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**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O.A.NO. 060/00696/2014 Date of order:- 14.12.2015.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**
Hon'ble Mr. Uday Kumar Varma, Member (A).

Shalinder s/o Shri Zile Singh, r/o House No.D-155, Professor Colony,
Yamunanagar, presently posted as Senior Accounts Officer, Indian Oil
Corporation Limited, Panipat Refinery.

.....Applicant.

(By Advocate :- Mr. Prateek Rathee)

Versus

1. Bharat Sanchar Nigam Limited through its CMD, BSNL Bhawan,
Harish Chand Mathur Lane Janpath, Connaught Place, Delhi-110
001.
2. Chief General Manager, Telecom BSNL, Haryana Telecom Circle,
107, Mahatma Gandhi Marg, Ambala Cantt-133 001.
3. The General Manager, Telecom District, BSNL, Sector 8, Karnal
(Haryana).

.....Respondents

(By Advocate : Mr. D.R.Sharma).

ORDER

Hon'ble Mr. Uday Kumar Varma, Member (A):

Applicant Shalinder has filed the present Original
Application under Section 19 of the Administrative Tribunals Act, 1985,
praying for quashing of order dated 23.5.2014 with a prayer that the
respondents be directed to transfer accumulated leaves to IOCL
Panipat Refinery as per DPE guidelines 10 & 13 and Rule 39-D of
CCS(Leave) Rules, 1972.

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2. Facts of the case are that the applicant joined the respondent BSNL as Junior Accounts Officer on 9.2.2004. On 20.4.2006, the applicant applied for the post of Accounts Officer in Indian Oil Corporation Limited(for short IOC) , through proper channel. The applicant has averred that he has also taken NOC from the office of CGMT, Haryana Circle, BSNL, Ambala for appearing in interview. On the basis of interview, the applicant was selected as Accounts Officer and was issued appointment letter dated 19.2.2007. After having received the appointment letter from IOC, the applicant tendered his resignation which was accepted by the competent authority on 14.3.2007. The applicant joined the IOC Barauni Refinery Bihar on 16.3.2007. After joining the IOC, the applicant had filed OA No.897-HR-2009 before the Tribunal for directing the respondents to refund the security deposit, bond amount and training expenses amounting to Rs.1,41,390/- along with interest. The said OA was allowed vide order dated 3.2.2011 by directing the respondents to refund the security amount, bond amount and training expenses amounting to Rs.1,41,390/- within a period of three months.

3. The applicant has stated that as per DPE/Guidelines/II(c)/10, he is entitled to transfer of accumulated sick leave/half pay leave in the event of movement of an employee from one public enterprise to another. Under RTI Act, the applicant was informed that as on 14.3.2007, he had 67 days of earned leave and 56 days of HPL to his credit. The applicant and the IOC Barauni refinery requested the respondent BSNL for transfer of accumulated E/L and HPL to IOC, but the same was rejected by respondent no.3 vide letter dated 3.1.2014. In the said letter, the respondent BSNL has requested the IOC for recovery of interest amounting to Rs.32907/- on

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wrong/excess payment made to the applicant. Feeling aggrieved against the order dated 3.1.2014, the applicant again approached the Tribunal by filing OA No.060/00064/2014. The learned coordinate Bench of the Tribunal vide its order dated 24.1.2014 had directed the respondents to consider the representation of the applicant in the light of guidelines DPE/Guidelines/II(c)/13 within a period of two months. After the receipt of the order dated 24.1.2014, the applicant made a representation dated 24.2.2014 for transfer of accumulated leave followed by a legal notice dated 16.5.2014. However, the respondent BSNL again vide order dated 23.5.2014 has denied to transfer the accumulated leave to IOCL. Hence the present OA.

4. Pursuant to notice, the respondents have contested the claim of the applicant by filing written statement. They have stated that the applicant is not entitled to the benefit of transfer of his leave to IOCL as he voluntarily resigned from the office of the respondents. As per Rule 39 (6)(a) (ii) of the CCS Leave Rules, 1972, if a government servant resigns or quits the service, he may be granted cash equivalent to leave salary @ 50% of the leave at his credit, subject to the maximum 150 days. The benefit of Rule 39(6)(a)(ii) was given to the applicant, but the same was returned by him. The applicant had resigned voluntarily on 24.2.2007 unconditionally after his selection in IOCL, as such, the applicant is not entitled to any relief. Even in the resignation letter, the applicant has specifically mentioned that "I am ready to pay bond and all other dues to BSNL as per rule if due". They have thus prayed for dismissal of the OA.

5. The applicant has not filed any rejoinder to rebut the averments made in the written statement.

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6. We have given our thoughtful consideration to the entire matter and perused the pleadings available on record with the able assistance of the learned counsel for the parties.

7. The applicant's contention is almost entirely based upon the guidelines in this respect issued by the Bureau of Public Enterprises. To have the full appreciation of the same, it will be appropriate to quote the relevant guidelines verbatim from these guidelines:-

"Carry forward of earned leave in the event of the movement of an employee from one public enterprise to another.(No.2(2)/85-BPE(WC) dated 25th July, 1985).

CHAPTER II

PERSONNEL POLICIES

(c) Service Matters

10. DPE/Guidelines/II©/10

Carry forward of earned leave in the event of the movement of an employee from one public enterprise to another.

The undersigned is directed to refer to the BPE's O.M.No.2(28)/82-BPE(GM-I) dated 14.12.1982 wherein it has been explained that whenever **transfer** of an employee between one public enterprise to another is effected with the consent of the Managements concerned, the concerned employee could be allowed the benefit of transfer expenses, carry forward of leave, gratuity etc."

(emphasis added).

In addition to the above, the applicant has also relied on further amplification of the above provision, which runs as follows :-

"13. DPE/Guidelines/II (c)/13

Carry forward of half pay/sick leave in the event of movement of an employee from one enterprise to another.

3. This matter has been examined carefully and it has been decided that managements of the Public Enterprises may transfer the accumulated sick leave/half pay leave standing to the credit of their employees at the time of **transfer** to another Public Sector Enterprise provided such **transfer** has taken place with the consent of managements of both the enterprises or under orders of Government/Public Enterprises Selection Board. The procedure for transfer of sick/half pay leave and liquidation of liabilities for such leave would be the same as for earned leave".

(emphasis added)

A perusal of these provisions suggests that carry forward of leave in the event of movement of an employee from one enterprise to another takes place, if such a movement takes place on **transfer**. However, as the facts of this case reveal that the applicant had indeed resigned from one public enterprise and joined another one, it does not seem to be a case of transfer taking place with the mutual consent of the two public enterprises. The applicant is using the transfer and resignation as inter-changeable, terms which may be incorrect to concede or grant.

8. As has been pointed out by the respondents, there are clear provisions when an employee resigns from a public sector enterprise viz.a.viz. the settlement of his leave that he has earned during his service in the same enterprise. In fact, in terms of these rules, the applicant was offered the cash payment which the applicant refused to accept.

9. In view of the fact that the applicant has not been able to establish that the word "transfer" in the above mentioned guidelines can be interpreted as "change of organization on account of resignation" and as we are not convinced that such an interpretation is legally sustainable, we are of the view that the relief sought for by the applicant does not merit favourably consideration.

10. The OA resultantly, fails and is thus dismissed. No costs.

Uday Kumar Varma

(UDAY KUMAR VARMA)
MEMBER (A).

Sanjeev Kaushik

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 18.12.2015.
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