

CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

OA No.391/2005 with MA No.427/2005.

Jaipur, this the 22 day of February, 2006.

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

P. K. Saha
S/o Shri Chitranjan Saha,
Aged about 51 years,
R/o D-II/1 Sanchar Path, P&T Colony,
C-Scheme, Jaipur.

... Applicant.

By Advocate : Shri C. B. Sharma.

Vs.

1. Union of India
Through Secretary to the Government of India,
Department of Telecommunication,
Ministry of Telecommunication and Technology,
Sanchar Bhawan,
New Delhi 110 001.
2. Chairman cum Managing Director,
Mahanagar Telephone Nigam Limited (MTNL)
Through Executive Director Telephones,
K. L. Bhawan, Janpath,
New Delhi. 110 050.
3. Accounts Officer (Cash)
Office of Chief General Manager Telecommunications,
Rajasthan Telecom Circle,
Jaipur 302 008.

... Respondents.

By Advocate : Shir Prakash Gangavat for Respondent No.1.
Shri Anurag Sharma for Respondent No.2.
Shri N. C. Goyal for Respondent No.3.

: O R D E R :

Per M. L. Chauhan, Judicial Member.

The applicant has filed this OA thereby praying for
the following reliefs :-

"(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed not to recover any damage rent from the applicant for the period 22/10/2004 to 03/05/2005 by quashing letters dated 14/07/2005 and 09/06/2005 (Annexure A/1 and A/2) with all consequential benefits.

(ii) That the respondents further directed to adjust amount of Rs.20,046/- paid by the applicant towards license fee for the period 01/03/2004 to 03/05/2005 without demanding further any amount.

(iii) Any other order, direction or relief may be passed in favour of the applicant, which may be deemed fit just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. The applicant belongs to Indian Telecom Services Group-A Cadre and presently holding the post of Principal General Manager, Telecom, District Jaipur. The case as set out by the applicant in the OA is that while working in MTNL as General Manager, he was allotted residential accommodation Quarter No. S-II/80, Lavy Pinto Block, Asiad Village, New Delhi at monthly license fee of Rs.771/-. It is further pleaded that in the month of February 2004 the applicant was transferred from MTNL, New Delhi to Jaipur, Rajasthan Telecom Circle. Accordingly, he made request for retention of residential accommodation till end of academic year 2004-2005. It is further stated that his request was considered favourably and the applicant was permitted retention of residential accommodation. The grievance of the applicant is that the Respondent No.2 vide letter dated 19/03/2004 directed the applicant to make payment of license fee for the

period 01/02/2004 to 31/03/2004 at the rate of Rs.1542/- instead of Rs.771/- per month. It is further pleaded that thereafter a show cause notice dated 29.05.2004 for eviction of the said premises was served upon the applicant and vide order dated 14.06.2004 Eviction order was passed. Further grievance of the applicant is that vide order dated 25.04.2005 the applicant was directed to make payment of Rs.2,63,610/- towards damage rent and further vide letter dated 3.5.2005 the applicant was further directed to make payment of Rs.3,01,611/- towards damage rent. The applicant has further stated that vide letter dated 9.06.2005 (Annexure A/2), the Jaipur Authorities informed the applicant in regard to the recovery of Rs.3,01,611/-. It is these orders which are under challenge in this OA.

3. Notice of this application was given to the respondents. By way of preliminary objection, the respondents have stated that this Tribunal has got no jurisdiction to entertain the matter as the answering respondents are not amenable to the jurisdiction of this Tribunal. It is further stated that the applicant is not challenging any order passed by the Department of Telecom in this OA and the orders which are under challenge in the present OA are order dated 14.07.2005 (Annexure A/1) and order dated 9.06.2005 (Annexure A/2) which have been passed by MTNL and BSNL respectively, which have a separate entity and are not the department/functionary of

the department of telecom so as to invoke the jurisdiction of this Hon'ble Tribunal. It is further stated that the jurisdiction of this tribunal cannot be allowed to be invoked against the orders passed or action taken by the answering respondent against an employee working under it even on deputation basis.

4. Since the question of jurisdiction is involved in this case, I have heard the Learned Counsel for the parties.

5. Learned Counsel for the applicant argued that since, admittedly, the applicant is an employee of Telecom department and is presently on deputation with MTNL/BSNL, as such, this Tribunal has got jurisdiction to decide the matter in view of the provisions contained in Section 14 of the Administrative Tribunals Act, 1985. Learned Counsel for the applicant argued that for the purpose of exercising the jurisdiction in relation to service matter of employees, it has to be founded out as to whether they fall within the categories of employees mentioned in Section 14 of the Act and it would be inconsequential and wholly irrelevant as to in which organization or department such employee is working or posted at last. It is further argued that the jurisdiction of the Tribunal does not depend on the character of the party against which the relief is claimed. Learned Counsel for the applicant argued that once it is established that a

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person is holding a ~~public~~ post and that the relief claimed is in respect of service condition, then the question whether he is seeking remedy against the government or against any authority or both is immaterial. For that purpose, Learned Counsel for the applicant has placed reliance on the decision rendered by the CAT, Principal Bench in OA No.1963/2005 and other connected matters filed by the Indian Telecom Service Association and Others against the action of the respondents whereby the applicants were asked to exercise option for absorption in MTNL/BSNL.

6. On the contrary, Learned Counsel for the respondents has placed reliance on the decision of the Delhi High Court in the case of Ram Gopal Verma vs. Union of India, 2001 (7) SLR 693 and the decision of the Bombay High Court in the case of Bharat Sanchar Nigam Limited vs. A. R. Patil and Ors. etc.

