FORM No. 4
(SEE RULE 12)
CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ORDER SHEET

Org.App./MiscPetn/Cont.Petn/Rev.Appl....7/04.....

In O.A..110/03.....

Name of the Applicant(s) Bharat Sanchar Nigam Ltd.....

Name of the Respondent(s)....Sujit Das.....

Advocate for the Applicant .B.C. Pathak, Add. GASC.....

Counsel for the ~~Railway~~/CGSC....Miss U. Das.....

OFFICE NOTE	DATE	ORDER OF THE TRIBUNAL
This Review petition has been filed by the Counsel for the Union of India for u/s 22(3)(f) of the C.A.T Act, 1985 and Rule 17 of the C.A.T Procedure Rules, 1987 for the review order of the order dt 19.3.2004 passed in O.A No. 110/03 by this Hon'ble Tribunal. Laid before the Hon'ble Court for further orders. bb Section Officer 30/7/04	27.7.2004 bb 2.8.2004 mb 24.8.2004	List the case on 2.8.2004 along with M.P.62/2004. Member (A) List on 24.8.2004 alongwith M.P. 62/2004. Member (A) present: The Hon'ble Shri D. C. Verma, Vice-Chairman (J). The Hon'ble Shri K.V.Prahladan, Member (A). List the case before the appropriate Bench on 6.9.2004 alongwith M.P.62 of 2004. Member (A) Vice-Chairman

R.A. 7/2004

16.02.2005 Present : The Hon'ble Mr. M.K. Gupta, Judicial Member.

Adjourned to 22.02.2005.

Member (J)

mb

22.02.2005 Present : The Hon'ble Mr. K.V. Prahladan, Member (A).

On the plea of learned counsel for the applicant list on 9.3.2005.

Member (A)

mb

11.3.05. Present: Hon'ble Mr.K.V.Prahladan, Member(A).

On the plea of learned counsel for the Respondents case is adjourned to 29.4.05 for filing written statement and further orders.

Member(A)

lm

29.4.2005 At the request of Mr. B.C. Pathak learned counsel for the respondents the case is adjourned. Lost on 11.5.2005.

Vice-Chairman

mb

11.5.2005 Mr.D.Barua, learned counsel appearing on behalf of Mr.B.C.Pathak, learned counsel for the applicant seeks time. post on 25.5.2005.

Vice-Chairman

bb

R.A.7/2004

Office Notes	Date	Order of the Tribunal
	25.5.2005	The case is adjourned to 8.6.2005. Member bb
14-6-05 No c/ws has been filed	8.6.05	Since the jurisdiction aspect regarding maintainability of the application against the BSNL as respondent is raised in this application, I am of the view that the matter must be ~~xxxxx~~ heard by the Division Bench. Post on 16.6.2005 before Division Bench. Vice-Chairman pg
	16.6.05	After hearing the counsel for the parties at some length on the question of preliminary jurisdiction we feel that the parties have not placed all the relevant records before us. In the circumstances we direct the parties to file all the relevant papers, memoranda [illegible] of the Central Government and the BSNL for a proper consideration of the question of jurisdiction. Post on 22.7.2005 for hearing. Member Vice-Chairman pg

R.A.7/2004

22.7.2005 Since Mr.B.C.Pathak, learned counsel for the BSNL is unwell post on 10.8.2005.

Member Vice-Chairman

bb

10.8.2005 Post this case on 16.8.2005 at 2.30 P.M.

Member Vice-Chairman

mb

16.8.05. Mr.B.C.Pathak, learned counsel appearing on behalf of BSNL submits that he is not well and requires time to fully recover. Therefore, all these matters has to be adjourned to another date.

Post the matter on 22.11.05.

Member Vice-Chairman

lm

22.11.2005 Post before the next Division Bench.

Vice-Chairman

mb

2.1.2006 Heard learned counsel for the parties. Order passed in separate sheets. The R.A. is allowed.

Member Vice-Chairman

mb

17.1.06

Copy of the order has been sent to the office for issuing the same to the ~~applicants~~ advocates for the parties.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

R.A. No. 7/2004

DATE OF DECISION: 02.01.2006.

Bharat Sanchar Nigam Limited — APPLICANT(S)

Mr. B.C. Pathak — ADVOCATE FOR THE APPLICANT(S)

- VERSUS -

Shri Sujit Das — RESPONDENT(S)

Mr. S. Sarma, Ms. B. Devi — ADVOCATE FOR THE RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE Mr. N.D. DAYAL, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.

.....

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Review Application No. 7/2004 In O.A. No. 110/2003

Date of Order : This the 2nd January 2006.

The Hon'ble Mr. Justice G. Sivarajan, Vice-Chairman.
The Hon'ble Mr. N.D. Dayal, Administrative Member.

Bharat Sanchar Nigam Ltd.

. . . Petitioner/Respondent

By Mr. B.C. Pathak, Advocate

- Versus -

Shri Sujit Das

. . . Opposite Party/Applicant

By Advocates Sri S. Sarma, Ms. B. Devi

. . . . .

ORDER (ORAL)

SIVARAJAN. J. (V.C.)

The Bharat Sanchar Nigam Limited (BSNL for short), being aggrieved by the order dated 19.03.2004 passed by this Tribunal in O.A. 110/2003, has filed this Review Application stating that this Tribunal has no jurisdiction to entertain applications seeking relief against BSNL. Mr. B.C. Pathak, learned counsel for the BSNL, in support has relied on a Division Bench decision of the Hon'ble Gauhati High Court rendered in W.P. (C) 1603/2004 and connected cases. Ms. B. Devi, learned counsel for the applicant in the O.A. submits that the Division Bench decision of the High Court applies to the present case.

2. A Division Bench of the Gauhati High Court in W.P. (C) No. 1603/2004 and connected cases decided on 28.09.2005 has held that in the absence of a notification under Section 14(2) of the Administrative Tribunals Act 1985 this Tribunal has no jurisdiction over matters relating to BSNL. Admittedly, there is no such notification. In the circumstances, we allow this Review Application and set aside the order dated 19.03.2004 passed in O.A. No. 110/2003 and dismiss the said O.A. as without jurisdiction. We make it clear that this will not preclude the applicants in the O.A. from pursuing his remedies before the appropriate forum.

(N. D. DAYAL)
ADMINISTRATIVE MEMBER

(G. SIVARAJAN)
VICE CHAIRMAN

/mb/

Filed by
Advocate
12/7/04

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

REVIEW APPLICATION No. 7 of 2004
In O.A. No. 110/2003

Bharat Sanchar Nigam Ltd. ... **Petitioner/Respondents**

-vs-

Shri Sujit Das ... **Opposite party/Applicant**

In the matter of:

An application under Section 22(3)(f) of the Central Administrative Tribunal Act, 1985 and Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 for review of the order dated 19.3.2004 passed in O.A. No.110/2003 by this Hon'ble Tribunal.

The application of the above named petitioner/respondents -

MOST RESPECTFULLY SHEWETH:

9

1. That the Opposite Party/ Applicant (referred to as the OP) filed the O.A. No. 110/2003 in this Hon'ble Tribunal seeking grant of temporary status under the Casual Labour (Grant of Temporary Status and Regularization) Scheme of the Department of Telecommunications, 1989 with retrospective effect from 1992 with all arrears of pay and also seeking regularization of his service from 1995.

2. That the Petitioners, as Respondents contested the case by filing their written statements in the case and stated that the applicant/OP could not fulfil the required criteria of the Scheme of 1989 and as a result he was duly informed about the decision and finding of the verification committee.

