

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 9<sup>th</sup> day of May, 2011

CORAM:

**HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDL.)**  
**HON'BLE MR. ANIL KUMAR, MEMBER (ADMV.)**

**Original Application No.579/2009**

1. Ram Chandra Sharma  
s/o Shri Jootha Ram sharma,  
r/o K-4/15, LIC Flats, Vidyadhar Nagar,  
Sector-6, Jaipur, presently  
working as Division Engineer (NIB)  
O/o PGMTD, Jaipur
2. Ramraj Meena  
s/o Shri Golya Ram Meena,  
r/o 4/31, Sanchar Vihar Colony,  
Malviya Nagar, Jaipur
3. Gulab Chand Jeengar  
s/o Shri Ram Swaroop Jeengar,  
r/o 3/151, Sanchar Vihar Colony,  
Malviya Nagar, Jaipur
4. Dwarika Karol,  
s/o Shri Laxmi Narayan Karol,  
r/o D-9 JP Colony, Tonk Phatak,  
Jaipur.

.. Applicant

(By Advocate: Shri R.D.Rastogi)

Versus

1. Union of India  
*through Secretary ,*  
Department of Telecommunication,  
Govt. of India,  
New Delhi.

2. The Bharat Sanchar Nigam Limited  
Through its Chairman and Managing Director,  
Statesman House,  
New Delhi.
3. Deputy General Manager (Personnel)  
Bharat Sanchar Nigam Limited,  
Corporate Office,  
Personnel Branch (DPC), 4<sup>th</sup> Floor,  
Bharat Sanchar Bhawan,  
Janpath,  
New Delhi.
4. Secretary,  
Department of Personnel & Training,  
Government of India,  
New Delhi.
5. Shri Sudarshan Rao B staff No. 11050  
Presently working as Executive (STS),  
In Advaman Nicobar Circle of BSNL.
6. Shri S.K.Rama Murthy staff No.9884  
Present working as Executive (STS)  
In Western Telecom Region Mumbai  
of BSNL.

.. Respondents

(By Advocate: Shri D.C.Sharma and Shri Tej Prakash Sharma)

**Contempt Petition No.18/2010 (OA No.579/2009)**

1. Ram Chandra Sharma  
s/o Shri Jootha Ram sharma,  
r/o K-4/15, LIC Flats, Vidyadhar Nagar,  
Sector-6, Jaipur, presently  
Working as Division Engineer (NIB)  
O/o PGMTD, Jaipur
2. Ramraj Meena  
s/o Shri Golya Ram Meena,  
r/o 4/31, Sanchar Vihar Colony,  
Malviya Nagar, Jaipur
3. Gulab Chand Jeengar  
s/o Shri Ram Swaroop Jeengar,  
r/o 3/151, Sanchar Vihar Colony,  
Malviya Nagar, Jaipur

4. Dwarika Karol,  
s/o Shri Laxmi Narayan Karol,  
r/o D-9 JP Colony, Tonk Phatak,  
Jaipur.

.. Applicant

(By Advocate: Shri R.D.Rastogi)

Versus

1. Shri Kuldeep Goyal,  
Chairman and Managing Director,  
Bharat Sanchar Nigam Limited,  
Harish Chandra Mathur Lane,  
Janpath, New Delhi.
2. Shri Virendra Prasad,  
Deputy General Manager (Personnel),  
Bharat Sanchar Nigam Limited,  
Corporate Office,  
Harish Chandra Mathur Lane,  
Bharat Sanchar Bhawan,  
Janpath, New Delhi.

