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**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH  
NEW DELHI**

O.A. NO.2401/2004

This the 31<sup>st</sup> day of March, 2005.

**HON'BLE SHRI SHANKER RAJU, MEMBER (J)**

**HON'BLE SHRI S. K. MALHOTRA, MEMBER (A)**

M.L.Gupta [Retired DGM (Finance)],  
Department of Telecommunications,  
R/O 2/18 Sector 5, Rajindra Nagar,  
Sahibabad, Ghaziabad (UP).

... Applicant

( By Shri S.N.Anand, Advocate )

versus

1. Union of India through  
Secretary, Ministry of Communications  
& Information Technology  
(Department of Telecommunications),  
20, Ashoka Road,  
New Delhi-110001.
2. Member (Finance),  
Ministry of Communications & Information  
Technology (Department of Telecommunications),  
20, Ashoka Road,  
New Delhi-110001.
3. Controller of Communication Accounts,  
DTO Building, Prasad Nagar,  
New Delhi-110005.

... Respondents

( By Shri H.K.Gangwani, Advocate )

**ORDER (ORAL)**

**Hon'ble Shri Shanker Raju, Member (J) :**

Heard the learned counsel.

2. In the light of decision of the Apex Court in *Chandreshwar Prasad Sinha v State of Bihar*, 2002 SCC (L&S) 200, without an opportunity to show cause, reduction of pensionary benefits is an illegality.

3. It is trite law that before civil consequences ensue upon even a retired government servant, he has to be afforded reasonable opportunity of showing cause in consonance with the principles of natural justice.

4. In the above backdrop, in this OA a challenge has been made to orders dated 9.10.2003 and 3.12.2003 where on reduction of pay, a recovery of Rs.44710/- has been effected from the DCRG of the applicant on account of over-payment.

5. Full Bench of this Tribunal in OA No.2286/2002 decided on 21.7.2003 in *Bhagwan Dass v Union of India*, while answering the reference, held that an officer in junior time scale who is promoted to officiate in the senior time scale, for purposes of pay fixation under FR 22(I)(a)(1) shall be deemed to have been regularly promoted.

6. The aforesaid decision has been carried before the High Court of Delhi in WP(C) No.1403/2004 where status quo by an order dated 15.3.2004 has been directed to be maintained.

7. Applicant who was promoted on officiating basis in junior administrative grade, instead of being fixed in senior time scale has been fixed in junior time scale, on the ground of having retired on superannuation on officiating basis but holding the substantive grade as per instruction 11 below FR-22.

8. The learned counsel of applicant states, by referring to the decision of the Apex Court in *Shyam Babu Verma v Union of India*, JT 1994 (1) SC 574 and *Bhagwan Shukla v Union of India*, 1994 SCC (L&S) 1320, that when pay fixation and payment thereof is not attributable to the government servant on account of his misrepresentation or fraud, recovery cannot be effected.

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9. Shri Anand states that decision of the Full Bench (supra) covers his case and as the judgment has not been overturned the same would be applied as a binding precedent and would hold the field.

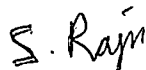
10. On the other hand, respondents in their reply have vehemently opposed the contentions and stated that status quo has been maintained by the High Court on the decision of the Full Bench.

11. We have carefully considered the rival contentions of parties. It is in the light of the trite law that reduction of pay and allowances and recovery thereof, if resorted to without an opportunity to show cause, would be an infraction to the principles of natural justice. Equally settled is that when payment on wrong calculation etc. has not been attributed to the government servant, recovery cannot be effected.

12. However, having regard to the fact that though the decision of the Full Bench deemed officiating promotion as regular promotion for purposes of pay fixation, yet, as status quo has been maintained, the recovery effected from the applicant is certainly in violation of the principles of natural justice.

13. In result, OA is partly allowed. Impugned orders are set aside. Respondents are directed to refund the recovered amount from the gratuity of applicant to him forthwith. However, the ultimate right to pay fixation and arrears thereof shall remain subject to the final outcome of the Writ Petition (supra) pending before the High Court and the government will be at liberty, if it is decided otherwise, to recover the amount from the applicant. In that event, before applicant is refunded the recovered amount, he shall furnish an undertaking to this effect to the respondents. No costs.

  
( S. K. Malhotra )  
Member (A)  
/as/

  
( Shanker Raju )  
Member (J)