

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 246/2001, 278/2001,
205/2001, and 282/2001.

MONDAY the 23rd day of JULY 2001

CORAM: Hon'ble Shri Justice B.Dikshit, Vice Chairman

Hon'ble Shri M.P. Singh, Member(A)

O.A. 246/2001

1. Action Committee Qualified Telecom Technical Assistants for Promotion to the Posts of Junior Telecom Officers having its office at Co-axial Station, Dept. of Telecommunication Jalgaon through its Chairman Shri Prabhakar Jagannath Banasure.
2. Arivind Haribhau Chavare Residing at 65, Koyana Sanmitra Society Godoli, Satara.
3. Nandkishor D. Shirpurkar Residing at Telephone Exchange Quarters Type III - 52 Ramtek Dist. Nagpur.

...Applicants.

By Advocate Shri D.V. Gangal.

V/s

1. The Union of India, through The Secretary, Ministry of Communication Sanchar Bhavan, Ashoka Road, New Delhi.
2. The Chairman / The Chief Managing Director, Bharat Sanchar Nigam Ltd.
3. The Chief General Manager Bharat Sanchar Nigam Ltd., Maharashtra Circle, Mumbai.

...Respondents.

By Advocate Shri V.S. Masurkar.

4. J.J. Wadhwani
5. V.B. Singh
6. V.P. Sirigh
7. Yusuf Syed

...Respondents.

By Advocate Shri G.S. Walia.

O.A. 278/2001

1. Radhakrishnan Kumar
Telecom Technical Assistant
Patalganga (Staff No. 198)
Working under the
General Manager,
Raigad Telecom District.
Mumbai.Applicant.

By Advocate Shri Babu Rajan.

V/s

1. Union of India through
The Chief General Manager
Maharashtra Telecom Circle
Fountain Telecom Building
Mumbai.
2. The General Manager Telecom
Telecom Raigad District
At. Wireless Compound
Linking Road, Santacruz(West)
Mumbai.
3. The Divisional Engineer
Telecom (Mtce.)
Sector 11, Old Coaxial Godown
New Panvel.
4. The Divisional Engineer
Telecom (A & G)
Wireless Compound, Linking Road,
Santacruz (West) Mumbai.Respondents.

By Advocate Shri V.S. Masurkar.

O.A. 282/2001

1. Walchand Asaram Kotecha
Indian Inhabitant, presently
working as Telecom Technical
Assistant in the Telephone
Exchange at Sangamner in the
Ahmednagar, District under
Divisional Engineer (Rural)
Sangamner.Applicant.

By Advocate Shri V.G.Rege.

V/s

1. Union of India through
The Chief General Manager,
Telecom Maharashtra Circle,
Fountain Exchange Building No.2,
Mumbai.Respondent.

By Advocate Shri V.S. Masurkar.

O.A. 205/2001

1. S.A. Kore T.T.A.
O/o S.D.E.(GM)
Jaysingpur
Kolhapur Telecom
G.M.T. Kolhapur.
2. P.V. Kulkarni T.T.A.
O/o D.E. (Trans)
G.M.T. Sangli.
3. V.H. Kale, T.T.A.
O/o S.D.E.(INDOOR) Miraj
G.M.T. Sangli.
4. S.H. Naikawadi, T.T.A.
O/o D.E. (Trans-MTCE)
Kolhapur, G.M.T. Kolhapur.
5. Ashok T.Tanna T.T.A.
O/o D.G.M. (Trans) Panjim
GMT. Goa.
6. S.B. Mote, T.T.A.
O/o S.D.O.P.(Outdoor) Satara
G.M.T. Satara.
7. A.G. Kokate
8. S.B. Kulkarni
9. S.A. Patil
10. T.B. Gandhwala
11. T.D. Shewale
12. S.R. Yadurkar
13. P.B. Moghe
14. D.B. Chougule
15. R.C. Ghadge
16. H.S. Tanekar
17. G.D. Khamkar
18. V.S. Pawar

All are T.T.A.'s working under
G.M.T. Kolhapur.

19. N.H.M. Shaikh
20. S.H. Mane
21. A.R. Khandekar
22. M.C. Biradar
23. N.A. Joshi
24. G.Y. Kulkarni
25. R.S. Chapare.

All are T.T.A's working under
G.M.T. Sangli.

By Advocate Shri S.P. Inamdar.

...Applicants.

