

Central Administrative Tribunal - Delhi
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Indian Telecom Service ... vs Union Of India (Uoi) And Ors. on 31 October, 2005
Equivalent citations: 2006 (3) SLJ 196 CAT
Bench: M A V.K., M K Gupta
ORDER

V.K. Majotra, Vice-Chairman (A)

1. By virtue of these applications has been assailed respondents' O.M. A-11013/1/2005-Admn.II(ITS)/TTS/TFS dated 24.3.2005 (Annexure P-1 in O.A. No. 1963/2005) whereby option has been called for absorption of Group 'A' officers of Indian Telecom Service (ITS)/Telegraph Traffic Service (TTS)/Telecom Factory Service (TFS) in Mahanagar Telephone Nigam Limited (MTNL)/Bharat Sanchar Nigam Limited (BSNL), alleging that respondents have resorted to enforce illegal conditions on applicants coercing them into exercising options for absorption in MTNL/BSNL.

2. All these O. As. have raised more or less identical facts and issues and have, therefore, been clubbed together for disposal by the present common order. For the sake of brevity, the facts have been culled out from O.A. No. 1963/2005.

3. Apart from seeking quashment of O.M. dated 24.3.2005 applicants have further sought directions to respondents to formulate a just, fair and comprehensive policy for absorption of the applicants in BSNL or MTNL and for those who do not opt for absorption in these organisations.

4. In addition, in O.A. No. 1958/2005 applicants therein have sought striking down of the provisions of Clauses 1 to 7 of the amended Rule 37A of the CCS (Pension) Rules, 1972 and further seeking continuance of these applicants in the Department of Telecommunications (DOT) as Government employees. Deemed deputation and transfer of posts of ITS to BSNL has also been sought to be declared as illegal and violative of Articles 311, 14 and 16 of the Constitution of India.

5. Among others, a few salient features of the impugned O.M. dated 24.3.2005 are as follows:

Options for absorption in MTNL/BSNL have been called from all serving Group 'A' ITS/TTS/TFS officers who were transferred to MTNL/BSNL on deemed deputation basis, also from those who remained in DOT and who were on the rolls of DOT/DTS/DTO as on 30.9.2000 as well as called from all officers who have retired since 1.10.2000. The effective date of absorption has been stated as 1.10.2000. It has been stated that option once exercised shall be final and would not be allowed to be withdrawn at a later stage. It is further stated that DOT will consider the options exercised by the concerned officers along with availability of posts in MTNL/BSNL and the personnel requirement of these organisations and make final allocations of officers to MTNL/BSNL or retention in DOT depending on organizational needs and public interest. The decision of DOT in this regard shall be final and binding on all concerned. MTNL/BSNL would absorb optees as allocated by DOT. Thereafter, respondents have issued various clarifications regarding general terms and conditions for absorption, the last being dated 4.10.2005 titled as "Consolidated general terms and conditions for absorption of Group "A" Officers in MTNL/BSNL". In these consolidated general terms and conditions inter alia have been incorporated the following important ones:

Allocation/Absorption orders

7. 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. While ordinarily officers will be absorbed in BSNL/MTNL as per their first choice, it is possible that other considerations such as working strength, seniority etc. may come into play. 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.

Changeover to IDA Pay scale:

9. On absorption, the corresponding IDA pay scales in MTNL/BSNL would be as under:

FOR MTNL

Sl. No. Existing CDA pay scale Corresponding IDA pay scale

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1. 22400-525-24500 25000-650-3 0200
 2. 18400-500-22400 23750-600-2 8550
 3. 14300-400-18300 18500-450-2 3900(E7)
 4. 12000-375-16500 17500-400-2 2300(E6)
 5. 10000-325-15200 16000-400-2 0800(E5)
 6. 8000-275-13500 14500-350-1 8700(E4)

FOR BSNL

Sl. No. Existing CDA pay scale Corresponding IDA pay scale

-
1. 22400-525-24500 25000-650- 30200
 2. 18400-500-22400 23750-600- 28550
 3. 14300-400-18300 17500-400- 22300
 4. 12000-375-16500 16000-400- 20800
 5. 10000-325-15200 14500-350- 18700

6. 8000-275-13500 13000-350- 18250

The highest available IDA pay scale both in MTNL/BSNL is Rs. 2 5000-

650-320--/-.

Pay fitment

1 1 (viii) Advisor, grade officers shall be fitted in the highest available IDA scale with an additional monthly 'Position allowance' of Rs. 2500. (Position allowance is, however, subject to the over all ceiling for perks and allowance as prescribed by DPE.

(ix) Any payment already made to Group 'A' officers by MTNL/BSNL pending absorption and implementation of IDA pay scales (like compensatory orad hoc or advance amounts etc. like Rs. 2750 pm in BSNL and Rs. 3000 pm in MTNL) would be recovered on fixation of pay in IDA scale. It will also be recovered from the non-optees (i.e. officers who want to continue in Govt. service or do not give any option at all)(Item No. 9 of General Terms and Conditions annexed with letter dated 24.03.2005)

Payment of Pension:

18.(i) The pension to the Group A officers upon their absorption in BSNL/MTNL shall be paid as per the relevant provisions of Rule 37A of CCS (Pension) Rules, 1972.

(ii) Absorbed Group A officers would also have an option to receivepro-rata retirement benefits for the service rendered in the Government. Ministry of Personnel, Public Grievances and Pension would be making suitable amendment to Rule 37-A of the CCS (Pension) Rules, 1972. This option shall be exercised by the absorbed officer within the time period as may be prescribed by the Government in this behalf. For the service rendered by the officer in BSNL/MTNL after 01.10.2000, the officer would be governed by the scheme/rules of BSNL/MTNL. Thepro-rata pension will be calculated on the CDA pay scales as on 30th Sept. 2000 of the absorbee and would be payable immediately on application as may be prescribed. No Dearness Relief (DR) onpro-rata pension will be available to such absorbees as he/she will be getting DA as an employee of BSNL/MTNL.

Promotion:

20. The effective date of absorption for Group A officers shall remain as 1.10.2000. any ad/we/regular promotion made in the Government after 01.10.2000 shall be carried forward by the respective PSU and the pay fitment will be accordingly allowed. However after issue of Presidential Order for absorption, any ad/joc/local officiating arrangement shall be at the discretion of the respective PSU. (Clarification dated 30.08.2005).

6. In O.M. dated 4.10.2005 it has also been clarified that wherever BSNL/MTNL do not have their own service conditions/rules, the existing rules of the Government shall apply mutatis mutandis till such time BSNL/MTNL frame their own rules.