3. That this Hon'ble Tribunal was pleased to pass the final order in the case on 19.3.2003 after hearing both the parties and allow the application in favour of the applicant. By the order-dated 19.3.2004, this Hon'ble Tribunal directed the respondents to re-engage the applicant as casual worker and to consider his case for grant of temporary status and regularization as per the Scheme since the applicant was eligible for temporary status on 1.8.1998.

But the Hon'ble Tribunal did not consider the submission of the respondents and evidence available on records that the applicant was not

currently in engagement in service as required under the scheme and also he was not in engagement after 1993 to 1998 (only 1 day engagement in the year 1998) and thereafter onwards.

The copy of the order-dated 19.3.2004 passed in OA No.110/03 is annexed as the ANNEXURE-R1.

4. That after the judgment dated 19.3.2004, the copy of the judgment was ready for the petitioner by 24.3.2004 and ultimately the copy of the order was received by the Department and the Department took some time to decide on the matter as to whether could be implemented or should be taken up for judicial review in the next higher court. The Department ultimately decided to go for judicial review in the High Court and handed over the brief to their Advocate for taking steps. But the Advocate of the petitioner suggested the Department to file a review petition before approaching the Hon'ble High Court. In the process, there has been some delay in moving the files from various channels and official hierarchy. Accordingly, this review application has been filed in this Hon'ble Tribunal.

5. That in this connection, the petitioners beg to state that while the OA No. 110/2003 was pending final disposal, the different Benches of this Hon'ble Tribunal held that the CAT has no jurisdiction over the BSNL, the newly created

company under the Companies Act, 1956 as there is no notification issued by the Central Govt. as required under Section 14(2) of the CAT Act, 1985. Some of the decisions holding that the CAT has no jurisdiction over the BSNL are passed in OA No. 198/2001 (Calcutta Bench), OA No. 811/2002 (Ernakulam Bench), OA No. 1425/1998 (Calcutta Bench), CP No. 175/2003 (Allahabad Bench), CP No. 6/2004 (Guwahati Bench) and CP No. 36/2003 etc.

The decision passed on 24.3.2004 also decided the common question in a series of cases (OA 401/2002 series of Jaipur Bench) as to whether CAT has jurisdiction over BSNL. This constituted larger Bench of Three Members held that for the employees of BSNL in the Group B, C and D, the CAT does not have jurisdiction as there has been no notification as required under Section 14(2) of the CAT Act, 1985. Moreover, the CAT Guwahati Bench is bound to follow the law laid down by the Supreme Court in *State of UP & another -vs- Synthetics and Chemical & another* [1991(4) SCC 139].

In view of the above legal position, the CAT would not have passed the order-dated 19.3.2004 in the above case by taking judicial notice of the above decisions. Therefore, it is a fit case for review of the said order dated 19.3.2004. The petitioner, in spite of their due diligence and care could not place the aforesaid decision at the time of hearing.

Copies of the order passed in OA No. 198/01, 811/02, 1425/98, CP No. 175/03, CP No. 6/04, CP No. 36/03 and OA No. 401/02 (series) are annexed hereto as Annexure R2 series.

6. That the petitioners prefers this review application amongst others on the following:

GROUNDS

(i) For that the Hon'ble CAT does not have jurisdiction over the BSNL as BSNL has not been notified by the Govt. as required under Section 14(2) of the Cenral Administrative tribunal Act, 1985 and hence the order dated 19.3.2004 passed in OA No. 110/2003 requires to be review and the OA is to be dismissed for want of jurisdiction.

ii) For that under the facts and circumstances of the case and the provisions of the Scheme of 1989, the OP/ Applicant is also otherwise not entitled to re-engagement and/or conferment of temporary status and or for regularization in the establishment of the BSNL as he wan not currently in engagement as required under the scheme of 1989 and hence, the OA No. 110/03 is liable to be dismissed and the order dated 19.3.2004 is liable to be recalled and set aside.

iii) For that in any view of the matter and the provisions of law the OP applicant is not

entitled to any relief in the OA No. 110/2003 and the order dated 19.3.2004 is liable to be set aside.

7. That if the Hon'ble Tribunal does not consider this application and recall the order dated 19.3.2004, the petitioners would suffer irreparable loss and injuries which may amount to mis-carriage of justice.

8. That there has been some delay in filing the Review Application. The delay so caused is beyond the control and authority of the petitioners and the same could not be avoided at any rate. The delay has been explained and a separate petition for condonation of delay has been filed in the Hon'ble Tribunal.

9. That this petition has been made bonafide and for proper adjudication of the matter.

In the premises aforesaid, it is therefore, prayed that Your Lordships would be pleased to issue notice to the OP, call for the record and after hearing the parties and perusing the records, may further be pleased to recall and set aside the order dated 19.3.2004 passed in OA No.110/2003 and dismiss the OA No. 110/2003 for want of

jurisdiction and/or pass such further or other order that Your Lordships may deem fit and proper.

And for this act of kindness, the petitioners as in duty bound shall ever pray.

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A F F I D A V I T

I, Shri Shankar Chandra Das, son of late Gopi Ram Das, aged about 57 years, resident of Telecom Officers Colony, Chenikuthi Hill Side, Guwahati-3, District- Kamrup (Assam), at present I am working as the Assistant Director Telecom (Legal) in the Office of the Chief General Manager, Assam Circle of M/s. Bharat Sanchar Nigam Limited, Ulubari, Guwahati-7 do hereby solemnly affirm and state that the statements made in the application in para 1, 2, 4 and 6 are true to my knowledge and belief, those made in para 3 and 5 being matter of records, are true to my information derived therefrom and the rest are my humble submission. I have not suppressed any material fact of the case.

And I sign this affidavit on this 12 th day of July, 2004 at Guwahati.

Identified by me:

Shankar Chandra Das
Deponent

Advocate

Solemnly affirmed and signed before me by the deponent who is identified by Sri B.C. Pathak, Advocate on this 12th day of July, 2004 at Guwahati.

Advocate

ANNEXURE : R1

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No.110 of 2003.

Date of Order : This the 19th Day of March, 2004.

The Hon'ble Mr K.V.Prahladan, Administrative Member.

Shri Sujit Das,
S/o Late Ananta Das,
Casual Mazdoor, under Sub-Divisional Officer,
Haflong. ...Applicant

By Advocate Miss Usha Das.

- Versus -

1. The Union of India,
represented by Secretary to the
Govt. of India,
Ministry of Communication,
Sanchar Bhawan, New Delhi.

2. The Chief General Manager, Telecom,
Assam Circle, Ulubari,
Guwahati.

3. The General Manager, Telecom,
Silchar SSA, Silchar-1.

4. The Sub-Divisional Officer, Telecom,
Haflong. ...Respondents

By Sri A.Deb Roy, Sr.C.G.S.C.

O R D E R (ORAL)

K.V.PRAHLADAN,MEMBER(A)

The applicant Sri Sujit Das joined the Telecom Department as a casual worker in 1987 and he continued as such till 1998. As per the letter issued by B.S.N.L dated 1.10.2001 in Annexure-9 since he has completed 240 days he is eligible for grant of temporary status in terms of "Casual Labourers (Grant of Temporary Status and Regularisation) Scheme 1989".

2. Heard Miss Usha Das, learned counsel for the applicant and Mr A.Deb Roy, learned Sr.C.G.S.C. for the respondents. Mr Deb Roy submitted that the applicant was not in engagement since 1993 and therefore no question of regularisation can arise.

