

**Central Administrative Tribunal
Ernakulam Bench**

OA No./180/00343/2018

Thursday, this the 13th day of February, 2020

CORAM

Hon'ble Mr.Ashish Kalia, Judicial Member

Purushothaman Nair, aged 70 years,
S/o Sreedharan Nair,
(Retired Junior Telecom Officer, Telephone Exchange,
Malayinkil, Trivandrum),
Residing at : “Sree Sailam”,
Elankathu Nagar, Valiavila,
Thirumala P.O., Thiruvananthapuram-695 006.

Applicant

(Advocate: Mr.T.C.Govindaswamy)

Versus

1. Union of India, represented by its
Secretary to the Government of India,
Ministry of Communications & Information Technology,
Department of Telecommunications,
New Delhi-110 001.
2. The Controller of Communication Accounts,
Department of Telecommunications, Kerala Circle,
Thiruvananthapuram-695 001.
3. The Chief General Manager, Telecommunications,
Bharat Sanchar Nigam Ltd,
Thiruvananthapuram-695 001.
4. The Principal General Manager (Telecom),
Bharat Sanchar Nigam Ltd,
Thiruvananthapuram-695 001.
5. The Chief Accounts Officer (FC),
Office of the PMG (TD),
BSNLBhavan, Thiruvananthapuram-695 001.
6. The Additional Director,
Central Government Health Scheme (CGHS),
No.2/117, Mosque Lane, Kesavadasapuram,
Thiruvananthapuram-695 004.

Respondents

(Advocate: (Mr.K.C.Muraleedharan, ACGSC for R1,2 & 6)
(Mr.V.Santharam for R3 to 5)

The OA having been heard on 13th February, 2020, this Tribunal delivered the following order on the same day:

O R D E R (oral)

The applicant seeks the following reliefs:

- (i) *Declare that the non-feasance on the part of the respondents to grant and pay the applicant the leave encashment for the leave at the applicant's credit as on 31.01.2008 is arbitrary, discriminatory and unconstitutional and direct the respondent accordingly;*
- (ii) *Direct the respondents to release the applicant's leave encashment for the leave at the applicant's credit forthwith, with interest payable @ 9% per annum to be calculated w.e.f. 01.02.2008 and to be compounded annually, upto the date of full and final settlement of the same;*
- (iii) *Declare that the non-feasance on the part of the 6th respondent to issue the CGHS card for the applicant's treatment is arbitrary, discriminatory and unconstitutional;*
- (iv) *Direct the respondents to issue the CGHS card for the applicant's treatment forthwith.*

2. The basic contention raised in this OA by the applicant is that though he was subjected to some criminal case, his payment for leave salary has been withheld and CGHS card has not been issued to him. As regards the issuance of CGHS card, the Department has conceded that they are issuing the same subject to completion of certain formalities.

3. Sri T.C.Govindawamy, learned counsel for the applicant submits that the applicant is bed-ridden and cannot approach the respondents for completing the necessary formalities. Either the Department may send by post the requisite formats which he can fill up and send them back to the Department or by any other method they may communicate in this regard.

4. Learned counsel for the respondents submitted at the Bar that the Department is not averse to do that and the Department will do the needful. As regards the first contention in the OA whether the Department can withhold the

leave salary, learned counsel for the applicant has drawn my attention to Rule 39 (3) of Part III of FR & SR (Leave Rules) which reads as follows:

"3. The authority competent to grant leave may withhold whole or part of cash equivalent of earned leave in the case of a Government servant who retires from service on attaining the age of retirement while under suspension or while disciplinary or criminal proceedings are pending against him, if in the view of such authority there is a possibility of some money becoming recoverable from him or conclusion of the proceedings against him. On conclusion of the proceedings, he will become eligible to the amount so withheld after adjustment of Government dues, if any".

5. The learned counsel tried to impress this Tribunal in regard to the said Rule and submitted that there has to be a decision on file for withholding his leave encashment. He further submits that there is no charge sheet/departmental proceeding pending against him. The applicant is only a co-accused in the FIR. He further submits that unless or until a decision is taken by the competent authority for withholding of said amount due towards the leave encashment, it cannot be done because the respondents are also governed by the administrative rules and instructions.

6. On the contrary, learned counsel for the respondents has drawn my attention to Annexue A1 order in OA No.406/2015 whereby this Tribunal has directed as follows:

"5. Coming to the relief sought in this O.A, it appears to this Tribunal that as all the reliefs are relating to the disbursement of pension, commuted value of pension, DCRG, etc., as long as he is facing the criminal proceedings, the applicant cannot be considered for the whole of the retiral benefits as per the CCS (Pension) Rules. Nevertheless, the amounts due to the applicant on account of leave surrender can be considered by the respondent authorities for payment to him in according to the extant rules and instructions".

7. The Tribunal while disposing of the OA had directed the respondents that the amount of leave surrender can be considered by the respondent authorities for payment to him in accordance with extant rules and instructions, meaning thereby either Rule 39(3) or any other rule and instructions has to be followed and the

competent authority has to take a decision. In other words, projecting the grievance before this Tribunal through this application is barred by res-judicata since this Tribunal has already decided this issue. The applicant cannot re-approach this Tribunal for same grievance. Nevertheless, this Tribunal had already directed the respondents to consider the issue in accordance with law and instructions. Learned counsel fairly submitted at the Bar that there is no such decision. Thus this Tribunal, *prima facie*, feels that there ought to have been some decision on the file for withholding leave encashment.

8. In the interest of recovery of the public money, a sound reasoning should have been on the file. This Tribunal feels that ends of justice would be met if a direction is issued to the respondents to take an appropriate decision within thirty days from the date of receipt of this order. If it is affirmative, then there would not be any further litigation. If it is negative to the extent the applicant's involvement is not causing any loss to the public exchequer, then the payment has to be released in terms of the extant rules. This exercise shall be completed within the period as stated herein above. The decision should be communicated to the applicant in writing. The OA is disposed of.

**(Ashish Kalia)
Judicial Member**

aa.

Annexures filed by the applicant:

Annexure A1: Copy of the order dated 4.8.2016 in OA No.180/00406/2015 of this Tribunal.

Annexure A2: Copy of the representation dated nil submitted by the applicant to the Joint Controller of Communication Accounts.

Annexure A3: Copy of communication from the office of the 2nd respondent addressed to the Director in the office of the 6th respondent bearing No.CCA/KRL/60-146/2016/Admn dated 5.1.2017.

Annexure A4: Copy of the letter bearing No.E-60/2017/CGHS/TVM/922 dated 23.3.2017 issued by the 6th respondent.

Annexure A5: Copy of the reply dated 17.4.2017 issued by the applicant to the 6th respondent.

Annexure A6: Copy of the representation dated 26.8.2017 submitted by the applicant to be served upon the 4th respondent.

Annexure A7 series: Copies of some of the treatment certificates indicating the applicant's ailment and treatment, issued by the various medical authorities.

Annexures filed by the respondents:

Annexure R4(a): Copy of the communication No.OA/180/00406/2015 dated 20.9.2016 issued by the Assistant General Manager (Admn), BSNL, Trivandrum.

Annexure R4(b): Copy of the order dated 6.2.2018 in Crl.M.C.No.5705 of 2016 of the Hon'ble High Court of Kerala, Ernakulam.

Annexure R4(c): Copy of the letter No.GMT/TV/LC/OP(CAT)/293/2016/40 dated 30.10.2017.