

FORM NO. 4

(S.T. RULE 42)

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

ORDER SHEET

~~Csg. App/ Misc. Petn/ Cont. Petn/ Rev. Appl.~~ 9/64

In O.A. 24/03

Name of the Applicant(s) Union of India Govt

Name of the Respondent(s) Betha Ram Saikia

Advocate for the Applicant B. C. Pattnaik, Add. case.

Counsel for the ^{Respondent} ~~Railway/ C.S.G.~~ G. K. Bhattacharyei, B. Chandhury

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

This Review petition
has been filed by the
Counsel for the Union
of India Govt. Wp 23(3)(7)
of the CAT Act, 1985 read
with Rule, 17 of the C.A.T.
Procedure Rules, 1987 for
review the order dated
3.5.04 passed by this
Honble Tribunal in O.A.
24/03.

Laaid before the
Honble Comt for further
order.

Session officer

Prs.

Contd.

From pre page R.A.No.9/04 has been filed by Mr.B.C.Pathak, Addl.C.G.S.C. for the Union of India and others U/S 22(3)(F) of the C.A.T. Act, 1985 and Rule 17 of the C.A.T.(Procedure & Rules 1987 for review the Order dated 13.5.04 which was passed by the Hon'ble Shri M.K.Gupta, Member (J) and the Hon'ble Shri K.V.Prahladan, Member(A).

Laid for favour of kind circulation /approval with the Hon'ble Shri M.K.Gupta, Member(J).

N. Singh
28/7/04
S.O.(J)
The Review Application shall be sent to The Hon'ble Sri M.K.Gupta, Member (J) C.A.T. Bangalore Bench for consideration by Circulation.
~~Hon'ble Member(A)~~

K.V. Prahladan
Hon'ble M(A)

N. Singh
28/7/04
1e Dy. Registrar.

Received copy
of order.
M. Singh
30/08/04

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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH:GUWAHATI

REVIEW APPLICATION NO.9/2004 IN O.A. NO.24/2003

DATED THIS THE 12TH DAY OF AUGUST, 2004

SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

SHRI K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

1. Union of India
Represented by its Secretary
(DOT), Ministry of Communi-
cation, Sanchar Bhawan
20, Ashoka Road
New Delhi-110 001.
2. Chairman-cum-Managing Director
BSNL Board, Sanchar Bhavan
20, Ashoka Road
New Delhi.
3. Senior Deputy Director
General (B.W.), BSNL
Chandrik Building (10th Floor)
36, Janpath, New Delhi-110 001.
4. Chief Engineer (Civil)
BSNL Assam Civil Zone
Mitra Building, Ulubari
Guwahati-781 007
5. K.H. Ramappa
Executive Engineer (C)
DOP, Mysore.
6. U.N. Naik
Executive Engineer (P&D)
DOP, Bangalore.
7. M.S. Rajmohan Prasad
Executive Engineer (P&D)
DOP, Bangalore.

... Petitioners/
Respondents

(By Shri B.C. Pathak, A.C.G.S.C.)

vs.

Shri Betha Ram Saikia
S/O. late Lakheswar Saikia
Assistant Engineer (Civil)
BSNL, Civil Sub Division-V
Guwahati.

... Opposite party/
Applicant



O R D E R
BY CIRCULATION

This Review Application has been taken up by circulation under provisions of Rules 17(3) of CAT (Procedure) Rules, 1987.

2. By the present review application, the respondents in O.A. 24/2003 have sought to recall and review the order dated 13th May, 2004 by stating that the applicant's case was time barred; settled position of seniority list would be unsettled if the same was to be accepted; applicant did not pass the qualifying test; and that despite due diligence and care the respondents could not raise the objection regarding jurisdiction of this Tribunal as a Company known as Bharat Sanchar Nigam Limited (BSNL for short) was registered under the Companies Act and all the assets and liabilities by the Government of India, Department of Telecommunications, with effect from 1.10.2000, were transferred to the said BSNL. In the absence of notification issued under 14(2) of the Administrative Tribunal Act, 1985 conferring jurisdiction to this Tribunal over BSNL, this Tribunal had no jurisdiction to pass the said order.

3. Reliance was placed on various judgements passed by the coordinate Bench of this Tribunal. In Grounds para-7, three contentions have been raised,



namely:- (i) that this Tribunal "should have taken the judicial notice of the existing precedents of various judgements/orders passed by the various Benches", (ii) that this Tribunal "should have considered the legal point in issue regarding the bar of the application on the point of limitation" and (iii) it is a fit case where the order dated 13th May, 2004 is liable to be recalled on the point of jurisdiction and settled position of law. Reliance is also placed on Section 57 of the Indian Evidence Act.

4. We have perused the order dated 13th May, 2004 as well as the review application carefully.

Regarding the question of limitation raised by the respondents, we find that the said specific plea was considered in para-5 and rejected being "misconceived". As far as the question regarding jurisdiction is concerned, after noting the judgement pronounced by the coordinate Bench at Bangalore, in para-6 it was held that as the applicant had not been absorbed in BSNL, basic grievance regarding non-inclusion of his name in the All India Seniority List continued to subsist and this Tribunal had jurisdiction over the same. It is unfortunate that no judgements on which now reliance is being placed, as Annexure-R1 series, were either referred to or pointed out during the course of oral hearing and we find the



respondents had the audacity to say that this Tribunal should have taken judicial notice of the existing precedents. We cannot but condemn this attitude on the part of the petitioners/respondents. We may also note at this stage that the Full Bench judgements rendered in B.N. Sharma vs. Union of India at Jaipur on 24th March, 2004, which is also one such order and judgement relied in para-22 at page 44 of the review application, specifically observed as follows:

"Resultantly we answer the controversy, as already 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." (emphasis supplied)

Similarly, the Ernakulam Bench in its judgement dated 28th November, 2002 in O.A. No.811/2002, J. Sasidharan Pillai vs. Assistant General Manager (Admn.) and Others, in para-3 also observed that: "We have considered the question of jurisdiction of the Tribunal to entertain this application. Since the applicant has been absorbed as 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". No reliance can be placed on the orders passed in contempt proceedings as no adjudication of issue was made therein.