3. Considering the facts and circumstances of the case, the respondents are directed to re-engage the applicant as casual worker and consider his case for grant of temporary status and regularisation as per the scheme, since he was eligible for temporary status on 1.8.1998. The applicant is not eligible for any backwages, he will not be eligible to claim any arrears of pay and allowances. The above direction shall be completed within three months from the date of receipt of this order.

The application is accordingly allowed. No order as to costs.

Sd/MEMBER(ADM)

Central Administrative Tribunal

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24/3/04

Section Officer (J)
C.A.T. GUWAHATI BENCH
Guwahati-781005

24/3

DOCUMENT - 6

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ANNEXURE : R2 Series

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. O.A. 198 of 2001

Present : Hon'ble Justice R.N. Roy, Vice-Chairman

Hon'ble Mr. S.P. Singh, Administrative Member

BISWANATH BANERJEE

VS.

UNION OF INDIA & ORS.

For the applicant : Mr. B.K. Mandal, counsel

For the respondents : Mr. M.S. Banerjee, counsel

Heard on : 1.3.2001 Order on : 1.3.2001

O R D E R

R.N. Roy, V.C.

Ld. counsel for both sides are present. This case is relating to the Department of Telecom which has now become a corporate body. Bharat Sanchar Nigam Limited is definitely a corporate body under the Government of India within the meanings of Article 12 of the Constitution. But that has not been notified till today and therefore, this court has no jurisdiction to entertain such petition.

2. Accordingly, the O.A. is disposed of at the stage of admission as 'not maintainable'. The applicant may approach the appropriate forum in respect of his grievances made in this O.A. No order as to costs.

MEMBER(A) VICE-CHAIRMAN

Advocate

ANNEXURE : A2

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No.811/2002

Thursday this the 28th day of November, 2002

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. T.N.T. NAYAR, ADMINISTRATIVE MEMBER

J.Sasisadharan Pillai,
S/o Janardhan Pillai
Staff No.3358, Senior Telecom Operating
Assistant (P), Telephone Exchange,
Elampalloor, Kundara
residing at Krishnavilasam Veedu,
Ambipoika, Kundara. ...Applicant

(By Advocate Mr.Vishnu S.Chempazhanthiyil)

V.

1. Assistant General Manager (Admn)
Office of the General Manager (Telecom)
District, BSNL, Kollam.

2. General Manager, Telecom District,
BSNL, Kollam.

3. The Director General,
Telecom Department, New Delhi.

4. Union of India, rep. by its
Secretary, Ministry of communications,
New Delhi.

5. K.M.Georgekutty
Senior TOA(P),
Telephone Exchange, Pathanapuram. ..Respondents

(By Advocate Mr. K. Kesavankutty, ACGSC - R1 - 4)

The application having been heard on 28.11.2002, the Tribunal on the same day delivered the following:

Contd...

92.

.2.

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE'CHAIRMAN

The applicant working as Senior Teleco Operating Assistant (P) under the Bharat Sanchar Nigam Limited (BSNL for short) has filed this application challenging the order dated 1.8.2002 by which the applicant's posting has been changed from Kundra to Pathanapuram, order dated 7.8.2002 (A6) by which the 5th respondent has been posted to Kundara and the A9 order dated 21.11.2002 by which his representation for retention at Kundara or at Kottiyam has been rejected. The applicant claimed that he being an ex-territorial army man he is entitled to a posting in a choice station and that the order turning down the request is unsustainable.

2. Shri K.Kesavankutty took notice for official respondents. He argued that the application may not be entertained as the applicant being an employee of the BSNL and as the BSNL has not been notified under the Administrative Tribunals Act, the Tribunal does not have jurisdiction. On the facts the counsel argued that the applicant having ceased to be a member of the territorial army in the year 1999 he is not entitled to any benefit and he supports the impugned order on the ground that it ...

3. We have considered the question of jurisdiction of the Tribunal to entertain this application. Since the applicant has been absorbed as an employee of the BSNL he is no more an employee of the Telecom Department. As the BSNL has not been notified under the Administrative Tribunals Act, this Tribunal cannot exercise jurisdiction in regard to service matters of such employees of BSNL. The applicant being one who has been absorbed we find that this Tribunal does not have jurisdiction to entertain this application.

4. In the result the application is rejected under Section 19(3) of the Administrative Tribunals Act.

Dated the 28th day of November, 2002

Sd/-
(T.N.T.NAYAR)
ADMINISTRATIVE MEMBER

Sd/-
(A.V.HARIDASAN)
VICE CHAIRMAN

DGM(M) GM7 0361-2661366

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In the Central Administrative Tribunal
Calcutta Bench

OA No.1425/96

19-9-2003

Present : Hon'ble Mr.S. Biswas, Member(A)

Makhan Lal Mazumdar

-Vs-

Telecom

For the applicant : Mr.B.Mukherjee, Counsel

For the respondents : Ms U. Sanyal, Counsel

ORDER

Heard both sides.

2. In this case, the applicant is a Group 'D' in the Telecommunication Department. Consequently, this is not within the jurisdiction of this Tribunal. Hence, as the Tribunal has no jurisdiction, the OA is ~~disposed of~~ dismissed. No costs. However, liberty is given to the applicant to approach the appropriate forum for redressal of the grievance.

Sd/-
Member(A)

(a) Sl No of the "Appln 1951
(b) Name of the applicant ...... Ms. S. Sanyal, Adv
(c) Dt. of presentation of application for copy 19.9.03
(d) No. of pages 02
(e) Copying fee charged urgent or ordinary ...... Free
(f) Dt. of preparation of copy 30/9/2003
(g) Dt. of delivery of the copy to the applicant 29.10.03

Certified to be true copy
Central Administrative Tribunal
Calcutta Bench

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

CIVIL MISC.CONTEMPT APPLICATION NO. 175 OF 2003

IN

ORIGINAL APPLICATION/DIARY NO.1605 OF 2002
ALLAHABAD THIS THE 30th DAY OF OCTOBER,2003

HON'BLE MAJ GEN K.K. SRIVASTAVA,MEMBER-A
HON'BLE MR. A. K. BHATNAGAR,MEMBER-J

1. R.A. Patel, Junior Telecom Officer.
2. Ram Swaroop, Line Man.
3. Mewa Lal, Telecom Technical Assistant.
4. Kamlesh Kumar Mishra, Regular Mazdoor.
5. Ram Sahivan Patel, Regular Mazdoor.
6. Shanker Lal, Regular Mazdoor.

All posted at Telephone Exchange Saraon, District-Allahabad.

7. Indrajeet, Phone Mechanic.
8. Avadh Rao, Phone Mechanic.
9. Ramesh Chandra, Phone Mechanic.
10. Saledeen, Regular Mazdoor.
11. Radha Devi, Regular Mazdoor.
12. Anoop Kumar, Regular Mazdoor.

All posted at Karchhana Telephone Exchange, District-Allahabad.

13. Raja Ram, Phone Mechanic,

Posted at Jasra Exchange, District Allahabad.

14. G.S. Singh, Junior Telecom Officer.
15. Madho Prasad, Phone Mechanic Posted at Dhoorpur, Telephone Exchange, Allahabad.

.....Applicants

(By Advocate Shri R.S. Singh)

1. Sri Prithvipal Singh,
   CMD, Bharat Sanchar Nigam Ltd.,
   New Delhi.

2. Sri V.K. Shukla,
   Chief General Manager, U.P. at Lucknow.

...............Respondents

(By Advocate ---------------)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

This Contempt Petition is filed against the officers of Bharat Sanchar Nigam Limited a newly constituted corporation. Since no notification under section 14(2) have been issued in respect of this newly constituted corporation i.e., B.S.N.L. This Contempt Petition is not maintainable before this Tribunal.

