

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH**

Original Application No.180/00128/2015

Tuesday, this the 13th day of November, 2018

C O R A M :

**HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER
HON'BLE Mr.ASHISH KALIA, JUDICIAL MEMBER**

Kannan Raghu,
S/o.Reghuvappan.N.,
Junior Telecom Officer (Resigned), Kannur.
Residing at Kannamangalam, Kalavoor P.O.,
Alappuzha District – 688 522.

...Applicant

(By Advocate – Ms.Rekha Vasudevan)

v e r s u s

1. Bharat Sanchar Nigam Ltd.,
represented by its Chairman and Managing Director,
Corporate Office, 102-B Statemen House,
New Delhi – 110 001.
2. The Chief General Manager (Telecom),
Kerala Circle, Bharat Sanchar Nigam Limited,
Thiruvananthapuram – 682 033, Kerala.
3. The General Manager,
Kannur Secondary Switching Area,
Bharat Sanchar Nigam Limited,
Kannur, Kerala – 670 002.
4. The Assistant General Manager,
Office of the General Manager,
Kannur Secondary Switching Area,
Bharat Sanchar Nigam Limited,
Kannur, Kerala – 670 002.

...Respondents

(By Advocate – Mr.T.C.Krishna)

This application having been heard on 1st November 2018, the
Tribunal on 13th November 2018 delivered the following :

ORDER

Per : Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

This O.A is filed by Shri.Kannan Raghu, former Junior Telecom Officer of Bharat Sanchar Nigam Limited (BSNL) who had resigned from service, against the orders at Annexure A-3, Annexure A-5 and Annexure A-6 orders demanding the bond amount, overpayment and one month's salary. The reliefs sought in the O.A are as follows :

1. Quash Annexure A-3 letter No.ST-2/37/RESIG/GEN/18 dated 12.7.2012 issued by the 4th respondent, Annexure A-5 letter No.ST-2/37/RESIG/30 dated 22.9.2012 issued by the 4th respondent and Annexure A-6 letter No.HR.III/2-27/Resgn/2012/pt/15 dated 3.6.2013 issued for the 2nd respondent.
2. Declare that no amount is liable to be recovered from the applicant as demanded by the respondents in the impugned orders under the heads of “Bond”, “interest upon the bond amount”, “overpayment” and “amount equal to one month salary” and to direct the respondents to refund the amount already remitted by the applicant on demand from the respondents.
3. To grant such other reliefs as may be prayed for and the court may deem fit to grant, and
4. Grant the cost of this Original Application.

2. The applicant had joined as a Junior Telecom Officer (JTO) under the BSNL on 19.4.2010 and was sent for training. He joined after the completion of training on 26.7.2010. He was required to execute an agreement on 7.12.2009 in connection with his appointment as JTO. As per this agreement he was called upon to furnish a bond to the extent of Rs.2,00,000/- for indemnifying the Company against all losses or damages. As part of the agreement under Clause 6 the following is mentioned :

“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 the provisions of clause (1) above and the CGMT is satisfied that the failure of the trainee to reach the necessary standard is due to his/her work or if the trainee voluntarily quits for reasons not beyond his/her control any time, during the course of training, or on completion hereof does not serve the BSNL for a period upto 5 years..... 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 jointly or severally shall pay forthwith to the BSNL on demand an amount of Rs.2,00,000/- (Rupees Two Lakhs) as bond amount along with the interest @ 18% p.a.....”

3. A copy of the agreement entered into by the applicant is at Annexure A-1. While working as JTO Panathady, Kasargode the applicant claims that he fell ill and suffered from Varicose Ulcer. He was constrained to avail medical leave from 3.2.2012 onwards. A medical certificate to that effect is at Annexure A-2. Due to the circumstances beyond his control and in view of his serious health condition, he resigned from the service of the BSNL on 2.3.2012 and claims to have been relieved from service on 5.3.2012. The applicant lays emphasis on his contention that his physical condition was the reason why he tendered his resignation and this was a factor clearly beyond his control.

