



Sambhar

Government of India  
National Commission for Scheduled Tribes  
6<sup>th</sup> floor, 'B' Wing, Loknayak Bhawan  
Khan market, New Delhi-110 003.

Dated: 23.04.2012

No.HKG/11/2011/MFIN9/SEHRMT/RU-IV

ru

To

The Secretary  
Ministry of Communication & IT  
Deptt of Telecommunication  
Sanchar Bhawan, 20, Ashoka Road,  
New Delhi- 110001


Sub: Representation received from Shri H. K. Gaikwad, Secretary General, All India VSNL SC/ST & OBC Emp. Federation, Pune and Shri Ujjwal S. Tiga, Assistant Manger, VSNL regarding harassment of ST employees in the TCL when their service transferred from OCS to VSNL and vise- versa.

Sir,

I am directed to refer to this Commission's letter of even number dated 03.11.2011 on the above subject and to forward herewith a copy of the proceedings of the Sitting held in this Commission on 11.11.2011 for necessary action.

It is requested that compliance report with reference to the above proceedings may please be sent to this Commission at an early date.

Yours faithfully,

  
(K.D. Bhansor)Mrs.  
Deputy Director

1666-69  
24/4/12  
गारा विभाग  
ISSUED

Copy for information and necessary action to:-

The Managing Director and CEO  
VSNL (Tata Communication Ltd.)  
Videsh Sanchar Bhawan,  
Mahatma Gandhi Road, Fort,  
Mumbai-400001

o/c

Copy for information to:-

1. Shri HK Gaikwad  
Secretary General,  
All India VSNL SC/ST & OBC  
Employees Federation VSNL,  
TCL Dighi, Alandi Road  
Pune-15, Maharashtra
2. Shri Ujjwal S. Tiga  
Assistant Manager  
VSNL (TCL), Videsh Sanchar Bhawan,  
Bangla Sahib Road,  
New Delhi-110001

**(K.D. Bhansor)Mrs.  
Deputy Director**

Copy to: -

✓ T-SSA (NIC)

**HKG/11/2011/MFIN9/SEHRMT/RU-IV**

**Proceedings of the Sitting held in the NCST on 11.11.2011 at 1530 Hrs to discuss the case of Shri H.K. Gaikwad, Secretary General, All India VSNL SC/ST & OBC Emp. Federation, Pune and Shri Ujjwal S. Tiga, Assistant Manager, VSNL regarding harassment of ST employees.**

The following were present:

**NCST**

1. Dr. Rameshwar Oraon, Hon'ble Chairperson
2. Shri Aditya Mishra, Joint Secretary
3. Smt. K.D. Bhansor, Deputy Director
4. Shri N. Balasubramanian, Research Officer

**Ministry of Communications and IT (Deptt.of Telecommunications)**

1. Shri Satya Pal, Advisor (O)
2. Shri N.K. Joshi, DDG(SU)
3. Dr. Vincent Barla, Director (SR)

**Tata Communications Ltd.(TCL)**

1. Shri R. Nanda, Sr. VP (HR)
2. Shri Natarajan, Sr. GM (HR)

**Petitioners**

1. Shri H.K. Gaikwad, General. Secretary
2. Shri U.S. Tiga, All India VSNL SC/ST & OBC Employees, Federation, Pune

डा० रामेश्वर उरांव / Dr. RAMESHWAR ORAON  
अध्यक्ष / Chairman  
राष्ट्रीय अनुसूचित जनजाति आयोग  
National Commission for Scheduled Tribes  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi

## Office bearers of the Association.

1. Shri Pooran Chand
2. Shri Deena Nath
3. Shri Dharampal.

**Issue: Representation of Shri H.K. Gaikwad, Secretary General, All India VSNL SC/ST & OBC Emp. Federation, Pune and Shri Ujjwal S. Tiga, Assistant Manager, VSNL regarding harassment of ST employees.**