5. In para-6, this Tribunal had rendered specific finding and observed that: "It is undisputable fact that the applicant as on date has not been absorbed in BSNL. It is also admitted that the applicant is neither a Group 'C' or Group 'D' but holding a Group 'B' post. It is also undisputed fact that the applicant's basic grievance is non-inclusion of his name in All India Seniority List, for which inaction, cause arose when he was working in the Department of Telecommunication." (emphasis supplied)

When the Tribunal has rendered a finding of facts after considering the objection raised by the respondents, it is not open to the petitioner/respondent i.e., Union of India herein to raise such pleas as noticed herein above. The scope of review has been clearly dealt with under Order 47 Rule 1 of CPC and the Hon'ble Supreme Court in Smt. Meera Bhanja vs. Smt. Nirmala Kumari Choudhury, (1995) 1 SCC 170, has held as under:

"8. It is well settled that the review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order 47, Rule 1, CPC. In connection with the limitation of the powers of the court under Order 47, Rule 1, while dealing with similar jurisdiction available to the High Court while seeking to review the orders under Article 226 of the Constitution of India, this Court, in the case of Aribam Tuleswar Sharma v. Aribam Pishak Sharma, speaking through Chinnappa Reddy, J., has made the following pertinent observations: (SCC p.390 para3). 'It is true as observed by this Court in Shivdeo Singh v. State of Punjab, there is



nothing in Article 226 of the Constitution to preclude the High Court from exercising the power of review which inheres in every Court of plenary jurisdiction to prevent miscarriage of justice or to correct grave and palpable errors committed by it. But, there are definitive limits to the exercise of the power of review. The power of review may be exercised on the discovery of new and important matter or evidence which, after the exercise of due diligence was not within the knowledge of the person seeking the review or could not be produced by him at the time when the order was made; it may be exercised where some mistake or error apparent on the face of the records is found; it may also be exercised on any analogous ground. But, it may not be exercised on the ground that the decision was erroneous on merits. That would be the province of a court of appeal. A power of review is not to be confused with appellate power which may enable an appellate court to correct all manner of errors committed by the subordinate court.'

9. Now it is also to be kept in view that in the impugned judgement, the Division Bench of the High Court has clearly observed that they were entertaining the review petition only on the ground of error apparent on the face of the record and not on any other ground. So far as that aspect is concerned, it has to be kept in view that an error apparent on the face of the record must be such an error which must strike one on mere looking at the record and would not require any long drawn process of reasoning on points where there may conceivably be two opinions. We may usefully refer to the observations of this Court in the case of Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale wherein K.C. Das Gupta J., speaking for the Court has made the following observations in connection with an error apparent on the face of the record:

An error which has to be established by a long-drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record. Where an alleged error is far from self evident and if it can be established, it has to be established, by lengthy and complicated arguments, such an error cannot be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ." (emphasis supplied)



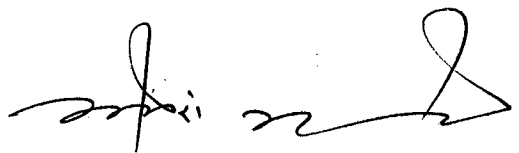
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The aforementioned judgement and its ratio is squarely applicable in the facts and circumstances of the present case. Under the guise of review one cannot be allowed to reargue the case particularly when findings have been specifically recorded. If the said findings, the review applicant's feel are not in accordance with law, filing of review is not the answer.

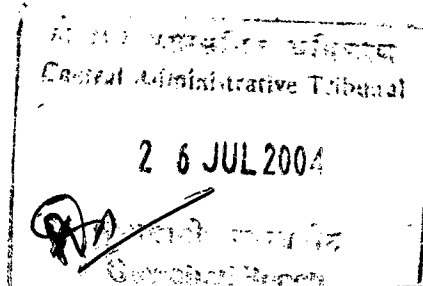
6. On consideration of the entire matter, we are of the considered view that there exists no error apparent on the face of the record requiring review/recall of the said order dated 13th May, 2004 in O.A. No.24/2003. Accordingly, R.A is dismissed being misconceived and without any merits.

7. In the normal circumstances we would have imposed heavy costs upon the respondents for filing such baseless and misconceived review application particularly without appreciating the law laid down in the judgements which had been made the basis for filing the present review application. But in the interest of justice, we do not propose to impose such costs.


(K.V. PRAHLADAN)
MEMBER(A)


(MUKESH KUMAR GUPTA)
MEMBER (J)

mr.



Filed by
Advocate
10/6/04
(B. C. Pathak)
Add: Union Govt. Standing Council
Central Administrative Tribunal
Guwahati Bench, Guwahati

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH AT GUWAHATI

REVIEW APPLICATION No. 9 of 2004
In O.A. No. 24/2003

Union of India & others

... Petitioner/Respondents

-vs-

Sri Betha Ram Saikia

... Opposite party/Applicant

In the matter of:

An application under Section 22(3)(f) of the Central Administrative Tribunal Act, 1985 (hereafter referred to as the 'CAT Act') and Rule 17 of the Central Administrative Tribunal (Procedure) Rules, 1987 [hereafter referred to as the 'CAT (Procedure) Rules'] for review the order dated 13.5.2004 passed by this Hon'ble Tribunal in O.A. No. 24/2003.

The application of the above named petitioner-

MOST RESPECTFULLY SHEWETH:

1. That the Opposite Party as Applicant (referred to as the OP) filed the O.A. No. 24/2003 in this Hon'ble Tribunal seeking inclusion of his name in the All India seniority list and thereafter promote him to the post of Executive Engineer (C) with effect from the date on which his juniors were promoted.

