

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.568 of 2011

Monday, this the 12th day of December, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member
Hon'ble Ms.K Noorjehan, Administrative Member

K.G Divakaran Nair
 Executive Engineer (C-II)
 Bharat Sanchar Nigam Limited
 Civil Division, Kottayam East – 686 005 Applicant

(By Advocate – Mr.Vishnu S Chempazhanthiyil (Not present))

V e r s u s

1. The Chief Engineer (Civil)
 Bharat Sanchar Nigam Limited
 Telecom Civil Zone
 Manacaud Telephone Exchange Compound
 Manacaud, Thiruvananthapuram.

2. The Chief General Manager
 Bharat Sanchar Nigam Limited
 Kerala Circle, Thiruvananthapuram-33

3. The Accounts Officer (CA III)
 Office of the Chief General Manager Telecom
 Bharat Sanchar Nigam Limited
 Kerala Circle, Thiruvananthapuram - 33 **Respondents**

(By Advocate – Mr. P.M.M Najeeb Khan(Not Present))

This Original Application having been heard on 12.12.2011, the Tribunal on the same day delivered the following:



ORDER

By Hon'ble Mr. Justice P.R. Raman, Judicial Member -

Today, when the case came up for consideration, none was present. Since the applicant as well as respondents are absent, the Original Application is dismissed for non-prosecution.

(Dated this the 12th day of December, 2011)



(K. NOORJEHAN)
ADMINISTRATIVE MEMBER



(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A No. 568 /2011

Tuesday, this the 10th day of April, 2012.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K.NOORJEHAN, ADMINISTRATIVE MEMBER

K.G.Divakaran Nair,
Executive Engineer (C-11),
Bharat Sanchar Nigam Limited,
Civil Division, Kottayam East-686 005. - Applicant

(By Advocate Mr Vishnu S Chempazhanthiyil)

v.

1. The Chief Engineer (Civil),
Bharat Sanchar Nigam Limited,
Telecom Civil Zone,
Manacaud Telephone Exchange Compound,
Manacaud, Thiruvananthapuram.
2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram-33.
3. The Accounts Officer (CA III),
Office of the Chief General Manager,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram-33. - Respondents

(By Advocate Mr PMM Najeeb Khan)

This application having been finally heard on 23.03.2012, the Tribunal on 10.04.2012 delivered the following:

ORDER

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER

The matter is short and simple. B.S.N.L, where the applicant was functioning as Executive Engineer at the time of his superannuation on 30-06-



2011, had the Annexure A-1 Promotion Policy dated 18-01-2007, as per which, with every promotion resulting in change in substantive status, the executive shall have to compulsorily undergo two weeks training for being eligible for the second increment in the promotional post. The executive who fails to successfully undergo the prescribed two weeks training within two years of promotion to that grade would not be eligible for consideration for next post based promotion. As per the said policy, admittedly, in case of delay in completing the two weeks training, the second increment would be accordingly delayed for the period when the two weeks training is not completed.

2. The applicant was granted the time bound upgradation w.e.f. 01-10-2004 vide Annexure A-2 to the grade of Rs 16400 – 20800 and thereafter, he was placed in the grade of Rs 32900 – 58000 as per communication dated 30-09-2009 and the next increment was granted w.e.f. 01-10-2010. Annexure A-3 and A-3A refer. This upgradation warranted the applicant to complete the two weeks compulsory training on or before 24-02-2010. Two such training courses were conducted in July 2009 and October, 2009, in which while some colleagues of the applicant participated the applicant did not and for the first time, the applicant had sought for permission to undergo the training vide his request dated 04-06-2010, to attend the next scheduled training, the commencement of the training having been notified from 06-12-2010 to 18-12-2010. The scheduled training, however, happened to be postponed to 04-04-2011 due to administrative reasons, and later that too was cancelled in the wake of an order issued by BSNL Headquarters dated 11-02-2011 to conduct web based training in respect of upgradation courses to be held after 01-04-2011. Annexure R4 to R-6 refer. The applicant did complete the above mentioned web based training before the date of his superannuation.

[Signature]

3. Respondents have, on the basis of the promotion policy letter, issued the following impugned orders which deprived the applicant of the increment granted to him and also entailed recovery of the excess payment:-

(a) Order dated 19-01-2011 – whereby increments granted w.e.f. 01-10-2009 and 01-10-2010 had been cancelled and over payment consequent to drawal of the increments be recovered. Annexure A-7 refers.

