

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.504/2013

Thursday , this the 21st day of July, 2016

CORAM:

**HON'BLE Mr.JUSTICE N.K. BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE Ms.P. GOPINATH, ADMINISTRATIVE MEMBER**

1. Abdul Rasheed.A, S/o.late Sadak Abdulla,
Working as Sr.TOA,
O/o.GMT, BSNL, Konnola Tower,
Down Hill, Malappuram – 676 519.
Residing at Achipra House, Vallikariram,
Niramaruthur P.O., Tirur – 676 109.
2. Anwar Ali P, S/o.late Khalid P,
Working as Sr.TOA,
O/o.GMT, BSNL, Marketing (Dvsn.),
Up Hill Malappuram.
Residing at Puthiyakath House,
Chakkalakuth, Gandhi Nagar (84),
Nilambur – 679 329, Malappuram District.
3. Prasobh J Nair,
S/o.late E.Janardhanan Nair,
Working as Sr.TOA,
O/o.Telcom Civil Division,
BSNL, Co-Axial Staff Quarters,
East Hill, BSNL, Calicut – 673 005.
Residing at Prabhatham, Pattelthazham,
P.O.Pokkunnu, Mavkave, Calicut – 673 007.
4. Sudheer T., S/o.late Balan T.,
Working as Sr.TOA (G),
O/o.GMT, BSNL, Malappuram.
Residing at Sreeragam, Pidakkoliparambu,
Edakkad P.O., Kozhikode – 673 005.
5. Vijayamma K.J., D/o.late Narayana Kurup,
Working as Sr.TOA (G),
CSC, CTO Building, Alappuzha – 688 001.
Residing at Kurikkaveedu,
Mararikkulam North P.O, Alappuzha.



6. Valsamma Mathew,
D/o.Varghese P.V.,
Working as Sr.TOA (G),
CSC, Thycattusser, Poochakkal P.O.,
Cherthala, Alappuzha – 688 528.
Residing at Sihyalayam (Pallipparambil),
Pallipuram P.O., Cherthala, Alappuzha – 688 541.
7. Sivaprasad S.,
S/o.late P.Sreekumaran Nair,
Working as Sr.TOA,
O/o.GMTD, BSNL Bhavan,
Vellayittambalam, Kollam.
Residing at Sreeshylam, Kanjiramala,
PPM P.O. - 691 332.
8. Ajitha I.P., W/o.late U.Sasidharan,
Working as Sr.TOA,
GMT, BSNL Bhavan,
Vellayittambalam, Kollam.
Residing at Remya Bhavan,
Keralapuram, Velimon P.O., Kollam.
9. Sasikala P.,
W/o.late Sarathchandra Babu,
Working as Sr.TOA,
O/o.GMT, BSNL Bhavan,
Velayittambalam, Kollam.
Residing at Moothalil,
Thekumbhagam, Chavara South P.O.
10. Rajaneesh S,
S/o.late N.Sivarajan,
Working as JAO,
O/o.GMT, BSNL Bhavan, Thiruvalla.
Residing at Charuvila Puthen Veedu,
Palachery P.O., Punalur, Kollam – 691 331. ...Applicants

(By Advocate Mr.M.R.Hariraj)

V e r s u s

1. Union of India represented by the Secretary to Govt. of India,
Ministry of Communication, New Delhi – 110 001.
2. Bharath Sanchar Nigam Ltd.
represented by Chairman & Managing Director,
Sanchar Bhavan, New Delhi – 110 001.



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3. The Chief General Manager,
Bharath Sanchar Nigam Ltd.,
Kerala Circle, Thiruvananthapuram – 695 033.
4. The Principal General Manager,
Bharath Sanchar Nigam Ltd.,
Kozhikode SSA, Kozhikode – 673 001.
5. The General Manager,
Bharath Sanchar Nigam Ltd.,
Alappuzha SSA, Alappuzha – 688 001.
6. The General Manager,
Bharath Sanchar Nigam Ltd.,
Kollam SSA, Kollam – 691 001.
7. The General Manager,
Bharath Sanchar Nigam Ltd.,
Malappuram SSA, Malappuram – 676 505.
8. The General Manager,
Bharath Sanchar Nigam Ltd.,
Thiruvalla SSA, Thiruvalla. ...Respondents