2. The Petitioners/ Respondents (referred to as the Petitioner) filed their written statements in the case and stated, *inter alia*, that the application was not maintainable it being time barred as provided under section 20 and 21 of the Central Administrative Tribunal Act, 1985. It was also stated that the cause of action arose in the year 1989 and it attained finality in the year 1994 by the issue of final seniority list. Hence, the long settled position of such seniority of others cannot be unsettled so belatedly which will adversely affect others. It was also stated that the applicant did not pass the qualifying test and that statement was not controverted by the applicant nor any rejoinder was passed. It was also stated that the issue of financial upgradation under the ACP Scheme is a different issue totally unconnected with the seniority list and relief cannot be based on such ACP Scheme, which will otherwise hit the provisions of Rule 10 of the CAT (Procedure) Rules, 1987.
3. That the petitioner, in spite of due diligence and care, could not raise the objection in their written statements that after the creation of Bharat Sanchar Nigam Ltd. (in short 'BSNL'), a company registered under the Companies Act and after the transfer of assets and liabilities by the Govt. of India, Department of Tele-communications w.e.f. 1.10.2000, no order/ judgment could be passed against the BSNL as the BSNL has not been brought under the jurisdiction of the Central Administrative Tribunal (CAT) by notification under Section 14(2) of the Central Administrative Tribunal Act, 1985 (referred to as the 'Act').
4. That in this connection, the petitioners beg to state that while the OA No. 24/2003 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. 1424/1998 (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.

In view of the above legal position, the CAT would not have passed the order-dated 13.5.2004 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 13.5.2004. The petitioner, in spite of their due diligence and care could not place the aforesaid decisions in their written statements however oral submission was made at the time of hearing with the support of the above cases. But this Hon'ble Tribunal did not consider the said submission and also did not take judicial notice as provided under Section 57 of the Indian Evidence Act.

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 R1 series.

5. That this Hon'ble Tribunal heard the parties and passed the final order on 13.5.2004. By the said order this Hon'ble Tribunal rejected the plea of limitation on the technicality of contradictory statements in the written statements. The most vital plea raised by the respondents in their support that the Hon'ble Tribunal did not have jurisdiction to try matters pertaining to employees of BSNL, was also rejected on the basis of a decision dated 5.6.2002 in OA No. 810/96, which has been overruled by subsequent decisions as stated hereinabove. The application was to be dismissed on the above two grounds alone.

The copy of the order-dated 13.5.2004 passed in OA No. 24/2003 is annexed as the Annexure-R2.

6. That after the judgment dated 13.5.2004, the copy of the judgment was formally issued by the registry of the Hon'ble Tribunal only on 15.6.2004 and the same was thereafter sent by the Addl. CGSC to the petitioner. On receipt of the copy of the judgment, the petitioner took up the matter with the competent authority to take a decision on the implementation of the order or to go for judicial review as the case may be. The competent authority however took a decision to prefer a Review Application in this Hon'ble Tribunal itself and accordingly this Review Application has been filed.
7. That the petitioner prefers this Review Application *inter alia* on the following:

-GROUNDS-

- (i) For that the petitioner Hon'ble Tribunal should have taken the judicial notice of the existing precedents of various judgments/ order passed by the various Benches of this Hon'ble tribunal holding thereby that the CAT does not have jurisdiction to pass any order against the BSNL in the matter of employees of BSNL. The Hon'ble Tribunal should have also taken judicial notice of the said settled position of law/decisions while passing the said order that there has not been any notification to bring BSNL within the jurisdiction of the Hon'ble CAT as required under Section 14(2) of the Act for which it is a fit case to recall the said decision dated 13.5.2004 passed in OA No. 24/2003 and review the same.
- (ii) For that the Hon'ble Tribunal should have considered the legal point in issue regarding the bar of the application on the point of limitation as required under the provisions of Section 20 and 21 of the CAT Act, 1985 which is an evidence explicit on the face of the records. Therefore the order dated 13.5.2004 passed in OA No. 24/2003 is required to be recalled and reviewed.
- (iii) For that in view of the matter and the provisions of law, it is fit case where this Hon'ble Tribunal would be pleased to recall its decision dated 13.5.2004

passed in OA No. 24/2003 and after considering the above points and hearing both the side may pass such further or other order in the case and set aside the order on the point of jurisdiction and settled position of law and consequently dismiss the application on the ground of want of jurisdiction.

8. That if this Hon'ble Tribunal does not consider this review application and recall the order dated 13.5.2004, the petitioner would suffer irreparable loss and injury which may amount to mis-carriage of justice.
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 the order dated 13.5.2004 passed in OA No. 24/2003 and fix the matter for hearing and after hearing the parties shall also be pleased to dismiss the application on the ground of want of jurisdiction and other settled provisions of law and/or may pass such further or other order that Your Lordships may deem fit and proper.

Affidavit.....

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A F F I D A V I T

I, Shri Girish Chandra Das, son of Late Raheswar Das, aged about 48 years, resident of Bikanpur, Japerigog, District- Kamrup (Assam) do hereby solemnly affirm and state as follows:

1. That at present I am working as the S. D. E. (C) Admin. IV in the Office of the C. E. (C), Assam Zone, Guwahati of M/s. Bharat Sanchar Nigam Limited, and I am taking steps and looking after the court cases of the Company. Hence, I am fully acquainted with the facts and circumstances of the case.
2. That the statements made in para 1, 2, 3, 6 and 7 - of the petition are true to my knowledge and belief, those made in para 4 and 5 - - - - - being matter of records, are true to my information derived therefrom and the rest are my humble submission and based on legal advice. I have not suppressed any material fact.

And I sign this affidavit on this 26th day of July, 2004 at Guwahati.

Identified by me:

Girish Chandra Das
DEPONENT

Advocate

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

ADVOCATE

ADMINISTRATIVE TRIBUNAL
CALCUTTA Bench

198 of 2001

Shri R. D. Roy, Vice-Chairman
Shri S. P. Singh, Administrative Member

SHRI R. D. ROY, V.C.
VS.

UNION OF INDIA & ORS.

