

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

O. A. No.60/86/2018

Date of decision: 29.05.2018

(Reserved on: 10.5.2018)

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

Bishan Dass, aged 60 years (Office Superintendent (G) retired/Group "C" Service), son of Late Sh. Thuru Ram, resident of Gali No.5, Salaria Nagar, Back Side Old Sabji Mandi, Pathankot-145001.

... APPLICANT

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 Chander Mathur Lane, Janpath, New Delhi-110001.
3. Office of 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. Office of GMT (D) BSNL, Pathankot, through its accounts officer (Claims)
6. SDE (HRD) Office of GMT (D), BSNL, Pathankot

... RESPONDENTS

PRESENT Sh. Arvinder Singh, counsel for the applicant.
Ms. Nidhi Garg, counsel for respondents no.1 to 3.
Sh. Rajesh Gupta, counsel for respondents no.2, 4, 5 and 6.

ORDER

SANJEEV KAUSHIK, MEMBER (J):-

1. By way of present O.A., the applicant has challenged correctness of order dated 17.03.2017 whereby the respondents have ordered

recovery of sum of Rs.1,08,893/- on account of excess payment of salary w.e.f. 21.02.2002 to 31.10.2016.

2. The facts are not in dispute.
3. Applicant commenced his service with the respondent department as Trainee Clerk w.e.f. 01.08.1979 in the erstwhile Indian Posts and Telegraph in the office of Divisional Engineer Telegraph, Amritsar. On creation of Bharat Sanchar Nigam Ltd. (for short BSNL), his services were placed with BSNL. After rendering more than 37 years of service the applicant retired on 31.03.2017, on attaining the age of superannuation as office Superintendent (G) from the office of SDE Marketing, Pathankot. Vide communication dated 17.03.2017, applicant has been informed that his pay has wrongly been fixed resulting into giving him pay on higher rates than his entitlement from 21.02.2002 to 31.10.2016. Accordingly, the impugned order has been passed whereby the respondents while rectifying their mistake have ordered the applicant to deposit a sum of Rs.1,08,893/-. Against this order, the applicant is before this Court.
4. We have heard learned counsel for the parties.
5. Sh. Arvinder Singh, learned counsel appearing on behalf of the applicant raised a plea that applicant being a Class-III employee, the respondents cannot effect recovery in terms of law laid down by the Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer)**, (2015 (4) SCC 334). Additional plea has been raised that they cannot recover amount beyond the date of 5 years of order of recovery.
6. The respondents while resisting the claim of the applicant only raised a plea that since they have paid higher salary than his entitlement

for above noted period, therefore, by impugned order while rectifying their mistake they have ordered recovery of amount to which the applicant is not legally entitled to. It has also been submitted that applicant himself has written a letter to office before his retirement on 31.03.2017 that he be informed that whether there is any amount which is to be recovered from him, therefore, the impugned order of recovery is valid. To support their contention, they placed reliance on in the case of **High Court of Punjab and Harayana vs. Jagdev Singh** (2016) 14 SCC 267).

7. Having deeply considered the crux of the pleadings and in the light of aforesaid prismatic reasons, we are of the considered view that impugned order of recovery cannot sustain and is liable to be set aside. The respondents sought to recover the amount which they have paid to the applicant during 21.02.2002 to 31.10.2016 on the plea that unlawfully they have paid higher rates than his entitlement. Thus, while rectifying their mistake, they have passed order of recovery. They have also argued, which has been noticed in the preceding paragraph that the applicant has himself given an undertaking for recovery of excess payment, thus his case is covered by ratio laid down in the case of Jagdev Singh (supra).
8. We are afraid that the respondents can apply ratio laid down in the case of Jagdev Singh (supra) in the present case because the undertaking which the respondents are relying upon was not given by the applicant when he was given higher pay i.e. in the year 2002. The undertaking is of 31.03.2017, which the applicant has given at the time of his retirement. It is undisputed truth that every employee is under obligation to give an undertaking at the time of

retirement as if at that point of time, office commits any mistake then department will not suffer. Thus, undertaking given in 2017 cannot be used as tool to effect recovery of amount which they paid from 2002 to 2016, therefore, ratio laid down in the case of Jagdev Singh (supra) is not applicable.

9. The case of the applicant is squarely covered within four corners of square in the case of Rafiq Masih (supra) where the Lordships have carved out exception in para 12 of the judgment, 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.”□

10. Accordingly, the O.A. is allowed, action of the respondents in effecting recovery from the applicant is invalidated. If respondents have already affected recovery from the applicant, then they are directed to refund amount immediately.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 29.05.2018
Place: Chandigarh.
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