

**CENTRAL ADMINISTRATIVE TRIBUNAL  
AHMEDABAD BENCH  
Original Application No.367/2019**

**Dated this the 26th day of February, 2021**

**Reserved on : 03.02.2021  
Pronounced on : 26.02.2021**

**CORAM:**

**Hon'ble Shri. Jayesh V. Bhairavia, Member (J)**

**Hon'ble Dr.A.K. Dubey, Member (A)**

Jayendra Bipinbhai Patel,

Aged about 53 years,

Son of Shri Bipinbhai Patel.

Residing at:

9, Sonal Apartments,

Maninagar Co-operative Housing Society,

Behind Jade Blue Show Room,

Maninagar Cross Road, Ahmedabad – 380 008.

Working as:

Divisional Engineer (OFC-East),

Ist Floor, Bhadra Telegraph Office,

BSNL, Ahmedabad – 380 001.

... Applicant.

By Advocate Shri A L Sharma

V/s

- 1 Union of India,  
(To be represented through  
The Secretary (DOT),  
Ministry of Communication,  
Department of Telecommunication,  
Sanchar Bhavan, 20, Ashoka Road, New Delhi – 110 001.
- 2 The Chief General Manager,  
Gujarat Telecom Circle,  
7<sup>th</sup> Floor, Telecom Bhavan,  
Navrangpura, Ahmedabad-380 006.
- 3 The Principal General Manager Telecom,  
Ahmedabad Telecom District,  
2<sup>nd</sup> Floor, Gulbai Tekra Exchange, Ahmedabad – 380 006.
- 4 Managing Director,  
Bharat Sanchar Nigam Limited,  
BSNL corporate Office,  
Harish Chandra Mathur Lane, Janpath, New Delhi – 110 001.

- 5     The Account Officer (Salary),  
      9<sup>th</sup> Floor, Telecom Bhavan,  
      Navrangpura, Ahmedabad – 380 006. ... Respondents.

By Advocate: Shri H D Shukla - R-1.  
              Shri Joy Mathew- R 2 to 5

### **ORDER**

Per Shri Jayesh V Bhairavia, Member (J)

- 1     This application is filed by applicant under Section 19 of AT Act challenging action of respondents in recovering an amount of Rs.20,000/- from the salary for the months of September 2019 without giving any opportunity of hearing or supply any documents and the basis on which such a recovery has been worked out. (salary slip of September 2019 -Annexure A/1 ). Therefore, the applicant has sought following relief:

*“(A) The Hon’ble Tribunal be pleased to declare the action on the part of the respondent authorities in deducting substantial amount from the salary of the applicant under the guise of recovery of any amount whatsoever by reason of erroneous granting of benefit of stepping up, without affording any opportunity of hearing as illegal arbitrary unconstitutional and contrary to settled legal position.*

*(B) Be pleased to declare the action on the part of respondent authorities in withdrawing the benefit of stepping up already granted to the applicant, being illegal, arbitrary unconstitutional and contrary to administrative instructions and settled legal position.*

*(C) Be pleased to direct the respondent authorities not to disturb or withdraw the benefit of stepping up already granted to the applicant in view of the administrative instructions prevailing at the relevant time, merely because of change/introduction of new policy subsequent thereto.*

*(D) Be pleased to direct the respondent authorities to refund the amount already recovered from the salary of the applicant with interest at the rate of 12% per annum.*

*(E) Be pleased to allow the petition with costs and be pleased to quantify the cost.*

*(F) Be pleased to grant such other and further reliefs as may be deemed just and proper by the Hon’ble Tribunal in the facts and circumstances of the case.”*

