

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 29th day of August, 2008

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER
HON'BLE MR.B.L.KHATRI, ADMINISTRATIVE MEMBER

ORIGINAL APPLICATION No. 22/2008

1. Ram Avatar
s/o Shri Sheo Dan Singh,
r/o Plot No.18, Shiv Colony,
Khatipura Road, Jhotwara, Jaipur,
retired as Senior Section Supervisor
O/o PGM, Telecommunication Department,
Jaipur
2. Hanuman Sahai Sharma
s/o Shri Chittar Mal Sharma,
r/o Moriija Road, Chomu, District Jaipur,
retired as Senior Section Supervisor
O/o PGM, Telecommunication Department,
Jaipur
3. Amar Singh
s/o Shri Mam Raj Ji,
r/o Lok Nayak Vyas Colony,
Near Barkati Masjid Nahari ka Naka,
Shastri Nagar, Jaipur,
retired as Sr. Section Supervisor
O/o PGM, Telecommunication Department,
Jaipur
4. G.M.Chhattani
s/o Sh.Mangha Ram Chhattani,
r/o 758, Ashok Chowk,
Adarsh Nagar, Jaipur,
retired as Sr. Section Supervisor
O/o PGM, Telecommunication Department,
Jaipur
5. Kalyan Sahai
s/o Sh. Pokhar Ram ji,
Naiyan Ka Tiba,
Near Sheetla Mata Temple, Jaipur,
retired as Sr. Section Supervisor
O/o PGM, Telecommunication Department,
Jaipur

6. Kailash Chand Jhalani
s/o Sh. Ram Swaroop Jhalani,
r/o Morija Road, Chomu,
Distt. Jaipur,
retired as Sr. Section Supervisor
O/o PGM, Telecommunication Department,
Jaipur
 7. Laxmi Devi
w/o late Sh. Gopal Lal Saini,
who was working as Sr. Section Supervisor,
r/o E-52 B, Roop Vihar,
New Sanganer Road,
Sodala, Jaipur
- .. Applicant

(By Advocate: Shri Surendra Singh, proxy counsel to
Shri M.S.Gupta)

Versus

1. Union of India through
Secretary to Government of India,
Ministry of Communication,
Department of Telecommunications,
New Delhi.
2. The Director General,
Telecommunication Department,
Govt. of India,
New Delhi.
3. The Chief General Manager,
Telecommunication Department,
Rajasthan Circle, Jaipur
4. The Principal General Manager,
Telecom District, Jaipur
(Bharat Sanchar Nigam Ltd.,)
Jaipur

.. Respondents

(By Advocate: ...)

ORIGINAL APPLICATION No.23/2008

Krishan Lal Thawani,
s/o late Sh. Lakhimal Thawani,
r/o 94/96, Agarwal Farm,
Mansarovar, Jaipur,

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retired from the O/o the PGM,
Telecommunication Department,
Rajasthan, Jaipur

(By Advocate: Shri Surendra Singh, proxy counsel for
Shri M.S.Gupta)

.. Applicant

Versus

1. Union of India through
Secretary to Government of India,
Ministry of Communication,
Department of Telecommunications,
New Delhi.
2. The Director General,
Telecommunication Department,
Govt. of India,
New Delhi.
3. The Chief General Manager,
Telecommunication Department,
Rajasthan Circle, Jaipur
4. The Principal General Manager,
Telecom District, Jaipur
(Bharat Sanchar Nigam Ltd.,)
Jaipur

.. Respondents

(By Advocate:)

ORIGINAL APPLICATION No.24/2008

1. Satya Narain Verms
s/o Sh. Bhura Mal Verma,
r/o 2404, Kodiwal Bhawan,
Ghee Walon Ka Rasta,
Johri Bazar, Jaipur,
retired as Chief Section Supervisor,
O/o PGM, Telecommunication Deptt.,
Jaipur
2. J.N.Saluja
s/o Sh. Jaisa Ram Ji,
r/o Plot No.7, Shiv Colony,
Khatipura Road, Jhotwara, Jaipur,
retired as Chief Section Supervisor,
O/o PMG, Telecommunication Deptt.,
Jaipur

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Jaipur

3. Smt. Sudarshan Gupta
w/o Shri M.L.Gupta,
who was working as Chief Section Supervisor,
O/o PMG, Telecommunication Deptt.,
Jaipur,
r/o 2/461, Jawahar Nagar,
Jaipur,
4. Heera Lal
s/o Sh. Daulat Ram Ji,
r/o 3417, Chowkari Hazoori Topkhana,
Kothi Kalayan Nala Mohalla, Jaipur,
retired as Chief Section Supervisor,
O/o the PMG, Telecommunication Deptt.,
Jaipur.

