

**Central Administrative Tribunal, Allahabad Bench,
Allahabad**

Original Application No.330/00706/2015

This the 2nd day of April, 2018

Hon'ble Mr. Justice Dinesh Gupta, Member (J)

Surendra Pathak aged about 61 years son of late Baleshwar Pathak r/oVillage Paranapur (Gaytripuram) Post Palahani, District- Azamgarh.

Applicant

By Advocate: **Sri Ashish Srivastava**

Versus

1. Union of India through its Secretary, Ministry of Communication and I.T., Department of Telecommunication, New Delhi.
2. Senior General Manager, Telecom Department, Bharat Sanchar Nigam Limited, Office of the Senior GMTD, Raidopur, Azamgarh.
3. Accounts Officer, Cash, Office, Senior GMTD, Azamgarh.

Respondents

By Advocate: **Sri D.S. Shukla**

By Hon'ble Mr. Justice Dinesh Gupta, Member (J)

The applicant has filed the present O.A. under Section 19 of the AT Act with the following reliefs:-

- i) This Hon'ble Tribunal may be pleased to quash the impugned order dated 16.3.2015 issued by the respondent No. 3 (Annexure No.A-1 to this Original Application).
- ii) This Hon'ble Tribunal may be pleased to direct the respondents to restore the pay and consequently the pension of applicant from Rs. 25,125/- to Rs. 25,665/-
- iii) This Hon'ble Tribunal may be pleased to direct the respondents to refund the recovered amount of Rs.

2,05,755/- from the retiral dues of the applicant along with 12% interest thereupon.

iv) Any other releif which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicant.

v) Award the costs of the original application in favour of the applicant.

2. The brief facts emerging from the O.A. are that the applicant was initially appointed as Telephone Operator on 12.3.1975. The was promoted as Junior Engineer and further as Sub-Divisional Engineer, Telecom on 20.10.1998. The was again promoted as Assistant General Manager on 28.3.2013 and retireed on 31.3.2014.

2.1 The respondent No.3 has issued a letter dated 2.4.2014 which reveals that applicant was granted lateral advancement w.e.f. 9.1.1996 in the pay scale of Rs. 7500-12000/-.

2.2 The applicant has further received another letter dated 2.7.2014 issued by respondent No. 3 wherein it was observed that the compliance received from office of the respondent No. 2 was checked and found that the reply in para 2 of the letter was not correct. The applicant was granted lateral advancement w.e.f. 8.1.1996 but the pay scale of Rs. of Rs. 7500-12000 w.e.f. 1.1.1996.

2.3 The applicant made an application before CMD, BSNL, New Delhi against the illegal recovery and erroneous pay fixation after his retirement whereby the pension of the applicant was also reduced from Rs. 25655/- to 25.125/-

2.4 Vide letter dated 16.3.2015, the applicant was intimated that amount of Rs. 2,05,755/- has been adjusted against the excess payment of leave encashment which is paid in excess between March 1996 to March 2014.

2.5 Applicant has challenged the recovery order on the ground that pay of the applicant fixed 20 years back could not be re-opened at the time of retirement. It is further stated that recovery of excess amount due to employers mistake is not permissible

3. Notices were issued to the respondents who in turn filed the counter reply through which it is stated that during the checking of pension matter of applicant it was found that pay of the applicant was wrongly fixed and on the basis of wrong fixation, he was allowed higher pay scale, as such the excess amount paid to the applicant was deducted from the dues of applicant. It is stated that Rs. 2,05,755/- has been recovered from leave encashment payable to the applicant on account of over payment for the period March 1996 to March 2014.

4. Heard the learned counsel for applicant Sri Ashish Srivastava and learned counsel for respondents Sri D.S. Shukla.

5. Learned counsel for applicant submitted that so far as recovery of excess amount from the applicant is concerned, the same cannot be recovered from the applicant as the applicant has already been retired. The contention of the applicant that as per contention of the respondents his pay was wrongly in 1996, which is more than twenty years back, as such the same cannot be recovered from the applicant. In this regard, applicant has placed reliance of the judgment of Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih (Civil Appeal No. 11527 of 2014 decided on 18th December, 2014)**.