(b) Order dated 26-05-2011 giving the information of recovery of Rs 48170 in two installments had been issued. Annexure A-8 refers.

4. It is against the above mentioned two orders that the applicant has moved this O.A. seeking the following reliefs:-

- i) Call for the records leading to the issue of Annexure A-4 and set aside Annexure A-4.
- ii) Call for the records leading to the issue of Annexure A-8 and set aside Annexure A-8.
- iii) Direct the respondents to restore increments sanctioned as per Annexure A-3 and A-3(a).
- iv) Declare that the recovery effected as per Annexure A-11 is illegal and arbitrary and direct the respondents to refund the amount recovered from the applicant.

5. Respondents have contested the O.A. They had justified the recovery and reduction on the ground that the statutory requirement of completion of training had not been fulfilled by the applicant.

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6. Counsel for the applicant submitted that though the applicant did not complete the compulsory training within the stipulated two years of his promotion and earned two increments, he was prepared to undergo the same when the same was scheduled on 04-04-2010. The requirement is only to undergo the training and there is no qualifying tests or examinations. Had the training been conducted as scheduled, he would have been eligible to draw the second increment though not from 01-10-2010 at least from 01-01-2011 the month commencing from the date of completion of the training originally scheduled on 06-12-2010. The training was cancelled by the authorities and the applicant cannot be blamed for the same. The training was then scheduled for April, 2011 but by that time, the training was replaced by web training effective from April, 2011 and the applicant did complete the same. And he superannuated in June, 2011. As such, the respondents ought to have allowed the applicant to enjoy the second increment.

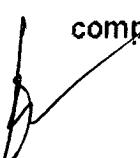
7. Counsel for the respondents had submitted that the applicant not having fulfilled the requirement of training, cannot be granted the increments.

8. Arguments were heard and documents perused. Vide Annexure A-8, the applicant's fixation of pay has been as under:-

(a) from 01-10-2009: Rs 42,220/-

(b) from 01-10-2010 Rs 43,390/-

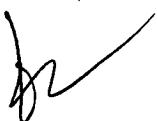
9. The above has been cancelled and pay was fixed at Rs 40,990/- with no increment either as of 01-10-2009 or of 01-10-2010. In other words, the two increments granted in 2009 as well as 2010 had been withdrawn in view of non completion of two weeks compulsory training by 14-02-2010 as per the



respondents. The respondents have fallen into a great error in withdrawing the two increments, as the stipulation is that the applicant cannot earn the second increment if he did not complete the training within two years. Thus, as on 01-10-2009 his pay earlier fixed at Rs 42,220/- shall remain intact. We declare so.

10. As regards the earning of second increment too, the requirement is only to complete the training for which the applicant had expressed his willingness to participate in the training originally scheduled in December, 2010. Had the training been completed he would have earned the second increment from 01-01-2011. However, the training was postponed. The applicant cannot be blamed for the same as it was an administrative decision. Again, the training scheduled in April, 2011 could not be held as by then, the system had undergone a change and web training got introduced. Thus, the first opportunity that the applicant could get to complete the training is in June, 2011, which he did. From that date onwards, he has become entitled to draw the second increment i.e. fixation of pay at Rs 43,490/- from 14-06-2011 onwards. However, the question is whether the applicant could be penalized for non completion of training in December, 2010, when he was ready and willing for the same, but the same had been postponed and later on fully cancelled as a new system of web training was introduced. At best, his completion of training could be advanced to 01-01-2011 if he is deemed to have completed the training had one been conducted as per schedule. This enables him to secure the second increment w.e.f. 01-01-2011. Thus, the excess paid from 01-10-2010 to 31-12-2010 has to be recovered.

11. The OA is thus **disposed** of declaring that the applicant is entitled to first increment w.e.f. 01-10-2009 and second from 01-01-2011 and the excess amount of pay and allowances made to him from 01-10-2010 till 31-12-2010 (when he had been paid the second increment increasing the pay to Rs 43,490/-



instead of Rs 42,220/-) shall alone be recovered. Respondents are directed to pass suitable orders in this regard. The applicant shall pay the amount due by him to the respondents as stated above. No costs.


K.NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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