

**Central Administrative Tribunal
Principal Bench**

OA No.3954/2012

New Delhi, this the 17th day of January, 2017

**Hon'ble Mr. Justice Permod Kohli, Chairman
Hon'ble Ms. Nita Chowdhury, Member (A)**

Ravi Prakash Gandhi
S/o Shri Om Prakash
R/o House NO.60, Ground Floor,
Ashoka Enclave, Part-1,
Sector-34, near Kanishka Towers,
Faridabad (Haryana). - Applicant

(By Advocate : Shri Prashant Sivarajan for Shri Ankur Chhibber)

VERSUS

1. Union of India
through Secretary
Ministry of Information & Technology
Department of Telecom
Sanchar Bhawan, 20, Ashoka Road,
New Delhi.
2. Chairman-cum-Managing Director
Bharat Sanchar Nigam Ltd.
Bharat Sanchar Bhawan,
Harish Chandra Mathur Road Lane,
Janpath, New Delhi 110 001.
3. Director (Staff)
Department of Telecommunication
Sanchar Bhawan, 20, Ashoka Road,
New Delhi. - Respondents

(By Advocate : Shri Rajeev Kumar)

: O R D E R :

Justice Permod Kohli, Chairman:

The applicant was selected in Indian Telecom Services 1992 batch and joined on 20.12.1993. He earned promotions from time to time. While working as DGM (JAG), he was considered on deemed deputation to MTNL while being on the rolls of DOT/DTS/DTO. On 01.10.2000, the operative part of the DOT was converted into BSNL. On 24.03.2005, Department of Telecom vide its letter No.A11013/1/2005 called for

options from the employees of DOT for absorption in BSNL/MTNL w.e.f. 01.10.2000. The applicant vide his representation dated 11.04.2005 sought certain clarifications in respect to absorption. It is stated that the said representation was not responded to. In the meantime, certain litigations ensued in respect to the question of absorption in different Courts and process of absorption in MTNL and BSNL was halted till August, 2008, and fresh round of negotiations started between the management and the employees' association.

2. A number of writ petitions, i.e., W.P. Nos.22217 to 22257/2005 were filed before the Hon'ble High Court of Delhi against certain judgments passed by Central Administrative Tribunal challenging the circular dated 24.03.2005 calling for options from Group 'A' Officers of Indian Telecom Service, Telegraph Traffic Service and Telecom Factory Service for absorption in BSNL/MTNL.

3. During the pendency of these writ petitions, the applicant resigned from service from DOT in March, 2007. His resignation was accepted and he was relieved on 30.04.2007.

4. On 17.09.2008, the DOT again issued Circular No.A11013/1/2005-Admin.II/Abs.Cell calling for options for absorption in BSNL from officers of DOT who were on rolls w.e.f. 01.10.2000.

5. After resigning from service, the applicant made an application on 06.10.2008 seeking absorption to BSNL. Receiving no response to his request for absorption, the applicant submitted representation on 30.04.2009 followed by another representation dated 24.09.2010. In the meantime, Chandigarh Bench of CAT decided OA No.385/HR/2006 on 18.01.2007 filed by one Rajwinder Kaur seeking absorption in BSNL. The said Rajwinder Kaur had submitted her option for absorption in

BSNL on 24.03.2003. While her case for absorption was pending, she tendered her resignation from the post of SDE vide her letter dated 14.07.2003 which was accepted on 26.07.2003. Her request for absorption was pursuant to the option called by the respondent-department vide letter dated 02.09.2003 from Group 'B' Officers. She again exercised her option on 29.09.2003 for absorption in BSNL w.e.f. 01.10.2000. Her request was turned down vide order dated 10.02.2004 on the ground that having resigned from service, she could not be absorbed. Her OA filed before the Chandigarh Bench was allowed vide order dated 18.01.2007 with the following observations:-

