

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

ORIGINAL APPLICATION NO.060/01302/2017

Chandigarh, this the 19th day of January, 2018

...

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J) &
HON'BLE MRS. P. GOPINATH, MEMBER (A)**

...

Balwinder Kaur wife of Late Sh. Darshan Singh (Senior Telephone Office Assistant Retd. / Group-C Service), aged about 59 years, R/o Phallaound Kalan, P.O. Bhogiyal, District Sangrur.

.... APPLICANT

(Present: Mr. Arvinder Singh, Advocate)

VERSUS

1. Union of India through its Secretary, Ministry of Communications & IT, Department of Telecommunications, Sanchar Bhawan 20, Ashoka Road, New Delhi-110001.
2. Bharat Sanchar Nigam Limited through its General Manager, Harish Chandra Mathur Lane, Janpath, New Delhi-110001.
3. Office of the Controller of Communication Accounts, Punjab Telecom Circle, Madhya Marg, Sector 27-A, Chandigarh-160019, through its Senior Accounts Officer (Pension).
4. Office of Chief General Manager (BSNL), Punjab Circle, Sanchar Sadan, Plot No.2, Sector 34-A, Chandigarh-160022, through DGM (Finance).
5. SDE (HRD), Office of GMT, BSNL, Sangrur.

.... RESPONDENTS

**(Present: Mr. Ram Lal Gupta, counsel for respondents no.1 & 3.
Mr. D.R. Sharma, counsel for respondents no.2, 4 & 5).**

ORDER (Oral)**SANJEEV KAUSHIK, MEMBER (J)**

1. On joint request, the matter is taken up for final disposal at this stage.
2. Ms. Balwinder Kaur wife of Late Sh. Darshan Singh, who was working as Senior Telephone Assistant, is before this Court against order of recovery for a sum of Rs.1,19,467/- on account of wrong fixation of pay of her husband.
3. Learned counsel appearing on behalf of the applicant argued that the husband of the applicant took voluntary retirement on 31.07.2016. He unfortunately died on 14.9.2016 before respondents settle his dues. After the death of her husband, the respondents have conveyed their decision vide letters dated 21.09.2016 and 22.10.2016 for recovery of an amount of Rs.1,19,467/- on account of over payment of pay and allowances which they have paid to the husband of the applicant from 1998. Therefore, he submitted that the impugned order of recovery is illegal, arbitrary and against settled proposition of law in the case of **State of Punjab Vs. Rafiq Masih (White Washer)**, (2015 (4) SCC 334).
4. Sh. D.R. Sharma submitted that Annexures A-4 and A-5 are not under challenge, therefore, no relief can be granted. A similar plea has also been raised by Sh. Ram Lal Gupta that this petition be dismissed.
5. We have given our thoughtful consideration to the entire matter and are in agreement with the submissions made at the hands of the applicant that respondents cannot be allowed to make recovery of alleged amount after allowing the husband of the applicant to retire as no recovery can be effected from the retired

Class-III employee. More so, when proposed recovery is of an amount which was paid in the year 1998 i.e. more than 5 years before the order of recovery. Accordingly, action of the respondents in effecting recovery is against exception carved out in para 12 of the judgment passed in the case of Rafiq Masih (supra), which reads as under:-

- "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.
- (iii) 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.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover."□

6. Merely because the applicant has not impugned Annexures A-4 and A-5 does not debar her to agitate the matter for effecting recovery, because her prayer in petition is to declare action of the respondents in effecting recovery illegal. Thus for the loose pleadings, the applicant cannot be made to suffer/penalize.
7. In view of the above, we allow petition and invalidate the action of the respondents in effecting recovery pursuant to Annexures A-4 and A-5. Resultantly, both the orders are also quashed. Accordingly, the respondents are directed to release the recovered amount forthwith.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Dated: 19.01.2018

'KR'

