

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 466 of 1998

Wednesday, this the 25th day of March, 1998

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. S.K. GHOSAL, ADMINISTRATIVE MEMBER

1. P.K. Sunil Kumar,
(Resigned Technician, Employee No.4725,
Office of the General Manager, Telecom,
Ernakulam)
Parepallathu House, Neericode PO,
Ernakulam District - 683 511 .. Applicant

By Advocate Mr. KP Kailasanatha Pillay

Versus

1. The Chief General Manager,
Telecommunication, Kerala Circle,
P M G Junction, Thiruvananthapuram.
2. General Manager, Telecom,
Department of Telecommunications,
Ernakulam District,
Kochi - 682 031
3. The Assistant General Manager (Admn),
Office of the General Manager,
Telecom, Ernakulam. .. Respondents

By Advocate Mr. Mathews J Nedumpara

The application having been heard on 25-3-1998, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

The applicant while working as Technician in the
Telecom Department was sent for training for a period of
one year on his executing a Bond that if he fails to serve
the Telecom Department for a period of five years after
successful completion of the training, the expenditure
incurred for his training would be refunded by him. The
applicant after completion of the training did not complete

contd..2.

the tenure of five years, but took up an assignment in the Kerala State Electricity Board (KSEB for short). The Telecom Department did not agree to accept his resignation and discharge him unless he paid the amount due under the Bond executed by him. Therefore, the applicant made payment of a sum of Rs.23,203/- and got relieved to join the KSEB. After joining the KSEB, the applicant made a representation to the respondents seeking refund of the amount and permission to complete the five years tenure under the KSEB. Finding no response to this, the applicant has filed this application for a declaration that he is entitled to get refunded the amount of Rs.23,203/- remitted as training expenses by him and for a direction to the respondents to allow the applicant to serve the rest of the Bond period under the KSEB and to refund the amount of Rs.23,203/- to the applicant.

2. It has been alleged in the application that a similar benefit was given to one M.N. Sambasivan and that there is no reason why the applicant alone should be discriminated against. It has also been stated that in other establishments of the Central Government, for instance Railways, similar benefit was given to the employees to join the State Government establishments.

3. We have perused the application and the annexures appended thereto and have heard the learned counsel for the applicant as also the learned counsel for respondents. We do not find any basis for the claim of the applicant. The sum of Rs.23,203/- was paid by the applicant under the contractual obligation between him and the respondents.

contd..3.

✓

He had agreed that in case he failed to serve the Telecom Department for a period of five years after successful completion of the training, he would pay the expenses incurred for his training, namely Rs.23,203/-. It was on payment of the amount that the applicant was relieved accepting his resignation. The Telecom Department was not at all benefitted by the applicant serving in the KSEB and therefore, the expenses incurred by the respondents for the training of the applicant has to be refunded in terms of the agreement between the applicant and the respondents.

4. In the light of what is stated above, we find no justification for a declaration that the applicant is entitled to get refunded the amount of Rs.23,203/- or to allow him to serve the rest of the Bond period in the KSEB. The reliance placed by the applicant in the case of M.N. Sambasivan is unfounded. It is seen from A-5 and A-6 that M.N. Sambasivan had served the full period of five years after completion of his training in the Telecom Department. Even otherwise, the applicant was bound by his own commitment. Even if the department had waived its right in respect of some other person, the applicant has no legal right to claim that the respondents should waive their right in his case also.

5. In the result, the application fails and the same is dismissed. No costs.

Dated the 25th of March, 1998


S.K. GHOSAL
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

LIST OF ANNEXURES

1. Annexure A5: Shri M.N. Sambasivan's training course certificate dated 20.7.1990.
2. Annexure A6: Shri M.N. Sambasivan's resignation certificate.

• • •

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

OA No. 466 of 1998

Tuesday, this the 18th day of September, 2001

CORAM

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. P.K. Sunil Kumar,
(Resigned Technician, Employee No.4725,
Office of the General Manager, Telecom,
Ernakulam)
Parepallathu House, Neericode PO,
Ernakulam District - 683 511Applicant

[By Advocate Mr. K.P. Kailasanatha Pillay ((rep.))]

Versus

1. The Chief General Manager,
Telecommunication, Kerala Circle,
PMG Junction, Thiruvananthapuram.

2. General Manager, Telecom,
Department of Telecommunications,
Ernakulam District, Kochi - 682 031

3. The Assistant General Manager (Admn),
Office of the General Manager,
Telecom, Ernakulam.Respondents

[By Advocate Mr. C. Rajendran, SCGSC]

The application having been heard on 18-9-2001, the
Tribunal on the same day delivered the following:

O R D E R

HON'BLE MR. A.M. SIVADAS, JUDICIAL MEMBER

The applicant seeks to declare that he is entitled to
get refunded the amount of Rs.23,203/- remitted as training
expenses, to direct the respondents to allow him to serve the
rest of the bond period in K.S.E.B. and to refund the said
amount and to direct the respondents to consider A7
representation and pass favourable orders.

