

Central Administrative Tribunal Principal Bench, New Delhi

T.A.No.44/2012
(W.P. (C) No.10266-74/2005)

Monday, this the 6th day of February 2017

Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Mr. K.N. Shrivastava, Member (A)

1. The P&T Civil Engineers Group 'A' Association
Through its President, Mr. Jagdish Chandra
s/o late Mr. Kahan Singh
(Posted as CE (BW) MTNL)
3rd Floor MTNL Sadan
CGO Complex, New Delhi
2. Mr. A K Nagar s/o late Mr. S M Nagar
Chief Engineer (Civil)
CTO Project, New Delhi
3. Mr. D S Deshwal s/o Mr. Kharak Singh
Superintending Engineer (Civil)
BSNL, Civic Circle, New Delhi
4. Mr. Shalendra Sharma s/o Mr. O P Sharma
Superintending Engineer (Civil)
CTO Project, New Delhi
5. Mr. Arun Kumar Gupta s/o Mr. V P Gupta
Superintending Engineer (P&D) II
BSNL, Mohan Singh Place, New Delhi
6. Mr. Balvinder Kumar s/o Mr. Bardu Ram
Executive Engineer (Civil)
CTO Project, New Delhi
7. Mr. Vinod Sharma s/o Mr. K C Sharma
Executive Engineer (P&D) II
BSNL o/o CE (C) – BSNL, UP (W), Meerut

..Applicants

(Ms. Madhu Tewatia, Advocate)

Versus

1. Union of India through Secretary
Ministry of Communication & IT
Department of Telecommunication
Sanchar Bhawan, New Delhi -01

2. Bharat Sanchar Nigam Ltd. (BSNL)
Through its chairman & Managing Director
Statesman House, Barakhamba Road
New Delhi -01
3. Mahanagar Telephone Nigam Ltd. (MTNL)
Through its Chairman & Managing Director
Jeevan Bharti Building, Connaught Circus
New Delhi – 1
4. The Member (Production)
Telecom Commission
Deptt. of Telecommunication & IT
Sanchar Bhawan 20, Ashoka Road
New Delhi – 1

..Respondents

(Mr. Rajesh Katyal, Advocate for respondent No.1,
Mr. Vaibhav Kalra and Ms. Neha Bhatnagar, Advocates for
Respondent Nos. 2 to 4)

O R D E R (ORAL)

Justice Permod Kohli:

This matter was originally filed in the Hon'ble High Court of Delhi and registered as W.P. (C) Nos. 10266-72/2005. It was transferred to this Tribunal vide order dated 28.09.2012 and registered as T.A. No.44/2012.

2. The petitioner No.1 is an Association of Civil Engineers working in the P & T Department whereas the petitioner Nos. 2 to 7 are the individuals. They were brought on deputation to the Bharat Sanchar Nigam Limited (BSNL) w.e.f. 01.10.2000 after the BSNL was created. While they were working on deputation, the impugned Notification/Circular dated 24.03.2005 came to be issued asking the officers to exercise their options for Mahanagar Telephone Nigam Limited (MTNL) / BSNL or Government service, as the case may be. The said Circular was followed by further clarificatory orders dated 17.05.2005 and 30.05.2005. The applicants challenged the validity of the order dated 24.05.2005 and clarifactory

orders whereby they were directed to exercise the options from retrospective effect, i.e. w.e.f. 01.10.2000.

3. Similar W.Ps. were filed by similarly situated persons. These petitions came to be transferred to the Tribunal. Some of the similarly situated employees directly approached the Tribunal by filing various O.As., including O.A. No.1963/2005 (with connected cases). These O.As. were decided by the Tribunal vide order dated 31.10.2005 with the following conclusions:-

“39. Having regard to the facts and circumstances of the case as also observations made above our conclusions on various contentions made by the parties are as follows:

(1) Terms and conditions for absorption in BSNL/MTNL for Group A officers contained in OM dated 4.10.2005 are comprehensive enough. Combined with them the assurances provided on behalf of the Government as respects allocation/absorption as well as recovery of the ad hoc amount, these instructions would enable the concerned employees to exercise an informed option for absorption in MTNL/BSNL.

