

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

ORIGINAL APPLICATION NO. 321 of 2013

CORAM Friday this the 29th day of January, 2016

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

Abdurahiman Pulikkathumbayil,
P.T.House, Kolappuram North
P.O.A.R.Nagar, Malappuram-676305
presently working as Assistant Engineer,
Irrigation Section No.III,
Department of Irrigation, Ponnani,
Malappuram.

.....**Applicant**

(By Advocate Mr. S.M. Prasanth)

Versus

1. Bharath Sanchar Nigam Limited represented by its Chief Managing Director, Bharat Sanchar Bhavan, Janapath, New Delhi-110 001.
2. Chief General Manager, Office of the Chief General Manager, Bharat Sanchar Nigam Limited, Kerala Telecommunications, Thiruvananthapuram.33.
3. The State of Kerala, represented by the Chief Engineer The office of the Chief Engineer, Irrigation and Administration Government of Kerala, Thiruvananthapuram.1.
4. Union of India represented by the Secretary to the Department of Telecommunications, New Delhi.1.

...**Respondents**

(By Advocate Advocate Mr. T.C.Krishna, Sr.PCGSC for R 1&2
Advocate Mr. S.Jamal for R.4
Government Pleader Mr. M.Rajeev for R3)

This application having been finally heard on 8.01.2016, the Tribunal on 29.01.2016 delivered the following:

O R D E R

Per: Justice N.K.Balakrishnan, Judicial Member

Annexure A13 is under challenge. The applicant was directed to remit the bond amount and to get his resignation accepted within 15 days of

receipt of Annexure A13.

2. After successful completion of training the applicant was appointed to the post of Junior Telecom Officer (JTO) under the Office of the 2nd respondent as per Annexure A2. Annexure A1 bond was excuted by him. The applicant had earlier applied for the post of Assistant Engineer in the Irrigation Department under the Government of Kerala and he had participated in the selection process. Annexure A3 advice memo dated 29.10.2010 was issued by the Kerala Public Service Commission (KPSC). Pursuant thereto Annexure A4, the appointment order dated 18.11.2010 appointment order was issued. The applicant submitted his resignation from the post of Junior Telecom Officer (JTO) on 19.11.2010. He made a request for transfer of the bond as per Annexure A5. Applicant submits that Annexure A6 order of the Department of Public Enterprises, Government of India states that an employee who leaves the service of the Central Government/Public Enterprise, with proper permission to take up a new job of Central Government/State Government, the stipend and training expenses need not be recovered from such an employee, if he executes a fresh bond with the new employer undertaking the service for the balance period. Annexure A7 representation was given by him to the respondents. The applicant was granted 45 days time to join the Irrigation Department. Another letter was sent to the 2nd respondent seeking permission to leave the organisation. The applicant joined the Irrigation Department on 27.12.2010 and thereafter he has been working in that department. To Annexure A11 communication issued to the applicant, he submitted explanation vide Annexure A12. Thereafter Annexure A13 notice was issued to remit the bond amount. Again a representation (Annexure A14) was given. He received a communication Annexure A15 to which Annexure A16 reply was given. Again

Annexure A17 notice was served on the applicant. The applicant had waited for a period of one month which is the notice period for resignation before he joined the service of the Government. The delay occurred on the part of Respondents 1&2 in accepting the resignation cannot be a reason for issuing Annexure A13. Annexure A13 notice and all steps taken pursuant thereto are to be declared illegal, arbitrary and violative of the fundamental rights. Hence he has approached this Tribunal.