**(By Advocates Mr.Thomas Mathew Nellimoottil,Sr.PCGC [R1]
& Mr.Johnson Gomez [R2-8])**

This application having been heard on 4th July 2016, the Tribunal on 21st July 2016 delivered the following :

ORDER

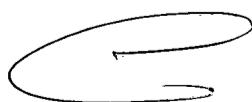
HON'BLE Ms.P.GOPINATH, ADMINISTRATIVE MEMBER

All applicants in the O.A were dependents of deceased DOT employees who made request for compassionate appointment under Dying Harness Scheme in 1998, 1999 and 2000. 1st and 2nd applicants were offered appointment as TOA (Genl.) on compassionate ground on 30.5.2000. Similar offer of appointments were given to all other applicants. Offer of temporary post as TOA in Calicut, Telecom district was communicated to the 2nd applicant and 1st applicant on 13.6.2000 and 14.6.2000 respectively.



Applicants except 4 & 7 were directed to report for TOA induction training for three months at CTTC, Trivandrum. Sanction of payment of training allowance for a period of three months was conveyed to 1st, 2nd and 3rd applicants on 19/27.7.2000. Offer of temporary post TOA in Calicut district was communicated to the 4th applicant on 4.9.2000. 4th and 7th applicants were directed to report for induction training for three months to CTTC, Trivandrum on 18.9.2000. Applicants except 4 & 7 were posted as TOA (G) on 10.10.2000. 4th applicant on completion of 3 months training from 18.9.2000 was posted as TOA (G) with effect from 18.12.2000. Order was issued appointing 1st, 2nd and 4th applicants as TOA (G) with effect from 10.10.2000, 18.10.2000 and 10.10.2000. 1st, 2nd and 4th applicants submitted options form for absorption to BSNL with effect from 1.10.2000 on 27.1.2000, 1.2.2001 and 18.1.2001. Presidential orders was issued for permanent absorption of 1st to 6th applicants to BSNL on 4.4.2002, 15.2.2002, 13.3.2002, 13.2.2002, 10.1.2002, 10.1.2002 and on 20.2.2002 for 7th to 10th applicants. Subsequently by an order dated 4.5.2007 the permanent absorption of 3rd applicant to BSNL was treated as null and void. The applicants were absorbed in the BSNL by Presidential Order. The 2nd respondent has no jurisdiction to treat it as "null and void". The impugned order is therefore ultra vires.

2. The impugned orders were issued without notice to the applicants. The applicants were appointed albeit temporarily and sent for training by the Department of Telecom. They were not "recruited" by the BSNL. On

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the contrary they were absorbed into the BSNL as per the provisions of Rule 37A of the CCS (Pension) Rules, 1972. Clause 21 of Rule 37A specifically states that in case of absorption of employees due to conversion of DOT to BSNL, the pensionary benefits including family pension shall be paid by the 1st respondent. The applicants are entitled to be granted all benefits under Rule 37A of the CCS (Pension) Rules. All the applicants were offered appointment on compassionate ground in Dying in Harness Scheme before the formation of BSNL. They were directed to undergo the training prior to the formation of BSNL. Their training period has been reckoned as qualifying service and increment sanctioned reckoning this period. The Ministry of Personnel, P.G and Pensions, Department of Pension & Pensioners' Welfare clarified that, in such cases the employees who were required to undergo departmental training relating to jobs prior to 1.1.2004 and were in receipt of stipend during such training would also be covered under CCS (Pension) Rules, 1972. The respondents do not have any inherent power of review to cancel the Presidential Order of absorption in BSNL.

3. Relief sought is to declare that the applicants are DOT recruited employees and that they are entitled to benefits in accordance with Rule 37A of the CCS (Pension) Rules, 1972 and to direct the respondents to treat them at par with other employees who were on the rolls of DOT as on 30.9.2000 and to determine their pension and pensionary benefits in accordance with the CCS (Pension) Rules, 1972 and to refund

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the amounts recovered from the applicants due to Annexure A-13 with interest at the rate of 12% per annum from the date of recovery till the date of actual refund.

