

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00497/2017

Tuesday, this the 23rd day of October, 2018

C O R A M :

HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER

P.Manikandan,
S/o.V.Pazhanimala,
Telecom Mechanic,
H.R.No.198917681, BSNL,
Broad Band, OCB Telephone Exchange,
Pattalam Road, Thrissur.
Residing at Kolencherrythudi House,
Venganallur P.O., Chelakkara, Thrissur – 680 586. ...Applicant

(By Advocate – Mr.C.A.Joy)

V e r s u s

1. The Bharat Sanchar Nigam Ltd.,
represented by its Chairman & Managing Director,
Sanchar Bhavan, 20, Janapath, New Delhi – 110 001.
2. The Principal General Manager,
O/o.PGMT, BSNL Bhavan, Thrissur SSA,
Kovilakathumpadom, Thrissur – 680 022.
3. General Manager,
Office of the Principal General Manager,
BSNL Sanchar Bhavan, Thrissur – 680 022.
4. Deputy General Manager (Plg.),
Office of the Principal General Manager,
BSNL, Sanchar Bhavan, Thrissur – 680 022.
5. Divisional Engineer (BB),
Office of the Broad Band,
Central Telephone Exchange,
Pattalam Road, Thrissur – 680 001. ...Respondents

(By Advocate Mr.Pradeep Krishna)

This Original Application having been heard on 12th October 2018,
the Tribunal on 23rd October 2018 delivered the following :

O R D E R

The applicant is aggrieved by the order passed by the respondents on 16.10.2009 whereby the period of absence from duty was treated as 'Dies Non' without break in service. The statutory appeal and review preferred thereto has also been rejected.

2. The brief facts of the case are that the applicant has availed earned leave from 10.8.2009 to 13.8.2009 and then continued on medical leave upto 19.9.2009. In the meanwhile he was transferred to DE Broad Band, Thrissur during the leave period. He has further submitted that his absence from duty from 14.8.2009 to 18.9.2009 (35 days) is not willful and its due to his illness for which he has submitted the medical certificate to the authorities where he was working. He has also filed representation to the 2nd respondents in this regard but the same has not been considered so far. Feeling aggrieved by this he has approached this Tribunal seeking the following reliefs :

1. Call for the records leading to Annexure A-3, Annexure A-4 and Annexure A-6 orders and set aside the same.

2. Direct the respondents to treat the period of service from 14.8.2009 to 18.9.2009 (35 days) as leave and disburse the eligible salary for the said leave period.

3. Any other appropriate order or direction as this Hon'ble Tribunal may deem fit in the interest of justice.

3. Along with the O.A the applicant has also filed M.A.No.180/581/2017 for condoning the delay of 6 days in filing the O.A. For the reasons stated in the application the delay is condoned. M.A is allowed.

.3.

4. Respondents had appeared in this case and filed reply. It is submitted that the applicant was transferred on 1.8.2009 in the interest of service by the Assistant General Manager (Admn.), O/o.Principal General Manager Telecom District, Thrissur. He was relieved on 10.8.2009 with instruction to report for duty at Divisional Engineer (Broad Band), Thrissur. The transfer order along with relieving order was sent to the applicant to his residential address by the controlling officer, Sub Divisional Engineer by registered post which was returned back as he has refused to accept the same. The respondents have also informed him over phone regarding his transfer. The respondents have therefore prayed for dismissal of the O.A.

5. Heard learned counsel appearing for the parties and perused the records. During the course of the argument learned counsel for the applicant has submitted that the applicant is a low paid employee. He was unwell and medical certificates was duly furnished by him and after getting fitness certificate he has reported for duty at the transferred place. On the other hand, learned counsel for the respondents submitted that the applicant's non joining to the transferred place of posting is willful and defiance of the administrative orders. Learned counsel for the applicant has relied upon the judgment passed in O.A.No.575/2010 wherein in identical circumstances this Tribunal in para 8 and 9 has directed as follows :

“8. As regards the medical certificates, the RTI information vide Annexure A-10 does reveal that the applications for medical leave reached the authorities before the applicant could report for duty. Obviously, the applicant who was serving under Respondent No.5 would have submitted the applications only before that authority. The same was thereafter forwarded to the fourth respondent by the said Respondent No.5.

4.

9. Thus, no fault could be found against the applicant. The decision to treat the period of absence for the period from 14.8.2009 to 18.9.2009 vide Annexure A-5, A-7 and A-9 are therefore, liable to be quashed and we accordingly do so. It is declared that the applicant is entitled to have the period of absence from 14.8.2009 to 18.9.2009 as leave on medical grounds. Respondents are directed to accordingly regularize the period of absence of the applicant for the aforesaid period and also disburse the salary and allowances due for that period to the applicant. The O.A is allowed on the above terms. This order shall be complied with, within a period of eight weeks from the date of receipt of a copy of this order.”

6. It is seen that the department has not denied that the applicant has not submitted medical certificates which has been produced before the last controlling authority. The department has also not sent him for or has referred him to a Medical Board for examination of his illness. But they were bent upon to transfer him. I find no reason to not extend the ratio of the above judgment passed by this Tribunal to the applicant herein who is similarly situated person.

7. The O.A is therefore allowed. The impugned orders at Annexure A-3, Annexure A-4 and Annexure A-6 are set aside. The respondents is directed to treat the period of service from 14.8.2009 to 18.9.2009 (35 days) as leave. The respondents is also directed to disburse the eligible salary due for that period. The order shall be complied with within a period of 60 days from the date of receipt of a copy of this order.

(Dated ts the 23rd day of October 2018)

**ASHISH KALIA
JUDICIAL MEMBER**

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List of Annexures in O.A.No.180/00497/2017

1. **Annexure A1** - A true copy of the memo dated 8.9.2009 issued by the 5th respondent.
2. **Annexure A2** – A true copy of the explanation submitted by the applicant dated nil.
3. **Annexure A3** – A true copy of the order of the 5th respondent, Memo No.DE BB/Staff-1/09-10/Thrissur dated 16.10.2009.
4. **Annexure A4** - A true copy of the order No.DGM/CON/Adv.Entry/Appeal/52/Thrissur dated 7.12.2009 of the 4th respondent.
5. **Annexure A5** - A true copy of the Review Petition submitted by the applicant dated 24.12.2009.
6. **Annexure A6** - A true copy of the order No.BSNL/GMD/X-1/2009-2010/18 dated 27.1.2010 of the 3rd respondent.
7. **Annexure A7** – A true copy of the medical certificate issued to the applicant dated 14.8.2009, 20.8.2009, 31.8.2009 and 10.9.2009 (4 Nos.).
8. **Annexure A8** – A true copy of the representation dated 14.12.2015.
9. **Annexure A9** - A true copy of the order of this Hon'ble Tribunal in O.A.No.575/2010 dated 31.10.2011.
10. **Annexure R1(a)** - True copy of the transfer order dated 1.8.2009.
11. **Annexure R1(b)** - True copy of the relieving letter issued by the controlling officer.
12. **Annexure R1(c)** - True copy of the postal receipt No.2057 dated 21.8.2009.
13. **Annexure R1(d)** - True copy of the registered post with remarks.