A representation dated 27.07.2011 was received from Shri H.K. Gaikwad, Secretary General, All India VSNL SC/ST & OBC Emp. Federation, Pune regarding injustice to ST employees in VSNL, presently called Tata Communications Ltd. (TCL), in the matter of transfer, promotion and also harassment and discrimination to them. Subsequently, another representation dated 23.07.2011 was also received from Shri Ujjwal S. Tiga, Assistant Manager, VSNL reporting the Commission about harassment meted out to the ST employees in the TCL. The Hon'ble Chairperson fixed up a Sitting on 10.08.2011 in the matter with the MD and CEO (VSNL). Mumbai. The Tata Communication Ltd., Mumbai vide letter dated 04.08.2011 requested the Commission to re-schedule the meeting since CEO and MD was out of country

2. The TCL, Mumbai vide letter dated 23.08.2011 informed facts of the case as under:

- (a). TCL formely known as VSNL is now a part of the TATA Group-an equal opportunity employer, and does not discriminate in its dealings with the employees of any category on any ground whatsoever, including on the ground of caste, creed, race, religion, gender etc. TCL is committed to the principles of transparency and fair practices in its dealings with the employees. The Company is a global telecom player with its dealings with the employees.

- (b). Consequent to the Company ceasing to be a Public Sector Undertaking (PSU) with effect from 13.02.2002, TCL is no longer covered under the reservation policy applicable to the Government of India (GoI) or its Undertakings, and further the jurisdiction of the NCST is confined to ensuring the service safeguards of ST employees working in the Central and State Governments and the PSUs and does not therefore, extend to TCL, as TCL is no longer a PSU. A legal opinion given by the former Chief Justice of India in this regard was also enclosed along with letter dated 23.08.2011(Annexure-1, a copy of this which had also been forwarded to the Commission vide their letter dated 10.01.2008 in an earlier reference). In view of the aforesaid legal position, TCL had submitted that the present proceedings are outside the jurisdiction of the NCST.
- (c). The employees in the non-executive category are represented by the Federation of Tata Communications Employees Union which is recognized by TCL. The said Union takes up the grievances of all these employees (including SC/ST/OBC employees) and concerns affecting the employees are taken up for discussion and amicably resolved between the parities. The Company has maintained cordial and harmonious relationship with the Federation of Tata Communications Employees' Union and the employee community as a whole.
- (d). The said so-called all-India VSNL SC/ST&OBC Employees Federation (hereinafter referred to as "the Petitioner) is not a recognized Body.
- (e). The complaints of Mr. H.K. Gaikwad and Mr. Ujjwal S Tiga are baseless and do not give any material particulars necessary for the purpose of deciding the issue. Mr. H.K. Gaikwad does not belong to any Scheduled Tribes, and therefore, the complaint filed by him is misconceived and not maintainable. In any event, the letter dated 27<sup>th</sup> June 2011 by Mr. Gaikwad in his capacity as Secretary General is devoid of any



material particulars to substantiate the bald and baseless assertions and allegations made by him against the company. There is no material whatsoever to substantiate his allegation that the ST employees are being discriminated in the organization. The various issues raised by him in the letter with regard to OCS/VSNL employees or the disinvestment process completed as far back as in 2002 is a feeble attempt to distort facts with an oblique motive to discredit the company and are of no relevance or consequence before this Hon'ble Commission. Thus, in the absence of any particulars or instances of discrimination against employees of ST category, the complaint is liable to be dismissed.

- (f). There has been a general pattern of communication emanating from the Complainant for the last several years repeatedly on the same or similar issues resulting in an unending stream of correspondence both with the Company and Government authorities by misusing the medium and citing caste and gender as a weapon merely to gain sympathy from the various authorities. The Petitioner has been spewing venom and hatred through some of his communications although there has been congenial and harmonious working atmosphere in the Company. Just to cite an instance of the intimidatory tactics resorted to by the petitioner, a communication dated 02.10.2008 was issued by the complainant threatening to go on hunger strike and if their concerns were not addressed, they would resort to revolution (essentially giving threat to life of TCL company's officers) citing the instance of killing of an MD/CEO of another company by the workmen in Noida at that point of time. A copy of the said letter dated 02.10.2008 and TCL response there to was given to the DOT dated vide letter dated 21.01.2009. In another instance, the complainant misused the official medium and sent unsolicited mail dated 09.05.2007 to various senior officers and other employees located at different company locations expressing that some employees would commit suicide and the company's officers would be held responsible for the same. As the said acts on