2 The brief facts of the case are as under:-

- 2.1 The applicant was appointed as JTO on 28.11.1980. He was promoted to the post of Sub Divisional Engineer –Group B (hereinafter referred as SDE) on 01.01.2002. The applicant was thereafter promoted to the post of Divisional Engineer based on seniority cum fitness on 28.08.2019. Since then he has been performing his duty as Divisional Engineer under respondent authorities.
- 2.2 The applicant received the vertical promotion to the post of SDE and his pay was fixed accordingly. However, his junior one Sh. R V Rafalia was granted higher pay than the applicant and other similarly placed SDEs under lateral advancement scheme and the pay of said Sh. Rafalia was fixed under FR 22(1)(a)(i). The said Sh. Rafalia also received vertical promotion. Since junior to the applicant was drawing higher pay, therefore the applicant as also other similarly placed senior SDEs demanded to step up their pay on par with Sh. Rafalia. Considering the representation/request of applicant, the respondents had extended the benefit of stepping up of pay of the applicant on par with his junior Sh. Rafalia. The respondents vide its order dated 29.01.2008 stepped up the pay w.e.f. 01.03.2003 on condition that the said benefit is subject to clarification from Corporate Office BSNL.
- 2.3 It is stated that the Corporate Office of BSNL issued clarification dated 29.09.2014 wherein it has been stated that said Sh. Rafalia is not entitled to double benefit of pay fixation under FR 22(1)(a)(i) and the benefit of higher pay has ordered to be withdrawn. It was further stated in the said letter that those officers who have been granted benefit of stepping up of pay on par with their junior Sh Rafalia, also be verified and necessary action be taken for recovery of excess payment including re-fixation of pay. Accordingly, vide order dated

30.10.2014, the pay of said Rafalia was withdrawn and recovery was initiated from him.

- 2.4 The applicant was served with show cause notice whereby he was informed that his pay has been revised vide BSNL order dated 29.09.2014. Due to revision of pay and overpayment of 198975/- is due to be recovered from him by show cause it was directed to submit explanation on or before 31.01.2015. Along with the show cause the revised pay fixation memo was also supplied to the applicant. (Ann A/10). In response to said show cause applicant has submitted his reply through proper channel on 27.01.2015 (Ann A/11) wherein applicant has requested to supply him the copy of clarification issued by Corporate Office, BSNL and other relevant documents. The respondents vide their letter dated 02.02.2015 (Ann. A/12) intimated the applicant that his pay has been re-fixed and arrears of overpayment calculated as stated in the show cause notice on the instructions contained in letter dated 30.10.2014 issued by AGM(Admn)/CO,AM and copy of which was supplied to him.
- 2.5 It is stated that the Office of respondent no.2, i.e. Chief General Manager vide his letter dated 16.03.2017 (Ann. A/13) informed all the SSA heads in Gujarat Circle that with reference to order/decision dated 29.09.2014 for revision of pay and recovery thereof in respect of SDEs in stepping up cases, this office vide letter dated 16.04.2015 intimated that in the stepping up cases revision of pay and recovery may not be affected till the conclusion of Court decision. In this regard it is further stated that barring the cases where stay has been granted by the Court, overpayment if any made may be recovered and also submit revised pay fixation memo (Ann. A/13). After the show cause notice was issued due to pendency of certain cases on the subject matter, the respondents have not initiated the recovery

but vide letter dated 16.03.2017 again directed to initiate the recovery.

2.6 The respondent no.3 had also issued another letter dated 28.08.2019 by giving reference of letter dated 16.03.2017 once again requested the concerned offices to initiate the recovery in terms of BSNL Corporate Office letter dated 29.09.2014 and letter dated 30.10.2014 issued by local office.

2.7 It is stated that aggrieved by decision of withdrawal of stepping up of pay and initiation of recovery of overpayment, said Shri R V Rafalia had filed OA 458/2014, the said OA was dismissed vide order 24.07.2017. Thereafter, the respondent deducted Rs.20,000/- as shown in pay slip of month of September 2019 which is impugned herein (Ann. A/1) against which, the applicant filed representation on 01.10.2019 (Ann. A/15). However, said representations remained unanswered. Hence this OA.

