

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 410 OF 2011

Monday, this the 16th day of July, 2012

CORAM:

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

Salimbabu P.K.,
S/o.Pookunju,
Sub Divisional Engineer, (Pursuit Cell),
Office of the General Manager,
Bharat Sanchar Nigam Limited (BSNL), Alappuzha.
Residing at Kanjirathil, Cheravalli,
Kayamkulam P.O. - 690 502.

Applicant

(By Advocate Mr.T.C Govindaswamy)

Versus

1. The Chief General Manager (Telecom)
Bharat Sanchar Nigam Limited,
Thiruvananthapuram – 695 013.
2. The General Manager (Telecom)
Bharat Sanchar Nigam Limited,
Alappuzha – 688 011.
3. The Area Manager,
Office of the General Manager,
Telecom Division, Bharat Sanchar Nigam Limited,
Bhavan, Alappuzha – 688 001.
4. Shri.Mathew Jacob,
Deputy General Manager (P&A),
Office of the General Manager,
Telecom Division, Bharat Sanchar Nigam Limited,
Alappuzha – 688 011.

Respondents

(By Advocate – Mr.T.C Krishna)

The application having been heard on 16.07.12., the Tribunal on the same day delivered the following:

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ORDER

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

The applicant is presently working as a Sub Divisional Engineer in the Telecom Engineering Service -Group B of the Bharat Sanchar Nigam Limited (BSNL) in the Alappuzha Telecom Division. He is aggrieved by the adverse remarks and grading recorded by the Reviewing Officer in the annual performance appraisal report for the period ending 31.03.2010 communicated by the 4th respondent under No.DGM(P&A)/CR/2010-11/11 dated 17.12.2010, a true copy of which is produced as Annexure A-1. Appeal against Annexure A1 was also rejected by the appellate authority by Annexure A-2. Further appeal addressed to the first respondent, the Chief General Manager, was also rejected by Annexure A-3 order.

2. According to the applicant, he was working as Sub Divisional Engineer at Alappuzha when he was transferred to the post of Sub Divisional Engineer, Kayamkulam, by an order dated 04.06.2009. The applicant's posting was in place of one Ms.Gracy Eapen, who was in turn posted in the applicant's place at Alappuzha. Ms.Gracy Eapen joined the applicant's place at Alappuzha and relieved the applicant to join her place at Kayamkulam. When the applicant reported for duty at Kayamkulam on 15.06.2009, one Shri Pradeep who was holding the additional charge of the post of SDE/CML gave the applicant a copy of "making over particulars of" Ms.Gracy Eapen as if she was directly handing over charge to the applicant. Handing over details and the materials/registers to be handed over etc. were totally incomplete and in that process there was some correspondence between the applicant and the 4th respondent who was at the



material time working as the Area Manager. The 4th respondent at whose instance Pradeep had taken duty-cum-charge of the post held by Ms. Gracy Eapen was compelling the applicant to take over charge of the post, in complete violation of the Rules and Regulations on the subject and even under threat of severe departmental action against the applicant. In that process and under the orders of the 4th respondent period from 15.06.2009 to 27.06.2009 was treated as dies non when the applicant was actually on duty and the salary drawn by the applicant was subsequently recovered. He filed O.A 99/2010 which was allowed by order dated 15.11.2010. Annexure A-4 is the copy of the Tribunal's Order.

Para 7 & 8 of that order is extracted as hereunder:-

“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 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. ”



3. According to the applicant, the 4th respondent was trying to victimize him for one reason or other and there were series of further litigations also before this Hon'ble Tribunal. Annexure A-5 is a communication received from the 4th respondent as per which the applicant was asked to come over to the office of the "C.R.Reviewing Authority and to go through the C.R sheet and to sign it in token of having seen the same." It was alleged that despite instructions in that regard the applicant had not turned up in the office of the Reviewing authority and signed the annual performance appraisal report for the year 2009-2010 in token of having seen the same. According to the applicant his request for copy of the Annual Performance Appraisal Report was rejected though according to the instructions in that regard copy of the annual performance appraisal report has to be made available to the employee concerned. The applicant submitted Annexure A-6 representation dated 08.11.2010. It was in response to Annexure A-6 that Annexure A-1 was communicated to the applicant. It is contended that Annexure A-1 would show that the reporting officer has given the applicant an over all numerical grading of 4.1. A reading of the remarks of the reporting officer as also the Reviewing Officer would show that they are totally non-speaking and the only reference is with regard to the incident covered under Annexure A-4 order of this Hon'ble Tribunal. It is also stated that the Reviewing Officer has not initialed any of the entires alleged to have been made by him in Part III of the Annual Performance Appraisal Report. Grading given by him is also substantially lower than what has been given by the Reporting Officer. The applicant has submitted Annexure A-7 representation to the second respondent against the adverse reports in Annexure A-1 . Annexure A-7 was responded to by Annexure A-2 and as against Annexure A-2 the applicant submitted a second

