

CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR

22

**ORDERS OF THE BENCH**

**Date of Order: 21.03.2012**

OA No. 121/2011

Mr. Anupam Agarwal, counsel for applicant.  
Mr. Santosh, proxy counsel for  
Mr. G.S. Rathore, counsel for respondents.

At the request of learned proxy counsel for Mr. G.S. Rathore, counsel for respondents, put up the matter on 23.03.2012 for hearing.

*Anil Kumar*  
(ANIL KUMAR)  
MEMBER (A)

*K.S. Rathore*  
(JUSTICE K.S. RATHORE)  
MEMBER (J)

Kumawat

23/03/2012

OA No. 121/2011

Mr. Anupam Agarwal, Counsel for applicant  
Mr. G.S. Rathore, Counsel for respondents

Heard.

O.A. is disposed of by a  
Separate order on the separate  
sheets for the reasons recorded  
therein.

*Anil Kumar*  
(Anil Kumar)  
Member (A)

*K.S. Rathore*  
(Justice K.S. Rathore)  
Member (J)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the 23<sup>rd</sup> day of March, 2012

Original Application No.121/2011

CORAM:

HON'BLE MR. JUSTICE K.S.RATHORE, MEMBER (JUDICIAL)  
HON'BLE MR. ANIL KUMAR, MEMBER (ADMINISTRATIVE)

N.K.Sharma  
s/o Late Shri G.R.Sharma  
r/o 120 Sindhu Nagar, Jaipur  
presently working as Sr. A.O. (TR),  
Bharat Sanchar Nigam Limited,  
Sikar.

.. Applicant

(By Advocate: Shri Anupam Agarwal)

Versus

1. Bharat Sanchar Nigam Limited  
through Managing Director,  
Corporate Office,  
Bharat Sanchar Bhawan,  
Harish Chand Mathur Lane,  
Janpath, New Delhi.
2. Bharat Sanchar Nigam Limited  
through the Chief General Manager,  
Telecom Circle Rajasthan,  
Sardar Patel Marg,  
Jaipur
3. Assistant General Manager (Vigilance),  
Bharat Sanchar Nigam Limited,  
Office of Principal General Manager,  
Telecom District, M.I. Road,  
Jaipur.

.. Respondents

(By Advocate: Shri G.S.Rathore)

ORDER (ORAL)

Brief facts of the case are that the applicant while working as Senior Accounts Officer (Cash) in the office of General Manager Telecom District, Sikar was served with a memorandum by respondent No.3 based upon a complaint of Shri D.C.Jain. The same has been replied by the applicant denying the allegations vide reply dated 8.8.2008 (Ann.A/3). The office of the Principal General Manager, Telecom District, Jaipur having considered the reply intimated vide letter dated 3.6.2010 that a sum of Rs. 63376/- was required to be recovered from the salary of the applicant, as the said amount was stated to be over payment by way of stepping up of pay in respect of 8 officials.

2. Against the letter dated 3.6.2010 and 11.6.2010, the applicant submitted a representation dated 12.7.2010 (Ann.A/5) and the same has been replied by the respondent vide letter dated 18.11.2010 modifying the letter dated 3.6.2010 to be extent that the liability of payment of Rs. 63376 as fixed by the letter dated 3.6.2010 against the applicant has been modified to Rs. 40,492.


3. The applicant further submitted another representation dated 25.1.2011 to respondent No.2 against the order dated 18.11.2010 and during this time the respondents have started recovery to the



tune of Rs. 2000 per month from the salary of the applicant vide Ann.A/6.

4. The impugned order Ann.A/1 and A/2 are challenged on the ground that when the applicant was working as AO (Cash) Headquarter, Office of the PGMTD, Jaipur w.e.f. 1.8.2002 to 23.6.2005, the stepping up of pay cases of CTS had been put to the applicant by the dealing Assistant, on which he has given a detailed note which stood approved by the CAO (HQ) vide Ann.A/7.

5. Further challenged on the ground that the order dated 22.12.2004 (Ann.A/12), on the basis of which the stepping up cases under question were found erroneous by the respondents, was not applicable at the relevant time as the stepping up cases were processed in January, 2004 and October, 2004 whereas the order dated 22.12.2004 was received by the Circle Office on 18.2.2005. Thus, the applicant cannot be held liable for any recovery of any kind on account of alleged withdrawal of stepping up of pay of the officials concerned as the letter dated 22.12.2004 was received in Circle Office on 18.2.2005 and withdrawal of stepping up done previously was approved by the CAO (HQ) on 18.6.2005. The applicant has been relieved from the post of AO (Cash) HQ on 23.6.2005. As such, the recovery of excess payment, if any, was to be done by successor of the applicant, who did not do so and still not found liable for recovery.



