

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 743/93

Date of Decision: 1.3.1999

National Union of Telecom and others. Applicant.

Shri N.M. Ganguli for Advocate for
Shri Prem Seed. Applicant.

Versus

Union of India and others Respondent(s)

Shri S.S.Karkera for Advocate for
Shri P.M.Pradhan Respondent(s)

CORAM:

Hon'ble Shri. Justice R.G.Vaidyanatha, Vice Chairman.

Hon'ble Shri. D.S. Baweja, Member (A)

- (1) To be referred to the Reporter or not? NO
- (2) Whether it needs to be circulated to other Benches of the Tribunal? NO


(R.G. Vaidyanatha)
Vice Chairman

NS

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, MUMBAI:1

Original Application No. 743/93

Monday the 1st day of March 1999.

CORAM: Hon'ble Shri Justice R.G. Vaidyanatha, Vice Chairman

Hon'ble Shri D.S. Baweja, Member (A)

National Union of Telecom
Engineering Employees Group 'C'
C/o J.R. Shukla, A-46,
Prashant, Flat No. 303,
Gokuldhama, Goregaon (East).
Bombay.

National Union of Telegraph
Engineering Employees Line
Staff and Class IV
C/o Shri N.K. Verma,
3/8, Sadguru Seva Sadan,
Ayre Road, Dombivli (East)
District Thane.

All India Telecom Administrative
Officers Association Class III
and IV.
C/o P.B. Ambre,
9/1646, M.H.B. Colony,
Samta Nagar, Kandivli (East)
Bombay.

N.K. Verma,
3/8, Sadguru Seva Sadan,
Ayre Road, Dombivli (East)
District Thane.

... Applicants.

By Advocate Shri N.M. Ganguli for Shri Prem Seed.

V/s.

Union of India through
Department of Telecommunication
C/o Chief General Manager
(Maharashtra Circle) G.P.O.
Building P.D'Mello Road,
Bombay.

Mahanagar Telephone Nigam Ltd.
having its corporate office at
New Delhi and an office at
Telephone House, Veer Savarkar
Marg. Dadar (West), Bombay.

Chief General Manager
Mahanagar Telephone Nigam Ltd.,
Bombay,
Telephone House, Veer Savarkar
Marg. Dadar (West),
Bombay.

... Respondents.

By Advocate Shri S.S. Karkera for Shri P.M. Pradhan
for respondent No. 1 and 2.

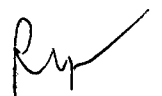
...2...!

O R D E R (ORAL)

Per Shri Justice R.G.Vaidyanatha, Vice Chairman

This is an application filed by the applicants claiming deputation allowance and certain other reliefs. The respondents have filed their reply opposing the application. At the time of arguments, today the learned counsel for the applicant submitted that he is confining the O.A. only for grant of deputation allowance from 1.4.1986 till they continued to be on deputation. As far as other prayers regarding absorption and repatriation he has admitted that options have been given in November 1998. The question is left open to be decided based on official giving final reply in response to the option notice given by the department. Therefore that question is left open. We have heard the learned counsel for both sides regarding grant of deputation allowance to the applicants.

2. Applicants 1 to 3 are different associations and one of the employees is made as applicant No.4. Their common case is that by virtue of Government order dated 25.2.1986 employees of department of Telecommunications working within Bombay Municipal Corporation, New Bombay Municipal Corporation and Thane Municipal Corporation were transferred to work under the proposed corporation called as Metropolitan Telephone Corporation, since named as Mahanagar Telephone Nigam Limited Corporation. The applicant's case is that since they were the employees of the department of Telecommunication and deputed to work in the proposed MTNL, they are entitled to deputation allowance as permissible under the rules. They made representation claiming



the same but in vain. The main grievance of the applicants is that they are entitled to deputation allowance which the respondents have denied. Some of the allegations are made regarding absorption which are not relevant for our purpose as already mentioned. Therefore the applicants now want that the respondents be directed to pay deputation allowance to them as per rules from 1.4.1986.

3. The respondents in their reply have strongly opposed the applicant's claim for deputation allowance. It is stated that the employees under DOT who were asked to work in MTNL were doing the same duty as they were doing as employees of DOT. There is no change in duties and responsibilities and even the place of work. This transfer was made in view of policy decision taken by the Government. It is also stated that the employees are now given adhoc payment of Rs. 100/- pending finalisation of the terms and conditions of absorption. It is stated that fundamental rules regarding deputation allowance is not applicable to the case. It is also stated that this is not a case of deputation but technically deemed to have been taken on deputation.