(2) On absorption, these officers will certainly gain in monetary terms by availing corresponding IDA pay scales, which are higher than the existing CDA pay scales available in the Government.

(3) There is no infirmity or illegality in insertion of rule 37A CCS (Pension) Rules, 1972 vide notification dated 30.9.2000. In our considered view, it cannot be said to be an excessive piece of legislation at all.

(4) Since a bulk of officers in BSNL/MTNL have been absorbed from 1.10.2000 no differential treatment can be accorded to Group A officers insofar as the question of effective date of absorption is concerned.

(5) In majority of OAs under consideration here the ITS Association or its members have filed series of petitions/applications before various High Courts and different Benches of this Tribunal on the same cause of action. This indeed is a flagrant abuse of the process of law and casts a serious doubt on intellectual integrity of the concerned Association or its members. We cannot approve such a

tendency on their part. Basically, following the settled law on this aspect, their OAs could have been dismissed outrightly. However, instead of taking a technical view of the matter, we have considered them on merits.”

The Tribunal also made further observations, which read thus:

“40. Although we have concluded above that the general terms and conditions of absorption in BSNL/MTNL were comprehensive and deserve no interference, it has been pointed out above that certain important aspects of the matter required clarifications and indeed the Government came up with OM dated 4.10.2005 during the pendency of these OAs and have been extending the date of submission of options from time to time, the last being 15.10.2005. As a matter of fact, certain assurances have been provided even during the course of hearing. It is also observed that a bulk segment of Group A officers have yet not exercised their option for absorption in BSNL/MTNL for various reasons. It would be reasonable and in the interest of justice that all Group A officers in DOT including those who are on deemed deputation with BSNL/MTNL get a further opportunity of exercising their option on the basis of OM dated 4.10.2005 combined with assurances given on behalf of respondents as incorporated above. In our view, these officials should be able to submit their options within a period of one month with no further extension.

41. In result, these OAs are disposed of directing respondent No.1, i.e., Secretary, Department of Telecommunication, New Delhi, to extend the date of submission of options in terms of the above observations up to November 30, 2005, whereafter respondents would be at liberty to take appropriate decision on such options within a reasonable period, say, three months. No costs.”

4. The aforesaid order of the Tribunal became subject matter of challenge before the Hon’ble High Court of Delhi in W.P. (C) Nos.22515-22518/2005 (with connected petitions). This bunch of W.Ps. were decided vide judgment dated 17.04.2012. On consideration of the gamut of the controversy, the Hon’ble High Court issued following directions:-

“ORDER

For the reasons stated hereinabove we dispose of these writ petitions in terms of the following directions:

- i) The deemed date of absorption of the petitioners fixed as 1.10.2000, is held to be illegal, being contrary to Rule 37-A (4) of CCS (Pension) Rules;
- ii) The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005;
- iii) The petitioners before this Court are given an option, to be exercised within two weeks from the date of this order, to revert to the Government or to seek permanent absorption in BSNL/MTNL as the case may be;
- iv) Those Government servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order;
- v) BSNL/MTNL shall relieve such of the petitioners, who opt to revert to Government service within 2 weeks of receipt of options from them;
- vi) Such of the petitioners who opt to revert to the Government shall be appropriately redeployed by the Government in Government service through surplus cell of the Government. We have no doubt in our mind that the Government would not like to keep such of the petitioners who opt to revert to the Government idle and, subject to availability of the positions with it, give them such work as is deemed appropriate to be performed by them.”

5. The present T.A. having been sent to this Tribunal remained pending during all these years. It is not in dispute that the controversy decided by the Hon’ble High Court, arising out of the judgment of the Tribunal and the controversy raised in the present T.A., is the same.

