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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on 11.01.2012

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W.P.(C) 7902/2010

UNION OF INDIA & ANR.

... Petitioners

versus

V K JAIN

... Respondent

Advocates who appeared in this case:

For the Petitioners : Mr R.V.Sinha

For the Respondent : Mr S.K.Das

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE V.K.JAIN

BADAR DURREZ AHMED (ORAL)

1. This petition is directed against the order dated 01.07.2010 passed by the Central Administrative Tribunal, Principal Bench, New Delhi (hereinafter referred to as 'the said Tribunal') in O.A. No. 1280/2009. As indicated in the very first paragraph of the impugned order itself, the question for consideration in the said OA was whether an officer of the Department of Telecommunications (DoT) could withdraw his option for absorption in Bharat Sanchar Nigam Limited(BSNL) after having opted for the same. The history with regard to the employment of the

respondent No.1 is given in paragraph 2 of the impugned decision which reads as under:-

“2. The Applicant belongs to the erstwhile Posts and Telegraph Building Works (Group ‘A’) Service, which he joined in the year 1977 as Assistant Executive Engineer(Civil). Subsequently, the Department of Posts and Telegraph was bifurcated into two departments, i.e., Department of Post and Department of Telecommunications in 1985. It is not contested that the first Respondent decided to continue with the unified cadre at Group ‘A’ level for both the departments. As a result, Group ‘A’ officers of civil wing could be posted either to the Department of Posts or to the DoT depending on the functional necessity and availability of posts. The Applicant rose in the hierarchy of his cadre and promoted as Supertending Engineer(Civil) on 21.03.1995. The new telecom policy introduced in the year 1997 created a company called BSNL. The intention of the Union Government was to transfer the entire telecom service to the newly formed BSNL by retaining the functions of policy formulation, licencing, wireless spectrum management, administrative control of PSUs etc. with the Union Government. A Circular to this effect was issued on 30.09.2000, which is placed at Annex A-3. By virtue of the order dated 30.09.2000, officers and staff were considered to have been transferred to BSNL along with their posts on as is where is basis, on deemed deputation, without deputation allowance, with effect from 1.10.2000, i.e., the date of taking over of telecom operations by the BSNL. Notwithstanding the fact that the Applicant was on deemed deputation to BSNL, he was transferred by order dated 4.02.2004(Annex.A-4) from the post of SE(P&D), BSNL, Jaipur to the Department of Posts at Delhi as SE(P&A). A chargesheet was issued to the Applicant under Rule 14 of the CCS(CCA) Rules 1965 in the year 2004. By an office order dated 24.03.2005, the Group ‘A’ officers belonging to Civil, Electrical and

Architecture Wings of the DoT were called upon to exercise their options for absorption in BSNL/MTNL. The general terms and conditions for absorption, *inter alia*, envisaged that :

“2. The option once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage. No officer shall give any conditional option.”

The clause 3 of the aforesaid circular reads thus:

“Absorption of officers facing disciplinary/vigilance cases will be decided by the “Allocation Committee” consisting of Member (Services) as Chairman, Member(P), Member(Finance) and Additional Secretary(T) as its members. The office of DDG (Civil) in DoT will service the Allocation committee.””

2. A circular dated 24.03.2005 issued by the DoT indicated the scheme for calling for options of absorption of Group ‘A’ officers of P&T Building Works (Group ‘A’) Services in MTNL/BSNL. Paragraph 9 of the said circular specifically indicated that the option once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage. Paragraph 10 of the said circular indicated that the officers not exercising any option as prescribed will be deemed to have opted for Government service. It was further stipulated that conditional option shall not be accepted and any such offer shall be treated as if the officer has not exercised the option for absorption in MTNL/BSNL. Appended to the said circular dated 24.03.2005 were general terms and conditions for absorption of Group ‘A’ officers in MTNL/BSNL which contained similar terms. The relevant terms as mentioned in paragraph Nos. 1 to 5 are reproduced herein below:-

“1. The option can be exercised by Group A officers borne on the regular establishment of P&T Building Works Services (P& T BWS) belonging to Civil, Electrical and Architecture Wings of DoT.

2. The option once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage. No officer shall given any conditional option.

3. Absorption of officers facing disciplinary/vigilance cases will be decided by the “Allocation Committee” consisting of Member(Services) as Chairman, Member(P), Member(Finance) and Additional Secretary(T) as its members. The Office of DDG(CIVIL) in DoT will service the Allocation Committee.

