

CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH

OA 3124/2009

New Delhi this the 1st day of June, 2011

Hon[↑]ble Mr. Justice V.K.Bali, Chairman

Hon[↑]ble Mr. L.K.Joshi, Vice Chairman (A)

1. BSN Group `A[↑] Executive Associations,
A-301, Sukh Sagar Apartments, Plot No.12,
Dwarka, New Delhi, through its General
Secretary Shri Saurabh Tyagi

2. Shri Saurabh Tyagi,
D.G.M. (EW-QC),

B.S.N.L., C.O.,

New Delhi

| Applicants

(Through Shri Sanjay Kumar Tyagi, Advocate)

VERSUS

1. Union of India, through the Secretary,
Ministry of Communication and
Information Technology,
Department of Telecommunication,
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001

2. The Secretary,
Department of Personnel & Training,
Government of India, North Block,
New Delhi-110001

3. The Secretary,
Department of Public Sector Enterprises,
Government of India,
New Delhi

4. Secretary (Expenditure),
Ministry of Finance,
North Block, New Delhi

5. The Chairman
Union Public Service Commission,
New Delhi

6. Chairman & Managing Director,
Bharat Sanchar Nigam Ltd.,
Bharat Sanchar Bhawan,
Mathur Lane, Janpath,
New Delhi-110001 ...Respondents

(Through Shri Rattan Lal, for respondents 1 to 5

Shri Rahul Arora with Ms. Veena Tuteja, for respondent 6)

O R D E R

Mr. L.K. Joshi, Vice Chairman (A):

The Applicants represented through the BSNL Group ◀A↑ Executive Association and one more person, Shri Saurabh Tyagi, Deputy General Manager, Bharat Sanchar Nigam Limited (BSNL) are assailing the Office Memorandum dated 24.09.2009, which reads thus:

"Subject: T Appointment of officers of Indian P&T Accounts and Finance Service Gr. 'A' in BSNL/MTNL on deemed deputation basis-Reg.

The undersigned is directed to refer to the subject cited above and to say that the competent authority has approved the appointment of SAG officers of Indian P&T Accounts and Finance Service Gr. 'A' in BSNL/MTNL on deemed deputation basis. SAG officers who are willing to be posted in BSNL/ MTNL on deemed deputation basis are requested to send their willingness alongwith the choice of station to the undersigned within a week positively. It is, however, informed that the posting would be subject to the requirements of BSNL/MTNL, vacancy position existing at a particular station and at the discretion of the competent authority."

The following relief has been sought by the Applicants:

!!a) Quash the impugned letter/decision dated 24.9.2009 issued by the Department of Telecom. in respect the appointment of the Indian P&T Accounts and Finance Service Group A in BSNL/MTNL on the basis of deemed deputation; and

direct the respondent No.1 to declare that the absorption process is complete which inter-alia includes to issue further directions to:

- i) direct respondents No.1 & 3 to repatriate the non-optees working in BSNL forthwith;
- ii) restrain the respondents No.1 to 3 from making any further posting of officials on deemed deputation to BSNL;
- iii) directed respondents No. 1 & 5 directed not to grant any promotion to Government officers against the posts/vacancies in BSNL.
- iv) direct the respondents No.2 & 4 to identify the posts justified in the Department of Telecom. As per SIU norms and to revert the posts diverted from BSNL back to BSNL.

OR

c) In the alternative cancel the Presidential Orders issued so far as they pertain to the members of the applicant Association and re-start the process of absorption of Group A officers afresh.¶

2. The facts of the case giving rise to the controversy have been delineated in the following paragraphs. The Applicant BSNL Group 'A' Executive Association comprises Group 'A' officers of different services, namely, Indian Posts and Telecom Accounts and Finance Service, P&T Building Works Service (Civil, Architectural and Electrical Disciplines) Group 'A', General Civil Services (GCS) of Telecom Factories Organisation and Indian Telecommunication Service Group 'A' (who have opted for absorption in BSNL), initially recruited by the Union Government and now absorbed in BSNL.

