

CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

Original Application No. 180/00054/2019

Wednesday, this the 30th day of October, 2019

CORAM:

Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member

Ambily K.S

Junior Telecom Officer, BSNL

IPTAX, Aluva – 683 101

Residing at Sreesanthi, Puthukkalavattom

Elamakkara – 682 026

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Applicant

(By Advocate : Mr.Vishnu S Chempazhanthiyil)

V e r s u s

1. The Assistant General Manager (Admn)
Office of the Principal General Manager
Telecom District, BSNL Bhavan, Ernakulam – 682 016

2. The Principal General Manager
Telecom District, BSNL Bhavan, Ernakulam-682 016

3. The Chief General Manager, Telecom
Bharat Sanchar Nigam Limited
Kerala Circle, Thiruvananthapuram – 695 033

4. The Chairman and Managing Director
Bharat Sanchar Nigam Limited, Corporate Office
Statesman House, New Delhi – 110 001

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Respondents

(By Advocate : Mr.V.Santharam)

This application having been heard on 25.10.2019 the Tribunal on 30th
day of October 2019 delivered the following:

ORDER

By Hon'ble Mr. E.K.Bharat Bhushan, Administrative Member

Original Application No.180/54/2019 is filed by Smt.Ambily.K.S, Junior Telecom Officer, Bharat Sanchar Nigam Limited, aggrieved by the refusal on the part of the respondents to grant her Child Care Leave. The reliefs sought in the Original Application are as follows:-

- “ 1. Call for the records leading to the issue of Annexure A-12 and set aside Annexure A-12.
2. Direct the respondents to consider sanction Child Care Leave for the period from 28.7.2018 to 31.5.2019 or in the alternative to consider sanctioning Extraordinary Leave without Medical Certificate.
3. Declare that the applicant is entitled to be granted Child Care Leave for the period from 28.7.2018 to 31.5.2019 and direct the respondents to sanction the same.
4. Call for the records leading to the issue of Annexure A5 and set aside Annexure A5.
5. Any other further relief or order as this Hon'ble Tribunal may deem fit and proper to meet the ends of justice.
6. Award the cost of these proceedings to the applicant. ”

2. Subsequently on 15.3.2019, Miscellaneous Application No.180/280/2019 filed by the applicant was allowed and she was permitted to amend the relief to include the following:

- “7. Call for the records leading to the issue of Annexure A-19 and set aside Annexure A-19.
8. Call for the records leading to the issue of Annexures A-18 and set aside Annexure A-18. ”

3. The applicant had been recruited as Telecom Technical Assistant in the year 2008 under BSNL and is currently working as Junior Telecom Officer. On account of the fact that her husband is working in the United States of America, she had applied for permission to go abroad to join her spouse. She applied for No Objection Certificate (NOC for short) for this purpose and also applied for one year leave. She was issued with a No Objection Certificate on 27.1.2018, a copy of which is available at Annexure A-1. But the leave applied for one year was rejected as per Annexure A-2. The applicant thereafter applied for 6 months leave and was granted the same up to 27.7.2018 (Annexure A-3).

4. The applicant had proceeded abroad along with her two children aged 9 and 6, who were enrolled in a private school in New Jersey, U.S.A. Seeing the significant improvement in their academic skills, the applicant wished to remain with her children and husband till May 2019 and accordingly, furnished a representation on 10.7.2018 seeking extension of leave (Annexure A-4). However, she was informed by communication dated 27.7.2018 that her request was inadmissible in view of the undertaking that she had given at the time of issue of NOC (Annexure A-5). Thereupon, she submitted a request on 27.7.2018 for Extra Ordinary Leave for a period of 10 months from 28.7.2018 to 31.5.2019 (Annexure A-6).

5. The applicant invites attention to the guidelines issued for grant of CCL by Government of India and its adoption by BSNL (Annexures A-7,

A-8, A-9 and A-10 refer to various orders in this regard). On receipt of Annexure A-5 communication, the applicant submitted a request for CCL for a period of 10 months from 28.7.2018 to 31.5.2019 (Annexure A-11). However, the same was rejected as per communication dated 13.8.2018, a copy of which is at Annexure A-12. The grounds adopted by the respondents were to the effect that CCL cannot be claimed as a matter of right and she had entered on leave before grant of the same. She made representations to higher authorities as per Annexure A-13 and A-14, but these were to no avail. She invites attention to the orders of the Hon'ble Supreme Court in Civil Appeal No.4506/2013 (Annexure A-16) which laid down that every Government employee is eligible for CCL as provided for in the rules. She submits that the undertaking given by the applicant at the time of obtaining the NOC had been given "in an obsolete form" and this cannot be used against her to deny extension of leave.