7. Mr. G.D. Gupta, learned Senior Counsel, submitted that although DOT decided to corporatise the service provision of DOT vide their memorandum dated 30.9.2000 which was made effective from 1.10.2000, the Department has not been able to issue terms and conditions for absorption of Group 'A' officers in MTNL/BSNL in a comprehensive manner so far though a period of more than half a decade has elapsed. Thus

while the future of the concerned officers remains in suspended animation, they are not yet in a position to take a firm and final decision being handicapped by non-availability of complete information. He pointed out that even memorandum dated 4.10.2005 is not exhaustive enough and lacks information on various important aspects, namely, the basis for allocation/absorption; apart from personnel requirement of these organisations what would be determining factors weighing in the mind of the authorities for making final allocation despite officers' choice, working strength and seniority. Not only that memorandum dated 4.10.2005 is not exhaustive, it has not even been endorsed or served/circulated to the concerned employees or their associations. Copies of this memorandum have been endorsed to Members, Telecom Commission, CMDs of BSNL/MTNL, and a few DDGs only. Learned Senior Counsel Mr. Gupta made the following specific contentions:

(1) While vide notification dated 30.9.2000 (Annexure P-5) inserting Rule 37A after Rule 37 of the CCS (Pension) Rules, 1972, it had been stated that the permanent absorption of these employees shall take effect from the date on which their options "are accepted by the Government", memorandum dated

4.10.2005 specifies 1.10.2000 as the effective date of absorption. Memorandum of 4.10.2005 is retrospective in nature and runs counter to the spirit of aforesaid notification dated 30.9.2000. If the absorption is given a retrospective effect, the affected Government employees shall lose various benefits which had already accrued to them, such as qualifying service rendered by them from 1.10.2000 till date, for pension purposes.

(2) Without a decision at the competent level, DOT has reduced the strength of various categories of posts. To illustrate, he referred to Annexure R-13 to the effect that against four posts at the level of Higher Administrative Grade (Rs. 22400-24500)(indicated in O.M. dated 30.9.2000 on the subject), only one post has been shown in the Higher Administrative Grade in DOT.

(3) Group 'A' officers working in these organisations were paid ad hoc amount of Rs. 2,750 per month w.e.f. 1.10.2000. No condition of recovery of the amount in the event of non-opting for absorption in BSNL/MTNL had been attached to such payment even vide order dated 17.6.2004. However, through O.M. dated 4.10.2005 under Clause 11(ix) recovery of the said amount has been prescribed.

(4) DOT had issued clarification dated 30.5.2005 (Annexure P-10). Among others, clarification on criteria for allocation to MTNL/BSNL/Government service were stated. It was clarified that the allocation in BSNL/MTNL shall be based on factors like - (1) the option exercised; (2) the working strength as on the date of allocation; (3) seniority; and (4) incumbency in PSU. Vide O.M. dated 4.10.2005 the "incumbency" factor has been replaced by expression "etc.". It would imply that incumbency factor has been given a go by and in any case it would not be one of the main factors. It could also imply leverage to DOT to emphasize arbitrarily either seniority or incumbency or some other factors denying rational consideration.

(5) IDA pay scales have been made effective in MTNL/BSNL from 1.10.2000. Excepting uniformity of two pay scales, namely Rs. 25650-30200 and Rs. 23750-600-28550 the other four scales in MTNL are higher than those in BSNL. For this purpose reference was made to paragraph 10 of O.M. dated 4.10.2005. He contended that such difference is discriminatory and would make Junior Administrative Grade (JAG) selection grade level officers allocated to BSNL ineligible to apply for Schedule-C posts in PSUs. He explained that while JAG selection grade level in MTNL is Rs. 18500-450-23900 making MTNL JAG selection grade officers eligible for above purpose, officers holding the same level in BSNL would be placed in lower pay scale of Rs. 17500-400-22300 which would render them ineligible for above purpose and as such would be detrimental to the interest off the entire cadre of BSNL.

(6) Lastly the learned Counsel stated that whereas vide O.M. dated 30.9.2000 respondents have decided to transfer DOT staff to BSNL w.e.f. 1.10.2000, Government have ceaselessly continued to recruit personnel in DOT through UPSC and placed them on deemed deputation with BSNL without any forewarning that there is a likelihood of their being declared surplus in the event of non-exercising option for absorption. As such, the

Government is estopped from changing their status of civil servant to their detriment.

8. Learned Senior Counsel Mr. A.K. Panda appearing in O.A. No. 1252/2005 submitted as follows:

(1) Applicants had been selected through a combined competitive Engineering Services examination held by the Union Public Service Commission and had opted for P&T Building Works Services out of a total of nine Services that were available to Category-III Electrical Engineering Group 'A' Services. The learned Counsel submitted that in the event of declaration of these applicants as surplus Government should adjust them in one of the other Electrical Engineering Group 'A' Services, for which they had initially competed, allotting them bottom seniority vis-a-vis the candidates selected for the related Service in the year of applicants' selection. In this connection, he relied on Tribunal's orders dated 6.8.2002 whereby O.A. No. 298/2002 Umakanta Bhattacharjee v. Union of India and Ors. with connected matters was disposed of with certain directions. The Court had taken into account cognizance the requirement of clarity in respect of the pay scales, fitment formula and promotional avenues of the officers on absorption, in the absence of which, it was recognised that the concerned could not give an option for absorption.

(2) Referring to impugned Annexure A-1 dated 24.3.2005 vide which option for absorption of Group 'A' officers of P&T (Building Works) Group 'A' Service were called, the learned Senior Counsel stated that officers had been accorded four weeks' time to submit their options, however, now the concerned officers have not been afforded any time for submitting their options for absorption, and on the other hand, vide communication dated 18.10.2005 stand repatriated to their parent department.

(3) BSNL has not yet framed any detailed personnel policy covering matters relating to recruitment rules, norms/rules for creation of posts, cadre structure, promotion policy, cadre management, and eligibility criteria for various technical and management posts at various levels. As such, the concerned officers would not be in a position to make an informed choice for absorption particularly when their status from civil servants is going to be downgraded. He further submitted that a Government servant cannot be deprived of his status as a "civil servant" without his consent. The learned Counsel stated that by the impugned memoranda respondents are obtaining options of the concerned officers for absorption in the corporations and that their willingness for absorptions has not been solicited. As a matter of fact, respondents ought to have obtained willingness of these officers for absorption in these corporations and in the event they are unwilling for such absorption, they should be allowed to continue in Government service in DOT or in any other Ministry/Department. He further laid emphasis on the distinction between 'option' and 'willingness'. In this connection, he relied on 1994 Supp (3) SCC 204 State of Tamil Nadu and Ors. v. V.S. Balakrishnan and Ors. particularly paragraphs 10 and 11 of the judgment. He also drew support from 1998(2) SCC 563 Orissa State Electrical Engineers Association v. State of Orissa and Ors.

(4) Harsh measures like declaring Government officials who have put in long years in service surplus without exploring other alternative such as deputation in other Ministries/Departments of the Government, should not be adopted. The learned Senior Counsel stated that identical jobs and posts do exist in other departments of the Government of India for which recruitment through the same examination as taken by these applicants is still continuing.

