

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00122/2017

Friday, this the 20th day of September, 2019

C O R A M :

HON'BLE Mr.E.K.BHARAT BHUSHAN, ADMINISTRATIVE MEMBER

M.N.Pushpangathan,
Technician, Office of the General Manager,
Telecom District, Thiruvananthapuram – 695 023.
Residing at Meenaram, T.C.79/2512, Venpalavattom,
Anayara P.O., Thiruvananthapuram – 695 029. ...Applicant

(By Advocate – Mr.Vishnu.S.Chempazhanthiyil)

v e r s u s

1. The Chief General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Kerala Circle, Thiruvananthapuram – 695 033.
2. The Principal General Manager,
Office of General Manager, Telecom,
Bharat Sanchar Nigam Limited,
Thiruvananthapuram – 695 001.
3. The Controller of Communication Accounts,
Office of the Controller of Communication Accounts,
Department of Telecommunication, Kerala Circle,
Thiruvananthapuram – 695 033.
4. The Under Secretary,
Department of Telecommunication (Pension Section),
Ministry of Communication & IT, Sanchar Bhavan,
20 Ashoka Road, New Delhi – 110 001. ...Respondents

**(By Advocates Mr.George Kuruvilla [R1-2]
& Mr.N.Anilkumar, SCGSC [R3-4])**

This Original Application having been heard on 18th September 2019,
the Tribunal on 20th September 2019 delivered the following :

ORDER

The O.A is filed by Shri.M.N.Pushpangathan aggrieved by denial of pension for the service rendered by him as a Technician under the Department of Telecom for the period from 11.1.1979 to 17.2.1993. The reliefs sought in the O.A are as follows :

1. Direct the respondents to sanction and release the entitled retirement benefits of the applicant, for services rendered under the Central Government as per the terms stipulated in Annexure A-15.
2. Declare that the applicant is entitled for receipt of pro-rata retirement benefits for service rendered under the Central Government, as stipulated in Annexure A-15 and direct the respondents to extend the above benefits with all consequential benefits including interest.
3. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
4. Award the cost of these proceedings.

2. The applicant was initially engaged as a Technician in the Department of Telecommunications on 11.1.1979. While so, on selection and appointment as Assistant Engineer in Kerala State Electricity Board (KSEB) through Public Service Commission, he requested for being relieved of his duties to join in KSEB. The technical resignation rendered by him was accepted with effect from 18.2.1993.

3. It is submitted that on 22.3.2001 the applicant had made a request to record his service as Technician from 11.1.1979 to 17.2.1993 so as to enable him to receive pro-rata retirement benefits for the service rendered in the Central Government for the aforesaid period. Thereafter several rounds of communications took place between both BSNL and KSEB in the matter

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and finally the BSNL vide Annexure A-15 dated 9.2.2007 issued a communication prescribing the terms and conditions of permanent transfer/absorption of the applicant in KSEB from Department of Telecom, as sanctioned by the Chairman, BSNL, the relevant portion of which reads as under :

(i) either to count the service rendered under the Central Government for pension in KSEB under the D.P&A.R's O.M.No.28/10/84-PU dated 29.8.84.

(ii) or to receive pro-rata retirement benefits for the service rendered under the Central Government.

4. Accordingly the applicant chose the second option to receive pro-rata retirement benefits for service rendered under the Central Government. He also filled up the necessary forms and completed the formalities for receiving pro-rata retirement benefits. Since no action was forthcoming afterwards he represented the matter to the 3rd respondent. Though first he was informed that his claim was referred to the DOT Headquarters for necessary order/clarification, later he was informed that the concerned files were not traceable. Even after many years the claim of the applicant has not been finalised yet, which compelled him to approach this Tribunal.

5. As grounds it is submitted that the applicant had more than 10 years service in the Department of Telecom which makes him eligible for pensionary benefits and Annexure A-15, which is based upon the sanction of the Chairman, BSNL, provides for grant of pension/gratuity including calculation of pro-rata retirement benefits etc. for the service rendered by him in the Department of Telecom for the period from 11.1.1979 to

17.2.1993.

6. Respondent Nos.1-2 have filed their reply statement wherein they have submitted that the service of the applicant in question pertains to DoT and not to BSNL and as such no relief can be claimed from BSNL. The applicant being an ex-DoT employee, the case should have been referred to the DoT. BSNL being a public sector undertaking under the DoT, they can issue terms and conditions only in respect of the employees recruited by them and working under them. And BSNL had no authority to issue Annexure A-5, Annexure A-7 as also Annexure A-15 terms and conditions as they are not within their competence. They rely on Annexure A-9 order of the Government of Kerala which states that the pensionary liability including gratuity should be borne by the Government to which the Government servant belongs at the time of retirement and no recovery of proportionate pension should be made from the Government under whom he had served. Thus BSNL is not liable to remit the pensionary liability to KSEB. Any stand taken by the KSEB contrary to Annexure A-9 is untenable and illegal.

