration given by the applicants before posting as JAOs to the effect that they will not claim for absorption or permanancy in the telecom wing of the communication Ministry nor claim seniority in the postal wing is void ab-initio;
- (c) To hold and declare that the threatening decision of the respondents to repatriate the applicants back to the postal wing is arbitrary, illegal and deserves to be quashed;
- (d) To hold and declare that the OM's dated 15/12/90, 24-8-92, 30-5-94, 10-8-94 are void."

The OM dt. 15-12-90 at Annexure A-3 is a circular intimating requirement of services of suitable officers on transfer basis for the post of Junior Accounts Officer in the Ministry of Communications. The O.M. dated 24-8-92 at Annexure A-4 deals with filling up of some posts of Junior Accounts Officers in the Department of Telecommunications on deputation basis. In para 2 of the ~~the /~~ it is stated as below:

*Officers who volunteer for the post

will not be allowed to withdraw their names later."

Under the period of deputation it is mentioned that:

"Initially for a period of one year; likely to be extended upto a maximum of 3 years."

O.M. dt. 10-8-1994 is at Annexure A-11,page 41, which is an order of appointment for filling up of posts of JAOs in Department of Telecom on deputation basis containing 117 names and xx para-5 of which reads as below :

"5. Before relieving the officials, a declaration may be obtained from them to the effect that the posting as JAO is purely temporary and on deputation basis and they will not have any claim for seniority in the parent cadre in respect of the services rendered by them in Telecom nor they will have any right for permanent absorption in Telecom."

Impugned memo is concerned that the It appears so far as the remaining /: to memorandum referred to is dt. 20-5-94 and not to memorandum dt. 30-5-94 and the same has been filed by the respondents in their written statement /: again/on the subject of filling up of posts of JAOs in Department of Telecom on deputation basis containing 72 names para 5 of which reads similarly to the memorandum dt. 10-8-94 referred to above.

3. The applicants contend that they have been appointed either on transfer basis or on deputation basis. However, beyond stating that they have been appointed on transfer basis and enclosing a copy of O.M. dt. 15-12-90, at Annexure A-5, page 32 on the subject of "Appointment of Junior Accounts Officers in the Department of Telecommunications on transfer basis"

there is nothing on record to show that any of the applicants have been appointed on transfer basis. Further it is seen from Annexure A-3 to the application in which particulars of 8 applicants have been given that all the applicants are admittedly on deputation basis who had joined the department on different dates ranging / between 24-2-93(applicant No.2) to 8-12-95(applicant No.8) and the rest of the applicants have joined on deputation basis on the dates falling between these two dates. The applicants contend that when the department had requirement of large number of JAOs they were taken on deputation but the deputation terms are arbitrary and unconsciable and the applicants, bargaining who were in a weaker/position, had no alternative but to accept the same. But the applicants having served with the department for a long time have been threatened with repatriation, that the applicant have full experience of working in the Accounts department of Telecom wing, that the examination in Telecom/ wing is identical except for a minor change, that/they still are required to undergo a further examination xxxxxx if they are willing to do so, that in any case the Tribunal should hold that by operation of the rules they have become members of the Telecom Accounts Service xxx, that respondents do have requirement of additional staff, that respond/ have stopped repatriation of some officials vide order dt. 22-11-95 at Annexure A-1 and finally that a decision/was taken in the JCM meeting dt. 16-5-94. Applicants have not filed/copy of the minutes but they are available with the written statement of the respondents and the same are reproduced below :

"The Employees who are on deputation in the Junior Accounts Officer cadre of Deptt. of Telecom as on date will be considered for absorption as one time measure provided they are willing to be posted anywhere in the country. The steps for necessary amendment of RRs would be undertaken immediately. However, the absorption will commence only after the results of the part II examination held in Feb.94 are declared and the officials selected are posted to stations of their choice."

4. It appears that subsequent JCM / since modified above the decision but the applicants contend that the modification effected xxxxxxxxxxxxxxxxx have been challenged by the applicants' union and for this purpose correspondence exchanged with the Chairman of the Telecom Commission is annexed at page 76 and 77. The contention of the applicants is therefore that the subsequent decision cannot be/a JCM decision and the original decision of the JCM is binding and the Dated 16/5/94 Tribunal should therefore direct the respondents to implement the same.