(5) Lastly, relying on 1986(3)SCC 156 : 1986(2) SU 320 (SC) Central Inland Water Transport Corporation Ltd. and Anr. v. Brojo Nath Ganguli followed in AIR 1991 SC 101 : 1991(1) SLJ 56 (SC) Delhi Transport Corporation v. DTC Mazdoor Congress and Ors., he maintained that applicants are forcibly being subjected to submit option for absorption in BSNL/MTNL while their bargaining power vis-a-vis respondents is unequal. He pointed out that in these judgments the test of reasonableness or fairness of a clause in a contract has been recognised where there was inequality of bargaining power. He submitted that applicants are facing a situation resulting in unfair and unreasonable bargains between the parties possessing wholly disproportionate and unequal bargaining powers.

9. Learned Counsel Mr. V.S.R. Krishna submitted as follows:

(1) In paragraph 18 of O.M. dated 4.10.2005 wherein the issue of payment of pension has been dealt with, it has been provided that pro rata pension of absorbed Group 'A' officers will be calculated on CDA scales as on 30.9.2000. He contended that reckoning pro rata pension from 30.9.2000 is contrary to the notification dated 14.10.2005 amending Rule 37A of the CCS (Pension) Rules, 1972, particularly Sub-rule (8) wherein after the words "as the case may be", following has been inserted, namely:

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.

The learned Counsel further pointed out that this notification has come into force on 14.10.2005, i.e., on the date of its publication. Our attention was also drawn to DOP&T O.M. dated 5.7.1989 on the subject of "Settlement of pensionary terms etc. in respect of Government employees transferred en masse to Central Public Sector Undertakings/Central Autonomous Bodies", which provides as follows:

(c) The permanent Government servants with less than 10 years' service, quasi-permanent employees and temporary employees who opt for the rules of the PSU/autonomous Body shall be entitled to an amount equal to Provident Fund contribution for the period of their service under the Government upto the date of permanent absorption in the PSU/autonomous Body with simple interest at 6% per annum as opening balance in their CPF account with the Public Sector Undertaking/autonomous Body.

Thus the learned Counsel maintained that absorbing applicants retrospectively from 1.10.2000 would result in setting five years' pensionable service of applicants absolutely at naught which would otherwise be reckoned as qualifying service for pensionary purposes. Moreover, the O.M. dated 5.7.1989 has not been taken into consideration while amending Rule 37A of the rules iibiV/either in the year 2000 or on 14.10.2005 when this rule was further amended, as stated above.

(2) The learned Counsel contended that though Government have clarified vide O.M. dated 4.10.2005 that wherever BSNL/MTNL do not have their own service conditions/rules, the existing rules of the Government shall apply mutatis mutandis till such time BSNL/MTNL frame their own rules. He apprehended a situation where these bodies may formulate rules in relation to various benefits including housing, medical, LTC etc. which may be detrimental to these personnel being absorbed in BSNL/MTNL which may provide terms and conditions which may be inferior to the present terms and conditions under the Government rules. At present being Government servants these applicants have rules which cannot be modified to their disadvantage.

(3) With reference to paragraph 7 of O.M. dated 4.10.2005 the learned Counsel maintained that procedural fairness is neither visible nor incorporated for allocation/absorption of these officers in BSNL/MTNL. He apprehended arbitrariness and nepotism in exercise of executive power in allocation of officers to BSNL or MTNL.

10. Learned Counsel Mr. K.C. Mittal referring to the reliefs claimed in O.A. No. 1958/2005 pointed out that applicants have raised certain fundamental issues which have not been raised in the other O.As. inasmuch as they have sought striking down of the provisions of Clauses 1 to 7 of the amended Rule 37A of the CCS (Pension) Rules, 1972 and further seek continuance of these applicants in the DOT as Government employees. He further pointed out that applicants have also sought declaration of deemed deputation and transfer of posts of ITS to BSNL as illegal and violative of Articles 311, 14 and 16 of the Constitution. He further stated that applicants have also sought a direction to respondents not to convert DOT, which is a multi-disciplinary department into limited organisations, i.e., MTNL/BSNL for shaking the career interests of organized technical Group 'A' officers of the ITS. Alternatively, he stated that applicants herein have sought a direction to respondents to further clarify the general terms and conditions for absorption and to encadre posts in various Ministries/Departments/organisations in the Government. In support of the reliefs claimed by these

applicants, Mr. Mittal submitted as follows:

(1) The orders dated 30.9.2000 transferring the officials belonging to various organized services and cadres and posed in MTNL/BSNL along with their posts on existing terms and conditions on as-is-where-is basis on "deemed deputation" are illegal inasmuch as in the service jurisprudence there is no concept of "deemed deputation" at all. He specifically mentioned that fresh recruitment of such officials as applicants to man BSNL/MTNL has not ceased and is continuously being undertaken through the agency of UPSC.

(2) By addition of Rule 37A in the CCS (Pension) Rules, 1972, the learned Counsel pointed out that respondents have brought in objects alien to the subject of pension like option to revert to the Government or to seek permanent absorption in the PSU or autonomous body or abolition of post held in the Government upon absorption of Government servants in the PSUs, etc. He contended that such aspects of service could have been dealt with in the related recruitment rules of the Government servants. Thus, he expressed that insertion of Rule 37A is contrary to the recruitment rules and constitutes an 'excessive piece of legislation'. In this behalf the learned Counsel relied on 1980(3) SCC 418 : 1980 SLJ 623 (SC) Dr. J.P. Kulshrestha and Ors. v. Chancellor, Allahabad University and Ors.

(3) By setting up BSNL/MTNL and transferring the business and staff of the DOT vide O.M. dated 30.9.2000, Government has acted against the Allocation of Business Rules as well as the statutory rules governing the recruitment and other service matters of the organized services involved in the present matter. He further supplemented that while a new business not already being conducted by the Government can be entrusted with a corporation like MTNL/BSNL, however, the existing business of providing telecom services currently run and entrusted with the DOT cannot be parted and handed over to such bodies.

On a specific query from the Bench whether vires of O.M. dated 30.9.2000 on the subject of setting up of BSNL/MTNL has been challenged through the present O.A., the learned Counsel answered in the negative. He, however, maintained that although the vires of O.M. dated 30.9.2000 has not been challenged, yet applicants can raise objections about the deemed deputation of staff, terms and conditions of absorption etc.

(4) The learned Counsel mentioned that ITS (Group 'A') Recruitment Rules, 1992 were framed under Article 309 of the Constitution. Under these rules applicants had been recruited in service, however, through mere executive instructions, namely, O.M. dated 30.9.2000, respondents are negating the effect of the rules framed under the Constitution inasmuch as they are transferring the entire business of DOT including the posts held by applicants and thereby jeopardizing their entire service career.

