

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 314 of 2013

Friday, this the 29th day of January, 2016

CORAM:

**Hon'ble Mr. Justice N.K. Balakrishnan, Judicial Member
Hon'ble Mrs. P. Gopinath, Administrative Member**

Muhammed Ishaque C., Parakkundil House,
Elayur Iruvettu PO, Malappuram, Pin – 673 639,
presently working as Asst. Engineer,
220 KV Station, Areacode, Transmission Circle,
Malappuram.

..... **Applicant**

(By Advocate : Mr. S.M. Prasanth)

V e r s u s

1. Bharath Sanchar Nigam Limited, represented by its Chief Managing Director, Bharath Sanchar Bhavan, Janapath, New Delhi – 110 001.
2. Chief General Manager, Office of the Chief General Manager, Bharath Sanchar Nigam Limited, Kerala Telecommunications, Thiruvananthapuram – 695 033.
3. Kerala State Electricity Board, represented by the Chief Engineer (HRM), Kerala State Electricity Board, Vydyuthi Bhavan, Pattom Palace Post, Thiruvananthapuram - 695 004. **Respondents**

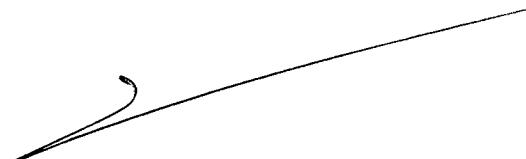
[By Advocate : Mr. T.C. Krishna, Sr.PCGSC- for R1&2)]

This application having been heard on 08.01.2016, the Tribunal on 29.01.2016 delivered the following:

ORDER

Per: Justice N.K. Balakrishnan, Judicial Member -

The applicant challenges Annexures A5 and A5(a) orders. As per Annexure A5 he was directed to pay to the respondents 1 & 2 a sum of Rs. 3,80,870/- after deducting Rs. 5,000/- which was remitted by the applicant on 9.12.2009. After successful completion of training the applicant joined as JTO (Electrical) on 1.9.2010. Later he joined KSEB on 30.5.2011. The applicant contends that he had promptly intimated the 1st respondent that he was selected by the Kerala PSC for the post of Assistant Engineer (Electrical). The applicant had pointed out the orders of the Department of Public Enterprises, Government of India, to show that when a Government employee who leaves the services of the Central Government with proper permission to take up a new job of Central Government/State Government/Public Enterprises, the stipend and training expenses need not be recovered, if he executes a fresh bond with the new employer undertaking the service for the balance period. The applicant has been working with the KSEB. While so he received Annexure A5 as per which he was directed to remit the amount as stated earlier. Annexure A6 representation was given but Annexure A7 communication was issued to the applicant, rejecting the request made by the applicant. The order issued by the respondents 1 & 2 directing the applicant to pay the bond amount of Rs. 2,00,000/- with interest thereon at 18% per annum, according to him is



illegal and unsustainable. Thus, he has approached the Tribunal seeking the relief as mentioned earlier.

2. Respondents 1 & 2 refuted the plea raised by the applicant contending that the applicant was appointed as JTO (Electrical) in BSNL on 1.9.2010 after completing phase-I training at Gaziabad. He was sent for that training after the applicant had executed a bond to serve the BSNL for a period of five years vide Annexure R2(A). On 7.5.2011 the applicant submitted a letter informing that he was selected to KSEB and so he should be relieved from BSNL. From 30.5.2011 the applicant was not attending the office. A notice was sent to the applicant seeking explanation for his unauthorized absence with effect from 30.5.2011 vide Annexure R2(B). On receipt of Annexure R2(B) Annexure R2(C) reply was sent by him on 29.6.2011 stating that he had applied for leave from 26.5.2011 to 7.6.2011. Further he also stated that he was ready to pay the bond amount vide Annexure R2(C). Again as per Annexure R2(D) also the applicant agreed to pay the bond amount and requested to make necessary arrangement for payment of the same. As per Annexure R2(C), approval for resignation was given to him w.e.f. 28.5.2011 i.e. the last date he attended the office, subject to the refund of an amount of Rs. 3,85,606/- . Instead of remitting the bond amount as replied by him he sent a reply dated 19.10.2011 requesting to transfer the bond to the new employer. If the new employer agrees to take the bond from the official the same can be transferred by the official but the arrangements

