

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

% Judgment reserved on: 10.4.2012
Judgment pronounced on: 17.4.2012

+ **W.P.(C) 22515-22518/2005 & CM No.14692-14694/2005, 6787/2006,
7955/2006, 15087/2008 & 1536/2012**

Indian Telecom Service Association & Others ... Petitioners

versus

Union of India & Others ... Respondents

+ **W.P.(C) 22217-22257/2005 & CMs No.14646/2005, 14648/2005**

Arun Gupta And Others ... Petitioners

versus

Union of India & Others ... Respondents

+ **W.P.(C) 22258-22463/2005 & CMs No.14652/2005 & 14655/2005**

Mukesh Kumar Chauhan And Others ... Petitioners

versus

Union of India & Others ... Respondents

+ **W.P.(C) 22783/2005**

S.K.Talware ... Petitioner

versus

Union of India ... Respondents

- + **W.P.(C) 22784-22788/2005 & CM No.16074/2005**
- Pushpender Singh And Others** ... Petitioners
- versus
- Union of India** ... Respondents
- + **W.P.(C) 22789-22847/2005 & CMs No.12817/2006, 13732/2006 & 14503/2006**
- Akhilesh Trivedi** ... Petitioners
- versus
- Union of India** ... Respondents
- + **W.P.(C) 23093/2005**
- Rakesh Kumar Tripathi** ... Petitioner
- versus
- Union of India** ... Respondents
- + **W.P.(C) 23124-23126/2005**
- Awadhesh K. Singh And Others** ... Petitioners
- versus
- Union of India & Others** ... Respondents

+ **W.P.(C) 23655/2005**

Gajender Kumar Yadav ... Petitioner

versus

Union of India & Others ... Respondents

+ **W.P.(C) 12380-12382/2006 & CMs No.9467/2006, 11074/2008 & 14543/2008**

MTNL Executive Welfare Association ... Petitioner

versus

Union of India & Another ... Respondents

+ **W.P.(C) 17618/2006 & CMs No. 14588-14589/2006 & 170/2007**

A.K.Sharma ... Petitioner

versus

Union of India & Others ... Respondents

+ **W.P.(C) 3414/2007 & CM No.6396-6397/2007**

Vinay Saran ... Petitioner

versus

Union of India & Others ... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Parag Tripathi, Sr. Advocate with Mr. VSR Krishna and Ms. Swati Sharma in WP(C) 22215-22257/2005
Mr. Yasoban Das, Sr. Advocate with Mr. A.K.Srivastava, Mr. Ashish

Sindhu and Mr. Arvind Tiwari in WP(C) 22789/2005
Mr. A.K.Srivastava and Mr. Ashish Sindhu in WP(C) 22783/2005,
22784/2005, 22789/2005, 23093/2005, 23124/2005 & 23655/2005
For Respondent : Mr. A.S.Chandhiok, Additional Solicitor General with Mr. B.V.Niren,
Mr Prasouk Jain, Mr. Utkarsh Sharma & Mr. Pratap for UoI
Mr. Ravi Sikri with Mr. Vaibhav Kalra for MTNL

CORAM:
HON'BLE MR. JUSTICE BADAR DURREZ AHMED
HON'BLE MR. JUSTICE V.K.JAIN

V.K. JAIN, J.

1. This batch of writ petitions are directed against the orders dated 21.10.2005 and 31.10.2005 passed by the Central Administrative Tribunal, Delhi (hereinafter referred to as the Tribunal) in OA No. 1963/2005 and other connected OAs.
2. Pursuant to its decision to set up a Public Sector Corporation viz. MTNL from 1.4.1986, Government of India, Ministry of Communications, Department of Telecommunications vide order dated 18.3.1986 directed that on commencement of operations of MTNL w.e.f. 1.4.1986, the staff of Delhi and Bombay telephone districts working within the jurisdiction of Union Territory of Delhi and Bombay, New Bombay and Thane Municipal areas, will be deemed to be transferred on deputation to MTNL, on existing terms and conditions without any deputation allowance for a maximum period of 05 years. It was further directed that till the terms and conditions of service in MTNL were decided and options were called from the concerned Officers of Department of Telecommunications (DoT), the posts which at that time were manned by the existing Officers of DoT would

continue to be manned by them, with DoT service conditions continuing to apply to them. The staff working on deputation with MTNL was to have an option for permanent absorption in the company, once the terms and conditions in this regard were finalized.