6. Also challenged on the ground that while ordering recovery by letter dated 18.11.2010, 11.6.2010 and 3.6.2010, it has further been ignored that Rule 70 of the CCS (Pension) Rules, 1972 authorizes recovery of over payment within two years from the pensioner and, in case such payment is not made, recovery may be made in installments from pension/family pension of the official concerned to whom over payment is found to have been made. However, in the present matter, if any excess payment was found to have been made to the persons namely – (1) Shri B.N.Vashishtha, CTS (2) Shri Ajit Singh CTS (3) Shri B.K.Pareek CTS (4) Shri N.K.Giryani CTS (5) Shri D.C.Jain CTS (6) Shri C.S.Sharma CTS (7) Shri G.C.Saini CTS and (8) Shri P.D.Basandani CTS, the officers responsible for not effecting recovery from their pensions have not been found guilty and have rather been allowed to retire safely and the applicant has been arbitrarily found liable for recovery.

7. The order impugned has also been challenged by the applicant on the ground that the impugned order is not sustainable, inasmuch as, the same has been issued by respondent No.3 who is not the appointing authority and, thus, not competent to issue such order and further that before issuing the recovery order, no enquiry, whatsoever, has been conducted prior to issuance of order Ann.A/1 and no one can be punished without compliance of the Principles of natural justice, as the recovery being one of the penalties prescribed



under the rules and can in no case be passed without conducting the enquiry as per rules.

8. On the contrary, the learned counsel appearing for the respondents have strongly controverted the submissions made on behalf of the respondents and submitted that the applicant is not entitled to any relief in pursuance to order dated 18.11.2010 by which stepping up of pay has been directed to be withdrawn in respect of 8 officials and the applicant was held responsible for approving the stepping up of pay to all officials. Merely, because the CAO has approved the proposal prepared by the applicant, the applicant cannot escape from the responsibility of examining the case of stepping up of pay anomaly carefully and thoroughly.

9. It is also contended on behalf of the respondents that the stepping up of pay of officials have been approved by the applicant even he was not competent. Hence, he cannot put blame to other officers as he never suggested sending the case to the competent authority. The stepping up was settled by the applicant while he was holding the charge of AO (Cash), Hqr. There has been no violation of Article 14 of the Constitution of India and after thoroughly examining the fact and circumstances of the matter, the recovery order has been passed by the respondents, which cannot be said to be in violation of the principles of natural justice.



10. In rejoinder to the reply, the learned counsel appearing for the applicant has stated that the respondents by their action done hostile discrimination vis-à-vis other employees. They have neither alleged anything nor initiated proceeding against the Dealing Assistant/AAO, CAO, Circle Officer, GM (F) who all were knowing it well about the processing and approval of stepping up of claims at par with Shri Gopi Lal Yadav. The respondents are not making any recovery from the beneficiaries. Even otherwise also, no recovery can be made without enquiry as per rules.

11. In response to the submissions advanced on behalf of the applicant, the respondents have submitted that the order impugned Ann.A/1 has been passed by the competent authority as the AGM (Vigilance) got approval of the PGMTD, Jaipur and then the impugned order dated 18.11.2010 has been passed. Thus, we are not satisfied with the submissions advanced on behalf of the applicant that the impugned order has not been passed by the competent authority.

12. Further in view of the submissions advanced on behalf of the applicant that before passing the impugned order by which recovery has been made effective from the month of February, 2011 at the rate of Rs. 2000 p.m. from the salary of the applicant, no enquiry has been conducted, we have pertinently asked the respondents whether before effecting recovery, any enquiry,



whatsoever, has been conducted or not, but no satisfactory answer has been given and it appears that no such enquiry has been conducted by the respondents. Thus, action of the respondents appears to be in violation of the principles of natural justice.

13. Having considered the rival submissions of the respective parties and upon perusal of the material available on record, we are of the view that the order impugned is passed by the authority after getting approval of the competent authority and we are not satisfied with the submissions made on behalf of the applicant that the impugned order is without jurisdiction as the same has not been passed by the competent authority. But in our considered view, before the recovery is made effective pursuant to this order, enquiry required to be conducted as per rules after affording the opportunity of being heard to the applicant.

14. Therefore, we quash and set-aside the impugned order Ann.A/1 so far as recovery from the salary of the applicant is concerned and direct the respondents to hold enquiry affording opportunity of being heard to the applicant and shall pass fresh order.

15. We are not inclined at this stage to pass any order for refund of the amount, which has already been recovered from the salary of the applicant. The applicant will be entitled to receive this amount





from the respondents, if he is exonerated in the enquiry to be conducted by the respondents for the charges of wrong stepping up of pay in relation to 8 officials.

16. With these observations, the OA stands disposed of with no order as to costs.

  
(ANIL KUMAR)  
Admv. Member

  
(JUSTICE K.S.RATHORE)  
Judl. Member

R/