3. When BSNL was incorporated on 1st October 2000, the employees of the Department of Telecommunication were transferred to the BSNL. They were kept initially on deemed deputation in BSNL, without payment of any deputation allowance. At the time of incorporation of the BSNL, a new Section, namely, Section 37-A came to be incorporated in the Central Civil Services (Pension) Rules, 1972, which was about the payment of pension on absorption consequent upon conversion of a Government department into a Central Autonomous Body or a Public Sector Undertaking. The said Rule has been extracted below:

!!37-A

(1) ||

(2) Central Government shall allow the transferred Government Servant an option to revert back to the Government or to seek permanent absorption in Public Sector Undertaking or autonomous body as the case may be.

(3) The option referred to in sub-section (2) shall be exercised by every transferred government servant in such a manner and within such period as may be specified by the government.

(7) |.|.

(8) ||..

(9) The employee who opts to revert to government service shall be redeployed through the surplus cell of the government.¶

4. By an Office Memorandum dated 24.03.2005 options were called from the Group 'A' officers in BSNL, which, inter alia, stated as follows:

"9. Options once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage.

"10. The officers not exercising any option as prescribed will be deemed to have opted for Government Service. No conditional option shall be accepted and any such offer shall be treated as if the officer has not exercised his option for absorption in MTNL/BSNL." (emphasis added.)

The terms and conditions of service which were offered by the Office Memorandum dated 24th March 2005 were further clarified/modified by communications dated 17th May 2005, 31st May 2005, 2nd June 2005, 28th August 2005, 30th August 2005 and 24th September 2005. Finally, consolidated and revised guidelines were issued on 04.10.2005. On 18.10.2005 all the officers who had not opted for BSNL were repatriated to the Department of Telecommunications, the parent Department, with the exception of persons in whose favour courts had granted the stay. Some of the officers who had been repatriated challenged the order of repatriation before this Tribunal in OA number 2661/2005 and other related matters, Indian Telecom Service Association and others Vs. Union of India and others, decided on 28.02.2006. The orders dated 24.03.2005 and 18.10.2005 were challenged in the OAs. The Tribunal held thus:

¶13. Mere pendency of Review Application, as urged by the said applicant, would not be a ground to stall hearing in all such OAs. As far as the challenge made to communication dated 18.10.2005 is concerned, we may note that vide the said order only those officials were repatriated, who had yet not submitted/ exercised their option within the period prescribed. It is well settled law that an official has no legal right to continue on deputation indefinitely and he cannot insist to remain on deputation and yet not exercise option either for his retention or for his repatriation to the parent department.¶

The OA was dismissed. Advertence was also made in the aforesaid order to the order passed in OA number 1963/2005 and several related matters, Indian Telecom service Association and others Vs. Union of India and others, decided on 31.10.2005, in which also the Office Memorandum dated 24.03.2005 had been assailed. The Tribunal disposed of the OAs with the following observations:

!!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:

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.

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.

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.

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 effective date of absorption is concerned.

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.

!!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.¶

The Government of India again asked for options from the officers of the Department of Telecommunications on 26.08.2008 for their absorption in BSNL or for their reversion to the Department of Telecommunications. The general terms and conditions of absorption annexed to the letter dated 26.08.2008 were modified vide letter dated 29.08.2008. The deemed deputation was further extended up to 22.12.2008, in spite of the directions of this Tribunal.

5. On 14.07.2009 Recruitment Rules were notified by the BSNL, known as BSNL Management Service Recruitment Rules, 2009, for recruitment of its officers. These Rules were made effective from 11.06.2009. The Recruitment Rules do not contemplate appointment by transfer, deputation or deemed deputation. Following the impugned order dated 24.09.2009, which has been quoted above, the Chairman-cum-Managing Director of BSNL wrote to the first Respondent, Secretary, Department of Telecommunication, which, inter alia, stated that:

!!BSNL has meanwhile notified its Recruitment Rules on 11th June 2009 for recruitment & promotion at Group ◀A↑ level. The process of direct recruitment at the level of STS and JAG has already been initiated. The vacancies at the level of SAG are also being filled up by giving promotion to

eligible officers. In view of the above, no deputation may please be made at the SAG level At this point of time.¶

The first Applicant also made a representation dated 06.10.2009 to the first Respondent against the impugned order, but there was no response.