(5) Government of India declared their new telecom policy in 1999. Vide O.M. dated 30.9.2000 respondents have stated that Government had decided to corporatise the service provision functions of DOT in pursuance of the aforesaid policy. The learned Counsel stated that there is no challenge to the said policy but its execution through the present petition. He maintained that respondents have grossly failed to evolve a comprehensive package for setting up BSNL. He further maintained that in the law laid down by the Hon'ble supreme Court in 2002(2) SCC 333 BALCO Employees' Union (Regd.) v. Union of India and Ors., judicial review is not completely ousted and reasonableness of the executive action can always be tested in the Courts of law.

(6) Citing AIR 1999 SC 840 Chairman, Public Service Commission, J&K v. Sudarshan Jamwal and Anr., the learned Counsel pleaded that Section 21 of the General Clauses Act, 1897 states, "where, by any Central Act or Regulation a power to issue notifications, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notification, orders, rules or bye-laws so issued." In this backdrop, he took exception to issuance of O.M. dated 30.9.2000 whereby respondents have resorted to restructuring DOT and parting with the civil posts created and governed under the ITS (Group 'A') Recruitment Rules, 1992. As such, respondents could not have transferred the civil posts held by applicants and they shall also not be able

abolish such posts by mere executive orders.

11. We have also heard learned Counsel Mr. D.S. Chaudhary, who had sought impleadment of MTNL Executives Welfare Association in O.A. No. 1963/2003.

12. Replying to the contentions made on behalf of applicants, Mr. P.P. Malhotra, learned Additional Solicitor General, at the outset, expressed his anguish about the manner in which the ITS association through itself or through its individual members have filed series of petitions on the same subject before various Benches of this Tribunal and different High Courts in the country. He stated that these applicants have filed nine cases before the High Courts and thirty-seven cases before various Benches of this Tribunal. Thus, the learned ASG maintained that applicants have abused the process of law and resorted to "Bench hunting" on the same issue. In this manner, the learned ASG, brought the alleged misdemeanour of applicants to the notice of the Bench and maintained that such a conduct of these applicants disentitles them to any relief claimed through these OAs

13. The learned ASG then proceeded to deal with the contentions made on behalf of applicants on merit.

14. As regards the contention of applicants regarding transfer/abolition of posts held by applicants as civil servants being contrary to Articles 19, 311 and 309 of the Constitution, the learned ASG, relying on 1973(2) SCC 650 M. Ramanatha Pillai v. State of Kerala and Anr. - a Constitutional Bench judgment-maintained that the aforesaid Articles of the Constitution are not applicable and the issue raised is not longerm integra. The Government have a clear power to create or abolish a post. In this regard, he specifically referred to the following paragraphs of the aforesaid judgment:

12. The contentions on behalf of the appellant Ramanatha Pillai were these. First, the order abolishing the post is vitiated by mala fide of respondent No. 2. Second, the abolition of the post does not terminate the agreement, dated December 20, 1968. Third, the abolition of the post has the effect of terminating the services of the appellant, and, therefore, it is invalid by reason of non-compliance with the provisions of Article 311 of the Constitution. Fourth, the order of the Government was made without giving an opportunity to the appellant and thereby violated the principles of natural justice. It was said that the order of Government entailing the civil consequences of loss of service could be made only after observing the principles of natural justice. Fifth, the principle of estoppel applies to the case that it was not lawful for the Government to terminate the services of the appellant.

13. On behalf of the other appellants the contentions are these. The right to permanent tenure is created by rules or Acts. The executive decision cannot put an end to these rights. Service Rules create statutory rights to receive salary and pension till the age of superannuation. These statutory rights constitute property within the meaning of Articles 19(1)(f); 31(1) and (2) of the Constitution. The abolition of a post is a mere executive decision and it cannot terminate the statutory tenure of service nor can it affect fundamental rights without the support of a valid law. The tenure cannot be taken away by rule or an Act which is inconsistent with Article 311(1) and (2) of the Constitution, both before and after the amendment of that Article. After amendment of Article 311(1) a permanent Government servant holds office during good behaviour and the doctrine of pleasure stands negatived except to the extent saved expressly by Article 310. A premature termination on abolition of post violates Articles 311(2), 19(1)(f) and 31(1) and also Articles 14 and 16. If termination of employment after notice is bad a termination without notice without a valid rule is worse.

14. The first question which falls for determination is whether the Government has a right to abolish a post in the service. The power to create or abolish a post is not related to the doctrine of pleasure. It is a matter of Governmental policy. Every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The creation, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public.

36. The abolition of post may have the consequence of termination of service of a Government servant. Such termination is not dismissal or removal within the meaning of Article 311 of the Constitution. The opportunity of showing cause against the proposed penalty of dismissal or removal does not therefore arise in the case of abolition of post. The abolition of post is not a personal penalty against the Government servant. The abolition of post is an executive policy decision. Whether after abolition of the post the Government servant who was holding the post would be offered an employment under the State would therefore be a matter of policy decision of the Government because the abolition of post does not confer on the person holding the abolished post any right to hold the post.

39. The right to hold a post comes to an end on the abolition of the post which a Government servant holds. Therefore, a Government servant cannot complain of a violation of Articles 19(1)(f) and Article 31 of the Constitution when the post is abolished.

41. The High Court was correct in all the three appeals in coming to a conclusion that the abolition of post does not attract Article

311.

15. The learned ASG then contended that questions relating to the constitution/creation/abolition of posts and other terms and conditions of service including promotional avenues are within the exclusive discretion and jurisdiction of the State. Thus, the statutory Tribunals cannot direct the Government on these matters. He drew support from 2003(2) SCC 632 : 2003(1) SLJ 238 (SC) P.U. Joshi and Ors. v. Accountant General, Ahmedabad and Ors., and referred particularly to paragraph 10 of the said judgment. It reads, thus:

10. We have carefully considered the submissions made on behalf of both parties. Questions relating to the constitution, pattern, nomenclature of posts, cadres, categories, their creation/abolition, prescription of qualifications and other conditions of service including avenues of promotions and criteria to be fulfilled for such promotions pertain to the field of policy is within the exclusive discretion and jurisdiction of the State, subject of course, to the limitations or restrictions envisaged in the Constitution of India and it is not for the statutory Tribunals, at any rate, to direct the Government to have a particular method of recruitment or eligibility criteria or avenues of promotion or impose itself by substituting its views for that of the State. Similarly, it is well open and within the competency of the State to change the rules relating to a service and alter or amend and vary by addition/subtraction the qualifications, eligibility criteria and other conditions of service including avenues of promotion, from time to time, as the administrative exigencies may need or necessitate. Likewise, the State by appropriate rules is entitled to amalgamate departments or bifurcate departments into more and constitute different categories of posts or cadres by undertaking further classification, bifurcation or amalgamation as well as reconstitute and restructure the pattern and cares/categories of service, as may be required from time to time by abolishing the existing cadres/posts and creating new cadres/posts. There is no right in any employee of the State to claim that rules governing conditions of his service should be forever the same as the one when he entered service for all purposes and except for ensuring or safeguarding rights or benefits already earned, acquired or accrued at a particular point of time, a Government servant has no right to challenge the authority of the State to amend, alter and bring into force new rules relating to even an existing service.

