

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

BOMBAY BENCH

O.A. No. 89/96
T.A. No.

DATE OF DECISION 14-2-96

All India Telecom Employees' Union and 2 Ors. Petitioner

Shri B.Dattamoorthy Advocate for the Petitioner(s)

Versus

General Manager (Admn) M.T.N.L. and 2 Ors. Respondent

Shri V.S.Masurkar Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Hon'ble Shri M.R.Kolhatkar, Member (A).

The Hon'ble Mr.

1. ~~Whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? ✓
3. ~~Whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether in needs to be circulated to other Benches of the Tribunal ? X

M.R. Kolhatkar
(M.R. KOLHATKAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL

GULESTAN BLDG.NO.6, PRESCOT RD, 4th FLOOR,

BOMBAY BENCH

ORIGINAL APPLICATION NO.89/96.

DATED THIS 14th DAY OF February 1996.

CORAM : Hon'ble Shri M.R.Kolhatkar, Member (A).

1. All India Telecom Employees' Union,)
Class III, MTNL, Parel Telephone Complex))
Bombay - 400 012.)
2. Smt.Archana Raghoji Rane)
Higher Grade Telephone Operator)
Staff No.21032, Marol Telephone Exchange))
M.I.D.C., Central Road,)
Andheri (East), Bombay - 400 093.)
3. Smt. Shaila F. Rodrigues,)
Higher Grade Telephone Operator)
Staff No.21123, Prabhadevi Trunkh)
Exchange, Bombay - 400 028.) Applicants
(Advocate by Shri B.Dattamoorthy))

v/s.

1. General Manager(Admn) M.T.N.L.,)
Bombay Telephones, Telephone House,)
Prabhadevi, Bombay - 400 028.)
2. Chief General Manager,)
MTNL, Telephone House,)
Prabhadevi, Bombay - 400 028.)
3. Union of India represented by)
Chairman, Deptt. of Telecommunications)
Sanchar Bhavan,)
Ashoka Road,)
New Delhi - 110 001.) Respondents.
(Advocate by Shri V.S.Masurkar)

I O R D E R

I Per Shri M.R.Kolhatkar, Member (A) I

In this OA, the applicant No.1 is the All India Telecommunications Union, Class-III, MTNL, Parel and applicant Nos.2 and 3 are two of the effected employees.

The original applicants have challenged the letter No.ST/U-58/CCS/NFTE/E-3/95-96 dt. 17/1/96 which appears at Annexure-A of the OA as well as Exhibit-R-2 of the Written Statement. It appears that there is a dispute regarding representative character of the two factions of the All India Employees' Union class-III and in terms of the judgement of the Hon'ble High Court at New Delhi, the process for checking the membership of the said Union as regards the allegiance of the members of two factions is to take place from 15/12/95 to 16/2/96. This duration of verification process is set out in MTNL letter dated 15/12/95 at Annexure-C. These instructions of the MTNL in their turn have been issued in terms of Union Department of Telecommunication letters dated 22/11/95, 1/12/95 and 12/12/95. The letter from Union Department of Telecommunications dated 12/12/95 is at Annexure-B. In para-2 of which it is directed as below:-

" With a view to enabling the two factions of the Union to coordinate with their members in the verification process, it is hereby directed that both the factions of the Union may be permitted to jointly use the notice board facilities available to the Union for the purpose of communication with the members. It is hereby further directed that the authorised representatives of the two factions nominated by them for the present process may not be transferred during the duration of verification process."

2. Thus the Union Department of Telecommunication has imposed a ban on transfer of the authorised representative of the two factions nominated by

them for the present process of verification during the duration of verification process and the duration of verification process specified is from 15/12/95 to 16/2/96 in the MTNL letter dated 15/12/95. In fact, in their sur-rejoinder, there is a letter at Exhibit-R-III dated 1/12/95 in which the action plan time schedule of the verification process is shown in detail.

The same is as below:-

Action Plan - Time Schedule

<u>No.</u>	<u>Name of the Activity</u>	<u>To be completed by</u>	<u>Action by</u>
1.	Nomination to all the branch level Unions by the Circle Secretary/Representative nominated by the General Secretary of each faction.	15.12.95	Unions
2.	Issue of authorisation forms by field units to the officials	18.12.95	Circle Officer/Controlling Officer.
3.	Completion of the process of getting the authorisation forms filled up	10.1.96	Controlling Officer.
4.	To consolidate information regarding the membership verification and supply of the same to the D.D.O.	17.1.96	Controlling Officer.
5.	Consolidated information as xxxxxx of the accounting procedure by the DDO and supply of the same to the Circle Office.	24.1.96	D.D.O.
6.	xxxxxxx recovery of membership subscription by the DDO from the salary of January, 1996.	31.1.96	D.D.O.
7.	Compile information by all the Controlling Officers at the circle office and submission of the same to the Dte.	2.2.96	Head of Circle
8.	Compilation of the information at TCHQ and submission to High Court.	16.2.96	TCHQ

3. It is the case of the applicants that in terms of these instructions they had communicated the names of their authorised representatives by their letter dated 13/12/95 which comprises a list of 110 persons of whom the following 21 persons working under respondent No.2 were affected viz. 16, 26, 27, 33, 53, 55, 57, 60, 61, 62, 64, 65, 67, 73, 74, 75, 77, 78, 79, 94 and 95. It is further the case of the applicants that by the Impugned letter dated 17/1/96, the date for filling up the authorisation form viz. 17/1/96 is taken as the terminal date of verification process. This letter states as below:-

"The report received in this office from various units show that work of verification is expected to be completed by this deadline.