.. Respondents

(By Advocate: Shri Tej Prakash Sharma)

ORDER (ORAL)

Applicant No.1 submitted a representation dated 25.9.2009 through proper channel to respondent Bharat Sanchar Nigam Limited (BSNL) for taking up the matter with the Department of Telecommunication (DOT) to process the case of adhoc promotion to JAG(DGM) in respect of ITS officers 2000 batch and refrain from promoting junior officers to adhoc JAG until his promotion on adhoc/regular basis by the DOT. Since no action has been taken and the letter dated 9.12.2009 has been issued whereby all the



Head have been directed to submit the ACRs/APRs of Executive STS officers working in BSNL for considering them for promotion ignoring the applicant who are much senior therefore, by way of filing this OA, the applicants have asked for the following reliefs:-

"By issue of appropriate order or direction the actions of the respondents in issuing the impugned letter dated 9.12.2009 and thereby initiating the process of promotion of junior officers may kindly be quashed and set aside and the respondents may be directed to refrain from promoting junior officers included in said letter unless the applicants are promoted to JAG grade and the respondent no.1 may be directed to consider the case of applicants for promotion to JAG grade giving necessary relaxations as was given to other batches of ITS Group A earlier by DoT and now being given by BSNL on a much larger scale. If during the pendency of this O.A. any adverse order is passed against the applicant by the respondents then the same may be taken note of and be quashed and set aside."

2. The matter was listed on 23.12.2009. The Tribunal considered the grievance of the applicants where vide letter dated 9.12.2009 (Ann.A/1) ACRs/APARs of 279 officer, as per the list enclosed, have been called for the purpose of promotion to the grade of GDM(T) on adhoc basis in which names of the applicants have not been included and after having issued notices and considering submissions made by the learned counsel appearing for the applicants observed as under:-

"...we are of the view that ends of justice will be met if the case of the applicants are also considered provisionally for promotion on the post of DGM(T) on adhoc basis along with other persons mentioned in Ann.A/1 and result of the consideration shall be kept in a sealed cover till the next date."

3. During pendency of this OA, Misc. Application No.33/2000 is filed by the respondents for modification/recalling the ex-parte order dated 23.12.2009 passed by this Tribunal alleging therein that

the applicants are employees of DoT and their service conditions are governed by the ITS Recruitment Rules 1991 and Ann.A/1 was issued by BSNL for their own officers for promotion from STS (AGM) to JAG(DGM) grade which has been challenged by way of the present OA and since the Tribunal vide order dated 23.12.2009 has directed the respondents that cases of the applicants may also be considered provisionally for promotion for the post of DGM on adhoc basis along with other persons mentioned in Ann.A/1 and the result of the consideration shall be kept in a sealed cover till the next date of hearing i.e. 6.1.2010. It is also submitted that the applicants have been promoted to STS of ITS Group A in 2006 and as per ITS Recruitment Rules, officers in STS with 5 years regular service are eligible for promotion to JAG (DGM). The Eligibility of promotion is taken on 1<sup>st</sup> January of vacancy year. The applicants will be eligible for consideration for promotion to JAG of ITS Group A against the vacancy year 2012-2013. Hon'ble MOS (C&IT) approved the proposal for relaxation in qualifying service for promotion of applicants and officers of their batches to JAG of ITS Group A against the vacancy year 2010-2011 and proposal for relaxation in qualifying service has been sent to Department of Personnel and Training (DOPT) for consideration and approval. The DOT has also further stated that promotion is not a right and adhoc promotion is done by administrative department based on the requirement of department.

4. The applicant also filed Misc. Application No.116/2010 for bringing subsequent documents on record for staying operation of



the said documents and submits that even after passing order dated 23.12.2009 respondent No.3 has issued order dated 1.4.2010 whereby promotions have been made on adhoc/temporary basis on the post of Executive (JAG level of telecom operation) grade without considering the applicants and as such the direction given by this Tribunal has been flouted. Thus, the applicants have also filed a Contempt Petition against respondent No.2 and 3 for flouting the order dated 23.12.2009.