2. The legal position has been well settled in this regard by the Judgments of Division Bench of Hon'ble Delhi High Court in Ram Gopal Verma Vs. U.O.I. and Ors A.I.S.L.J. 2002(1) 352 and Hon'ble Bombay High Court in B.S.N.L. Vs. A.R. Patil and Ors.etc 2002 (3) ... 1.

3. In view of the above the contempt petition is rejected as not maintainable with liberty to the applicant to approach the appropriate forum.

S.d.

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Section Officer
Central Admn. Tribunal
Allahabad

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ANNEXURE : Q

Contempt Petition No.6 of 2004

Date of decision: This the 1st day of April 2004

The Hon'ble Shri Kuldip Singh, Judicial Member

The Hon'ble Shri K.V. Prahladan, Administrative Member

Shri Pankaj Borah,
S/o Late Baburam Borah,
Resident of Village- Bhakatgaon,
P.O.- Nabhanga, Golaghat, Assam. .....Petitioner

By Advocates Mr A. Dasgupta and
Mr S. Chakraborty.

- versus -

1. Shri Binod Kumar Mishra
General Manager
Telecom, Kamrup Telecom District,
Guwahati.
2. Shri Kamal Krishna Das
Divisional Engineer (ADmn),
Office of General Manager, Telecom,
Kamrup Telecom District,
Guwahati.

By Advocate Mr B.C. Pathak, Addl. C.G.S.C. .....Respondents

.....

O R D E R (ORAL)

KULDIP SINGH, JUDICIAL MEMBER

The petitioner has filed this Contempt Petition on 25.2.2004 whereas the order in the O.A. was passed on 26.8.2002. Even excluding the time for communication of this order and the time given for implementation of the order then also the Contempt Petition has become barred by limitation under the provisions of Section 20 of the Contempt of Courts Act. The respondents have taken another objection that the officers belong to the Bharat Sanchar Nigam Limited (BSNL for short), therefore, the Tribunal

has no jurisdiction. The learned counsel for the respondents even quoted a judgment of the Delhi High Court in Ram Gopal Verma Vs. Union of India and others, reported in 2002 (1) SLJ 352, wherein it was held that the Tribunal has no jurisdiction for a Public Sector Enterprise unless notification is issued under Section 14(2) of the Administrative Tribunals Act. The learned counsel for the respondents also referred to another judgment passed by the Allahabad Bench of the Tribunal in Civil Misc. Contempt Application No.175 of 2003 wherein also the contempt peititon was also filed against officers of the BSNL and since no notification have been issued in respect of the BSNL under Section 14(2) of the Administrative Tribunals Act, it was held that the Tribunal had no jurisdiction over the BSNL.

2. Following the aforementioned two judgments we also hold that this Tribunal has no jurisdiction over the BSNL and accordingly the Contempt Peition is dismissed.

Sd/MEMBER(J)

Sd/MEMBER(A)

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Section Officer (J)
C.A.T. GUWAHATI BENCH
Guwahati-781005

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Contempt Petition No.36 of 2003 (O.A.120/2001)

Date of Order : This, the 18th Day of June, 2004.

THE HON'BLE SMT. BHARATI ROY, JUDICIAL MEMBER.

THE HON'BLE SHRI K. V. PRAHLADAN, ADMINISTRATIVE MEMBER.

Sri Palesh Barman
S/o Sri Rohini Barman
Aged about 32 years, by occupation
Casual Labourer (Driver)
a resident of Barnaddi village
P.O: Belsor, P.S: Belsor in the
district of Nalbari, Assam. . . . . Petitioner

By Advocates Mr.R.K.Malakar, G.C.Deka & K.C.Sarma.

- Versus -

1. Sri S.K.Bhaduri
General Manager, Telecom
Kamrup District, Guwahati
from 17.8.2000 to 31.10.2002 and at present
Kolkata Telephones, Kolkata.

2. Sri M.K.Gogoi
General Manager, Telecom
Kamrup District, Guwahati- 7
from 31.10.2002 to 12.11.2002
and at present Guwahati Area Manager
(East), Dispur, Ulubari
Guwahati - 6.

3. Sri N.N.Benerjee
General Manager, Telecom
District Kamrup, Guwahati - 7
from 12.11.2002 to 22.1.2003 and at present
Senior Deputy Director General (Vigilance)
and General Manager (Dev) Office of the
Chief General Manager
Assam Telecom Circle, Guwahati-7.

4. Sri B.K.Mishra
General Manager, Telecom
Kamrup District, S.R.Bora Lane
Ulubari, Guwahati-7 since 22.1.2003 till date.
. . . . Respondents.

By Mr.B.C.Pathak, Addl.C.G.S.C.

Contd./2

21

28

ORDER

SMT.BHARATI ROY, MEMBER(J):

The petitioner, who was engaged as Casual Driver and was terminated from the post w.e.f.1.4.1999, filed the Original Application No.120 of 2001 assailing the order of termination and also sought for direction to regularise his service.

2. Vide order dated 4.9.2002 passed in the said O.A. this Tribunal opined that respondents need to take care of the situation and consider the case of the applicant against future vacancy of Group 'C' alongwith others on priority basis, if necessary by relaxing his age keeping in mind the services rendered by him in the department. It was also kept open to the applicant for seeking for being engaged as Casual Mazdoor till he is finally absorbed in a regular post and in that event the authority was directed to consider such prayer of the applicant fairly.

3. The present Contempt Petition has been filed by the applicant for violating the order of this Tribunal. It is the contention of the applicant that the respondents did not consider his case in terms of the order of the Tribunal and recruited person who is junior to him. Respondents appointed one outsider and one Sri Bhupen Deka, who is junior to the applicant.

4. Respondent No.4 have filed counter reply. However, Mr.B.C.Pathak, learned Addl.C.G.S.C. for the

Contd./3

contemner raised the point of jurisdiction of the Tribunal in entertaining the Contempt Petition. He further rererred to the order of this Tribunal passed in C.P.6/2004 (in O.A.467/2001), wherein this Tribunal dismissed the C.P. for lack of jurisdiction. In the similar context, he has also referred to the Full Bench judgment of the CAT, Jaipur Bench in O.A.401/2002 and 7 Others. Learned counsel for the applicant Mr.R.K.Malakar, however, submits that the orders of the Tribunal referred to by the learned counsel for the respondents relates to the C.P. where B.S.N.L. was party before this Tribunal, whereas in the present case B.S.N.L. has not been made party. In this context, Mr.B.C.Pathak, learned Addl.C.G.S.C. submits that in so far as the reliefs and question of appointment and regularisation are concerned, the Deptt. of Telecommunication (DOT) has no role to play in implementing the order of theTribunal because of the fact that all the posts of Group 'B' & 'C' have been transferred from DOT to B.S.N.L. w.e.f.1.10.2000. In so far as the appointments of the two persons referred above is concerned, Mr.B.C.Pathak submits that the appointments were made by B.S.N.L. In this context, he has also drawn our attention to Annexure-P2 enclosed by the applicant in the O.A. to show that the appointments were made by B.S.N.L. We find force in the contention of the learned counsel for the contemners. In view of the facts and circumstances that the alleged contemners are not in a position to implement the order of this

Tribunal dated 4.9.2002 passed in O.A.120/2001, it cannot be held that there is any wilful disobedience of the order of this Tribunal. In this context, it requires mentioning that Bharat Sanchar Nigam Limited (B.S.N.L.) is a newly constituted corporation and no notification under section 14under Section 14(2) of the Administrative Tribunals Act, 1985 has been issued in respect of new organisation i.e. B.S.N.L. Therefore, this Tribunal cannot issue any direction on the B.S.N.L. authoritiies.

