

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. No 99/2010

This the 15th day of November, 2010

C O R A M

HON'BLE MRS. K. NOORLJEHAN, ADMINISGTRATIVE MEMBER
HON'BLE DR. K.B. SURESH, JUDICIAL MEMBER

Salim Babu P.K S/o Pookunju
Sub Divisional Engineer/Intl.-II
Bharat Sanchar Nigam Limited (BSNL), Kayamkulam
residing at KanjirathilCheravally
Kayamkulam. .. Applicant

By Advocate Mr. T.C. Govindaswamy

Vs

- 1 The Chairman cum Managing Director
Bharat Sanchar Nigam Limited (BSNL),
New Delhi.
- 2 The Chief General Manager
Bharat Sanchar Nigam Limited (BSNL),
Kerala Telecommunications
Thiruvananthapuram
- 3 The General Manager Telecom District
Bharat Sanchar Nigam Limited (BSNL),
Alappuzha-688 011
- 4 The Area Manager Telecom
Bharat Sanchar Nigam Limited (BSNL)
Alalppuzha-688 011

5 The Divisional Engineer Telecom
Bharat Sanchar Nigam Limited (BSNL),
Kayamkulam

6 Shri Mathew Jacob
Area Manager, Telecom
Alappuzha-688 011

7 Shri R. Pradeep
Sub Divisional Engineer (Intll-I)
Bharat Sanchar Nigam Limited (BSNL),
Kayamkulam

8 Ms Gracy Eapen
Sub Divisional Engineer
Bharat Sanchar Nigam Limited (BSNL),
Alappuzha-688 011

Respondents

By Advocate Mr. George Kuruvilla for R 1-5 and 7 & 8

The Application having been heard on 4.11.2010, the Tribunal delivered the following

ORDER

HON'LE MRS. K. NOORJEHAN, ADMINISTRATIVE MEMBER

The applicant who is presently working as a Sub Divisional Engineer in the BSNL, Kayamkulam is aggrieved by the order dated 10.8.2009 (A-1) treating the period of his service between 15.6.2009 to 27.6.2009 as dies non.

2 The applicant a Sub Divisional Engineer of BSNL while working at Alappuzha was transferred to Kayamkulam by order dated 4.6.08. He was relieved on 11.6.09 and joined at Kayamkulam on 15.6.2009. The 7th respondent who was holding the additional charge of the post, gave the applicant a copy of Making Over Particulars of the 8th respondent who

74

was earlier holding the post. The applicant submitted joining report dated 15.6.2009 addressed to the 5th respondent and enquired whether he should take over charge of the post or assume charge of the post in the absence of any Making overcharge by the defacto incumbent(A-4). He was informed to take over the charge, he gave a written request to the 7th respondent to hand over certain additional documents which were required to be maintained by him for verification(A-5) which was replied to by A-6. A reading of A-6 would show that he was not in a position to make over/hand over most of the documents/materials. Meanwhile, the applicant who reported for duty on 15.6.2009 was directed to sign the attendance register maintained in the Main Distribution Frame Wing. The 5th respondent issued an office order dated 16.6.09 indicating rearranging the charge of SDE(Int-I) consequent to the transfer of the 8th respondent and the joining of the applicant. In the light of A-7 the applicant further represented that the charge of various wings is yet to be handed over, to confirm whether the applicant would be held responsible if some records etc. are missing or corrected at a later stage (A-8). It was responded by A-9 instructing the applicant to take over the charges as per the order and defects if any to be intimated within two days. The applicant submitted Annexure A-10 letter stating the chaotic state of the Power Plant Section and that taking over charge would be practically impossible unless properly made over. However, on 27.6.2009 the applicant noticed that the attendance register in the MDF Section where the applicant was affixing his signature was found removed thereafter, the applicant fell ill and availed leave from 29.6.2009 till 19.7.2009. On 30.6.2009 he received a letter proposing to treat the period from 15.6.2009 to the date of assuming charge as dies non. When he reported for resuming duty, the 7th respondent

7/1

refused to allow him to discharge his functions. As no reply was received to his representations, he moved the Tribunal through O.A. 544/09 which was disposed of with direction to permit the applicant to join duty and make payment of salary for the leave period (A-16). Thereafter, the impugned order at A-1 was served on the applicant. The applicant filed M.A. 804/09 in O.A. 544/09 which was closed on the basis of A-18 reply of the respondents. Aggrieved by the recovery of 13 days salary, the applicant has filed this O.A to direct the respondents to treat the period of service of the applicant from 15.6.2009 to 27.6.2009 as duty and for refund of the pay and allowances recovered from the salary with 12% interest.

