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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 232/2004

New Delhi, this the 24<sup>th</sup> day of March, 2005

HON'BLE JUSTICE MR. M.A. KHAN, VICE CHAIRMAN (J)  
HON'BLE MR. S.K. MALHOTRA, MEMBER (A)

O.P. Singhal (G.O.9485)  
(Retired Divisional Engineer, O/o  
GM (North-I), MTNL, Shalimar Bagh, Delhi)  
R/o C-443C, Majils Park,  
Delhi – 110 035

... Applicant

(By Advocate : Shri S.N. Anand)

Versus

1. Union of India through  
Secretary, Ministry of Communications,  
Department of Telecom,  
Sanchar Bhawan,  
20, Ashoka Road,  
New Delhi – 110 001
2. The Chief General Manager,  
Mahanagar Telephone Nigam Limited,  
Khurshid Lal Bhawan,  
Janpath  
New Delhi – 110 050
3. Dy. General Manager (F) HQ  
O/o Mahanagar Telephone Nigam Limited,  
Khurshid Lal Bhawan,  
Janpath,  
New Delhi – 110 050

... Respondents

(By Advocate: Shri Satish Kumar)

ORDER (Oral)

BY HON'BLE JUSTICE MR. M.A. KHAN, VC (J) :

By the present OA the applicant has requested for quashing of the order dated 21/22.5.2002 (Annexure 'A') and for further direction to the respondents to refund him Rs.44,638/- which have been wrongly deducted from his leave encashment with interest at the rate of 18% p.a. and further

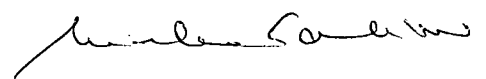


for restoring the benefit of stepping up of his pay with reference to his junior and the consequential benefits arising from the revised retiral benefits.

2. Briefly, the facts of the case are that the applicant was working as a Divisional Engineer in the Department of Telecommunication on deemed deputation to the MTNL and was superannuated on 31.5.2002. On a representation of the applicant that his junior Shri Rajender Lal Gulati was drawing more pay than him, the respondents stepped up his pay also to bring at par with the pay of Shri Rajender Lal Gulati w.e.f. 1.1.1990. Since then the respondents had been drawing his pay on the revised pay at par with the pay of Shri Rajender Lal Gulati. On his superannuation, the applicant had been paid the terminal benefits except the amount of leave encashment from which a sum of Rs.44,638/- has been deducted. The respondents have deducted the amount on the ground that the pay of Shri Rajender Lal Gulati, who was junior to the applicant, was wrongly fixed in 1990 the benefit of which was also given to the applicant wrongly.

3. The learned counsel for the respondents stated that the respondents propose to take action and revise the pay of Shri Rajender Lal Gulati. But as per the averment made in the counter reply it has not been done yet. According to the respondents, the excess amount which was over paid to the applicant between 1990 and the date of his superannuation was calculated at Rs.44,638/- and this excess amount paid to him has now been recovered from the amount of his leave encashment.

4. The grievances of the applicant in this case are mainly two folds. Firstly, before revising his pay to a lower stage, he has neither been served with a show cause notice nor has he been provided an opportunity of hearing. Therefore, the action of the respondents in revising the pay of the applicant without putting him to notice is illegal and arbitrary and violative of principles of natural justice. His second submission is that the amount, which is stated, to have been erroneously paid to him was paid to him by the respondents in order to bring his pay at par with the pay of his junior, Shri Rajender Lal Gulati and he had no role to play in this payment. Therefore, the respondents have no right to recover the alleged excess payment made by them to the applicant as a result of stepping up of his pay to make it at par



with his junior, Shri Rajender Lal Gulati. The counsel for the applicant has cited the following judgements in support of his argument:

- (i) Shyam Babu Verma & Ors vs. Union of India & Orders (JT 1994(1) SC 574)
- (ii) Bhagwan Shukla S/o Sarabjit Shukla vs. Union of India & Ors (1994 SCC (L&S) 1320)
- (iii) Punjab State Electricity Board & Anr. Vs. V.N. Sharma ( 1995 SCC (L&S) 250)
- (iv) Sahib Ram vs. State of Haryana & Others ( 1995 SCC (L&S) 248)
- (v) OA No.194 of 1999 (H.N. Verma vs. UOI & Ors) decided on 10.9.2002 by CAT (Full Bench Patna)
- (vi) OA 463/1995 (Billeswar Saha vs. UOI & Ors) decided on 27.2.2001 by CAT (Calcutta)
- (vii) OA284/94 (R.B. Saxena vs. UOI & Ors) decided on 23.11.1995 by CAT
- (viii) OA 245 of 2001 (Baij Nath Ram vs. UOI & Ors) decided on 17.9.2001 by CAT (Calcutta Bench)
- (ix) OA No.459/1998 (Mr. Vasudev Ganesh Gokhale vs. UOI & Ors) decided on 3.12.2002 by CAT (Mumbai Bench)

5. The learned counsel for the respondents has fairly admitted that no opportunity was provided to the applicant before his pay was revised and the amount of excess payment was recovered from the amount of leave encashment and the amount of pension was also revised on the basis of the revised pay of the applicant. He has submitted that the Department is taking necessary action to put the applicant to notice for passing a fresh order regarding recovery of the erroneous excess payment, revision of his pay to a lower figure and also revision of the pension and other retiral benefits. The learned counsel for the applicant submitted that in the meantime, the respondents may be directed to refund the amount of Rs.44,638/- wrongly deducted from his leave encashment along with interest and cost of the application. He places reliance in support of his claim on the case laws, which are noted above.


6. Recovery of erroneous excess payment made to a Government employee by the respondents on account of administrative lapse without putting him to notice and providing an opportunity of hearing is per se against the principles of natural justice. The respondents realizing it have themselves decided to serve a show cause notice on the applicant and pass a fresh decision in the matter. Prima facie, the erroneous excess payment is

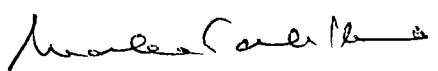
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not on account of mis-representation or fraud played by the applicant or the applicant had no role to play in it. So, we are of the view that the amount recovered from the applicant should be directed to be refunded to him without prejudice to the rights of the respondents <sup>and</sup> subject to fresh order, which is to be passed, by the respondents. The applicant <sup>may</sup> be asked to give an undertaking that the amount refunded to him will be returned subject to the out come of the order to be passed by the respondents and in case the order is challenged before this Tribunal, then subject to the outcome of the decision of the Tribunal in the matter.

7. We accordingly allow the application. The respondents are allowed to serve a show cause notice on the applicant within four weeks. The applicant shall file reply to the show cause notice within two weeks thereafter. The respondents shall give him a reasonable opportunity of hearing before taking a fresh decision in the matter of revision of his pay, pension and pensionary benefits. The learned counsel for the respondents has stated at the bar on instructions of the respondents that the fresh decision in the matter will be taken by them within 3 weeks from the date on which the reply of the applicant is received in response to the show cause notice and that they shall communicate the decision to the applicant. The respondents are directed to pay the amount of Rs.44,638/- to the applicant without prejudice to their pleas in the counter reply on furnishing an undertaking by the applicant that refund of the amount will be subject to the order to be passed by the respondents and also that if the order is challenged before the Tribunal then subject to the order of the Tribunal. The respondents shall release the amount recovered from his leave encashment within six weeks from the date of receipt of a copy of this order.

8. The OA stands disposed off in terms of the above order but without any order as to costs.

  
(S.K. Malhotra)  
Member (A)

  
(M.A. Khan)  
Vice Chairman (J)