3. The respondents 1&2 filed reply statement contending as follows

The applicant was appointed as JTO (Civil) in BSNL on 11.10.2010 after completing Phase I training at the Advanced Level Telecom Training Centre, Ghaziabad and the subsequent field training. He had executed a bond undertaking to serve the BSNL for a minimum period of 5 years and in default to pay the bond amount with interest. He submitted a letter dated 19.11.2010 intimating that he had been advised by the KPSC for appointment as Assistant Engineer (Civil) in the Irrigation Department and he requested to relieve him at the earliest. He also requested to transfer the bond he had executed with BSNL to the new department, but he remained absent from duty from 7.12.2010 without proper intimation or permission. He further requested to relieve himself from his duties of JTO(Civil) on or before 19.12.2010 and submitted an undertaking to refund the expenses incurred by BSNL on account of training etc. The process of bond transfer is to be done before getting relieved from BSNL and joining the new organisation. If there is no time for this purpose he has to pay the bond money and after joining the new organisation, bond transfer can be processed and the money remitted can be refunded, provided he has applied for the new job through proper channel or he has intimated of his decision to join

the new job at the earliest opportunity and leaves the present job with proper permission. It can be done only if the new employer accepts the bond transfer. In this case, the applicant has just deserted BSNL without fulfilling any of the above requirements. The claim of the applicant that he had promptly intimated the respondents about his selection under Kerala Government and he joined in the Irrigation Department after complying with the formalities is not correct. He did not give any intimation regarding his application for the post of AE in the Irrigation Department, his interview, his inclusion in the rank list or receipt of the advice memo from the KPSC. He might have applied for the job of AE in the Irrigation Department before joining the BSNL as JTO. The respondents should have been informed of the application submitted for the job, the interview he had participated, the factum of selection and also decision to join the new job, at the earliest opportunity.

The applicant had applied for the post in the Irrigation Department in November, 2007. He had attended the written examination on 8.11.2008, he later attended the interview on 21.1.2010 and 22.1.2010 and he found a conformable position in the rank list immediately afterwards. He did not inform the probability of getting appointment till 19.11.2010. There was suppression of information. He remained absent from duty w.e.f. 7.12.2010 and left the BSNL without permission. Hence he is liable to pay the bond amount. The plea raised by the applicant that while the selection process in BSNL was in progress, KPSC invited application for the post of AE in the Irrigation Department is misleading. Department of Public Enterprises OM dated 29.7.2004 Annexure [R.2(A)] applies to cases in which the employee apply for the new job through proper channel or where they leave the organization with permission. The applicant joined the Irrigation Department ~~without~~ getting discharged from the

bond obligation, without getting the resignation accepted and without getting relieved from the BSNL. The applicant was given sufficient time for remitting the bond amount but he failed to do so. The averment that the applicant can leave the organization on expiry of the notice period without permission is misconceived. Mere submission of resignation letter will not entitle him to leave the organization. Hence respondents contend that the application is liable to be dismissed.

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

5. We have heard the learned counsel appearing for both sides and have gone through the pleadings and documents.

6. Here is the chronology of events. On 12.11.2007 the applicant applied for the post of AE in the Irrigation Department through KPSC. The written test for that post was held on 8.11.2008. It was thereafter he applied for the post of JTO in the BSNL. The written test in the BSNL was on 21.6.2009. From these facts it is clear that the applicant had submitted his application for the post of AE (to the KPSC) even prior to his application for the post of JTO in BSNL. The written test in the BSNL was on 21.6.2009 whereas he had already written the PSC test for AE in the Irrigation Department on 8.1.2008. On 7.12.2009 there was verification of records by the BSNL. Since the applicant was qualified to be appointed, he was directed to execute the bond. Accordingly Annexure A1 bond was executed by him on 12.12.2009. It is pointed out by the learned counsel for the respondents that the applicant appeared before the KPSC for verification of documents/certificates on 4.1.2010. Admittedly he had undergone the training at Ghaziabad for the period from 5.7.2010 to 8.10.2010.

Thereafter the applicant had undergone field training from 13.9.2010 to 8.10.2010.

