
(2014) 05 P&H CK 0515
In the Punjab And Haryana At Chandigarh
Case No : CWP-10350-2008

Union of India and Others	Vs	APPELLANT
Central Administrative Tribunal, Chandigarh Bench, Chandigarh and Others		RESPONDENT

Date of Decision : 22-05-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2014) 05 P&H CK 0515

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : Anil Rathee, Advocate for the Appellant; B.R. Mahajan, Advocate for Respondents Nos. 2 and 3, Advocate for the Respondent

Final Decision : Dismissed

Judgement

Sanjay Kishan Kaul, C.J.—The present writ petition raises the issue of exercise of options by the employees of Department of Telecommunication (in short DoT) who were on deputation to the Bharat Sanchar Nigam Limited (in short BSNL) and were desirous of being absorbed in the BSNL. The endeavour of respondents No. 2 and 3 to seek such absorption has been negated by the BSNL. It is this negation which gave rise to O.A. No. 95/CH/2006 being filed before the Central Administrative Tribunal, Chandigarh Bench which has allowed the O.A. in terms of the impugned order dated 12.03.2008. This order is sought to be assailed in the present writ petition under Article 226 of the Constitution of India both by the BSNL and the Union of India.

2. We may note that learned counsel for the petitioners has pleaded before us that there was no jurisdiction conferred under the Administrative Tribunals Act, 1985 in respect of the employees of the BSNL till 31.10.2008. The present O.A. was, however, filed much earlier in the year 2006 and was decided before the jurisdiction was so conferred. It is, however, conceded by learned counsel for the petitioners that no such objection was raised before the Tribunal. In fact,

apparently the other decisions rendered by the Tribunal have even been accepted by the BSNL. It is really the Division Bench judgment of the Bombay High Court in *Bharat Sanchar Nigam Ltd. and Others Vs. A.R. Patil and Others*, which forms the basis of submission, though that decision was of 01.08.2002 and was certainly available with the petitioners when the O.A. was filed.

3. Be that as it may, we have the benefit of the order passed by the Tribunal and to obviate this controversy, we will examine the matter in depth and proceed to record our own reasons for the decision on the controversy in question.

4. Now the facts. On the BSNL being incorporated, all employees who were working with DoT were sent on deputation to the BSNL from 01.10.2000. The question thereafter arose as to what would be the fate of the employees. It was not possible to change their employer without their consent and that is the reason a decision was taken to invite options from these employees as to whether they would like to continue as employees of DoT or would prefer to be absorbed in the BSNL. The trigger for such an option was a communication dated 14.01.2002 setting out the detailed procedure which was required to be followed while calling for such options. This, however, is stated to have given rise to a spate of litigations specifically about the mode and manner in which the options were to be called as well as absence of certain essential information for the employees to exercise their options. The matters were heard together by the Principal Bench of the Tribunal and in terms of a judgment dated 06.08.2002, necessary directions were issued qua the information to be made available for exercising the options. However, the options were required to be taken from all serving Group "B" officers who were on deemed deputation w.e.f. 01.10.2000 as well as from those who remained in DoT and/or who were on the rolls of DoT/DTS/DTO as on 30.09.2000. We may add here that both respondents No. 2 and 3 qualified for the right to exercise such option in view of the cut-off date i.e. 30.09.2000, though they had subsequently retired on 30.10.2001 and 31.05.2002 respectively.

5. As a sequitur to the aforesaid, a letter dated 02.09.2003 was issued calling for four copies of option form with one set of general terms and conditions to be issued to the Group "B" officers latest by 05.09.2003 who in turn were to exercise the option within a period of 45 days thereafter. To obviate any further controversy qua receipt of forms/information, one copy duly acknowledged by Group "A" officer was to be returned to the optee. In fact, even the persons who had given their options earlier were permitted to exercise the fresh options in the revised proforma.