3 The learned counsel for the applicant mainly submitted as under:-

3.1 It is argued that the impugned action of initiating recovery from the salary of the applicant that too without affording any opportunity of hearing and supplying the documents to the applicant is illegal, arbitrary, un-constitutional. It is submitted that Hon'ble Apex Court in catena of judgments reiterated and emphasised that administrative action which visit a person with adverse civil consequences must be preceded by a notice and opportunity of hearing. In support of said submission learned counsel has placed reliance on the judgments (i) State of Orissa v/s Dr. (Miss) Binapani Dei AIR 1967 SC 1269 (ii) A.K.Kraipak v/s Union of India AIR 1970 SC 150 (iii) Sayeedur Rehman v/s State of Bihar AIR 1973 SC 239 (iv) Swadeshi Cotton Mills v/s Union of India AIR 981 SC 818 (v) S L Kapoor v/s Jagmohan & Ors AIR 1981 SC 136, (vi) Smt

Menaka Gandhi v/s Union of India AIR 1978 SC 597 and (vii) Olga Telis v/s Bombay Municipal Corporation AIR 1986 SC 180.

- 3.2 It is submitted that the benefit of stepping up of pay and pay fixation including consequential benefits were granted to the applicant in the year 2003 which cannot be disturbed after 16 years and in light of judgment passed by Hon'ble Apex Court in the case of Rafiq Masih (White Washer) reported in (2015) 4 SCC 334, the impugned decision of recovery of excess payment by the respondent is illegal.
- 3.3 It is submitted that the impugned decision is against the respondent's own circular dated 19.01.1996 which specifically mandates that the pay of seniors has to be stepped up to that of their juniors subject to the other conditions laid down in DOPT OM dated 04.11.1993. Further, it is submitted the date from which the pay anomaly between the applicant and his junior Shri R V Rafalia arose, at the relevant time circular dated 19.01.1996 was prevailing and considering the same, benefit of stepping up of pay was granted to the applicant and to other similarly situated employees. By relying upon the judgment of Hon'ble Apex Court in the case of Er. Gurcharan Singh Grewal & Anr. Vs. Punjab State Electricity Board & Ors, it is submitted that "A senior cannot be drawing lesser salary than his junior" Such anomaly should not have been allowed to continue and ought to have been rectified. It is submitted that it is not open to respondents to illegally and arbitrarily withdraw the benefit granted and re-fix the pay of the applicant and order recovery.
- 3.4 It is submitted that the impugned decision of withdrawing the stepping up of pay of a senior with respect to his junior in view of the provisions of EPP is illegal and arbitrary since it fails to

consider the direction/advice issued by CAT, Ernakulam Bench passed in OA No.109/2011 with other OAs decided on 07.12.2011 that the seniors (SDEs promoted as adhoc DEs before getting the 2<sup>nd</sup> TBP getting less pay than juniors), the respondents are directed the pay of the applicant to the level of pay of the junior. The said order was affirmed in SLP filed by the respondent BSNL against the order of Kerala High Court.

3.5 It is submitted that the stepping of the pay was granted to remove pay anomaly which was already sanctioned by the competent authority at the relevant time i.e in the year 2006-2007, much before the clarification sought for from BSNL by the Circle Office vide memo dated 13.03.2013. The benefit was extended to the applicant at the relevant time after due deliberation for which the applicant cannot be punished in the form of undue recovery. Therefore, the impugned order is required to be quashed and set aside.

3.6 It is submitted that the respondents have withdrawn the benefit of stepping up of pay in the case of similarly situated SDEs and by re-fixing the pay recovery has been initiated for overpayment. Aggrieved by the said decision, the similarly placed SDEs have filed OA 320/2018 (Bipinchandra Gagandas Patel v/s BSNL) before this Tribunal, wherein this Tribunal has granted interim relief in terms of para 9(a) of the said OA.(Ann. A/16) and restrained the respondents from effecting the recovery. It is submitted that the case of the applicant is also identical and common in nature to the OA No.320/2018 which is pending before this Tribunal for final decision. In sum, it is submitted that the respondents are not entitled to step down the pay of applicant and ought not to affect the recovery.