On setting up of another Public Sector Corporation viz. Bharat Sanchar Nigam Limited (BSNL), Government of India vide OM dated 30.9.2000 decided to transfer the business of providing telecom services in the country to BSNL w.e.f. 1.10.2000. Department of Telecom Services and Department of Telecom Operations, which were concerned with providing telecom services in the country and maintaining the telecom network/telecom factories were separated and carved out of the Department of Telecommunications (DoT). The assets and liabilities of the aforesaid departments were also transferred to BSNL by a separate order. The following interim arrangements were, inter alia, made vide the aforesaid order dated 30.9.2000:

- (i) The establishment (officers, staff, employees and industrial workers) sanctioned for exchanges/offices, in various telecom circles, metro districts of Calcutta and Chennai, project circles, civil, electrical and architectural wings, maintenance regions, specialized telecom, units namely Data Networks, National Centre for Electronic Switching, Technical and Development circle, Quality Assurance circle (except TEC), training institutions, other units like telecom factories, stores and electrification projects of

DoT/DTS/DTO (belonging to various organized services and cadres given in Annexure A to this letter) and posted in these circles/offices/units will stand transferred to Bharat Sanchar Nigam Limited along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation without deputation allowance, with effect from 1st October, 2000, i.e., the date of taking over of telecom operations by the Company from DTS & DTO. Bharat Sanchar Nigam Limited will exercise control and supervision of staff working against these posts.

(ii) The organizational structure of restructured Department of Telecommunications (DoT) is given at Annexure 'B' (Tables I to IV giving posts/units to be retained in DoT and to be transferred to BSNL). Consequent to residual work of DTS and DTO being transferred to DoT, it will continue to do the work allocated under Allocation of Business Rules. The officers and staff presently working in these posts will continue to work, until further orders, in their existing posts under DoT and all other officers and staff will stand transferred along with their posts on existing terms and conditions, on as is where is basis, on deemed deputation without deputation allowance w.e.f. 1.10.2000 to the Company.

(iii) x x x x

(iv) Officers and staff belonging to various Central Secretariat Services (mentioned in Annexure A) providing services to offices/units being transferred to the Company will stand transferred along with their posts, on as is where is basis, on deemed deputation, without existing terms and conditions of service. Further orders in the matter would be decided by DoT in consultation with

DoPT which is the cadre controlling authority of CSS.

- (v) Officers and staff shall continue to be subject to all rules and regulations as are applicable to Government servants, including the CCS (CCA) Rules till such time as they are absorbed finally by the Company after they exercise their options. Their pay scales, salaries and allowances will continue to be governed by existing rules, regulations and orders.

3. By a Circular dated 24.3.2005 DoT called for options for absorption of Group A Officers of Indian Telecom Service, Telegraph Traffic Service and Telecom Factories Service. The aforesaid Circular, inter alia, stipulated as under:

“3. The effective date of absorption will be 1.10.2000.

X X X X

5.8 The officers would have four weeks to give their option. They should ensure that their options are received by the Circle/Units of MTNL & BSNL and the Establishment Division of DoT latest within one week of the option time limit.

X X X X

9. The option once exercised shall be final and will not be allowed to be withdrawn by the concerned officer at a later stage.

10. Officers not exercising any option as prescribed will be deemed to have opted for Government

service. No conditional option shall be accepted and any such offer shall be treated as if the officer has not exercised option for absorption in MTNL/BSNL.

X X X X

12. DoT will consider the option exercised 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/BSNL or retention in DoT depending on the organizational needs and public interest. 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."