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appeal Annexure A-8 dated 07.02.2011 addressed to the first respondent. This was rejected by Annexure A-3. According to the applicant, the adverse entries in Annexure A-1, Annexure A-2 and Annexure A-3 are totally arbitrary, discriminatory and unconstitutional. At any rate, it has been added that the decision in Annexure A-4 in O.A 99 of 2010 was challenged by the official respondents before the Hon'ble High Court of Kerala by filing O.P(CAT) No.328 of 2011 and the same was finally withdrawn. A grading given below the usual bench mark grading "good" by the Reviewing Officer is subjected to substantial prejudice and irreparable injury. It is inter-alia contended that the reason given by the Reviewing Officer are unsupported by any material so as to make an effective appeal to the same. At any case all the entries made by the Reviewing Officer are totally non-speaking and incapable of making an effective appeal. The conduct of the reviewing officer is self evident from Annexure A-4 order of the Tribunal as also from Annexure A-5. Notwithstanding the earlier orders in that regard the 4th respondent reviewing authority was not even prepared to supply a copy of Annual Performance Appraisal Report so as to enable the applicant to submit a detailed appeal. It is prayed that to call for the records leading to the issue of Annexure A-1 and set aside the same and also to set aside Annexure A-2 and A-3 orders and to grant all consequential benefits as though there were no adverse entry for the period ending 31.03.2010.

4. In the reply statement filed by the respondents the fact that the applicant was transferred to Kayamkulam as per order dated 04.06.2009 is admitted. But according to the first respondent, he reported for duty only on 15.06.2009. Thereafter he purposefully refused to take over charge and

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proceeded on medical leave and it was for this reason that Dies-non was imposed on him for the period from 15.06.09 to 27.06.09 as he took over charge only on 27.06.2009. The applicant at Kayamkulam could not render satisfactory service and also spoiled the staff relations. Hence he was again transferred from Kayamkulam to the Pullukulangara Telephone Exchange. At this station also the applicant was totally inefficient in performing his assigned duties and lot of complaints were raised by his own colleagues. It is submitted that major disciplinary action was proceeded against him and he was kept under suspension. That order was challenged by the applicant before the Tribunal in O.A No.692/2010, which was closed by the Tribunal leaving open a chance to the applicant to represent his grievance before the Authority. Thereafter on issuing the final charge sheet the order of suspension was revoked by the Competent Authority and the applicant was transferred to Alappuzha in the interest of service. Now he is working at Alappuzha. According to the respondents he was transferred to Kayamkulam on his request. When reported for duty on 15.06.2009, Making over Particulars of the Smt Gracy Eapen, who was earlier holding the post to which the applicant was transferred, was given by Sri Pradeep, who was then holding additional charge of the said post. According to the applicant the details were incomplete and not contemplated by any process known to law. Therefore the applicant submitted letter to the Controlling Officer, enquiring whether he should take over charge. The Controlling Officer directed him to take over charge immediately, the applicant again gave another request on 16.06.2009 asking for several other documents for further verification. The Controlling Officer rearranged the sections and asked the applicant to take over charge of Remote Switching Unit.WLL/Power Plant. The applicant again

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represented to confirm whether he would be held responsible if some records are missing or seen corrected at a later stage. He was again instructed to take over charge within two days. The applicant did not do so. Now BSNL has filed a petition before this Tribunal seeking review of the order. They have produced Annexure R-1 Appraisal Report and it is contended that the Reviewing Authority instructed the applicant to come to the office to acknowledge the assessment recorded for the period 2010-2011, but he disobeyed the instruction and hence forwarded a photostat copy of the report to the applicant for his information. A copy of the letter of the applicant dated 26.11.1009 to the Controlling Officer is marked as Annexure R-2. As per which, according to the respondents, the applicant has willfully disobeyed the instructions issued by the Area Manager. Annexure R-3 is a letter submitted by the applicant allegedly questioning the authority of Area Manager. According to the respondents, the applicant is chronic litigant and has filed so many court case against BSNL before various courts as hereunder:-

