

CENTRAL ADMINISTRATIVE TRIBUNAL AHMEDABAD BENCH

**Original Application No.206/2018
Dated the 17th day of February 2020**

CORAM:

Hon'ble Shri M.C.Verma, Member (J)

Jitendrakumar Rasiklal Shah,
S/o. Rasiklal Shah,
Male, Aged 62 years,
Residing at:
5, Srinathji Society, Vachheavad,
Nr.Saloon Bazaar, Nadiad 387 001.

By Advocate Shri P H Pathak

V/s

- 1 Bharat Sanchar Nigam Ltd,
Notice to be served through
The Chairman, BSNL, Janpath,
New Delhi – 110 001.
- 2 Controller of Communication Accounts,
Gujarat Telecom Circle, Khapur,
Ahmedabad – 380 001.
- 3 General Manager,
Telecom District,
Telephone Exchange Building,
P G Road, Nadiad – 387 002.

... Respondents

By Advocate Shri M J Patel

ORDER (ORAL)

1 Instant OA has been preferred by applicant challenging order dated 29.12.2017 (Annexure AI) whereby his pension has been revised/ re-affixed and his existing pension was reduced from Rs.14,630/- to Rs. Rs.14,270/- and recovery of excess payment made has been directed. The OA is at the stage of final hearing.

2 Facts in brief, as has been set out in pleading in OA are that applicant on superannuation has retired, on 30.04.2016 from the post of Sr TAO. That on superannuation applicant was paid his retirement dues and his pension was fixed as Rs.14,630/- but later on, respondent No. 2 taking unilateral decision reduced his pay from year 1998 and resultantly his pension as well and that his pension was revised and was reduced to Rs.14,270/-. That recovery was also directed. That one of the applicant in OA 81/2018 made application under RTI and came to know that recovery to be affected from applicant is of Rs 1,43,394/-. That the recovery is stated to be pertaining to period commencing from Year 1998 onwards. That the recovery after retirement is illegal and not permissible and further no opportunity was given to them before passing the order for recovery and hence is the OA.

3 Notice of OA was issued. Respondents have filed reply. According to respondents, CCA Gujarat Circle has issued the revised Pension letter dated 29/12/17. That DOT Cell, vide letter No.GJT/AC/15/03165 dated 06.12.2016 have asked for re-examination of case of the applicant. That amount of recovery was also communicated by DOT Cell. That amount of Rs.1,43,394/- had to be recovered from applicant and it was intimated to the applicant as per said circular. It has also been pleaded that pursuant thereto CC Gujarat Circle has issued the revised pension letter dated 29.12.2017 in respect of the pensioner which is at Annexure R3 (Annexure AI). It has been stated that applicant has been given sufficient opportunity and that no Rules have been violated.

Rejoinder to reply has been filed by the applicant.

4 Upon completion of pleadings, matter was admitted for final hearing. I have heard learned counsel Mr. P.H. Pathak Advocate & learned counsel Mr. M.J. Patel Advocate who respectively appeared for applicant & respondents and have perused the record minutely.

5 Learned counsel Shri Pathak has submitted that before revising the pension, the authority ought to have given opportunity to the applicants. He also assailed the impugned order contending that the order is silent as to how much is the recovery and how many instalments etc. etc would be there. He further submits that

applicant is Class III employee and as per judgment of Hon'ble Supreme Court no recovery can be affected after retirement from Group C and D employees that reply of the respondent reflects that recovery pertains to period commencing from year 1998. He requested to quash the impugned order directing the respondents to issue fresh PPO without disturbing the pay of applicants fixed earlier.

6 Learned counsel Shri M.J. Patel contended that in view of directions, as were given vide Annexure R6 (No. 38 /MPP-1998 dated 20.04.99 Department of Telecommunication, Sanchar Bhavan, Ashoka Road, New Delhi-1) case of pay scale of persons absorbed in restructured cadre as per re-structuring scheme were reviewed and some persons, including the applicant were placed in the pay scale as per directions given and that vide Annexure R3 revised PPO was issued.

7 Upon query as to how this amount of recovery has been calculated, to which period it pertains etc. both counsel showed their inability and learned Counsel for respondent submits that it is not ascertainable from available record and added that it reflects that as per directions given vide Annexure R5 some persons including the applicant was placed in different pay scale.

8 Hon'ble Supreme Court in the case of Rafiq Masih's case (cited supra) has held as under:-

“ 6..... that while it is not possible to postulate all situations of hardship where payments have mistakenly been made by an employer, in the following situations, a recovery by the employer would be impermissible in law:

(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).

(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.

(iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.

(iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.

(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.” (emphasis supplied).

9 Learned Counsel Shri P H Pathak, at this stage placed on record copy of order dated 26the March, 2019 passed in OA No. 81/2018 and urged that case of present applicant and applicant of OA No. 81/2018 are identical and impugned order is also the same and it was quashed and set aside in OA No. 81/2018 . He requested to pass same order in this OA as well. Copy of order passed in 81/2018 supplied to counsel for respondents and he agreed that the

case of the applicant in OA No. 81/2018 and case of instant OA are identical.

10 This Tribunal while disposing of the OA No. 81/2018 on 26/03/19 observed and directed as under:-

“9. Taking note of entirety, especially the fact that the materials available is not sufficient and on the basis of available material it will not be justified to adjudicate to rest the controversy settled for all purposes and therefore, what, in interest of justice needs at this stage is to quash the impugned order, to direct the respondent to re-examine the case of the applicants within three months, if they desire to do so, and if according to them any recovery is to be affected, applicants may be given proper notice and after hearing them order may be passed, and till passing of any such order pension to applicants shall be payable as per pre-revised PPO. Ordered accordingly. Amount pursuant to impugned order, if any, has been recovered, the same shall be refunded to the applicants within two months from the date of receipt of copy of this order.”

11 Having considered the entirety, the facts & submission of learned counsel for parties, it appears just and proper to dispose of this OA with same observation and direction as were given in OA No. 81/2018. Accordingly instant OA, No. 206/18 is disposed of with directions as were given in OA No. 81/2018 and has been quoted *ibid.* M.A. if any is pending also stands disposed of.

(M C VERMA)
MEMBER(J)

abp