6. During pendency of the present W.Ps. (T.A.), the Hon’ble High Court passed various interlocutory orders in regard to the plea of the petitioners for exercising the options in respect to various circulars issued by the

respondents from time to time. While issuing notice on 06.06.2005, the Hon'ble High Court made the following observations:-

“9. In view of the above circumstances, I am of the view that the petitioner and members of the first petitioner, cannot be compelled to exercise option consequent to impugned order dated 24.3.2005. Hence, their refusal or inability to exercise any option in accordance with that order or the order dated 30.5.2005 will not come in their way of their absorption with one or the other P.S.U. in the event they are found to be entitled for that relief. Ordered accordingly. This is subject to the final outcome of this writ petition.”

7. The petitioners filed C.M. No.10245/2005 (pages 205-210) stating therein that the respondents are proceeding to complete absorption process on the basis of available option forms and are in the process of issuing the presidential order/notification qua those officials, who have exercised their options. It was accordingly prayed that the absorption process be not finalized in part by means of issuing the presidential order/notification as the same would adversely affect the rights/career prospects/service conditions of such officers, who have not exercised their options pursuant to the aforesaid order dated 06.06.2005. On this C.M., the Hon'ble High Court passed the order dated 23.08.2005, which reads as under:-

“Issue notice.

List this application on the date already fixed i.e. 5th September, 2005 for disposal.

The Respondents are directed to disclose the number of vacancies available in the MTNL, BSNL and the Government of India in each wing that is to say civil, electrical and architectural.

It is made clear that any action taken by the Respondents in regard to the assignment of any officer to one or the other organisation is subject to the final outcome of the present proceedings.”

8. The petitioners filed another C.M. No.10391/2005 (pages 256 to 263) with the following prayers:-

“I. Direct that the exercise of option by the officers/petitioners is without prejudice to their rights and contentions in the present Writ Petition and without giving up their claim or relief sought for in the present petition to which they are found entitled to on disposal of the petition.

II. Direct that the options tendered by the officers under coercion and forced circumstances be not acted upon and that status quo be maintained in view of the orders of the Guhati and Uttranchal High Court, SLP against the same having been dismissed.

III. Direct the Respondents not to take any action against the petitioners/officers by declaring them surplus or to deploy retired or military personnel in their place on account of non exercise of option.

IV. Direct that the deemed deputation of the petitioners/officers shall continue till the decision of the Writ Petition as ordered by the Uttaranchal High Court, and SLP against the same having been dismissed.

V. Pass such order or further orders as are deemed fit and proper in the circumstances of the case.”

9. On this C.M. being filed, the Hon’ble High Court passed the order dated 19.10.2005. In this order, the Hon’ble High Court noticed the interim orders passed by the Division Bench of the Guwahati High Court as also the Division Bench of the Uttaranchal High Court and the dismissal of the S.L.P. by the Hon’ble Supreme Court. Counsel appearing for the Union of India made submissions that the earlier orders passed by the Hon’ble High Court on 06.06.2005 and 23.08.2005 would take care of the petitioners’ apprehension. The Hon’ble High Court thereafter recorded the following:-

“Mr. Narula appearing for the UOI stated that the orders dated 6.6.05 and 23.8.05 would take care of the Petitioner’s apprehension. It is submitted that all actions would be subject to the outcome of the proceedings in this case. In this view of the matter, it is made clear that even if options are, or have been exercised they should be construed as being without prejudice.”

The aforesaid C.M. was disposed of by the Hon'ble High Court with the following observations:-

“Having regard to the orders of Guwahati High Court and Uttranchal High Court the application is disposed off in terms of the statement recorded, and clarification recorded in Para 3. This is subject to the members of the Petitioner No.1 filing individual affidavits in these proceedings making their position clear. Such affidavits shall be filed within two weeks from today.”

