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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDER SHEET

ORDERS OF THE TRIBUNAL

contd. From sheet - 13

13.12.2007

OA 402/2005

None present for applicant.
Mr. N.C. Goyal, counsel for respondents.

Learned counsel for respondents has no objection if the case is adjourned.

List on 18.2.2008.

R. Shukla
(J.P. SHUKLA)

MEMBER (A)

A. K. YOG
(A.K. YOG)
MEMBER (J)

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18.02.2008

OA No. 402/2005

Mr. Rajveer Sharma, Counsel for applicant.
Mr. Jai Singh, Proxy counsel for
Mr. N.C. Goyal, Counsel for respondents.

Heard learned counsel for the parties.

For the reasons dictated separately, the OA is disposed of.

R. Shukla
(J.P. SHUKLA)
MEMBER (A)

M.L. Chachan
(M.L. CHACHAN)
MEMBER (J)

AHQ

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 18th day of February, 2008

ORIGINATION APPLICATION NO. 402/2005

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. J.P. SHUKLA, ADMINISTRATIVE MEMBER

Ghasilal Jain son of Shri Mangilal Jain aged about 62 years, resident of Vinod Sadan, Fateh Gadi, Rampura, Kota (Rajasthan). Retired Sr. T.O.A. (T.G.) from the Department of Telecommunication (Bharat Sanchar Nigam Limited).

.....APPLICANT

(By Advocate: Mr. Rajveer Sharma)

VERSUS

1. Union of India through Secretary, Department of Post and Tele communication, Government of India, New Delhi.
2. Bharat Sanchar Nigam Limited (A Government of India Enterprises) through its Chairman/Managing Director, 148, Statesman House, A-Wing, Vth Floor, Bara Khamba Road, New Delhi.
3. General Manager, Telecom District, Bharat Sanchar Nigam Limited, Kota.

.....RESPONDENTS

(By Advocate: Mr. Jai Singh Proxy counsel for Mr. N.C. Goyal)

ORDER (ORAL)

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

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“(a) By an appropriate writ, order and the direction, your Lordship may kindly be pleased to accept and allow this OA and by an order and direction the impugned order dated 17.9.2003 (Annexure A/1) may kindly be quashed and set aside, the respondents may be directed to repay such amount with interest @ 12% p.a.

(b) By an appropriate order and direction the respondents may be directed to refix and redetermine the retrial benefits of the applicant in new IDA Pay Scale 7800-11175 and accordingly the retrial benefits may kindly be directed to be paid to the applicant. Arrear of such amount may also be directed to be paid to the applicant with interest @ 12% p.a.

(c) The respondents may be directed to release and pay the pending medical bills with interest @ 12% p.a. and the respondents may be directed to reimburse the medical bills in future and other bills which are to be reimbursed. The respondents be further directed to provide all the retrial benefits and facilities admissible to the employee retired in Scale 7800-11175.

(d) Any other order or direction which this Hon'ble Tribunal may deem fit and proper be also passed in favour of the applicant.”

2. In sum & substance, the case of the applicant is that he was on deputation with the BSNL. While serving BSNL, he had exercised option for absorption in BSNL w.e.f. 01.10.2000. Respondent No. 1 without considering the applicant's option for absorption, which is still pending, has refixed his pay, as if he has never exercised option for his absorption in the BSNL, vide impugned order dated 17.09.2003 (Annexure A/1). Thus according to the applicant, so long as the decision on his option is taken, which was exercised by him within the prescribed time as stipulated by the respondents, it was not permissible for the respondents to resort such an action.

3. Notice of this application was given to the respondents. Respondents have taken preliminary objection regarding maintainability of his OA, As according to the respondents nos. 2 & 3, the applicant is ~~seeking~~ relief from the BSNL, as such this Tribunal has got no jurisdiction to entertain this OA. On merit, it is stated

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that option was called from the employees for their absorption in BSNL w.e.f. 01.10.2000. The applicant did not submit his option at the initial stage when the BSNL was created. However, the department of Telecommunication issued a letter dated 02.05.2003 (Annexure R/1) for obtaining option for absorption in BSNL. It is further submitted that applicant in pursuance of Annexure R/1 submitted his option dated 23.05.2003 (Annexure A/2) for giving his option to opt the BSNL. It is further submitted that the option of the applicant was forwarded by the respondent no. 3 to AGM (Pers), office of CGMT, Jaipur vide office letter NO. E-118/BSNL/Option/11/2003 dated 30.05.2003 for issuance of Presidential Order for absorption in BSNL from BSNL Headquarter. Since the applicant was due to retire on 30.06.2003 on superannuation, hence the pay & allowances were drawn on IDA scale and on retirement leave encashment was also made on the pay of IDA scale.

4. We have heard the learned counsel for the parties. From the facts, as stated above, it is clear that the applicant has exercised his option within four weeks pursuant to letter dated 02.05.2003 (Annexure R/1). Thus, it was incumbent upon the appropriate authority to take such decision and it was not permissible for respondents nos. 2 & 3 to refix the pay of the applicant as he has never exercised his option in the BSNL and till a decision on his option was taken by the appropriate authority, such an action on behalf of respondents nos. 2 & 3 is without any authority of law. Since the main issue involved in this case is regarding passing of the appropriate order on the option exercised by the applicant pursuant to letter dated 02.05.2003 (Annexure R/1), which decision

has to be taken by the Government level by issuing presidential order for the absorption of the applicant in BSNL or otherwise, thus according to us, the present OA is maintainable.

5. In the facts & circumstances of this case, we are of the view that it will be appropriate if the direction is given to respondent no. 1 to pass a appropriate order on the option of the applicant dated 23.05.2003 (Annexure A/2), which option has been exercised pursuant to the order (Annexure R/1) issued by the respondents, within a reasonable period.

6. Accordingly, Respondent no. 1 is directed to take decision on the option exercised by the applicant vide letter dated 23.05.2003 within a period of two months from the date of receipt of a copy of this order. It will be open for the applicant to file substantive OA in case adverse decision is taken on his option for absorption in the BSNL by Respondent No. 1. In case the option of the applicant is accepted by Respondent No. 1, the respondents nos. 2 & 3 are directed to refix the pay of the applicant within one month from the date of receipt of such decision, ignoring the order dated 17.09.2003 (Annexure A/1).

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


(J.P.SHUKLA)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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