6. In the meanwhile, the respondents have initiated disciplinary proceedings and issued her a Memo of Charges under Rule 36 of BSNL (CDA) Rules, a copy of which is produced and marked as Annexure A-18. Also the request of the applicant for grant of 10 months CCL has been rejected as per orders dated 25.2.2019, a copy of which is available at Annexure A-19. The applicant maintains that the conduct of the respondents amounts to arbitrary exercise of power. She contests the stand taken by the respondents in Annexure A-19 that there is shortage of staff and submits that she was never put in charge of IPTAX. Thus, she submits that Annexure A-19 is factually incorrect and is violative of orders of

Government of India regarding grant of CCL as well as judgment of the Hon'ble Punjab and Haryana High Court in CWP No.21506/ 2017. As grounds the applicant maintains that CCL is a facility that cannot be denied to eligible employees. Being eligible for the same, to deny it on the ground that she had provided an undertaking while obtaining NOC, amounts to arbitrary action on the part of the respondents. The applicant has been doubly disadvantaged by being denied CCL on one hand and being subjected to disciplinary action, on the other.

7. A detailed reply statement has been filed by the respondents. At the outset, it is maintained that the applicant belonging to a category where there is shortage of adequate staff and being an Executive, it was on this ground that her leave applied for at the first instance had been rejected by the competent authority (Annexure R3(b)). It is true that the NOC for 6 months was issued to her up to 27.7.2018, but while obtaining the NOC, an undertaking had been furnished by the applicant which reads as follows (Annexure R3(c)):-

UNDERTAKING

“ I, Ambily.K.S hereby undertake that I will not overstay abroad unauthorisedly in excess of the leave granted to me. I further undertake that I will not render resignation / negotiate for any employment etc. while my stay abroad. In case of any deviation of the rules or violation of the undertaking given, I shall be liable for disciplinary action in accordance with the rules of the Govt. of India/BSNL conduct, Discipline and appeal rules, 2006. ”

8. However, ignoring the said declaration and without returning home,

she applied for CCL for 10 months with effect from 28.7.2018. As per Leave Rules, an employee can proceed on CCL only with prior sanction of leave by competent authority and as work in the concerned section must go on uninterrupted, the leave cannot be demanded as a matter of right. The representation itself was not properly signed and the signature was only a scanned one. It was due to her misdemeanor that, it was decided to initiate disciplinary action against the applicant. It is also brought out by the respondents that the applicant had travelled to Malaysia 6 times during different spells in the years 2011 and 2012 availing Maternity Leave, Earned Leave and Extra Ordinary Leave on medical grounds. The journey was performed unauthorisedly without obtaining NOC from BSNL. She had been subjected to disciplinary action for her misdemeanor and a punishment was awarded to withhold one increment for two years with cumulative effect, a copy of the same is at Annexure R3(f).

9. It is averred that the alleged representation at Annexure A-14 was neither received in CGMT's office nor forwarded to CGMT's office. To her representation at Annexure A-11, a reply had been sent at Annexure A-12 clearly informing that the period of absence from 28.7.2018 will be treated as unauthorised absence and the misconduct of overstay beyond the sanctioned leave will attract provisions of Rule 5(6) of BSNL (CDA) Rules, 2006.

10. The respondents have detailed the responsibilities and duties associated with the applicant's position in the office to bring out that her

presence was necessary from the point of view of functionality of the Organisation. It further states that proceedings under Rule 36 was resorted to after the representation which was received, had been dealt with. The employee was already under notice that further absence would attract disciplinary action and she cannot plead ignorance on that count.

11. The applicant has filed a rejoinder reiterating the contentions raised in the O.A. The rules relating to grant of CCL are repeated to the extent that every woman employee in BSNL is entitled to the same for a period of 730 days and the applicant had only applied for the same facility which was unfortunately denied to her. Her previous travel to Malaysia has no bearing on the present issue relating to denial of CCL.

12. The respondents have filed additional reply to the rejoinder maintaining that the applicant had committed gross irregularities in violating the conditions of undertaking which she herself had submitted and in applying for CCL while she was on unauthorised absence. Given the circumstances, she has no right to claim that CCL should be mechanically granted to her.

13. Heard Mr.Vishnu S Chempazhanthiyil, learned counsel for the applicant and Mr.V.Santharam, learned Standing Counsel for the respondent BSNL. All pleadings, both oral and documentary, were examined.

14. The facts of the case are not under dispute. The applicant, after having

been denied leave for a period of one year, had obtained leave for 6 months after submitting an undertaking that she will not overstay abroad after the conclusion of her leave period. She chose to do so considering the need for her children to complete the academic year in the United States of America. Her contention is that she applied for EOL and the same was rejected. It was at that stage, while residing abroad that she chose to file a request for CCL for 10 months from 28.7.2018 to 31.5.2019. The respondents, on their part, do not deny the mandatory nature of CCL which came to be adopted in all government offices and subsequently adopted in BSNL as well. CCL, as a facility for women employees has been supported in the judgments referred to in the O.A. However, the facts of the case before the Tribunal are not in the nature of a simple issue relating to grant or refusal of CCL in a normal case. The applicant had proceeded for 6 months leave after giving an undertaking that she would return on completion of the 6 months period. Her leave itself had been granted by the concerned authority after noting that she can be relieved from duty only on a substitute being made available, which clearly reveals the essential nature of the role she was required to fulfill in the organisation where she works. After having admitted her children to a private school in U.S.A and after the period of leave ended only, she came to realise the need for her and her children to remain in U.S.A for another 10 months. Thus, she submitted a request for CCL for 10 months.

