

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00922/2019

DATED THIS THE 25TH DAY OF FEBRUARY 2020

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Sri.V.Muthappa,
Aged 64 years,
S/o Late Sri.Venkatappa,
Chief Section Supervisor (Retired),
Bengaluru Telecom District,
Residing at No:747, 17th 'A' Cross,
37th Main, 6th Phase,
J.P.Nagar, Bengaluru: 560 078. ... Applicant

(By Shri PA.Kulkarni..... Advocate)

vs.

1.Bharat Sanchar Nigam Limited,
by its Chairman and Managing Director,
Corporate Office (Personnel-II Section)
Bharat Sanchar Bhawan,
4th Floor, Janpath, New Delhi: 110 001.

2.Chief General Manager Telecom,
Karnataka Telecom Circle, BSNL,
No.1, S.V.Road, Halasuru,
Bengaluru: 560 008.

3.Principal General Manager
BSNL, Bengaluru Telecom District,
Raj Bhavan Road, Telephone House,
Bengaluru: 560 001.

4.Controller of Communication Accounts,
DOT Cell, Amenity Block,
2nd Floor, Palace Road, Bengaluru: 560 001. ... Respondents
(By Shri K.Rama Bhat.. Counsel for R 1- 3)
(By Shri Vishnu Bhat.. Sr. Panel Counsel for R)

ORDER (ORAL)HON'BLE DR. K.B. SURESH, MEMBER (J):

1. Heard. Annexure A-4 is in challenge which we quote:-

*"Bharat Sanchar Nigam Limited,
Office of the Principal General Manager
Telephone House, Raj Bhavan Road,
Bengaluru: 560 001.*

No.STA-BGTD/OA.235/2012-19/46 Dated January 22, 2019

*To
V.Muthappa,
CSS (Retired),
R/ at No:747, 17th 'A' Cross,
37th Main, 6th Phase,
J.P.Nagar, Bengaluru: 560 078.*

SPEAKING ORDER

Sub: Settlement of with-held Leave Encashment Amount & recovery of Over Payment from Sri V.Muthappa, Retired CSS: Regd.

*Ref: 1. Details of High Court of Karnataka with reference to the Writ Petition No.45009/2015(S-Res)
3. Your application to PGM BGTD vide your letter dated 4.5.2018*

The matter had been got examined & following is put up for your information please.

1. *BCR Grade-IV promotion date in respect of you was revised and subsequent re-fixation of pay (order dated 17.10.2014) and consequent recovery is made in compliance of the Hon'ble CAT order dated 6.3.2014 in OAs 548, 234-35/2012*
2. *The OA.No.1396/2014 filed against the pay fixation order dated 17.10.2014 was also dismissed as officials junior to you are also reverted as such said pay fixation attained finality, as same appear to be not contested further afterward dismissal of OA against said pay fixation.*
3. *The Hon'ble Supreme Court decision in the matter of Rafiq Masih (White Washer) etc. in CA No 11527/2014 was pronounced on 18.12.2014 and subsequently, the DoP&T issued OM based on the above decision on 02.03.2016.*

4. The instant matter on the basis of court decision dated 6.3.2014 was settled already vide order dated 17.10.2014 and 19.8.2015 which is before the DoP&T OM dated 2.3.2016. Therefore, the the DoP&T OM dated 2.3.2016 do not appear to be applicable in the instant matter.

This has the approval of competent authority

sd/-

*Deputy General Manager
O/o PGM Bangalore Telecom District,
Bangalore : 560 001. "*

2. Two salient features of this is that White Washer's judgement may not be available in this matter. That may not be correct as Hon'ble Supreme Court have clearly mentioned that at the time of retirement these kind of amounts cannot be recovered.
3. But crucial issue is not that. It is that whether rightly or wrongly the applicant was promoted by the respondents. No juncture of his is attributed to it. He had worked in that promotional post and earned that salary which he had worked for. Therefore, rightly, it cannot be recovered . OA is, therefore, allowed. Annexure-A4, so far it relates to recovery is hereby quashed. The amount recovered may be returned within one month without interest and thereafter 15% as directed by the Hon'ble High Court of Karnataka. No order as to costs.

(CV.SANKAR)
MEMBER (A)

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(DR. K.B. SURESH)
MEMBER (J)

Annexures referred to by the applicant in OA No.922/2019

Annexure-A1- Copy of Order dated 17.10.2007 extending Gr.IV promotion to the applicant
Annexure-A2- Copy of Copy of Order dated 17.10.2014 revising the date of Gr.IV promotion given to the applicant
Annexure-A3- Copy of Order dated 19.08.2015 regarding recovery of sum of Rs.6,57,705/-
Annexure-A4-Copy of Impugned speaking order dated 22.01.2019
Annexure-A5-Copy of CAT BG order dated 17.01.2000 in OA 576/1999 and 613 to 656/1999
Annexure-A6- Copy of High Court order dated 28.5.2004 in WP No.12655-12667 of 1999
Annexure-A7-Copy of High Court order dated 15.12.2004 in WP No.12654/1999 connected with WP Nos.14473/1999, 14476/1999 & 29750/2000
Annexure-A8- Copy of CAT BG order dated 13.07.2007 in MA 63/2007 arising out of OA 576/1999 and 613 to 656/1999
Annexure-A9- Copy of CAT BG order dated 6.3.2014 in OA 235/2012 filed by the applicant
Annexure-A10- Copy of CAT BG order dated 29.6.2015 in OA 1396/2014 filed by the applicant
Annexure-A11-Copy of High Court order dated 25.4.2018 in applicant's WP No.45009/2015.
Annexure-A12-Copy of Apex Court ruling in Chandi Prasad Uniyal's case reported in (2012) 8 SCC 417
Annexure-A13- Copy of Apex Court ruling in State of Punjab and others versus Rafiq Masih and others(relevant portion) reported in (2015)4 SCC 334
Annexure-A14- Copy of Apex Court ruling in R.Santhakumari Velusamy's case reported in (2011) 9 SCC 510
Annexure-A15-Copy of DOPT OM dated 2.3.2016
Annexure-A16-Copy of DOPT OM dated 6.2.2014
Annexure-A17-Copy of Apex Court ruling in Vijay L. Mehrotra's case reported in (2001) 9 SCC 687 relating to grant of 18% simple interest

Annexures referred to in reply

Annexure R1: Copy of order dated 6.3.2014 in OA.548/2011

Annexure R2: Copy of order dated 29.6.2015 in OA.1396/2014

Annexure R3: Copy of order dated 25.4.2018 in WP.45009/2015

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