16. Reliance was also placed on 1980(3) SCC29 : 1980 SLJ 408 (SC) Dr. N.C. Singhal v. Union of India and Ors., particularly paragraph 18, to contend that Government is a better Judge to decide to create or abolish the posts depending upon the need of the organisation and the requirements of general public. The creation, continuation and abolition of posts are all decided by the Government in the interest of administration and general public. The Courts would be the least competent in the face of scanty material to decide whether Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fides, legal or factual. The observations made therein read as follows:

18...Whether a particular post is necessary is a matter depending upon the exigencies of the situation and administrative necessity. The Government

is a better judge of the interests of the general public for whose service the hospitals are set up. And whether a hospital catering to the needs of general public providing medical relief in different specialities has need for a particular post in a particular specialty would be better judged by the Government running the hospital. If Government is a better judge it must have the power to create or abolish the posts depending upon the needs of the hospital and the requirements of general public. Creation and abolition of posts is a matter of Government policy and every sovereign Government has this power in the interest and necessity of internal administration. The creation or abolition of post is dictated by policy decision, exigencies of circumstances and administrative necessity. The decision, the continuance and the abolition of post are all decided by the Government in the interest of administration and general public (see *M. Ramanatha Pillai v. State of Kerala*). The Court would be the least competent in the face of scanty material to decide whether the Government acted honestly in creating a post or refusing to create a post or its decision suffers from mala fide, legal or factual. In this backdrop it is difficult to entertain the contention of the appellant that posts were created to accommodate some specific individuals ignoring the requirements of the hospital or the interest of the general public at large.

17. With reference to 2003(5) SCC 134 J.P. Bansal v. State of Rajasthan and Anr., it was maintained that the power to abolish a civil post is inherent in a right to create it. The Government has power subject of course to the constitutional provisions to reorganize a department to provide efficiency and to bring about economy. It can abolish an office in good faith. Further that the decision-maker's freedom to change the policy in public interest cannot be fettered by the application of the principle of substantive legitimate expectation. To the same effect the following observations made by Lord Diplock in *Hughes v. Deptt. of Health and Social Security* 1985 AC 776, have been relied upon:

Administrative policies may change with changing circumstances, including changes in the political complexion of Governments. The liberty to make such changes is something that is inherent in our constitutional form of Government.

18. Strong reliance was also placed on 1999 SCC (L&S) 627 *Allem Longkumer v. Medokerhe Terhuja and Ors.*, to suggest that since the Government has taken a specific decision looking to the special circumstances in a given case, to absorb the appellant therein w.e.f. 1.11.1978, which decision was backed by appropriate recommendation from the department concerned setting out all circumstances in which the proposal is made, the decision cannot be called arbitrary or unreasonable. It was pointed out that the aforementioned judgment was also a case where a retrospective absorption of deputationist from the date he was taken on deputation was in question.

19. With reference to the observations made by the Hon'ble Supreme Court in 1999(1) SCC 368 Dharam Pal and Ors. v. Food Corporation of India and Ors., it was contended that applicable cannot challenge the qualification fixed by respondents for absorption or subsequent recruitment in the cadre concerned and no challenge can be made if the Government decides to form a separate cadre considering the administrative necessity in its working and filling up the posts in such cadre.

20. Out attention was also drawn to the Division Bench judgment of the Hon'ble Delhi High Court dated 22.3.2002 in CWP No. 7544/2001 *Indian Telecom Service Association v. Union of India and Ors.*, wherein a challenge was made by the aforesaid association to the order dated 8.5.2000 seeking option from the members of the petitioner-association for permanent absorption in MTNL and which challenge was rejected by this Tribunal vide order dated 12.10.2001 in O.A. No. 1252/2000. Various contentions, as raised in the batch of present applications, were indeed raised, contended the learned ASG, and were repelled by the Hon'ble High Court. Strong reliance was placed on the following observations from the said judgment:

The touch-stone of legal requirement for exercising of an informed option, is that the individual officers concerned should know about the package of terms and conditions, including any uncertainties or vagaries or delays which are likely to arise in the transferee organisation (MTNL). There is no obligation cast on the Government to re-assure them and satisfy them in all respects before calling upon them to exercise the option.

In the impugned order we find the Tribunal has duly addressed itself to the above-said consideration viz. of the members of the petitioners' association and other concerned employees of Group A and B, being duly enabled in the matter of making an informed choice in relation to the option called from them by the impugned letter/order dated 8.5.2000. The Tribunal has rightly noted that there is no compulsion upon anyone to opt in favour of being absorbed in the MTNL. There is also no right available in law to the petitioner association, or for that matter upon anyone else, to insist upon being consulted before the issuance of the order/letter dated 8.5.2000. Equally, the Tribunal has correctly held that the aspect of pensionary benefits to be received after absorption in MTNL, (and thereafter upon superannuation), has been appropriately clarified by the official respondents taking the stand that all the individuals will have the choice of either retaining the pensionary benefits as are available to them under Government Rules, or to be governed by the Pension Rules of MTNL..

It was pointed out that the three directions issued by this Tribunal in the aforesaid O.A. were maintained by the Hon'ble High Court observing, "Tribunal has taken a legal, practical and holistic view of the matter and therefore there is no ground to interfere with its said decision by us in exercise of our jurisdiction under Article 226 of the Constitution of India". The three directions issued by the Tribunal were in the following nature:

- (i) Consider issuing appropriate clarification/instructions on the issue raised in paras 20, 21 and 22 above with the utmost expedition.
- (ii) Consider suitably extending the date for submissions of options in terms of letter dated 8.5.2000 and subsequent letters, till the aforementioned clarifications/instructions are issued.
- (iii) Meanwhile consider initiating appropriate preparatory action in respect of those who have already submitted their options for permanent absorption in MTNL.

21. On the conduct of the applicant-association, the learned ASG maintained that since applicants have not approached this Tribunal with clean hands and have also suppressed material facts from this Tribunal with a view to gain advantage which amounts to overreaching the Court, the present applications are liable to be dismissed. Reliance was placed on - 80 (1999) Delhi Law Times 207 Holy Health and Educational Society (Regd.) v. Delhi Development Authority; and 2000 (56) DRJ (Suppl) 90 (DB) Kanchan Kapoor v. DBA.

22. The learned ASG further maintained that on a Miscellaneous Application filed by the Union of India certain petitions which were pending before other Benches of this Tribunal, were transferred to this Bench in terms of order dated 12.8.2005. Thereafter also, a series of petitions have been preferred by the ITS Association as well as its members before various Benches of this Tribunal, on the same subject matter and, therefore, multiple proceedings have been resorted to. A list of 17 such proceedings was pointed out with reference to the number of cases before different Benches of this Tribunal apart from Writ Petitions preferred before different High Courts. In the above backdrop, it was maintained that this Tribunal should give liberty to applicant-association/its members to withdraw those proceedings pending before other Benches. In the alternative, this Tribunal should observe that the proceedings pending before other Benches are deemed to have been withdrawn or we should comment upon the conduct of applicants.