5. Respondents have opposed the O.A. According to them the applicants are employees of Postal department and by choosing to come on deputation to the Telecom Department they have benefitted because Telecom department is an expanding department with better chances of promotion. Respondents contend that the set of Rules for the staff of the Telecom wing are quite separate. The rules for the Postal wing are called Junior Accounts Officers Service, Postal Wing(Group 'C') Recruitment Rules,1977, and the rules for Telecom wing are called Junior Accounts Officers Services, Telecommunication Wing (Group C) Recruitment Rules,1977. The former is GSR 546 whereas the latter is GSR 545. The P.T Department was bifurcated in 1985, After bifurcation

both the departments began to conduct JAO Part-I and Part-II examination for their needs separately. The syllabus of the JAO examination and service conditions of both the department of posts and ^{department of} telecom are different. In the postal wing the services in the grade of JAO are ^{on} circle basis whereas the services in the telecom wing are attached with all India transfer liability. During the year 1989-1991 due to fast expansion of the department a large number of vacancies were created in the cadre of JAO and department resorted to filling up of these vacancies by way of deputation which is an approved mode of recruitment in the Govt. departments. According to the respondents the applicants have concealed the fact that they had qualified JAO Part-II examination with postal syllabus ~~and~~ and have legitimate right of appointment as JAO in the department of Posts only. The syllabus and services of JAO ~~now~~ between two wings are not interchangeable. It is conceded by the respondents that in the meeting dt. 16-5-94 the unions were consulted of which the minutes were as reproduced above. But subsequently the circumstances have changed because the departmental examinations ^{threw} / up a large number of candidates. Therefore a meeting was held on 29-11-1995 also attended by unions xxx when the following decisions were taken:

- (a) No JAOs on deputation to DOT will be absorbed;
- (b) No persons will henceforth be taken on deputation to the cadre of JAO from other departments as DOT is in a position to meet its own requirements;
- (c) The JAOs who are already on deputation in DOT will be repatriated on completion of their tenure; (the few deputationists whose repatriation orders were recently deferred would be repatriated by March '96.)

Counsel for the respondents would therefore contend that the decisions taken in the meeting of the earlier JCM have been modified by the meeting of the subsequent

JCN and it is in the light of this latest decision that the department is required to repatriate Junior Accounts Officers taken on deputation from the Postal side to their ~~or~~ parent cadre.

6. Respondents have further contended that deputationists have no right for permanent absorption. In this connection they have cited the decision of Bangalore Bench of CAT in O.A. No.1895/95 decided on 19-12-1995 (Smt. N. Nagalakshmi vs. U.O.I.). The question before the Bangalore Bench was xxxxx whether the officer had any right to continue in the post which she held purely on a deputation basis. The Bangalore Bench held that there is no such right and the application was dismissed. Respondents therefore pray that the O.A. may be dismissed.

7. M.P.NO.796/96 was filed by All India P&T Accounts and Finance Service Officers's Association and 20 individuals representing promotee officers of the department of Telecommunication xxxxxxxxxxxx. The Misc. Petitioners sought leave to join them as interveners. MP was allowed and the OA. was amended. The counsel for the interveners has adopted the argument of official respondents.

8. We may first consider whether the terms of deputation can be regarded as ^{able} unconscionable and whether the applicants have a right to remain on deputation till they ^{are} absorbed. The applicants rely on Central Inland Water Transport Corporation Limited and another vs. Brojo nath Ganguly and another reported at 1986 ATC 103. That was a case of termination. There was a term in contract of employment as also service rules of the company providing for termination of services of permanent employees without assigning reasons on three months' notice or pay in lieu thereof on either side.

Hon'ble Supreme Court held on facts that such a term is unconscionable, arbitrary and opposed to public policy and was void under Section 23 of Contract Act.

In our view that judgment has no application to the facts of the present case. That was a case relating of permanent employees.

to termination. This case relates to deputation.

that deputationists have no right to absorption It is well settled by the judgment of the Hon'ble

Supreme Court xxxxx in Ratilal B.Soni and Ors. vs.