are to be made before getting relieved from BSNL and joining KSEB. The new employer - KSEB has to approve/accept the transfer of bond. Here the applicant has just deserted the BSNL without completing any of the formalities. It is a case where the applicant was imparted with the pre-appointment training for the post of JTO (Electrical) by spending huge amounts in the best Telecom Training Centre in Asia situated in Gaziabad. The BSNL had incurred expenses with regard to the selection, appointment, training of employees and also stipend and allowances paid to him. The bond is to cover the losses that may be caused to the respondents if the candidate leaves the organization without serving at least for a period of five years. That apart the applicant was brought under insurance coverage and BSNL had paid the premium in the case of the applicant up to 30.9.2011. The applicant had applied for the post prior to his joining BSNL. The interview for the post, shortlisting of the candidates, issuance of advice memo, etc. took place much prior to his joining as JTO. But he suppressed all those facts from the respondents. While submitting the letter of resignation the applicant knew very well that he was bound to pay the bond amount for getting his resignation accepted by the BSNL and for getting himself relieved. It was under such circumstances the applicant had expressed his willingness to pay the bond amount as per Annexure R2(C). Immediately on coming to know of the approval of his resignation subject to the payment of bond amount he turned around and claimed that his bond

is to be transferred. The applicant submitted his resignation letter on 7.5.2011 and joined KSEB on 30.5.2011. The applicant claimed that he had applied for leave up to 7.6.2011 for completing one month notice vide Annexure R2(C). It is clear that the applicant joined KSEB during the notice period itself. Thus he has violated the terms and conditions of his appointment. If the resignation is without giving one months notice the person resigning has to remit one month's salary in lieu of notice in addition to the other liabilities. He is not eligible to get transfer of the bond as he left BSNL without permission.

3. A rejoinder was filed by the applicant refuting the averments made in the reply statement. It is contended that while accepting the resignation respondents 1 & 2 did not mention anything about bond transfer as to whether that is possible or not and remained silent about bond transfer and later asked the applicant to pay the bond amount of Rs. 2,00,000/- with huge interest of Rs. 1,53,468/-. The applicant is not liable to pay the same. It was almost after one year respondents 1 & 2 issued the letter to the applicant dated 28.4.2012 stating the reasons to reject the bond transfer.

4. An additional reply statement has been filed by the respondents denying the contentions raised by the applicant in the rejoinder.

5. The point for consideration is whether the applicant is liable to pay the bond amount and interest as claimed by the respondents ?

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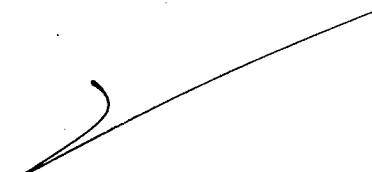
6. Heard the learned counsel for the parties. We have gone through the pleadings and documents produced by the parties.

7. It is not disputed that after the applicant was selected and before he was sent for training he executed Annexure R2(A) bond dated 15.12.2009.

That bond was executed for indemnifying the BSNL against all losses or damages which the BSNL may suffer by a reason of the breach of the terms of Annexure R2(A) agreement. The applicant was bound to serve the BSNL at least for a period of 5 years after the completion of the training. Clause (8) of Annexure R2(A) states that without the previous consent of the BSNL the applicant/employee shall not enter the service of nor be employed in any capacity whether advisory, executive or otherwise by any reason company, undertaking or concern other than BSNL. It is not disputed that the applicant joined as JTO (Electrical) at BSNL Electrical Sub Division, Calicut on 1.9.2010. It is contended by the respondents that the applicant received the Kerala PSC advice memo on 14.3.2011. Admittedly the applicant did not inform that fact to the BSNL. Annexure A2 is the appointment order issued by the KSEB on 10.5.2011. The applicant was directed to report on 30.5.2011 at 9 AM. Annexure A3 is the resignation letter dated 7.5.2011 sent by the applicant to the 2nd respondent through proper channel. The 2nd respondent was informed that the applicant is not in a position to continue in the post of JTO (Electrical) since he has been appointed as Assistant Engineer (Electrical), KSEB. Sohe requested the

latter to relieve him as early as possible. In the same letter it was stated by the applicant that he had executed a service bond worth Rs. 2,00,000/- as per BSNL Recruitment Rules for the five years service period. As per Annexure A3 the applicant requested the 2nd respondent to transfer the bond to the KSEB as per the guidelines of the Department of Central Public Enterprises, Government of India. The guidelines which has been appended to Annexure A3 resignation letter, according to the respondents has no application to the facts of this case, since the guidelines are applicable to a case where the employee had applied to get employment in Governmental/Quasi Governmental organization or Public Undertaking through proper channel during the currency of the bond. Here the applicant had submitted the application for the post of Assistant Engineer, KSEB even prior to his appointment in the BSNL.