the part of the complainant was without any rhyme or reason, the company had to seek the intervention of the police authorities against any such motivated action. Accordingly, a communication dated 18.05.2007 was issued by our Advocate to the concerned Police station advising them to take necessary corrective action. There is no substance in the various references and representations made by the petitioner whose modus operandi is to misguide and mislead the authorities citing caste or gender merely to gain undue sympathy from the authorities. TCL also mentioned that many of the issues had already been raised in the previous correspondence and the same had been dealt with and duly responded to by the company as per the details given below:-

Sl. No	Reference of the Association/NCST	Reference of the response of the TCL.
1.	Asso.55/Tele-02/06/ST/SSW dated 18.05.2006	TCL letter dated 14.06.2006
2.	Asso.55/Tele-02/06/ST/RU-IV dated 18.10.2006	TCL letter dated 26.10.2006
3.	Asso.55/Tele-02/06/ST/SSW dated 20.12.2006	TCL letter dated 04.01.2007
4.	RU-4/Service/Commu.(VSNL)-11/2006 dated 05.01.2007	TCL letter dated 29.01.2007
5.	RU-IV/Service/Commu.(VSNL)-11/2006 dated 13.08.2007	TCL letter dated 04.10.2007
6.	Asso-55/Tele-02/06/ST/SSW/RU-IV dated 16.08.2007	TCL letter dated 04.10.2007
7.	Asso-55/Tele-02/06/ST/SSW/RU-IV dated	TCL letter dated 04.10.2007

	07.09.2007			
8.	RU-IV/Service/Commu(VSNL)- 11/2006 dted 07.11.2007	TCL	letter	dated 10.01.2008
9.	SE/Service/VSNL/2008/145/RU- IV dated 21.04.2008	TCL	letter	dated 16.06.2008

3. With regard to the representation dated 23.07.2011 from Shri Ujjwal S. Tiga, TCL submitted that.

- (a). "After the privatization of TCL with effect from 13.02.2002, the company does not maintain data on reserved community employees as there is no such requirement-statutory or otherwise. Be that as it may, TCL, as part of the Tata Group, is an equal opportunity employer and does not discriminate in its dealings with the employees on any ground whatsoever including on the ground of caste, creed, race, religion, gender etc. Consequently, in matters of administrative nature like transfers etc., the company takes decision based on business needs and not based on any other consideration.
- (b). The events mentioned therein involving the employee relate to PSU era and the present management cannot comment on the same.
- (c). With reference to para 4 and 5, TCL denies the allegations. TCL further denied that Shri Tiga had been denied increments promotion or discriminated in any manner whatsoever, as alleged or otherwise. As a matter of fact, by his own admission, Shri Tiga has mentioned that he was rated "Good" in 2009-10 and "Vital Contributor" in 2010-11. He has also admitted that he was granted increments in 2009-10 and received pay revision letter for 2010-11. TCS, however, clarified that quantum of increments is based on various factors including ratings assigned to the employees through the PMS process. TCS



reiterated that the increments and promotions were not automatic and given to the employees solely on the basis of individual's performance and not based on any other consideration.

(d). With reference to paras 6 and 7, TCL stated that Shri Tiga had no right to raise issues concerning other employees belonging to other categories, as NCST may not have jurisdiction to deal with them, yet to keep the record straight, TCL submitted them perspective on the same. TCL emphasized that the services of Shri M.P. Singh were terminated in accordance with the terms and conditions of his appointment. TCL had paid him three months salary in lieu of notice, as required under the norms. As such, the said termination was NOT arising out of:

(i) any disciplinary action;

(ii) any misconduct by the concerned terminated employee

(e). here is no merit in the claim that Shri M.P. Singh was victimized on the basis of his caste category. The company follows a standard practice of assessment and these decisions have been uniformly applied. TCL would like to bring it to the notice of the Commission that there were employees in the general category too, whose services had been terminated on the same basis as that of Shri M.P. Singh. Informatively, Shri M.P. Singh had challenged the termination of his services before Bombay High Court which was dismissed in favour of the Company. Now, Shri. M.P. Singh has challenged the Bombay High Court order before Supreme Court (SLP No. 4619 of 2011) and the matter is subjudice. In any event, TCL believed the cases of other category of employees cannot be reflected to this Commission for want of jurisdiction and we see this as clearly an attempt on the part of Shri Tiga to mislead and confuse this Commission by such frivolous and baseless reference.