1. Union of India through
The Secretary,
Ministry of Communication
Department of Telecom,
Sanchar Bhavan,
Ashoka Road,
New Delhi.
2. The Chairman/Chief
Managing Director,
Bharat Sanchar Nigam Ltd.
Sanchar Bhavan, Ashoka Road,
New Delhi.
3. The Chief General Manager,
Bharat Sanchar Nigam Ltd.
Maharashtra Circle,
Mumbai.
4. The General Manager,
Bharat Sanchar Nigam Ltd.,
Sangli division,
Sangli.
5. The General Manager,
Bharat Sanchar Nigam Ltd.,
Kolhapur Division,
Kolhapur.
6. The General Manager,
Bharat Sanchar Nigam Ltd.,
Goa Division,
Panaji Goa.
7. The General Manager,
Bharat Sanchar Nigam Ltd.,
~~Satara.~~
(By Advocate Shri V.S.Masurkar)

: ORDER (ORAL) :

Shri Birendra Dikshit, Vice-Chairman.

The short question which arise for determination in these cases is as to whether this Tribunal has jurisdiction to adjudicate the dispute between the management and the employees of Bharat Sanchar Nigam Limited?

2. The above question for determination has arisen as the applicants claim themselves to be qualified Telecom Technical Assistants (in short 'TTA') in employment with Bharat Sanchar Nigam Limited (in short 'BSNL') entitled to be sent to the training of Junior Telecom Officers Group B (in short 'JTO'), which is a gazetted post. They have challenged the select panel of candidates claiming that they are being wrongly denied the right to go in for training for being appointed to the post of JTO whose pay scale is Rs.6500-10500, a pay scale higher than that of TTA. The applicants have also challenged the J.T.O. (Amendment) Rules, ¹⁹⁹⁶ 1996 and JTO Recruitment Rules, 1999 published in Gazette of India Extraordinary Part-II Section 3 sub-section (i) dated 1.9.1999 and seek declaration to the effect that they belong to "walk in group" and being part of the cadre of TTA are required to be sent for training as JTO. As respondents have raised a preliminary objection that this Tribunal has no jurisdiction to try disputes of employees of BSNL, the question mentioned above has arisen for determination. Although facts of the four cases are different but as the preliminary objection is about jurisdiction in this Tribunal to try dispute against an order of BSNL, on the request of all the counsels, we heard Shri D.V.Gangal, Advocate first and therefore ^{we} set out facts of OA 246/2001. Out of three other cases, counsels in two cases adopted arguments of Shri Gangal while in OA 278/2001 Shri Babu Rajan appearing for applicant beside adopting argument of Shri Gangal, also added an argument which will be dealt at appropriate place in this order.

3. The facts relevant for determination of preliminary objection of OA 246/2001 are that applicants claim that they are of TTA cadre which has come into existence on restructuring of cadre as per order issued in the year 1991. They claim that though proper orders were issued to give effect to restructured cadre but they were not adhered to by administrative officers. On 27.4.1994 instructions were issued providing for calling of options from prospective officials seeking absorptions in restructured cadre. The instruction provided two methods for entering restructured cadre. ~~two methods~~ ^{which} They are :
(1) to have higher qualification which constituted a group called "walk in group" and; (2) those who did not have higher qualification were required to appear in screening test. As per instructions the "walk in group" included
(1) all group 'C' employees born on regular establishment in Telecom Engineering Branch of Department possesssing minimum qualification of three years Diploma in Electrical/Mechanical/Radio/Telecom/Electronic Engineering awarded by Technical Institutes recognised by the Central Government after Xth standard; (2) technicians who have 10 + 2 qualifications or equivalent qualification or higher qualification like B.Sc. M.Sc. etc. (3) technicians having two years ITI Diploma certificates after matriculation. Leaving out persons of above mentioned categories, all other technicians, who did not hold above qualifications, were required to appear

in screening test before their option for absorption in restructured cadre of TTA could be accepted. In view of clearcut demarcation of cadre of TTA employees/officials who were in possession of Diploma or who were B.Sc./M.Sc., were to be included in TTA cadre straight away without going through screening test. The applicants claim that they are of same class yet they are not being treated as forming cadre of TTA. Their grievance is that higher ups in association with Diploma holders and B.Sc./M.Sc. employees did not treat applicants No.2 and 3 as well as members of their association (applicant No.1's members) as part of the restructured cadre of the TTAs and were compelled to appear for qualifying screening test. Thus, before any screening could take place, TTA cadre was formed consisting of 100% transferred employees born on regular establishment in Telecom Engineering Branch with three years Diploma of Group 'C' etc. and their technical seniority is to be arranged on the basis of training marks under relevant TTA Recruitment Rules, 1991 as amended by TTA (Amendment) Rules, 1994.