7. It is further submitted that Rule 37 of CCS (Pension) Rules, 1972 prescribes that a Government servant who has been permitted to be absorbed in a service or post in or under a Corporation or Company wholly or subsequently owned or controlled by Central Government or State Government, shall be deemed to have retired from service from the date of such absorption and shall be eligible to receive retirement benefits or have

the option to count service rendered under Central Government in that body, in accordance with the orders of the Central Government applicable to him. Further the Government of India vide O.M No.8/4/70-Estt.(A) dated 6.3.1973 also prescribed the procedure to be followed by Central Government employees, who apply for posts under the State Government on their own volition in response to advertisements or circulars including those by State PSCs. As per the instructions therein, the terms on which the Central Government servants go over to a post under a State Government may be settled mutually between the State Government and Central Government and while forwarding the application this should be made clear. Also Government of India vide O.M.No.F3(6)EV(A)/71 dated 4.12.1971 has issued a detailed procedure to be followed when benefits of past service is allowed or when a resignation shall not entail forfeiture of past service. As per the said O.M the order accepting the resignation of an employee should clearly indicate that the employee is resigning to join another appointment with proper permission and that the benefits under Rule 26(2) of the CCS (Pension) Rules will be admissible to him. Similarly the contents of the order accepting the resignation should be noted in the service book of the employee concerned under proper attestation. When all the conditions prescribed in the said O.Ms are fulfilled the Government servant is entitled for pro-rata pension/to count his past service for pension. The respondents further submitted that as per Rule 39(6)(a)(ii) of CCS (Leave) Rules, if a Government servant does not fulfill the above conditions while quitting/resigning from the service, the authority competent to grant leave, may grant cash equivalent in respect of the earned leave at his credit

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on the date of cessation of service, to the extent of half of such leave at his credit. The respondents contend that neither the relieving order nor the service book of the applicant mention that the applicant resigned from the service to join another department with proper permission and the benefit under Rule 26(2) would be admissible to him. At the same time the service book shows that the applicant was sanctioned cash equivalent in respect of earned leave at his credit on the date of cessation of his service to the extent of half of such earned leave.

8. Respondent Nos.3-4 have also filed their reply statement wherein they have taken the same contentions as Respondent Nos.1-2. They have submitted that the applicant is not entitled to pro-rata pension for the service rendered in DoT for the period from 11.1.1979 to 17.2.1993 because he had resigned from DoT on his selection as Assistant Engineer in KSEB, for which he applied directly through KPSC and the conditions stipulated in Government of India O.M dated 4.12.1971 are not fulfilled in the case.

9. Shri Vishnu S.Chempazhanthiyil, learned Counsel for the applicant laid emphasis on Annexure A15, which was issued by Respondents-1/2 organisation viz., BSNL, wherein the terms of the applicant's posting to KSEB have been detailed. He stated that the applicant had been given an option and the one he chose was to receive prorata retirement benefits for the service rendered under the Central Government. The fact of his service are not denied by either of the respondents and the conditions stipulated in

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Government of India, OM dated 04.12.1971 are thus fully complied with in the case. Further the communication dated 07.11.2007 of Respondents-1/2 (Annexure A16) admits the responsibility for including his service in the erstwhile organisation for grant of pension. The fact that his Service Book does not contain particulars of taking up his assignment in KSEB is answered by the learned Counsel by stating that this is a matter over which the applicant has no control.

10. Shri George Kuruvila, Standing counsel for BSNL (Respondent-1&2) and the learned SCGSC representing Respondents3&4 were also heard. Shri George Kuruvila put forth the argument that Annexure A15 has been issued without proper authority and was at best, an error. The BSNL had come into being only in 2000 and the alleged resignation having taken place in 1993, it is apparent that the applicant was an employee of Department of Telecom (Respondent3&4) and not of BSNL. The learned SCGSC drew attention of the Tribunal to the fact that the procedure laid down in the Government of India OM of 04.12.1971 has not been followed in this case. The order accepting the resignation does not mention that the employee is resigning to join another organisation after obtaining prior permission, which is a necessary condition to obtain the benefits under Rule 26(2). The fact that the applicant directly approached KPSC for the posting in KSEB, keeping his employer in the dark is evidenced from the notation made in the Service Book of the applicant.

11. I have examined the contentions of either side and gone through the documents on offer. The applicant had been employed under Department of Telecom from 11.01.1979 to 17.02.1993. Then he appears to have joined the post offered to him by the Kerala State Electricity Board, after submitting resignation. However, in order to get the benefits provided under the Rule 37 of the CCS (Pension) Rules, the Government servant is required to fulfill certain conditions while quitting/resigning from service, which he has not cared to do. The respondents had called for a copy of the undertaking obtained from the applicant and the copy of resignation letter tendered by him etc., but the same have allegedly not been produced. I am also unable to assign importance to his relieving order, as there is no mention that he was resigning to join another organisation after obtaining proper permission. This makes him ineligible for benefits provided under Rule 26(2). The omission of the same in his Service Book also points to the fact that his employer was not aware of his imminent move to another organisation. Merely stating that the respondents were aware of the offer of appointment as it had been posted to his official address, is not an acceptable argument.

