

Central Administrative Tribunal
Principal Bench
New Delhi

O.A.No.932/2014

M.A.No.839/2014

Order Reserved on: 13.01.2017

Order pronounced on 23.01.2017

Hon'ble Shri V. Ajay Kumar, Member (J)

Hon'ble Shri V. N. Gaur, Member (A)

1. John Thomas A.
S/o Sh. A.C.Thomas
PGM, IA & Enterprise Business
6th Floor, BSNL Bhawan
HC Mathur Lane,
New Delhi – 110 001.
2. LRVM Rao
D/o R.V.Madhava Rao
Principal General Manager (F)
Karnataka, Telecom Circle
No.1, Swami Vivekananda Road
Bangalore-8.
3. G Ravi
S/o Sh. S. Gopalan
PGM F
O/o CGMT Tamil Nadu Circle
New Admn. Bldg, 16A Greams Road
Chennai-60
R/o 80 Annasalai
Chennai-600002.
4. Smt. Sujata Ray
W/o Sh. Tapan Ray
O/o CGM, BSNL Gujarat Telecom Circle
GC Road, Ahmedabad-380006.
Bungalow No.K-16, Sector-20
Gandhi Nagar, Gujarat-382020.

5. Sujata Venkateswaran
W/o Sh. K. S. Venkateswaran
Karnataka Circle BSNL.
St.Floor, CFO Campus
Telecom House, Raj Bhawan Road
Bangalore-560 001.
R/o 229, V Main, 13th Cross
Indira Nagar, Stage 2
Bangalore-560038.
6. Arundhati Panda
Director Finance
3rd Floor, CDOT Campus
Mehrauli, Delhi-30.
7. Sumam Pillai
W/o Sh. Ajit Kumar Pillai
Sr. GM F
BSNL Andhra Pradesh Circle
O/o CGM, 1st Floor, Door Sanchar Bhawan
Hyderabad.
R/o Flat 95, Staff Quarters
EFL University, Hyderabad-500007.
8. Yojana Das
Sr. GM (BFCI)
5th Floor, BSNL Bhawan
HC Mathur Lane,
New Delhi.
9. Madhav Narayan Punde
S/o Sh. Narayan Bhagwant Punde
GM(F), Office of PGM BSNL
Satara Road, Pune.
10. Mandeep Prakash
S/o Sh. Om Prakash Sharma
GM(F), Office of CGMPT BSNL Punjab Telecom
Plot No.2, Sanchar Sadan, Sector-34-A
Chandigarh-22.
R/o 357, Sector-30A
Chandigarh-160030.

11. Durga Rani Gurajala
W/o Sh. K.Prakash
GM (TR)
DPS Residence, No.14 Museum Road
Post Office Compound, Museum Road
Bangalore – 560025.
12. Ghanshyam Prasad Verma
S/o Sh. Gordhan Lal
GM CFA, BSNL Bhawan
HC Mathur Lane, Delhi-1
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DIZ Area,
New Delhi – 110 001.
13. Kalyan Sagar Nippani
S/o Sh. N. Giridhar Rao
NATFM
CGM, NATFM, NATFM Hostel
RTTC Compound,
Gacchibowli
Hyderabad – 500032
14. Romonika Sharan
W/o Sh. Vimlendra Sharan
CO BSNL
C/o Yashwant Nath Singh
R/o A9 D II flats
R K Puram Sector 12
New Delhi – 110 021.
15. Sunil Kumar
S/o late Dr. K.C.Singh
BSNL Bihar Circle
B-9, Siddhartha Apartment, Jagdeo Path
Patna-800014[Bihar]
16. Shailendra Kumar Bhardwaj
S/o SH. Nawal Kishore

BSNL Corporate Office Delhi.
R/o 805, Oasis Emerald Heights
Ramprastha Greens, Sector-7
Vaishali, Ghaziabad-201010.