“8. Denial of absorption in the BSNL to applicant merely on the ground that at the time of consideration of such options she had already resigned is also illegal exercise of the power vesting in the competent authority. All letters calling for options for absorption from Group 'B' including Annexure A-3, dated 2nd September, 2003 with reference to letters, dated 14.1.2002 and BNL letter dated 1st Feb. 2002 had given option to the employees of DoT who had been transferred to BSNL on deemed deputation for absorption which was to be given to them and has actually been given w.e.f. 1.10.2000. This option was also made available to those who remained in DoT or were on the rolls of DoT/DTS/DTO on 30.9.2000 and the crucial date for such absorption was 1.10.2000 when applicant was very much on rolls of DoT and had worked on deputation w.e.f. 1.10.2000 upto the date of her resignation. Her rights are to be considered w.e.f. 1.10.2000 upto the date of severance of her relationship. Severance of her relationship with the respondents in July 2003 cannot make her service prior to that date non-existent particularly when right of absorption was made w.e.f. 1.10.2000. Under Annexure A-3, thus, applicant had very clear rights for getting her option accepted w.e.f. 1.10.2000. It is not disputed before us that she had exercised her option in March, 2003. In Annexure A-3, the date of receipt of options was extended upto 20.10.2003 and the options already received were to be considered. AT the cost of repletion, we record that she had all the rights for consideration of her absorption w.e.f. 1.10.2000 and grant of all consequential benefits on such.”

Considering her case to be similar in nature, the applicant made representations dated 06.10.2008, 30.04.2009 and 24.09.2010. Since these representations were not considered by the respondents, the applicant filed OA No.1444/2011 before Principal Bench of this Tribunal.

The said OA was disposed of vide judgment dated 14.12.2011 with the following observations/directions:-

“5. Having regard to the nature of the issues as referred to above, it does not matter whether the applicant belonged to Group ‘A’ and Group ‘B’ post for the principles laid down by the Chandigarh Bench of this Tribunal in the case referred to above would still be mutatis mutandis applicable to the applicant herein as well. In any case, the fact remains that the applicant has not been informed of the result of the respondents’ consideration of his representations referred to above. In all fairness, the applicant deserves to be informed of the result of consideration of his representations by the respondents. Whatsoever the decision of the respondents may be, they ought to have informed it to the applicant whereupon, it would be open to the applicant to seek further redressal of his grievances if any in accordance with law. The learned counsel for the respondents fairly conceded this and submitted that there would not be any objection for conveying the respondents’ decision on the applicant’s representations.

6. In view of the aforesaid and on consensual basis, this Application is disposed of with directions to the respondents to consider the applicant’s representations dated 6.10.2008, 30.4.2009 and 24.9.2010, as at Annexure A2 collectively, having due regard to the order of the Chandigarh Bench of this Tribunal in OA No.385/HR/06 in the matter of Rajwinder Kaur vs. Union of India and others and inform the result thereof consideration to the applicant through a reasoned and speaking order within three months from the date of receipt of a certified copy of this order. No costs.”

In the meantime, WP (C) No.22217/05 and other connected writ petitions came to be decided by the Hon’ble Delhi High Court vide judgment dated 17.04.2012 by issuing the 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, given them such work as is deemed appropriate to be performed by them."

In terms of the above direction No.(iii), the petitioners therein were given further opportunity to exercise their option for absorption within two weeks from the date of the order to revert to the government or to seek permanent absorption in BSNL/MTNL as the case may be. Direction No.(iv) is in respect to those government servants who have already accepted permanent absorption w.e.f. 01.10.2000 were not entitled to exercise a fresh option.

6. It is admitted case of the applicant that she did not exercise her option for absorption within the specified time or otherwise in terms of the directions contained in para (iii) of the aforesaid judgment.

7. Pursuant to the directions issued by this Tribunal in OA No.1544/2011 filed by the applicant before the Principal Bench to dispose of her representations, the respondents passed the impugned order dated 04.05.2012 rejecting her representation in the following manner:-

“Whereas above OA has been disposed of by the Hon’ble CAT vide judgment dated 14.12.11, with the following direction to the respondents:-

“To consider the applicant’s representations dated 6.10.2008, 30.4.2009 and 24.9.2010 collectively having due

regard to the order of Chandigarh Bench of this Tribunal in OA No.385/HR/06 in the matter of Rajwinder Kaur vs. Union of India & Ors. and inform the result thereof consideration to the applicant through a reasoned and speaking order within three months from the date of receipt of a certified copy of this order.”

