

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 3253-57/2005**

M.P.SHARMA & ORS Petitioners
Through Mr. D S Choudhary and Mr. D. Mathew,
Advocates

versus

M.T.N.L. Respondent
Through Mr. Dinesh Agnani, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

% **ORDER**
22.04.2008

1. The petitioners are permanent employees of MTNL. They were earlier Group A and B employees of the Department of Telecommunications, who have exercised their options to be absorbed in MTNL. The two substantive prayers made in the present writ petition are as under :

“ It is, therefore, respectfully prayed that this Hon'ble Court be pleased to :

- i. Direct the respondent to repatriate all I.T.S. officers to their parent department, by way of an appropriate writ order and direction in the nature of mandamus.
- ii. Direct the respondent to fill up the posts so falling vacant by promoting the eligible executives.”

2. ITS officers belonging to department of telecommunications still continue to hold the lien in the said department. Learned counsel for the respondent/MTNL has pointed out that ITS officers were asked to

exercise their option for absorption or repatriation but the matter has remained pending since 2002 in view of various litigations. It is also pointed out that whether or not to absorb ITS officers or to take them on deputation is an internal matter concerning administration and management of MTNL.

3. The petitioners cannot ask for mandamus against MTNL to either absorb the said officers or to repatriate them. I find merit in the defence raised by the learned counsel for the respondent. It is for the respondent/corporation to decide how to run and manage its affairs and whether to take officers on deputation or on contract basis or to absorb them. It is not for the petitioners or for this Court to direct for repatriation unless there are statutory rules or provisions to the contrary that the ITS officers should either opt for absorption or should be repatriated. In the writ petition the petitioner has not pointed out any statutory rule or provision which is being violated and pursuant to which the petitioners have legal right to ask for repatriation of all ITS officers, who have not exercised their option for absorption.
4. During the course of arguments learned counsel for the petitioner has drawn my attention to Rule 37A of the CCS Pension Rules, 1972. I have examined the said rule which came into force w.e.f. 30th September, 2000. It may be noted that respondent corporation was formed in 1986.

The said rule stipulates that on conversion of department of Central Government into a public sector undertaking or an autonomous body, all government servants of that department shall be transferred en masse to the public sector undertaking till such time they get absorbed in that undertaking or autonomous body w.e.f. such date as may be notified by the Government. The Central Government is also required to give an option to the transferred government servants to revert back to the government or seek permanent option in the undertaking/autonomous body.

5. Sub-rule 3 provides that option should be exercised by the government servant within such time as may be specified by the government. Officers who opt to revert back to the Government have to be redeployed. Learned counsel for the petitioner in this regard has referred to Order dated 8.5.2000 issued by the Government of India by which officers belonging to Group A, B and certain group C posts were asked to exercise for option or had to be retransferred on or before 1st September, 2000. In this connection, I may note the averments made in the counter affidavit filed by MTNL in which it is stated that ITS Grade A officers and other Grade A officers namely Indian P & T Accounts and Finance Services and All India P & T Civil/Electrical officers etc. are still working on deputation in MTNL and BSNL and the absorption of Grade A officers is yet to take place both in MTNL and BSNL. Reference is also made to DOT letter dated 29.8.2003 in which it is stated that as of now absorption shall take place only of Group B officers. Copy of the said letter dated 29.8.2003 has been placed on record. In paragraph 5

of the said letter it has been stated as under :

“5. For the present options for available Group B officers only will be called. The absorption will take place in the substantive grade as of 1.10.2000. Options from Group ‘A’ will be called for in next phase. However, Group B officers promoted after 1.10.2000 as Group A, if desire to get absorbed in their substantive Grade of Group B, will be allowed to exercise their option, leaving their seniority issue open till absorption of Group A is completed.”

6. In view of what is stated in letter dated 29.8.2003, I do not think this Court can issue any directions as is suggested and prayed for in the present writ petition.

The writ petition is accordingly dismissed.

SANJIV KHANNA, J.

APRIL 22, 2008
Vld/P