6. Hon'ble High Court of Allahabad Bench in the case of **State of U.P. and others Vs. Bhim Sen Sharma and another reported in 2017 (4) ADJ 768 (DB)(LB)** has observed that the alleged one increment was wrongly granted to the applicant in 1979 and pension of claimant (respondent No.1) was sought to be fixed by rectifying said mistake after almost 19 years and more. Hon'ble High Court dismissed the writ petition and allowed the cost of Rs. 5000/-. The relevant portion of judgment is reproduced below:-

“9. However, we do not find ourselves in agreement with aforesaid submission. Whenever any action prejudicial to interest of a Government servant is taken, Competent Authority must exercise its power within a reasonable time and it cannot be appreciated that such power should be exercised after decades and that too after retirement of Government servant. In the present case, impugned order has been passed after almost 6 years from the date of retirement.

10. It is well established that when a power is there and there is no period prescribed under law, power should be exercised reasonably and within a reasonable period also and not after a very long time or at any time. In these facts and circumstances, we are of the view that if there is any error in pay fixation etc., Competent Authority is entitled to rectify mistake within a period of three years. We further provide that in case such a mistake is detected after three years in that case instead of taking action against the person who is benefited with such wrong fixation, Competent Authority must take action against the person who caused such mistake and is responsible and recover loss suffered by department.”

7. Respondents have reiterated the facts as stated by him in the counter reply and further submitted that pay of the applicant was wrongly fixed. The said mistake was came in the light at the time of fixation of pension. As such excess amount was found to be recovered from the applicant. Learned counsel for respondents further submitted that applicant himself sent a letter dated 20.0.1997 to the competent authority and requested for fixation of his pay as on 1.3.1996 according to report of Vth Pay Commission and also mentioned that my basic pay was Rs. 2375/- as on 1.3.1996 in the scale of Rs. 2000-3500 in JT cadre. However, in his option form made a request for fixing his pay as on 1.3.1996. Counsel further submitted that applicant submitted a representation before the competent authority for fixing his pay on next increment date i.e. 1.3.1996 after later advancement in JTO and in his application, the applicant stated that he may be given lateral

advancement w.e.f. 1.3.1996 in JTO cadre. It is further submitted that Ministry of Communication and I.T. Department of Telecommunication wrote a letter to the competent authority of department and it is clearly mentioned in the letter that the retired officer was granted lateral advancement w.e.f. 8.1.1996 but the pay scale of Rs. 7500-12000/- has been allowed w.e.f. 1.1.1996 and pay fixation as on 1.3.1996 may be done with reference to pay in substantive pay scale of Rs. 6500-10500/- according to GID (4) below Rule 7 of CCS RPR 1997. Counsel further submitted that while checking the pension matter of the applicant, the authority found that the pay of the applicant was wrongly fixed and on the basis of wrong fixation, he was allowed higher pay scale. Thereafter, the excess payment made to the applicant was deducted from the dues of the applicant in accordance with existing rules.

8. The Court is unable to accept the contentions raised by the learned counsel for respondents.

9. From the pleadings of the parties, two questions arose before this Tribunal. First in regard to wrong fixation of pay and subsequently wrong fixation of pension. Second in regard to recovery of amount of Rs. 2,05,755/-.

10. So far as first question is concerned, there is some confusion regarding pay fixation in the year 1996 and

accordingly applicant was getting the said pay regularly till his retirement. It was only after retirement, on checking of pension papers, the respondents found that fixation in the year 1996 was wrongly made. It is not disputed that pay of the applicant was wrongly fixed in 1996 and in view of observation and instances enumerated by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih Civil Appeal no. 11527 of 2014 (decided on 18th December, 2014)**, the recovery on certain amounts is impermissible where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred above, the Apex Court as a ready reference, summarize the few situations wherein recoveries by the employees would be impermissible in law. The third situation is that the 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. The applicant's case so far as wrong fixation is concerned is squarely covered by this situation as observed by the Hon'ble Apex Court in the case of State of Punjab Vs. Rafiq Mashi.