Whereas Ravi Prakash Gandhi had submitted representations dated 6.10.2008, 30.4.2009 and 24.09.2010 requesting that

- (i) His option for absorption to BSNL may be considered as the absorption is effective from 1.10.2000 when he was a serving officer of DoT/DTS/DTO.
- (ii) Treat his resignation from DoT as voluntary Retirement from BSNL after completion of a Combined Service of more than 10 year.

Whereas the above representations of Shri Ravi Prakash Gandhi has been considered by the competent authority and disposed off as under:-

- (i) Shri Ravi Prakash Gandhi was very much in service when the option for absorption in BSNL/MTNL were invited for the first time through letter dated 24.3.2005. On that occasion, Shri Gandhi did not exercise option for absorption in BSNL. He resigned from service on 30.4.2007. With acceptance of his resignation, his service under the Government stood forfeited in terms of the provisions of Rule 26 of the CCS (Pension) Rules, 1972. With cessation of Government service and with no past service at his command, he cannot be granted any benefit including those occurring on absorption. In other words, it may not be appropriate to permit his absorption in BSNL.
- (ii) The case of Smt. Rajwinder Kaur decided by the Hon'ble CAT, Chandigarh Bench in OA No.385/HR/06 is not exactly similar to that of Shri R. P. Gandhi as in that case Smt. Rajwinder Kaur had exercised option while she was in service.
- (iii) There is no provision in the rules to treat the resignation from service as voluntary retirement after it has been accepted by the competent authority.

/sd/
(D. N. Sah)
Under Secretary (SNG)”

It is against this order that the present OA has been filed.

8. The reliefs claimed by the applicant have been resisted by the respondents on the same ground as noticed in the impugned order dated 04.05.2012 .

9. We have heard learned counsel for the parties at length.

10. The only question that needs to be considered is as to whether the applicant is entitled to the benefit of absorption on the basis of his exercising option on 06.10.2008 for absorption in BSNL when she had ceased to be the employee of DOT on account of his resignation.

11. It is admitted case of the parties that in the year 2003 and later on, in the year 2005 options were invited for absorption in BSNL/MTNL from the employees of DOT who were serving on deputation with BSNL/MTNL w.e.f. 01.10.2000. The applicant did not exercise her option. She resigned from service of DOT in the year 2007, and her resignation was accepted and she was relieved on 30.04.2007. She, for the first time, exercised her option on 06.10.2008 after her exit from service on the basis of her own resignation. Not only that, even when the bunch of writ petitions were decided by Hon'ble Delhi High Court vide its judgment dated 17.04.2012 giving opportunity to the employees (petitioners therein) to exercise their option within two weeks from the date of judgment, the applicant although petitioner in W.P. (C) No.22217/2005 did not exercise her option. The fact remains that the applicant never exercised the option for absorption in BSNL while she was in service. After her resignation was accepted, she must have earned and got the pensionary benefits from the DOT as its permanent regular employee. What prompted the applicant to exercise the option for absorption in BSNL after her resignation is not forthcoming from the record. Learned counsel for the applicant submits that since the retirement from BSNL was more beneficial, the applicant after having resigned from service of DOT, exercised option for absorption in BSNL. The DOT invited options from time to time prescribing the dates within which the concerned employees were required to exercise their option while in service. The

applicant never exercised such option. Even pursuant to the directions of the Hon'ble High Court, she did not exercise the option. The impugned order whereby the representation of the applicant seeking absorption in BSNL has been rejected on the ground that the applicant never exercised her option while in service, cannot be faulted with.

12. Learned counsel for the applicant has further submitted that the applicant was entitled to be treated similar at par with Rajwinder Kaur as there were observations of the Tribunal in OA No.1544 of 2011 decided by Principal Bench of this Tribunal that the directions in Rajwinder Kaur will *mutatis mutandis* apply to the case of the applicant. The respondents have clearly distinguished the case of Rajwinder Kaur. Whereas Rajwinder Kaur had applied for absorption while she was in service but the applicant never applied for absorption while in service. The applicant had no right to apply for absorption after resigning from the post in DOT, and obtaining pensionary benefits therefrom. We do not find any merit in this OA. It is accordingly dismissed. No order as to costs.

(Nita Chowdhury)
Member (A)

(Justice Permod Kohli)
Chairman

/pj/