12. The applicant solely relies upon Annexure A15 document along with Annexure A16. These were issued by an entity which was not in existence when he was employed under DOT and for that reason itself they are

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inadmissible as conclusive proof. The applicant appears to have not fulfilled the primary conditions stipulated under relevant provisions of the Pension Rules and is thus ineligible for the relief as claimed. OA is dismissed. No costs.

E.K.BHARAT BHUSHAN
ADMINISTRATIVE MEMBER

sd/asp

List of Annexures in O.A.No.180/00122/2017

- 1. Annexure A-1** - True copy of the Memo No.EB1(a)158/90/6 dated 27.1.1993 issued by the KSEB.
- 2. Annexure A-2** - True copy of the Memo No.EB1(a)158/90/6 dated 18.12.1992 issued by the KSEB.
- 3. Annexure A-3** - True copy of the request dated 22.3.2001 submitted by the petitioner.
- 4. Annexure A-4** - True copy of the request was forwarded to the 2nd respondent by the KSEB.
- 5. Annexure A-5** - True copy of the certificate issued by the O/o.the General Manager, Telecom District vide Certificate No.D.O.No.ST-781/Tech/3 dated 21.3.2001.
- 6. Annexure A-6** - True copy of the communication No.PA/Genl/2001/339 dated 27.7.2001 issued by the KSEB.
- 7. Annexure A-7** - True copy of the Certificate No.ST/781/Tech/5 dated 2.8.2001 issued by the O/o.the General Manager, Telecom District, Thiruvananthapuram.
- 8. Annexure A-8** - True copy of the communication No.FA.G1/1/158/2003 dated 15.9.2003 issued by the KSEB.
- 9. Annexure A-9** - True copy of the G.O.(P)No.651/03/Fin dated 6.12.2003 issued by the Government of Kerala.
- 10. Annexure A-10** - True copy of the communication No.ST-781/Tech/2001-05/8 dated 15.10.2005 issued by the O/o.the 2nd respondent.
- 11. Annexure A-11** - True copy of the communication PAG! 1/158/2003 dated 20.1.2005 issued by the KSEB.
- 12. Annexure A-12** - True copy of the communication No.PA.GL.I/158/2000/05 dated 7.11.2005 issued by the KSEB.
- 13. Annexure A-13** - True copy of the representation dated 27.5.2005 of the Office of the 2nd respondent.
- 14. Annexure A-14** - True copy of the communication No.CCA/KRL/1-55/03-04 dated 18.7.2006 issued by the 3rd respondent.
- 15. Annexure A-15** - True copy of the communication No.ST-781/Tech/2001-07/17 dated 9.2.2007 issued by the O/o.the 2nd respondent.

- 16. Annexure A-16** - True copy of the communication No.CCA/KRL/1-55/2003-04/5 dated 28.11.2007 issued by the 3rd respondent.
- 17. Annexure A-17** - True copy of the communication No.TA-51/PEN/DOT/1260/6 dated 2.2.2008 issued by the O/o.the 2nd respondent.
- 18. Annexure A-18** - True copy of the request dated 12.12.2008 to the 3rd respondent.
- 19. Annexure A-19** - True copy of the communication No.ST-781/Tech/2001/30 dated 3.4.2010 issued by the O/o.the 2nd respondent.
- 20. Annexure A-20** - True copy of the representation dated 9.11.2011 to the 3rd respondent.
- 21. Annexure A-21** - True copy of the communication No.CCA-KRL/RTI/2012/Admn dated 26.4.2012 issued by the O/o.the 3rd respondent.
- 22. Annexure A-22** - True copy of the communication No.CCA/KRL/1-55/2003-04/4855 dated 12.2.2015 issued by the O/o.the 3rd respondent.
- 23. Annexure A-23** - True copy of the communication No.40-25/2009-Pen(T).Pt dated 20.4.2015 issued by the 4th respondent.
- 24. Annexure A-24** - True copy of the communication No.47/34/2015-Pen(T) dated 11.8.2015 issued by the DOT New Delhi.
- 25. Annexure A-25** - True copy of the communication No.CCA/KRL/1/55/2003-04/13 dated 23.3.2016/4.4.2016 issued by the O/o.the 2nd respondent.
- 26. Annexure A-26** - True copy of the representation dated 28.11.2016 to the 3rd respondent.
- 27. Annexure A-27** - True extract of the Government of India instructions as under Rule 26 of CCS (Pension) Rules.
- 28. Annexure A-28** - True copy of the O.M.No.28020/1/2010-Estt.(C) dated 17.8.2016 issued by the Department of Personnel & Training.
- 29. Annexure R-3(a)** - True copy of the letter dated 17.7.2006.
- 30. Annexure R-3(b)** - True copy of the letter dated 18.2.1993.
- 31. Annexure R-3(c)** - True copy of the order noted in service book.
- 32. Annexure R-3(d)** - True copy of the extract of service book.

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33. Annexure R2(a) - True copy of the appointment order of the Applicant as Technician in DoT.

34. Annexure R2(b) - True copy of the letter No.ST 1014/123 dated 18/02/1993 issued by the Asst General Manager (Admn), Telecom Bhavan, Thiruvananthapuram.