- (f). With reference to Paras 8 to 11. TCL denied that there was any conspiracy – criminal or otherwise to transfer Shri Tiga from New Delhi to Pune and thereafter terminate his service. As mentioned above, this transfer was not confined to Shri Tiga alone but about 75 others too had been transferred. The transfer was arising out of business needs. It was not only for his own career prospects but for also optimum utilization of available resources within the company. An individual employee cannot take shelter of the Commission in administrative matters such as transfer etc nor does the Commission have any right to invoke its jurisdiction on the Company in such matters. TCL vehemently denied that the same had been done on account of the fact that Shri Tiga belonged to a particular category as had been alleged.
- (g). With reference to para 12, TCL denied that the employees who are under transfer would be deprived certain benefits as mentioned therein. All such employees will not have a break in service and the prior period of service is reckoned for all service related matters.
- (h). With reference to allegations appearing in para 13 to 15, TCL mentioned that the grievance made with regard to previous OCS/VSNL employees was outside the scope and jurisdiction of the Hon'ble Commission.

4. The reply of the TCL was communicated to the Association and to petitioner vide NCST letter. dated 22.09.2011. The Association of VSNL and petitioner filed their rejoinders dated 05.10.2011 and 17.10.2011 refuting the facts.

5. The Commission noted VSNL ceased to be a Public Sector Undertaking (PSU) with effect from 13.02.2002 and TCL is no longer covered under the Reservation Policy applicable to the Government of India (GoI) or its Undertaking. The jurisdiction of the NCST is confined to ensuring the service safeguards of ST employees working in the Central and State Government and the PSUs, and does not, therefore, extend to TCL, which is

no longer a PSU owing to the observations of the TCL. The Commission, therefore decided to discuss the matter with the Secretary, Ministry of Communication and IT, Deptt. of Telecommunication and MD and CEO, TCL, Mumbai on 11.11.2011 at 1500 Hrs.

6. The Ministry of Communications & IT vide letter dated 09.11.11 informed that the Secretary, Deptt. of Telecommunication was pre-occupied on 11.11.2011 and therefore, would not be able to attend the meeting. Shri Satya Pal, Advisor (Operations), Telecom will represent the Secretary (T) and exemption of Secretary, Telecom was requested.

7. In view of the position brought out by the Ministry of Communications & IT vide letter dated 09.11.2011 the Commission allowed Shri Satya Pal, Advisor (Operations) to attend the meeting.

8. Shri Satyapal, Advisor (Operations), Telecom appeared on 11.11.2011 before the Commission and explained that Videsh Sanchar Nigam Limited (VSNL) was a Public Sector Undertaking under the administrative control of the Department of Telecommunications till 13.02.2002. In February, 2002, the Government of India, as per the Disinvestment Plan, released 25% of VSNL's equity to a Strategic Partner. Consequently, with effect from 13.02.2002, VSNL is not a Public Sector Undertaking under the control of the Government and is now under the administrative control of the TATA Group. The VSNL is now known as Tata Communications Limited (TCL). Therefore, as per the constitutional provisions, the orders of reservations for SC/ST/OBC are no longer applicable to the employees of TCL, being a non-governmental entity. From time to time, the SC/ST/OBC Association of VSNL have been submitting representations to NCSC, NCST and Parliamentary Committee on Welfare of SCs/STs concerning their various grievances. During the year 2007, NCST had held a meeting with the then Secretary (T) and the following two facts were conveyed to the Commission:

- (a) The employees were transferred to TCL, as per the Share Holding Agreement (SHA) and the Share Purchase Agreement (SPA). As per these



agreements, TCL had agreed to provide certain protection to the employees transferred to TCL for a period of 2 years w.e.f. from 13.02.2002.