4. According to applicants, the Rules were amended in 1999 which provided that length of service in cadre of Phone Inspector/Auto Exchange Assistant/Transmission Assistants/Wireless Operators/Telecom Technical Assistants will be criteria for sending them for JTO training to which Respondents objection is that by this, the applicants are wrongly mixing up aforesaid criteria of JTO (Amendment) Rules, 1996 with TTA Rules. The

Respondents claim that 1996 amendment has nothing to do with TTA Rules and are not applicable to this case. The applicants' grievance is that orders were issued on 28.8.1997 to the effect that juniors absorbed in restructured cadre prior to their service in the select panel may be reviewed in the light of guidelines provided that seniority list be prepared accordingly, but there should be no revision so that if any illegality was committed while preparing the year-wise select panel it be reviewed and injustice caused to seniors and "walk in group" be redressed. However, applicants claim that about it nothing has been done. The applicants, therefore, claim that though they form a part of "walk in group" and were not required to be imparted any training, yet they were sent for training, thereby, deliberately delaying their inclusion in the TTA cadre. The applicants also claimed that even if it is assumed that the Respondents were correct in directing the applicants ~~that they~~ were required to undergo induction training/screening, then the applicants case is that Respondents manipulated the inclusion for training of applicants in such a way that juniors were trained first and became part of the cadre of TTAs earlier than the applicants only for the reason that the applicants were sent to training / screening years later than their juniors. The applicants' further claim is that the criteria for preparation of list of candidates for training as JTO is based on length of service as TTA, but the applicants have been treated as part of cadre of TTA later than their juniors and ineligible candidates by order dt. 13.3.2001, in supersession of the earlier

list dt. 19.9.2000. The applicants' further claim is that Respondents have prepared the list of candidates against 35% quota of promotees for vacancies of the year 1995, 1996, 1997, 1998 and upto 31.8.1999 only for training for promotion as JTO leaving out about 542 qualified and eligible candidates without any opportunity to be treated equally with their groups and even their juniors. As it is under aforesaid circumstances, that the learned counsel appearing on behalf of official respondents raised preliminary objections that the order has been passed by BSNL, which is a body corporate registered under Companies Act, 1956 and as it is not notified under section 14(2) of Administrative Tribunals Act, this Tribunal has no jurisdiction to entertain this application.

5. We have heard the Counsel for parties ~~on~~ preliminary objections.

Admittedly, BSNL has come into existence on 15.9.2000 and order under challenge dt. 13.3.2001 has been passed by an officer of BSNL (Repsondent No.3). Shri V.S.Masurkar, learned counsel for respondents has argued that applicants are seekig quashing of an order passed by an officer of BSNL and are also seeking directions against BSNL and it is not disputed by applicants that BSNL has not been notified under section 14(2)(i) of Admininitrative Tribunals Act. The learned counsel for the respondents relied upon the judgment of Parbir Kanti Chaudhary vs. Union of India and Others dt. 3.1.2001 (Calcutta Bench). Shri G.S.Walia appearing on behalf of private respondents adopted the arguments of Shri V.S.Masurkar, beside adding to it the case of Hon'ble

Supreme Court of Arka Bikas Chakravorty vs. State Bank of India & Ors.

(1997 SCC (L&S) 1710) arising out of Bihar Shops and Establishment Act,

1954. Shri Walia argued that apex court held that on issue of notification the Tribunal ceased to have jurisdiction to decide any pending application from the date of issue of notification. He contended that as in the case in hand, the proceedings have been initiated even after issue of notification while in the case of Arka Bikas Chakravorty the case was even pending, the apex court held that jurisdiction of Tribunal stood ousted, the applicants stand in a position which is worst than that and therefore, this Tribunal has no jurisdiction to entertain the claim of applicants.

6. Shri D.V.Gangal, the learned counsel for the applicant, contended that in this case this Tribunal is required to interpret the rules frame by Government of India in the year 1994-97 with regard to filling up of vacancies for the year 1995 which came into existence when the department was that of Central Government, therefore, this Tribunal has jurisdiction to adjudicate upon the rights of the parties. Shri Gangal relied upon the Full Bench Judgment of OA 297/95 and 408/96 Sushil Kumar Tewari and Ors. Vs. Union of India and Others, decided on 6.1.2000 (Full Bench at Lucknow) and contended that the present case is identical to that of the full bench. He contended that this Tribunal has the jurisdiction to entertain the present case in view of decision of full bench.

7. Shri Baburajan, the learned counsel for the applicant in OA 278/2000 beside adopting the arguments of Shri D.V.Gangal, also contended that BSNL is under the administrative control of Telecommunications ^{Department} of Government of India and therefore, the Tribunal is having jurisdiction. In support of his contention that the department is under the administrative control of Government of India, he relied upon the OM No.2-29/2000-Resig dt. 30.9.2000 to the effect that the Government has decided to retain the administrative control. Shri V.G.Rege and Shri S.P.Inamdar appearing in other two OAs have adopted the arguments of Shri Gangal.