17. Yashwant Nath Singh
S/o Sh. S.N.Singh
GM, Taxation & CM
CO BSNL, New Delhi.
R/o A 9 D II flats
R K Puram Sector 12
New Delhi 110021.
18. Prabhu Dayal Chirania
S/o Sh. Sawar Mal Chirania
GM, IFD, UKD, BSNL
R/o D-403, Windlass Residency, 11
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19. Ratna Babu Merigala
S/o Sh. M. Sundar Ras
GM IFA PGM TD BSNL
Hyderabad.
20. K. Geethanjali
D/o SH. K. Kachapalyam
Office of CGM Maintenance
Southern Telecom Region, Chennai.
R/o Divyavarshini Apartments, F 1
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Palavanthangal, Chennai 600114.
21. Surajeet Mandol,
S/o Late Sh Sunil Kumar Mandol
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22. Samendra Kujur
S/o Sh. George Frank Kujur

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 R/o Flat No.3A, Anish Enclave
 Opposite NIFFT HATIA
 Ranchi – Khunti Road, Ranchi
 Jharkhand-834003.

23. Mrs. Rita Goyal
 GM-Finance, BSNL
 W/o Sh. Prashant Nikam
 R/o 38/4, First Floor, East Patel Nagar
 New Delhi – 110 008.

24. Sandeep Sandhu
 S/o Sh. J.S. Sandhu
 JT GM ITPC BSNL
 Chandigarh,
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25. Mr. Rajiv Kumar
 S/o SH. Premchandra Prasad
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26. Geeta Rau
 W/o Sh. K.P. Rau
 Exe. Director (F)
 6th Floor, BSNL Bhawan
 HC Mathur Lane, New Delhi.

27. Smita Chaudhary
 W/o Sh. B.K.Chaudhary
 GM EF, 1st Floor, BSNL Bhawan
 HC Mathur Lane, New Delhi-1
 R/o 35/6, BSNL Colony
 Kali Bari Marg
 New Delhi – 110 001.

... Applicants

(By Advocate: Mrs. Rekha Palli, Sr. Advocate with Ms. Poonam Singh and Ms. Ankita Patnaik)

Versus

1. Department of Telecommunications
Ministry of Communications & Information Technology
520, Sanchar Bhawan
20, Ashoka Road
New Delhi – 110 001.
2. Union of India
Through the Secretary
Department of Telecommunications
Ministry of Communications & Information Technology
520, Sanchar Bhawan
20, Ashoka Road
New Delhi-110 001.
3. Bharat Sanchar Nigam Ltd.
Through its Chairman
Bharat Sanchar Bhavan
Harish Chandra Mathur Lane
Janpath, New Delhi. Respondents

(By Advocate: Sh. S.M.Zulfiqar Alam)

ORDER

By V. Ajay Kumar, Member (J):

The applicants, 27 in number, belonged to the IP&T AFS Group 'A' Service recruited by the UPSC through the Civil Services Examination. On forming the Bharat Sanchar Nigam Limited (in short, BSNL), the operations of providing and maintaining telecom services of the Department of Telecommunications was transferred to BSNL. The applicants along with others, were transferred on '*as is where is basis*' to BSNL on deemed deputation initially for a period of 5 years.

2. Vide Circular dated 24.05.2005 options were called for either to work in BSNL on absorption basis w.e.f. 01.10.2000 or to revert to

Government service and get redeployed through the surplus cell of the Government. In pursuance of the same, the applicants opted for absorption in BSNL and accordingly they were permanently absorbed in BSNL, w.e.f. 01.10.2000.

3. The applicants filed the OA seeking the following relief(s):

“8.1 Quashing and declaring as non est the Presidential Orders of absorption of the Applicants (Annexure A-1);

8.2 Direct the Respondents to appropriately modify the order dated 11.3.2013 and extend the benefit thereof to the Applicants;

8.3 Directing the Respondent DoT to provide option to the Applicants to work in BSNL on the same terms and conditions as those granted by the office order dated 11.03.2013 to the Group A' Officers who elected not to get absorbed in BSNL by ignoring their earlier absorption orders.

8.4 Direct restoration of the status and seniority as existing prior to option exercised under offer letter dated 24.03.2005 in DoT with all consequential benefits & no financial loss to the Applicants.