.. Applicants

Versus

1. Union of India through
Secretary to Government of India,
Ministry of Communication,
Department of Telecommunications,
New Delhi.
2. The Director General,
Telecommunication Department,
Govt. of India,
New Delhi.
3. The Chief General Manager,
Telecommunication Department,
Rajasthan Circle, Jaipur
4. The Principal General Manager,
Telecom District, Jaipur
(Bharat Sanchar Nigam Ltd.,)
Jaipur

.. Respondents

(By Advocate:)

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O R D E R (ORAL)

By way of this order, we propose to dispose of these OAs as the common question which requires our consideration is whether this Tribunal has got jurisdiction to entertain these matters.

2. Briefly stated, applicants in these OAs are persons who retired as Chief Section Supervisor, Senior Section Supervisor/Section Supervisor, from Department of Telecommunications/Bharat Sanchar Nigam Limited (BSNL). The grievance of the applicants in these cases is that they should be granted BCR Grade-IV i.e. 10% which has been granted to the junior persons w.e.f. the year 1995 vide order dated 7.7.2006, Ann.A1 in OA No.22/08 and 24/08 whereas in OA No.23/08 the applicant has not annexed any such order whereby the said grade was given to the so called junior ~~of~~ the applicant w.e.f. 29.8.95/17.1.95. At the outset, it may be stated that such a claim cannot be entertained at this stage.

That apart, as can be seen from the order Ann.A1, the said order has been passed by the BSNL authorities whereby promotion in BCR Grade-IV (10%) has been given to the persons named therein w.e.f. 17.1.1995 i.e. the date from which such junior persons have been promoted subject to final outcome of SLP (C) No.CC 4108/2006

filed before the Hon'ble Supreme Court. From perusal of this order, it is evident that the said scale was given to the persons named therein pursuant to the judgment rendered by this Tribunal in OA No.64/2000. Thus, from the facts as stated above, it is clear that the benefit has been extended only to those persons who have obtained favourable order from the Court and such promotion has been given subject to final outcome of the SLP filed before the Supreme Court. Thus, the applicants cannot claim promotion against 10% quota in BCR Grade-IV on the basis of the judgment which has not attained finality.

Besides this, promotion in BCR Grade-IV has to be given up to the extent of 10% posts existing in a particular cadre strength. Therefore, it is not a case where BCR Grade-IV has to be given solely on the basis of seniority after completion of particular years of service, but in fact the scale is given only to those persons who were promoted in BCR Grade-IV against 10% vacancy/posts. Thus, it cannot be said to be a case of recurring cause of pay and allowances. Rather, it is a case where rightly or wrongly persons have been promoted in BCR Grade-IV against available 10% vacancies posts and in view of the law laid down by the Hon'ble Apex Court in the case Secretary to Govt. of Punjab and Ors. vS. Ajit Singh and Ors., 1999 SCC (L&S) 1322, non consideration of a person for

promotion is not a continuous cause. Thus, such stale claim cannot be entertained at this stage.

Further, from perusal of Ann.AI, it is also evident that out of 12 persons, 7 persons were promoted in BCR Grade-IV (10%) in the year 1999, 2000, 2001 and 2002 and in their case vide impugned order date of promotion has been revised to 17.1.1995 pursuant to direction given by this Tribunal. Thus, cause of action has arisen in favour of the applicants at the relevant time when such promotion was given to their junior persons.

3. Be that as it may, the facts as stated above have been noticed only for the purpose whether prima-facie the applicants have got a case for issuance of notice. However, we are of the view that the present OAs can be disposed of solely on the ground that this Tribunal has got no jurisdiction to entertain the matter as some of the applicants were employees of the BSNL whereas some were employees of Department of Telecommunications and the relief, if any, has to be granted by the BSNL authorities, even if, the relief as claimed pertains to the period when the applicants were serving in the Department of Telecommunication.