4. Along with the Original Application, the applicants have filed M.A.No.616/2013 to condone the delay of 1566 days in filing the O.A.

5. In the reply statement to the O.A filed by the respondents it is submitted that applicants are praying to be declared as DOT recruited employees and that they are entitled to benefits in accordance with Rule 37A of the CCS (Pension) rules 1972 and to direct the respondents to treat them at par with other employees who were on the rolls of DOT as on 30.9.2000 and to determine their pension and pensionary benefits in accordance with CCS (Pension) Rules, 1972. The details of the applicants furnished would indicate that the applicants were appointed after BSNL a Government Company registered under the Companies Act came into existence as under :

Sl. No.	Name of the applicant	Present Unit/ SSA	Present cadre	Entry cadre	Date of training From	Date of training To	Date of appointment
1	Abdul Rasheed A HR No.200008352	MLP	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
2	Anwar Ali P HR No.200009573	MLP	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
3	Prasobh J Nair HR No.200011795	Civil Wing	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
4	Sudheer T HR No.200002946	MLP	Sr.TOA(G)	TOA(G)	18/09/00	17/12/00	18/12/00



5	Vijayamma K J HR No.200000863	ALP	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
6	Valsamma Mathew HR No.200000864	ALP	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
7	Sivaprasad S HR No.200009166	KLM	Sr.TOA(G)	TOA(G)	18/09/00	17/12/00	18/12/00
8	Ajitha I P HR No.200009079	KLM	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
9	Sasikala P HR No.200009086	KLM	Sr.TOA(G)	TOA(G)	10/07/00	09/10/00	10/10/00
10	Rajaneesh S HR No.200009135	PTA	JAO	TOA(G)	10/07/00	09/10/00	10/10/00

6. As per the service particulars furnished above the officials were sent for the induction training before 1.10.2000, before the formation of BSNL. The appointment of these officials in the entry cadre were done by BSNL (not by DOT) after 1.10.2000 ie. after the formation of BSNL. As per the clarifications R-2(a) issued by BSNL Corporate Office vide letter No.BSNL/4/SR/2002 Vol.III dated 4.5.2007 based on clarifications issued by DoT/nodal ministry and letter No.500-85/CA II/BSNL/EPF/Vol.III dated 21.6.2007, the officials were treated as BSNL recruits and the Presidential Orders issued wrongly were treated as "Null and Void". These officials were brought to EPF scheme from GPF since BSNL recruits are governed only by EPF Rules.

7. All the applicants entered service on compassionate ground quota after the BSNL formation on 1.10.2000. Annexure A-1 collectively are letters informing applicants about compassionate appointment subject to verification of qualification certificate. Hence the appointment process had



not been completed. Annexure A-2 are merely "offer of temporary appointment" only, which were issued as part of pre-appointment formality.

Para 3 of the offer of temporary appointment states as follows :

"3. The terms of appointment of the candidate after satisfactory completion of prescribed course of training are as follows :

(I) The appointment is temporary and will not confer any title to permanent appointment. This offer of appointment is subject to availability of vacancies.

(II) He will be entitled to an initial pay of Rs.3200/- in the scale of pay of Rs.3200-85-4900. He will also be entitled to dearness and other allowances at the rates admissible under and subject to the conditions laid down in rules and orders governing the grant of such allowances from time to time.

(III) The appointment is purely provisional pending the issue of eligibility certificate in the candidates favour and shall stand cancelled in the event of such certificate being refused. The candidate is required to give a written undertaking in the form attached.

(IV) The appointment may be terminated at any time by one month's notice given by the appointing authority without assigning any reason. The appointing authority, however, reserves the right to terminating the services of the appointee forthwith or before the expiration of the stipulated period of notice, and on such termination, he will be entitled to claim a sum equivalent to the pay and allowances for the period of notice or the unexpired portion thereof.

(V) The appointment carries with it the liability to serve in any part of the Calicut Telecom District and in specific circumstances any part of India. The appointee shall be liable for field services within India in times of war or National Emergency and the conditions of service will be governed by the relevant rules and orders in force from time to time.