5. Another Misc. Application No.112/2010 was also filed on behalf of All India Bharat Sanchar Nigam Limited Executives' Association through Shri O.P.Jat s/o late Shri Bhagan Singh, Circle Secretary for impleading of party in the array of respondents. When this OA alongwith MA No.33, 112, 116 and 122/2010 were listed on 25.1.2011, this Tribunal passed the following order:-

"When the matter was listed on 23.12.2009, this Tribunal though issued notices to the respondents, but declined to grant absolute stay in the matter. However, in order to protect the interest of the applicants, this Tribunal had ordered that cases of applicants may also be considered provisionally along with other persons for promotion to the post of DGM(T) on ad hoc basis. However, result of such consideration was ordered to be kept in the sealed cover till the next date of hearing.

Learned counsel for the applicant subsequently move MA 116/2010 praying for staying of operation of the order dated 1.4.2010 (Ann.MA/1) as also the Contempt Petition No. 18/2010 thereby stating that the order dated 23.12.2009 has not been complied with by the respondents.

When the matter was listed on 6.4.2010, this Tribunal passed the following order:-

"This MA has been moved by the applicant thereby praying for staying operation of the order dated 1.4.2010 whereby the persons named therein have been promoted on adhoc basis.

Grievance of the applicant is that case of the applicant was not considered in right perspective



despite the interim order passed by this Tribunal and in the instant case respondents were in hurry to promote other persons ignoring claim of the applicant. Since the case is already listed for hearing on 19.4.2010, respondents may file their reply to the MA. Respondents shall also produce finding kept in sealed cover whereby respondents have considered the case of the applicant on the next date of hearing."

The respondents have filed their reply. Respondents No. 1 to 4 in their reply have not specifically mentioned as to whether the order dated 23.12.2009 passed by this Tribunal was complied with. Whether the applicants were eligible for consideration for promotion or not, was a matter which was sub-judice under determination before this tribunal and this tribunal vide order dated 23.12.2009 had directed the respondents that case of the applicants for promotion may be considered provisionally and findings of such consideration may be kept in sealed cover. Thus, it was incumbent upon the respondents concerned to comply with the order of this Tribunal so long as the same was operative and not vacated and it was not permissible for the respondents to ignore the lawful order passed by this Tribunal.

Respondent no. 1 is directed to file specific reply as to why the order dated 23.12.2009 was ignored and as to why they should be prevented to contest this case so long as they do not purge themselves in case the order dated 23.12.2009 is not complied with.

Learned counsel for respondent NO.1, however seeks adjournment. As a matter of last indulgence, four weeks' time is granted to him to file an affidavit in terms of the observations made hereinabove.

However, prima-facie we are of the view that it is a case where the respondents were guilty of violation of the order passed by this Tribunal on 23.12.2009, for which notices are also being issued in the Contempt Petition separately filed by the applicant.

Let the matter be listed on 28.3.2011. IR to continue till the next date. CC to learned counsel for respondent No.1."

6. In the Contempt Petition which has been preferred, only respondent No1. and 2 were made party i.e. *Shri Kuldeep Goyal*, Chairman and Managing Director, BSNL as respondent No.1 and *Shri Virendra Prasad*, Dy. General Manager, BSNL as respondent



No.2. The DoT has not been impleaded as party. This Tribunal suo-moto impleaded DoT as party respondent. It is also submitted on behalf of the BSNL that exercise of option for permanent absorption of employees of BSNL in respect of Group B, C and D has already been completed. In respect of ITS Group A officers who are recruited in Govt. service through Union Public Service Commission, the process of absorption is done by Cabinet and is carried out by the administrative ministry i.e. Ministry of Communication and IT, Department of Telecommunications. The applicants are on the strength of Department of Telecom and have not been absorbed in BSNL and belong to ITS Group A services and are still working on deemed deputation basis in BSNL. With regard to compliance of the order dated 23.12.2009, it is also contended that the ex-parte interim order granted by this Tribunal is not absolute stay in the matter and since compliance has to be made by the Department of Telecommunication, the BSNL has informed the DOT with regard to the interim order dated 23.12.2009. It is also contended that the applicants are well aware of the fact that BSNL rule do not apply to them as they are on deemed deputation in BSNL and in fact on the rolls of DOT, they are governed by separate set of rules of DoT and their promotion can be made in accordance with rules that too by the DoT.