State of Gujarat and others, 1990 SCC(L&S)630 where in para-5 the Hon'ble Supreme Court has held that

"The appellants being on deputation they could be reverted to their parent cadre at any time and they do not get any right to be absorbed on the deputation post." Ratilal B.Soni's judgment was relied on

by a division bench of this Tribunal in R.Vidyadharan vs. The Hon'ble ChairmanCAT & Ors, 1994(2)MTJ 562 and

to the same effect, the decision of the Bangalore Bench

in Nagalakshmi's case cited above. We, therefore, do not consider that the various QMs challenged by the applicants containing deputation terms

reproduced by us/suffer from any infirmity. In view of latest decision of JCM, the question of any directions to absorb applicants does not arise. We are therefore required to consider the

contention of the applicants regarding constitution of the Telecom Accounts Service and the averments of the applicants that by operation of Rule(s) especially

Rule 5 of the GSR 545 relating to Telecom Wing and

Rule 8 dealing with departmental examination the

applicants should be declared to have been members

of the Junior Accounts Officers of the Telecom Wing

and that therefore the distinction between

services of the Telecom wing officers(intervenors)

and the services of the Postal Wing officers(applicants)

is discriminatory and arbitrary.

10. Rule 5 of GSR 545 defines Members of the Service as below :

- (a) Junior Accounts Officers appointed to the Posts and Telegraphs Accountants Service of the Posts and Telegraphs Department before the commencement of these rules, from the date of such commencement;
- (b) Junior Accounts Officers appointed to the Posts and Telegraphs Accountants Service on and from the commencement of these rules and before the notified date, from the date they are so appointed;
- (c) Persons appointed to the service on or after the notified date, from the date they are so appointed.

According to the applicants they should be considered to have/appointed to the Services in term of Rule 5-C because both the services have identical syllabi and in terms of Rule-8 relating to departmental examination Postal employees who have passed Part-I of the Departmental examination of the Postal Wing are required to be given option to appear for Part-II of the departmental examination of the Telecom Wing and no such option was ever given to the applicants.

So far as applicability of Rule 5 is concerned the applicants have not enclosed any letter of appointment appointing/to the JAO/Telecom Wing after the notified date; the notified date in this case being 15-4-1977. The counsel for the applicant would rely on the Supreme Court judgment in the case of S.S.Moghe and Ors. vs. U.C.I. & Ors., AIR 1981 SC 1495. This case dealt with framing of service rules for an organisation initially which was temporary viz. Aviation Research Centre and the Hon'ble Supreme Court had observed that "When a new service is proposed to be constituted by the Government, it is fully within the competence of the Government to decide as a matter of policy

the sources from which the personnel required for applicants
manning the Service are to be drawn." / It is contended
that some of the applicants are serving in MTNL and
in respect of MTNL no recruitment rule are framed and
and all employees are on deputation; that employees
from Telecom Wing as well as Postal Wing are on
deputation and therefore the employees from Postal wing
xx
have as much right to form part and parcel of the
Telecom Wing. To consider this aspect we refer to
Branch Auditor's report filed by applicants themselves
In para 6(xiii) it is stated that MTNL does not have
employees as its staff are on deputation from the
Department of Telecommunications and the employees
State Insurance Act, 1948 would not be applicable to
the Mumbai Unit.

11. However, this only talks of the employees
who are on deputation from Telecommunication Department
Admittedly the employees do not belong to Telecommunica-
tion department but they are/^{on deputation} from Postal department.
It is not disputed that Postal Department and Telecom
department were separated from 1985/therefore the
question of treating the applicants and interveners
on par ^{does not arise as they are different classes}
after 1985. There is also no question of discrimination
in terms of Article 14 of the Constitution of India.

12. The applicants however contend that respondents
have been issuing circulars making open JAO Telecom
examination to the employees of the Department of Posts
in connection with which a circular dt. 22-1-92 had been
issued. However, on this point applicants have also
enclosed a subsequent circular dt. 21-4-92 which has
also been enclosed by the respondents which reads as
below:

*In continuation of this Directorate circular letter No.3-10/92 E/699 dt. 17-3-92 on the subject cited above, I am to state that the Deptt. of Telecom have made the following clarification in . . . to the making the JAO (Telecom) exam open to the employees the Deptt. of Posts.

Since the syllabus for both part-I & II of JAO(P) exam are different from JAO(I) exam. Postal Employees who have qualified in the JAO Part-I Postal Exam. are not eligible to appear in JAO Part II Telecom exam. All the Postal candidates in question must appear for both the Part I and II of JAO Telecom exam.

A copy of the syllabus for the Part-I & II of the JAO Telecom exam is being circulated separately along with DE Section(DOT) circular for the Part-I exam.

JAO Part I Telecom exam for the employees of this Deptt. will be held from 18th Sept. to 20th Sept.1992. The exam circular is being issued separately by the DE Section of Dept. of Telecom.