8.5 Order payment of costs to the Applicants.

8.6 Issue any other order that this Hon'ble Tribunal may deem fit and proper.”

4. In short, the applicants are seeking to quash the Presidential orders under which they were absorbed in the BSNL and to allow them to exercise fresh options, on various grounds.

5. Heard Mrs. Rekha Palli, learned Senior Counsel with Ms. Poonam Singh and Ms. Ankita Patnaik, the learned counsel for the applicants and Shri S.M.Zulfiqar Alam, the learned counsel for the respondents, and perused the pleadings on record. MA No.839/2014 for joining together is allowed.

6. The learned counsel for the respondents submitted that the OA is liable to be dismissed in limine, as identical OAs seeking identical reliefs, filed by identically placed persons, were dismissed by this

Tribunal in OA No.2287/2008 and batch, dated 03.06.2009 (Annexure R1) and the said decision was upheld by the Hon'ble High Court of Delhi in WP(C) No.10343/2009, dated 31.08.2009 (Annexure R2).

7. In view of the above specific submission of the respondents' counsel, the relevant paragraphs of the said Judgement are extracted below:

"2. All the Applicants being aggrieved by their permanent absorption in Mahanagar Telephone Nigam Limited (MTNL) and Bharat Sanchar Nigam Limited (BSNL), have prayed (i) to quash and set aside the Presidential Orders issued for permanent absorption of the Applicants, (ii) to treat their continuous service in the Government with the Respondent No.1 and (ii) to allow the Applicants to exercise their fresh option in terms of order dated 26.08.2008 and 29.09.2008 as has been extended to the Group-A Officers presently working in the Government.

3. The brief facts of the case as stated by the Applicants reveal that Mahanagar Telephone Nigam Limited (MTNL, for short) was formed on 1.4.1986 and Bharat Sanchar Nigam Limited (BSNL, for short) was formed on 1.10.2000 to discharge the telecom and associated functions of DOT. Consequently, the Respondent No.1 started the permanent absorption process of the Government employees in MTNL and BSNL. Having completed the process of permanent absorption of Group-B, C and D employees invited the Indian Telecom Service (ITS) and other Group-A Officers to exercise their option whether they wanted to be absorbed in BSNL or MTNL or they wanted to continue in the Government of India as Government officers. The Respondents circulated terms and condition of their absorption along with the option forms. The last date for submission of the option forms was periodically extended and appropriate clarifications were issued on number of occasions about the terms and condition of their services. The Respondent No.1 in its letter dated 4.10.2005 finally provided consolidated terms and conditions of absorption of ITS and other Group-A Officers, where it was clearly stated that the option once exercised would be final and the officers would not be allowed to withdraw their option at a later stage. It was also mentioned that if the officers submit conditional option or do not submit any option at all, they would be deemed to have opted to continue as Government officers in the Government of India. In the year 2005-2006, the Applicants opted to be absorbed in MTNL/BSNL (Respondent No.2). Consequently, Applicants options were accepted by Respondent No.1 and appropriate Presidential orders were issued to the Respondent No.2 for the permanent absorption of the Applicants in MTNL/BSNL. However, the permanent absorption orders ultimately mentioned that these would be subject to the outcome of pending court cases. All the Applicants were absorbed in MTNL/BSNL w.e.f. 1.10.2000. It is the case of the Applicants that Respondent No.1 has again called for options from the Group-A Officers working as government officers in the Government of India but clearly states whether they would