7. The learned counsel appearing for the respondents submits that in pursuance of DoT order No.314-01/2010-STG-III dated 12.12.2010 vide its order dated 22.12.2010 the applicants are promoted to JAG of ITS Group -A on purely adhoc and temporary





basis with effect from the date of assumption of charge of the higher post and until further orders. Thus, they have complied with the interim direction issued by this Tribunal.

8. The learned counsel for the applicants is not satisfied with the compliance and submitted that the interim order dated 23.12.2009 has not been complied with in letter and spirit as the adhoc promotion order were to be issued w.e.f. 1.4.2010 as junior persons have been given promotion by the BSNL and thus contempt is borne out by not following the directions of this Court and the respondents deserve to be punished under the Contempt of Courts Act., 1971 and the ratio decided by the Division Bench of the Hon'ble High Court in the case of Hira Lal Sharma vs. Railway Shramik Sahkari Bank, Bikaner Ltd., Bikaner and others reported in WLN (UC) 1983 301 wherein it is observed that the orders passed on 20.12.1982 and 5.1.1993 to take back petitioner in service but the non petitioners refused to take back petition in service. It is held that non-petitioners disobeyed directions of Court willfully.

9. Shri Rastogi also referred the judgment rendered by the Hon'ble Apex Court in the case of Mohammad Idris and another vs. Ustam Jehangir Bapuji and others reported at AIR 1984 SC 1826 wherein it was held that there was a clear breach of undertaking given by the petitioners and the Single Judge was quite right in giving appropriate direction to close the breach in addition to punishing the party for contempt of court. *Same view has been* taken by the Hon'ble Supreme Court in the case of Major Gen. B.M.Bhattacharjee and another vs. Russel Estate Corporation and



another reported at AIR 1993 SC 1632 – disobedience of Court's order-Interim order directing a party not to allot flats to any body – Word "allot" would in the context mean handing over of flats-Delivery of possession and executive of sale deed in favour of third parties pending interim order – would amount to contempt notwithstanding that agreement of sale were already executed. Also in the case of Prithawi Nath Ram vs. State of Jharkhand and Ors., reported in (2004) 7 SCC 261, the Hon'ble Supreme Court held that whether the right or wrong the order had to be obeyed and disobedience thereof would render the party concerned liable for contempt. Hence, order passed by the High Court in contempt proceedings refusing to take any action for contempt as in its opinion its earlier order which was alleged to have been disobeyed could not have been passed. Setting aside the matter was remitted to High Court for fresh consideration. It is further observed that even if the interim order is subsequently vacated or relief refused to a party in the main proceedings, it cannot justify disobedience of such interim order by the other party.

10. Having considered the submissions advanced on behalf of respective parties in OA as well as in Contempt Petition alongwith Misc. Applications and upon careful perusal of the interim order passed by this Tribunal on 23.12.2009 and the order 25.1.2011 and have also thoroughly examined the relief claimed in the OA. It is not out of place to mention that in the OA the Union of India through Secretary, Department of Telecommunication, Government of India, New Delhi has been impleaded as respondent No.1 and the



relief sought by the applicants is to issue appropriate order or direction to quash and set aside the order dated 9.12.2009 thereby the respondents have initiated the process of promotion of junior officers and it has further prayed that the respondents may be directed to consider the case of applicants for promotion to JAG grade giving necessary relaxation as was given to the other batches of ITS Group-A earlier by the DoT and now being given by the BSNL on a much larger scale. Two things born out from perusal of the relief clause, one is with regard to letter dated 9.12.2009 by which the BSNL has issued a list of 279 officers for promotion from Executive (STS) to DGM on adhoc basis and second is consideration of promotion of the applicant to JAG grade by giving relaxation. It is also not disputed that the applicants are working in BSNL on deputation purely on temporary basis and their lien remain with the DoT and the list which has been under challenge was issued by respondent BSNL of their officers finally absorbed in the BSNL. Vide ex-parte order dated 23.12.2009 while issuing notices this Tribunal observed that ends of justice will be met if the cases of the applicants are also considered provisionally for promotion on the post of DGM (T) on adhoc basis alongwith other persons mentioned in Ann.A/1 and result of consideration shall be kept in sealed cover till the next date of hearing. Since the BSNL has not considered the case of the applicant as directed by this Tribunal, therefore, applicants preferred Contempt Petition