4. However, the respondents took a different view and served on him letter dated 12.7.2012 issued by the office of the 4th respondent demanding payment of an amount of Rs.4,25,964/- which included the bond amount of Rs.2,00,000/- and the interest thereof, alleged over payment of Rs.42433/- and one month's salary of Rs.33279/-. The applicant disputes the estimation of interest calculated also. He submitted a representation dated 25.7.2012, a

.4.

copy of which is at Annexure A-4. However, the same was rejected as per letter dated 22.9.2012 (Annexure A-5) issued by the 4th respondent. Further the Assistant General Manager in the office of the 2nd respondent issued another letter dated 3.6.2013 stating that the applicant had deserted from the services of the BSNL and his request cannot be considered. Again, the applicant claims having submitted representation on 1.8.2013 (Annexure A-7). The respondents replied through a Lawyer's Notice dated 27.11.2014 (Annexure A-8) demanding payment of an amount of Rs.4,65,222/-. Finally, faced with the threat contained in the Lawyer's Notice and the pressure exerted by the respondents on the surety, the applicant remitted an amount of Rs.4,65,222/-. He claims that on the same day he had made a further representation (Annexure A-9).

5. The applicant contends that the respondents' action in extracting an amount of Rs.4,65,222/- under the guise of the bond executed as per Annexure A-1 agreement is illegal. It is clearly stated in the agreement that if the trainee “voluntarily quits for reasons not beyond his/her control any time”, only then he or she need indemnify the employer by being forfeited the bond amount. In this case the applicant maintains that it was his serious physical ailment which necessitated his resignation. He had also disputed how the interest had been calculated while placing the demand upon him. But this has been not considered seriously by the respondents. Also the respondents did not grant him the benefit of pay revision made applicable as per Annexure A-10 order.

.5.

6. The respondents have filed a reply statement countering the points made in the O.A. At the outset it is maintained that the O.A is hopelessly barred by limitation. The orders impugned are Annexure A-3, Annexure A-5 and Annexure A-6 which are dated 12.7.2012, 22.9.2012 and 3.6.2013 respectively. The O.A was filed on 12.2.2015 and there has been a substantial delay of nearly two years in filing the O.A for which no satisfactory explanation has been offered. The applicant had submitted an application (M.A.No.180/176/2015) seeking condonation of delay of 579 days in filing the O.A. He submits that he had been representing his case at different points in time and also due to the fact of his ill health he could not avoid the delay. This is disputed by the respondents in the reply statement stating that it is trite law that repeated representations cannot be used as a ruse to extend the period of limitation. This Tribunal at the first hearing on 13.2.2015 left the question of delay open to be considered at the time of hearing of the O.A. After having heard both the counsel on this point, we are of the view that the reasons submitted by the applicant to explain the delay are not adequate for the said purpose. Hence the O.A is liable to be rejected on the ground of limitation.

7. In the reply statement the respondents strongly dispute the fact that the applicant had left BSNL services on account of his ill health. In fact it has come to light that he took up an alternative job in a Software Unit at Infopark called M/s.Q Burst Technologies, Kochi while the applicant in the

O.A argues at length about his poor health condition which resulted in his resignation. The respondents draws our attention to the resignation letter, a copy of which is at Annexure R-4(a) which states as follows :

From
Kannan Reghu
Junior Telecom Officer,
Panathady, Kasargode.

To
The Chief General Manager, BSNL,
Through Sub Divisional Engineer Rajapuram,
Kasargod, under Cannanore Telecom Circle, Kerala.

Sub : Letter of resignation submitting of :

Ref : Higher education, family matters, continuity of treatment
subsequent bed rest, regarding of.

Sir,

I do hereby resigned from BSNL Service with effect from 05.03.2012 due to the reasons noted here under.

1. For the smooth completion of my higher studies enables to stabilise (sic) and develop my carrier and seek related better job.
2. My innevitable presence and care is very delicate(sic) to salvate my parents ie.
 - a. My father is a heart patient under treatment relaxing after a major keyhole surgery and stending lad (sic).
 - b. My mother is also under treatment for hipper (sic) tension, Gastroenteritis and urinary disorders.
3. My treatment has to be continued and subsequent rest for three months. Where I am on medical leave up to 4.3.2012.

Hence on above grounds your benign consideration is requested towards the matter and kindly acknowledge the receipt of this letter/request and allow to terminate me from service and issue adequate release certificate (sic).”