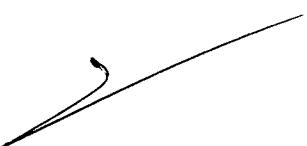
8. The learned counsel for the applicant would submit that though the applicant has submitted his resignation on 7.5.2011, no order was issued nor was the applicant communicated as to whether Annexure A3 was accepted or not. Therefore, according to the applicant he bonafide believed that his resignation letter was accepted and since he was to report to duty at the KSEB office on 30.5.2011, he has to leave the BSNL and he thereafter joined the KSEB. The respondents would point out that admittedly the applicant has to give one months notice or he has to return one month's salary in lieu of the one month period. Admittedly the applicant did not



remit that amount. Therefore, even if Annexure A3 was to be accepted it would be effective or operative only from 7.6.2011. But admittedly the applicant joined the office of the KSEB on 30.5.2011.

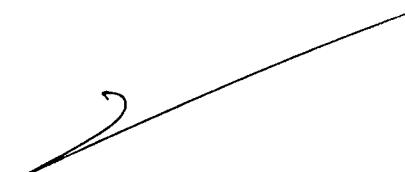
9. According to the respondents, in fact the applicant had deserted the BSNL by sending Annexure A3 letter of resignation without taking care to see whether his resignation letter was accepted or not and whether the BSNL was agreeable to transfer the bond to the new organization (KSEB). There is no case for the applicant that he had submitted application to the KSEB at the time of joining or immediately thereafter stating that Annexure R2(A) bond had been executed by him to the BSNL and that the bond should be got transferred to KSEB.

10. Annexure R2(B) is the letter sent by the BSNL to the applicant wherein the applicant was informed that he was absent from duty at the BSNL w.e.f. 30.5.2011. The applicant was informed that absence without leave and without sufficient grounds would be treated as misconduct and so the applicant should submit his explanation for unauthorized absence from duty. The learned counsel for the respondents would submit only after Annexure R2(B) letter dated 23.6.2011 was sent to the applicant he submitted Annexure R2(C) letter dated 29.6.2011 stating that he had submitted his resignation letter on 7.5.2011 and it was only thereafter he applied for leave from 26.5.2011 to 6.6.2011. It eludes comprehension as to how he could apply for leave up to 6.6.2011 when admittedly he had joined



the office of KSEB on 30.5.2011. The applicant wanted to have dual employment during that period, the respondents contend. Such a request for grant of leave vide Annexure R2(C) was sent by the applicant since he did not complete one month's notice period before he joined the other organization and also to wriggle out of the action for unauthorized absence from 30.5.2011, the respondents further contend.

11. In Annexure R2(C), the applicant, in unequivocal terms, undertook to pay the bond amount. It was stated "I am ready to pay the bond amount. So I kindly request you to do necessary arrangement for payment of bond amount". According to the respondents it was acting upon Annexure R2 (C), Annexure R2(D) letter was sent from the office of the Chief Engineer attached to the BSNL, Trivandrum to the Chief General Manager, BSNL stating that the applicant had sent a reply dated 29.6.2011, referring to Annexure R2(C) stating that he is ready to pay the bond amount for which he requested the Executive Engineer (E), Calicut to make the necessary arrangement. It can be seen from Annexure R2(D) that it was accepting Annexure R2(C) (the undertaking given by the applicant), that the action for unauthorized absence was not taken by the BSNL. Acting upon Annexure R2(C) the office of the Chief General Manager, BSNL was informed that the resignation submitted by the applicant may be accepted with effect from 28.5.2011 the date on which the official last attended duty in BSNL but direction was given to recover the bond amount from the applicant along