4. Before the candidate is sent for training, the following additional conditions will have to be fulfilled :

(1) Production of a certificate of fitness from the competent Medical Authority (viz. Medical Board/Civil Surgeon/Dist. Medical Officer/Authorized Medical Attendant).

(2) Submission of a declaration in the form enclosed (Annexure A-I) and in the event of the candidate having more than one wife living, the appointment will be subject to his being exempted from the enforcement of the requirement in this behalf.

(3) Taking an oath of allegiance/faithfulness to the Constitution of India (or making a solemn affirmation to that effect) in the prescribed form.



(4) Production of the following original certificates :

(a) Character certificates from two Gazetted Officers of the Central/State Govts. Or Stipendary Magistrate in the prescribed form (Annexure A-II).

(b) Certificate in the prescribed form in support of the candidate's claim to belong to a Scheduled Caste/Scheduled Tribe Community/OBC.

(c) Discharge certificate in the prescribed form of previous employment, if any.

(d) Any other documents to be specified.

1. Attestation form in quadruplicate, duly filled in and attested by a Gazetted Officer. Passport size photographs in each form should be pasted.

2. Declaration of training class.

3. Seniority declaration.

4. Statement of close relations.

5. Form of undertaking.

6. Form of Surety Bond.

8. Further the applicants had to complete the induction training successfully for appointment. Based on Annexure A-2 series the applicants cannot make a claim for permanent appointment. In Annexure A-2 it is also clearly mentioned that appointment will be subject to an agreement executed by the candidates and appointment will be made only after satisfactory completion of prescribed course of training. The applicants have completed training only after the formation of BSNL, ie. after 1.10.2000 and appointment orders of the applicants were issued by BSNL.

As per the instructions provided by BSNL Corporate Office, New Delhi as per Annexure R-2 (a) "options from compassionate ground appointment case where appointment order issued after 30.9.2000 by BSNL will not be called for and such appointees will be treated as BSNL recruited employee

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only. In case option from any such appointee has been called for and PO issued, it shall be treated as null and void. Presidential Order was issued to the applicants based on the clarification issued earlier and on discovery of the mistake the clarification was revised by BSNL HQ as per Annexure R-2 (a), hence the Presidential Order issued to the applicants and similarly placed officials were treated as null and void. The applicants were aware of formation of BSNL and any doubt about their employer should have been clarified thereon prior to the 1566 days of delay in filing this O.A.

9. Respondents draw attention to para 7(1) and (2) of the Recruitment Rules, 1988 of TOA at Annexure R-2 (8) which was existing at the time the officials were offered appointment, the direct recruits shall execute a bond before proceeding for training that they shall before appointment undergo training for a period of three months. It may be seen that the applicants have completed 12 years of service in BSNL and the statement that there is no rule or instruction mandating such training at this stage is false and misleading since the Recruitment Rules existed before and after formation of BSNL. Further the payment made during training are admissible amounts towards training allowance paid to the applicants. Training is a part of pre-appointment formality. The applicants were sent for induction training and only on successful completion of training formal appointment orders can be issued. In respect of the applicants appointment orders were issued only after the formation of BSNL ie., 1.10.2000 as they have completed the training after the formation of BSNL.

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10. In respect of Annexure A-6 (2) order of the Alappuzha SSA by which applicants have been posted as Temporary TOA, it is stated that the letter head has been erroneously typed as Department of Telecommunications as is evident from the date therein ie. 9.10.2000 by which time BSNL was already formed. It could be a case of new BSNL letter heads not being printed as BSNL had just been created nine days ago. As per revised clarification issued by BSNL HQ vide Annexure R-2 (a) it is clear that this was a mistake and the Presidential Order thus issued has been treated as "null and void". The order was necessitated on account of the fact that the applicants who were new recruits in BSNL were earlier wrongly issued Presidential Orders for absorption in BSNL without taking note of the fact that they were appointed in BSNL after the formation of the Company.