3 The respondents filed reply statement resisting the claim of the applicant. They submitted that when the applicant reported to join duty, the 7th respondent handed over a copy of Charge Making Over Memo prepared by the 8th respondent for verification purpose, but he instead of taking charge submitted A-4 conditional joining report, he asked for a number of documents for individual verification, purposefully to delay the assumption of charge. He also indulged in unwanted correspondence creating confusion. The 5th respondent instructed applicant to take over the charge and to intimate the defects if any within two days. However, the applicant instead of taking over the charge again represented. In view of the reluctance on the part of the applicant to take charge a show cause notice was issued proposing to take disciplinary action and to treat the period from 15.6.2009 till the date of assuming charge as dies non. Without taking charge, he went on medical leave. It is also alleged that the applicant without taking charge signed the attendance register from 15.6.2009 to 26.6.2009 to show that he

ty

was on duty. They further stated that the A-1 order was passed much before the Annexure A-16 order of the Tribunal. They further stated that even after the show cause notice the applicant did not take over charge and thereafter made adverse remarks against the superior officers.

4 The applicant filed rejoinder reiterating the averments in the O.A.

5 We have heard the learned counsel for the parties and perused the pleadings.

6 The undisputed facts of the case are that the applicant reported for duty on 15.6.2009. There was no SDE to hand over the charge. The 7th respondent who was admittedly holding additional charge memo, handed over the charge prepared by the 8th respondent who was already relieved from the post and who took charge from the applicant at Alappuzha. The applicant wanted to physically verify the materials as it is the proper course of action expected from an officer to avoid any issue regarding shortage of materials/records on a future date. However, he was directed take charge and intimate defects if any within two days. The applicant fell ill and went on medical leave.

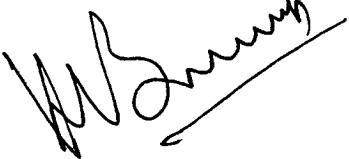
7 The short question that comes up for consideration is whether the action of the respondents is illegal, arbitrary, discriminatory and violative of the constitutional guarantees enshrined in Articles 14 & 16 and that he is eligible for treating the period as on duty. The respondents have admitted that the applicant submitted joining report

ty

on plain paper to the DET, Kayamkulam and started signing the MDF attendance register meant for TMLs in MDF. It is admitted that the applicant had signed the attendance register. The applicant was only insisting on verifying the materials/files etc for proper verification. It is strange to note that the respondents are directing the applicant to take over charge and then verify and report any shortage within two days. Further, the applicant was also not given any intimation regarding his duties and responsibilities. The presence of the applicant in the office is further corroborated by the office order dated 16.6.2009 (A-7) re-arranging the duties of SDEs consequent on the joining of the applicant.

8 In the circumstances we are of the considered view that the applicant was trying to ensure proper taking over charge and that he was very much present in the office and was signing the attendance register which is admitted by the respondents in the impugned A-1 order itself. Therefore, we hold that treating the period of duty from 15.6.2009 to 27.6.2009 as dies non, is without proper application of mind and the official respondents had issued the order on extraneous consideration. Accordingly, the O.A. is allowed. The applicant is entitled to salary for the period from 15.6.2009 to 27.6.2009 with 8% interest till the payment is made. The O.A. is allowed as above. No costs.

Dated 15th November, 2010


K.B. SURESH
JUDICIAL MEMBER


K. NOORJEHAN
ADMINISTRATIVE MEMBER

Kmn