2. The applicant commenced service as a Technician on the
22nd of February, 1993 under the respondents. He successfully
completed the technical training course. He served for a

period of two years and nine months under the respondents. While so, he got appointment in the Kerala State Electricity Board (KSEB for short), which is a State Government establishment. He submitted his resignation as per letter dated 17-10-1995. At the time of relieving him, he was forced to remit an amount of Rs.23,203/- towards the balance amount as per the bond executed to the department to serve for a period of five years. The resignation was accepted by the 2nd respondent only on refund of the said amount.

3. Respondents resist the OA contending that when the applicant submitted the resignation he was asked to refund the training expenses which he promptly did. He cannot say that the amount deposited should be refunded since the principle of promissory estoppel comes into play. KSEB is a statutory corporation controlled by the Kerala State Government. The application is not maintainable since it is not routed through proper channel. The OA is barred by limitation.

4. The learned counsel appearing for respondents fairly submitted that the plea regarding limitation is not pressed.

5. This OA was once disposed of by this Bench of the Tribunal by dismissing the same at the admission stage. The matter was taken up by the applicant before the High Court of Kerala by filing OP No.9348 of 1998. The High Court in the judgement in the said OP has stated that according to the petitioner as per OM No.28021/1/84 dated 14-11-1984 and other departmental circulars if a Central Government employee during the period of bond joins another State Government undertaking or Central Government undertaking, the bond amount cannot be enforced and this matter was not considered by this Tribunal.

6. So, the question to be considered is whether the applicant is bound to refund the amount of Rs.23,203/- in the light of OM No.28021/1/84 dated 14-11-1984.

7. In the reply statement filed by the respondents they have not stated any syllable as to the nonapplicability of the said OM to the applicant.

8. Respondents have admitted that KSEB, wherein the applicant joined after acceptance of his resignation by the 2nd respondent, is a statutory corporation controlled by the Kerala State Government.

9. Respondents have stated that this OA is not maintainable for two reasons - firstly that the principle of promissory estoppel comes into play and secondly that the application has not been routed through proper channel. During the course of argument the learned counsel for respondents submitted that the question of promissory estoppel does not arise in this case and he further submitted that though the word used in the reply statement is 'application', what is actually meant is the 'representation' that is not routed through proper channel.

10. A8 is the OM referred to in the judgement of the High Court. In A8 it has been clearly stated that the bond may not be enforced in the case of Government servants, who leave Government service to secure employment, under a State Government, a Public Sector Undertaking, owned wholly or partly by the Central Government or by a State Government, or a Quasi-Government Organisation, that in such cases a fresh bond is to be taken from such Government servants to ensure that they serve the new employer for the remaining period of the

...6...

bond, and that the terms of the bond executed by an employee of a Public Enterprise, who has received scientific/technical training at the cost of the Enterprise, should not be enforced in case he joins the Central Government, a State Government, a quasi-Government organisation or another Public Enterprise, subject to the condition that a fresh bond is taken to ensure that the employee serves the new employer for the balance of the original bond period.

11. According to respondents, the applicant had executed a bond to serve under them for a period of five years. There is no dispute as to the fact that the applicant has joined the KSEB. The learned counsel appearing for the applicant submitted that the applicant joined the KSEB in the year 1996 and he is even now continuing in KSEB. This is not disputed by the learned counsel for respondents. That being so, the remaining bond period is over and hence there is no question of getting a fresh bond from the applicant to ensure that he will serve the new employer for the remaining period of bond.

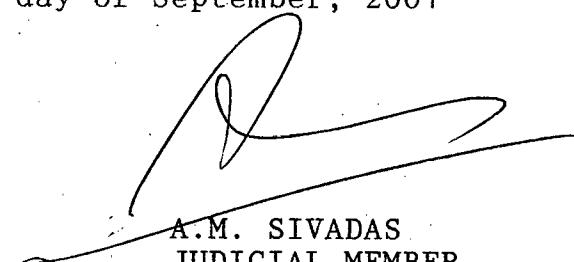
12. Accordingly, it is declared that the applicant is entitled to get refund of the amount of Rs.23,203/- remitted by him in pursuance of A2. Respondents are directed to refund the said amount to the applicant within five weeks from today.

13. The Original Application is disposed of as above. No costs.

Tuesday, this the 18th day of September, 2001



G. RAMAKRISHNAN
ADMINISTRATIVE MEMBER



A.M. SIVADAS
JUDICIAL MEMBER

ak.

APPENDIX

1. Annexure A1: True copy of the resignation letter dated 17/10/95 submitted before the 2nd respondent.
2. Annexure A2: True copy of the letter No.4.7710/21 dated 25/1/96.
3. Annexure A3: True copy of the Book No.T.C.1711 & receipt No.099 dated 9.2.96
4. Annexure A4: True copy of the acceptance of resignation letter dated 9.2.96.
5. Annexure A5: True copy of Sri M.N Sambasivan's training course certificate dated 20/7/90.
6. Annexure A6: True copy of the M.N.Sambasivan's resignation Certificate.
7. Annexure A7: True copy of the representation dated 18/11/96.
8. Annexure A8: True copy of the relevant pages of Swamy's complete Manual on Establishment and Administration for Central Government Offices

....