

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 115/2012

Jodhpur, this the 6th day of March, 2014

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Member (Judicial)

Kewal Krishna Arora s/o Sh. Sardari Lal, aged about 60 years b/c Arora, r/o 1-D-20, Jawahar Nagar, Sri Ganganagar, District-Sri Ganganagar (Raj), retired as Assistant General Manager from the office of General Manager Telecom District, Bharat Sanchar Nigam Limited, Sri Ganganagar, District Sri Ganganagar.

.....Applicant

By Advocate: Mr. H.S.Sidhu

Versus

1. Bharat Sanchar Nigam Limited (a government of India enterprises) through its Chief General Manager, Rajasthan Telecom Circle, Institutional Area, Jhalana Doongri, Jaipur
2. General Manager, Sri Ganganagar Telecom District Officer, Bharat Sanchar Nigam Limited, District- Sri Ganganagar.
3. Accounts Officer, controller and Communication Accounts, Rajasthan Telecom Circle Institutional Area, Jhalana Doongri, Jaipur

.....Respondents

By Advocate : Mr. Mukesh Dave for resp. 1 and 2 and Ms. K. Parveen for resp. No.3.

ORDER (Oral)

The present OA has been filed by the applicant against the order dated 1.3.2012 (Ann.A/1) whereby recovery of Rs. 52,109/- has been made from DCRG and Commuted value of Pension and also against the order dated 6.3.2012 (Ann.A/2) whereby pension of the applicant has been calculated treating his basic pay as Rs. 44180/- instead of Rs. 45,510/- which was being paid to him before retirement i.e. on 31.10.2011.

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2. Short facts of the case are that the applicant was initially appointed in the respondent department as Junior Engineer vide order dated 31.10.1977. He was promoted to Sub Divisional Engineer vide order dated 30.6.1994 and to the post of Assistant General Manager on 27.8.2008. While working as such, the respondent issued an order dated 23.10.2009. The said order was regarding anomaly due to accrual of increment of junior earlier than the senior after fixation of pay in the revised pay scale on implementation of the second PRC and, therefore, the respondents issued order dated 17.3.2011 fixing the applicant in the pay scale of Rs. 29100-54500 at par with his junior Shri R.C.Godara, AGM. The applicant was fixed in the basic pay of Rs. 44180/- and with the annual grade increment at Rs. 45,510/-. The said benefit was given to the applicant w.e.f. 12.7.2010 and arrears were paid to him. Since 1.2.2011 till the date of retirement the applicant was getting the salary in the basic pay of Rs. 45510/-. The applicant on attaining the age of superannuation retired on 31.10.2011. It is stated by the applicant that the retiral benefits i.e. amount of DCRG and commuted value of pension has to be paid to the applicant at the time of retirement, but the said amount was paid on 14.3.2012 after deducting Rs. 52109/- from the said calculated amount. When the applicant approached the respondents, the applicant was informed by a verbal order that his salary was wrongly fixed vide order dated 17.3.2011, therefore, the said amount has been recovered from the retiral benefits. It is the case of the applicant that at the time of retirement, he was drawing basic salary of Rs. 45,510/- since 1.2.2011 and as per provisions of Rule 34 and 49 of CCS (Pension) Rules, 1972, the pension of the applicant has to be fixed at Rs. 22755/- whereas it has been calculated as Rs. 22090/- treating the basic pay of Rs. 44180/-. Therefore, aggrieved of the impugned

orders Ann.A/1 and A/2, the applicant has filed the present OA praying for the following reliefs:-

- (a) The impugned order dated 1.3.2012 (Annex-A/1) so far it related to the recovery of rupees 52109/- is concerned passed by the respondents may kindly be quashed and set-aside and the respondents may kindly be directed to refund the same with interest @ 12% per annum.
- (b) The impugned order dated 6.3.2012 (Annex-A/2) passed by the respondents so far it relates to the determination of the pension of the applicant rupees 22090/- may kindly be quashed and set-aside and the respondents be directed to re-calculate the pension of the applicant treating his basic pay of rupees 45510/- and pay him the pension accordingly with arrear and interest on that @ 12% per annum.
- (c) The respondents may kindly be directed to compute the amount of commutation of pension treating his basic pay of rupees 45510/- and pay the difference of amount accordingly.
- (d) Any other direction/relief/order may be passed in favour of the applicant which may be deemed just and proper under the facts and circumstances of the case.
- (e) That the cost of this application may be awarded with all consequential benefits.

