

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 344 OF 2011

Monday, this the 3rd day of December, 2012

CORAM:

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER
HON'BLE Mr. K NOORJEHAN, ADMINISTRATIVE MEMBER

Aneesh T.K.
Junior Telecom Officer
Office of th Divisional Engineer (Intelligent Network)
Mobile Services, Telephone Exchange
North Parur – 683 513
Residing at Thurakkalpallath Hosue
VIP Colony, Mannam PO, North Parur
Ernakulam – District – 683520

... Applicant

(By Advocate Mr.M.R.Hariraj)

versus

1. Bharat Sanchar Nigam Limited
represented by its Chairman and Managing Director
BSNL Bhawan, New Delhi – 110 001
2. The Chief General Manager
Telecom, BSNL
Punjab Telecom Circle
Chandigarh – 160 022
3. The General Manager
Telecom, BSNL
Hoshiarpur SSA, Railway Mandi
Punjab – 146 001
4. The Chief General Manager
Telecom, BSNL
Kerala Telecom Circle
Thiruvananthapuram – 695 033
5. The General Manager
Mobile Services, BSNL
Thiruvananthapuram – 695 033
6. Union of India represented by Secretary
to Government
Ministry of Communication
New Delhi – 110 001

... Respondents

(By Advocate Mr.George Kuruvilla)

The application having been heard on 03.12.2012, the Tribunal
on the same day delivered the following:



ORDER

HON'BLE Mr.JUSTICE P.R.RAMAN, JUDICIAL MEMBER

The applicant, a Junior Telecom Officer was earlier appointed in the Punjab Circle of BSNL. He executed a bond, Annexure A-3 produced in this case as per which he agreed to serve BSNL for five years on completion of his training. After successful completion of training he joined Punjab Circle. This was in July, 2006. Subsequently, in November, 2008 he appeared for the examination for direct recruitment as JTO in BSNL and he was allocated to Kerala Circle. He submitted his resignation to the Punjab Circle and he joined the Kerala Circle. He executed a bond while joining Kerala Circle. Since he left the service of the Punjab Circle, the authorities took the view that he has violated the conditions of the bond and sought to recover the amount under the bond from the applicant. The applicant has approached this Tribunal seeking to stay Annexures A-1, A-15 and A-17 and for a direction not to enforce Annexure A-3 bond against him. Since the facts are not in dispute, the only question that arises for consideration is whether the applicant has violated the conditions of the bond and any amount could be recovered as per bond executed by him while taking up employment in Punjab Circle. The clauses which are relied upon by the respondents are Clause 3, 6 & 8 which are extracted hereunder:-

" 3. THAT the trainee has agreed within the company that after completion of the training, he shall serve BSNL in such department or departments at such place or places in India in such capacity in connection with BSNL's business as BSNL may require from time to time, for at least 5 years after completion of aforesaid training, on terms and conditions contained herein after and in accordance with the rules and regulations of BSNL as applicable from time to time to such trainees.

" 6. THAT the trainee and surety have agreed that in the circumstances if the trainee commits breach of any conditions of this agreement or, in case the training of the said trainee is discontinued under provisions to clause (1) above and the CGMT is satisfied that the failure of the trainee to reach the

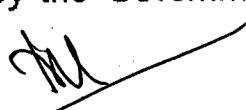
MM

necessary standards is due to his/her work (the decision of the CGMT in this behalf being final) or in case of continued adverse reports regarding his/her conduct or his/her political activities directed against the Government of his/her country/BSNL, or if the trainee voluntary quits for reasons not beyond his/her control any time during the course of training, or on completion thereof does not serve the BSNL for period upto five years or during such period of service does not carry out his/her duties with diligence, BSNL shall have full powers to forfeit the amount of security deposit without any notice to the trainee and surety. Trainee and surety have further agreed that they are jointly or severally shall pay and refund forthwith to the BSNL on demand an amount of ₹ 85,000/- (Rupees eight five thousand only) along with all amount paid to him / her as stipend during the period of his/her training together with training expenses incurred on him/her by the Company which in this case shall be ₹ 6895/- + Dearness Allowance per month and ₹ 1800/- (Rupees One thousand eight hundred only) per month respectively along with the interest @ 18% p.a along with losses/damages which BSNL may suffer by reason of the breach of the conditions of agreement and upon the trainee and / or the surety making such payment, the above written bond shall be void and of no effect, otherwise it will remain in full force and virtue.

