

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

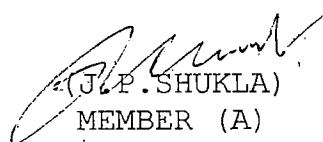
26.11.2007

OA 433/2002 with MA 424/2002

Mr. P.N. Jatti, Counsel for applicant.
Mr. T.P. Sharma, Counsel for respondents

In view of serial Bomb blasts in the Court premises of various cities in Uttar Pradesh, the Advocates have abstained the Court work.

Accordingly, the case is adjourned to
29.11.2007.


(J.P. SHUKLA)
MEMBER (A)

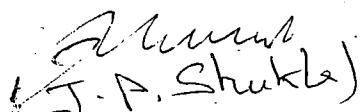

(M.L. CHAUHAN)
MEMBER (J)

AHQ

28.11.2007

Mr. P.N. Jatti, Counsel for applicant
Mr. T.P. Sharma, Counsel for respondents

Heard learned Counsel for the parties.
For the reasons dictated separately,
the OA is disposed of.


(J.P. Shukla)
M(A)


(M.L. Chauhan)
M(J)

AMUL

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No. 433/2002 with MA No. 424/2002.

Jaipur, this the 29th day of November, 2007.

CORAM : Hon'ble Mr. M. L. Chauhan, Judicial Member.
Hon'ble Mr. J. P. shukla, Administrative Member.

1. M. D. Pareek
S/o Shri Ganga Dhar Pareek,
Aged 62 years,
R/o D-B, P & T Colony, M.I. Road,
Jaipur.
2. Bhola Ram,
S/o Shri Gauri Dutt,
Aged about 62 years,
R/o 1+B-50, Shiv Shakti Colony,
Sashtri Nagar,
Jaipur.
3. Ram Bux Sharma,
S/o Shri Chittarmal,
Aged about 62 years,
R/o A-36, Ram Kutir,
Shastri Nagar,
Jaipur.
4. Avdesh Kumar Agarwal,
S/o Shri Kishori Lal Agarwal,
Aged about 64 years,
R/o 867, Tilwala House,
Geen Mata Ki Gali, Rasta Gopalji,
Jaipur.
5. Abdul Gaffoor
S/o Shri Lal Mohd.
Aged about 61 years,
R/o C/o Gulam Mohammed, 69,
Krishna Nagar, Near Kanta, Kalwar Road,
Jaipur.
6. Ram Dayal Sharma
S/o Shri Pyare Lal,
Aged about 65 years,
R/o 1-Kha-10, Housing Board,
Shastri Nagar, Jaipur.
7. R. S. Sharma
S/o Shri N. L. Sharma,

Aged about 64 years,
R/o D-244, Prem Nagar, Jhotwara,
Jaipur.

8. Ram Gopal Sharma,
S/o Shri Vijay Lal Sharma,
Aged about 64 years,
R/o Govind Bhawan, Opp. E.S.I. Disp. No.4,
Ajmer Road, Jaipur.

9. M. K. Jain,
s/o Shri Kastur Chand Jain
aged about 63 years,
R/o 1255, Jhalanaion Ka Rasta,
Kishan Pole Bazar,
Jaipur.

10. S. K. Bhatt,
S/o Shri P. Bhatt,
Aged about 61 years,
R/o 52, Gatore Road,
Brahmpuri, Jaipur.

11. N. C. Vijay
S/o Shri Har Sahai,
Aged about 62 years,
R/o D-75, Nehru Nagar,
Jaipur.

12. Gopal Lal Chaudhary
S/o Shri R. S. Chaudhary,
Aged about 63 years,
R/o 852, Ram Nagar,
Shastri Nagar, Jaipur.

13. Hem Raj Paliwal,
S/o Shri K. M. Paliwal,
Aged about 62 years,
R/o 44/223, Rajat Path, Mansarovar,
Jaipur.

14. Yashpal Sharma,
S/o Shri C. D. Sharma,
Aged about 64 years,
R/o 133, Kanwar Nagar,
Chandi Ki Taksal,
Jaipur.

15. Pooran Singh,
S/o Shri Gapat Singh,
Aged about 65 years,
R/o 33, Santaji Marg,
Opp. Pondrick Park, Brahmpuri Road,
Jaipur.

16. Jai Ram B. Khatwani,

S/o Shri Bhura Mal Khatwani,
 Aged about 64 years,
 R/o 7-Ga-26, Jawahar Nagar,
 Jaipur.

