

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This 25th day of February 2020.

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J

MISC. APPLICATION NO.330/02235 of 2017

In

Original Application No. 330/01377/2017

Smt. Aruna Devi wife of Late Mahadev Prasad, aged about 65 years, (Phone Mechanic), R/o L-4, Sarandhranagar, Hasari, Jhansi.

.....Applicant

By Advocate: Shri H.R Tripathi

Versus

1. Union of India through Secretary, Ministry of Tele Communication and Information Technology, New Delhi.
2. Bharat Sanchar Nigam Ltd. (BS.N.L) through A.G.M. (Admn. Officer of G.M.B.S.N.L.) Jhansi.
3. The Account Officer (Cash), Office of C.G.M.T BSNL, U.P. (E) Circle Hazratganj, Lucknow.
4. The Controller of Communication Account, U.P (E) Circle Telephone Exchange Building Vikas Khand-1, Gomti Nagar, Lucknow.

.....Respondents

By Advocate: Shri D.S Shukla

ORDER

1. The present O.A. has been filed by applicant Smt. Aruna Devi seeking following reliefs:-

“(i) To issue an order or direction in the suitable nature directing the respondents authorities to consider the grievances, claim/relief of the applicant and release to the deducted illegal amount of Rs.85000/- from the death/retiral benefits of the husband of the applicant as mentioned above in the preceding paragraph of this application with the interest of 18% per annum or in accordance with law as well as enhance the pensions excluding Rs. 1 lacs to the applicant for mental harassment within stipulated period as to be specified by this Hon'ble Tribunal.

- (ii) To issue an order or direction in the suitable nature directing the respondents authorities to consider and decide the representations/applications of the applicant within stipulated time as may be fixed by this Hon'ble Tribunal.
- (iii) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case.
- (iv) To award the cost of the application to the applicant".

2. Case of applicant is that on the death of her husband Mahadev Prasad, who died during his service period on 21.06.2012, applicant Aruna Devi is receiving the family pension and at the time of his death, there was nothing outstanding against her husband but yet the respondents have deducted Rs.85000/- from the retiral benefits of her husband without any valid reasons and without giving any show cause notice. That despite sending representation to the respondents, no reply was received as to why the amount was deducted from the retiral benefits of deceased. Therefore, the action of respondents in deducting the money from his retiral benefit is not only illegal but is in violation of law laid down by Hon'ble Apex Court in **State of Punjab Vs. Rafiq Masih, (2015) 4 SCC 334**. Hence the present O.A. seeking direction to the respondents to release Rs.85000/- along with interest.

3. I have perused the counter affidavit filed by the respondents. In the counter affidavit, it has been averred that the O.A. is barred by period of limitation and that the amount was rightly deducted from the retiral benefits of her husband and in this regard respondents have placed reliance on letters of Government of India i.e. Annexure CR-1, CR-2 and CR-3 to take the plea that the matter was examined by General Manager Telecom District, BSNL Jhansi who came to the conclusion that overpayment of Rs.83251/- was made to the deceased employee and the same has been recovered from his DCRG.

4. I have heard and considered the arguments of counsel for the parties and gone through the material on record.

5. Insofar condonation of delay is concerned in filing the O.A., on consideration of the arguments of the learned counsel for the parties and going through the material on record as well as looking to the

nature of relief sought by applicant, in interest of justice and for the reasons given by the applicant, the delay in filing the O.A. is condoned.

6. It be noted that there is no denial of the representation of the applicant being received by the respondents as to the deduction made by the department from the retiral benefits of deceased husband of applicant. Equally well is the position that there is no averment in the counter affidavit that reply was given to this representation delineating the reasons for the said deduction. This apart, learned counsel for the applicant submitted that the deduction from the retiral benefits of husband of applicant has been ordered by the respondents without notice and without providing opportunity of being heard and that it was incumbent upon the respondents to give an opportunity of being heard against the deduction so, ordered by the respondents in which deduction entail to visit the applicant with civil consequences. Learned Counsel for applicant placed reliance upon ***Brijendra Kumar Tripathi v/s State of U.P., 2019 (4) ADJ 690 (LB) and S.N.Vishwakarma v/s State of UP, 2006 AA C.J. 1062*** in support of his arguments and prays that the impugned order be quashed.
7. The fact remain uncontested that the action of the respondents in deducting the said amount from retiral dues of deceased husband has been made without giving an opportunity of being heard to the applicant against the said deduction from the retiral benefits.
8. The question is, can the respondents be allowed to make the recovery from the applicant in violation of principles of natural justice. The respondents are under obligation to at least following the principles of natural justice before issuing any order contrary to interest of the applicant as the same visits her with civil consequences.
9. The Hon'ble Apex Court in ***K.I. Shephard v/s Union of India, AIR 1988 SC 686***, held that even administrative acts have to be in accordance with natural justice if they have civil consequences. It was also held that natural justice has various facets and acting fairly is one of them. (Read with advantage ***Indu Bhushan v/s State of Jharkhand, 2010 (11) SCC 278***. Going further, Hon'ble Apex Court in ***Chamoli District Co-operative Bank Ltd. v/s Raghunath, AIR 2016 SC 2510*** held that even if

rule / regulation does not talk of the following the principles of natural justice, even then law requires it to be followed. Thus, the impugned order cannot be sustained on the touchstone of principles of natural justice.

10. In the instant case, the deduction has been made from the retiral benefits of the husband of applicant which action of respondents is in violation of the principles of natural justice i.e. without hearing the applicant on the deduction made from the said terminal benefits unilaterally. The deduction involves public money. Therefore, O.A. is disposed off with the direction to the respondents to inform the applicant as to the reasons for deducting the said amount from the retiral benefits of the applicant within 02 weeks from the date of receipt of a certified copy of this order so as to enable the applicant to take any legal action, if so warranted under law. No order as to costs.

(RAKESH SAGAR JAIN)

Member (J)

Manish/-