

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 27.07.2004

Original Application No.306/2003.

Babu Lal Meena S/o Shri Moolchand Meena, by caste Meena, aged about 42 years, resident of Sector No.11, House No.533, Malviya Nagar, Jaipur.

... Applicant.

v e r s u s

1. Union of India through its Secretary, Department of Communication, Ministry of Telecommunication, Sanchar Bhawan, New Delhi.
2. Chairman-cum-Managing Director, B.S.N.L., Statesman Building, New Delhi.
3. Senior D.D.G. (Electrical Works), Chandralok Building, 10th Floor, Janpath, New Delhi.
4. Joint Dy. Director General (Electrical Works-QC), B.S.N.L., Chandralok Building, 10th Floor, Janpath, New Delhi.

... Respondents.

Mr. Rajendra Soni counsel for the applicant.

Mr. H. C. Bairwa Proxy counsel for

Mr. Bhanwar Bagri counsel for respondent No.1.

Mr. Tej Prakash Sharma counsel for respondent No.2 to 4.

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Hon'ble Mr. M. L. Chauhan, Judicial Member.

: O R D E R (ORAL) :

The applicant who was working as Assistant Engineer (Electrical) and a permanent employee of the Department of Telecom and thereon deputation with Bharat Sanchar Nigam Limited (BSNL, for short) was transferred from Jaipur to Shimla vide order dated 24.10.2002. Feeling aggrieved by the said order, he filed OA No.104/2003 in this Tribunal which was disposed of at admission stage vide order dated 12.03.2003 without notice to the respondents and in the operative portion of the order it was observed that the applicant shall file representation to Respondent No.1 alongwith a copy

of this order with copies to Respondent Nos.3 & 4 for information and by Speed Post within 2 weeks from today. In that event, the respondent No.1 was directed to consider the case of the applicant and dispose of his representation through a speaking order within four weeks from the date of its receipt. Persuant to the directions given by this Tribunal it appears that respondent No.1 forwarded the representation of the applicant to the BSNL, as Officers upto SAG level Posts is dealt by the PSU BSNL under DOT. Vide order dated 28.04.2003 (Annexure A-2), BSNL Authority rejected the representation of the applicant thereby stating that the request of the applicant for posting at Jaipur could not be considered since there is no vacancy available in Jaipur and stay of the applicant in Rajasthan Circle was more than 16 years. It was further mentioned in that order that the request of the applicant for transfer to Jaipur cannot be considered at this stage also as the applicant has not completed the two years tenure at Shimla.

2. Based upon this order passed by the BSNL Authorities, Ministry of Communications & Information Technology, Department of Telecommunications, vide order dated 12.05.2003 (Annexure A-1) rejected the representation of the applicant thereby stating the same reasons which resulted into the rejection of the representation of the applicant vide order dated 28.04.2003 (Annexure A-2). It is these orders which are under challenge before this Tribunal.

3. When the matter was listed for hearing, learned counsel for the respondents has brought the attention of this Tribunal to the order No.32-8/2003-EW/178 dated 23.02.2004 whereby the applicant has been permanently absorbed in BSNL w.e.f. 01.10.2000 (forenoon). Thus, according to the learned counsel for the respondents this Tribunal has got no jurisdiction to entertain the matter in view of the decision rendered by the Full Bench in the case of B. N. Sharma & Ors. vs. Union of India & Ors. passed on 24.03.2004 in OA No.401/2002 &

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4. On the contrary, learned counsel for the applicant had raised twofold submissions in support of the contention that this Tribunal has jurisdiction to decide the matter. Learned counsel for the applicant submits that when the original order dated 24.10.2002 (Annexure A-3) was passed and also subsequent orders dated 28.04.2003 (Annexure A-2) and 12.05.2003 (Annexure A-1), respectively were passed, the applicant was not the employee of BSNL but he was permanent employee of Department of Telecommunications on deputation with BSNL, as such, this Tribunal has got jurisdiction to entertain the matter. According to learned counsel for the applicant, the order of absorption of the applicant as Assistant Engineer (Electrical) in BSNL was issued on 23.02.2004 though antedating the same w.e.f. 01.10.2000, as such the action under challenge pertains to the period when no such order regarding his absorption in BSNL was passed by the competent authority. As such this Tribunal has got jurisdiction.

4.1. Learned counsel for the applicant has further argued that the impugned order dated 28.04.2003 (Annexure A-2) was passed by the BSNL authorities in regards to the direction issued by this Tribunal in earlier OA whereby it was the Respondent NO.1 who was directed to decide the representation. As such it is this Tribunal who has got the jurisdiction to entertain the matter as the order Annexure A-2 has been passed in total dis-regard to the order passed by this Tribunal. Though the submissions made by the learned counsel for the applicant is attractive but I am of the view that this Tribunal has got no jurisdiction to decide the matter.