For the applicant: Mr. R. D. Roy, Counsel
For the respondents: Mr. S. P. Singh, Counsel

Heard on 1.2.2001

O. D. R. P.

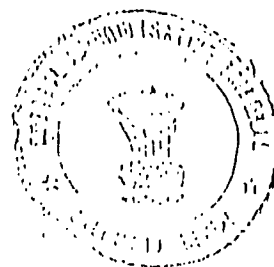
Order on 1.2.2001

R. D. Roy, V. C.

In 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 meaning of Article 29 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 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.

G. S.
MEMBER



1/2/2001
V. C. R. D. ROY

Advocate
Date:

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.No. 611/2002

Thursday this the 28th day of November, 2002

pür.

CORAMHON'BLE MR. A.V. HARTADHAN, VICE CHAIRMAN
HON'BLE MR. T.H.T. DAYAR, ADMINISTRATIVE MEMBERJ. Sankaradharan Pillai,
S/o Janardhan Pillai,
Staff No. 3358, Senior Telecom Operating
Assistant (P), Telephone Exchange,
Elampalloor, Kundara
residing at Krishnavillanqum Veedu,
Ambipoika, Kundara.

...Applicant

(by Advocate Mr. V. John S. Chempazhanthiylil)
V.

1. Assistant General Manager (Admin)
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. Kunnankutty, ACCSC - R1 - 4)

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

Contd....

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2.
ORDER

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 Kundara to Pathanapuram, order dated 7.8.2002 (AG) by which the 5th respondent has been posted to Kundara and the AG 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. Renavankutty 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 Tribunal 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...

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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.HAYAR)

ADMINISTRATIVE MEMBER

Sd/-

(A.V.HARIODASAH)
VICE CHAIRMAN



11

In the Central Administrative Tribunal
Calcutta Bench

DGM (M)
G.M.
0361-2661366

22

OA No. 1425/90

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 'C' in the Telecommunication Department. Consequently, this is not within the jurisdiction of this Tribunal. Hence, as the Tribunal has no jurisdiction, the OA is ~~dismissed~~ ^{disallowed}. No costs. However, liberty is given to the applicant to approach the appropriate forum for redressal of the grievance.

Sd/-
Member(A)

Central Administrative Tribunal
Calcutta Bench
23/9/03

- (a) No. of the "Appin" 1981
- (b) Name of the applicant MS. S. Sanyal
- (c) Dt. of presentation of application for copy 19.9.03
- (d) No. of pages One
- (e) Copying fee charged Urgent or ordinary? From
- (f) Dt. of preparation of copy 22/9/2003
- (g) Dt. of delivery of the copy to the applicant 29.10.03

P.S. "Candida" - a name.

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निःशुल्क प्रतिलिपि

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ORIGINAL APPLICATION/DIARY NO.4605 OF 2002
ALLAHABAD THIS THE 30th DAY OF OCTOBER, 2003

HON'BLE MR. A. K. BHATTAGAR, MEMBER-2

- Paid by Cash

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- 2103

~~Noted~~

Postman 2/10/72
Postman 2/10/72

2011

Posted as Jazra Exchange, District Alibabad.

15. Madho Prasad, Phone Mechanic Posted at Gheorpur,
Telephone Exchange, Allahabad.

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- 2 -

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

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

.....Respondents

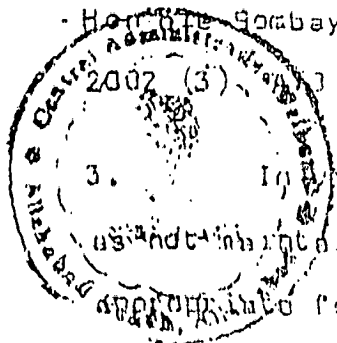
(By Advocates -----)

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



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

TRUE
COPY

SECRETARY
Central Administrative Tribunal
Delhi

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 R.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 (Admin),
Office of General Manager, Telecom,
Kamrup Telecom District,
Guwahati.

.....Respondents

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

.....
ORDER (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

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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 petition 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 Petition is dismissed.

Sd/MEMBER(J)

Sd/MEMBER(A)

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[Signature]
22/11/04

Section Officer (J)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

[Signature]

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CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

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

Date of Order : This, the 10th Day of June, 2004.

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

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

Sri Paresh 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
(Post), 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.Boro Lane
Ulubari, Guwahati-7 since 22.1.2003 till date.

By Mr.D.C.Pal, A.S.I., G.C.

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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 Adjl.C.G.S.C. for the

contemner raised the point of jurisdiction of the Tribunal in entertaining the Contempt Petition. He further referred 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 the Tribunal 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 contemnors. In view of the facts and circumstances that the alleged contemnors are not in a position to implement the order of this

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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 14 under 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. authorities.

That being the position, we hold that there is Contempt lites and accordingly the present Contempt Petition is dismissed..



Sd/MEMBER(J)
Sd/MEMBER(Adm)

Certified to be true Copy
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N 13/7/09
Section Officer (J)

C.A.T. GUWAHATI BANCH
Guwahati-781005

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

This the 21 day of April, 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 Dastak Nagar, Tonk Phatak,
Jaipur.

(By Shri P. H. Jatti, Advocate)

... Applicant

-versus-

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

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

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

(By Shri Tej Prakash Sharma, Advocate)

... Respondents

2) O.A. NO. 402/2002

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

(By Shri P. H. Jatti, Advocate)

... Applicant

-versus-

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

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

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

(By Shri S. H. Sandhu, Advocate)

... Respondents

3) O.A. NO. 403/2002

S. K. Bhatnagar S/O Shri C. H. Rath Bhatnagar,
R/O G-Khad, Housing Board,
Shastri Nagar, Jaipur.

(By Shri P. H. Jatti, Advocate)

... Applicant

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-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.
- (By Shri B. H. Sandhu, Advocate) ... Respondents

4) Q.A. 110.404/2002
Bhanwar Lal Moena S/O Dhanna Ram Moena,
R/O A/SI, Gordanpur, Dalia Gato,
Jaipur.
(By Shri P. N. Jatti, Advocate) ... Applicant

-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.
- (By Shri B. H. Sandhu, Advocate) ... Respondents

