

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

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**O. A. No.60/1358/2017
M.A. No.60/624/2018**

Date of decision: 02.05.2018

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

...

1. Surinder Kumar Jain, aged about 57 years, son of Sh. Daya Ram Jain, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
2. Sant Singh, aged about 56 years, son of Sh. Gurdial Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
3. Prem Lal Raturi, aged about 59 years, son of Late Sh. Paras Ram, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
4. Mohinder Kaur, aged about 56 years, wife of Sh. Kuljit Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
5. Mohd. Munir, aged about 59 years, son of Sh. Fatesh Mohd., Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
6. Kewal Singh, aged about 56 years, son of Sh. Ram Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
7. Bant Singh, aged about 56 years, son of Sh. Ginder Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
8. Rajinder Singh Panesar, aged about 57 years, son of Sh. Hardial Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
9. Kusum Kumar Garg, aged about 58 years, son of Sh. Harbilas, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.

10. Anita Rani, aged about 55 years, wife of Sh. Hem Raj Mittal, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
11. Naresh Kumari, aged about 55 years, wife of Sh. Surinder Nandra, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
12. Atma Singh, aged about 59 years, son of Sh. Dayal Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
13. Kansa Ram, aged about 57 years, son of Sh. Kishna Ram, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
14. Ram Krishan, aged about 56 years, son of Sh. Mohan Lal, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
15. Kiran Rani, aged about 59 years, wife of Sh. Ram Gopal, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
16. Santosh Kumari, aged about 55 years, wife of Sh. Raj Kumar Gupta, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
17. Ranjit Singh aged about 59 years, son of Sh. Sunder Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
18. Suresh Kumar, aged about 58 years, son of Sh. Umro Chand, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
19. Ram Sarup, aged about 55 years, son of Sh. Chiraji Lal, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
20. Balwant Singh, aged about 57 years, son of Sh. Gurdev Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.

21. Dhian Singh, aged about 54 years, son of Sh. Dhara Singh, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
22. Darshna Devi, aged about 55 years, wife of Sh. Tej Kumar, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
23. Dhani Ram Kansal, aged about 58 years, son of Sh. Dev Raj, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.
24. Inderjit Singh, aged about 59 years, son of Sh. Ram Chand, Office Superintendent (G) (Group "C" Service), Punjab Telecom Circle, Unit-Sangrur TD.

... APPLICANTS

VERSUS

1. Bharat Sanchar Nigam Limited, though 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 Chander Mathur Lane, Janpath, New Delhi-110001.
3. Controller of Communication Accounts, Punjab Telecom Circle, Madhya Marg, Sector 27-A, Chandigarh-160019 through its Senior Accounts Office (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: Sh. Arvinder Singh, counsel for the applicants.

Sh. K.K. Thakur, counsel for respondents no.1 and 3.

Sh. D.R. Sharma, counsel for respondents no.2 and 4.

ORDER (Oral)

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SANJEEV KAUSHIK, MEMBER (J):-

1. Applicants are aggrieved against order Annexure A-1, whereby respondents have not only re-fixed their pay w.e.f. 01.12.1998 in the pay scale of Rs.5000-8000 and have also ordered recovery of the excess payment.
2. Learned counsel appearing on behalf of applicants submitted that they have not challenged correctness of action of the respondents in re-fixing their pay but they are only against recovery of the excess amount.
3. Applicants entered into service with the respondent department as TOA between 1978 to 1982. They were promoted to the post of Senior TOA in the pay scale of Rs.1320-2040. They were granted restructuring cadre on completion of 16 years service in the pay scale of Rs.4000-6000. Pay of applicant no.1 was fixed @Rs.4750/- and pay of other applicants was also fixed in that pay scale. Pay scale of 4500-7000 was upgraded to Rs.5000-8000 as per DOT letter dated 20.04.1999 and pay in the upgraded pay scale was to be fixed as per FR 22 (1)(a)(2). But inadvertently the pay of the applicants has wrongly been re-fixed @Rs.5150/- instead of Rs.5000/-. When this fact came to the notice of BSNL, they passed impugned order Annexure A-1 re-fixing pay of the applicants w.e.f. 01.12.1998 and have also ordered recovery of excess amount paid to them than their entitlement.
4. Learned counsel appearing on behalf of the applicants argued that in view of the law laid down by Hon'ble Supreme Court in the case of

State of Punjab Vs. Rafiq Masih (White Washer), (2015 (4)

SCC 334), respondents cannot effect recovery on two counts firstly, the applicants are Class-III employees and secondly, they cannot make recovery of amount beyond 5 years from the date of order of recovery. In the present case, recovery is of amount paid in 1998, therefore, action of the respondents in effecting recovery from the applicants be invalidated.

5. Respondents while filing written statement did not dispute factual accuracy. However, Sh. D.R. Sharma, appearing on behalf of respondents no.2 and 4 placed reliance on order dated 12.05.2017 passed by the Principal Bench of the Tribunal in O.A. No.792/2016 titled **Navneet Rai Rishi vs. Union of India & Ors.** (Annexure R-1), where order of recovery has not been interfered by the Court.
6. We have given our thoughtful consideration to the entire matter and are of the view that since applicant no.1 is a retired employee while other applicants are Class-III employees, therefore, action of the respondents in effecting recovery from them is not sustainable. More so, when recovery is of the amount which was paid in the year 1998 i.e. more than five years from the order of recovery. The action of the respondents in effecting recovery is against the exceptions 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."□

The case relied upon by counsel for respondents no.2 and 4 is not applicable in the present case as facts of that case are entirely different from the case in hand.

7. Accordingly, the O.A. is party allowed, action of the respondents in effecting recovery from the applicants is invalidated. If respondents have already affected recovery from any of the applicant, they are directed to refund amount to the applicants.
8. OA along with MA stands disposed of in the above terms.

**(P. GOPINATH)
MEMBER (A)**

**(SANJEEV KAUSHIK)
MEMBER (J)**

Date: 02.05.2018.
Place: Chandigarh.

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