- (b) TCL had obtained a legal advise from a retired Chief Justice of India on the applicability of reservation orders/jurisdiction of National Commission of SCs/STs.

9. Having heard the above, the Association Office bearers were also given opportunity to explain their grievances. The Association submitted representation dated 11.11.2011 in which they pointed out that "the Under Secretary (OC) to the Govt. of India vide his letter dated 30.04.2002 bearing letter No. 3-2/2002/SCT-OC issued Office Memorandum regarding constitutional safeguards to the SC/ST employees in the VSNL and informed to the Loksabha that **"Adequate provision has been made in the shareholders agreements whereby the strategic partner recognizes that, the Govt. in relations to its employment policies follows certain principles for the benefit of the members of the SCs/STs, physically handicapped persons and other socially disadvantaged categories of the society. The strategic partner shall use its best efforts to cause the company to continue to provide adequate job opportunities for such persons etc."** which has not kept in mind by the Govt. and the SC/ST Employees are being deprived of their service safeguards. Thereafter, in this connection, the Association requested consideration of the following:

- (a) Termination letters issued to 15 employees in June/July 2007 to be taken back and 15 employees to be given VRS by fixing their pay as per 5<sup>th</sup> Pay Commission.
- (b) OCS/VSNL Employee especially SC/ST&OBC employees should not be disturbed and transferred from one place to another till their superannuation.
- (c) Pay to be revised as per 6<sup>th</sup> Pay Commission (or) as per the bilateral agreement entered into



by the TCL Employees Federation and the TCL Management, in respect of S/Shri H.K. Gaikwad, Pooran Chand & Ramjeet Singh this process to be completed within 15 days time from 11.11.2011 or else, further action as per SC/ST Prevention of Atrocities Act 1989 may be initiated against Mr. V. Natarajan the Sr. GM of HR.

- (d) General category employees who are supporting the SC/ST Employees should not be harassed, humiliated and insulted by the TCL management, The management may be asked to furnish a undertaking to that effect.
- (e) TCL Management stopped to pay increment to the OCS/VSNL employees without any reason; that increment to be given to them.
- (f) The TCL management may be asked not to issue any letter to the OCs/VSNL Employees (whose services were transferred to TCL without making them aware of any terms and conditions, of transfer of their services to the TCTSL) to furnish the undertaking that, they will follow the rules and regulations to TATA or else their services will be terminated. Whereas TATA do not have any code of conduct or any rules, regulations in this regard.

### **Conclusion**

10. The Commission observed that ST employees are facing/feeling discrimination in promotion, release of increment appraisal system and transfer policy etc. The Commission further noted that these employees were employees of VSNL and at the time of Disinvestment Plan of VSNL, no option regarding their absorption in TCL or otherwise was taken before arriving at the agreement between TATA Communication Ltd. and VSNL. The Commission observed that STs enjoy certain constitutional safeguards which were not watched by the Govt. while

formulating Disinvestment Plan of VSNL and, in particular, in transfers of their employees to new entity viz TCL. It was an obvious lapse on the part of the Govt. at the time of transferring the staff of VSNL to a private agency and consequently, adequate steps were not taken to safeguard the interest of STs, which were available to them the erstwhile VSNL. Moreover as per the Article 338A (9), the Commission was not consulted on such a major policy affecting the STs. The Commission concluded that the Govt., while framing the Disinvestment Plan, did not exercise proper care towards the interest of STs. The Commission, therefore, decided to discuss the matter with the concerned Ministries/Depts, viz, DoPT, DPE, DoT, Department of Disinvestment. Simultaneously, TCL was advised to sympathetically look into the grievances of the STs, as per their grievance management system.

डा० रामेश्वर उराण / Dr. RAMESHWAR ORAON  
अध्यक्ष / Chairman  
राष्ट्रीय अनुसूचित जनजाति आयोग  
National Commission for Scheduled Tribes  
भारत सरकार / Govt. of India  
नई दिल्ली / New Delhi