4. The learned counsel for the applicant contended that once there is a deputation by the Government to MTNL, the applicants are entitled to deputation allowance as provided in Appendix 5 of Swamy's Compilation of FRSR. On the other hand the learned counsel for the respondents submitted that this is a case of transfer of entire employees from DOT to MTNL, cannot be called as deputation within the meaning of Appendix 5. He further

Ry
...4...

submitted that there is delay and laches besides limitation in filing the application. He has also submitted that the applicants ^{have} not challenged the orders of the Government dated 25.2.1986.

5. The short point for consideration is whether the applicants have made out a case for grant of deputation allowance or not?

6. The order of transfer² dated 25.2.1986, a copy of which is at page 26 of the paper book. On perusal of the order it shows that it is a case of policy decision taken by the Government of India of transferring the entire work of department of Telecommunication to a Corporation, Metropolitan Telephone Corporation which has since been named as Mahanagar Telephone Nigam Limited Corporation. In this policy decision taken by the Government of India many conditions are mentioned as to how the work is to be transferred. It is also mentioned that all the existing employees of DOT enblock stand^s transferred to the proposed Corporation. Then in para 5 (ii) reads as follows:

" 5(ii) The services of all the 'non-gazetted staff' in sub-divisional, Divisional and Circle cadres i.e. all non-gazetted staff upto the level of J.Es (but excluding JAOs) now working in the two telephone Districts in the areas to come under the jurisdiction of the Metropolitan Telephone Corporation will be deemed to have been transferred on deputation to the Corporation on the existing terms and conditions, without any deputation allowance from the date the corporation takes over the operation in Delhi and Bombay."

Above clause clearly mentions that this transfer on deputation was without any deputation allowance. Therefore the Government itself has taken a policy decision and ofcourse modalities of work being transferred including the transfer of official with a specific clause that employees are not entitled to any deputation allowance.

The applicants have nowhere challenged the legality of Government order dated 25.2.1986. The Government being an employer has every right to pass the order of transfer of official and if they are not governed by existing rules the Government has right to issue executive instructions or execute orders to govern the service conditions. This is not a case of simple deputation coming within Appendix 5.

7. The learned counsel for the applicant brought to our notice Rule 3 of Appendix 5 of Swamy's Compilation of FRSR. Para 3.1 reads as follows:

" The term 'deputation' will cover only appointments made by transfer on a temporary basis to other posts in the same or other departments/offices of the Central Government provided the transfer is outside the normal field of deployment and is in the public interest"

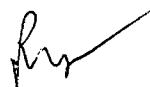
As far as deciding the question of "outside the normal field of deployment" has to be decided by the competent authority. The applicant nowhere alleged or placed any record that the competent authority has passed an order. This is a case of transfer decided within normal field of deployment. On the other hand the circular dated 25.2.1986 clearly provides that this is not a case of transfer outside normal field of deployment. In a matter of policy decision

the Court or Tribunal cannot do anything, unless the question of policy decision is arbitrary or unreasonable or violative of Article 14 of the Constitution of India. Here there are no pleadings and no materials on record to show that the decision of the competent authority is arbitrary or violative of article 14 of the Constitution of India.

Even on facts, enblock transfer of existing employees to the proposed corporation with the same nature of duties and responsibilities and place of work is also same, the only thing is the name is changed; if in such circumstances the Government decides by way of policy decision that no deputation is permissible and it cannot be said that the decision of the Government is either un-reasonable or arbitrary. As already stated that the Government being an employer has prerogative to issue executive instructions regarding matters which are not covered by statutory rules. This is a case of proposed absorption on the basis of policy decision of Government of India and therefore it is not strictly speaking a deputation within the meaning of Appendix 5.

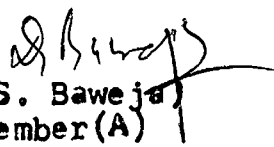
8. After considering the facts and circumstances of the case, we hold that this is not a case of transfer on deputation in the normal sense, but this is a case of enblock transfer of one unit to another unit and merger of both units into a proposed corporation.

9. It is also stated that the applicant has not challenged the legality and validity of the Government policy decision as disclosed in the circular dated 25.2.1986. This application has been filed about 7 years later in 1993 and they have not challenged the



Government notification. There is inordinate delay in approaching this Tribunal. On merits we have come to the conclusion that this is a case of deputation not being outside normal field of deployment and therefore, the applicants are not entitled to the claim of deputation allowance.

10. In the result the application fails and is hereby dismissed. No order as to costs.


(D.S. Baweja)
Member(A)


(R.G.Vaidyanatha)
Vice Chairman

NS