A list of the representatives nominated by the E-3 unions for the purpose of verification were under the orders of rotational transfer when the verification process commenced and their orders were not implemented during the process of verification. Since the work of the union representatives in the process of verification is over once the forms have been signed and returned to the controlling officers and further work is to be done by administration, these officials who were under transfer can be relieved after their work relating to the process of verification is completed."

4. What according to the applicants is objectionable in this communication is that whereas the respondent No.1 and 2 were fully aware of duration of the verification process lasting upto 16/2/96, they have deliberately violated the specific instructions of the Union Department of Telecommunications and thereby the Union representatives who were to be transferred rotationally were permitted to be transferred after

the last date of filling up authorisation form is over namely 17/1/96 which is only one of the steps in the over all verification process, which we have reproduced above. Infact, at the argument stage, the respondents have pointed out that even this process is behind schedule and there have been severall ommissions and commissions by the administration. According to applicants, in terms of this letter dated 17/1/96 units started implementing the transfers in a few cases. Both the applicant No.2 and 3 stand relieved from their post to join new posts and applicant No.3 is said to have reported at the new place. 4 others have also joined new place of posting. According to the applicants, the Union sent a letter dated 22/1/96 and represented that the process of verification is not commenced in some units and letter dated 17/1/96 is unjustified and requested the General Manager, Administration with copy to Union Department of Telecommunications to keep the transfer of nominated members in abeyance till 16/2/96. Inspite of this, there was no reply to the letter dated 22/1/96 and therefore the applicants approached the Tribunal on 24/1/96 and obtained Interim Relief.

5. Respondents filed a written statement and applicants filed a rejoinder and the respondents have also filed a sur-rejoinder. I have heard the parties and I am disposing of this OA at the admission stage.

6. In their written statement, the respondents have contended that the applicants' grievance in the present case is misconceived and made with a view to

show the supremacy of one union over the other. They have stated that the applicants have suppressed subsequent letter dated 10/1/96 at Annexure-R-1 to the written statement by which the last date for receiving back the forms which was initially 10/1/96 was extended first to 15/1/96 and then to 17/1/96. According to respondents, the date of 16/2/96 was the last date on which the result of the verification process was to be finalised at Telecom Commission Head Quarters and not at Circle level for which last date was initially 10/1/96 extended to 17/1/96. Since the work of Union representative in the process of verification is over once the forms have been signed and returned to the controlling officers and further work is to be done by Administration, hence officials who were under transfer can be relieved. It is also contended that the employees will be transferred only within the territorial jurisdiction of the MTNL in Bombay. In their rejoinder, the applicants have reiterated that MTNL letter dated 17/1/96 goes against the specific instructions of the Union Department of Telecommunication not to disturb authorised nominated representatives during the process of verification. According to the applicants, the authorised representative who have certified the forms and maintained an account of the same are required at their respective positions to ensure that all the forms have been received and are taken into account while counting. It is absolutely essential that the Union representatives continue to be associated till the process of verification including counting is completed.

7. In their sur-rejoinder, the respondents have contended that the present matter is a Union dispute

and that they rely on the Full Bench judgement of CAT, Bangalore in O.A.Nos 1123 and 1124 of 1989 and 612 to 617 and 875 to 877 of 1990 (The Indian National NGO's Association of Army Electronics Inspection v/s. Secretary, Ministry of Defence) decided on 17/6/92. It is further stated that according to the action plan, the date for compilation of information by controlling officers at Circle level was 10/1/96 extended up to 17/1/96 and therefore the General Manager, Administration has rightly issued the orders. According to respondents, the process of verification at Circle level has since been completed and a letter to this effect has also been sent by the MTNL to Head Office (Union Department of Telecommunication) vide their letter dated 5/2/96 at Exhibit-R-4 to the Sur-rejoinder.

8. At the argument stage, it is contended by the Counsel for respondents that the matter in question is not a service matter but it is a matter pertaining to recognition of Unions. The matter falls within the purview of the High Court, in this particular case, Delhi High Court which has issued some directions which are being implemented by the Head Office. Therefore the Tribunal lacks jurisdiction. Secondly, it is contended that transfer can be challenged by an individual employee but it cannot be challenged by a Union as such. Therefore the applicant No.1 has no locus standi in the matter on merits, the counsel reiterated what is stated in the written statement.