4. The Circular dated 24.3.2005 calling for options from Group 'A' Officers of Indian Telecom Service, Telegraph Traffic Service and Telecom Factories Service was challenged by the petitioners herein, by way of various Original Applications filed by them before the Tribunal. Besides seeking quashing of the circular dated 24.3.2005 the petitioners also sought directions to the respondents to formulate a just, fair and comprehensive policy for absorption of those persons, who opted for absorption in BSNL/MTNL as well as for those who did not opt absorption in these organizations. In OA No. 1963/2005 the petitioners also sought the striking down of provisions of clauses 1 to 7 of Rule 37-A of CCS (Pension) Rules 1972 besides seeking their continuance in DoT as Government employees.

5. The Tribunal on hearing the parties reached the following conclusions:

- (1) Terms and conditions for absorption in BSNL/MTNL for Group 'A' officers contained in OM dated 4.10.2005 are comprehensive enough. Combined with them the assurances provided on behalf of the Government as respects allocation/absorption as well as recovery on the *ad hoc* amount, these instructions would enable the concerned employees to exercise an informed option for absorption in MTNL/BSNL.
- (2) On absorption these officers will certainly gain in monetary terms by availing corresponding IDA pay scales, which are higher than the existing CDA pay scales available in the Government.
- (3) There is no infirmity or illegality in insertion of rule 37-A CCS (Pension) Rules, 1972 vide notification dated 30.9.2000. In our considered view, it cannot be said to be an excessive piece of legislation at all.
- (4) Since a bulk of officers in BSNL/MTNL have been absorbed from 1.10.2000 no differential treatment can be accorded to Group 'A' officers insofar as the question of effective date of absorption is concerned.

While disposing of the OAs the Tribunal also directed respondent No.1 i.e. Secretary, DoT to extend the date of submission of options up to 30.11.2005, making it clear that thereafter the respondents would be at liberty to take appropriate decision on such options.

6. The main issue which arises for our consideration in this case is as to whether the respondents were entitled, in law, to notify 1.10.2000 as the date of absorption of the petitioners in BSNL/MTNL.

Rule 37-A of CCS (Pension) Rules, 1972, on which reliance was placed by Shri Parag Tripathi, learned Senior Counsel for the petitioners as well as by Shri A.S.Chandiok learned Additional Solicitor General representing Union of India and its Departments, to the extent it is relevant, reads as under:

37-A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking:-

- (1) On conversion of a department of the Central Government into a Public Sector Undertaking or an Autonomous Body, all Government servants of that Department shall be transferred *en masse* to that Public Sector Undertaking or Autonomous Body, as the case may be, on terms of foreign service without any deputation allowance till, such time as they get absorbed in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in the Public Sector Undertaking or Autonomous Body, as the case may be, with effect from such date as may be notified by the Government.
- (2) The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Public Sector Undertaking or Autonomous Body, as the case may be.
- (3) The option referred to sub-rule (2) shall be exercised by every transferred Government servant in such manner

and within such period as may be specified by the Government.

- (4) The permanent absorption of the Government servant as employees of the Public Sector Undertaking or Autonomous Body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.
- (5) Upon absorption of Government servants in the Public Sector Undertaking or Autonomous Body, the posts which they were holding in the Government before such absorption shall stand abolished.
- (6) The employees who opt to revert to Government service shall be re-deployed through the surplus cell of the Government.
- (7) The employees including quasi-permanent and temporary employees but excluding casual labourers, who opt for permanent absorption in the Public Sector Undertaking or Autonomous Body, shall on and from the date of absorption be governed by the rules and regulations or bye-laws of the Public Sector Undertaking or Autonomous Body, as the case may be.

7. Relying upon Sub-Rule (4), extracted above, Shri Parag Tripathi, learned Senior Counsel for the petitioners contended that the Rule 37-A, which is the only rule providing for *en masse* transfer of Government servants working in a department to the Public Sector Undertaking concerned, on conversion of the department, in which these Government servants are working, into a PSU or an autonomous body, does not empower the Government to notify a date prior to the