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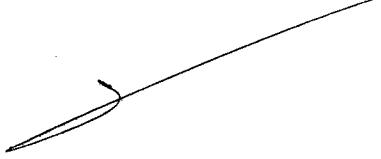
with other dues. Therefore, Annexure R2(D) cannot help the applicant to contend that his resignation was accepted by the BSNL with effect from 28.5.2011. That is only conditional in nature since that order was issued based on Annexure R2(C). **When a public servant executes a solemn document/undertaking and makes or persuades the other office to act upon such an undertaking he cannot resole from that undertaking; it does not behove of or befit a public servant, the respondents submits.**

Not only that, in Annexure R2(D) itself, it was clarified that it was on condition of remittance of the bond amount that the request made by the applicant was allowed. The applicant cannot approbate and reprobate. The plea raised by the applicant that his resignation was accepted by the respondents w.e.f. 28.5.2011 and so he was not bound to be present in the office of the BSNL after 28.5.2011 cannot be accepted for a moment. At the risk of repetition it has to be stated that such an order was issued by the respondents only acting upon the undertaking given by the applicant that he would pay the bond amount and that arrangements have to be made for enabling the applicant to remit the bond amount. When an employee has given such an undertaking he cannot simply resile from the same and contend that he is not bound to pay the amount. Before Annexure R2(D) no order was issued by the BSNL to the applicant to the effect that the resignation letter sent by the applicant was accepted. According to the respondents without previous permission, m the applicant was not expected

to leave the office of the BSNL. Admittedly the applicant did not make any request to the KSEB for getting transfer of the bond. In view of Annexures R2(C) and R2(D) other contentions to the contra raised by the applicant cannot be sustained.

12. It is stated in the rejoinder filed by the applicant that he had agreed to pay the bond amount as per Annexure R2(C) and expressed his readiness to pay the amount if bond transfer is not possible as per law and regulation. Annexure R2(C) is not a conditional one. On the other hand he has expressed his readiness to pay the amount. The respondents were requested to make arrangements so as to enable the applicant to pay that amount. Since the applicant had already undertaken to pay the bond amount, according to the respondents, there was no necessity to repeat the contention that the bond transfer is not feasible or permissible. The applicant had already left the service of the BSNL, even before the expiry of the notice period, and had joined the other organization. It is further contended by the respondents that if it was not possible for the applicant to have the bond transferred before joining the other organization, he could have, immediately after joining the KSEB submit an application to the KSEB requesting the KSEB to get the bond transferred from the BSNL. Indisputably that was not done by the applicant.

13. The applicant would contend in the rejoinder, that none of the authorities under respondents 1 & 2 directed the applicant to furnish details



of past applications for jobs even during training and also after training. The applicant cannot blame the respondents since the applicant alone was aware of the fact that the Kerala PSC has issued an advice memo and in all probability he (the applicant) was entitled to get appointment. Till he received the order of appointment he did not divulge that fact to the BSNL. Thus, according to the respondents the applicant was totally at fault in not informing the BSNL sufficiently early and also because he did not take steps requesting the BSNL to transfer the bond immediately. True, the advice memo issued by the PSC alone does not give guarantee of appointment, but that is no reason for the applicant not to disclose that fact to the BSNL. According to the respondents the bond transfer is possible only by getting consent from the new employer. No request was made by the applicant requesting the BSNL to address the KSEB for transfer of the bond at the appropriate time. The respondents repeated their contention that bond transfer is to be done before getting relieved from the present organization and before joining the new employer. Though the learned counsel for the applicant has argued at length contending that there was no fault on the part of the applicant and that the delay was caused only because of the respondents we are not able to accede to that submission in view of the fact that the applicant left the service of the BSNL without getting sanction/permission from the BSNL to join KSEB nor did the BSNL allowed transfer of the bond. The transfer of the bond is permissible only if

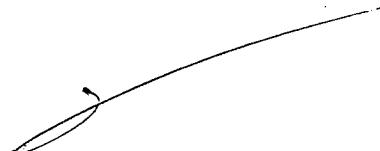
the other organization to which the applicant stood transferred agrees to have the bond transferred to his unit/office.

14. The Contract in this case is not vitiated by mistake, fraud, undue influence or misrepresentation nor is it hit by Section 23 of the Contract Act.