11. The learned counsel for applicant has also placed reliance of the judgment of **State of U.P. and others Vs. Bhim Sen Sharma and another (supra)** and submitted that the facts of this case is also squarely covered by the

case of applicant in the present O.A. In that case, the alleged one increment was wrongly granted to the applicant in 1979 and pension of applicant was sought to be fixed by rectifying said mistake after almost 19 years and more and court while allowing the Writ Petition clearly held that after a lapse of a subsequent time, the respondents action for withdrawing the same and refix the pay is against the provision as well as against the natural principle of law. The Court also go on to held further that if any mistake has been committed in pay fixation much prior to the retirement of the applicant, neither any salary paid by mistake to the applicant could have been recovered nor pension of the applicant could have been reduced. Thus, in view of the above observation, so far as question No. 1 is concerned, the respondents after granting of pay to the applicant in the year 1996, whether wrongly or rightly, cannot refix the pay of the applicant since the applicant has already retired in 2014 and pay of the applicant was fixed in the year 1996.

12. So far as the second question is concerned, the principle laid down by the Hon'ble Apex Court in the case of **State of Punjab vs. Rafiq Mashি** (supra) squarely covers the situation of the present case. In this case, applicant was retired in 201 and pay of the applicant was fixed on 1996. The respondents have

never informed the applicant before his retirement that his pay was wrongly fixed and now they have adjusted the Rs. 2,05,755/- as excess amount from the retiral dues of the applicant. In the case of **Rafiq Mashি**, while dealing with such type of situation, the Hon'ble Apex Court held that recovery of excess amount would be impermissible from the retired employees. Further, the Apex Court has also held that recovery from employees is also impermissible when the excess amount has been made for a period in excess of five years before the recovery order is issued. The court did not allow the recovery of excess payment. The court was of the opinion that it would be iniquitous and arbitrary for an employer to require an employee to refund the excess amount.

13. In view of observation and instances illustrated by the Hon'ble Apex Court in the case of **State of Punjab and others Vs. Rafiq Masih Civil Appeal no. 11527 of 2014 (decided on 18th December, 2014)**, the recovery on certain amounts is impermissible where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred above, the Apex Court as a ready reference, summarize the few situations wherein recoveries by the employees would be impermissible in law. The third situation is that the 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. The applicant's case so far as wrong fixation is concerned is squarely covered by this situation as observed by the Hon'ble Apex Court in the case of **State of Punjab Vs. Rafiq Mashি.**

14. The learned counsel for applicant submitted that the judgment of **State of U.P. and others Vs. Bhim Sen Sharma and another** and the facts of this case is also squarely covered by the case of applicant in the present O.A. In that case, the alleged one increment was wrongly granted to the applicant in 1979 and pension of applicant was sought to be fixed by rectifying said mistake after almost 19 years and more and court while allowing the Writ Petition clearly held that after a lapse of a subsequent time, the respondents action for withdrawing the same and refix the pay is against the provision as well as against the natural principle of law. The Court also go on to held further that if any mistake has been committed in pay fixation much prior to the retirement of the applicant, neither any salary paid by mistake to the applicant could have been recovered nor pension of the applicant could have been reduced.

15. In the case of **Rafiq Mashি (supra)**, while dealing with such type of situation, the Hon'ble Apex Court held that recovery of excess amount would be impermissible from the retired employees. Further, the Apex Court has

also held that recovery from employees is also impermissible when the excess amount has been made for a period in excess of five years before the recovery order is issued. The court did not allow the recovery of excess payment. The court was of the opinion that it would be iniquitous and arbitrary for an employer to require an employee to refund the excess amount.

16. In view of the aforesaid judgment of the Hon'ble Apex Court, the O.A. is allowed. Order dated 16.3.2015 is quashed and it is directed that no recovery can be made from the applicant. In case any recovery is made, the same shall be refunded to the applicant with 9% interest thereon. No order as to costs.

**(Justice Dinesh Gupta)
Member (J)**

HLS/-