8. It can only be concluded that he had opted to leave the services of BSNL in order to seek better job prospects. He mentions that he is required to take care of his father and mother and mentions only about his need “to

.7.

continue his treatment”. In the reply statement the respondents have strongly put forward the argument that the seriousness of the health condition is now being exaggerated in order to escape from the bond condition. Further it is also disputed that the applicant had been relieved from his duty. He had submitted his resignation on 2.3.2012 and left on 5.3.2012 without any sanction. The said resignation letter was itself received by the 4th respondent on 13.3.2012 and a decision in the case was to be taken at the level of Chief General Manager, Trivandrum. Clearly without waiting for the same, he abandoned his duty and took employment in a private institution. Considering that a large sum has been spent by the BSNL in training the applicant in new technologies, the bond condition had been introduced in order to specifically avoid situation as the one brought on by the applicant.

9. There is no ambiguity in the sum that is being demanded from the applicant. He had not completed five years service in the BSNL after the completion of the training period as required in the agreement. Hence interest at the rate of 18% was computed for the remaining period which is short of five years from the date of training. The details of overpayment already made available in Annexure R-4 (d) are also explained in para 15 of the reply statement. Hence the respondents were quite correct in estimating the amount demanded and collected.

10. The applicant has filed a rejoinder wherein certain details of his poor health have been indicated which is at Annexure A-12. It is further argued that the applicant had left due to unavoidable reasons of the health and clearly for reasons beyond his control and the respondents were wrong in extracting the amount that they did. The respondents have filed an additional reply statement wherein they have given the details of the amount demanded from the applicant. It is mentioned as follows :

a	Bond amount		Rs.200,000.00
b	Interest at the rate of 18% for the period from 19.4.2010 to 31.10.2014 (2,00,000 x 18/100 x 1658/365)		Rs.163,528.00
c	Other amount to be recovered		Rs.101,694.00
i.	Overpayment	Rs.33,947.00	
ii.	Balance of Computer Loan (Principal)	Rs.22,500.00	
iii.	Interest on Computer Loan	Rs.10,494.00	
iv.	GSLIS premium paid by BSNL	Rs.315.00	
v.	Land phone dues (0467 2228100)	Rs.868.00	
vi.	Mobile phone dues (9447588100)	Rs.291.00	
vii.	Amount equal to one month salary in lieu of 'notice' before resignation	Rs.33,279.00	
		Rs.101,694.00	
Total			Rs.465,222.00

11. It is maintained that there is no mistake or inaccuracy in the estimation done. Further documents on the same are supplied as Annexure R-4(j) and Annexure R-4(k).

12. Smt.Rekha Vasudevan, learned counsel appeared on behalf of the applicant and Shri.T.C.Krishna, learned counsel appeared on behalf of the respondents. Learned counsel for the applicant set store by the arguments raised in the O.A that Clause 6 of the Agreement Bond clearly has a provision that if the employee is compelled to terminate his services due to factors beyond his control, the bond is not to be enforced. She mentioned that as evidenced in the medical certificates supplied, the illness of the applicant is grave and he could not continue to work in the demanding role of a JTO. It is true that he took up a private employment after resigning from BSNL as there was no other way open to him to continue with his livelihood. Shri.T.C.Krishna, learned counsel for the respondents laid emphasis on the resignation letter that the applicant had submitted wherein there is only a passing reference to “treatment” necessary for him and the first reason he states in the said letter is that he wishes to seek a better job. Clearly this does not amount to a reason beyond his control. He was fully aware of what he was taking up when he entered the services of the BSNL, willingly went for the training and executed the bond. He abandoned his job and left without even his resignation being accepted. It was only through discreet inquiries that the authorities were able to find out that he had taken up another job in a private institution possibly on better terms.