like to be absorbed in the services of BSNL or MTNL or they would like to retain their status as government officers. As indicated earlier, this time also the Respondent No.1 has informed that all the cases of absorption in BSNL/MTNL will be effective from 1.10.2000. It is stated by the Applicants that the terms and conditions of absorptions have been liberalized for the advantage of the officers and the terms and conditions indicate that option once exercised would be final and thus, those who submit conditional option or do not submit their option at all would be deemed to have opted to continue their status as government officers. In the said option, the Respondent No.1 has clearly mandated that this option will not be open for those officers who have already exercised their option and absorbed in MTNL/BSNL. It is the Applicants case that they have submitted their representations to the Respondent No.1 to allow them to exercise their option afresh like those officers who have been in the Government and have the second opportunity to exercise their option to retain their status as government officer or not? The Respondent No.1 has rejected the Applicants representations. Thus, the Applicants are before this Tribunal challenging the Presidential Order dated 27.01.2006 passed by the Respondent No.1 whereby they were permanently absorbed with MTNL/BSNL w.e.f. 1.10.2000 and the Applicants have further prayed for a direction by this Tribunal to the Respondent No.1 to allow them to exercise their option afresh for their absorption in BSNL or MTNL or to come back to their earlier status of Government officers in the Government of India.

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7. The controversies in all four OAs being same revolve on the following issues which come up for our consideration and determination:

(i) Are the Presidential Orders issued for permanent absorption of the Applicants in MTNL/BSNL legally valid or liable to be quashed and set aside?

(ii) Whether the permanently absorbed Group-A officers in MTNL/BSNL are eligible and entitled to be considered for exercising their option as per the letters dated 26-8-2008 and 29-9-2009?

(iii) Whether the permanently absorbed Group-A officers in MTNL/BSNL are eligible to get additional benefits and incentives under the terms and conditions of absorption given in the letters dated 26-8-2008 and 29-9-2009?

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8.3 The restructuring of a Department and creation of new corporate entities to look after the specific service functions, which were looked after by the Government comes within the domain of the executive function. In the present case MTNL and BSNL emerged as public sector undertakings consequent to the policy decision taken by the Government. Rule 37A (1) provides that such transferred Government servants shall be absorbed in the Public Sector Undertaking or Autonomous Body, as the case may be, with effect from such date as may be notified by the Government. Once absorbed their relationship with Government ceases and they become the employees of the entity where they got absorbed. The Applicants opted for MTNL/BSNL and their option was accepted which became final for the employee applicant and the employer respondent and became the employee of BSNL. Those

who opted for MTNL/BSNL are covered by the Rule 37A. Normally, the Courts and the Tribunals should not interfere and we have to apply absolute judicial restraint in the matters of policy decision which come within the executive domain. However, when the issue of absorption of Government officers in the newly created corporate bodies is concerned unless illegality, violation of constitutional rights, arbitrariness or discrimination is proved the action to the executive cannot be questioned. The Tribunals power of judicial review although exists but is limited in the sense, whether the orders impugned by the Applicants are found to be arbitrary or not is to be decided by us. The Presidential orders passed being in conformity with Rules and Government Policy decision we find that those orders are valid procedurally and legally. We do not find any arbitrariness in the Presidential orders passed for absorption of the Applicants in MTNL/BSNL. In this context, we rely on the decision of Honble Supreme Court in the case between CSIR versus Ramesh Chandra Agrawal (2009 (3) SCC 35). The Applicants fail to convince us in the 1st issue.

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13. After taking into account the above facts and circumstances of the case and the settled rule position in the matter, we find that Applicants have not made out a case in their support. We therefore uphold the validity of the presidential letters/orders accepting the absorption of the Applicants in MTNL/BSNL and the Respondent 1s letters/orders dated 26.08.2008 and 29.09.2008 extended to the Group-A Officers presently working in the Government inviting them to exercise option for permanent absorption in MTNL/BSNL are also valid in law. The Original Applications being devoid of merits are dismissed. Let a copy of this order be placed in each of the 4 OAs. The respective parties will bear their own costs."

8. Though the learned senior counsel persuaded us that the facts in the above OA are different from that of the present OA, the same cannot be acceded to as no distinction is shown. In view of the clear finding on the identical issues by this Tribunal as upheld by the Hon'ble High Court of Delhi, the present OA deserves to be dismissed, for parity of reasons.

9. In the circumstances and for the aforesaid reasons, the OA is dismissed. No costs.

(V. N. Gaur)
Member (A)

(V. Ajay Kumar)
Member (J)