<i>Sl. No.</i>	<i>Case Number</i>	<i>Subject</i>	<i>Remarks</i>
1	O.A No.1153/2000	Repatriation	Dispose of Representation
2	O.A No.19/2001	Transfer order	Dismissed
3	O.A No.374/2001	Transfer order	Rejected
4	WP(C) No.1768/07	"	Dismissed
5	WP(C) No.2139/07	Adverse entry in CR	"
6	WP(C) No.33595/07	"	"
7	WP(C) No.6850/08	"	"
8	W.A 1183/08	"	"
9	O.A No.544/09	Non drawal of salary	Salary paid
10	O.A No.99/2010	Dies-non from 15.06.09 to 27.06.09	Allowed Review proposed



Sl No.	Case Number	Subject	Remarks
11	O.A No.117/2010	Denial of RH on 18.09.09 & dies non	Dies non set aside – salary paid
12	O.A No.616/2010	Withholding of increment	Dispose of representation
13	O.A No.692/2010	Suspension order	Closed giving chance to represent
14	O.A No.1016/2010	Denial of documents in disciplinary proceedings	Dismissed
15	CP(C) No.88/2010	Contempt in O.A 117/10	Closed
16	O.S No.326/2010	Suit for damages	Pending
17	O.A 1115/2010	Revision Petition	Orders for disposal of revision petition in 3 months
18	OP(CAT) 1321/11	Connected with disciplinary proceedings	Closed
19	CP(C) 46/2011	Contempt in OA 99/2010	Pending
20	O.A 309/2011	To regularise suspension	Pending
21	O.A 403/2011	Against disposal of RP	Pending

5. It is contented that this O.A is not maintainable and is liable to be dismissed.

6. What is challenged before this Tribunal is Annexure A-1, more particularly the assessment made by the Reviewing Officer. In Annexure A-1, the marks awarded by the Reporting Officer has been considerably reduced by the Reviewing Officer. But no reason has been given for reduction of the marks. Integrity of the applicant has been certified as beyond doubt. However, in column 5 the fact that he was awarded a punishment of Dies-non between

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15.06.09 to 27.6.2009 for not taking charge of SDE for this period is made mention of and it is also mentioned that he was also awarded minor punishment of withholding of one increment with cumulative effect. This adverse remark is made against him by the Reviewing Officer. It is to be seen that as against the punishment of dies-non he has preferred O.A No.99/10 before this Tribunal and I have already extracted the relevant para of the order of Tribunal in favour of the applicant. The Tribunal, by Annexure A-4 order, set aside the dies-non as one made without proper application of the mind and it was also found that the said order is an order for extraneous consideration. The applicant was found entitled for salary for the period from 15.06.2009 to 27.6.2009 with 8% interest till payment is made. The said order has become final since the writ petition filed therefrom has been subsequently withdrawn. Though, it is stated in the counter that the review application is pending, the fate of which is not known. At any rate, as the matter stands, Annexure A-4 has become final and the dies-non has been set aside. But curiously enough the reviewing officer has taken the dies-non and the minor punishment imposed as an adverse comment against the applicant. The adverse comments made by the reviewing officer in the light of the Annexure A-4 order of the Tribunal, is not liable to be sustained. The dies-non order made earlier is no longer in existence. The reason given by the Reviewing Officer has since been set aside by Annexure A-4. The Reviewing Officer ought not have been relied upon such remarks which was the subject matter of the order passed by this Tribunal in Annexure A-4. In the circumstances, the order Annexure A-1 to the extent of the Reviewing Officer's remarks is set aside and consequently the matter requires reconsideration in the hands of the Reviewing Officer dehors the adverse comments made regarding

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his dies-non and to assign marks. To enable the Reviewing Officer to do so Annexures A-1, A-2 and A-3 are set aside and the Original Application is allowed as above. The Reviewing Officer may do the needful in accordance with what has been observed above within a period of 4 months from the date of receipt of copy of this order. No costs.

(Dated, this the 16th day of July, 2012)



(JUSTICE P R RAMAN)
JUDICIAL MEMBER

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