7. I have heard the learned counsel for the parties and gone through the material placed on record.

8. At the outset, it may be stated that the decision relied by the applicant in OA No.1963/2005 and other connected matters filed by the Indian Telecom Service Association against exercising their option for absorption in MTNL/BSNL is of no assistance to the applicant inasmuch as in that OA the question of

jurisdiction was not raised and dealt by the Tribunal. According to me, the matter is squarely covered by the decision rendered by the Delhi High court in the case of Ram Gopal Verma (supra) as well as the decision rendered by the Bombay High court in the case of A. R. Patil & Ors. (supra). In the case of Ram Gopal Verma, the petitioner therein belongs to TES Group-B in the Department of Telecommunication and was sent on deputation to MTNL where he was placed under suspension. The petitioner challenged his suspension order in the Tribunal. The OA was dismissed on the ground of jurisdiction as the Tribunal hold that the Tribunal would assume jurisdiction in respect of MTNL only upon a notification issued by the Central Government under Section 14(2) of the Administrative Tribunals Act, 1985. Since the Central Government had not issued any notification under Section 14(2) of the Act, the Tribunal was not vested with any jurisdiction to entertain any petition relating to any service dispute in MTNL. The Hon'ble High Court upheld the judgment of the Tribunal and after noticing the provisions contained in Section 14 (2) of the Administrative Tribunal Act and after relying on the judgment of the Apex Court in the case of A.P. State Electricity Board v. M.A. Hai Azami, 1992 (6) SLR 167 (SC) has made the following observations in Para 4 to 7 which reads as under :-

"4. Learned Counsel for Respondent Mr. Jayant Bhushan, on the contrary submitted that MTNL, a

Government Company could be brought within the jurisdiction of Tribunal only by a notification to be issued by the Central Government under Section 14(2) of the Act and so long as this notification was not issued, Tribunal could not assumed jurisdiction in respect of any service matter under MTNL. He placed reliance on a Supreme Court judgment in A.P. State Electricity Board v. M.A. Hai AZami, 1991 Supp (1) Supreme Court Cases 660 which according to him squarely covered the point in issue ousting Tribunal's jurisdiction over MTNL.

5. There is no dispute that MTNL was a Government company incorporated under the Companies Act and was a distinct legal entity. It is also admitted by both sides that it was not covered by provisions of Section 14(1) of the Act and could be brought within Tribunal jurisdiction only through a notification to be issued by Central Government. This sub-section reads thus :-

"(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 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.

(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).....

(b).....

A combined readings of the two provisions shows that provisions of sub-section (3) could be applied to local or other authorities under the control of the Government and to Corporations or societies owned and controlled by the Government by a Notification to be issued by the Central Government. No such notification was admittedly issued till date to extend jurisdiction of Tribunal to MTNL. That being so, was Tribunal still obliged to entertain petitioner's OA challenging his suspension order which was passed by General Manager of MTNL and

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

6. We are supported in this by the Supreme Court judgment in A. P. State Electricity Board (supra) which also dealt with a similar case of a deputationist holding that so long as concerned employee had sought relief against the Electricity Board, Tribunal had no jurisdiction in the matter. Therefore, it all comes to whether relief sought was relatable to his post in the parent department or the borrowing corporation. If it was against the later one, Tribunal would assume jurisdiction only upon a Notification to be issued by Central Government under Section 14(2) of the Act. The employees retention of a lien on a post in the parent department was irrelevant for the purpose. In the present case also, petitioner had not sought any relief in this OA related to his post in the parent department but had questioned his suspension from the post of SDE(Cables) in MTNL which admittedly was not covered the requisite Notification.

7. We, accordingly hold that since Central Government had not issued any notification under Section 14(2) of the Act to apply provisions of sub-section (3) to MTNL, CAT was not vested with any jurisdiction to entertain any petition related to any service dispute in the MTNL.

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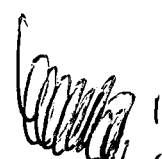
To the similar effect ^{is} ~~to~~ the decision of the Bombay High Court in the case of A.R. Patil & Ors. (supra) where the Hon'ble High Court has set aside the decision of the Tribunal whereby the petition of the applicant before the Tribunal against transfer order ~~is~~ passed by BSNL was entertained.

9. The ratio as laid down by the Delhi High Court based on the decision of the Apex Court is squarely applicable in the instant case. Since in this case the Central Government had not issued any notification under Section 14 (2) of the Act to apply provisions of Sub section 3 of MTNL/BSNL, as such, this Tribunal is not vested with any jurisdiction to entertain any petition related to any service dispute in the MTNL/BSNL. Accordingly, this Tribunal has got no jurisdiction to entertain the matter. The Registry is directed to return the Paper Book to the applicant for filing the same before the appropriate forum retaining one copy of the Paper Book. The ex parte interim stay granted on 29.08.2005 and continued from time to time shall stand vacated. However, it is expected that the respondents will not give effect to the impugned order Annexure A/2 for a further period of four weeks from today so that the applicant may approach appropriate forum to seek redressal of his grievances and further that time taken by the applicant in pursuing his case before this Tribunal shall constitute a sufficient cause for condonation of delay, if any.

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10. With these observations, the OA is disposed of with no order as to costs.

11. In view of the order passed in OA, MA No.427/2005 filed for vacation of interim stay, stands dismissed accordingly.



(M. L. CHAUHAN)
JUDICIAL MEMBER

P.C./