23. As to the contention raised by applicants regarding respondents' having resorted to retrospective absorption being untenable and unjustified, the learned ASG maintained that other officers belonging to Group B, C and D were given option for absorption w.e.f. 1.10.2000 and in order to maintain uniformity, the

Government has decided that the Group A officers may also be absorbed in MTNL/BSNL w.e.f. 1.10.2000. The department has taken this step in the interest of all employees. Certain clarifications were issued to dispel certain doubts created/expressed by the Association as well as individual officers. Though there is no compulsion for absorption either in MTNL or BSNL, maintained the learned ASG, the Government has corporatised the department as a policy decision and given fair chance to officers to exercise their option. In case they do not exercise the option, they would be regulated by the surplus cell as per the rules and instructions on the said subject. The posts as of date have not been abolished, though the Government has right to do so. Reliance was placed on JT1998(3)SC9 :

1998(3)SLJ155(SC),/Cy4/?v.5a//iA'M/Harcfe/IHr., to contend that by amending the provisions of law, retrospective operation could be given to the rules. However, retrospective operation of service rules could not be given by mere executive instructions. When a decision was taken on the basis of the reports of various Committees and in consultation with the Ministry of Finance and UGC, and scales of pay were granted from a certain date, the challenge to such decision could not be entertain. Since all the scientists in the said case were granted the scale of pay from 1.1.1986 which was applied without discrimination and they were placed in a much better position, it was held that the respondents' action was not unreasonable, arbitrary, irrational or violative of Articles 14 and 16 of the Constitution. It was maintained by the learned ASG that in the same service different dates cannot be provided, otherwise respondents' action would be arbitrary and illegal.

24. As regards the scales of pay, it was pointed out that the IDA scales are higher than those applicable in the Central Government and such scales would be applicable to applicants in case they choose to opt for absorption in BSNL/MTNL w.e.f. 1.10.2000. As far as the apprehension of applicants about recovery is concerned, it was pointed out that the decision taken by BSNL for payment of ad hoc amount of Rs. 2750 per month to Group A officers working in BSNL pending absorption vide communication dated 21.5.2004 was subject to certain terms and conditions, namely:

(i) The ad hoc amount will be paid to all Group 'A' officers presently working in BSNL who are regular group 'A' officers as on 1.10.2000 and have not been given offer for absorption in BSNL along with Group 'B' officers.

(ii) Date of payment of ad hoc amount of Rs. 2750 p.m. will be w.e.f. 1.10.2000 or actual date of joining in BSNL which ever is later.

(iii) The ad hoc payment so paid will be adjusted from the arrears which will be paid to such officers on account of implementation of ID A pay scales as and when decided and paid.

(iv) The said ad hoc amount so paid shall be recovered from the officer, who does not opt for absorption in BSNL.

Vide communication dated 17.6.2004 paragraph 1(i) and 1(iv) of the aforesaid communication dated 21.5.2004 was modified which reads as:

(i). The ad hoc amount will be paid to all Group 'A' officers who have not been given offer for absorption in BSNL along with Group 'B' officers for the period for which they worked in BSNL after 1.10.2000, irrespective of their absorption or otherwise as and when option for absorption in BSNL are called for from Group 'A' officers.

(ii). The said ad hoc amount so paid to the officers who opt for Government service or do not exercise any option shall be restricted upto the last date for submission of option form for absorption in BSNL as and when called for from Group 'A' officers.

It was pointed out that the latter communication dated 17.6.2004 had been issued because of various references from the concerned officers and the terms and conditions were beneficial to those officers who either opted for Government service or do not exercise such option. Further the said amount has been paid to all Group A officers who have not been given offer for absorption irrespective of their absorption or otherwise. In the above backdrop, it was contended that paragraph 11.9 of the O.M. dated 4.10.2005 cannot be said to be either prejudicial or illegal. The learned ASG further stated that the department would consider the issue of recovery in individual cases sympathetically and will take an objective and considered view.

25. As respects the grievance regarding incumbency factor being given a go by implying leverage to DOT to act arbitrarily denying rational consideration for allocation to MTNL/BSNL, the learned ASG assured that respondents would not act arbitrarily and would certainly give weightage to incumbency factor as far as possible.

26. As regards the contention raised on behalf of applicants regarding absorption in MTNL/BSNL w.e.f. 1.10.2000, our attention has been drawn to Clause (8) of Rule 37A (notification dated 30.9.2000), which provides, '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.

27. As to the objection to the provisions of Clauses (1) to (7) of Rule 37A *ibid*, the learned ASG stated that Clauses (1), (4) and (8) of the aforesaid rule notified vide Annexure P-5 dated 30.9.2000 have to be read harmoniously and not in isolation. He stated that it is immaterial that this amendment has been issued under the CCS (Pension) Rules, 1972. He further stated that it is also not significant that it has been issued by the Department of Pension and Pensioners' Welfare and not by the Ministry of Personnel, Public Grievances and Pension. As a matter of fact the Department of Pension and Pensioners' Welfare is a part of the Ministry of Personnel, Public Grievances and Pension. He further supplemented that heading of a rule or a statute is not important; what is important are the provisions of the rules. In this regard, he relied on the book titled--Principles of Statutory Interpretation (9th Edition 2004) by G.P. Singh. He quoted, "resort to the heading can only be taken when the enacting words are ambiguous. It implies that if the provision is clear enough it would not at all be necessary to refer to the heading". Thus, the learned ASG stated that if Rule 37A *ibid* is read as a whole, there is no scope to contend that the Clauses (1) to (7) thereof are the instance of excessive legislation, as contended by applicants.

28. In response to the contentions made on behalf of respondents, the learned Senior Counsel Mr. A.K. Panda stated that the objection raised in respect of the conduct of applicant-association in various O. As. under consideration is not applicable to the applicants in O.A. 1252/2005. He maintained that applicants in this O.A. are individual officers working on deputation with BSNL/MTNL and are not members of the ITS Association, which is one of the applicants in most of the O.As. under consideration herein. Placing reliance on 2003(2) SCC 721 : 2003(1) SLJ 253 (SC) Bank of India and Ors. v. O.P. Swamakar and Ors. with other connected matters, the learned Counsel stated that a common question whether an employee opting for voluntary retirement under a scheme offered by the nationalized banks and the State Bank of India was precluded from withdrawing the said offer, was involved in that batch of cases. It was held therein that although unlike Government employees, the employees of nationalized Banks/State Bank of India do not enjoy a status, they do enjoy security of employment being governed by terms and conditions under statutory rules, therefore, services of such employees could not be terminated by resorting to a policy of hire-and-fire. The employer has to act fairly and strictly in terms of norms and satisfy the test of Articles 14 and 21 of the Constitution. The learned Senior Counsel maintained that these requirements are applicable to the present case all the more as applicants are Government employees being compelled to opt for BSNL/MTNL failing which being declared surplus.

