

(2004) 08 DEL CK 0078

Delhi High Court

Case No: Writ Petition (C) . No. 3329 of 2003

Alok Vohra

APPELLANT

Vs

Govt. of India and Another

RESPONDENT

Date of Decision: Aug. 31, 2004**Citation:** (2004) 76 DRJ 535 : (2005) 3 SLJ 68**Hon'ble Judges:** Manmohan Sarin, J**Bench:** Single Bench**Advocate:** Rani Chhabra, for the Appellant; S.K. Mittal, for the Respondent**Final Decision:** Dismissed

Judgement

Manmohan Sarin, J.

Petitioner, by this writ petition, seeks quashing of letter No.A-35016/1/2000-Admn.II dated 5.5.2003. By the said letter, the plea of the petitioner that he be treated as being on deemed deputation with BSNL w.e.f. 1.10.2000 and his technical resignation from the post of Upper Divisional Clerk (UDC) in the cadre of BSNL w.e.f. 7.3.2003 be accepted, was declined. Petitioner being aggrieved by the aforesaid decision, seeks a direction to respondent No.1-Department of Telecommunication (DOT) to forward his technical resignation to respondent No.2-Bharat Sanchar Nigam Limited (BSNL), claimed to be the only Competent Authority to accept his resignation. Petitioner further seeks a direction to respondent-BSNL to absorb him from 1.10.2000 and pay the arrears of dues in pay scale and other benefits, as applicable to BSNL from the date of his deemed absorption i.e. 1.10.2000 to the date of his being relieved for deputation to Telecom Regulatory Authority of India (TRAI) on 26.9.2001.

2. The relevant facts, culminating in the impugned letter dated 5.5.2003 may be noticed.

3. Petitioner has been appointed on 14.12.1987, as a Lower Divisional Clerk (LDC) in the DOT. He was included in the select list of 1986 of regular UDC and was to be

promoted to the next post of Assistant. The Government of India in pursuance to the New Telecom Policy decided to corporative the service provisions/functions of the DOT to the newly formed company-BSNL. It is claimed that the assets and liabilities of the DOT were transferred and employees working in various cadres were asked to exercise their option. The option form to be filled was final. Petitioner duly exercised his option on 17.9.2001 to be absorbed w.e.f. 1.10.2000 in BSNL. It is claimed that the option exercised was final. Petitioner on absorption in BSNL was to be governed by the rules, regulations and pay scales, as applicable to BSNL. In the meanwhile, on 26.9.2001, petitioner was selected as Assistant on deputation basis for a period of two years in autonomous body TRAI and he joined there as Assistant on deputation. It is claimed that in January, 2002, the staff, who opted for BSNL was absorbed with BSNL w.e.f. 1.10.2000 and all optees of BSNL were also paid arrears of differential in pay scale from DOT to BSNL, as they came on permanent strength.

4. While the petitioner was working with TRAI, the latter decided to expand its cadre by permanent absorption of optioners. Petitioner exercised his option for TRAI. Petitioner tendered his resignation to respondent-BSNL from the post of UDC in the cadre of BSNL. The Senior Research Officer of TRAI sent resignation of the petitioner with forwarding letter to respondent No.1. Petitioner was asked to submit his formal request for revocation of option to BSNL to enable his permanent absorption in TRAI. Petitioner asserted that his exercise of option to BSNL was final and the lien of the petitioner stood transferred to BSNL. He requested respondent No.1-DOT to forward his resignation letter. It is at this stage that the impugned letter of 5.5.2003, referred to earlier, was issued.

5. Counter affidavit has been filed by the respondents. Parties have also filed synopsis of submission. Ms.Rani Chhabra, counsel for the petitioner, reiterated that the option exercised in September, 2001 for absorption in BSNL w.e.f. 1.10.2000 was final. She submits that the physical transfer to BSNL was merely a technical formality in this case and all those who were actually transferred to BSNL in 2002 got their pay fixation in higher grade, as applicable w.e.f. 1.10.2000. She submits that from 1.10.2000 to September, 2001, many employees retired and some went on deputation. While the technical transfer was waived in case of retirees, it had been applied in the case of petitioner, who went on deputation to TRAI. Petitioner seeks higher scales, as applicable for the period 1.10.2000 to September, 2001 in BSNL. She submits that absorption in BSNL actually took place in January, 2002 but it was given effect from 1.10.2000 even though the employees were working in DOT. Respondents claim that petitioner continued to be on the rolls of DOT and his resignation had to be submitted to the said department and not to BSNL. Petitioner has wrongly assumed himself to be permanently absorbed with BSNL, based on deemed deputation. Mr.Mittal, learned counsel for the respondent rightly contends that petitioner cannot draw any support from clauses (iv) and (v) of Office Memorandum dated 30.9.2000 (Annexure P-1). A reading of the said clauses would show that provisions of deemed deputation would not be applicable to the

petitioner as the said Office Memorandum envisaged transfer of units/offices to BSNL and petitioner was not working with any of those units. I find merit in the submission of the respondent. Petitioner, no doubt, had exercised his option for absorption in BSNL, yet within 10 days, he exercised the option on 26.9.2001 to join TRAI on deputation. Petitioner was actually relieved to join TRAI on deputation and had so joined. Respondents have rightly pointed out that UDCs, who were on deputation in different departments were taken back on the strength of DOT and then their services were placed at the disposal of BSNL for permanent absorption. It is stated that petitioner having exercised the option for going on deputation to TRAI on 26.9.2001 could not thus avail of the option for returning to DOT and pursuing the permanent absorption with BSNL, as earlier exercised. Petitioner continued to be on the attendance rolls of DOT till 26.9.2001, when relieved to join TRAI. The Clauses (iv) and (v) of the Office Memorandum (Annexure P-1) would also not be attracted, as the said clauses cover only members and staff of those offices/units, which were transferred to BSNL on as is where is basis. It is only the members, who were providing services in said offices and units, who would have the benefit of the said clauses, which are not applicable to the petitioner. In the instant case, petitioner had exercised his individual option on 17.9.2001 for transfer to BSNL, but subsequently opted for deputation to TRAI. There is merit in the submission of the respondents that the petitioner's parent department continued to be DOT as his transfer/deputation not having been effected to BSNL, the resignation has to be tendered to DOT and not to BSNL. Writ petition has no merit and is dismissed.