

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH
Original Application No.369/2021.**

Dated this the 21th day of September, 2021.

CORAM:

**Hon'ble Sh. Jayesh V. Bhairavia, Member (J)
Hon'ble Dr. A.K. Dubey, Member (A)**

1. Bharatbhai Thakor,
Son of Popatlal Thakor,
Age: about 50 years,
65, Khodiyarmata Vas,
Near Chandlodiya Lake,
Chanadlodiya, Ahmedabad – 382 441.

...Applicant

(By Advocate Mr. P. H. Pathak)

VS

1. Chairman,
Bharat Sanchar Nigam Limited
Sanchar Bhavan, New Delhi – 110 001.
2. Principal General Manager,
Ahmedabad Telecom District (BSNL)
Gulbai Teklra Telephone Exchange,
Building, Ellisbridge, Ahmedabad – 380 009.
3. Account Officer (Salary)
Ahmedabad Telecom District,
9th Floor, Telecom Bhavan,
Navrangpura, Ahmedabad – 380 009.

...Respondents

ORDER(ORAL)

PER: Hon'ble Shri Jayesh V Bhairavia, Member (J)

1. The applicant has filed the present OA under section 19 of the Administrative Tribunal Act 1985 seeking following relief:-

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- (A) *The Hon'ble Tribunal be pleased to declare the impugned decision of respondent no.2 and 3 to withhold full salary of applicant towards recovery without following the principles of natural justice is arbitrary, illegal unjust and set aside the same and direct the respondents to refund the amount recovered with 12% interest.*
- (B) *The Hon'ble Tribunal be pleased to declare that any alteration in payment of salary adversely affecting to the applicant, cannot be done without following principles of natural justice and be pleased to set aside the same, in the interest of justice.*
- (C) *The Hon'ble Tribunal be pleased to direct the respondents to pay special cost and compensation to the applicant.*
- (D) *Any other relief to which this Hon'ble deems fit and proper in the interest of justice may be granted together with cost.*

2. The brief facts as pleaded by the applicant are as under:-

2.1 The applicant joined the service as canteen boy in the year 1984 with Ahmedabad Telecom District i.e. Respondent no.3 herein. Pursuant to the interim order passed by this Tribunal dated 01.04.1999 in MA No.126/1999 in OA No.80/1995 (filed by the applicant) the service of the applicant was regularized in Group D post by the respondent vide order dated 05.05.1999. The said OA No.80/1995 was finally allowed on 08.06.2001 by this Tribunal with a direction to the respondent to treat the applicant as government servant w.e.f 01.10.1991. Accordingly, his service was regularized as group D employee w.e.f 01.10.1991 vide order dated 08.03.2003 by the respondent no.3 (Annexure A/2) .

2.2 The applicant was absorbed with BSNL w.e.f 01.10.2000 and his pay was revised from CDA to IDA vide order dated 07.08.2002. The applicant was granted second pay revision w.e.f 01.01.2007 vide order dated 07.05.2010. Subsequently, the applicant was granted financial up-gradation in the year 2001, that is the first up-gradation w.e.f 12.06.2001, second up-gradation in TM cadre from 12.06.2008 and the third up-gradation was granted of Rs.12520-23440 w.e.f 12.06.2016. The applicant has continued in the said pay scale.

3. It is the grievance of the applicant that for the month of August 2021 the respondent no.2 and 3 have not prepared the pay slip and entire salary of

the applicant is withheld on the ground of for some recovery. Hence, this OA.

4. Learned Counsel for the applicant Mr. P. H. Pathak mainly submits that in the month of July 2021, the respondent had prepared the pay slip of the applicant and paid the salary to the applicant. However, without assigning any reason, the respondent did not prepare the pay slip of applicant for the month of August 2021 and withheld the entire salary of the applicant. According to the applicant, the said action of the respondent adversely affects his livelihood.