29. The learned Senior Counsel then drew support from Brojo Nath Ganguly (*supra*), stating that in case applicants do not opt for absorption in BSNL/MTNL, their services may be terminated in case they are not

deployed properly under the scheme for surplus employees. Such action of respondents is unconscionable, arbitrary and opposed to public policy.

30. Learned Counsel Mr. K.C. Mittal, responding to the contentions made on behalf of respondents, stated that while respondents' right to frame a policy such as corporatization cannot be disputed, what can be disputed is the implementation of the policy of the Government, which does not satisfy the test of reasonableness and fairness within the four corners of the Constitution and the relevant rules and law laid down in this behalf. Referring to the case of P.U. Joshi (supra), he contended that BSNL is a Company under the Companies Act and as such is not the State. While he stated the State by appropriate rules is entitled to amalgamate departments or bifurcate departments and constitute different categories of posts or cadres by further classification, bifurcation or amalgamation as well as reconstitute and restructure the patterns and the cadres/categories of services as per its requirements by abolishing the existing cadres/posts and creating new cadres/posts, but Government do not have powers to restructure BSNL or to transfer a Government department to a corporate body. He pointed out that vide Section 4 of the Indian Telegraph Act, 1885 it is the exclusive privilege of the Central Government to establish, maintain and work telegraphs but it has no power under the provisions of this Act to transfer such functions to a non-Government organisation. It would be possible only on appropriate amendment to the aforesaid provisions of the Act. He also made a reference to AIR 1970 SC 1150 Dr. S.C. Aggarwal v. Hindustan Steel Limited to contend that Hindustan Steel Limited has an independent existence and is not a department of the Government nor are its servants holder of civil posts under the State. With the impending absorption of applicants holding civil posts in BSNL/MTNL, they will lose their status of civil servants holding civil posts.

31. Contradicting the contention of the learned ASG that the Government have absorbed Group B, C and D employees in BSNL w.e.f. 1.10.2000 and, therefore, it would be illegal if uniformity is not maintained for absorption of Group A officers with effect from the same date, Mr. G.D. Gupta pointed out that Group C and D officials of DOT were absorbed in MTNL w.e.f. 1.11.1998 and, therefore, no illegality would be committed if prospective date for absorption is prescribed for Group A officers who are small in number in BSNL, particularly because they have yet not exercised their option for absorption. On the point of the impending loss to these applicants in the even of absorption from a retrospective date, he apprehended that they would suffer greatly in terms of pro rata pension. He further supplemented that as pension is available on completion often years of service, a large number of officers would not be getting any pension if they are absorbed from 1.10.2000, as service from 1.10.2000 onwards would not be reckoned for purposes of determination of pension. In this behalf, he took exception to absorption from retrospective date by making a reference to Department of Pension and Pensioners' Welfare O.M. dated 5.7.1989, particularly paragraph 3 thereof, which reads as follows:

3. As soon as Central Government Department, Office or segment or a Government Department is converted into a PSU/Autonomous body, the concerned Government servants will be transferred to such new organisation on foreign service terms in the initial period. The Government servants will be permanently absorbed in the PSU/autonomous Body with effect from a prospective date to be fixed by the concerned administrative Ministry/Department and from that date they will cease to be Government servants. Such of the Government servants who are not willing to be absorbed will have an option to revert back to Government service. In that event, if no suitable vacancies are available in the Office/Department/Ministry for such employees, their names will be transferred to Surplus Staff Cell.

32. We have bestowed our careful consideration to all aspects of the matter, perused the pleadings on record and judgment cited carefully.

33. Before proceeding further, we may note that Rule 10 of the Central Administrative Tribunal (Procedure) Rules, 1987 permits an application to be filed based upon a single cause of action and one or more reliefs which are consequential to one another. As far as O.A. No. 1958/2005 is concerned, we find that the applicants therein have sought a number of different and distinct reliefs which are not at all consequential to

one another. Basically, this O.A. could have been dismissed being not maintainable in view of the aforesaid provision of rules. However, taking a pragmatic view, we are considering this O.A. as well for relief seeking quashment of O.M. dated 24.3.2005 and for direction to respondents for formulating a comprehensive policy for absorption of applicants in BSNL/MTNL.

34. Basically, in these applications under consideration applicants have pointed out that applicants have not yet been offered comprehensive terms and conditions for absorption in BSNL/MTNL, still they are being compelled to opt for absorption in BSNL/MTNL. It has been contended on behalf of applicants that as the terms and conditions of absorption stated so far still lack complete information on various aspects of absorption like promotional avenues, pension etc., applicants do not have a reasonable opportunity to exercise an "informed option". In this behalf, it is noticed that in the case of ITS Association (C.W. No. 7544/2001)(supra), the Hon'ble High Court of Delhi on an identical issue relating to absorption in MTNL observed, as stated above, that the touch-stone of legal requirement for exercising an 'informed option' is that the concerned must know about the package of terms and conditions including uncertainties or vagaries etc. However, it has also been observed that there is no obligation cast on to Government to satisfy each and every individual in all respects before calling upon them to exercise the option. The aforesaid judgment is squarely applicable to the facts and circumstances of the present case and is also binding upon this Tribunal.

35. Applicants have taken strong exception to their alleged retrospective absorption w.e.f. 1.10.2000 contending that with this the affected employees would lose various benefits which had already accrued to them such as qualifying service from 1.10.2000 onwards for pensionary purposes. Having regard to the facts as noted hereinabove, particularly that for Groups B, C and D officials absorbed in BSNL, which constitute the bulk of workforce, respondents have maintained a uniform date, i.e., 1.10.2000. As per Rule 37A ibid the benefit of pension on absorption shall accrue with effect from such date "as may be notified by the Government". It is not in dispute that the date notified by the Central Government is 1.10.2000. The aforesaid rule has to be read in its entirety and not in isolation, i.e., based on clauses. We find force in the contention raised by respondents that harmonious construction has to be given to the aforesaid rule. As already noticed, out of about four lakh employees working under the BSNL as on date, about 3.97 lakh belong to the said groups/cadres. There is justification in respondents' contention that if a small segment of officers belong belonging to Group A is allowed prospective date of absorption which is different from 1.10.2000, it will be patently and perse illegal and arbitrary. This will not satisfy the test on reasonableness and the law on the said subject laid down by the Hon'ble Supreme Court. Moreover, if Group A officers are absorbed from the similar data, i.e., 1.10.2000, neither they lose their seniority nor will their promotional avenues be adversely affected. As noticed hereinabove, Sub-rule (8) of Rule 37A ibid, as inserted vide notification dated 30.9.2000, makes a permanent Government employee 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". The words "combined service" have got special significance in the given context. Therefore, merely because a person is sought to be absorbed from 1.10.2000, he will, under no circumstances, be prejudiced as regards quantum of pension. The further contention raised by applicants that those who were recruited by the UPSC from the year 2000 onwards and deputed to BSNL on deemed deputation basis would also suffer, in our view they would not suffer in any manner as they have no right to contend that their status as civil servants, for all times to come, must be protected. Similar situation existed in relation to Groups B, C and D employees who were recruited, say, in 1996 onwards but had not completed ten years' service on the date of absorption, i.e., 1.10.2000 for determining pro rata pension, as contended by these applicants. The present Group A officers cannot be treated any differently than those employees. As we have already noticed, the Constitutional Bench of the Hon'ble Supreme Court in M. Ramamatha Pillai (supra) has laid down a law that the creation or abolition of posts is dictated by policy decision, exigency of circumstances and administrative necessity. We may also note the fact that in an era of global competition, we have to be alive, adapt and conform to the prevalent conditions, developments, economic changes and related working environment. It is no doubt true that with the creation of an autonomous body/PSU, there would be certain persons or officers whose status as civil servant is bound to change but this cannot be termed as termination/dismissal/removal under Article 311(2) of the Constitution, as observed in the aforesaid case. We cannot ignore the fact that on creation of such bodies