... Applicants

By Advocate : Shri P. N. Jatti.

Vs.

1. Union of India,
 Through its Secretary
 To the Govt. of India,
 Department of Telecom,
 Sanchar Bhawan, New Delhi.
2. Chief General Manager,
 Telecom, Rajasthan Circle,
 Jaipur-B.
3. Principal General Manager,
 Telecom District,
 Jaipur-10.
4. Shri B. K. Sharma,
 O/o General Manager Telecom,
 Sriganganagar (Raj.)

... Respondents.

By Advocate : Shri Tej Prakash Sharma.

: O R D E R (ORAL) :

The applicants have filed MA No.424/2002 thereby praying for joining together. In view of the averments made in the MA, applicants are permitted to file joint OA. MA stands allowed.

2. The applicants have filed this OA thereby praying for the following reliefs :-

"8.1 That by a suitable writ/order or direction the respondents be directed to allow all the benefits as

BCR 10% in the pay scale of 2000-3200 with effect from 24.12.1990 on which this benefit was allowed to their junior Shri B. K. Sharma, further the respondents be directed to issue the order for fixation as pay and payment of all the arrears with reasonable interest.

8.2 Any other relief which the Hon'ble Bench deems fit."

3. Briefly stated, the facts of the case are that the applicants have retired as Chief Section Supervisor/Senior Section Supervisor from the office of General Manager Telecom, District Jaipur. Their grievance is that one of their junior, Shri B. K. Sharma has been promoted to Grade-IV in the scale of Rs.2000-3200 against 10% posts in the BCR Scheme, ignoring their claims. Feeling aggrieved, they have filed OA No.330/1999 before this Tribunal. The said OA was disposed of by this Tribunal with a direction to the respondents to decide the issue in regard to promotion under 10% quota of the BCR Scheme in respect of the applicants and other similarly situated persons within four months from the date of receipt of a copy of the order. Accordingly, the applicants made representation dated 25.06.2001, which was examined by the BSNL authorities and the same was rejected vide impugned order dated 24.09.2001 (Annexure A/1). It is this order which is under challenge in this OA and they prayed for the aforesaid reliefs.

4. Notice of this application was given to the respondents. Respondents have filed reply. By way of

preliminary objection, respondents have stated that this Tribunal has got no jurisdiction to entertain this OA in view of the decision rendered by this Tribunal in OA No.486/2002. On merit, it was stated that the applicants are not entitled for the benefit of BCR Grade-IV w.e.f. 24.12.90 on which date this benefit was allowed to their Junior Shri B. K. Sharma. It is stated that when the BCR Scheme was introduced in the year 1990, the promotion to BCR Grade-IV was allowed amongst the officials of Grade-III based on their inter-se seniority in Grade-III. It is further stated that this action of the respondents was challenged by some of the officials by filing an OA No.1455/91 before the CAT Principal Bench, New Delhi and the CAT, PB, vide order dated 7.7.92 directed that promotion to 10% post in the BCR Scale of Rs.2000-3200 Grade-IV would have to be based on seniority in the basic cadre and not on the basis of seniority in Grade-III. This order of the PB was also affirmed by the Hon'ble Apex Court. Accordingly, the DOT vide letter dated 13.12.95 superseded its earlier instructions and directed that the promotion to BCR Grade-IV will be given based on the seniority in basic grade subject to other conditions. Consequent upon the directions issued by the DOP vide letter dated 13.12.95, the DOT vide subsequent letter dated 30.12.1999 decided to revert those officials who were given BCR grade based on the Grade-III seniority. These instructions were again challenged before the CAT, PB, New Delhi, by filing OA No.425/2000

and the CAT, PB, quashed the instructions dated 30.12.99 vide order dated 2.6.2000. The decision of the CAT, PB, was challenged before the Apex Court and the Hon'ble Apex Court upheld the decision rendered by the CAT, PB and further held that withdrawal of the scale to those persons who are senior based on Grade-III seniority pursuant to instruction dated 30.12.99 are wrong and they were allowed to draw that scale. Thus, according to respondents, the applicants are not entitled to the revised scale even on merit as Shri B. K. Sharma was admittedly senior to the applicants in Grade-III seniority and he was allowed the BCR in Grade-IV scale as per the instructions prevailing at that time. The concept of granting Grade-IV scale to 10% post in Grade-IV as per BCR scheme based on base grade seniority came into force w.e.f. 13.12.1995 when the instructions to that effect was issued which cannot be made applicable retrospectively. As such, the applicants are not entitled to any benefit and order Annexure A/1 was rightly passed thereby rejecting the claim of the applicants.