Allocation/absorption orders:

4. DoT will consider the option given by Group ‘A’ officers along with the availability of posts in MTNL/BSNL and the personnel requirement of these organizations and make final allocation of officers to MTNL or BSNL. The decision of DOT in this regard shall be final and binding on the officer. MTNL/BSNL would absorb optees as would be allocated by DoT.

5. The effective date of absorption will be 1.10.2000.”

3. The respondent exercised the option of being absorbed in BSNL on 06.06.2005. At that point of time, disciplinary proceedings were pending insofar as the respondent was concerned. Before his option could be accepted, he sent a letter for withdrawal of the offer on 02.08.2006. However, that was rejected by an order dated 11.08.2006 by the DoT in the following terms:-

“I am directed to refer to your letter no.7/2004-CWP dated 4th August, 2006 on the above subject and to say that option once exercised is final and binding. The Presidential Order for absorption in his case could not be issued due to pending vigilance case against him. The officer may kindly be informed accordingly.”

4. Another representation was moved by the respondent on 15.09.2008 in respect of the withdrawal of the option which was also rejected by an order dated 24.09.2008 passed by the DoT which is as under:-

“I am directed to refer to your letter no.4-5/2007-CWP dated 15.9.2008 on the above subject and to say that as per general terms and conditions for absorption of Group ‘A’ officers in MTNL/BSNL, the option once exercised is final. Presidential Order in respect of Shri V.K.Jain could not be issued due to pending vigilance case against him. The case has already been considered by the Allocation Committee and it was decided to keep the case pending till finalization of the disciplinary/vigilance case against the officer.” The officer may kindly be informed accordingly.”

5. Being aggrieved by that, the respondent preferred the said OA before the Tribunal. After considering the rival contentions of the parties, the Tribunal relying upon the decision of the Supreme Court in the case of **Bank of India v. O.P.Swarnakar**, (2003) 2 SCC 721 decided the question in favour of the respondent by holding that the offer made by the respondent could be withdrawn by him inasmuch as the offer had not yet been accepted by the petitioner herein. The Tribunal simply relied on the decision of the Supreme Court which was pertaining to the offers made to employees under the Voluntary Retirement Scheme. The Supreme Court in that case observed that the scheme was contractual in nature and that the scheme was an invitation for offers to be made by the employees who could opt for voluntary retirement. In case they had opted and the

option had not been accepted, they could also withdraw the said option inasmuch as it would amount to withdrawal of offers prior to their acceptance. Based on the principles emanating from the Contract Act, 1872, the Supreme Court came to the conclusion that offers made under the said Voluntary Retirement Scheme could be withdrawn prior to their acceptance as they would not have materialized into a binding contract. Employing the same principle in the present case, the Tribunal has come to the conclusion, which reads as under:-

“8. The Applicant gave his option for absorption under the second Respondent-BSNL. The Respondent failed to take any decision in the matter. It can also not be the case of the Respondents that the Applicant is on deemed deputation to BSNL because the first Respondent transferred the Applicant from BSNL to the Department of Posts by an order adverted to in a foregoing paragraph of this order. In such circumstances, following the ratio laid down by the Honourable Supreme Court in **Bank of India v. O.P.Swarnakar** (supra), we are of the considered opinion that it would be open to the Applicant to withdraw his option for absorption in BSNL.”

6. After having heard learned counsel for the parties, we see no reason to differ with the view taken by the Tribunal. The learned counsel for the petitioner had contended that the decision of the Supreme Court in the case of **Bank of India v. O.P.Swarnakar** (supra), would not be applicable to the present case because the employment was not contractual one. However, we do not agree with the submission because it is not a question that as to whether the employment was a contractual one or not. The entire issue is whether the scheme was contractual or not. We must also point out that the scheme does not have any statutory flavour. It is entirely contractual and it is based upon the employees exercising their option to be retained in the parent department or to be absorbed in either MTNL or BSNL.

In the present case, we find that the scheme is essentially an invitation to an offer and the option exercised by the employee is an offer to an invitation and will remain an offer till its acceptance. It is only on the acceptance of the offer that a binding contract would result. In the present case, the respondent has withdrawn the option(offer) prior to its acceptance. There is nothing in law which prevented him from doing so. This is so because the offer had not been accepted and it had not resulted into a binding contract.

7. In view of the foregoing reasons, we see no reason to interfere with the impugned order. The Writ Petition is dismissed. There shall be no order as to costs.

BADAR DURREZ AHMED, J

V.K.JAIN, J

JANUARY 11,2012/‘sn’