5) Q.A. 110.405/2002
Deep Chand S/O Bhairu Ram,
R/O 392, Devi Nagar,
Now Sangar Road,
Jaipur.
(By Shri P. N. Jatti, Advocate) ... Applicant

-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.
- (By Shri B. H. Sandhu, Advocate) ... Respondents

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6) Q.A. NO. 400/2002

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

... Applicant

(By Shri P. H. 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) Q.A. NO. 407/2002

B. L. Swarankar S/O Kanhlajalal Swarankar,
R/O Vill. & P.O. Jelpura (Chomu),
Jaipur.

... Applicant

(By Shri P. H. 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) Q.A. NO. 408/2002

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

... Applicant

(By Shri P. H. 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)

O R D E R

Justice V. G. Agarwal :

The decision of the Apex Court in the case of S. P. Sampath Kumar v. Union of India, (1987) 1 SCC 124, focused 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 23 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

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the High Court within whose jurisdiction, the Tribunal concerned falls. In the penultimate Paragraph No. 33, the findings were recorded as under:-

"33. In view of the foregoing 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 29 of the Act and the "exclusion of jurisdiction" clauses in all other legislations enacted under the scope 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 validity of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(c) 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., (1959) 1 SCC 599, the Supreme Court held that the Administrative Tribunal would be bound by the decisions of the High Courts. At this stage, we would mention to add that we are not delving into the vexed question that was raised as to what would be the position of the Administrative Tribunal 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 *finis* without giving reasons or they are *obiter dicta* decisions which are *per incuriam* and *sub silentio*. We learn 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, (1969)

SCC 101 wherein this principle has been emphasised by 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 Jamma Das case (Jamma Das v. Calcutta 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 those words :

the 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 *Gordon v. Worth of Paris Ltd.* (K) (1936) 2 All ER 995(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 garnished 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 *Landaster Motor Co. (London) Ltd. v. Bromith Ltd.* ((1941) 1 KB 675), the court held itself not bound by its previous decision. Sir Wilfrid Greene, H.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, giving 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. Here 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 :

"11. 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-silence. "A decision passes sub-silently, 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. Bromith 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 Lall. The bench held that, 'precedents sub-silently 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 1400) 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.R. Sharma (OA No.401/2002), he had superannuated on 30.11.2001. In the case of R.P. Sharma (OA No.407/2002), his superannuation had already occurred on 31.8.2003; and

In the cases of S.K. Bhattachagar (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 Bhawan Lal Moona (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. 6500-10500 (Pre-revised 2000-2000) through creation of supernumerary posts in accordance with DOR letter No. 22-G/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 DOR letter No. 22-G/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

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scale of Rs. 5500-9000 with effect from the date shown against each due to entry in restructured cadre. In pursuance of DOR letter No. 1-30/HRP-98 dated 20.4.1999.

A corrigendum even had been issued on 3.3.2001 which reads :

"Date of reversion to the cadre of Sr. Telephone Supervisor in UCR Grade-III shown as 29.8.2001 A/H in Para-III of this office memo no. ST-4/30/V/130 dated 29.8.2001 may kindly be read as 8.3.1999 A/H

sd/-
Divisional Engineer Phones (Admn.)
O/o The Principal GMD, 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 30.3.2000 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

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transfer the business of providing telecom services and running the telecom factories to the newly set up company. 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, Technical Centre for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects or Det/DTC/DTG (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 DIS & DPO. 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 applicable to Government servants, including the CCS (CCA) Rule, 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 declaration of the Hon'ble single Judge of the Rajasthan High Court in

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the case of R.A.Mangal & Ors. v. Union of India & Ors., CWP No.6186/2002 rendered on 16.9.2002, 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 BSML 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 arising from BSML e.g. transfer, promotion etc by BSML.

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 BSML.

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 BSML 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 BSML.

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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. Shashi Kumar Jain learned counsel appearing for the petitioners.

3. In pursuance of the powers conferred upon it by clause (1) of Article 223 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 93 thus -

"9. In view of the reasoning adopted by us, we hold that clause 2 (d) of Article 223-A and clause 3 (d) of Article 223 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" clause in all other legislations enacted under theegis of Articles 223 A and 223 B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme

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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 Tribunal 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 legislation (except where the legislation which creates the particular Tribunal is challenged, by overruling the jurisdiction of the Tribunal concerned. Section 5 (c) 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."

7. The learned counsel for the respondents contended that the decision rendered by the learned single judge is sub-attached to the basic question

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pertaining to the Jurisdiction and further in the opening paragraph, it had been pointed out 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 BSIL 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 to 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 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 Tribunal's. 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 without 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. 357 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.446/2001 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.Batal 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 BSIL. It had followed the earlier decision in the case of Ram Pratap Moona (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. 340/2001 decided on 20.9.2003. It was held that in the absence of a notification having been issued under sub-section (2) to Section 14, the BSIL being a registered company, its employees cannot be treated as employees of the Central Government, and the application was held not maintainable.

19. 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. 1116-CII-2002, and - OA No. 1123-CII-2002 rendered on 5.5.2003 (reported as 2003 (2) Administrative Tribunal 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 BSIL are in fact the employees of BSIL 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) BLR 386, 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.