4. The matter on this point is no longer res-integra. At this stage, it will be useful to quote

Para 5 of the judgment passed by this Tribunal in OA No.433/2002 decided on 229.11.2007, M.D.Pareek and Others vs. Union of India and Ors., which thus reads:-

"5. We have heard the learned counsel for the parties. We are of the view that since the respondents have raised a preliminary objection regarding maintainability of this OA on account of jurisdiction, as such, the said question has to be decided first. The matter on this point is no longer res-integra. The respondents in their reply have placed reliance on the decision of this Bench in the case of Sarbati Devi vs.UOI and Ors., in OA No.486/2002 decided on 28.11.2002, the relevant portion of which is reproduced herein below:-

"It is noticed that the impugned order has been issued by Bharat Sanchar Nigam Limited (BSNL), which is not one of the departments of the Government. It is a registered company. The Tribunal can exercise power under Section 14 of the Administrative Tribunal Act, 1985 (for short, the Act) on the service matters concerning a person appointed to any civil service of the union or any civil post under the Union.

Since the impugned order has been issued by BSNL, it is evident that the applicant, if at all was in service, was in part-time service of the BSNL Company and not in a office of the Central Government. This Tribunal does not have jurisdiction to entertain this matter under Section 14 of the Act.

It is significant to point out that BSNL has not been included in the order dated 17.12.98 wherein the Tribunal has been empowered to hear service matter of the employees of the Corporation/Societies or other authorities.

Since the Tribunal does not have jurisdiction to entertain this matter, it is directed that the OA may be returned to the applicant for presentation to the proper court, after the applicant filed certified copies of the OA and the documents."

The matter is squarely covered by the decision rendered by this Bench in the case of Sarbbati Devi (supra) as in the present case also the grievance of the applicants is regarding Annexure A/1 which order has been passed by the BSNL authorities. Accordingly, we held that this Tribunal has got no jurisdiction to entertain the

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matter. At this stage, it will be useful to quote the decision of the Delhi High Court (DB) in the case of Ram Gopal Verma vs. Union of India (Delhi), reported in 2001(7) SLR 693. In that case also the provisions of Section 14 and 14(2) of the Administrative Tribunals Act, 1985 were involved and the question which came up for consideration before the Hon'ble High Court was whether the CAT's jurisdiction extended to Mahanagar Telephone Nigram Limited (MTNL) also. Their Lordships of the Hon'ble High Court after relying on the decision of the Apex Court in the case of A.P.State Electricity Board v. M.A. Hai Azami, 1992 (6) SLR 167 (SC) and after noticing the aforesaid provisions of AT Act held that the employees retention of lien on a post in the parent department was irrelevant for the purpose of jurisdiction and what is important is whether the relief sought relates to the parent department or the borrowing corporation. In the present case, the applicants are claiming benefit under BCR scheme w.e.f. 14.12.1990. At this stage, it may be stated that w.e.f. 1.10.2000, Government of India has decided to transfer all assets and liabilities to BSNL vide OM dated 30.09.2000. Thus, its successors' company shall be responsible for all assets and liabilities even in respect of the claim which pertains prior to 1.10.2000. As can be seen from Clause 3 (iii) of OM dated 30.9.2000, the book value of the assets comprising the business being transferred to the Company has been provisionally assessed as Rs. 63,000 crores and the said sum was treated as provisional value of the business being transferred to and taken over by the Company subject to finalization of transfer value by 31.3.2001 in consultation with Ministry of Finance. As can be seen from OM dated 3.09.2000 all the business of department of Telecom Services and the Department of Telecom Operation was transferred to BSNL which is a company. The government had only retained the functioning policy formation, licensing, wireless spectrum, management and administration control etc. It was for that reason that even the past liability in respect of the employees who has retired from the department of telecom services were to be borne out by the BSNL. That is why the impugned order Annexure A/1 came to be passed by the BSNL authorities. Thus, according to us, the matter pertains to BSNL which is a company and the applicant are aggrieved of the order passed by the BSNL authorities, this Tribunal has got no jurisdiction to entertain the matter in the

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absence of notification under Section 14(2) of the Administrative Tribunals Act, 1985."

5. Thus, in view of the finding recorded by this Tribunal in the case of M.D.Pareek (Supra) and also the fact that the benefit has been given by the BSNL authorities vide impugned order Ann.A1 in respect to those employees who have obtained favourable order from this Tribunal and which benefit has been extended subject to outcome of the SLP pending before the Hon'ble Supreme Court, we are of the view that this Tribunal has got no jurisdiction to entertain the matter.

6. Accordingly, the OAs are disposed as this Tribunal as got no jurisdiction to entertain the matter. Registry is directed to return the OAs to the applicants for the purpose of presentation of the same before the appropriate authority, if any, by retaining one copy with them.

(B.L. KHATRI)

Admv. Member

(M.L. CHAUDHARI)

Judl. Member