3. By way of filing reply, the respondents have denied the claim of the applicant and submitted that vide order dated 17.3.2011, the pay of the applicant was wrongly fixed on account of wrong stepping up given to the applicant on 12.7.2010. The order dated 29.3.2009 has no application in the case of the applicant and the same has wrongly been applied. It is further submitted that the entitlements of retiring person are checked to avoid any excess and short payment and also to ensure that retiring person is not deprived of his/her legitimate entitlements, as such, during this process in the case of the applicant the mistake was noticed and accordingly, his basic pay was restored to original status of Rs. 44180/- since 1.2.2011. Since the applicant was paid excess amount, the same was liable to be recovered and as such there is no illegality in the action of the respondents in recovering the excess paid amount vide Ann.A/1. The revised fixation memo pertaining

to the applicant was issued on 3.2.2012 in pursuance to Ann.A/1. The respondents have submitted that the recovery of Government dues from DCRG, is permissible without consent of the employee as per Pension Rule 73. Moreover, the applicant has given his consent to recover any Government dues/overpayments from his pensionary emoluments. The applicant was well aware of the wrong fixation as he was working as AGM (HR and Adm.) who was also responsible for timely settlement of pension cases. The Controller of Communication Accounts has communicated the shortcomings as early as 5.8.2011, but he failed to settle the shortcomings in due course. Hence, it is not true that the officer was not aware of the fact of re-fixation of pay and consequent change in basic pay.

4. The respondent No.3 by filing separate reply has submitted that the salary was wrongly paid @ 45510/- to the applicant prior to his retirement which was checked by office of respondent No.3 and it revealed that the applicant was allowed irregular step up of pay with Shri R.C.Godara, who was promoted on adhoc and temporary basis as AGM. It is further submitted that the applicant was stepped up w.e.f. 12.7.2010, the date from which Shri R.C.Godara was promoted as DE on adhoc basic, which is not covered under Corporate Officer PAT (BSNL), New Delhi order dated 23.9.2009 and 14.10.2010. As per these orders, the stepping up of pay is available to the seniors who were getting more or equal pay with earlier DNI in the pre revised pay scale but less pay or equal pay with later date of increment to his junior under 2nd RPC (BSNL) from 1.1.2007 only. As regard, opportunity of hearing, it is stated that in view of undertaking furnished by the applicant while submitting pension papers under Article 920 of CSR, the applicant had already authorized to recover any overpaid amount. The applicant was informed at every stage regarding irregular step up of pay with his junior,

thus the applicant was well aware regarding refixation of pay, hence, no notice was served to the applicant by the GMTD, Sri Ganganagar who is pension sanctioning authority. The pension was authorized under Rule 49(2)(a) of CCS (Pension) Rules, 1972 i.e. 50% of the last pay drawn correctly.

5. The applicant has filed rejoinder reiterating the averments made in the OA.

6. Heard both the parties. Counsel for the applicant contended that after retirement of the applicant, the respondents department passed the order of refixation of salary of the applicant by refixing it from Rs. 45510/- to Rs. 44180/- and consequently by calculating the excess paid amount of Rs. 52109/- the same is ordered to be recovered from the applicant. He further contended that refixation of pension of the applicant is done without hearing the applicant or giving any opportunity of representation to the respondent department. Counsel for the applicant further contended that pay of the applicant was rightly fixed by the respondents but after receipt of pension papers, the respondent department passed order Ann.A/1 and A/2 and Rs. 52109/- has been deducted vide the sanction/authority dated 1.3.2012 which is per-se illegal because the applicant has not been given any opportunity of being heard, therefore, the Ann.A/1 and A/2 may be quashed by this Tribunal and respondents may be directed to refund the same with 12% interest per annum and order of determination of pension at Rs. 22090/- may be quashed and set-aside. Further, respondents may also be directed to refix his pension on the basis of last paid salary of the applicant i.e. Rs. 45510/- and pay the pension accordingly with arrears @ 12% interest per annum. Further contended that the respondents may be directed to