13. The issue lies in a narrow compass. An employee who had submitted a bond now wants to escape from its rigours on the ground that there is a provision in the Agreement accompanying bond that if he is compelled to

leave on account of factors beyond his control, the bond amount ought not to be forfeited. The reason he mentions for his departure from BSNL is his health condition. However, as strongly maintained by the respondents, in his resignation letter there is only a passing reference to this and the first reason he submits therein is that he is seeking better job opportunities. Learned counsel for the respondents also calls to his assistance the judgment of the Hon'ble High Court of Kerala in O.P. (CAT) No.209 of 2016 along with O.P.(CAT) No.156 of 2016 and O.P. (CAT) No.150 of 2016 wherein the issue regarding the actual extent of liability in a similar case has been considered at length. It is ordered therein as follows :

“7. After hearing both sides and after goind through the nature of contentions raised from both the sides, this Court is of the view that, it is not the job of the Court or Tribunal to substitute the terms of contract or rewrite the contract. It cannot but be said that the Department has to spend huge amount so as to impart training to the candidates selected as Junior Telecom Officers, to make them properly equipped with the requisite level of understanding, skill and credentials. It was to meet the organizational requirement to this extent, that a minimum service of 'five years' was stipulated as per the Bond. Admittedly, since the party respondents/applicants have left the service of BSNL on their own, pursuant to the better offer under some other Employer, the Bond amount has to be satisfied. The liability in this regard has been upheld by the Tribunal as well, but for changing the 'rate of interest' and also the 'period' for which interest is payable.”

14. After duly examining all factors before us we cannot come to the conclusion that the respondents have acted in a manner not befitting a responsible Government Organization. We are of the view that the applicant's physical condition was only a secondary reason for his abandoning BSNL services and he cannot escape from the rigours imposed

.11.

upon him by the bond that he had chosen to furnish. Thus, the O.A is devoid of merit. The O.A is dismissed, both on account of it being hit by the limitation rules and also for the reason that it is devoid of merit. No costs.

(Dated this the 13th day of November 2018)

ASHISH KALIA
JUDICIAL MEMBER

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

asp

List of Annexures in O.A.No.180/00128/2015

1. **Annexure A1** – True copy of the agreement dated 7.12.2009 executed by the applicant in favour of the 3rd respondent.
2. **Annexure A2** – True copy of the medical certificate dated 3.2.2012 issued by the doctor at S.V.Hospital, Cherthala.
3. **Annexure A3** – True copy of the letter No.ST-2/37/RESIG/GEN/18 dated 12.7.2012 issued by the 4th respondent.
4. **Annexure A4** – True copy of the representation dated 25.7.2012 submitted by the applicant to the 4th respondent.
5. **Annexure A5** – True copy of the letter No.ST-2/37/RESIG/30 dated 22.9.2012 issued by the 4th respondent.
6. **Annexure A6** – True copy of the letter No.HR.III/2-27/Resgn/2012/pt/15 dated 3.6.2013 issued for the 2nd respondent.
7. **Annexure A7** – True copy of the representation dated 1.8.2013 submitted by the applicant to the 2nd respondent.
8. **Annexure A8** – True copy of the lawyer's notice dated 27.11.2014 issued at the behest of the 2nd respondent.
9. **Annexure A9** – True copy of the representation dated 16.12.2014 submitted by the petitioner to the 2nd respondent.
10. **Annexure A10** - True copy of the receipt bearing No.45 dated 17.12.2014 issued by the office of the 2nd respondent.
11. **Annexure A11** - True copy of the Office Order No.1 of 2012 dated 3.1.2012 issued by the 1st respondent.
12. **Annexure A12** - True copy of the report of the Ultra Sound Scan of the applicant.
13. **Annexure R4(a)** - True copy of the resignation letter dated 2.3.2012 submitted by the applicant.
14. **Annexure R4(b)** - True copy of the letter dated 16.4.2012 of the 4th respondent.
15. **Annexure R4(c)** - True copy of the letter dated 31.5.2012 of the 4th respondent.

.13.

16. Annexure R4(d) - True copy of the letter dated 10.7.2012 issued to the applicant.

17. Annexure R4(e) - True copy of the letter dated 25.2.2013 of the 4th respondent.

18. Annexure R4(f) - True copy of the report dated 22.7.2013 of the Sub Divisional Engineer (HRD).

19. Annexure R4(g) - True copy of the representation dated 1.8.2013 of the applicant.

20. Annexure R4(h) - True copy of the guidelines dated 22.1.2013.

21. Annexure R4(i) - True copy of the pay fixation memo dated 10.2.2012.

22. Annexure R4(j) - True copy of the guideline dated 22.1.2013.

23. Annexure R4(k) - True copy of the guideline dated 19.8.2013.