11. We have gone through the explanation given on behalf of the BSNL and on behalf of the DoT. As stated hereinabove, it is

being admitted fact that the applicants are working in the BSNL on deputation and are not absorbed in the BSNL and remain with the DoT and in the Contempt Petition the officers of the DoT were not made party-respondents and only Shri Kuldeep Goyal, Chairman and Managing Director, BSNL and Shri Virendra Prasad, Dy. General Manager, BSNL are made party. Thus, notices of the Contempt Petition were issued initially to these officers of the BSNL and the BSNL thereafter sent communication to the DoT with regard to the interim direction and upon receipt of such information, the DoT not only processed the matter of the applicants for adhoc promotion but also sought relaxation from the Department of Personnel and Training. The fact as alleged by the respondents is that the applicants are not entitled to be given promotion in the year 2011 as they have not completed requisite service of 5 years and only entitled to be given even adhoc promotion on temporary basis in the year 2012-2013 and this fact is established by the relief claimed by the applicants wherein they have asked for necessary relaxation as was given to other batches of ITS Group A earlier by the DoT. With the approval of the DOPT after seeking relaxation, promotion order has been passed vide order dated 21<sup>st</sup> December, 2010 which is placed on record at Ann.CP/2.

12. Having considered the relief claimed by the applicants in the OA, we are of the considered view that the relief claimed by the applicants in the OA has been granted after seeking relaxation and the applicants are not at all entitled to get the benefit w.e.f. 1.4.2010 as claimed and thus the ex-parte interim order dated



23.12.2009 whereby direction was issued to the respondent BSNL to consider case of the applicants provisionally and recommendations be kept under sealed cover cannot be considered as the order under challenge in the OA as the same is not issued by the DoT but by the BSNL. 279 officers have been given adhoc promotion vide impugned order dated 1.4.2010 as they were absorbed in the BSNL whereas the applicants are working on deputation basis, thus we find no merit in this OA and the same is dismissed being bereft of merit. The interim relief granted by this Tribunal on 23.12.2009 and vide subsequent order dated 25.1.2011 also stands vacated.

13. With regard to the submissions made on behalf of the applicants that even after vacation of interim order, the CP survives as held by the Hon'ble Supreme Court (supra), we have carefully scanned the judgment referred to by the applicants and upon perusal of the judgment referred we are of the view that the facts and circumstances before the Supreme Court were altogether different whereas in the instant case substantial compliance has been made by the respondents as the applicants failed to implead officers of the DoT by name in the CP as party-respondents, but have acted promptly after receipt of information furnished by the BSNL with regard to the interim order and compliance order has been passed much prior to the order of this Tribunal dated 25.1.2011 by way of issuing adhoc promotion after granting relaxation as discussed hereinabove on 22.12.2010 *whereas this order has been* passed on 25.1.2011. Thus, in our considered view, the respondents have substantially complied with the direction issued by this Tribunal



and no case of contempt is made out. Consequently, the Contempt Petition is dismissed and notices issued are hereby discharged.

14. The OA as well as CP and Misc. Applications shall stand disposed of in the aforesaid terms with no order as to costs.

(ANIL KUMAR)  
Admv. Member

(JUSTICE K.S.RATHORE)  
Judl. Member

R/

copy given vide  
no- 6918692  
19/5/11  
Z