date on which the options exercised by the Government servants are accepted by it, as the deemed date of absorption of such Government servants in the Public Sector Undertaking concerned. The learned Additional Solicitor General on the other hand contended that since Sub-Rule (1) of Rule 37-A empowers the Government to fix any date from which the absorption of the Government servants is to take place in the PSU concerned, such a date could also be a date prior to inviting options in terms of Sub-Rule (2). He further submitted that since Sub-Rule (1) uses the expression “absorption” as against the expression “permanent absorption” used in Sub-Rule (2) and Sub-Rule (4), there could be an initial absorption of the petitioners in terms of Sub-Rule (1) even from a date prior to inviting options from Government servants concerned which would also relate back to the date of initial absorption fixed by the Government in exercise of powers conferred upon it by Sub-Rule (1) of Rule 37-A. This, however, was countered by the learned Senior Counsel for the petitioners who contended that the expression “absorption” and “permanent absorption” have been used interchangeably and there is only one absorption of the Government servants concerned, which can take place after inviting options from them in terms of Sub-Rule (2). He also submitted that Sub-Rule (1) cannot be interpreted *de hors* the other provisions of Rule 37-A and therefore the Government could not have fixed a date prior to the date on which options were invited from the petitioners.

8. It can hardly be disputed that while interpreting a statutory Rule, the Court is required as far as is possible, to give a meaningful effect to all the provisions contained in that Rule and it would not be appropriate to interpret one Rule in isolation, without taking into consideration the intent and purport of other Rules. All the Sub-Rules forming part of Rule 37-A of CCS (Pension) Rules stipulate various conditions for payment of pension on absorption consequent upon conversion of a Government department into a Central Autonomous Body or a Public Sector Undertaking. The attempt of the Court therefore has to be to give effect to all these conditions, while interpreting the Rule. It is true that Sub-Rule (1) empowers the Government to notify a date from which the absorption of the Government servants transferred *en masse* to a Public Sector Undertaking or an Autonomous Body, has to become effective. Had there been no other Sub-Rule in Rule 37-A or had there been nothing in other Sub-Rules of Rule 37-A which would negate the interpretation suggested by the learned Additional Solicitor General, it could be possible for the respondents to contend that the Government in its wisdom having notified 1.10.2000 as the date with effect from which the absorption of the petitioners into BSNL/MTNL was to take place, the petitioners are not entitled to challenge the decision taken by the Government and if the date notified by the Government in this regard was not acceptable to them, they were at liberty not to opt for the absorption in the BSNL/MTNL. However, the provisions contained in

Sub-Rule (2) and Sub-Rule (4) clearly negate the interpretation suggested by the learned Additional Solicitor General. The scheme of absorption, as contained in Rule 37-A is that: (i) on conversion of a department into a Public Sector Undertaking/Autonomous Body all the Government servants of that department stand transferred *en masse* to the PSU/Autonomous Body; (ii) the Government servants who are so transferred to the PSU/Autonomous Body are on deemed foreign service with the PSU/Autonomous Body concerned, though without any deputation allowance; (iii) they continue to be on foreign service with the PSU/Autonomous Body concerned till they are absorbed in that Undertaking/Body; (iv) once the *en masse* transfer of Government servants in terms of Sub-Rule (1) has taken place, the Government has to give an option to them either to revert to Government service or to seek permanent absorption in the Undertaking/Autonomous Body concerned; (v) those employees who opt for permanent absorption in the PSU/Autonomous Body concerned cease to be Government servants and are deemed to have retired from service, with effect from the date the options exercised by them are accepted by the Government; (vi) those Government servants who do not opt for permanent absorption in the PSU/Autonomous Body concerned stand reverted to the Government and have to be re-deployed through its surplus cell.

If we accept the contentions made by the learned Additional Solicitor General that the Government could have fixed 1.10.2000 as the deemed date of absorption of the petitioners in MTNL/BSNL that would be wholly contrary to the express provisions contained Sub-Rule (4), which clearly stipulates that those who opt for absorption in the PSU/Autonomous Body concerned cease to be Government servants from the date their option is accepted by the Court. This would render Sub-Rule (2) and Sub-Rule (3) of Rule 37-A of CCS (Pension) Rule absolutely redundant. Any attempt to fix a date prior to inviting options from Government servants in terms of Sub-Rule (2) of Rule 37-A, in our opinion would be violative of Sub-Rule (2) and Sub-Rule (4) of the Rule 37-A, and therefore we cannot accept the interpretation suggested by the respondents. We are in agreement with the learned Senior Counsel for the petitioners that the expressions “absorption” and “permanent absorption” have been used interchangeably in various Sub-Rules of Rule 37-A and the scheme contained in the said Rule does not envisage two absorptions i.e. initial absorption followed by a permanent absorption, after giving option to the Government servants in terms of Sub-Rule (2) of the said Rule. In fact even the Circular dated 24.3.2005 whereby options were invited by the Government does not use the expression “permanent absorption”. The heading refers to “option for absorption”. Clauses (i) and (ii) of the OM refer to “absorption”, Clause (iii) provides that the “effective date of absorption” will be