Pending a final decision to take JAOs on permanent absorption basis the Dept. of Telecom will continue to take JAO Part-II (P) exam passed candidate as JAO on deputation basis only.*

From the above it is very clear that Postal employees are required to pass both Part-I and Part -II ^{Telecom} examinations as per the latest decision and that it is not true that the syllabus and examinations are interchangeable.

On this point, however/the case of Sunetra C.Tare and Ors. vs. U.O.I. & Ors, (O.A. 562/96 decided by this

Tribunal on 4-12-96) was also / before us. That was

a case in which a Postal employee had sought a direction to Dept of Telecom to postal employees to give an option to appear for the Telecom wing

examination. The Tribunal in that case had examined the position. Para 5 of the judgment clarifies the whole situation and the same is reproduced in full:

*5. Similar affidavit has been filed on behalf of Respondent No.4 and 5 by Assistant General Manager(Legal)working under the Office of the Chief General Manager(Telecom) Maharashtra Circle, stating that prior to bifurcations of Postal and Telecom wings into two departments Exam for the post of JAOs were controlled according to Recruitment Rules of 1976 which came into force w.e.f. 1-4-1976. It is true that under Rule 8(2)Part-I of the department exam shall be common to both the JAOs in the Telecom Wing and the JAOs in the Postal Wing, and under Rule 8(3)(a) any person after passing Part-I of the Departmental exam may exercise an option to appear in Part-II of the departmental exam to be held for the JAOs in postal wing and the options once excercised shall be final. However, after bifurcation into two wings viz. Department of Posts and Department of Telecom Rule 8(2) and 8(3)(a) were amended which were notified by letter dt. 12-12-1986 which runs as under :

"8(2):- Persons of Department of Telecom shall be eligible to appear in Part-I of the Departmental Exam for the posts of the JAOs if they have rendered 3 years of continuous service

8(3):- Any person who qualified in Part-I of the department exam(including a person from department of Posts) who had exercised the options to appear in Part-II of the departmental Exam in the Department of Telecom, before the commencement of amended rules shall be eligible to appear in Part-II of the said Exam."

By virtue of the bifurcation of Postal and Telecom wings into two separate and independent Departments viz. Department of posts and Department of Telecom, the privilege was extended only to those employees of Postal Wing to appear in Part-II of JAOs exam in Telecom Wing. who have passed Part-I Exam in postal side. It is an admitted fact that none of the applicants have passed part-I exam and therefore, the question of letting them to appear for exam does not arise."

13. From this it is clear that w.e.f. 12/12/1996 only the Postal employees who had exercised an option to appear for Part-II examination of Department of Telecom prior to 12/12/86 are entitled to appear for part-II Telecom Exam. Therefore the question of any further option does not arise nor a mere willingness helps. The reliance therefore placed by the applicants on Rule 8 of the JAO Services, Telecommunication Wing (Group 'C') Recruitment Rules, 1977 does not help the applicants to arrive at the conclusion that applicants can be declared to be members of the JAO Services Telecom Wing.

14. Finally the counsel for the applicants have contended that the circular dated 15/12/90 shows that the respondents were making recruitments of candidates on transfer basis and to the extent the recruitment on transfer basis is permissible the applicants should be considered as working on regular basis and are entitled to be absorbed. The Circular dated 15/12/90 which was issued to all Ministries only shows that the department might have sought in the past to recruit some officers on transfer basis but that does not show that the recruitment took place and appointment orders were issued or what the terms were. Admittedly applicants have been recruited on deputation basis and therefore the question of treating them as officers working on transfer basis does not arise.

15. In the light of the above discussion we are of the view that the OAs are without merit and the same are liable to be dismissed. Accordingly the same are dismissed at the admission stage with no order as to costs. The interim relief earlier granted stands vacated.

Member (A)

Member (J)

abp.

Dated: 7-3-97 (4) Addl. B.

M.P. No. 150/97
for directions
to respondents to
stop operation
on 9/3/97 Circular
Circular, kept in
'c' folder.

6/3

Heard Mr. D.V. Gargal for
the applicant, Mr. V.S. Masurkar
for respondents MTNL, Mr. S.S.
Karkera for Mr. P.M. Pradhan for R.L.

Applicant has filed M.P. No.
150/97 for staying the operation
of the judgement and for going to
Supreme Court. We see no merit
in the M.P. and the same is
dismissed.

07/0

ms.

(M.R. Kolhatkar)
M(A)

(B.S. Hegde)
M(D)

ddl. 7/3/97

order/Judgement despatched
to Applicant/Respondent(s)
on 13/3/97

14/3/97