4 Per contra on behalf of respondent no.1 (i.e The Secretary (DOT), Ministry of Communication, Department of Telecommunication, New

Delhi) standing counsel Shri H D Shukla appeared and submitted that reply has been filed wherein it is mainly stated that in pursuance of new telecom policy 1999, the government of India has transferred the business of providing telecom services in the country to newly formed Bharat Sanchar Nigam Ltd, (BSNL) w.e.f. 1.10.2000. All the government employees working in different/various territorial circles, maintenance region, etc were transferred en masse to BSNL alongwith their post on deemed deputation basis without any deputation allowance in terms of DOT's OM No. 2-29/2000-Restg. dated 30.09.2000. (Ann. R/1). The DoT HQ is not the custodian of service record of the applicant. It is further stated that the concerned SSA/circle DTS/DTO (now BSNL) maintain the service record of the applicant and the BSNL is competent to decide the fixation of pay, etc of the applicant. Therefore, the respondent nos. 2 to 5 i.e. BSNL are competent to file the necessary reply. Even otherwise the applicant has not prayed any relief against respondent no.1. i.e. DoT.

- 5 On behalf of respondent No. 2 to 5 BSNL, standing counsel Shri Joy Mathew appeared and submits that detailed counter reply has been filed wherein the claim of applicant has been denied. He mainly submitted as under:-

5.1 It is stated that by considering the demand and request of the senior SDEs to step up their pay on par with their junior including the applicant's representation dated 28.07.2006, the respondents BSNL had issued a conditional order of stepping up of pay of the applicant and other similarly placed SDEs on par with his junior (i.e Sh. R V Rafalia). However, as per the clarification issued by BSNL Corporate Office vide letter dated 29.09.2014, the extension of benefit of pay fixation under FR 22(1)(a)(i) to JTO who got lateral advancement promotion (JTO-LA) and post based promotion as SDE, both during the period from 01.10.2000 to 30.09.2004 in IDA scale Rs.11875-300-17275/-, stands withdrawn since double benefit of pay



fixation cannot be given. Accordingly, it was directed that the said benefit granted to the Sh. R V Rafalia stands withdrawn and further instructed to recover overpayment, in addition to it, it was also directed that the extension of benefit of such higher pay/step up granted in the case of other SDEs on par with R V Rafalia, in those cases also the pay is required to be stepped down by way of refixation and recovery of any excess payment needs to be initiated from the said employee.

Pursuant to the aforesaid clarification and direction, the respondents had withdrawn the benefit of higher pay granted to Sh. Rafalia and other similarly placed SDEs and also initiated the recovery of excess payment including the applicant herein.

- 5.2 It is submitted that before initiating the recovery of overpayment, the show cause notice dated 20.01.2015 (Ann. A/10) had been issued whereby applicant was put to notice about revision of pay and an overpayment of Rs.1,98,975/- due to be recovered from him. He was requested to show cause why said amount should not be recovered from him and he was granted sufficient time to submit his explanation. In response to the said show cause notice the applicant had submitted his representation dated 27.01.2015 (Ann A/11). Therefore it is not correct on the part of the applicant to state that he was not put to notice about the clarification issued by Corporate Office whereby the double benefit of pay fixation and the benefit of stepping up of pay was withdrawn. The applicant was well aware of the said facts as also he was put to notice at the time of grant of benefit of stepping up that same is subject to clarification. Therefore, it is not open for the applicant to state that the benefit of stepping up of pay was granted unconditionally or in other words it was never granted permanently.