1.10.2000. Clause (x) speaks of option 'for absorption' in BSNL/MTNL. There was a prescribed proforma for exercise of option by the Government servants concerned. The Sub-Heading given on the proforma speaks of "absorption" whereas Clauses (ii) and (iii) refer to "permanent absorption". This also indicates that the expression "absorption" and "permanent absorption" are being used interchangeably and the scheme contained in Rule 37-A of CCS (Pension) Rules does not envisage an absorption/initial absorption, followed by permanent absorption.

At this stage we would also like to refer to Clause (v) of the OM dated 30.9.2000, whereby the petitioners, along with others, were transferred *en masse* to BSNL/MTNL. The OM stipulated that the Officers/staff shall continue to be subject to all rules and regulations as are applicable to Government servants including CCS (CCA) Rules till such time as they are absorbed finally by the company, after they exercise their option. This clearly shows that the Government servants who were transferred *en masse* to BSNL/MTNL continued to be Government servants till they are absorbed in BSNL/MTNL as the case may be. If we accept the construction suggested by the learned Additional Solicitor General, it would mean that despite being absorbed/initially absorbed in BSNL/MTNL, the Government servants who were transferred *en masse* to these PSUs continued to be governed by the rules applicable to Government servants, during the period

between their absorption/initial absorption and their permanent absorption. Once a Government servant is absorbed in a PSU, he cannot be governed by the Rules applicable to Government servants and it is the rules and regulations of the PSU concerned which shall apply to him. If the PSU concerned needs time to frame its own rules and regulations, nothing prevents it from adopting such of the rules applicable to the Government servants as are deemed appropriate by it for its employees. But it cannot be said that the rules applicable to the Government servants, would continue to apply to the Government servants who are absorbed/initially absorbed even when such rules have not been adopted by the concerned PSU. Therefore, we have no hesitation in holding that the petitioners continued to be on Foreign Service with BSNL/MTNL till the date options were given to them in terms of Sub-Rule (2) of Rule 37-A and the options exercised by them were accepted by the Government. Of course, the Government was competent to decide the manner in which as well as the period within which such options were to be exercised by the petitioners, but, it could not have fixed a date prior to the date of inviting options as the date of absorption envisaged in Sub-Rule (1) of Rule 37-A.

9. Even if we presume, for the sake of argument, that in exercise of the power conferred by it of Sub-Rule (1) of Rule 37-A the Government could have fixed 1.10.2000 the date of absorption/initial absorption of the petitioners that does not

advance the case of the respondents in any manner for the simple reason that in view of the express provision contained in Sub-Rule (4) of the said Rule the petitioners continue to be Government servants till the options in terms of Sub-Rule (2) were invited from them and those options were accepted by the Government. Even if we proceed on the assumption that the scheme of the Rule envisaged two absorptions one being the absorption/initial absorption and the other being permanent absorption, it cannot be disputed that the date of permanent absorption cannot be a date prior to inviting options to revert to Government or to seek permanent absorption in the PSU concerned.

