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

+ W.P.(C) 13648/2018 & C.M. Nos. 53201-04/2018

SUJATA VENKATESWARAN AND ORS. Petitioners

Through: Mr. Arvind K. Nigam, Senior
Advocate with Mr.V.K.Ojha,
Advocate.

versus

DEPARTMENT OF TELECOMMUNICATION
AND ORS.

..... Respondents

Through: Mr. Jasmeet Singh, CGSC with
Mr.Aditya Madaan, Advocate for
UOI.
Mr. Sameer Agarwal, Advocate for
R3/BSNL.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

19.12.2018

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C.M. No. 53202/2018

Allowed, subject to all just exceptions. The application stands disposed of in the aforesaid terms.

C.M. Nos. 53201/2018 & 53203/2018

By the aforesaid applications, the petitioner seeks condonation of delay in filing the writ petition as well as condonation of delay in re-filing the writ petition respectively. Since, we have heard, learned Senior Counsel for the petitioner on merits and we do not find merit

in the writ petition, we do not consider necessary to deal with these applications.

These applications stand disposed of.

C.M. No. 53204/2018

By this application, the petitioner seeks leave to place on record some additional documents.

For the reasons stated therein, the application is allowed.

W.P.(C) 13648/2018

1. The petitioner has preferred the present writ petition to assail the order dated 23.01.2017 passed by the Central Administrative Tribunal (Principal Bench) New Delhi in O.A. No. 932/2014. The Tribunal has rejected the said original application preferred by the applicants. The relief sought by the petitioners before the Tribunal primarily was that the Presidential order absorbing the applicants/petitioners in the BSNL, consequent upon the exercise of their options be declared as *nonest*.
2. They also sought a direction to the respondents to provide options to them to work in the BSNL on the same terms and conditions as those which were granted vide order dated 11.03.2013 to Group 'A' Officers who opted not to be absorbed in BSNL.
3. When the Government created two Corporate Bodies namely BSNL & MTNL, the Government servants, who were working in the department of telecommunications were given option, either to get absorbed in the said two organizations, or to go to the Surplus Pool under Rule 37 A (6) of CCS (Pension) Rules.
4. The petitioners exercised their option to get absorbed in the BSNL and they were accordingly, permanently absorbed on 01.10.2000. It appears

that several other officers of Group 'A' opted for Government service. They were neither sent back to DOT, nor redeployed through Surplus Cell, but were allowed to continue to work in BSNL.

5. Some of the officers challenged the terms of absorption offered by the Government. The matter came up to this court in batch of writ petitions, including W.P. (C.) Nos. 22515-518/2008 which was decided on 17.04.2012. In respect of those petitioners, who approached this court, the deemed date of permanent absorption from 01.10.2000 was held to be illegal, being contrary to Section 37 A (4) of the CCS (Pension) Rules. Their dates of permanent absorption were declared as 08.12.2005.

6. The court also granted an opportunity to those petitioners to give their option within two weeks from the date of the said order to revert to Government Service, or to seek permanent absorption in the BSNL or MTNL, as the case may be. It was specifically directed that those Government Employees, who stood permanently absorbed w.e.f. 01.10.2000, will not be entitled to fresh option in terms of order of the court. Consequently, those officers – who were before this court in the aforesaid batch of writ petitions, were given the option. The present petitioners were not party to those writ petitions, since they accepted their absorption in BSNL w.e.f. 01.10.2000 and never questioned the same. After those officers were given fresh options in April, 2013, the present petitioners approached the Tribunal by preferring the original application seeking similar treatment. The same has been rejected by the Tribunal.

7. The submission of Mr. Nigam, learned Senior Counsel for the petitioners is that the petitioners -who are deemed to have been voluntarily and permanently absorbed on 01.10.2000 are being discriminated, when

compared to those - Government servants who did not give their options earlier, and were given the options in terms of the decision in batch of writ petitions including the W.P. (C.) Nos. 22515-518/2008 which was decided on 17.04.2012. He submits that the petitioners pay and allowances are less than those who were either given options later on, or those who continue as government servants but continue in Government services and are working on deputation in BSNL.