8. THAT during the continuance of this agreement the trainee shall not, without the previous consent of BSNL, enter the services of, nor be employed in any capacity, whether advisory, executive or otherwise or for any part of his time by any person, company undertaking or concern other than BSNL. Similarly, the trainee shall also not undertake/commence any business or trade etc. of any kind without prior permission of BSNL.

2. The stand taken by the respondents is that each circle should be treated as separate establishment and once he joins a Circle, say Punjab Circle, he should complete the term of five years as per the directions of the bond. This was refuted by the counsel for applicant. We have heard the counsel on both sides.

3. Even though the counsel for respondents would contend that apart from the conditions of the bond, the applicant should also abide by the rules and regulations of the bond and any violation of the conditions of the rule are also deemed to be part and parcel of the bond vide Clause 3 of the bond. He also places reliance of an O.M issued by the Government of



India, Ministry of Heavy Industries & Public Enterprises to say that even in case he has left service of a Circle, action can be taken. This O.M is not produced along with the reply statement. A copy of the O.M was made available during the course of argument. We have perused the same. The said O.M is only a decision taken by the Department to take action in case of violation of the conditions in the bond. That has nothing to do to Annexure A-3 by a Court of law. No rules or regulations have been brought to our notice in aid of the incorporation of Clause 8 of the bond. In other words, the only contention now raised is that he has violated the conditions of the bond and not any other than O.M referred to above. This is only a departmental communication and it does not have any force of law. It cannot be treated as any rule or regulations binding the candidate especially in the wake of the specific conditions of the bond..

4. As per Clause 6 of the bond as extracted above, it is agreed that if there is any violation of the conditions of agreement of the bond, training is discontinued, report regarding his conduct etc. in such circumstances the amount is recoverable from the employee. But Clause 8 clearly says that during the pendency of the agreement the trainee shall not without the previous consent of BSNL enter the service of nor be employed in any capacity, whether advisory, executive or otherwise or for any part of his time by any person, company undertaking or concern other than BSNL. In other words, Clause 8 is attracted only when the employee enters service in any other establishment other than BSNL without the previous consent of the department. Admittedly, the applicant has taken employment in the Kerala Circle of BSNL. BSNL being a company under the Company's Act, merely because there is change in the circle clause 6 & 8 is not applicable.

TMQ

: 5 :

Literally speaking, only when the employee discontinues the service with the BSNL and takes up employment in a different company or establishment there arises violation of the conditions of Clause 6 and 8 and the amount can be recovered. So long as that is not done, we are of the firm opinion that there is no violation of Annexure A-3 bond and recovery made is illegal and contrary to the bond. Accordingly, we set aside Annexures A-1, A-15 and A-17 and direct the respondents not to recover any amount as per Annexure A-3 conditions of the bond, merely for the reason that he has not obtained any previous permission from the Punjab Circle.

5. The learned counsel for applicant points out that the service rendered by him at Punjab Circle is to be treated as part and parcel of the service for the purpose of pension and for the purpose of fixation of pay. We do not think that any such relief can be granted in this OA. Even though the service rendered by the employee at Punjab Circle is to be treated for pensionary benefits, since no previous permission is sought and in the absence of any enabling provision the service rendered in the Punjab Circle cannot be reckoned for the purpose of pensionary benefits as there is a break after he ceased to be in the Punjab Circle. We decline this relief.

6 OA is disposed of as above. No costs.

Dated, the 3rd December, 2012.


K NOORJEHAN
ADMINISTRATIVE MEMBER


JUSTICE P.R.RAMAN
JUDICIAL MEMBER