5. Admittedly, the applicant who was initially a permanent employee of Department of Telecommunications has been permanently absorbed in BSNL w.e.f. 01.10.2000 vide order dated 23.04.2004. As such for all intents and purposes including pensionary benefits he shall be

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deemed to be a permanent employee of Department of Telecommunications upto 31.09.2000. Thus, he cannot be said to be an employee of Department of Telecommunications after 01.10.2000. If it is so, this Tribunal has got no jurisdiction to entertain the matter in view the decision rendered by the Full Bench in the case of B. N. Sharma (supra) whereby it has been clearly stated that even if BSNL is a Government company, necessarily there has to be a notification issued under sub-section (2) to Section 14 before this Tribunal will have jurisdiction to deal with these matters. Since admittedly no such notification has been issued, this Tribunal has no jurisdiction power and authority to entertain the matter regarding the employees of BSNL.

6. That apart, the applicant is aggrieved by the order of transfer dated 24.10.2002 (Annexure A-3). This order of transfer has been passed by the BSNL Authority. Even on this ground, it will not be legally permissible for this Tribunal to entertain the OA regarding the order passed by the BSNL Authority. No doubt it is true that pursuant to the order passed by this Tribunal in the earlier OA, Respondent No.1, i.e. the Secretary, Department of Communication, Ministry of Telecommunications, was directed to decide the representation of the applicant regarding his transfer from Jaipur to Shimla. But from the material placed on record it is clear that the representation of the applicant was forwarded to the BSNL as according to Respondent No.1, Officers upto SAG level post is dealt with PSU BSNL under DOT and the said representation was rejected by the BSNL Authority vide impugned order dated 28.04.2003 (Annexure A-2). Since this Tribunal has given directions to Respondent No.1 to decide the representation, the Respondent No.1 has acted upon the reasons given by the BSNL Authority while rejecting the representation of the applicant passed fresh order dated 12.05.2003 (Annexure A-1). Thus, passing of the order dated 12.05.2003 (Annexure A-1) by the Ministry of Communication and Information Technology, Department of Telecommunications, will not confer the jurisdiction on

this Tribunal as the main grievance in this OA is regarding transfer of the applicant from Jaipur to Shimla, which order has been passed by the BSNL authorities. The representation pursuant to the order passed by this Tribunal in earlier OA was also rejected by the BSNL Authorities and subsequently the Department of Telecommunications has also passed fresh order Annexure A-1 reiterating the reasons given by the BSNL authorities.

7. Thus according to me this Tribunal has got no jurisdiction to entertain the matter simply because at one time this Tribunal has entertained the petition and have the jurisdiction and as such this OA will not confer the jurisdiction to decide the matter when at the time of decision of this case, the jurisdiction of this Tribunal has been ousted. Further there is no provision in the Administrative Tribunals Act that the matter which has been entertain and regarding which this Tribunal may have jurisdiction shall be decided by this Tribunal irrespective of absorption of the employee in BSNL from the prior date.

8. The view which I have taken is also fortified by the decision of the Bombay High Court in the case of BSNL vs. A. R. Patil and Ors., 2003 (1) SLR 386 where the similar controversy as in the instant case was involved and the following observations was made by the Bombay High Court :-

" From the above it will be abundantly clear that the respondents are employees of BSNL and they being officers shall continue to be subject to all rules and regulations as are applicable to Government servants. These clauses clearly meant that they will be employees of BSNL and BSNL will have the right to transfer them as employees but that transfer will be subject to the rules and regulations that are applicable to the Government of India. Even the employees have contended in the transfer applications that their transfers are against P and T Manual. In para 7 of the memorandum it is very clearly observed :

"(vii) The management of Bharat Sanchar Nigam Limited shall have full powers and

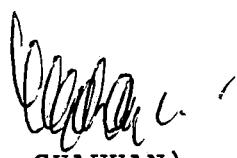
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authority to effect transfers of all the staff at all levels working under it."

In the face of this the Tribunal could not have held that it has the jurisdiction.

12. There is yet another aspect which has to be looked into and that is taking judicial notice of Government decisions known to have been taken and acknowledged by authorities judicial and quasi judicial decisions to convert the department of Telecommunications into BSNL was made publicly. It was known to one and all. Existence of BSNL is a fact of which judicial notice can be taken and has been taken by the Central Administrative Tribunal in its Calcutta Bench as also its Bombay Bench while dealing with two different cases. Once its therefore recognized and acknowledge by the Tribunal itself that BSNL is a legal entity it has become into existence. The Tribunal should have resisted exercise of jurisdiction. It should have avoided unwarranted exercise of jurisdiction in transfer matters."

9. Accordingly, I am of the view that this Tribunal has got no jurisdiction to entertain the matter and OA shall stand disposed of. Registry is directed to return the Case File to the applicant by retaining one copy with them.


(M. L. CHAUHAN)

MEMBER (J)