20. 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 acknowledged by the Tribunal itself that BSNL

In 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. (MHTL) 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 2 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. No such notification was issued till date to extend jurisdiction of Tribunal to MHTL. That being so, was Tribunal still obliged to entertain petitioner's CA challenging his suspension order which was passed by General Manager of MHTL and which was not endorsed to have been approved by General Manager of MHTL and which was not endorsed to have been approved by DOR. The answer in our view was in negative because petitioner was challenging suspension order passed by the Chief General Manager of MHTL suspending him from the post of GM (Cable), a post under MHTL and not from any post under DOR. It is true that petitioner maintained his lien to

the TES Group B service in BOT but that was of no avail to him because his challenge was directed against suspension from the post of SDE (Cables) in MTHL and passed by the Competent Authority of MTHL. His service status enjoyed by him in BOT 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 MTHL 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 BOT 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. 6186/2002 with respect, it must be stated that it was silent 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, as answer the controversy, as already 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 as 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. Bharti) Member (A)

(J.K. Khandelwal) Member (A)

(V.S. Aggarwal) Chairman

/sns/

Copy to Clerk Section (A) (14/11/04)

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ANNEXURE : R₂
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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI

ORIGINAL APPLICATION NO. 24/2003

DATED THIS THE THIRTEENTH DAY OF MAY, 2004

SHRI MUKESH KUMAR GUPTA, JUDICIAL MEMBER

SHRI K.V. PRAHLADAN, ADMINISTRATIVE MEMBER

Shri Betha Ram Saikia
S/O. Late Lakheswar Saikia
Assistant Engineer (Civil)
BSNL, Civil Sub Division-V
Guwahati.

... Applicant.

(By Senior Advocate Shri G.K. Bhattacharya and Advocate
Shri B. Choudhury)

vs.

1. Union of India
Represented by its Secretary
(DOT), Ministry of Communi-
cation, Sanchar Bhawan
20, Ashoka Road
New Delhi-110 001.
2. Chairman-cum-Managing Director
BSNL Board, Sanchar Bhavan
20, Ashoka Road
New Delhi.
3. Senior Deputy Director
General (B.W.), BSNL
Chandrik Building (10th Floor)
36, Janpath, New Delhi-110 001.
4. Chief Engineer (Civil)
BSNL Assam Civil Zone
Mitra Building, Ulubari
Guwahati-781 007
5. K.H. Ramappa
Executive Engineer (C)
DOP, Mysore.
6. U.N. Naik
Executive Engineer (P&D)
DOP, Bangalore.
7. M.S. Rajmohan Prasad
Executive Engineer (P&D)
DOP, Bangalore.

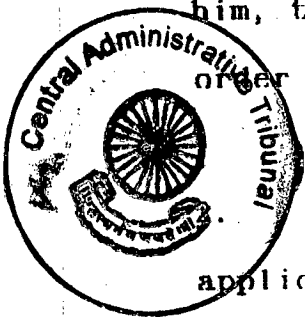
... Respondents

(By Shri B.C. Pathak, A.C.G.S.C.)

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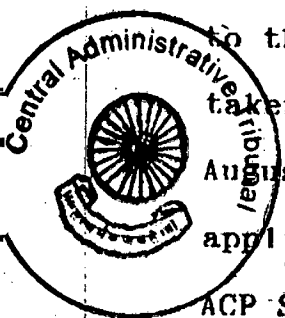
O R D E R (ORAL)SHRI MUKESH KUMAR GUPTA, MEMBER (J)

In this application a challenge has been made to the action of respondent nos.1 to 4 in not including the applicant's name in the All India Seniority List of Assistant Engineer (Civil) despite representations made by him and consequently not promoting him to the next higher grade of Executive Engineer (Civil), overlooking him, though several of his juniors were promoted vide order dated 23rd January, 2003.



The actual matrix of the facts are that: The applicant who belong to Scheduled Tribe community, after completing Diploma Course in Civil Engineering in the year 1971, joined as Junior Engineer (Civil) on 3rd July, 1972. During the course of service, he was promoted to the next higher grade of Assistant Engineer (Civil) with effect from 16.12.1978 vide P&T Board Order No.64-11/78-CW (P&T) dated 28.10.1978 (Annexure-I). In the All India Seniority List of Junior Engineers as on 1.10.1979, his name was included at sl.no.166. His name was also included in the All India Eligibility List of Junior Engineers for promotion to the grade of Assistant Engineer (Civil) issued vide memo dated 6.6.1989 at sl.no.125(A). Respondents 5 to 7 appeared at sl.nos. 171, 199 and 356 respectively in the said All India Eligibility List. It is contended that the applicant cleared all the departmental accounts papers for the

post of Assistant Engineer (Civil). It is stated that a notification dated 27th September, 1989 was issued by the Telecom Board, which did not include his name and as such he submitted a representation dated 17.10.1989 with a prayer to include his name but there was no response. He submitted several representations/appeal followed by various reminders like 22nd December, 1997, 1998, 29.11.99 and 26th June, 2000. He was assured by the authorities that the mistake in not including his name would be rectified but no positive action had been taken by the respondents. All India Seniority List of Assistant Engineer (Civil) was again issued on 15th March, 2001 but the same did not include his name. Another notification dated 15th March, 2002 was issued circulating provisional seniority list in the grade of Assistant Engineer (Civil) which also omitted the applicant's name. The applicant submitted representation dated 4.4.2001 which was duly forwarded to the concerned authorities but no action had been taken. In the meantime, based on DOP&T O.M dated 9th August, 1999, on completion of 24 years of service, the applicant was granted second financial upgradation under ACP Scheme vide order dated 27.12.2000. The respondents also issued a provisional seniority list of Assistant Engineer (Civil) on 21st September, 2001 which also omitted the applicant's name for no rhyme or reasons. Instead of rectifying the mistakes/omission, the respondents issued order dated 23rd January, 2003 promoting 21 officials to the next higher grade of



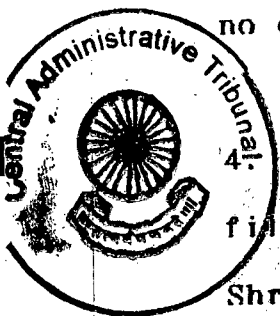
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Executive Engineer (Civil), including respondents 5 to 7 who were juniors to the applicant. Being aggrieved with the respondents action, the present application has been preferred the present O.A.

3. Shri G.K. Bhattacharya, learned Senior Advocate assisted by Shri B. Choudhury contended that the action of the authorities in omitting the applicant's name from the All India Seniority list is illegal, arbitrary and discriminatory besides being violative of the principles of natural justice. Despite the fact that the applicant was allowed second financial upgradation on completion of 24 years of service, his name had not been included in the seniority list without any rhyme or reasons. Instead of rectifying the mistake/omission in not including the applicant's name in the seniority list, the respondents promoted 21 officials including 3 of his juniors to the next higher grade of Executive Engineer (Civil), which action under no circumstances could be justified.