6. The case of respondents No. 2 and 3 is that this procedure was not followed in their case, but on the other hand when queried, the department sought to take a stand that since they had retired the option would not be available to them. The two respondents also submitted a detailed representation on 20.04.2004 and 17.08.2004 respectively and on account of an absence of decision preferred O.As before the Tribunal which were disposed of by a common order dated 24.10.2005

calling upon the petitioners before us to take a final decision qua the issue of options of respondents No. 2 and 3 within a period of two months from that date. The petitioners thereafter passed the orders rejecting the request of respondents No. 2 and 3 on 24.10.2005 and 05.01.2006 respectively predicated on a reasoning that the last date for exercising of option had been extended upto 20.10.2003 and in the absence of exercise of option these respondents are deemed to have continued to be in the service of DoT.

7. The aforesaid gave rise to a common O.A. filed before the Tribunal which has been allowed by the impugned order.

8. The stand of the petitioners before us, as taken before the Tribunal and in fact which is also pleaded before us on merits by learned counsel for the petitioners, is that the employees had sufficient time to discuss the pros and cons of the options and information was available to everybody. Incidentally, petitioners No. 1 and 2 before us (who were respondents No. 1 and 2 in O.A.) chose not to file any reply despite many opportunities granted to them as noticed in para 5 of the impugned order. Sufficient publicity was alleged to have been given in 79 leading newspapers. Apart from this, the order passed on 21.01.2008 by the Tribunal in O.A. No. 59-PB of 2006 titled as Deepak Kumar Gupta Vs. Union of India and others was cited as a precedent where a direction given to consider the options after the cut-off date had been rejected.

9. Touching on the latter aspect first, what is material is that the facts of a case have to be seen before treating it as a precedent. Deepak Kumar Gupta was an employee who had left India without information and, thus, communications sent to him were received back unserved. It is on this account that he did not succeed. The relevant fact is that even intimation was sent to him personally unlike respondents No. 2 and 3 before us.

10. In our view, the earlier instructions dated 14.01.2002 which gave rise to the litigation and thereafter the order passed by the Principal Bench of the Tribunal on 06.08.2002 gave rise to the relevant communication dated 02.09.2003 which mandated as to what information was to be made available to each employee and in which manner the service ought to be completed. Keeping in mind the possibility of controversy and in order to avoid the same the department went as far as to require an officer of Grade "A" to return the actual acknowledgement of forms to the optee. It is nobody's case that respondents No. 2 and 3 were either intimated personally or were handed over such forms, but dissemination of information is pleaded on the basis of newspaper advertisements, website and the notice board with the plea of presumption to be drawn of their awareness. Such a plea, in our view, is wholly unacceptable once it is contrary to the procedure established by the petitioners themselves. In fact, before the Tribunal, respondents No. 2 and 3 were able to establish that the Punjab Circle had expressed its inability to confirm the exercise of option by respondents No. 2 and 3. It is not open to the petitioners to rely on information disseminated through different sources which could be said to suffice when they have prescribed the

mode and manner of service of the documents for exercise of options themselves.

11. The result of the aforesaid is that the forms already submitted by respondents No. 2 and 3 exercising their options are liable to be accepted and the decision taken qua the exercise of such options allegedly on account of delay is quashed. In case, for any reason any fresh forms are to be got filled in by the petitioners from respondents No. 2 and 3, necessary intimation with forms be sent within a period of 15 days from today. The petitioners are, thus, called upon to fix the pay, pension and any other consequential benefit with interest as may be admissible to respondents No. 2 and 3 on their absorption in the BSNL and to remit the amount to respondents No. 2 and 3 within two months from today.

12. Needless to say that if some retiral benefits already stand paid to respondents No. 2 and 3, then only the differential would have to be paid as aforesaid, but with detailed calculations sent to respondents No. 2 and 3 in a form of covering letter.

13. The writ petition is accordingly dismissed and the relief granted to respondents No. 2 and 3 in terms aforesaid.

14. The parties are left to bear their own costs.