Learned Counsel for the applicant submits that the exercise of power of the respondent in withholding the salary of the applicant is *ex facie*, illegal and in violation of the Article 14 and 16 of the Constitution of India. No adverse order can be passed reducing the pay of the applicant or to recover the amount from the applicant without following the principle of natural justice and fair play.

5. Learned Counsel further submits that in light of the judgment passed by Hon'ble Apex Court in case of State of Punjab & Ors. Vs Rafiq Masih (White Washer) reported in 2015 (3) SCC 335, the respondent BSNL had issued Circular/Memorandum for implementation of the said judgment dated 01.05.2019 (Annexure R/3) and reiterated the observation of the Hon'ble Apex Court with respect to impermissible recovery by the employers and directed all cadre controlling authorities to review all cases of dues and ensure that there are no case of excess payment made to BSNL employees. Wherever any excess payment has been made on account of fraud, misrepresentation, and collusion etc. roles of those responsible for over payments in such cases, and the employees who benefited from such action should be identified, and disciplinary/criminal action should be considered in appropriate cases.
6. It is further submitted that orally the respondent had informed the applicant that an amount of Rs.1,10,505/- was to be recovered from him by the department. It is submitted that though the applicant has not been served with or received any order of recovery, the respondents have started recovery from the salary of the applicant that too without considering the guideline/instructions of the memorandum dated 01.05.2019. Therefore,

impugned action on the part of respondent for not preparing his pay slip for the month of August 2021 of the applicant who is class III employee and started recovery, the said action of the respondent is illegal, unjust, arbitrary and in violation of law laid down by Hon'ble Apex Court in the case of Rafiq Masih (supra).

7. Learned Counsel of the applicant further submits that the Hon'ble Apex Court in catena of judgments has held that no such order adversely affecting the pay of the applicant can be issued without following the principle of natural justice.
8. Heard the counsel for the applicant and perused the material on record.
9. In the present case it is noticed that the applicant has not placed on record any decision or order passed by competent authority with respect to his grievance about recovery of amount and non preparation of pay slip. The applicant has only made averment in the present OA that orally the office of respondent conveyed to him that recovery procedure would be initiated against him. The applicant in para no.VI of the OA has declared that there is no other efficacious remedy available to the applicant except to approach this Tribunal.
10. Answering the query put by this Tribunal that for redressal of his grievance about non-payment of salary or so called recovery whether the applicant herein had filed any representation or application before the competent authority, the learned counsel for the applicant submits that there is no need for applicant to file any representation before the respondent department since the action of respondents for not preparing of pay slip for the month of August 2021 on the ground of some recovery initiated against the applicant is contrary to the law laid down by Hon'ble Apex Court in the case of Rafiq Masih (supra) and also in violation of Article 14 and 16 of Constitution of India. We are not satisfied with the said explanation or submission of the counsel for the applicant.
11. It is always open for government employee to ascertain the reasons for any change or recovery or reduction in his pay/salary under the service conditions and rules thereof and for redressal of his grievance if any exists, he can file his representation before the competent authority.

In the present for redressal case as noticed herein above, the applicant has chosen not to approach the competent authority by filing his representation. The applicant has also not found it necessary to even wait a formal communication from the concerned department. As such there is no material, more particularly any impugned order on record. Or is there any representation which can be said to have been filed or pending for decision before the competent authority for redressal of grievance of the applicant. In this backdrop the contention of the applicant appears to be mere apprehension or he wants to avoid the decision of respondent with respect to his claim. In absence of any formal official communication to be impugned or pending decision on any representation of the applicant, it is difficult to follow the ratio laid down by the Hon'ble Apex Court in the judgment as relied upon by the counsel for the applicant.

In view of above factual matrix as also in light of provision of section 19 and 20 of the Administrative Tribunal Act of 1985, this Tribunal is not satisfied and convinced to entertain this OA in this format at this stage. Accordingly, the OA stands dismissed at admission stage.

(A K Dubey)
Member(A)

(Jayesh V Bhairavia)
Member(J)

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