11. The applicants are direct recruits of BSNL having joined the organization after BSNL was formed on 1.10.2000 and they did not have a single day regular service in the erstwhile Department of Telecom. The representations addressed to CMD submitted by 1st, 2nd, 5th and 6th applicants have been forwarded to Corporate Office. In this respect a CPGRMS Grievance Registration No.DOTEL/E/2011/11911 registered in the DOT CPGRMS online site by the 3rd applicant on 29.9.2011 and the reply provided from the office is produced and marked as Annexure R-2 (d). The applicants made various representations to the 6th respondent to effect the above recovery on installment basis from the salary, highlighting the financial hardship to be faced by the applicants in making lump sum

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payment. It is submitted that the 6th respondent considered these requests. Accordingly, an amount of Rs.3000/- is being recovered from the monthly salary of the applicants towards EPF. Being a Government Policy decision and as per the extent rules on the subject, the officials can be treated as BSNL recruits only.

12. The Government of India decided to transfer the business of providing telecom services in the country entrusted with Department of Telecom Services and Department of Telecom Operations to the newly formed company viz., Bharat Sanchar Nigam Limited. Accordingly, BSNL was formed with effect from 1.10.2000 and all employees were transferred to BSNL along with their posts on deemed deputation with effect from 1.10.2000 without any deputation allowance. As on 1.10.2000, the applicants were only trainees and were not holding any regular post in the Department of Telecom at that time. The applicants have admitted the same in the O.A. Presidential Order issued to the applicants was an inadvertent mistake which was corrected on receipt of direction from Corporate Office. This mistake cannot be used by applicants to argue their case for being treated as DoT employees.

13. The status of the applicants as on 30.9.2000 in O.A.No.493/2013 is different from that of the applicants herein and cannot be compared in any way. The respondents in their reply to M.A contend that the O.A is hopelessly barred by limitation and submits that the Hon'ble Supreme court

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has held in **U.P.Jal Nigam & Another Vs. Jaswanth Singh & Another (2006) 11 SCC 464** that “When a person is not vigilant of his rights and acquiesces with the situation and the acquiescence prejudices or there is a change of position, such person's writ petition cannot be heard after the delay on the ground that same relief should be granted as was granted to the persons similarly situated, but who were vigilant of their rights”.

14. The Hon'ble Supreme Court in **A.P.Re-rolling Mill Ltd. Vs. State of Kerala and others and connected cases (2007) 2 SCC 725** has also held that the benefit of a judgment is not extended to a case automatically, if there is long delay in approaching the court, the same may disentitle the party to obtain discretionary relief. The same position was reiterated in **S.S.Balu & Another Vs. State of Kerala & Others (2009) 2 SCC 479** wherein it was held that “delay defeats equity. Relief can be denied on the ground of delay even though relief is granted to other similarly situated person who approached the court in time.” The applicants have slept over their remedy for two years and this is being overlooked.

15. Heard the counsel for the parties and have gone through the pleadings. Whereas the applicants were cleared for compassionate appointment before the formation of BSNL, their appointment after training and completion of appointment formalities was after the formation of BSNL. As a matter of fact it can be said that applicants were appointed at the threshold of DoT transformation to BSNL and hence are under the

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mistaken impression that they are DoT employees. However, their appointment, on completion of appointment formalities and training, was made after BSNL had just been created. We understand the anxiety of the applicants to be a part of the Government of India system with its facilities but Government of India having taken a decision to create BSNL, the applicants have to respect and conform to the respondents decision taken in the larger interest of the public utility and the citizens of the country to transfer the telecom operations to the newly formed company BSNL.

16. Harping on the wrongly issued Presidential Orders will not make it a reality or endorse correctness to it. The terms and conditions governing formation of BSNL was drawn up by BSNL Corporate Office and DoT and hence they alone can interpret the terms and conditions of creation of BSNL, absorption of staff etc. The respondent Nos.3 to 8 are not vested with powers to interpret the terms and conditions or impose their interpretation to an agreement made by Government of India towards creation of BSNL. This would apply to different grades/levels of employees recruited through various modes which includes compassionate appointment. The applicants in the rejoinder admit that they completed their training after the formation of BSNL and their posting was also made by BSNL. Comparing the status of applicant as BSNL employees with the conditions which applied to the introduction of New Pension Scheme is not appropriate, as each Scheme which is different, is introduced with its own attendant terms and conditions.

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17. In view of the above, the O.A is dismissed. No order as to costs.

(Dated this the 21st day of July 2016)


(P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER

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