5.3 It is submitted that the Pursuant to clarification issued by Corporate Office the O/O. GMTD vide their letter dated 30.10.2014 directed the GM, BSNL Junagadh refix the pay of Sh. Rafalia at the stage of Rs.13375/- w.e.f. 10.03.2003 and overpayment may be recovered. The said clarification and orders were circulated in the Office and applicant herein was also aware about the same. The applicant was served with show cause notice dated 20.01.2015 (Ann. A/10), and in response to it the applicant has submitted reply and sought the copy of clarification issued by Corporate Office, BSNL which was supplied to him by the respondents vide its letter dated 02.02.2015 (Ann. A/12). The respondents had also informed all such SDEs who had got the extension of benefit of stepping up of pay on par with Sh. Rafalia, that their pay also be re-fixed and overpayment be recovered including the applicant. Therefore, it is contended by the respondent BSNL that applicant herein who is a Group-B officer was well aware about the issuance of the clarification issued by the Corporate Office, BSNL with respect of withdrawal of higher pay/stepped up pay of SDEs.

It is submitted that due opportunity was granted to the applicant to submit his explanation as the same was granted to all the SDEs vide respondent's letter dated 02.02.2015, sufficient time was granted to applicant and similarly situated other officers to repay the overpayment paid to them. Therefore, it is not correct on the part of applicant to state that he was not granted opportunity before initiating the recovery.

5.5 Further it is submitted by the counsel for the respondents that in light of instructions contained in OM dated 19.01.1996 for stepping up of pay on vertical promotion to TES Group B from 01.01.1990 in DoT department, the extension of benefit of stepping up of pay was granted to the applicant vide order dated

25.09.2007 w.e.f. 01/10.03.2003. Subsequently, vide OM dated 05.09.2006 (Ann. A/6) it was decided that the benefit of FR 22(1)(a)(i) cannot be allowed at the time of vertical promotion if it had been allowed at the time of lateral advancement under the scheme of lateral advancement in case of JTOs and SDEs. Accordingly the OM dated 19.01.1996 was withdrawn. Thereafter, vide clarification dated 09.12.2006 (Ann. A/7), it was declared that benefit of double pay fixation under FR 22(1)(a)(i) shall not be extended in future after 05.09.2006. The OM does not affect the employees who have got the benefit up to 04.09.2006. Thereafter vide circular dated 11.04.2007, BSNL Corporate Office, Delhi further clarified that the DoT has clarified that the OM dated 05.09.2006 takes effect from 05.09.2006. Since the applicant was granted extension of benefit of stepping up of pay on par with his junior Sh. Rafalia **on 25.09.2007**. Therefore also the applicant is not entitled to retain the double benefit received by him. It is submitted that in view of this fact, it is not right on the part of applicant to state that the respondents cannot withdraw the benefit of stepping up of pay on par with his junior Sh. Rafalia.

5.5 Learned counsel for the respondent submits that the applicant is not entitled for any relief sought for in this OA, as identical relief sought by Sh. Rafalia & Ors vide OA 458/2014 have been dismissed by order 24.07.2017. The said decision squarely applies to this case also.

6 The applicant has filed rejoinder reiterating the facts in the OA. Additionally it is stated that the judgment relied upon by the respondents i.e. case of Chandi Prasad Uniyal has been considered and virtually overruled by the Hon'ble Apex Court in the case of State of Punjab & Ors v/s Rafiq Masih (White Washer) (2015) 4 SCC 334.