7. The learned counsel for the applicant has very much relied upon Annexure A5 letter 19.11.2010. This letter addressed to Chief General Manager, Kerala Telecom through proper channel is relied upon by the applicant to contend that immediately upon receipt of appointment order, appointing him as AE (Civil) in the Irrigation Department, he submitted his resignation and requested for relieving him as early as possible treating Annexure A5 letter, as his resignation letter. It is also mentioned therein that he had executed a service bond worth Rs. 2 lakhs plus interest as per the BSNL Recruitment Rules for the 5 years service period. His request was to transfer the bond to Government of Kerala as per the guidelines of Deptt. Of Public Enterprises, Government of India. Copy of the relevant portion of the said guidelines was produced along with Annexure A5. The relevant Clause 29(a) reads:

"The bond executed by employees of the Public Enterprises, who have received scientific/technical training at the cost of Public Enterprises and have applied through proper channel during the currency of the bond, join Central Govt/State Govt. services or take up employment under quasi government organisation or any other public enterprise either on the basis of competition examination/tests/ interviews organised by those organisations or the Union Public Service Commission should not be enforced subject to the condition that a fresh bond is taken to ensure that the employees serves the new employer for the balance of the original bond period."

In that letter the applicant has stated that pursuant to the notification dated 12.11.2007 he had applied for the post. A written examination was conducted on 8.11.2008 and had undergone the interview on 21.01.2010/22.1.2010. He was not an employee of BSNL at that point of time. But it is submitted by the

learned counsel for the respondents that the guidelines, produced along with Annexure A5, shows that it would be applicable only to persons applied through proper channel during the currency of the bond. Of course, there is no dispute regarding the fact that if proper application had been submitted in time and he and if he had allowed to be relieved from the BSNL, then pursuant to the request made by the employee/officer the bond could have been transferred to the new organisation where the employee/officer has taken up employment subsequently. There is no case for the applicant that he had executed a fresh bond in Irrigation Department. No letter was sent by the applicant to that department so as to get transfer of Annexure A1 bond executed by him.

8. It is vehemently argued by the learned counsel for applicant that no reply was given to Annexure A5 letter dated 19.11.2010 and so he bonafide believed that Annexure A5 letter was accepted and acted upon by the respondents. The respondents contend that it is fallacious to contend that simply by deserting and leaving the organization a letter of this sort the applicant can escape from the liability from the bond. It is relevant to note that the applicant remained absent from duty w.e.f. 7.10.2010 without proper intimation and permission. There is no case for the applicant that he was granted permission or that he was relieved from the BSNL. According to the respondents except that he had deserted BSNL and left that letter (Annexure A5) in the office of BSNL he did not care to get any order on that letter. It was the bounden duty of the applicant to get an order of relief from BSNL. It was also his duty to get an order regrading transfer of the bond to the new organisation. As stated earlier, except Annexure A5 letter, which was left at the office of BSNL no other action was taken by the applicant to ascertain whether his letter was accepted and whether any other order pursuant thereto was issued by the BSNL. Even

according to the applicant no such order was issued. It was incumbent on the applicant to inquire and find whether the application was accepted. He has no explanation as to why he remained absent from duty without proper intimation and permission.

9. According to the respondents, the applicant was required to be on duty for a period of thirty days from the date of submission of his letter (Annexure A5). Therefore, he was expected to serve BSNL till 19.10.2010 since the period of 30 days will be over on that date. If the resignation is without giving one month's notice, then the employee has to remit one month's salary to the organization in addition to other liabilities. This contention is not controverted by the applicant. If so how could the applicant leave the BSNL without getting permission and be absent from duty from 7.12.2010? When the applicant was not relieved from the office of BSNL will it not amount to unauthorized absence which can invite action against the applicant is another question posed by the learned counsel for the respondents. The guidelines annexed to Annexure A5 applies only to cases where an employee applies for new job through proper channel with proper permission. The applicant could not produce any rule or standing order to show that there is a deeming provision or clause which would entitle the officer to hold that if no order of rejection is passed on such letter, it must be deemed to have been allowed/sanctioned. When there is no such rule or provision or standing order, the employee/officer cannot rest content saying that he had submitted a letter and so he is entitled to presume that his letter was accepted as a resignation and that all action which he wanted to be taken by the respondents had been taken .