Later on the earlier interim orders dated 06.06.2005 and 23.08.2005 were confirmed by the Hon'ble High Court vide order dated 29.08.2007.

10. It is not in dispute that the claim of the petitioners is squarely covered by the judgment dated 17.04.2012, referred to hereinabove. In terms of the judgment of Hon'ble High Court, some of the petitioners were given an option to be exercised within two weeks from the date of the order either to revert to the Government or to seek permanent absorption in BSNL/MTNL, as the case may be. However, in respect to those Government servants, who have already accepted permanent absorption w.e.f. 01.10.2000, it was directed, will not be entitled to exercise a fresh option in terms of the order.

11. Such of the petitioners in the present T.A., who have already retired from service and are drawing post-retiral benefits, are deemed to have accepted the option of absorption notwithstanding the fact that the exercise of option was kept subject to the outcome of the T.A. On a query from learned counsel for petitioners, we are informed that only petitioner Nos. 4 (Mr. Shalendra Sharma) and 6 (Mr. Balvinder Kumar) are still in service and other petitioners, i.e., petitioner Nos.2, 3 & 5 have retired, whereas

petitioner No.7 have taken premature retirement. Thus there is no question of considering their claims.

12. Similarly, the details of the members of the Association – petitioner No.1 having not been brought on record, cannot be examined in the present T.A. and we do not intend to pass any order with respect to any other employee, who has or has not exercised the option. The present order will confine only to petitioner Nos. 4 & 6. Since the petitioner Nos. 4 & 6 are still working and their options were kept subject to the final outcome of the T.A., we are of the considered view that their claims shall be covered by the judgment of the Hon'ble High Court, referred to hereinabove.

13. Mr. Vaibhav Kalra, learned counsel appearing for respondent Nos. 2 to 4 has vehemently argued that the claims of the applicant Nos.4 & 6 are covered by direction (iv) of the judgment of the Hon'ble High Court and thus they are not entitled to exercise fresh option. To the contrary, it is contended by Ms. Madhu Tewatia, learned counsel appearing on behalf of the applicants that the exercise of option by them was kept subject to the outcome of this petition by the Hon'ble High Court, meaning thereby that on disposal of the Writ Petition the applicants would have the liberty to exercise fresh option, if so permitted by the Court. Her contention is that in the judgment dated 17.04.2012 the Hon'ble High Court had permitted such of the petitioners therein, who had not exercised option, to exercise fresh option under direction (iii) of the judgment. It is accordingly stated that the exercise of option by the applicants during pendency of the judicial proceedings was never a voluntary exercise of option, it was rather under

the circumstances mentioned by the applicants and brought to the notice of the Hon'ble High Court, whereupon exercise of option by the applicants was kept subject to outcome of the writ petition. We endorse the view of the learned counsel for applicants. Exercise of option by them was never on their own accord but under the threat and coercion of sending them to other organization. This fact was brought to the notice of the Court and the right of the applicants for exercising the option was kept subject to outcome of the writ petition. Under these circumstances, the applicants' case would be covered by direction (iii) of the judgment dated 17.04.2012.

14. In this view of the matter, the T.A. is disposed of with the following directions:-

- (i) The petitioner Nos. 4 & 6 are accorded two weeks' time to exercise their options whether to seek absorption in BSNL/MTNL or to go back to the Government.
- (ii) In the event they exercise the option to go back to the Government, they will have to give undertaking to the respondents to refund all additional financial benefits while on deputation with the BSNL/MTNL, including the excess pay.
- (iii) The competent authority, on receipt of such option and their undertaking to refund, will pass the final order as per their option, within a period of three months.

- (iv) Implementation of such order shall be subject to the petitioner Nos. 4 & 6 refunding all additional financial benefits drawn from the BSNL/MTNL.

No order as to costs.

(K.N. Shrivastava)
Member (A)

(Justice Permod Kohli)
Chairman

February 6, 2017
/sunil/