It is further stated that the decision and order passed by this Tribunal in the case of Rafalia has not yet become final and it is under review. It is submitted that respondents have contended that he is getting salary of Rs.156000/- per month and therefore recovery of Rs.20000 per month would not cause any hardship is concerned, even an illegal recovery of Re.1/- from the salary would cause hardship. In the present case it is not an amount but the illegal action on the part of respondent, i.e. the issue under consideration. Since the action on the part of the respondent is ex-facie illegal, recovery of any amount whatsoever cause hardship. Therefore, the contention of respondent that no hardship is caused to the applicant is not tenable. It is submitted that the violation of principles of natural justice comes into play in the present case since the exercise of re-fixation of pay and consequential recovery is taken after a lapse of not less than ten years after the alleged erroneous fixation of pay. It is submitted that prior opportunity ought to have been afforded before reduction of pay scale on the ground of having been wrongly fixed. In absence of such practice, the impugned decision suffers from violation of principles of natural justice. In support of this submission learned counsel Shri Sharma placed reliance on the judgment passed by Hon'ble Apex Court in the case of Bhagwan Shukla v/s Union of India & Ors reported in (1994) 6 SCC 154. As also the counsel placed reliance on the judgment passed in the case of S L Kapoor v/s Jagmohan & Ors reported in (1980) 4 SCC 379 and submits that notice must be given in the context of proposed action and mere furnishing of information is not proper. Lastly, the counsel for the applicant submits that similarly placed SDEs have filed OA 320/2018 against the initiation of recovery on withdrawal of stepping up pay wherein this Tribunal has granted interim relief against the recovery. The issue involved in this OA is identical with the issue in OA 320/2018. In sum, it is submitted that the impugned decision of initiating the recovery of overpayment due to re-fixation of the pay of applicant is illegal, arbitrary and prayed for setting aside the same.

- 7 Heard the learned counsel Shri A L Sharma for the applicant, learned standing counsel Shri Joy Mathew for respondents 2 & 3 (BSNL) and learned standing counsel Shri H D Shukla for respondent no.1 (DoT) as also perused the material on record.
- 8 The issue involved in this OA relates to withdrawal of extension of benefit of stepping up of pay of the applicant which was granted to him on par with his junior Sh Rafalia and recovery of excess payment thereon.
- 9 Undisputedly, from the post of JTO the applicant was promoted to the post of Sub Divisional Engineer Group-B in the pay scale of Rs.7500-250-12000 vide order dated 02.01.2002 (Ann. A/2). It is noticed that while applicant was working as SDE, his junior one Sh. Rafalia was granted extension of benefit of higher pay by virtue of the lateral advancement scheme and his pay was fixed by giving him the benefit of FR 22(1)(a)(i), thereafter the said Rafalia got the virtual promotion vide order 20.03.2003 and again on exercising his option under FR 22(1)(a)(i) his pay was fixed at Rs.13,675/- which was more than the pay of SDEs senior to said Rafalia. Therefore, said senior SDEs including the applicant demanded to grant them extension of said benefit of higher pay by way of stepping up their pay on par with Sh Rafalia. As per DoT instructions dated 19.01.1996 with a view to remove pay anomaly, the respondents, extended the benefit of stepping up of pay to the applicant and other similarly placed SDEs on par with Sh Rafalia on condition that the said benefit is subject to clarification. Thereafter, the respondents Corporate Office of BSNL vide its order dated 29.09.2014 issued clarification and direction to the Chief General Manager, Gujarat Telecom Circle, Ahmedabad as under:-

“ .....

**2 “ it has been clarified by the Pers Branch that “the intent and purport of EPP-2007 is to allow the executive an opportunity to exercise the option to get the benefit of up gradation under the old time bound scheme, if it becomes due prior to 0.0.2004 and in case**

*he so desires. Having exercised such an option Sh. Rafalia cannot be governed by the old time bound upgradation scheme for this purpose any subsequent promotion. In fact, he is automatically governed by EPP-2007. Accordingly on his regular promotion as SDE(T) on 10.03.2003 in E-2 scale, Sh. Rafalia may have to be granted the benefit of increment in E-2 scale in terms of Para II(V) of EPP-2007.”*

*3 Further, the ES Branch has also clarified that “the cases of those who have opted for the EPP have to be decided in accordance with the Executive Promotion Policy”.*

*4 You are, therefore, requested to take action accordingly to decide the case and recovery of overpayment if any may also be intimated to this office.”*

Pursuant to aforesaid clarification/order dated 29.09.2014 the Chief General Manager, BSNL, Gujarat vide his order dated 30.10.2014 directed the GM, BSNL, to re-fix the pay of Sh. R V Rafalia at the stage of Rs.13,375 w.e.f. 10.03.2003 and over payment if any, may be recovered and revised pay fixation should be intimated to his office. It is also not in dispute that the applicant and other similar SDEs had accepted the conditional benefit of stepping up of their pay. The applicant himself accepts that he had not accepted the benefit of lateral promotion since he had already been granted the benefit of regular promotion (vertical promotion). It can be seen that applicant had availed double benefit of pay fixation under FR 22(1)(a)(i) on par with Sh. Rafalia and as noted above the respondents have withdrawn the said double benefit in the case of Rafalia, thus, the very basis on which the pay of applicants came to be stepped up stands extinguished.