8. Admittedly, BSNL has come into existence on 15.9.2000 and main order which is under challenge is ^{of} 18.3.2001 passed by an Officer of BSNL. The OAs have been filed after incorporation of BSNL. It is also admitted by Counsel for parties that no notification under section 14 (2) of Administrative Tribunals Act has been issued by Government of India till date. From the above facts, when no notification has been issued under section 14(2), we are of the opinion that this Tribunal does not have jurisdiction to entertain the present OA. The BSNL is a company incorporated under Indian Companies Act, 1956 and it has its independent legal status. Normal rule in respect of jurisdiction of Court and Tribunals is that remedy for enforcing a legal right is before Civil Court and it is only when the jurisdiction is specially conferred on a Tribunal that the Tribunal gets right to adjudicate upon the claims of litigants. The apex court

in the case of Arka Bikas Chakravorty (supra) has observed that it is a settled law that the authority under section 26 (2) of the Act in question under Bihar Shops and Establishment Act, 1954 ceased to have jurisdiction to decide any pending case, from the date of issue of notification. Their the apex court held that Tribunal lost jurisdiction on cessation of an Act even then claim was pending before it. In the case in hand proceedings have been initiated before Tribunal without BSNL being notified under section 14(2) of Administrative Tribunals Act. Thus, dispute in respect of employees of BSNL against its management is beyond the purview of this Tribunal.

9. In case of Parbir Kanti Chaudhary Vs. Union of India and Others (supra)

it has been held that while dealing with an order of transfer dt. 22.12.2000 :

"Department of Telecommunication, which is now BSNL, is a corporate body and Government under Article 12 of Constitution of India. But, unless it is notified, we are not in a position to entertain this petition, even assuming that the applicant is a government employee and he is under deputation without any deputation allowance. We cannot direct the department of Telecom, i.e. Bharat Sanchar Nigam Ltd. to comply with our order".

We follow the Judgment of Calcutta Bench in respect that this Tribunal has no jurisdiction upon claim.

10. We examined the case of Sushil Kumar Tewari and Ors. Vs. Union of

India and Ors. (supra) in respect of notification dt. 23.11.1997 issued under section 3 of the Prasar Bharati (Broadcasting Corporation of India) Act, 1990.

While the petitioner of that case was in the service of Union of India, the Prasar Bharati was constituted on 23.11.1997. The proceedings were pending on the date when new body viz. Prasar Bharati came into existence. Even if we

accept that rights could be adjudicated upon when the proceedings were pending, in case in hand the proceedings were initiated when the BSNL has already come into existence and it started functioning also. The applicants get no help from case cited in support of their argument.

10. Shri Baburajan, Advocate has represented applicant in OA 278/2001. There is some difference in respects of job of Radhakrishnan the applicant of that case, but order in that case is also passed by BSNL and therefore, that case is being decided together with this order as same principle of law about jurisdiction applies to that case also.

11. The counsel for petitioners of OA 278/2001, Shri Baburajan also contended that the Department has administrative control over the BSNL and therefore, it is part and parcel of Government Department and as such BSNL is amenable to jurisdiction of this Tribunal. We do not agree with it. Merely because Government has some administrative control over BSNL does not mean that the BSNL has no independent entity. We find from different notifications issued under section 22 of Administrative Tribunals Act that they had been issued in respect of Corporation and Companies which are under the administrative control of the Central Government. Yet, the notifications have been issued in compliance of conditions for notifications under section 14(2). The Central Government had issued notification in respect of those corporation owned or controlled by Government which it considered to be brought under this Tribunal for adjudication of rights of their employees. It has not done so in respect of BSNL, so that this Tribunal may have jurisdiction in

matters of BSNL. As observed earlier, BSNL has its own legal identity and as such it has to be dealt with as an independent juristic person.

12. It has also been brought to our notice that Kolkatta Bench has directed return of application to the applicants in that case, where it found that Tribunal did not have jurisdiction over the matter. In this case, the question of return of application does not arise as it is not clear from the report cited, which has been placed before us as to whether that judgment is by a Division Bench or a Single Bench. As the application has been moved, while this Tribunal has no jurisdiction, we consider that the application is not to be returned.

13. For the above reasons, we dismiss the OAs as this Tribunal has no jurisdiction to entertain the matter. No order as to costs.

(M.P.SINGH)
MEMBER(A)

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.