6. On 07.04.2010 a letter dated 10.03.2010, from the first Respondent addressed to the learned counsel for the Respondents was placed before us stating, inter alia, that:

!!2. In this connection it is intimated that the Annexure A-1 [the impugned Order] has merely called for willingness of willing SAG officers to be posted in BSNL. No action has been taken to post any IP&TAFS officer to BSNL till date. The letter also categorically states that the officers will be posted in BSNL subject to requirement of BSNL. Since no officer has been posted to BSNL, there is no cause of action.¶

The Tribunal, while taking the above letter on record, however, directed the Respondents to file reply to the OA.

7. The learned counsel for the Applicants contended that the action of the Respondent, Department of Telecommunication, was contrary to its own policy of giving the option only once for absorption in the BSNL. The Government had failed to follow this policy and kept on dilly-dallying, at the cost of those who had given their option for absorption in BSNL. The policy of the Government to give the officers in SAG, one opportunity after another to come on deemed deputation to BSNL was contrary to the directions given by this Tribunal in OA number 1963/2005 and OA number 2661/2005. The Recruitment Rules have been framed and the officers of the BSNL were waiting for their promotion. The Respondent, Department of Telecommunication was compelling the BSNL to take people on deemed deputation from the Department, in spite of the CMD's clarification that the BSNL did not need any officer of SAG. The process of absorption of the officers, who had opted for absorption, had not been completed since 2005. The officers of the Department of Telecommunications were having best of both worlds, by moving at will from the Department of Telecommunications to the BSNL and vice versa. The Government had gone back on the terms and conditions of service for the officers who had opted for absorption by not adhering to it.

8. The Respondent, Department of Telecommunications, has adopted an ambiguous stand in this matter. On the one hand it was stated that the Department had only asked for the willingness of officers of the SAG level for deemed deputation to BSNL, but had not taken any further action in the matter. It

was submitted, therefore, that the OA was premature. An order dated 19th January 2011 of the Madras Bench has also been placed on record by an affidavit dated 3rd May 2011, in which also a similar issue was considered. The order dated 24.09.2009 had been assailed in this OA too. It was noted in the order of the Tribunal in the aforesaid OA that:

!!4. A detailed reply has been filed on behalf of respondents 1,3,4 and 6. In paragraph 23, they have stated as follows:

!!With regard to para 4.9, it is submitted that on the persistent request of CMD, BSNL (RA-I, II, III, IV & V) for posting of IP&T AFS officers at senior level (JAG and above) in BSNL through deputation or deemed deputation since June 2006, citing a huge vacuum and problems being faced by BSNL management in handling finance functions, given the declining profits of BSNL and poor financial performance, the answering respondent has approved the posting of 10-15 SAG officers of IP&T AFS Group `A↓ to BSNL/MTNL on deemed deputation basis. Accordingly, vide O.M. dated 24.09.2009 (Annexure 14 of the O.A.) willingness of SAG officers of IP&T Group `A↓ for posting in BSNL/MTNL `on deemed↓ deputation basis, were called for.

It may, however, be added that on receipt of a letter from CMD, BSNL dated 20.10.2009 (Annexure A-15 of the O.A.) and representation from Association against order dated 24.09.2009, the issue of deemed deputation has not been pushed any further.

In view of the above, they have prayed for dismissal of the application.¶

The OA was closed with the following observations:

!!As the main respondents themselves have stated in the reply statement that on receipt of a letter from CMD, BSNL and representation from Association against the order dated 24.9.2009, the issue of posting of SAG officers to BSNL on deemed deputation has not been pushed any further, the applicants cannot have any grievance and the O.A. can be closed by recoding the said statement of the respondents. Accordingly, we close this O.A. Learned senior counsel for the applicants also agreed for the same.¶

Similar averment has been made in the counter affidavit of the first Respondent, Department of Telecommunications, which reads thus:

!!iii) With regard to the observations of the Hon[↑]ble Tribunal in Para 6 (ii) above, it is once again submitted that, the intention of the Respondent No. 1 is not for permanently absorbing the SAG officers who are willing to be posted in BSNL/MTNL on deemed deputation. The impugned order called for willingness of SAG officer for posting in BSNL only on deemed deputation and did not express any intention of their permanent absorption in BSNL. Since the CMD, BSNL in his letter dated 20.10.209 has declined any requirement of SAG officers, the impugned orders have become non operative and not pursued further.¶

