

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

Original Application No. 367 of 2016

This the 22nd day of February, 2018

C O R A M :

HON'BLE DR K B SURESH, JUDICIAL MEMBER

HON'BLE SHRI K N SHRIVASTAVA, ADMINISTRATIVE MEMBER

Shri Prabhudas K Makwana,
S/o Khanabhai Makwana,
Aged 60 years,
Retd. As Sr. TOA (P) under BSNL, Nadiad.
R/O: 12-B, Shyam Tenaments, Manjupura Road,
Nadiad – 01. ... Applicant

By Advocate Ms S S Chaturvedi

V/s

- 1 Chairman/Managing Director,
Bharat Sanchar Nigam Ltd,
Sanchar Bhavan, Barakhambha Road,
New Delhi – 110 001.
- 2 Chief General Manager,
Bharat Sanchar Nigam Ltd,
Telephone Bhavan, C.G.Road,
Ahmedabad – 380 004.
- 3 Department of Telecommunications,
Office of Controller of Communication Accounts,
Gujarat Telecom Region, 4th Floor,
P and T Administration Bldg,
Opp. Khanpur Post Office, Khanpur,
Ahmedabad – 380 001.
- 4 General Manager,
BSNL, Kheda Telecom Dist.
Nadiad – 387 002. ... Respondents.

By Advocate Shri M J Patel
Ms F D Patel – R 3.

O R D E R (ORAL)

Per Hon'ble Dr K B Suresh, Member(J)

1 Heard.

2 The matter lies in a very narrow compass. The issue is para 9 and 10 of earlier order of this Tribunal in TA 74/09 and connected matters dated 18.12.2009 of CAT, Ahmedabad Bench, wherein after answering the question which would have arisen in that matter, we had said that "if the pay scales granted earlier could not have been withdrawn, then we are not required to enter into the question of interpretation of para 2(3) of letter dated 20.4.1999."

3 The learned counsel for respondents point out that in para-10, while we say the present order of fixation of pay is quashed and set aside, we have also said that the contention relating to interpretation of para 2(3) of the letter dated 20.04.99 is kept open. That may be so, but then this matter has been agitated before Hon'ble High Court of Gujarat in SCA No.8022 of 2010 and the Hon'ble High Court has upheld the orders of the Tribunal against which the respondents herein had filed review wherein by a very detailed order dated 30.4.2013, the Hon'ble High Court has held on the basis of Hon'ble Supreme Court judgment "while it had expressed no opinion on the merits of the case, it is this order which is the subject matter of the petition before the Court." The said order was disposed of by that Court by passing the order dated 18.10.2010 sought to be reviewed.

4 The Hon'ble High Court held that in the facts and background of the case they see no reason to review the order dated 18.10.2010 and therefore the matter had attained finality. There is no appeal to Apex Court in the matter and even though the

respondents now claim that an undertaking was implicit will not lie voluntarily for the very same reason that the benefit had to be given on the basis of the Court Order and not voluntarily, that being so, that also will not lie against the applicant. The principles of relief on Rafiq Masih's case will be applicable in this case also. Therefore, the OA is allowed. Recovery is set aside and amount recovered already will be paid back with interest at G.P.F rate within next two months. No costs.

(K N Shrivastava)
Member(A)

(Dr. K B Suresh)
Member(J)

abp