9. At the outset, I dispose of the preliminary objections raised by Counsel for the respondents. I

perused the judgement relied upon by the Counsel for respondents. In para-21 it has been stated inter-alia as below:-

"21. In the light of the above discussions, we answer the questions referred to the Full Bench as follows:-

- (a) Matters-relating to granting recognition and the facility accorded to the recognised/registered trade unions for nominating their members at the various levels of the JCM under the scheme of Joint Consultative Machinery and Compulsory arbitration for Central Government employees are not "service matters" as defined in Section 3(q) of the Administrative Tribunals Act 1985 and, therefore, do not fall within the jurisdiction of the Tribunal for adjudication.
- (b) Matters relating to facility accorded to the recognised/registered trade unions for nominating their representatives in Works Committees under Section 3 of the Industrial Disputes Act 1947 are not "service matters" as in section 3(q) of the Act and therefore, do not fall within the jurisdiction of the Tribunal for adjudication."

10. With highest regard for the Full Bench judgement, in my view the reliance placed by Counsel for respondents on the same is mis-placed. The applicants are not agitating any issues relating to grant of recognition to any employees' union. They have challenged the transfers which have been effected in terms of respondent No.1's letter dated 17/1/96. It is not at all in dispute that the verification process is on for checking the membership of the members of the E3 union as regards allegiance to two factions, and this verification process is set in motion, in pursuance of Delhi High Court's judgement. In my view, therefore, this Tribunal has jurisdiction to consider the OA, as transfer is an incident of service.

11. The next argument that the union in question i.e.

applicant No.1 has no locus-standi also does not appeal to me. Rule 5(b) of the CAT procedure rules fully covers the situation which reads as below:-

"(b) Such permission(for joint application) may also be granted to an association representing the persons desirous of joining in a single application provided, however, that the application shall disclose the class/grade/categories of persons on whose behalf it has been filed (provided that at least one affected person joins such an application)."

12. It is not in dispute that applicant No.1 is a recognised union and applicant No.2 and 3 have been affected by transfers. It may be that not two but about 21 persons have been affected but the rules require atleast one of the affected persons to join alongwith the association of persons. It may be that there may be an individual interest in being transferred or not being transferred. But that doesn't rule out the possibility that there may be a collective interest of the Union in its members being transferred or not being transferred. In the well known Supreme Court case of N.K.Singh v/s. Union of India, Supreme Court has recognised an individual interest as well as public interest in the matters of transfers. I am therefore, of the view that the applicant No.1 has locus-standi to prosecute the OA.

13. On merits, the respondents have not really controverted the contention of the applicants that the letter dated 17/1/96 from General Manager, Administration is not in consonance with Union Department of Telecommunication letter dated 12/12/95 that the authorised

representatives of the two factions nominated by them may not be transferred during the duration of verification process. Respondents' own document filed with sur-rejoinder shows the details of verifications process from which it is seen that Head of the Circle is involved right up to the stage of compilation of information of all circles and submission of the same to the Directorate upto 2/2/96. It may be that in terms of this Time-Table, the respondents have sent a compliance report on 5/2/96 which only shows that as on 17/1/96, the action required to be taken at Circle level had not yet been completed and therefore the action by the respondents in proceeding with the effectuation of the rotational transfers was clearly in violation of the time table. In any case in the face of the clear embargo on transfer put by DOT during the verification process, by letter dated 12/12/95, which ends only on 16/2/96, it would not be proper for the respondents to transfer any of the affected employees either after 2/2/96 or after 5/2/96. (16-2-96)
In fact, the letter from the MTNL dated 15/12/95 at page-16 also makes this quite clear.

"However they will be shifted without further reference to this office, after the expiry of the verification process i.e. 16/2/96, if they are covered under rotational transfer."

14. This Tribunal was required to interfere in this matter only in the context of the contention of the Union that the guidelines of the DOT were being flouted by respondent No.1 and 2. The DOT was made a party respondent namely respondent No.3. Unfortunately, however DOT has not filed any written statement

as a result of which I was not given authoritative version of the guidelines. I have interpreted the guidelines according to materials placed before ~~me~~¹ and points made by the Counsel. I therefore, dispose of the OA by passing the following order:-

ORDER

The letter No. ST/U-58/CCS/NFTE/E-3/95-96 dt. 17/1/96 is hereby quashed and set aside to the extent it permits the rotational transfer of the authorised representatives of the Union during the verification process (prior to 16/2/96) falling under MTNL jurisdiction and in particular appearing at Sr.Nos. 16, 26, 27, 33, 53, 55, 57, 60, 61, 62, 64, 65, 67, 73, 74, 75, 77, 78, 79, 94, 95 which names were in fact communicated as authorised representatives of All India Telecom Employees' Union ~~by~~² the letter dt. 13/12/95. Respondent No.1 not to give effect to transfer of nominated Union representatives till 16/2/96 and such of the nominated Union representatives who had been moved out of their original posts are directed to be restored. It is made clear that this order has been passed in the context of the documents placed before ~~me~~¹ regarding guidelines of Union Department of Telecommunications as to the duration of verification process and is without prejudice to DOT competence to issue revised guidelines as to the verification process., which the respondents No.1 and 2 are bound to comply with. It is clarified that the respondent No.1 is at liberty to transfer the nominated Union representatives after 16/2/96 unless

DOT directs otherwise. There will be no orders
as to costs.

abp.



(M. R. KOLHATKAR)
MEMBER (A)