10. Therefore, since the options were invited by the Government only on 24th March 2005 it was not permissible for the Government to fix 1.10.2000 as the date of permanent absorption of the petitioners. Since the Circular dated 24.3.2005 clearly stipulated that the effective date of absorption will be 1.10.2000, the date fixed by the Government was in clear violation of the mandate of Sub-Rule (4) of Rule 37-A. On account of the Government having stipulated 1.10.2000 as the effective date of absorption, the petitioners did not get an opportunity to exercise the option in terms of Sub-Rule (2) of Rule 37-A which envisaged absorption from a date subsequent to the date of inviting options from the Government servants in this regard. Had the Government while issuing Circular dated 24.3.2005 fixed any date subsequent to 24.3.2005 as the effective date of absorption, the petitioners

would have been in a position to take an informed decision as to whether they wanted to opt for absorption/permanent absorption in BSNL/MTNL or wanted to revert to the Government. We therefore hold that the effective date of absorption notified by the Government vide Circular dated 24.3.2005 was illegal being violative of Sub-Rule (4) of Rule 37-A of CCS (Pension) Rules, 1972.

11. It was contended by the learned Additional Solicitor General that there has to be a uniform date for permanent absorption of those Government servants, who were *en masse* transferred to BSNL/MTNL and since most of the employees have already accepted 1.10.2000 as the deemed date of absorption, a different date should be fixed in the case of the petitioners. This, however, was contested by the learned Counsel for the respondents, who stated that different deemed dates for absorption were fixed in respect of those Government servants who were *en masse* transferred to MTNL. The learned Additional Solicitor General on instructions informed that no uniform deemed date of allotment was fixed in respect of all the Government servants who were *en masse* transferred to MTNL and there were certain categories of employees, in whose case the deemed date of absorption in MTNL was different from the deemed date of absorption of other Government servants who were transferred to that company. Thus, the respondents themselves have not maintained a uniform deemed date for absorption of all the Government servants who were transferred to MTNL. In any case, since we are of the view that

the respondents could not have notified a date prior to inviting options in terms of Sub-Rule (2) of Rule 37-A as the deemed date of absorption of the petitioners in MTNL/BSNL, the relief to the petitioners cannot be denied merely because it would result in them being absorbed from a date different from the date with effect from which most other employees were absorbed.

12. During the course of arguments, it was contended by the learned Additional Solicitor General that out of almost 4 lakh Government servants, who were transferred *en masse* to BSNL, almost all except a few hundred Group 'A' Officers who are petitioners before this Court, have accepted 1.10.2000 as the date of their absorption in BSNL. This was also the view taken by the Tribunal which felt that a small segment of Officers belonging to Group 'A' cannot be allowed a prospective date of absorption which is different from 1.10.2000. We, however, are not in agreement with the view taken by the Tribunal in this regard. If the mandate of the law requires the Government to act in a particular manner, the Government is required to act in that very manner and an illegal act of the Government can be challenged by any person aggrieved from such an act even if that act is accepted by most others.

13. The next question which comes up for consideration before us is as to what should be the effective date of permanent absorption of those petitioners in service of BSNL/MTNL, who opt for permanent absorption instead of reverting to the

Government. Since the options from the petitioners were invited only on 24.3.2005 it has to be a date post 24.3.2005. More than 7 years have passed since the Circular inviting options from the petitioners and others was issued. We note that vide an interim order dated 28.11.2005 this Court after hearing the learned Counsel for the parties, and in terms of the prayer made by the Counsel appearing for the petitioners allowed them further 10 days time to enable them to exercise their option. It was directed that any option, if exercised by the petitioners in terms of the order passed by the respondents and any other order passed by the respondents during pendency of the writ petition would be subject to the result of the writ petitions. It was also made clear that if the petitions are allowed and any adverse order was passed by the respondents, in the meanwhile, the same would abide by the final order to be passed in the writ petition. This order which was passed at the instance of the petitioners gave them one more opportunity to exercise the option of whether to get absorbed in BSNL/MTNL or to revert to Government service. The issue of the effective date of absorption being subjudice, the petitioners were to decide within 10 days from 28.11.2005 as to whether they wanted to be absorbed in BSNL/MTNL or wanted to come back to the Government and for those who were to seek absorption in BSNL/MTNL, this Court was to decide as to what would be deemed date of their absorption in BSNL/MTNL. During the course of arguments we were informed that none of the petitioners' exercised the option in terms of the

order dated 28.11.2005. We deem it appropriate to give one final opportunity to the petitioners to exercise an option, within two weeks from today as to whether they want to be permanently absorbed in BSNL/MTNL or want to revert to Government service. We also direct that 8.12.2005 i.e. 10 days from passing the order dated 28.11.2005 shall be the deemed date of permanent absorption of those petitioners who exercise the option to be permanently absorbed in BSNL/MTNL. We make it clear that such of the petitioners who do not exercise any option in terms of this order shall stand reverted to Government service on expiry of two weeks from the date of this order and BSNL/MTNL shall forthwith relieve them from its service so as to enable them to join Government duty.

