

CENTRAL ADMINISTRATIVE TRIBUNAL**CHANDIGARH BENCH****(order reserved on 12.3.2021)**

O.A.No.060/0751/2020

Chandigarh, this the 15th March, 2021**CORAM: HON'BLE MRS. AJANTA DAYALAN, MEMBER (A)**

Balwinder Singh (Retd) Lorry Driver, son of Inder Singh, aged about 57 years (Class III), resident of House No. 36, Baba Jiwan Singh Colony, Bye Pass Chheharta, District Amritsar-143105.

(BY ADVOCATE: MR. GAURAV KALSHI FOR MR. H.S. BATH)

Applicant

Versus

1. Bharat Sanchar Nigam Ltd. (BSNL) through its C.M.D. Corporate Office, Bharat Sanchar Bhawan, Janpath, New Delhi-110001.
2. Chief General Manager (CGM), MTC, NTR, BSNL, 2nd Floor, Kidwai Bhawan, New Delhi-110001.
3. Chief General Manager, Telecom, Punjab Circle, Sanchar Sadan, Plot No.2, Sector 34-A, Chandigarh. Pin Code-160022.
4. General Manager, MTC, NTR, BSNL Building, Telephone Bhawan, 2nd Floor, Sector-17, Chandigarh.
5. Deputy General Manager (NTR) MTC, 2nd Floor Building (BSNL), Master Tara Singh Nagar, Jalandhar.
6. General Manager, BSNL Telecom, Sanchar Bhawan, Ranjit Avenue, Amritsar, Pin-143001.

(BY ADVOCATE: MR. D.R. SHARMA)

....

Respondents



ORDER
HON'BLE MRS.AJANTA DAYALAN, MEMBER(A)

The present Original Application has been filed by the applicant Balwinder Singh seeking quashing of the order dated 10.7.2020 (Annexure A-2) regarding recovery of Rs.3,37,726/- made from his exgratia amount. The applicant has also sought direction to the respondents to refund this amount.

2. The applicant has stated that he was working as Lorry Driver which is categorized as Class III in BSNL. There was no complaint about his work or conduct. He took retirement under Voluntary Retirement Scheme (VRS) w.e.f. 31.1.2020. No objection was raised by the office regarding his dues at the time of his retirement. All dues were cleared by him. Despite this, at the time of release of ex-gratia amount, an amount of Rs.3,37,726/- was recovered from the applicant.

3. The applicant made a representation dated 1.7.2020 (Annexure A-1). He also sent a detailed representation dated 11.9.2020 (Annexure A-3). However, there was no response from the Department. Hence, the O.A.

4. The case of the applicant is that the amount has been recovered without any notice to him. No details regarding recovery made have been supplied to him. Even if there was wrong fixation of pay and excess payment due to this, there was no fault on the part of the applicant. Hence, the applicant has pleaded that no recovery can be effected from him in terms of the Supreme Court order in the case of **State of Punjab &**



Others Vs. Rafiq Masih; instructions dated 2.3.2016 (Annexure A-5) issued by Department of Personnel & Training, New Delhi and instructions dated 19.9.2017 (Annexure A-6) issued by Bharat Sanchar Nigam Limited, Corporate Office, New Delhi. He has argued that such recovery is impermissible in law as the applicant belongs to Class III category and he had already retired when the recovery was made.

5. The respondents have contested the claim of the applicant. Firstly, they have stated that the applicant has made a representation only on 11.9.2020 and has rushed to the Tribunal in October 2020 itself without waiting for a decision on his representation. As such, they have stated that the O.A. filed by the applicant is misconceived and is liable to be dismissed.

6. The respondents have further stated that at the time of retirement of the applicant on 31.1.2020, the following two dues were pending against him:-

Sr.No.	Particular	Amount
1.	Society Loan	Rs.5,25,000/-
2.	Recovery pending under orders of AGM (HR&Plg)	Rs.3,37,726/-

7. The respondents have stated that the 1st instalment of ex-gratia was of Rs.4,38,908/- and was exhausted against Society loan itself amounting to Rs.5,25,000/-. So, no recovery could be made against ex-gratia amount. The amount of Rs.3,37,726/- was recovered from the leave encashment.

8. The respondents have further stated that it is not the case of the hardship as the applicant has got handsome benefit under VRS amounting to Rs.22,45,587/- (Ex-gratia + leave



encashment + gratuity). He is also getting handsome pension amounting to Rs.25,511/- . Hence, the recovery of excess amount paid has been made rightly.