That being the position, we hold that there is no contempt lies and accordingly the present Contempt Petition is dismissed.

Sd/MEMBER(J)
Sd/MEMBER(Adn)

Certified to be true Copy
प्रमाणित प्रतिलिपि

13/7/04
Section Officer (J)
C.A.T. GUWAHATI BANCH
Guwahati-78'005

BB

FREE COPY U/R 22 OF C.A.T. (PROCEDURE) RULES

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

This the 24 day of March, 2004

HON'BLE SHRI JUSTICE V. S. AGGARWAL, CHAIRMAN
HON'BLE SHRI J. K. KAUSHIK, MEMBER (J)
HON'BLE SHRI A. K. BHANDARI, MEMBER (A)

1) O.A. NO.401/2002

B. N. Sharma S/O Shri C. D.Sharma,
R/O 274 Barkat Nagar, Tonk Phatak,
Jaipur.
... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan, New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur.
... Respondents

(By Shri Tej Prakash Sharma, Advocate)

2) O.A. NO.402/2002

R. P. Sharma S/O Shri Bishan Lal Sharma,
R/O Mandawar, Mahua Road,
Jaipur.
... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan, New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur.
... Respondents

(By Shri S. M. Sandhu, Advocate)

3) O.A. NO.403/2002

S. K. Bhatnagar S/O Shri S. M. Nath Bhatnagar,
R/O 5-Kha-8, Housing Board,
Shastri Nagar, Jaipur.
... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan, New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur.

... Respondents

(By Shri B.N. Sandhu, Advocate)

4) O.A. NO.404/2002

Bhanwar Lal Meena S/O Dhanna Ram Meena,
R/O A/21, Gordhanpuri, Galta Gate,
Jaipur.

... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan, New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur.

... Respondents

(By Shri B. N. Sandhu, Advocate)

5) O.A. NO.405/2002

Deep Chand S/O Bhairu Ram,
R/O 382, Devi Nagar,
New Sanganer Road,
Jaipur.

... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan, New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur.

... Respondents

(By Shri B. N. Sandhu, Advocate)

6) O.A. NO.406/2002

Manohar Singh S/O Ram Chandra,
R/O Vill. & P.O. Chomu,
Distt. Jaipur. ... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan,
New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur. ... Respondents

(By Shri B. N. Sandhu, Advocate)

7) O.A. NO.407/2002

B. L. Swarankar S/O Kanhiayalal Swarankar,
R/O Vill. & P.O. Jetpura (Chomu),
Jaipur. ... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan,
New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur. ... Respondents

(By Shri B. N. Sandhu, Advocate)

8) O.A. NO.408/2002

R.K.Kapoor S/O Ronak Lalji
R/O House No.77/140, Arawali Marg,
Shipra Path, Mansarovar,
Jaipur. ... Applicant

(By Shri P. N. Jatti, Advocate)

-versus-

1. Union of India through
Secretary, Government of India,
Department of Telecom,
Sanchar Bhawan,
New Delhi.

2. Chief General Manager Telecom,
Rajasthan Circle, Jaipur.

3. Principal General Manager Telecom,
Jaipur District, Jaipur. ... Respondents

(By Shri Tej Prakash Sharma, Advocate)

ORDER

Justice V. S. Aggarwal :

The decision of the Apex Court in the case of S. P.Sampath Kumar v. Union of India, (1987) 1 SCC 124, focussed upon the factual position which occasioned the adoption of the theory of alternative institutional mechanisms. The Supreme Court held that the theory of alternative institutional mechanisms was valid. It was attempting to remedy an alarming practical situation.

2. The matter was reviewed in the subsequent decision of a Larger Bench in the case of L.Chandra Kumar v. Union of India and Others, (1997) 3 SCC 261. The Supreme Court held that clause 2 (d) of Article 323-A and clause 3(d) of Article 323-B to the extent they exclude the jurisdiction of the High Courts and the Supreme Court in their powers of judicial review were unconstitutional. Section 28 of the Administrative Tribunals Act, 1985 (for short, "the Act") on the same lines was also held to be unconstitutional. The Supreme Court held that the decisions of the Administrative Tribunals would be subject to Judicial review before a Division Bench of

the High Court within whose jurisdiction, the Tribunal concerned falls. In the penultimate Paragraph No.99, the findings were recorded as under:-

> "99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court, under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role, in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Court even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged), by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

3. The law started taking a shape. Henceforth the orders of this Tribunal are subjected to judicial review before different High Courts. The different High Courts processed and interpreted the provisions as well as the situations arising. In this process,

the Central Administrative Tribunal became a Tribunal like any other Tribunal whose orders are subjected to judicial review because judicial review is one of the basic structure of the Constitution.

4. In the decision rendered by the Supreme Court in the case of State of Orissa and Ors. v. Bhagaban Sarangi and Ors.,(1995) 1 SCC 399, the Supreme Court held that the Administrative Tribunals would be bound by the decisions of the High Courts. At this stage, we would hasten to add that we are not delving into the vexed question that was raised as to what would be the position of the Administrative Tribunals where different High Courts have opined and interpreted law differently because the Central Administrative Tribunal is one having different branches all over the country.

5. Once the decision of a particular High Court is binding, the only exceptions known are whether the orders have been passed in limine without giving reasons or they are obiter dicta decisions which are per incuriam and sub silentio. We know from Article 141 of the Constitution that a decision of the Supreme Court binds all the courts and the Tribunals. The Supreme Court in this regard has repeatedly held that decisions which are per incuriam or sub silentio will not be a binding precedent. We refer with advantage to the Apex Court judgment rendered in the case of Municipal Corporation of Delhi v. Gurnam Kaur, (1989)

SCC 101 wherein this principle has been emphasised in clear terms holding :

"11. Pronouncements of law, which are not part of the ratio decidendi are classed as obiter dicta and are not authoritative. With all respect to the learned Judge who passed the order in Jamna Das case (Jamna Das v. Delhi Administration, Writ Petition Nos.981-82 of 1984) and to the learned Judge who agreed with him, we cannot concede that this Court is bound to follow it. It was delivered without argument, without reference to the relevant provisions of the Act conferring express power on the Municipal Corporation to direct removal of encroachments from any public place like pavements or public streets, and without any citation of authority. Accordingly, we do not propose to uphold the decision of the High Court because, it seems to us that it is wrong in principle and cannot be justified by the terms of the relevant provisions. A decision should be treated as given per incuriam when it is given in ignorance of the terms of a statute or of a rule having the force of a statute. So far as the order shows, no argument was addressed to the Court on the question whether or not any direction could properly be made compelling the Municipal Corporation to construct a stall at the pitching site of a pavement squatter. Professor P.J. Fitzgerald, editor of the Salmond on Jurisprudence, 12th edn. explains the concept of sub silentio at p.153 in these words :

> A decision passes sub silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind. The court may consciously decide in favour of one party because of point A, which it considers and pronounces upon. It may be shown, however, that logically the court should not have decided in favour of the particular party unless it also decided point B in his favour; but point B was not argued or considered by the court. In such circumstances, although point B was logically involved in the facts and although the case had a specific outcome, the decision is not an authority on point B. Point B is said to pass sub silentio.