On the other hand the Respondents have stated in an additional affidavit dated 27th January 2011 in paragraph 5 that the process of absorption of the Group 'A' officers in BSNL was initiated by them in March 2005, strictly in accordance with the relevant provisions of Rule 37-A of the CCS(Pension) Rules, 1972. In terms of the provisions of the Rule 37-A ibid, it was incumbent on the part of the Respondents to complete the process of absorption of Group ◀A[↑] officers in BSNL. It was also stated that many Group 'A' officers had not exercised their option despite several additional incentives offered to them. It was further submitted that the reasons for such poor response of Group 'A' officers had been analysed and the representatives of the Indian Telecom Service Association (ITSA) had also been consulted to ascertain their concerns. Based on these deliberations, the matter was again proposed to be submitted to the Cabinet for its consideration with a view to giving another opportunity to Group 'A' officers for exercising their option for absorption in BSNL. It goes on to state that the option process cannot be abandoned midway. It was further contended that the officers who had been absorbed on the basis of Rule 37-A of the CCS (Pension) Rules, 1972, their absorption was final and irrevocable. It was contended that there was no force in the contention of the Applicants that the process of absorption should be declared complete.

9. Directions had been given in OA number 1963/2005, already adverted to above, to extend the date of absorption up to November 30, 2005 and decision taken on such options within a period of three months. In OA number 2661/2005 further 10 days time was given to those who had not been able to exercise their option. In the light of these directions, the Respondents are not justified in further extending the time for absorption of Group 'A' officers even after five years of the directions given in OA number 2661/2005. Since then the Recruitment Rules have been finalised by the BSNL. It was urged by

the Applicants and not disputed by the Respondents that the Recruitment Rules of BSNL did not provide for any method of recruitment by deputation/deemed deputation. The Respondents are indulging in obfuscation by blowing hot and cold in the same breath. On the one hand the impression has been given that the issue regarding deemed deputation had been closed after the opposition by the Chairman-cum-Managing Director of BSNL and on the other hand it is stated that the Respondent, Department of Telecommunications, may approach the Cabinet for further extending the period of option for deputation. The apprehension in the mind of the already absorbed officers is that the Department of Telecommunications will continue to send officers of Group 'A' on deemed deputation to BSNL and their chances of promotion would be jeopardised. There cannot be any justification for extending the period of option for absorption or for continuing to depute Group 'A' officers on deemed deputation to BSNL, especially when the Recruitment Rules of BSNL had been finalised. The instructions issued by the DOP&T vide Office Memorandum number AB. 14017/37/2009-Estt. (RR) dated 8th October 2010 are relevant and have been extracted below:

"Subject: † Time limit for framing of Rules and Regulations on conversion of Government Department into PSUs/autonomous/statutory body.

The undersigned is directed to refer to the above subject and to state that the instructions on matters relating to regulation of service conditions of Government employees on transfer to autonomous organisations have been issued by the Department of Pension and Pensioners' Welfare. The provisions included in the relevant portion of Rule 37 (A) of the Central Civil Service (Pension) Rules, 1972 refers.

2. This Department has examined issues pertaining to service conditions, promotion/confirmation etc. in respect of the deemed deputationists on a reference received from the concerned administrative Ministries. It has been decided that in such cases where there is a conversion of a Government Department into PSUs/autonomous/statutory body, there must be a time frame within which a new body shall frame its rules and regulations. At the end of this period, all employees on deemed deputation should have opted either to get permanently absorbed in the new organisation or revert to the Government. A maximum period of 5 years for framing of rules and another 2 years for phasing out repatriation to those opting to come back to Government has been prescribed. All the Ministries/Departments are accordingly advised to adhere to the time frame whenever a proposal for transfer of employees is considered as above."

10. In the light of the above discussion the impugned order dated 24.09.2009 is quashed and set aside with directions to the Respondents not to give any further opportunity to the officers of the Department of Telecommunications, who continue to be on deemed deputation to BSNL and to repatriate them to their parent Department. The OA is allowed in terms of the above directions. No costs.

(L.K. Joshi)

Vice Chairman (A)

(V.K. Bali)

Chairman

/dkm/