9. Moreover, the respondents have stated that as per their reference dated 10.7.2020 (Annexure R-3), the applicant has already been informed by the respondents that the recovery is based on provisional pay fixation with the purpose of settlement of his pension case under VRS Scheme. The same has been done with the approval of the competent authority. Final recovery details will be provided to him on final pay fixation after settlement of his case for upgradation by the office of GMTD, Amritsar. This is because the time bound promotion case of the applicant was pending at the time of his voluntary retirement on 31.1.2020. This case has been finalised on 22.9.2020 and orders in this regard have been enclosed as Annexure R-4.

10. The respondents have further stated that the Rafiq Masih's case and the instructions dated 2.3.2016 (Annexure A-5) would not help him. The instructions dated 19.9.2017 (Annexure A-6) issued by Corporate Office of BSNL are only in order to avoid hardship to the employee from recovery of wrongful or overpayment made to the government servant. The applicant in the instant case has been given handsome benefits under the VRS Scheme. Since there is no hardship in this case, recovery has been rightly made from him.

11. In view of the above, the respondents have concluded that the recovery from the applicant has been rightly made with the order of the competent authority. Besides, the O.A. has been



filed in October 2020 - just a month after filing of the representation dated 11.9.2020. As such O.A. is devoid of merit and deserves to be dismissed.

12. I have heard the counsel of opposing sides and have also gone through the pleadings. I have also given thoughtful consideration to the entire matter.

13. First of all I observe that the matter only relates to recovery of Rs.3,37,726/- made from the applicant after his voluntary retirement on 31.1.2020. The respondents have stated that the applicant has received over Rs.22 lacs towards ex-gratia payment, leave encashment and gratuity. Besides, he is getting pension of over Rs.25,000/- per month. As such, the recovery of excess amount of Rs.3,37,726/- paid to him cannot be termed to be hardship. The present case cannot be treated as a case of hardship.

14. Besides, I find that the respondent have also relied upon judgement dated 24.11.2020 (Annexure R-5) in O.A.No.200/323/2020 titled **N.K. Nandanwar Vs. Chairman-cum-Managing Director BSNL etc.** of the Coordinate Bench of this Tribunal, Jabalpur Bench wherein it has been held that if a specific undertaking is given by the employees for recovery of excess amount, the respondent department can recover the excess payment made to such employees.

15. I also observe that the aforesaid case also relates to an employee of BSNL itself and the applicant therein N.K. Nandanwar also took VRS. At the time of VRS, the applicant therein had given an undertaking and the judgement is based on that undertaking. The Jabalpur Bench has also placed reliance



on a decision of Hon'ble Apex Court in the case of **Chandi Prasad Unyal and others Vs. State of Uttrakhand and others** (2012) 8 SCC 417. Hence, the case of the applicant is similar and, therefore, Rafiq Masih's case will not apply in the instant case.

16. I also observe that the respondents had informed the applicant also that the recovery was made based on his provisional pay fixation. It was also informed that this is for settlement of his pension case. In fact, his time bound promotion case was pending at the time of his voluntary retirement. This case has since been decided vide order dated 22.9.2020 (Annexure R-4) . It is possible that some benefit due to this finalisation may accrue to the applicant.

17. Further, I observe that even as per his own pleadings, the applicant made a detailed representation only on 11.9.2020 (Annexure A-3). However, he has filed the O.A. on 13.10.2020 – that is just a month after making his representation. This is despite the fact that he was aware of the fact that the recovery has been made based on his provisional pay fixation and is yet to take a final shape. More so, when the applicant was informed of this fact vide letter dated 10.7.2020 by the respondents, which has been attached by applicant himself as Annexure A-2 with the O.A. It is also a fact that applicant took VRS and thus it may not have been possible for the respondents to settle his all retiral dues by fixing his pay after giving him time - bound promotion before his sudden exit from the service.

18. In view of all above, it is clear that the O.A. is highly premature and has been filed without giving the respondents



adequate time for settling his dues after taking a decision on his time bound promotion and correct pay fixation and finalization of his retiral dues. Hence, the O.A. is clearly premature. Thus, even on this ground, the O.A. deserves to be dismissed.

19. In view of all above, I find no justification at all in the claim made by the applicant in the O.A.

20. The OA being devoid of merits, is dismissed.

21. There shall be no order as to costs.

**(AJANTA DAYALAN)
MEMBER (A)**

Place: Chandigarh
Dated: 15.03.2021

HC*