12. In Gerard v. Worth of Paris Ltd.(K) (1936) 2 All ER 905(CA), the only point argued was on the question of priority of the claimant's debt, and, on this argument being heard, the court granted the order. No consideration was given to the question whether a garnishee order could properly be made on an account standing in the name of the liquidator. When, therefore, this very point was argued in a subsequent case before the Court of Appeal in Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. ((1941) 1 KB 675), the court held itself not bound by its previous decision. Sir Wilfrid Greene, M.R., said that he could not help thinking that the point now raised had been deliberately passed sub silentio by counsel in order that the point of substance might be decided. He went on to say that the point had to be decided by the earlier court before it could make the order which it did; nevertheless, since it was decided "without argument, without reference to the crucial words of the rule, and without any citation of authority", it was not binding and would not be followed. Precedents sub silentio and without argument are of no moment. This rule has ever since been followed. One of the chief reasons for the doctrine of precedent is that a matter that has once been fully argued and decided should not be allowed to be reopened. The weight accorded to dicta varies with the type of dictum. Mere casual expressions carry no weight at all. Not every passing expression of a judge, however, eminent, can be treated as an ex cathedra statement, having the weight of authority." (Emphasis added).

The said decision has been followed by the subsequent decision of the Supreme Court in the case of State of U.P. & Anr. v. Synthetics & Chemical Ltd. & Anr., (1991) 4 SCC 139. The Supreme Court held that decisions even of the Apex Court which are sub silentio would not be a binding precedent. The findings of the Supreme Court in this regard are :

"41. Does this principle extend and apply to a conclusion of law, which was neither raised nor preceded by any consideration. In other words, can such conclusions be considered as declaration of

law? Here again the English courts and jurists have carved out an exception to the rule of precedents. It has been explained as rule of sub-silentio. "A decision passes sub-silentio, in the technical sense that has come to be attached to that phrase, when the particular point of law involved in the decision is not perceived by the court or present to its mind." (Salmond on Jurisprudence 12th Edn., p.153). In Lancaster Motor Co. (London) Ltd. v. Bremith Ltd. the Court did not feel bound by the earlier decision as it was rendered 'without any argument, without reference to the crucial words of the rule and without any citation of the authority'. It was approved by this Court in Municipal Corporation of Delhi v. Gurnam Kaur. The bench held that, 'precedents sub-silentio and without argument are of no moment'. The courts thus have taken recourse to this principle for relieving from injustice perpetrated by unjust precedents. A decision which is not express and is not founded on reasons nor it proceeds on consideration of issue cannot be deemed to be a law declared to have a binding effect as is contemplated by Article 141. Uniformity and consistency are core of judicial discipline. But that which escapes in the judgment without any occasion is not ratio decidendi. In B.Shama Rao v. Union Territory of Pondicherry (AIR 1967 SC 1480) it was observed, 'it is trite to say that a decision is binding not because of its conclusions but in regard to its ratio and the principles laid down therein'. Any declaration or conclusion arrived without application of mind or preceded without any reason cannot be deemed to be declaration of law or authority of a general nature binding as a precedent. Restrained in dissenting or overruling is for sake of stability and uniformity but rigidity beyond reasonable limits is inimical to the growth of law."

6. It is these principles which became the subject matter of controversy before us in the connected applications. Facts were admittedly identical except that in the case of B.N.Sharma (OA No.401/2002), he had superannuated on 30.11.2001. In the case of R.P.Sharma (OA No.402/2002), his superannuation has already occurred on 31.8.2003; and

in the cases of S.K.Bhatnagar (OA No.403/2002) on 31.10.2001; Deep Chand (OA No.405/2002) on 31.10.2001; Manohar Singh (OA No.406/2002) on 31.8.2003; and R.K.Kapoor (OA No.408/2002) on 31.8.2001. So far as Bhanwar Lal Meena (OA No.404/2002) and B.L.Swarankar (OA No.407/2002) are concerned, they are still working with the respondents.

7. By virtue of their separate applications, the applicants have impugned the orders dated 29.8.2001 and the corrigendum dated 3.9.2001. They seek their quashing from this Tribunal. The order of 29.8.2001 has been passed by the Bharat Sanchar Nigam Ltd. (for short, 'BSNL'), a Government of India enterprise and it reads:

> "The following Senior Telephone Supervisors were promoted to Grade-IV as Chief Telephone Supervisor in the pay scale of Rs.8500-10500 (Pre-revised 2000-3200) through creation of supernumerary posts in accordance with DOT letter No.22-8/94-TE.II dated 13.12.1995 and 13.2.1997 from the dates shown against each, on notional basis. Later on the officials found to be ineligible for Grade-IV promotion in accordance with DOT letter No.22-8/94-TE.II dated 8.9.99, and were to be reverted immediately, but due to Status quo maintained by the order of Hon'ble CAT Bench Jaipur they could not be reverted.
>
> Now as per the court direction, they had been served show cause notices. Representations received from the officials have been examined and are not considerable to be continued as Chief Telephone Supervisor.
>
> Now the following Chief Telephone Supervisors are hereby reverted to the cadre of Sr. Telephone Supervisor with effect from 29.8.2001 A/N in BCR Grade-III pay scale of Rs.5000-8000 without any pay protection and are further placed in the pay

scale of Rs.5500-9000 with effect from the dates shown against each due to entry in restructured cadre, in pursuance of DOT letter No.1-38/MPP-98 dated 20.4.1999".

A corrigendum even had been issued on 3.9.2001 which reads :

"Date of reversion to the cadre of Sr. Telephone Supervisor in BCR Grade-III shown as 29.8.2001 A/N in Para-III of this office memo no.ST-4/30/V/130 dated 29.8.2001 may kindly be read as 8.9.1999 A/N

sd/-
Divisional Engineer Phones (Admn.)
O/o The Principal GMTD, Jaipur-302010"

8. Admittedly, the applicants are Grade 'C' employees. Earlier they were in the Department of Telecommunication.

9. Learned counsel for the applicants had contended that the applicants would continue to have a cause against the Union of India. Some feeble arguments in this regard were addressed. Therefore, before proceeding further, the said controversy must be set at rest.

10. The Ministry of Communications (Department of Telecom Services) on 30.9.2000 had issued an Office Memorandum pertaining to setting up of BSNL and transfer of staff. The Government of India had decided to transfer the business of providing telecom services in the country which were currently entrusted to the Department of Telecom Services and the Department of Telecom Operations. It was proposed to

transfer the business of providing telecom services and running the telecom factories to the newly set up company, i.e., BSNL from 1.10.2000. The Government had only retained the function of policy formation, licensing, wireless spectrum management and administrative control, etc.

11. Since it was to take sometime for the new company to finalise the terms and conditions for staff, it was decided to give an opportunity to the staff for exercising their options in this regard. Para 4 (i) and (v) read :

"(i) The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices, in various telecom circles, metro, districts of Calcutta and Chennai, project circles, civil, electrical and architectural wings, maintenance regions, specialised telecom units namely Data Networks, National Centre for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects of DoT/DTS/DTO (belonging to various organised services and cadres given in Annexure-A to this letter) and posted in those circles/offices/units will stand transferred to Bharat Sanchar Nigam Ltd. along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation, without deputation allowance, with effect from 1st October, 2000, i.e., the date of taking over of telecom operations by the Company from DTS & DTO. Bharat Sanchar Nigam Ltd. will exercise control and supervision of staff working against these posts."

"(v) Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants, including the CCS (CCA) Rules till such time as they are absorbed finally by the Company after they exercise their

options. Their pay scales, salaries and allowances will continue to be governed by existing rules, regulations and orders."

An Office Memorandum even had been issued on 30.9.2000 pertaining to transfer of assets and liabilities of Department of Telecom Services and Department of Telecom Operations to the BSNL.