The respondents 1 to 4 on the other hand filed the reply and contested the applicant's claim. Shri B.C. Pathak, learned Additional Central Government Standing Counsel appearing for the respondents raised following contentions:

(a) That the present application is barred by law of limitation and suffers from laches. The applicant



remained silent for nearly 14 years and it is well settled law that the settled position after a long period of time cannot be unsettled.

(b) The next contention raised by the learned counsel was that this Tribunal has no jurisdiction as the applicant is working in BSNL. In the absence of specific notification under Section 14 (2) of The Administrative Tribunal Act, 1985, this Tribunal would have no jurisdiction to entertain the present application.

On merits it was contended that since the applicant was not a regular Assistant Engineer (Civil), his name did not appear in the seniority list and accordingly he was not considered for promotion to the next higher post of Executive Engineer. The provisional seniority list dated 21st September, 2001 would be finalised only after considering all the representations made including that of the applicant. The name of the applicant was not included in the seniority list of Assistant Engineer (C) as he had not passed the prescribed departmental qualifying examination which was essential for regularisation in the said cadre and the said fact was so admitted by the applicant in his representation filed as Annexure-A3 dated 17th October, 1989.



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59 In para-12 of the reply statement the respondents stated as follows: "The application is premature as neither the provisional seniority list has been finalised nor the applicant has been regularly promoted to the grade of AE (C)." In view of the above, it was contended that the present application is time barred by delay and laches. Strong reliance was placed by Shri B.C. Pathak, learned counsel for the respondents on AIR 1999 SC 1510 (B.S. Bajwa and Another vs. State of Punjab & Others) & CAT Full Bench Decision, Vol.III, Page 206 (Kamal Kishore Narang vs. Union of India & Others), AIR 1990 SC 10 (S.S. Rathore vs. State of M.P.), 1993 (1) ATR 855 (SC) (Ratan Chandra Samanta vs. Union of India), 1998 SCC (L&S) 611 (B.S. Baweja vs. State of Punjab), 2002 (1) SLJ 352 - Delhi High Court (Shri Ram Gopal Verma vs. Union of India and Anr.) & 2003 (3) SLJ 251 - Lucknow Bench (Sudhir Sharma vs. Union of India).

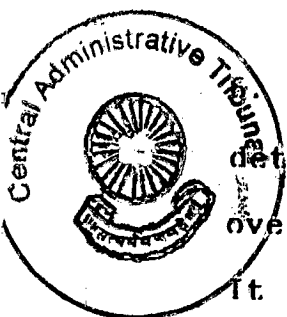


We heard learned counsel for the parties at length and perused the pleadings carefully.

The first and foremost issue which needs determination is whether the present application is hit by limitation. In other words, is it time barred? As noted herein above, the respondents in reply para-12 have stated in specific that neither provisional

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seniority list has been finalised nor the applicant has been promoted on regular basis in the grade of Assistant Engineer (Civil). Once the respondents contend that the application is premature, then how in the same breath they can be allowed to contend that the application is time barred. Such contradictory and conflicting contentions cannot be accepted on the face of it. Therefore, the respondents plea that the present application is time barred is misconceived and accordingly rejected.



The second fundamental issue which need determination is whether this Tribunal has jurisdiction over the issues raised, as contended by the respondents. It was vociferously contended by the respondents that the applicant even as on date is working in BSNI and in the absence of notification issued under Section 14 (2) of the Administrative Tribunal Act, 1985 conferring jurisdiction of this Tribunal over the employees of BSNI, the Tribunal has no jurisdiction to entertain the present application. It is undisputed fact that the applicant as on date has not been absorbed in BSNI. It is also admitted that the applicant is neither a Group 'C' or Group 'D' employee but holding a Group 'B' post. It is also indisputed fact that that the applicant's basic grievance is non-inclusion of his name in All India Seniority list, for which inaction, cause arose

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when he was working in the Department of Communication. A coordinate Bench of this Tribunal at Bangalore in O.A. No.810/1996 decided on 5.6.2002, on a similar issue of jurisdiction over the employees of BSNI held as

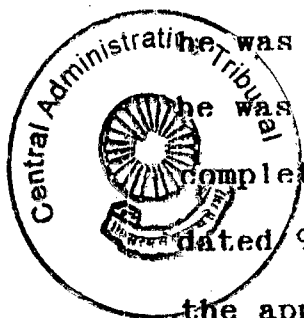
follows:-



...If that is so, whenever the services of a person holding the civil post under the Central Government are placed at the disposal of such Corporation, this Tribunal has jurisdiction in view of Section 14(1)(b)(iii) of the Administrative Tribunals Act, 1985 ('AT Act' for short). While considering Section 14(1)(b)(iii) of the AT Act, in O.A.No.58 of 2001 and connected cases, vide judgment and order dated 2-05-2002, this Tribunal, by following the judgment of the Central Administrative Tribunal, Delhi Bench in C.P. Mathur Vs. Union of India and others [(1992) 21 ATC 185] has held that under Section 14(1)(b)(iii) this Tribunal has jurisdiction regarding the service of a person placed at the disposal of any Corporation or Society 'owned' or 'controlled' by Government of India. In this view of the matter, we are of the considered opinion that this Tribunal has jurisdiction regarding the Central Government employees deputed to the Corporation which is under the control of the Central Government." (emphasis supplied)

The aforesaid law was recently followed by Bangalore Bench vide its judgement and order dated 7th October, 2003 passed in O.A. No.736/2002, G. Ramanathan vs. Union of India and Others. We may note that the applicant has not yet been absorbed in the BSNI and he continues to be on deemed deputation to BSNI. In view of the law noticed herein above, which squarely applies to the facts of the present case, we overrule the objection raised by the respondents and hold that this Tribunal has jurisdiction regarding the applicant's grievance who is placed at the disposal of BSNI owned/controlled by the Government of India.

