

Reserved on 16.09.2021
Pronounced on 21.09.2021

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 330/00359/2018

Hon'ble Ms. Pratima K Gupta, Member (Judicial)

Bhageerath, Son of Panna Lal, Resident of Kheerak Patti, Post Bhattachaon, District Jhansi.

.... Applicant.

By Advcoate : Shri A.D. Singh

Versus

1. Union of India, through Chief Manager Bharat Sanchar Nigam, Ltd., Division Jhansi, District – Jhansi.
2. The Assistant, Chief Manager, Telecommunication, B.S.N.L., Jhansi District Jhansi.
3. The Chief Senior Superintendent, Senior Divisional Engineer Signal, Telecommunication N.C.R, Jhansi, District Jhansi.

..... Respondents.

By Advocate : Shri Sanjeev Kumar Pandey holding brief of Shri P.R. Pandey

O R D E R

By Hon'ble Ms. Pratima K Gupta, Member (Judicial)

The present OA has been filed by the applicant against the impugned order dated 05.05.2017, 23.07.2014, 26.10.2015 against the recovery of 92,768/- from the retiral dues of the applicant and wrong fixation of pension.

2. The brief facts, according to the applicant are that the applicant was appointed as Line Man on 08.07.1977. He was promoted to Phone Mechanic on 01.04.2000. The last salary of the applicant was revised on 01.07.2013 of Rs. 21,430/-. The last pay certificate of the applicant dated 31.01.2014 shows that the basic pay of the applicant was 21,430/- i.e. is the date the applicant has superannuated. The respondent No.2 fixed the

pension of the applicant on 02.12.2014 on the basis of last pay drawn of the applicant as Rs. 20,800/- . Copy of the order is annexed as Annexure-A-3. The applicant represented to the respondents for against this wrong fixation of the pension on 08.04.2015. As the same was not replied by the respondents, the applicant approached this Tribunal by filing OA No.241 of 2017, the same was disposed of vide order dated 09.03.2017. The operative portion of the order is reproduced below :-

"Accordingly, the applicant is directed to submit a proper representation stating all the details to General Manager, BSNL, Jhansi within two weeks from the date of receipt of certified copy of this order. General Manager, BSNL, Jhansi is directed to decide such representation, if submitted within prescribed time, by a reasoned and speaking order within a period of two months from the date of receipt of representation."

3. In pursuance of the order of this Tribunal, the applicant once again represented on 17.04.2017 for wrong fixation of pension and recovery of Rs.92,768/- from the retiral dues of the applicant. According to the applicant has last drawn basic salary was Rs.21,430/- . However, the respondents have calculating the pension fixing basic last drawn salary of the applicant Rs.20,880/- . Hence, this Original Application.

4. Counter affidavit has been filed. In the counter affidavit, it is stated that the applicant was not entitled to the basic salary of Rs.21,430/- and in fact his last drawn basic pay was wrongly fixed as Rs.21,430/- which in fact should have been 20880/- and accordingly the applicant is getting the right pension as Rs.10,440/- . There is no infirmity in the order. The recovery so made was also in correction of the wrong fixation of the last drawn pay.

5. Heard Shri A.D. Singh, learned counsel for the applicant and Shri Sanjeev Kumar Pandey holding brief of Shri P.R. Pandey, learned counsel for the respondents and perused the record.

6. Learned counsel for the applicant has relied on with respect to the first issue as a recovery affected to the applicant as relied on the judgment of Hon'ble Supreme Court in the case of **State of Punjab Vs. Rafiq Masih**.

Para 12 of this judgment is reproduced below :-

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law :

- (i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).***
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.***
- (iii) Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.***
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.***
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."***

The case of the applicant is covered by 12 (ii) of the said judgment.

Accordingly, the recovery made against the applicant is not in accordance with law laid down by the Hon'ble Apex Court.

7. The applicant relied on the judgment of Coordinate Bench of this Tribunal in the case of Ganesh Prasad passed in OA No.607 of 2012, wherein the OA has been allowed relying on Rafiq Masih. The applicant has also relied on order passed in OA No.1674 of 2014 of the Coordinate Bench of this Tribunal in the case of Chandra Bhan Yadav Vs. Union of India & ors.

The operative portion of the order is reproduced below :

".....From the above, it transpires that at the time of retirement, the applicant was working on the post of Tracer and two adhoc promotions were granted by the respondents to the applicant. Thus, there is no misrepresentation or fraud on the part of the applicant and he had worked on the said post. It was also observed that no show cause notice or opportunity was granted

to the applicant before reducing his pay or issued any direction of recovery which is clear violation of principal of natural justice."

8. Learned counsel for the applicant has further argued that no show cause notice was issued before the recovery was affected nor any opportunity was given before reducing the pay.

9. The counsel for the respondents look us to page 25 of the OA showing that the last drawn basic pay of the applicant on 01.07.2013 was 21,430/- In the same order, it is also reflected at page 25 at Sl.No.28 that the increment to the applicant was granted on 01.04.2000 and once again on 01.07.2000. The respondents have corrected their mistake. Accordingly, the recovery was affected.

10. On perusal of record and judgments relied upon by the applicant and after hearing the rival contentions, the following emerge:

- (i) As far as the recovery from the applicant and retiral dues are concerned the same was not justified.
- (ii) and with respect the fixation of pay that there was no misrepresentation or fraud on account of the applicant and the applicant has worked on the said post.

11. In view of the above as the facts of the case in hand are covered by the law laid down in the case of Rafiq Masih (supra) by the Apex Court and OA No.1674/2014 by this Tribunal, the OA is allowed. The impugned orders dated, 23.07.2014, 26.10.2015 and 05.05.2017 are quashed. The respondents are directed to refix the pensionary benefits to the applicant and pay him arrears as well as refund back the recovered out of Rs.92,768/- along with interest @ 8% from the date of retirement within a period of three

months from the date of receipt of certified copy of this order. No order as to costs.

(Pratima K Gupta)
Member(Judicial)

RKM/