12. It appears that on 3/4th January, 2001, there was an agreement signed with the three Staff Federations of Group 'C' and 'D' employees regarding options for absorption in BSNL. It was decided that four copies of the option form with one set of provisional terms and conditions was to be sent to each of the employees of Group 'C' and 'D' by 15.1.2001 to complete the said process. Admittedly, as it was not being disputed during the course of submissions that the applicants had exercised the said option and an order had been passed absorbing Group 'C' and 'D' employees. In fact in the applications, there is no plea raised that the applicants had not exercised their options nor a controversy was raised in this regard. Therefore, we hold that the applicants had been absorbed in the BSNL.

13. Since the applicants had filed applications challenging the order passed referred to above in this Tribunal, an objection has been taken on behalf of the respondents that this Tribunal has no jurisdiction to entertain the applications. Citing a decision of the Hon'ble single Judge of the Rajasthan High Court in

the case of R.A.Mangal & Ors. v. Union of India & Ors., CWP No.0100/2002 rendered on 10.9.2002, the Tribunal felt that keeping in view the nature of the controversy, a larger Bench should be constituted and the following questions were posed for consideration :

> "1. Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees who are on deemed deputation to BSNL or only in respect of cause of action relating to their parent department e.g. disciplinary proceedings, retiral benefits, promotions in their department etc and not for the cause of action wholly arisen from BSNL e.g. transfer, promotion etc by BSNL.
>
> 2. Whether the Tribunal has jurisdiction on all service matter in respect of service matters of central government employees, the cause of action for which related to a period prior to the absorption of such employees in BSNL."

We do not dispute the importance of the above-said question, but keeping in view the nature of the controversy, we are not answering the dispute as to the jurisdiction of this Tribunal when a Government employee is on deemed deputation with the BSNL because it did not arise during the course of submissions and we had made ourselves clear to the Members of the Bar that this question can be gone into whenever it arises. We are also, therefore, not inclined to go into the other questions which are co-related thereto and are confining ourselves to the controversy as to if this Tribunal has the jurisdiction on service matters with respect to the Central Government employees, who have been absorbed in the BSNL.

14. It appears that in the case of R.A. Mangal and others (supra), who had suffered an order of reversion and were employees of the Department of Communications, the learned Single Judge of the Rajasthan High Court held:-

> "Impugning the orders of reversion the petitioners, who are the employees of Department of Communication Union of India have, in the instant writ petition, sought promotion on the post of Chief Supervisor (Telecom) in the Grade IV in the pay scale of Rs. 8500-10500 continuously without any break with all consequential benefits.
>
> 2. I have heard Mr. Sushil Kumar Jain learned counsel appearing for the petitioners.
>
> 3. In pursuance of the powers conferred upon it by clause (1) of Article 323 A of the Constitution Parliament enacted the Administrative Tribunals Act, 1985 (Act 13 of 1985). Chapter III of the said Act consists of sections 14 to 18. Sections 14, 15 and 16 of the said Act deals with the jurisdiction, powers and authority of the Central Administrative Tribunal, the State Administrative Tribunals and the Joint Administrative Tribunals respectively. These provisions make it clear that except for the jurisdiction of the Hon'ble Supreme Court, the Tribunals under the Act 13 of 1985 will possess the jurisdiction and powers of every other court in the country in respect of all service related matters. Their Lordships of the Supreme Court in L. Chandra Kumar vs. Union of India (1997) 3 SCC 261 indicated in para 99 thus -
>
> "99. In view of the reasoning adopted by us, we hold that clause 2 (d) of Article 323-A and clause 3 (d) of Article 323 B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the aegis of Articles 323 A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme

Court under Article 32 of the Constitution is a part of the inviolative basic structure of our Constitution. While the jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323 A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within whose jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5 (6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated."

4. Mr. Jain learned counsel canvassed that the petitioners are the employee of Bharat Sanchar Nigam Limited which is amenable to the writ jurisdiction under Article 226 of the Constitution. I am unable to persuade myself to agree with the submission. I am of the opinion that the petitioners should first approach to the Tribunal and thereafter if they feel aggrieved against the order of the Tribunal, they are at liberty to seek remedy before the Division Bench of this Court.

5. The jurisdiction of this Court is expressly ousted by the Act 13 of 1985 in respect of all service related matters.

6. Resultantly the writ petition stands dismissed as not maintainable."

13. The learned counsel for the respondents contended that the decision rendered by the learned Single Judge is sub silentio to the basic question

pertaining to the jurisdiction and further in the opening paragraph, it had been pointed that the petitioners before the High Court are the employees of Department of Communication of Union of India while in the penultimate paragraph, it has been held that they are the employees of BSNL and perhaps that is why the decision has been recorded that firstly they should approach the Central Administrative Tribunal.

10. The Act had been enacted to provide for the adjudication or trial by Administrative Tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services. It was an alternative forum to provide expeditious disposal of applications pertaining to service matters. The Act specifically provided as to under what circumstances, this Tribunal was to have jurisdiction. Section 14 reads:-

> "14. Jurisdiction, powers and authority of the Central Administrative Tribunal - (1) Save as otherwise expressly provided in this Act, the Central Administrative Tribunal shall exercise, on and from the appointed day, all the jurisdiction, powers and authority exercisable immediately before that day by all courts (except the Supreme Court in relation to-
>
> (a) recruitment, and matters concerning recruitment, to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services, being, in either case, a post filled by a civilian;
>
> (b) all service matters concerning-
>
> (i) a member of any All-India Service; or
>
> (ii) a person [not being a member of an All-India Service or a person

referred to in clause (c)] appointed to any civil service of the Union or any civil post under the Union; or

(iii) a civilian [not being a member of an All-India Service or a person referred to in clause (c)] appointed to any defence services or a post connected with defence.

and pertaining to the service of such member, person or civilian, in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation [or society] owned or controlled by the Government;

(c) all service matters pertaining to service in connection with the affairs of the Union concerning a person appointed to any service or post referred to in sub-clause (ii) or sub-clause (iii) of clause (b), being a person whose services have been placed by a State Government or any local or other authority or any corporation [or society] or other body, at the disposal of the Central Government for such appointment.

[Explanation.- For the removal of doubts, it is hereby declared that references to "Union" in this sub-section shall be construed as including references also to a Union territory.]

(2) The Central Government may, by notification, apply with effect from such date as may be specified in the notification the provisions of sub-section (3) to local or other authorities within the territory of India or under the control of the Government of India and to corporations [or societies] owned or controlled by Government, not being a local or other authority or corporation [or society] controlled or owned by a State Government;

Provided that if the Central Government considers it expedient so to do for the purpose of facilitating transition to the scheme as envisaged by this Act, different dates may be so specified under this sub-section in respect of different classes of or different categories under any class of, local or other authorities or corporations [or societies].

(3) Save as otherwise expressly provided in

this Act, the Central Administrative Tribunal shall also exercise, on and from the date with effect from which the provisions of this sub-section apply to any local or other authority or corporation [or society], all the jurisdiction, powers and authority exercisable immediately before that date by all courts (except the Supreme Court) in relation to-

(a) recruitment, and matters concerning recruitment, to any service or post in connection with the affairs of such local or other authority or corporation [or society]; and

(b) all service matters concerning a person [other than a person referred to in clause (a) or clause (b) of sub-section (1)] appointed to any service or post in connection with the affairs of such local or other authority or corporation [or society] and pertaining to the service of such person in connection with such affairs."