10. The respondents would further contend that the organisation with

whom the employee executed the original bond has to, at the time of forwarding his application, write to the organisation under whom the employee intends to take up employment, of the bond obligation of the individual and clarifying that in case of his selection to the new post, his relief would be on executing a fresh bond binding him to serve them for the balance original bond period. Though the applicant joined the Irrigation Department on 27.12.2010 no request was made by the applicant to the Irrigation Department regrading the enforceability of the bond he had executed in favour of the BSNL or the necessity of getting that bond transferred to Irrigation Department. It is also pointed out by the respondents that if only the applicant submits application for that purpose, the Irrigation Department would request transfer of the original bond; that too, if only the Irrigation Department was willing to accept the bond, the applicant had executed in favour of the BSNL. Even if it is assumed for the worst position that these are only technical, as contended by the applicant, still the fact remains that after leaving or simply deserting the organization by an application on 19.11.2010 the applicant did not pursue the matter nor did he ensure that his resignation was accepted or that his request for transfer of the bond was acceded to. What more, the applicant left the service of BSNL without serving BSNL for a period of 30 days notice period from 19.11.2010 and without obtaining permission, he absented himself from duty from 7.12.2010. That is, even before expiry of one moth period required for that purpose. The contention raised by the applicant that he bonafide believed that his request to relieve him from BSNL might have been allowed is rather unsound and unfounded. Annexure A7 is the letter dated 7.12.2010 addressed to the 2nd respondent as per which it was stated by him that he had submitted his resignation to the 2nd respondent through proper channel and it is under process. There is no case for

the applicant that his resignation letter was accepted by the 2nd respondent. Therefore, the contention that he was under the bonafide belief that his application had been accepted and the required sanction was given is found to be factually incorrect. As per Annexure A7 letter dated 7.12.2010 the applicant informed the 2nd respondent that since he came to know that it will take some time to settle all the formalities and since his joining date was to expire by 10.12.2010 he may be permitted to take up the new job considering the undertaking enclosed. The undertaking given by him reads:

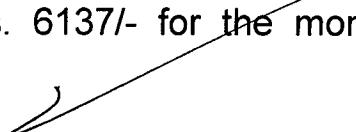
"I, Abdurahiman, Pulikkathumbayil S/o Alihassan PT.PT House, Kolappuram North Po, A.R.Nagar, Malappuram District, Kerala -676305, Junior Telecom Officer (Civil) BSNL, Civil Sub Division, II, Thrissur undertake that I have been permitted to take the new job in Irrigation Department of Government of Kerala upon my request I will refund all the expenses to BSNL on account of training upon demand, or otherwise I will execute a fresh bond with the Irrigation Department".

He was not permitted to join the new job in Irrigation Department. Even if it is accepted that the BSNL may not raise objection taking up new job, the next part of the undertaking remained. It is very much pressed into service by the learned counsel for the respondents. It says that the applicant had undertaken for refund of all the expenses to BSNL on account of training upon demand. That is not based on Annexure A1 bond executed by the applicant. Having made such an undertaking that he will refund all the expenses to BSNL on account of the training etc and since the liability on account of the bond (Annexure A1) executed by him in favour of the BSNL remains, it is too late in the day for the applicant to contend that he is not liable to pay the amount covered by the Bond. The operation of last part of that sentence, that "otherwise he will execute a fresh bond with the Irrigation Department" would come into play, only if the respondents had agreed to that course. Having

undertaken to refund the amount the applicant cannot retract from the same.