It is also noticed that the respondents in the case of applicant and other similarly placed SDEs have served notices for withdrawal of their stepping up and intimation for recovery of overpayment on the basis of clarification issued by the Corporate Office. Under the circumstances, it cannot be said that applicant was not put to notice before recovery being initiated.

10 The counsel for the applicant also submitted that the issue involved in the present case is identical to the facts of OA No. 320/2018 filed by similarly placed SDEs i.e. Bipinchandra G Patel & 4 Ors. On consideration of the said submission by the applicant it is found that the facts and grounds taken are common in said OA 320/2018. It is apt to mention that the said OA has been dismissed by this Tribunal vide order dated 18.02.2021. The relevant observation and findings of the order dated 18.02.2021 passed in said OA which reads as under:-

*“14 At this stage, we also take note of order passed by this Tribunal in another identical OA No. 222 of 2017 decided on 17.07.2017 in the case of Dipesh Jayantilal Parikh VS. BSNL & Ors., wherein the applicants being Senior to said Sh. Rafalia had represented to respondents to step up his pay on par with said Sh. Rafalia. In that process, the pay of applicant also came to be re-fixed at Rs. 13675 /- and the same was revised from time to time and he was drawing his pay accordingly. Subsequently, in light of clarification issued vide order dated 29.09.2014 by the Corporate Office of the respondent he was served with revised pay fixation memo and calculation sheet for overpayment with a direction to repay the said over payment vide order dated 30.03.2017. Aggrieved by said order the applicant had filed the aforesaid OA No. 222 of 2017. This Tribunal taking into consideration the order dated 24.07.2017 passed in OA 458 of 2014 (R V Rafalia’s Case), held that we are of the opinion that even if had there been a show cause notice, the applicant could not have offered any defence whatsoever in view of the facts that the pay of the said Sh. R V Rafalia came to be stepped down from Rs.13,675/- to Rs.13,375/-. Accordingly, this tribunal vide order dated 17.08.2017 dismissed the said OA. We also take notice that the RA 27/2017 filed in this OA was also dismissed vide order dated 01.02.2021.*

*15 In the present case undisputedly, as noted herein above on representation of the applicants, the respondents had granted benefit of stepping of pay on par with their junior Sh. Rafalia with unequivocal condition that the said benefit of stepping up of pay is subject to clarification issued from the Corporate Office. The applicants herein had accepted the said conditional order of their stepping up of pay voluntarily and without any objection. Under the circumstances it can be seen that the applicants were made known and put to notice from the beginning that their stepping up of pay is absolutely conditional. Thereafter, as noticed herein above the competent authority issued clarification dated 29.09.2014 and decided that the benefit of grant of higher pay to the said Sh. Rafalia is not in consonance with the provisions of FR 22(1)(a)(i) as also in the case of similar benefit extended on par to other SDEs which admittedly includes the present applicants. The decision of respondents to withdraw/step down the pay of Sh. Rafalia and recovery of excess payment has been affirmed by this Tribunal. Therefore, the very basis on which the pay of applicants came to be stepped up stands extinguished.*