8. Mr. Singh, who appears on advance notice for respondent/UOI, at the outset submits that the order passed by this court in ***W.P. (C.) No. 10343/2009*** dated 31.08.2009 titled ***Sanjeev Kumar & Anr. v. Union of India & Anr.*** squarely answers the issues raised by the petitioners.

9. We find that all the submissions advanced by the petitioners are squarely dealt with in the judgment rendered in ***Sanjeev Kumar (supra)***. We reproduce the decision herein below:

“The Petitioners are aggrieved by an order dated 3rd June, 2009 passed by the Central Administrative Tribunal, Principal Bench, New Delhi in OA No. 2287/2000. The Petitioners were Group ?A? officers with the Indian Telecom Service. They were given an option to either join the Mahanagar Telephone Nigam Limited (MTNL) or the Bharat Sanchar Nigam Limited (BSNL) or remain in Government service. The Petitioners exercised their option for joining MTNL and accordingly, they were absorbed in MTNL with effect from 1st October, 2000.

It appears that some persons opted to remain as Government servants or by default they were treated as Government servants. On 26th August, 2008 and 29th September, 2008 those Government servants who

continued with the Indian Telecom Service were given a fresh option to either join MTNL or BSNL or to remain Government servants.

According to the Petitioners, who are employees of MTNL, they too should be given a fresh option in terms of the letters dated 26th August, 2008 and 29th September, 2008. Since no such offer was given to them they preferred an original application before the Tribunal which came to be dismissed by the impugned order.

The Tribunal framed three questions for consideration and they are as follows:

(i) Are the Presidential Orders issued for permanent absorption of the Applicants in MTNL/BSNL legally valid or liable to be quashed and set aside?

(ii) Whether the permanently absorbed Group-A officers in MTNL/BSNL are eligible and entitled to be considered for exercising their option as per the letters dated 26.08.2008 and 29.09.2009?

(iii) Whether the permanently absorbed Group-A officers in MTNL/BSNL are eligible to get additional benefits and incentives under the terms and conditions of absorption given in the letters dated 26.08.2008 and 29.09.2009?

What has been canvassed before us is really with reference to question No.(ii) framed by the Tribunal.

It is submitted that there is a violation of Rule 37A of the CCS (Pension) Rules, 1972 inasmuch some of the Government servants were not re-deployed within the Government but were placed on deputation with BSNL or with MTNL. In our opinion, this issue ought to have been raised at the relevant point of time by the Petitioners. In any event, this has no relevance as far as the main grievance raised by the Petitioners is concerned.

It is then submitted that the opportunity of another option being given to the Government servants is discriminatory. In our opinion, this argument does not carry any substance inasmuch as the Petitioners are not Government servants but employees of MTNL. They are

in a category distinct from Government servants. If the Government chooses to give its employees an option which is not available to the employees of BSNL and MTNL no grievance can be made in this regard. Employees of public sector undertakings are not automatically entitled to the benefits given to Government servants.

We do not find any error in law in the view taken by the Tribunal. The Tribunal was right in coming to the conclusion that the Petitioners had no right to have another option being given to them.

Dismissed”.

10. The petitioners voluntarily gave their option to get absorbed in the BSNL. Others who did not do so, took the chance of being sent to the surplus cell and face an uncertain future. Merely because such other government officers were subsequently given options under the orders of this Court, would not give a right to the petitioners claim a similar right. Like the other officers, the petitioners should have agitated their rights contemporaneously. They did not do so. Thus, they do not have a legitimate claim.

11. Since the present matter is completely covered by the said decision and we, therefore, find no reason to interfere with the impugned order passed by the Tribunal.

12. Dismissed.

VIPIN SANGHI, J

PRATEEK JALAN, J

DECEMBER 19, 2018

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