

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO.537 of 2001

Dated this the 18th day of September, 2001

Coram: Hon'ble Mr.Justice Birendra Dikshit - Vice Chairman
Hon'ble Mr.B.N.Bahadur - Member (A)

1. J.H.Kamble,
Telegraph Overseer,
Central Telegraph Office,
Fort, Mumbai
R/o Ramprasad Pandey Chawl,
Chawl No.97/4/7, Anandgad,
Vikhroli Park Side,
Vikhroli, Mumbai.
2. P.D.Mane,
Telegraph Overseer,
Central Telegraph Office,
Fort, Mumbai.
R/o Ramtekadi Donger,
Shriram Zopadi Sangh,
Room No.1173,T.G.Road,
Sewree, Mumbai.
3. S.Y.Tapal,
Telegraph Overseer,
Central Telegraph Office,
Fort, Mumbai.
R/o Agri Chawl, No.21,
Ground Floor, Room No.27,
Calicut Street,
Fort, Mumbai.
4. P.D.Damse,
Telegraph Overseer,
Central Telegraph Office,
Fort, Mumbai,
R/o Shantinagar, Ismail Chawl,
Chawl No.2, Room No.11,
Sainath Nagar Road,
Ghatkopar, Mumbai.
5. M.R.Bharmal,
Telegraph Overseer,
Central Telegraph Office,
Fort, Mumbai.
R/o 97, Ram Niwas Chawl,
M.G.Road, Ghatkopar,
Mumbai.

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B.08/01

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Mumbai.

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6. D.G.Kashale,
Telegraph Overseer,
Central Telegraph Office,
Fort,Mumbai.
R/o New P.M.G. Colony,
B-35/12, Haveri Road,
Mulund (E), Mumbai.

7. V.Y.Yadav,
Telegraph Overseer,
C.T.O.,Fort,Mumbai,
Buddha Nagar, Hanuman Tekdi,
Gate No.2, Service Road,
Santacruz (E), Mumbai.

8. M.S.More,
Telegraph Overseer,
C.T.O.,Fort,Mumbai.
R/o R.Badak Chawl,Chawl No.17,
Road No.2, Lalbaug,
Mumbai.
By Advocate Shri G.S.Walia) - Applicants

VERSUS

1. Union of India,
through the Chairman,
Telecom Commission, Sanchar Bhawan,
New Delhi - 110 001.

2. The Chief General Manager,
Maharastra Telecom Circle,
Fountain Telecom Building No.II,
Flora Fountain,
Mumbai - 400 001.

3. The Chief Superintendent,
Central Telegraph Office,
Fort,Mumbai - 400 001. - Respondents

ORAL ORDER

Per: Hon'ble Mr.Justice Birendra Dikshit - Vice Chairman -

This is a joint Application filed by eight Applicants, some of whom are working and others have retired. They are claiming relief against Respondents 1, 2 and 3, Respondents 2 and 3 being the department of Respondent no.1.

2. While incorporating a new Corporation by the name of Bharat Sanchar Nigam Limited (hereinafter referred to as BSNL) w.e.f. 1.10.2001, handing over part of functions of Respondent no.1, the Secretary to Government of India in Ministry of Communications, Department of Telecommunications, New Delhi invited options from government servants working under said department, who were directly concerned with the functions for which said Corporation was incorporated. The options were required to be given in certain Option Form. The Applicants submitted their options in Option Form. This form had following printed sentence which was retained by applicants; "I hereby agree to be absorbed in the BSNL w.e.f. 1.10.2000" and they scored out the other sentence, an alternative, that "I do not agree for the absorption in BSNL and want to revert back to government service". Thus, Applicants opted to join BSNL instead of continuing with the employment of government. The original forms have been produced before us. We find on perusal of original form that options were accepted on 22.1.2001 by the Chief Superintendent, C.T.O., Mumbai:

3. A preliminary objection has been raised by counsel for respondents that this Tribunal has no jurisdiction to adjudicate the dispute between BSNL and its employee. The learned counsel pointed out that as ultimate relief is against BSNL, therefore, the application is liable to be dismissed for want of jurisdiction. We have examined the preliminary objection. From perusal of option form of each of the applicants, we find that the Applicants have given their options and the options ~~were~~ accepted. In our opinion on acceptance of option, the Applicants became employees of BSNL. As BSNL has not been notified under Section 14 (2) ^{to} of the Administrative Tribunals Act, 1985, we are
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of the opinion that this Tribunal has no jurisdiction to entertain the petition wherein the action of BSNL is being questioned.

4. The learned counsel for Applicants, to overcome the said objection, contended that the acceptance was not communicated to the Applicants and no notification was issued to the effect that they have been absorbed by BSNL. The learned counsel for applicant therefore contended that the Applicants continued to be employees of the Central Government. The argument is unsustainable. There appears no rule which requires communication of option or a notification was to be made before Applicants could be said to be employees of BSNL. The Applicants opted which stands accepted. The order in question dated 2.7.2001 (Exhibit A-1) is against an order of BSNL though issued by the Office of the Chief General Manager, M.H. Telecom Circle, Mumbai. As we are of the opinion that the order in respect of Applicants is by an officer of BSNL but the officer happens to be a Government officer, we consider that it is not open to the Applicant to challenge it on the ground that the order is issued by Union of India.

5. Although, the order indicates that it has been issued on a representation of Applicants for giving effect to an order passed by this Tribunal on 3.5.2001, but we do not find that any preliminary objection was raised and adjudicated upon by this Court at that stage. As objection has been taken in this OA and the objection is to the lack of inherent jurisdiction in

Tribunal to try this OA, we are of the opinion that the OA is liable to be dismissed for lack of inherent jurisdiction with this Tribunal.

6. So far as the orders dated 29.3.2000 and 26.5.2000 are concerned, they have certainly been communicated by Assistant Director (STB - I) and issued by ADG (TE) in the Ministry of Communications. These orders, though bears name of Ministry of Communications, ~~they~~ pertain to conditions of the service for and on going under the employment of BSNL as well as ^{about} options for higher pay scale. These directions appear to be given effect to in view of the scheme constituting the BSNL and before BSNL was incorporated. Now BSNL has been incorporated. Once incorporation has taken place then so far as conditions of service of employees are concerned, it is the concern of BSNL and the BSNL being an independent body, ~~the~~ order by an officer of government conferred with the power to take decision in respect of BSNL in his capacity of being an officer of that organisation, carries out any directions of Telecommunication Department, then he does it on behalf of BSNL. The legal status of BSNL is not done away merely because order has come from an officer of the Department of Telecommunication of Government of India. It continues to be a separate legal entity. Whatever has been done to the Applicants in this matter is by the BSNL, the employer of Applicants. The argument that the Applicants are challenging the orders of the Union of India before this Tribunal fails.

OA 537.01

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7. The OA is dismissed at the admission stage for want of jurisdiction. Let certified copy of this order be issued within two days.

B.N.Bahadur

(B.N.Bahadur)

Member (A)

B.Dikshit

(Birendra Dikshit)

Vice Chairman

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