5. We have heard the Learned Counsel for the parties. We are of the view that since the respondents have raised a preliminary objection regarding maintainability of this OA on account of jurisdiction, as such, the said question has to be decided first. The matter on this point is no longer res-integra. The respondents in their reply have

placed reliance on the decision of this Bench in the case of Sarbati Devi vs. UOI & Ors., in OA No.486/2002 decided on 28.11.2002, the relevant portion of which is reproduced herein below :-

" It is noticed that the impugned order has been issued by Bharat Sanchar Nigam Limited (BSNL), which is not one of the departments of the Government. It is a registered company. The Tribunal can exercise power under Section 14 of the Administrative Tribunals Act, 1985 (for short, the Act) on the service matters concerning a person appointed to any civil service of the union or any civil post under the Union.

Since the impugned order has been issued by BSNL, it is evident that the applicant, if at all was in service, was in part-time service of the BSNL Company and not in a office of the Central Government. This Tribunal does not have jurisdiction to entertain this matter under Section 14 of the Act.

It is significant to point out that BSNL has not been included in the order dated 17.12.98, wherein the Tribunal has been empowered to hear service matter of the employees of the Corporations/Societies or other authorities.

Since the Tribunal does not have jurisdiction to entertain this matter, it is directed that the OA may be returned to the applicant for presentation to the proper court, after the applicant files certified copies of the OA and the documents."

The matter is squarely covered by the decision rendered by this Bench in the case of Sarbati Devi (supra) as in the present case also the grievance of the applicants is regarding Annexure A/1 which order has been passed by the BSNL authorities. Accordingly, we held that this Tribunal has got no jurisdiction to entertain the matter. At this stage, it will be useful to quote the decision of the Delhi High Court (DB) in the case of

10

Ram Gopal Verma vs. Union of India (Delhi), reported in 2001 (7) SLR 693. In that case also the provisions of Section 14 and 14(2) of the Administrative Tribunals Act, 1985 were involved and the question which came up for consideration before the Hon'ble High Court was whether the CAT's jurisdiction extended to Mahanagar Telephone Nigam Limited (MTNL) also. Their Lordships of the Hon'ble High Court after relying on the decision of the Apex Court in the case of A. P. State Electricity Board v. M. A. Hai Azami, 1992 (6) SLR 167 (SC) and after noticing the aforesaid provisions of AT Act held that the employees retention of lien on a post in the parent department was irrelevant for the purpose of jurisdiction and what is important is whether the relief sought relates to the parent department or the borrowing corporation. In the present case, the applicants are claiming benefit under BCR Scheme w.e.f. 14.12.1990. At this stage, it may be stated that w.e.f. 1.10.2000, Government of India has decided to transfer all assets and liabilities to BSNL vide OM dated 30.09.2000. Thus, its successors' company shall be responsible for all assets and liabilities ^{even} in respect of the claim which pertains prior to 1.10.2000. As can be seen from Clause 3 (iii) of OM dated 30.09.2000, the book value of the assets comprising the business being transferred to the Company has been provisionally assessed as Rs.63,000 crores and the said sum was treated as provisional value of the business being transferred to and taken over by

the Company subject to finalization of transfer value by 31.3.2001 in consultation with Ministry of Finance. As can be seen from OM dated 30.09.2000 all the business of the department of Telecom services and the Department of Telecom Operation was transferred to BSNL which is a company. The government had only retained the functioning policy, formation, licensing, wireless spectrum, management and administration control etc. It was for that reason that even the past liability in respect of the employees who have retired from the department of telecom services were to be borne out by the BSNL. That is why the impugned order Annexure A/1 came to be passed by the BSNL authorities. Thus, according to us, the matter pertains to BSNL which is a company and the applicants are aggrieved of the order passed by the BSNL authorities, this Tribunal has got no jurisdiction to entertain the matter in the absence of notification under Section 14 (2) of the Administrative Tribunals Act, 1985.

6. Accordingly, the OA is disposed of as this Tribunal has got no jurisdiction to entertain the matter. Registry is directed to return the copy of the OA to the applicant for the purpose of presentation of the same before the appropriate authorities by retaining one copy with them.

Shukla
(J. P. SHUKLA)
ADMINISTRATIVE MEMBER

Chauhan
(M. L. CHAUHAN)
JUDICIAL MEMBER