11. It is vehemently argued by the learned counsel for the respondents that again a letter dated 14.12.2010 was sent by the applicant to the 2nd respondent where also he has reiterated his undertaking that he will refund the training expenses and stipend. True, the words used are not with regard to Annexure A1 bond. But the liability to pay the same arose, based on Annexure A1 bond and not based on any other contract or rule. In Annexure A8 it was stated that the stipulation of 30 days "notice period" as per the declaration signed by him before joining the BSNL will be completed on 19.12.2010 and that he may be allowed to relieve on or before 19.12.2010. That also shows that as per bond, he has executed that he is liable to serve the BSNL for the notice period after submission of Annexure A1 bond. It is not disputed that he did not serve the BSNL after 7.12.2010. The requirement of giving notice in writing, 30 days in advance of the intention of the applicant to resign is made explicit as per the declaration which accompanies Annexure A8 letter referred to above.

12. Annexure A9 is the letter whereunder he reported for duty to join as AE (Civil) in the Irrigation Department. There is nothing in Annexure A9 that any request was made to the Irrigation Department for getting transfer of the bond from the BSNL or that he had agreed to comply with the terms of the bond for the remaining period. Annexure A10 has been relied upon by the applicant to contend that he had sent a letter as per which the undertaking made by him was to refund the sum mentioned therein, which includes Rs. 15989/- being the amount spent for training during the month of July, 2010, Rs. 18410/- for the month of August, 2010 and Rs. 6137/- for the month of September, 2010



According to the applicant he is liable to pay only the amount aforesaid and if at all the expenses incurred by the department for his training. It is not for this Tribunal to have an adjudication on those issues. There is no plea that Annexure A1 bond executed by him is vitiated by fraud, misrepresentation or undue influence nor is there any case that Annexure A1 is hit by Section 23 of the Contract Act and is illegal and unenforceable. So much so the applicant cannot contend that Annexure A1 bond cannot be enforced.

13. Annexure A12 is another letter dated 24.8.2011 sent by the applicant to the Sub Divisional Engineer, BSNL, Thrissur where it is stated that he had not received any amount from BSNL since 1.12.2010 and that he attended duty for some days in December, 2010. The said statement is not definite or certain. The applicant says that the respondents can consider that he had left BSNL from 20.12.2010 and that any day which the applicant had not attended, without application, can be considered as Leave Without Allowance till 19.12.2010. Since the applicant had already left BSNL and since he was absent from 7.12.2010 the contention that he should have been granted leave without allowance is also bereft of any merit. According to respondents since the resignation letter (Annexure A5) which was deserted and left at the office of BSNL was not accepted it is actually a case where the name of the applicant appears on the roll of employment of BSNL as well as in the Irrigation Department; and actually applicant is having dual employment. It is not necessary to elaborate further as it is clear that the applicant left the BSNL without ensuring permission to get himself relieved from BSNL. The further fact that he absented himself from BSNL would demolish the case of the applicant that he had given 30 days notice for resignation. If 30 days time for accepting resignation is given it would become operative only from thirty days from

19.11.2010. That also would run counter to the arguments put forward by the applicant.

14. In view of what is stated above, the plea raised by the applicant challenging the enforceability of Annexure A1 and questioning the legality and correctness of Annexure A13 must fall to the ground. The applicant is liable to pay a sum of Rs. 2 Lakhs, the liability fastened on him as per Annexure A1 bond.

15. It is vehemently argued by the learned counsel for the applicant that the interest at the rate of 18% claimed by the respondents is unconscionable in nature. It is also stated that the amount the applicant has been directed to pay is incorrect. We have already found in OA No.1130/2012 that though Annexure A1 stipulates interest at 18% per annum, we find it just and proper that the applicant is directed to pay interest only at 9% per annum.

16. In the result, this O.A is disposed of modifying the impugned order and directing the applicant to pay Rs. 2 lakhs with interest thereon at 9% per annum from 7.12.2010 till 2.7.2012. No order as to costs.



(Mrs. P. Gopinath)

Administrative Member



(N.K. Balakrishnan)

Judicial Member