15. From the facts, it is clear that she had violated the terms of undertaking she herself had submitted while obtaining NOC. While a

woman employee is entitled to CCL, it is not a facility that she can enjoy without orders granting her the same issued by the competent authority. In this case, none had given her any assurance in this regard and on the contrary she had been put on notice that her further absence would invite disciplinary action. The action initiated against her as per Annexures A-18 and A-19 were a natural corollary to her action. No employee can be irresponsible in the manner in which she appears to have behaved. A job in a prestigious organisation or any organisation for that matter, cannot be viewed as a revolving door to enter and exit as one likes. The respondents have proceeded with action as per Rules and the process is said to be continuing. This Tribunal is of the view that there is no reason to interfere in this case on behalf of the applicant at this stage.

16. The Original Application fails. In the event if the applicant has any grievance regarding further action taken by the respondents in pursuance to the Inquiry, she will be at liberty to approach this Tribunal with adequate reasons. No costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

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List of Annexures

Annexure A1 - True copy of NOC granted on 27.1.2018 by the AGM (Admn) in the office of the 2nd respondent

Annexure A2 - True copy of communication No.ST/EK-214/NOC-Abroad/JTOs/2017/6 dated 30.11.2017 issued by the 1st respondent

Annexure A3 - True copy of sanction of leave as issued to the applicant

Annexure A4 - True copy of request dated 10.7.2018 to the DGM (Admn), BSNL Bhavan, Ernakulam

Annexure A5 - True copy of communication No.Q-10404/33 dated 27.7.2018 issued by the 1st respondent

Annexure A6 - True copy of request dated 27.7.2018 to the DGM (Admn), BSNL Bhavan, Ernakulam

Annexure A7 - True copy of O.M No.13018/2/2008/Estt.(L) dated 11.9.2008 issued by the Department of Personnel & Training, New Delhi

Annexure A8 - True copy of Clarifications have been issued in this regard and true copy of O.Ms issued by the Department of Personnel & Training, Government of India

Annexure A9 - True copy of Office Order No.1-33/2012-PAT (BSNL)/CCL dated 8.3.2013 issued by the Assistant General Manager (Pers.V), BSNL, New Delhi

Annexure A10 - True copy of Office Order No.1-33/2012-PAT(BSNL)/CCL dated 26.6.2018 issued by the Assistant General Manager (Estt.I), BSNL, New Delhi

Annexure A11 - True copy of request and the application submitted by the applicant on 3.8.2018 to the 2nd respondent

Annexure A12 - True copy of communication No.Q-104/37 dated 13.8.2018 issued by the 1st respondent

Annexure A13 - True copy of representation dated 6.9.2018 addressed to the 2nd respondent

Annexure A14 - True copy of representation dated 13.11.2018 addressed to the 3rd respondent

Annexure A15 - True copy of communication No.21011/08/2013-Estt(AL) issued by the Department of Personnel & Training, New Delhi

Annexure A16 - True copy of judgment dated 15.4.2014 of the Hon'ble Supreme Court of India in Civil Appeal No.4506/2014

Annexure A17 - True copy of communication dated 21.6.2018 issued by the McKenzie School, New Jersey

Annexure A18 - True copy of charge sheet No.ADMIN/00742/2300/Rule 36/00801680 dated 28.11.2018 issued by the Deputy General Manager (D.Tax & IT), O/o PGMT, BSNL

Annexure A19 - True copy of order No.HR-III/2-2/Misc/2018-19/2 dated 25.2.2019 issued by the 3rd respondent

Annexure R3(a) - True copy of the order No.HR-III/2-2/Misc/2018-19/2 dated 25.2.2019 passed by the Chief General Manager, BSNL, Trivandrum, 3rd respondent

Annexure R3(b) - True copy of the order No.ST/EK-214/NOC-Abrod/JTOs/2017/6 dated 30.11.2017

Annexure R3(c) - True copy of the application dated 9.11.2017 along with undertaking

Annexure R3(d) - True copy of the declaration dated 03.01.2018

Annexure R3(e) - True copy of the application dated 3.8.2018 seeking leave for 10 months w.e.f 28.7.2018

Annexure R3(f) - True copy of the order No.DGM(A&OP)/X-1/2012/52 dated 20.4.2013

Annexure A20 - True copy of format under which undertaking was obtained from the applicant (relevant portion)

Annexure A21 - True copy of communication F.No.11013/8/2015-EsttA-III dated 29.6.2015 issued by the Department of Personnel & Training

Annexure A22 - True copy of Corporate Office communication

No.413-3/2015-Pers-1 dated 22.6.2016

Annexure A23 - True copy of the judgment dated 10.10.2017 in Civil Writ Petition No.21506/2017 of the Hon'ble Punjab & Haryana High Court

Annexure A24 - True copy of communication dated 28.5.2019 to the 2nd respondent

Annexure A25 - True copy of the email communication sent by the applicant to the office of the CGMT

Annexure A26 - True copy of order No.ST/EK-214/7/2014-19/Part/III/106 dated 13.5.2019 issued by the Office of the PGMT, Ernakulam.

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