compute the amount of commutation pension on the basis of basic pay of Rs. 45510/- and pay the difference of amount accordingly.

7. Per contra, counsel for the respondents contended that as a matter of fact, the entitlements of retiring person are 100% checked to avoid any excess and short payment to ensure that retiring person is not deprived of his/her legitimate entitlement. During this process, mistake was noticed and the same was rectified and accordingly his basic pay was restored to original status i.e. Rs. 44180/- w.e.f. 1.2.2011. Since the applicant was paid excess amount, which was liable to be recovered from him, therefore, there is no illegality in the action of the respondents in recovering the excess amount vide Ann.A/1 and revised fixation memo was issued on 3.2.2012 in pursuance to Ann.,A/1. Regarding delay in releasing the pensionary benefits is concerned, counsel for the respondents contended that the applicant himself was working as AGM (Admn.) and he caused delay in submission of complete pension papers which resulted in further delay in releasing the pensionary benefits. According to the counsel for the respondents, there was no need to hear the applicant because the applicant has signed a consent letter as per Pension Rule 73 that in case of any excess pay made to him, the same may be recovered. Since the applicant has given undertaking Ann.R/4, therefore, the submissions made by the counsel for the applicant that he was not provided opportunity to represent the matter carries no force. Counsel for the respondents further contended that in view of the judgment of the Hon'ble Apex Court in the case of Chandi Prasad Uniyal and ors. vs. State of Uttarakhand and ors. reported in (2012) 8 SCC 417 and State of Bihar and Ors. vs. Pandey Jagdishwar Prasad reported in (2009) 3 SCC 117, the excess payment made by the department inadvertently or by mistake to any Government employee can be recovered

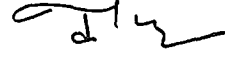
because it is the public fund and it can be recovered at any stage, if it was found that the excess payment was made inadvertently or by mistake. Counsel for the respondents further contended that whether any fraud or mis-representation was made is not material as per the above judgments of the Hon'ble Apex Court and when the applicant himself has executed a document Ann.R/4 then there is no question of any notice to the applicant.

8. I have considered the rival contentions of both the parties. In my considered view it is settled position of law that any excess amount paid by mistake or inadvertently amounts to public fund and as per the judgments of the Hon'ble Apex Court (supra), whether any fraud or mis-representation on the part of the applicant or not, it can be recovered by the department at any stage. Therefore, the decision taken by the respondents vide Ann.A/1 and A/2 cannot be said to be incorrect.

9. So far as the question of show-cause notice or right of hearing is concerned, from the reply of the respondents itself it is clear that no opportunity of hearing has been provided to the applicant before passing the orders Ann.A/1 and A/2. Therefore, I propose to dispose of this OA with certain directions:-

"Order Ann.A/1 and A/2 are not quashed but the execution of these orders will depend upon decision of the representation to be filed by the applicant against these orders. Accordingly, the applicant is directed to file a representation raising his grievance before the respondents within 15 days from the date of this order and the respondents are directed to dispose of the same within a period of three months thereafter. Till the disposal of the representation of the applicant, status-quo as on today shall be maintained."

10. The OA stands disposed of accordingly with no order as to costs.



(JUSTICE K.C.JOSHI)
Judicial Member

R/

Received Copy
for. Mukesh Dave
Adv.
Shawar
3/6/14

Pandey
dated 6-3-14
S
Savendra Singh
emerald adv.
15-3-14 H.S. Sidhu

R/C
Monika Talwar
12-3-14