like MTNL, BSNL or other Government companies, in fact the employees stand to gain financially. We may also note the fact that giving a similar and uniform treatment to all employees irrespective of their grade or status whether they belong to Group A or Group D, all will stand absorbed from a uniform date without there being any discrimination or creation of a class or sub-group within the organisation. This will also, in our view, meet the test of Article 14 of the Constitution, which deals with the equality to all citizens.

36. It is appropriate here to refer to 1986 (Supp) SCC 143 Reserve Bank of India and Ors. v. C.N. Sahasranaman and Ors., wherein it has been observed as follows:

61 ...In matters of service conditions, it is difficult to evolve an ideal set of norms governing various conditions of services and in gray area where service rules operated, if more than one view is possible without sacrificing either reason or common sense, the ultimate choice has necessarily to be conditioned by several considerations ensuring justice to as many as possible and injustice to as few. See in this connection the observations in *K.K. Dutta v. Union of India* at page 841 (SCC p.53). These principles, however, significant, do not authorize the majority of the employees to trample upon the constitutional guarantees or rights of the individual or minority employees. Majority cannot thwart or barter away the constitutional rights of the minorities. The constitutional guarantees are to protect this very danger. But in judging the content of the constitutional rights, the entire perspective of the equality of opportunity here and denial of equal rights in public employment have to be viewed in a fair, reasonable and just perspective. Viewed in that light, it is true, there may be individual instances exemplifying injustice by postponing or delaying the chances of promotions of the contesting respondents yet that does not deny them their constitutional right in its proper measure, and the considerations that have weighed with the making of the modified scheme and in the light of the other considerations mentioned hereinbefore, we must observe that with whatever care and objectivity or foresight any rule is framed, some hardship, inconvenience or injustice might result but the paramount consideration is the reconciliation of the conflicting claims of two important constituents of service--one which brings fresh clerical employees and the other mature experience. There has been happy merger of these two considerations in the scheme proposed and in that merger, no violation of the guaranteed rights of the opposing respondents have occurred.

Aforesaid observations were made in relation to service matters and related rules of the employees of Reserve Bank of India. We find that these observations are aptly applicable to the facts of the present cases as well. Consolidated terms and conditions in O.M. dated 4.10.2005 viewed in the light of above considerations, in our considered view, indicate that they are comprehensive enough as they deal with a large number of important aspects of the matter. Minor aberrations may have lurked in, which can certainly be looked into by the Government and need not necessarily be commented upon. In any case, the learned ASG has assured on behalf of the Government that the Government would certainly redress the complaint in regard to certain important aspects. He particularly assured that among other factors, namely, option, working strength as on the date of allocation, seniority etc., the Government would certainly take into consideration the incumbency factor by giving due weightage to it for allocation of applicants to BSNL/MTNL. With this forthcoming assurance, we have no reason to doubt that the Government's action in this regard would be fair and reasonable.

37. As regards the grievance regarding recovery of ad hoc amount of Rs. 2750 per month paid to Group A officers w.e.f. 1.10.2000 or from actual dates of joining in BSNL, whichever is later, the learned ASG assured that in fact no such recovery would basically become due as alleged by applicants. However, as the corresponding IDA pay scales available on absorption would be higher than the existing CDA pay scales, the ad hoc amounts paid to applicants shall be adjusted and not recovered as already clarified vide communication dated 21.5.2004, contents whereof have already been noticed hereinabove.

38. With regard to the alleged disparity of pay scales between BSNL and MTNL, it is noticed that taking into consideration the respective size, operational territories, volume of traffic and various factors, it would be unreasonable to expect absolute parity of pay scales in the two organisations. It will not be out of context to

notice that while the activities of BSNL are spread far and wide in the country, those of MTNL are concentrated in major metropolitan cities, which have their distinctive differentials. As such the contention raised for parity of pay scales is untenable.

39. Having regard to the facts and circumstances of the case as also observations made above our conclusions on various contentions made by the parties are as follows:

(1) Terms and conditions for absorption in BSNL/MTNL for Group A officers contained in O.M. 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 of 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 37A 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.

(5) In majority of O.As. under consideration here the ITS Association or its members have filed series of

petitions/applications before various High Courts and different Benches of this Tribunal on the same cause of action. This indeed is a flagrant abuse of the process of law and casts a serious doubt on intellectual integrity of the concerned Association or its members. We cannot approve such a tendency on their part. Basically, following the settled law on this aspect, their O.As. could have been dismissed outrightly. However, instead of taking a technical view of the matter, we have considered them on merits.

40. Although we have concluded above that the general terms and conditions of absorption in BSNL/MTNL were comprehensive and deserve no interference, it has been pointed out above that certain important aspects of the matter required clarifications and indeed the Government came up with O.M. dated 4.10.2005 during the pendency of these O.As. and have been extending the date of submission of options from time to time, the last being 15.10.2005. As a matter of fact, certain assurances have been provided even during the course of hearing. It is also observed that a bulk segment of Group A officers have yet not exercised their option for absorption in BSNL/MTNL for various reasons. It would be reasonable and in the interest of justice that all Group A officers in DOT including those who are on deemed deputation with BSNL/MTNL get a further opportunity of exercising their option on the basis of O.M. dated 4.10.2005 combined with assurances given on behalf of respondents as incorporated above. In our view, these officials should be able to submit their options within a period of one month with no further extension.

41. In result, these O.As. are disposed of directing respondent No. 1, i.e., Secretary, Department of Telecommunication, New Delhi, to extend the date of submission of options in terms of the above observations up to November 30, 2005, where after respondents would be at liberty to take appropriate decision on such options within a reasonable period, say, three months. No costs.