*It is also important to mention that this Tribunal in its order dated 17.08.2017 in OA 222/2017 by considering the orders/directions contained in BSNL's clarification dated 29.09.2014 and taking into consideration the demand from the applicants who are senior to said Sh. Rafalia for stepping up of their pay in para 14 it is observed that ".....besides the overpayment was not on account of mistake committed by the respondent. Admittedly, there is a demand from the applicants to step up his pay on par with the said Sh. R V Rafalia. The demand was met, but subject to a condition which is in the nature of a condition subsequent, whereas in the case of Rafiq Masih (supra), the monetary benefits were consequent upon a mistake committed by the competent authority. Therefore, in our opinion the case of the applicant does not fall under any one of the condition mentioned in Rafiq Masih (supra) and thus the same will be of no help to the applicant."*

*16 In our considered view the order passed by this Tribunal in the case of Sh. R V Rafalia (supra), as also order passed in OA 222 of 2017 & RA 27/2017 in the case of Dipesh Jayantilal Parikh v/s. BSNL & Ors. (Supra), is squarely applicable to the facts and circumstances of the present case, we are inclined to follow the same judgment/orders.*

*17 Thus, the submission of the applicants that they are senior to Sh. Rafalia and they were entitled to receive higher pay and accordingly their pay was stepped up, further it is also contended that their case is different than that of Sh. Rafalia, in our view, is found to be contrary to the material on record and said submission is not tenable. The issue relates to violation of principles of natural justice also decided by the Tribunal in aforesaid identical cases by taking into consideration the law laid down by Hon'ble Apex Court in the case of Haryana Financial Corporation & Anr v/s Kailash Chandra Ahuja (supra), and by considering the judgments passed by Hon'ble Apex Court in the case of Rafiq Masih (White Washer) (supra) and Jagdev Singh (supra) on the issue of recovery of excess payment. The said finding is also applicable to the facts and circumstances of the present case. Therefore, the submission of the applicants that their pay was arbitrarily and illegally stepped down and refixed, as also illegally issued an order for recovery by respondents is not acceptable.*

*18 In light of aforesaid judgment/orders passed by the Tribunal in identical cases and discussion hereinabove, we are of the considered view that the impugned decision re-fixation of the pay of the applicants by stepping down the pay and recovery of overpayment cannot be said to be suffering from any infirmities.*

*19 In view of aforesaid factual matrix and in light of orders passed by this Tribunal in identical OAs filed by similarly placed SDEs, the applicants are not entitled for any of the relief sought by them in this OA. Accordingly, the OA is dismissed. Interim relief granted vide order dated 15.06.2018 stands vacated. However, at this stage it would be appropriate to mention here that since the request for VRS of applicants have been accepted by the respondents; they are directed to settle all the retiral dues as payable to applicants within three months from the date of receipt of copy of this order. Ordered accordingly. No costs."*



- 11 It can be seen that the aforesaid order passed in OA 320/2018 in our considered view is squarely applicable to the facts and circumstances of the present case, as also it is the specific submission of the applicant that his case is identical to OA 320/20218, therefore we have no other option but to follow the same conclusion as in OA 320/2018.
- 12 In light of aforesaid judgment/orders passed by the Tribunal in identical cases and discussion hereinabove, we are of the considered view that the impugned decision of stepping down the pay by re-fixing the pay of the applicant and ordering recovery of overpayment cannot be said to be suffering from any infirmities. The judgments referred to by the applicant are of no help in the facts and circumstances of the present case.
- 13 In view of aforesaid factual matrix and in light of orders passed by this Tribunal in identical OAs filed by similarly placed SDEs, the applicants are not entitled for any of the relief sought by them in this OA. Accordingly, the OA is dismissed. Interim relief granted vide order dated 14.11.2019 stands vacated. No costs.

(Dr A K Dubey)  
Member(A)

(Jayesh V Bhairavia)  
Member(J)

abp

After pronouncement of the judgment, learned counsel for the applicant Shri A L Sharma submits that interim relief granted earlier by this Tribunal be continued for another two weeks. In our view the said request is not acceptable since we have dismissed the main OA and vacated the interim relief granted by this Tribunal. Hence the request is rejected.

(Dr A K Dubey)  
Member(A)

(Jayesh V Bhairavia)  
Member(J)

abp