7. Next and last issue which require determination is whether the applicant could be said to be promoted on officiating basis as Assistant Engineer (Civil) purely on adhoc and temporary basis, particularly when he has neither been reverted nor there is any break of any nature in the said post. Learned Senior Advocate Shri Bhattacharya strongly urged that under no circumstances a person who was promoted on officiating basis in the year 1978 could be treated on adhoc basis particularly when he has put in more than 25 years of service and he continues to work in the said post without any interruption or break. On the other hand, not only his annual increments were released, even he was allowed to cross efficiency bar. Not only these, he was even granted the second financial upgradation on completion of 24 years of service in terms of DOP&T O.M dated 9th August, 1999. Further, it was emphasised that the applicant had cleared all the departmental accounts paper of Assistant Engineer (C) as early as in the year 1983 - 1986. A specific averment to the said aspect was made in para-4.2 of the O.A. learned Senior counsel produced before us the result of Departmental Examination for Assistant Engineers (Civil)/(DR)/AEs and Asstt. Director of Hort. held from 20th to 24th December, 1982 to show that the applicant passed the Paper-B (i.e. Accounts Paper II) in the year 1983 for which the examination was held from 20th to 24th December, 1982. Similarly, vide communication dated



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22nd January, 1987, which circulated the list of officials who had qualified in the departmental qualifying examination for the said post, show that the applicant had passed I and III paper. Similarly order dated 22nd December, 2000 granting applicant second financial upgradation in the pay scale of Rs. 10,000-15,2000 on completion of 24 years of service was also produced before us. On the query raised by the Bench, particularly to the said order, the respondents were unable to react to the said aspects.



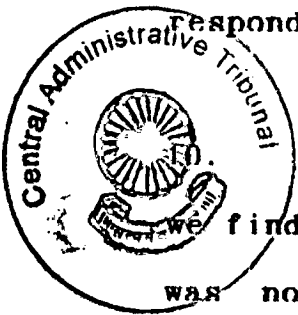
8. We may note that it is well settled law laid down by the Hon'ble Supreme Court in Narender Chadha & Ors. vs. Union of India & Ors. (1986 2 SCC 157), that an appointment cannot be treated as adhoc or temporary especially when the official continues to work for fifteen to twenty years without any break. Paragraph 21 reads as follows:

"As observed in D.R. Nim, I.P.S. v. Union of India [1967] 2 S.C.R. 325 when an officer has worked for a long period as in this case for nearly fifteen to twenty years in a post and had never been reverted it cannot be held that the officer's continuous officiation was a mere temporary or local or stop gap arrangement even though the order of appointment may state so. In such circumstances the entire period of officiation has to be counted for seniority."

9. The ratio laid down in the aforementioned case squarely applies to the facts of the present case. Following the ratio laid down in the aforementioned judgements, we are of the considered view that under no

[Signature]

circumstances the applicant who is working as Assistant Engineer (Civil) since 1978 could be treated as adhoc and temporary as projected by the respondents. At no point of time the applicant was ever informed about his being treated in the said post of Assistant Engineer (Civil) as adhoc and temporary. When the applicant was allowed all the increments which fell due, as well as allowed to cross the efficiency bar besides grant of second financial upgradation and also the fact that he was never reverted from the said post even for a day, i.e. technical break, it would not be justified to treat the applicant as Assistant Engineer on adhoc and temporary basis. When the applicant had passed the departmental qualifying examination in the year 1983-86, why he was not regularised, remained unexplained by the respondents.



In view of the discussion made hereinabove, find merits in the applicant's contention that there was no justification in not including his name in the All India Seniority list of Assistant Engineer (Civil). Since the applicant's name was not included in the All India Seniority list of Assistant Engineer (Civil) without any justification, he was deprived of the right of consideration to the next promotional post of Executive Engineer (Civil). The placement of respondents 5 to 7 in the eligibility list dated 23.6.1989 was also not disputed. This being the

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position, we find that had the applicant's name been figured at the appropriate place in the All India Seniority list of Assistant Engineer (Civil), he would not have been deprived of the right of consideration for promotion to the next higher post of Executive Engineer (Civil).



In view of the foregoing discussion, the present application is allowed by passing the following order:-

(i) In view of the law laid down by the Bangalore Bench of this Tribunal, the respondents' objection that in the absence of notification issued by Section 14 (2) of the Administrative Tribunals Act, 1985, the Tribunal has no jurisdiction to entertain the present application as the applicant is working under BSNL, is overruled;

(ii) In view of the respondents' statement made in paragraph 12 of the reply that the present application is premature as neither the provisional seniority list has been finalised nor the applicant has been regularly promoted to the grade of Assistant Engineer (Civil) and on the other hand contending that the cause of action is time barred and therefore the present application is hit by delay and laches is found to be inconsistent and contradictory on the face of it and accordingly the said plea is rejected;

(iii) Since the applicant was promoted as Assistant Engineer (Civil) vide order dated 13.11.1978 (Annexure-I) and continues to be functioning in the said post without any break or reversion, is held to be holding the said post on regular basis particularly in view of the law noticed hereinabove;

(iv) As the applicant is functioning as Assistant Engineer (Civil) since 13.11.1978, the respondents' action in not including his name in the provisional seniority list issued for the said cadre is held to be illegal;

(v) accordingly a direction is issued to respondents to include the applicant's name at appropriate place in the seniority list of the said cadre with all consequential benefits including right to promotion to the next higher post of Executive Engineer or further promotion, if any. Consequently, the respondents no.1-4 are directed to consider him for promotion to the grade of Executive Engineer (Civil) from the date his juniors were promoted vide order dated 23.1.2003. However, he will not be entitled to any back wages on the said account.

(vi) The aforesaid exercise shall be completed as early as possible and in any event within a period of three months from the date of receipt of the order.

(vii) No costs.



mr.

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

Certified to be true Copy
প্রমাণিত প্রতিলিপি

23/7/04
Section Officer (J)

C.A.T. GUWAHATI BANCH
Guwahati-781005