15. It is vehemently argued by the learned counsel for the applicant that every activity of a public authority must be informed by reasons and guided by public interest and they must act in accordance with certain constitutional conscience and so it has to be discerned from the conduct of the BSNL whether they acted accordingly. According to the learned counsel whether the terms of the bond Annexure R2(A) are unconscionable or opposed to public policy is a matter that can be gone into even by this Tribunal, since it is not a matter to be agitated before a civil court. Annexure R2(A) the bond/contract itself delineates the requirement of execution of such a bond, the main object being to get the service of such employees at least for five years as the BSNL has to spend money to select the candidates and also for imparting training by sending the selectees to Gaziabad. It cannot be said that the object is immoral or opposed to public policy so as to contend that it is hit by Section 23 of the Contract Act. For the aforesaid reasons the decision of the Hon'ble Supreme Court in **LIC of India & Anr.**

v. **Consumer Education & Research Centre & Ors. - 1995 (5) SCC 482**

has no application. For the very same reason the contention vehemently

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advanced by the learned counsel for the applicant that the consent or consensus *ad idem* of a weaker party like the applicant is absent, is also found to be untenable.

16. On going through Annexure R2(A) it cannot be found that it has resulted in unfair and unreasonable bargains or that the terms of the contract operate in *terrorem*. Of course, with regard to the rate of interest shown in Annexure R2(A) it can be said that there is some force in the submission made by the learned counsel for the applicant. The object of getting a bond executed in favour of the BSNL is found to be fair, just and equitable, after taking objectively all the relevant options into consideration and in a manner that is reasonable, relevant and germane to effectuate the purpose for public good and in general public interest. It cannot be said that irrelevant or irrational factors had been taken into consideration or that the bond was executed in an arbitrary manner. Also, it cannot be contended that the BSNL had imposed unconstitutional conditions while getting the bond executed in their favour.

17. The learned counsel for the applicant has relied upon the decision of the Larger Bench of the Hon'ble Supreme Court in *L. Chandra Kumar v. Union of India & Ors. - 1997 (3) SCC 261* in support of his submission that Tribunals have power to handle matters involving constitutional issues. It was held that the Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of competence to test the constitutional

validity of statutory provisions and rules. Anyway it is not necessary to further probe into those aspects since it has already been found that Annexure R2(A) is not opposed to public policy nor is it hit by Section 23 of the Contract Act. Since the applicant committed breach of the terms of the bond the contention that he is not liable to pay the bond amount cannot be sustained.

18. The other ground that has been vehemently argued by the learned counsel for the applicant is that as per Annexure A5 the applicant was directed to pay Rs. 3,80,870/- after deducting Rs. 5,000/- which was remitted by the applicant on 9.12.2009. The sum demanded as per Annexure A5 includes Rs. 2,00,000/- the bond amount Rs. 1,53,271 being the interest and Rs. 28,249/- one month's salary and another sum of Rs. 2,825/- being the over payment of salary for three days w.e.f. 29.5.2011 and also Rs. 1,260/- the LIC premium paid etc. It is contended by the applicant that the stipulation to pay 18% interest per annum is unconscionable and as such that part of the stipulation contained in Annexure R2(A) can certainly be interfered by this Tribunal.

19. Considering all the aspects we find that there is merit in the contention advanced by the applicant regarding the rate of interest at 18% per annum. Though it is the interest rate stipulated in Annexure R2(A) still we find that it would be just and proper that the applicant is directed to pay only the reasonable rate of interest. Admittedly the applicant was sent for

training to Ghaziabad and later he was also sent for field training. The applicant was paid the stipend also. Hence, it cannot be said that the respondents are not entitled to claim the bond amount. The respondents have spent money for imparting training and for other matters as stated earlier. The applicant left the service of the BSNL even before the expiry of one month period and as such there was breach of condition with regard to the same also. However, we are inclined to mould the relief so as to meet the ends of justice. It would be just and proper that the applicant is directed to pay Rs. 2,00,000/- with interest thereon at 9% per annum from 28.5.2011 till 3.10.2011 and Rs. 1260 -the GSLIS amount remitted by the BSNL (as shown in Annexure A5).

20. In the result the Original Application is disposed of modifying the order regarding the liability created under Annexure R2(A) by directing the applicant to pay Rs. 2,00,000/- with interest thereon at 9% per annum from 28.5.2011 till 3.10.2011 and also Rs. 1260/- - the GSLIS amount remtited by the BSNL as shown in Annexure A5 instead of the total amount shown in Annexure A5. No order as to costs.


(Mrs. P. GOPINATH)
ADMINISTRATIVE MEMBER


(N.K. BALAKRISHNAN)
JUDICIAL MEMBER