14. During the course of arguments some of the petitioners sought a direction to the respondents to frame an appropriate scheme for redeployment of those persons who opt to revert to Government service. As noticed earlier, Sub-Rule (6) of Rule 37-A stipulates that the employees who opt to revert to Government service shall be redeployed through the surplus cell of the Government. It is therefore the duty of the surplus cell of the Government to redeploy them in an appropriate manner. We do not know which department Government is in a position to accommodate such of the petitioners who opt to revert to government service. In our opinion this is an issue which can be properly addressed only by the Government and not by the

Court, particularly when we have no information nor has any material been made available to us with respect to this aspect of the matter.

15. During the course of arguments, relying upon Sub-Rules (8) & (21) of Rule 37-A, the learned Additional Solicitor General contended that the interest of the petitioners would not, in any manner, be prejudicially effected in case 1.10.2000 is taken as the date of their permanent absorption. This, however, was disputed by the learned Counsel for the petitioners who contended that the quantum of pensionary benefits to those who opt for permanent absorption in BSNL/MTNL would depend upon the date which is fixed as the deemed date for their permanent absorption.

“Sub-Rule (8) of Rule 37-A of CCS (Pension) Rules reads as under:

A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking or Autonomous Body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Government and in the Public Sector Undertaking or Autonomous Body in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from the Public Sector Undertaking or Autonomous Body, as the case may be or at his option, to receive pro-rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.”

Sub-Rule (21) of Rule 37-A of CCS (Pension) Rules, reads as under:

“Nothing contained in sub-rules (12) to (20) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited, in which case the pensionary benefits including family pension shall be paid by the Government.”

It is evident from a bare reading of this Rule that if the employee who is permanently absorbed in PSU/Autonomous Body concerned exercises the option to receive pro-rata retirement benefits for the service rendered under the Central Government he will get pensionary benefits up to 30.9.2000 if 1.10.2000 is taken as the deemed date of his permanent absorption in BSNL/MTNL. If however a date subsequent to 24.3.2005 is fixed as the deemed date of permanent absorption he will get pro-rata retirement benefits till that date. In other words, if 8.12.2005 is fixed as the deemed date of permanent absorption, a person opting for permanent absorption in BSNL/MTNL would be entitled to pro-rata retirement benefits such as pension up to 9.12.2005. We, therefore, cannot accept the contention that the decision of the Government to fix 1.10.2000 as the deemed date of permanent absorption of the petitioners does not prejudicially affect them in any manner.

ORDER

For the reasons stated hereinabove we dispose of these writ petitions in terms of the following directions:

- i) The deemed date of absorption of the petitioners fixed as 1.10.2000, is held to be illegal, being contrary to Rule 37-A (4) of CCS (Pension) Rules;
- ii) The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005;
- iii) The petitioners before this Court are given an option, to be exercised within two weeks from the date of this order, to revert to the Government or to seek permanent absorption in BSNL/MTNL as the case may be;
- iv) Those Government servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order;
- v) BSNL/MTNL shall relieve such of the petitioners, who opt to revert to Government service within 2 weeks of receipt of options from them;
- vi) Such of the petitioners who opt to revert to the Government shall be appropriately redeployed by the Government in Government service through surplus cell of the Government. We have no doubt in our mind that the Government would not like to keep such of the petitioners who opt to revert to the Government idle and, subject

to availability of the positions with it, give them such work as is deemed appropriate to be performed by them.

In view of the order passed, all the pending applications also stand disposed of. In the facts and circumstances of the case there will be no order as to costs.

V.K.JAIN, J

BADAR DURREZ AHMED, J

APRIL 17, 2012

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