

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

OA/020/816/2019

Date of CAV :22.04.2021

Date of Pronouncement :15.06.2021



Hon'ble Mr. AshishKalia, Judl. Member

DuppalaApparao,
S/o.D. Pentayya (Late),
Aged about 61 years,
Telecom Technician (Retired) Group C,
Office of the General Manager, Telecom District,
Srikakulam ó 532 001,R/o. 6-10, Main Road,
Kujipeta, Kotabommali (M),
Srikakulam ó 532 195.

...Applicant

(By Advocate :SriM. Bhaskar)

Vs.

1. Union of India rep. by
The Secretary, Department of Telecommunications,
Sanchar Bhavan, New Delhi ó 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
(Corporate Office), Janpath,
New Delhi ó 110 001.
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
A.P. Telecom Circle, Kaleswararao Market,
Vijayawada ó 520 001.
4. The Controller of Communication Accounts,
AP. Telecom Circle, Kaleswararao Market,
Vijayawada ó 520 001.
5. The General Manager,
Bharat Sanchar Nigam Limited,
Telecom District,Srikakulam ó 532 001.
6. The Assistant General Manager (Admn),
O/o. GMTD, BSNL,Srikakulam ó 532 001.

... Respondents

(By Advocate:Smt K. Rajitha, Sr. CGSC
SmtA.P. Lakshmi, SC for BSNL)

ORDER
(As per Hon'ble Mr. Ashish Kalia, Judl. Member)

Through Video Conferencing:



The brief facts of the case are that the applicant was appointed as Regular Mazdoor in the Department of Telecom on 29.03.1982. He was promoted as Line Man on 19.07.1985 and was further promoted as Telecom Mechanic on 28.07.1997. He was promoted on 19.07.2001 under OTBP Scheme 1st NEEP (Non Executive Employees Promotion). He was again promoted on 01.10.2004 against 2nd NEEP by mistake, instead of 19.07.2008. However, NEEP promotion given to him on 01.10.2004 was not rectified till the date of his retirement. The applicant retired on 30.06.2018 on superannuation as Telecom Technician in Group -Cøpost.

2. The DoT Pension Cell at Vijayawada raised objections on the promotion given to the applicant wrongly on 01.10.2004. The respondents have revised the promotion and pointed out an amount of Rs.2,41,367/- as over payment. Out of the said amount, an amount of Rs.1,99,337/- is accounted for an excess payment of Pay and allowances and Rs.42,030/- is accounted for over payment of leave encashment. Subsequently, an amount of Rs.42,030/- was refunded to the applicant on 15.03.2019.

3. Further, the applicant was forced to pay an amount of Rs.16,590/- towards overpayment of leave encashment on 24.11.2018. Hence, the total amount of recovery of over payment is Rs.2,15,927/- (199337+16590). It is contended by the applicant that the action of the

respondents is against the law laid down by the Honøble Supreme Court in *CA No:11527 of 2014 on 18.12.2014 in the case of State of Punjab and other Vs Rafiq Masih (White Washer Case)*.



4. The applicant filed OA No.510 of 2019 seeking to setting aside the action of the respondents and for a direction to refund the excess/overpayment of Rs.2,15,927/-(Rs.1,99,337+Rs.16,590) recovered with GPF rate of interest from the date of recovery till the date of refund. The said O.A. was disposed of by this Tribunal with a direction to the 1st respondent to examine the case of the applicant in the context of Honøble Supreme Court Judgement in Rafiq Masih case (supra), DOPT orders, representation of the applicant and thereafter take a decision within a period of eight weeks.

5. Department of Telecommunications is not the affected party and hence they have filed a formal reply. Bharat Sanchar Nigam Limited has filed a detailed reply stating that in respect of the applicant, the date of Time Bound Promotion in Administrative Order was wrong i.e. 01.10.2004 (i.e. 1st Time Bound Upgradation Promotion under Non-Executive Promotion Policy (NEPP), 01.10.2011 (i.e. 2nd TBU under NEPP) instead of 19.07.2008 (i.e. 2nd TBU under NEPP) and 19.07.2016 (i.e. 3rd TBU under NEPP) respectively and thus the applicant was more benefitted than his actual entitlement as per departmental service and pay fixation rules.

6. It is submitted that as per NEPP notification dated 23.03.2010 conveyed by BSNL corporate office, New Delhi vide letter dated 23.03.2010 [para 3, 3.2(a)] that since the upgradation of pay is notional up to 31.03.2008, the actual financial benefit will be allowed from 01.04.2008

onwards only. So, in the present case the mistake/wrongful payment was paid to the applicant only from 01.04.2008 but not from 01.10.2004 as mentioned in the said para. Copies of NEPP Notification are enclosed at Annexure-I.



7. After hearing the counsel for the parties, this Tribunal finds that the short issue raised in the present Original Application is whether the recovery made by the respondents is legally valid or not in terms of the judgement of the Honøble Supreme Court in Rafiq Masih's case.

8. The applicant had earlier approached this Tribunal for redressal of his grievance by filing OA No.510/2019, which was disposed of by this Tribunal with the following direction:

õ6. Even this Tribunal in batch of OAs.1834 to 1836 of 2015 had adjudicated on similar issue and directed to refund the amount already recovered from the applicants who were retired employees, when they were not found fault with. The present case is one such case and is a fully covered case. Hence it would be appropriate to direct the 1st respondent to examine the case of the applicant in the context of Honøble Supreme Court Judgement in Rafiq Masih case (supra), DOPT orders, representation of the applicant and thereafter take a decision within a period of eight weeks from the date of receipt of a copy of this order, by a speaking and reasoned order.õ

9. The applicant has submitted a representation but the respondents have rejected the same vide impugned order dated 9.8.2019. They have recovered an amount of Rs.2,15,927/- from the pensionary benefits of the applicant. Learned counsel for applicant has relied upon the judgement passed by the Honøble Apex Court in *Civil Appeal No.11527 of 2014 State of*

Punjab and others etc. Vs. Rafiq Masih (White Washer) etc., the operative portion of which reads as under:



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 employees, 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.

10. The applicant had retired in the year of 2018 and that the recovery pertains to the excess payment made w.e.f. 1.10.2004 when the 1st OTBP was granted. This Tribunal feels that the case of the applicant is squarely covered by the judgement of the Honøble Supreme Court in *Rafiq Masih's* case since he was a Group -Cø employee and recovery is made from his pensionary benefits for the excess payment made prior to 5 years from the date of his retirement, which is impermissible as per clauses (i) & (iii) extracted hereinabove. Thus, the impugned order is not sustainable in the eyes of law and is liable to be struck down. Accordingly, the impugned order is set aside with a direction to refund the amount recovered i.e. Rs.2,15,927/-(Rs.1,99,337+Rs.16,590/-) to the applicant with interest at the rate applicable to General Provident Fund deposits, within a period of 90 days from the date of receipt of a copy of this order.



11. With the above observation, the O.A. is allowed. No order as to costs.

(ASHISH KALIA)
JUDICIAL MEMBER

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