

15

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

OA No. 222/2012
Jodhpur this the 04th day of September, 2013.

CORAM

**Hon'ble Mr.Justice Kailash Chandra Joshi, Member (J) and
Hon'ble Ms. Meenakshi Hooja, Member (A)**

Chandra Ram Bidiyasar S/o Late Shri Jetha Ram Bidiyasar,
Aged about 56 years, B/c Jat, R/o Quarter No. 4, Type-III,
Gharwla Jav, Telecom Colony, Pali (Raj).
Presently working on the post of A.O. (TR) BSNL, Pali
under GMTD, Pali (Raj.)

.....Applicant

(Through Advocate Mr Salil Trivedi)

Versus

1. The Union of India, Through Secretary, Ministry of
Communication, Department of Tele Communication,
Sanchar Bhawan, New Delhi.

(Through Advocate Ms K. Parveen)

2. The General Manager, Telecom District, Bharat Sanchar
Nigam Limited (BSNL), Pali Marwar (Raj).

3. Account Officer (Works) BSNL, Office of GMTD, Pali
Marwar (Raj.).

(Through Advocate Mr Kamal Dave)

.....Respondents

ORDER (Oral)

Per Justice Kailash Chandra Joshi, Member (J)

The applicant, Shri Chandra Ram Bidiyasar, has filed this
OA under Section 21 of the Central Administrative Tribunal Act,
1985 against the respondent praying for the following relief (s):

1. That by an appropriate order or direction the
impugned recovery memo dated 16.04.2012 (Annexure

A/1), along with the audit objection issued by the respondents may be declared illegal and the same may be quashed. Further the respondents may be directed to re-fix the pay of the applicant as per the earlier fixation letter dated 11.11.2009 and restore the same.

2. That the respondent may further be directed not to recover any pay from the salary of the applicant in pursuance of the memo dated 16.04.2012.
3. Any other relief which this Hon'ble Tribunal deems fit in favour of the applicant may be granted.
4. Cost of the application be awarded in favour of the applicant.

2. The relevant facts of the case are that the applicant entered into the services of the respondent-department in the year 1978 on the post of Senior T.O.A. (G) and was promoted in the cadre of J.A.O. (Officiating) by the respondents w.e.f. 15.10.1999 in the pay scale Rs 5500-175-9000/- as per order dated 04.11.1999. The applicant was working as Junior Account Officer (Officiating) in the department of Tele Communication, subsequently, Bharat Sanchar Nigam Limited (BSNL) came into existence w.e.f. 01.10.2000 and it took over the entire operation of erstwhile department of Tele Communication. The respondent-department vide letter dated 25.02.2005 introduced the IDA pay scale of Rs 7,830-12430/- w.e.f. 01.10.2000 to 30.08.2001 corresponding to the pay scale of Rs 5500-9000 which was prevailing in the CDA scale and thereafter in the IDA pay scale of Rs 9850-14600 w.e.f. 31.08.2001. The fixation of the applicant in IDA scale was done as per the letter dated 25.02.2005. Later, when the applicant was

promoted as Account Officer and his pay was fixed in the pay scale of Rs 20600-46500/- and pay was fixed at Rs 29,770/-. The respondents without serving prior notice to him issued a recovery memo dated 16.04.2012 (Annex. A/1) on the basis of audit objection and the pay of the applicant was reduced from Rs29770/- to 28430/- for the reasons not communicated to the applicant and a recovery memo was issued. Therefore, the applicant by way of this OA has challenged the legality of the order for reduction and recovery from pay.

3. The respondents by way of counter denied the right of the applicant to get the order of the reduction in the pay as well as the recovery memo quashed because as per the audit objection the pay of the applicant was refixed as earlier fixation was erroneously made because the applicant, not being substantive employee of the BSNL, was not entitled for fixation under the IDA pay scale. The employee can have legitimate right in respect of pay fixation as per his status and prescribed pay scale but erroneous extension of pay fixation creates no right in favour of the applicant and that has been rectified as per audit objection. It has been further averred that the BSNL management approved and conveyed IDA Pay Scale to regular JAO/AAO in Department of Tele Communication who were absorbed in BSNL vide letter dated 25.02.2005 and their pay have been fixed on point to point basis from 01.10.2000 to 31.08.2001 in the IDA pay scale 7830-230-12430 corresponding to

CDA pay scale of RS 5500-175-9000 and thereafter, in IDA pay scale of RS 9850-250-14600 w.e.f. 31.08.2001 under FR 23. It was also averred that fixation of the applicant was done by his own handwriting which was contrary to the rules and respondents prayed to dismiss the OA.

4. Heard both the parties. Counsel for the applicant contended that without giving any opportunity of hearing the pay of the applicant was reduced and recovery memo was issued to recover the so called excess amount paid on account of erroneous fixation which is against the principle of natural justice because right of hearing is a basic right. Counsel for the applicant further contended that there was no mis-representation on the part of the applicant in the fixation in the earlier pay scale, therefore, Annex. A/1 requires to be set aside.

5. Per contra counsel for the respondents contended that the it was well within the knowledge of the applicant that his present pay has wrongly been fixed, therefore, there was no necessity to issue any show-cause notice prior to refixation or rectifying the error because recovery memo was issued and salary was re-fixed as per the audit objection and the rules in force at the relevant time.

6. Considered rival contentions of both the parties. It is a settled principle of law that before passing any adverse order

against a person, right of hearing must be provided to that person and without giving any opportunity of hearing if the respondents have passed any order its amounts to violation of principle of natural justice. Therefore, Annex. A/1 order issued by the respondents cannot be said to be legal, hence, it is set aside.

7. Accordingly, the OA is disposed off with the directions that the applicant shall file a detailed representation to the respondents within a month from the date of receipt of this order. Thereafter, respondents shall give an opportunity of hearing to the applicant, consider his detailed representation, and pass an appropriate order as per rules, within 3 months from the date of receipt of such representation. The applicant shall get the salary as he was drawing earlier and no recovery shall be affected on account of re-fixation as per Annex. A/1 till the disposal of the representation of the applicant.

8. There shall be no order as to costs.

Meen
(MEENAKSHI HOOJA)
ADMINISTRATIVE MEMBER

K.C.J
(JUSTICE K.C. JOSHI)
JUDICIAL MEMBER

ss