At the outset, it must be mentioned that this Tribunal is the creation of the Act and draws its power and strength from the provisions of the Act, while the High Courts are courts of constitutional jurisdiction having power to judicially review the orders of the Tribunals. It cannot be described that this Tribunal would be depository of the powers for which no provision has been made. If this Tribunal does not have the jurisdiction to entertain the applications, any order passed would be void being without jurisdiction.

17. We need not delve into the provisions of sub-sections (2) and (3) of Section 14 of the Act because when the same is read with clauses (b) and (c) to sub-section (1) to Section 14, it clearly shows that this Tribunal has no jurisdiction to entertain

the applications pertaining to employees of local or other authorities or other autonomous bodies unless a notification in this regard is issued. A Full Bench of this Tribunal in the case of K.K.Singh etc.etc. v. Union of India & Ors. etc.etc. in OA No.93/1997 decided on 20.11.1998 and reported as (1997-2001) A.T.F.B.J 257 had considered this question and held:-

> "19. In the result the reference is answered as under:
>
> "Excepting those specifically covered by clauses (b) and (c) of Section 14(1) A.T.Act, the CAT has no jurisdiction to entertain applications from employees of local or other authorities within the territory of India or under the control of the Govt.of India and to corporations or societies owned or controlled by Govt. (not being a local or other authority or corporation or society controlled or owned by a State Govt.) unless the same have been notified under Sec. 14(2) A.T.Act"

The said question has been gone into more often than once thereafter. The Jaipur Bench of this Tribunal in the case of Ram Pratap Meena v.Union of India and others in OA No.440/2001 decided on 4.4.2002 when a similar application had been filed seeking quashing of the orders which are under the gaze of this Bench had allowed the same. However, we make it clear that the Jaipur Bench was not concerned at that time with the question as to if it had jurisdiction to entertain the application or not. In the case of D.R.Balai v. Union of India & Ors. in OA No.572/2001 decided on 25.5.2002, a similar relief had been claimed and the Jaipur Bench had allowed the same. As referred to above, this question had not been gone into as to if

this Tribunal had jurisdiction to entertain the application against the BSNL. It had followed the earlier decision in the case of Ram Pratap Meena (supra). Therefore, the same would not be a binding principle because the question that is alive before us had not been considered by the abovesaid decisions. The Jaipur Bench considered this question only in the case of Panna Lal Yadav v. Union of India & Ors. in OA No.540/2001 decided on 28.8.2003. It was held that in the absence of a notification having been issued under sub-section (2) to Section 14, the BSNL being a registered company, its employees cannot be treated as employees of the Central Government, and the application was held not maintainable.

13. At this stage, we refer with advantage to the decision of the Chandigarh Bench of this Tribunal in the case of Phuleshwar Prasad Singh v. Union of India & Ors. in OA No.1110-CH-2002 and OA No.1128-CH-2002 rendered on 5.5.2003 (reported as 2003 (2) Administrative Total Judgments 297). The Chandigarh Bench was concerned with many questions and one of those was as is before this Bench. It was held:

> "The persons directly recruited, appointed and absorbed by/in BSNL are in fact the employees of BSNL and, in the absence of a notification under Section 14 (2) of the Act, this Tribunal has no jurisdiction, power or authority to entertain and adjudicate their disputes with regard to their service matter even though it pertains to the period prior to their absorption. This category of the employees undoubtedly falls beyond the ambit of the jurisdiction of this Tribunal."

19. The Bombay High Court in the case of Bharat Sanchar Nigam Limited.v. A.R.Patil and Ors., 2003 (1) SLR 380, had also the occasion to consider the said controversy. We are conscious of the fact that the facts before the Bombay High Court were little different, but still the High Court did express themselves in this regard. It held that this Tribunal should not have entertained the petition of the employees absorbed in the BSNL. We take liberty in reproducing the said observations from the Judgment of 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 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."

The Delhi High Court in the case of Ram Gopal Verma v. Union of India & Anr., 2002 (1) SLJ 352 also considered the said controversy. Before the Delhi High Court, there was no dispute that the Mahanagar Telephone Nigam Ltd. (MTNL) was a company incorporated under the Companies Act and had a distinct legal entity. The only fact admitted before the Delhi High Court was that the employees were not covered by the provisions of sub-section (1) to Section 14 of the Act. The Delhi High Court referred to sub-sections (2) and (3) of Section 14 and held that necessarily a notification had to be issued before this Tribunal would have jurisdiction to deal with the matter. The findings of the Delhi High Court read :

"6. A combined reading of the two provisions shows that provisions of sub-section 3 could be applied to local or other authorities under the control of the Government and to Corporations or societies owned and controlled by the Government by a Notification to be issued by the Central Government. No such notification was admittedly issued till date to extend jurisdiction of Tribunal to MTNL. That being so, was Tribunal still obliged to entertain petitioner's OA challenging his suspension order which was passed by General Manager of MTNL and which was not endorsed to have been approved by General Manager of MTNL and which was not endorsed to have been approved by DOT. The answer in our view was in negative because petitioner was challenging suspension order passed by the Chief General Manager of MTNL suspending him from the post of SDE (Cables), a post under MTNL and not from any post under DOT. It is true that petitioner maintained his lien to

the TES Group B service in DOT but that was of no avail to him because his challenge was directed against suspension from the post of SDE (Cables) in MTNL and passed by the Competent Authority of MTNL. His service status enjoyed by him in DOT would not confer jurisdiction on Tribunal which otherwise was not admittedly vested in it for want of requisite notification under Section 14 (2). Therefore, even when he held a lien on the post of TES Officer, his grievance directed against order suspending him from the post of SDE (Cables) in MTNL was not entertainable by Tribunal for lack of jurisdiction. It is also not the case that impugned order of his suspension was a composite order passed with the approval of DOT which could perhaps provide some basis for Tribunal's jurisdiction. This order was passed by the Chief General Manager on his own and it is not for us to examine whether it was passed validly or otherwise."

20. From the aforesaid, it is clear 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. This is obvious from the plain reading of the provision of Section 14 of the Act. Sub-section (3) to Section 14 makes it clear that this Tribunal shall have jurisdiction, powers and authority in relation to recruitment and matters concerning recruitment of all employees appointed to any service or post in connection with the affairs of the local or other authorities on and from the date specified in the notification issued under sub-section (2), which we have reproduced above. When notification under sub-section (2) is issued, such local or other authorities would be amenable to the jurisdiction of this Tribunal. Admittedly till date, no such notification has been issued and in the face

of the aforesaid, it must be held that this Tribunal does not have jurisdiction to entertain the applications pertaining to the applicants who are absorbed on the permanent strength of the BSNL.

21. Reverting back to the decision of the Rajasthan High Court in CWP No.6180/2002 with respect, it must be stated that it was sub silentio pertaining to the scope of sub-sections (2) and (3) of Section 14. The points referred to above had not been perceived while the matter was dismissed in limine. In this backdrop, it cannot be taken to be in the peculiar facts, as a binding precedent.

22. Resultantly, we answer the controversy, as aread, referred to above, holding that in cases in which the employees had been absorbed permanently with the BSNL, the Central Administrative Tribunal has no jurisdiction to adjudicate upon their service matters till a notification under sub-section (2) to Section 14 is issued.

23. In face of the findings we have recorded above, it becomes unnecessary for us to remit the matter back to the relevant Bench. Since this Tribunal has no jurisdiction to entertain the applications, the same are dismissed. No costs.

(A.K.Bhandari)
Member (A)

(J.K.Kaushik)
Member (J)

(V.S.Aggarwal)
Chairman

/sns/

Copying Clerk Section Officer (Judicial)
C.A.T. Jaipur Bench