

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O. A. No.60/729/2017

**Date of decision: 30.05.2018
(Reserved on: 09.5.2018)**

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

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1. Labh Singh, aged 61½ years, HRMS No.197700970, S/o Late Sh. Sarup Singh, retired Senior Telecom Operating Assistant (TG), Office of General Manager Telecom, "District" BSNL Patiala, R/o Street No.6, Aman Vihar, Bhadson Road, P.O. Sidhuwal, Patiala. Group C.
2. Raghbir Singh, aged 62 years, HRMS No.197400156, S/o Late Sh. Baru Singh, retired Telecom Mechanic Office of SDO Phone (IV) BSNL, Patiala, R/o House No.B-3/299, New Basti Badungar, Patiala. Group C.
3. Jasmer Singh, age 62 years, HRMS No.197801556, S/O Late Sh. Juna Ram, Retired Sr. TOA (General), Office of General Manager Telecom, "District" BSNL Patiala, R/o Ram Nagar Sainia, P.O. Tepla, Distt. Patiala. Group C.
4. Tara Singh, age 61 ½ years, HRMS No.197902508, S/o Late Sh. Raunaq Singh, Retired Sr. TOA (General), Office of General Manager Telecom, "District" BSNL Patiala, R/o Village Tasauli. PO Manakpur, Tehsil & District SAS Nagar.

... APPLICANTS

VERSUS

1. Union of India through its Secretary, Ministry of Communication and Information Technology, Department of Telecommunication, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001.
2. Controller of Communication Accounts, Punjab Telecom Circle, Sector 18-A, Chandigarh.
3. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Harish Chander Mathur Lane, Janpath, New Delhi-110001 through its Chairman-cum-Managing Director.
4. Chief General Manager, Telecom, Bharat Sanchar Nigam Limited, Punjab Circle, Sector 34-A, Chandigarh.
5. General Manager, Telecom, "District" Bharat Sanchar Nigam Limited, Patiala.

... RESPONDENTS

PRESENT: Sh. Barjesh Mittal, counsel for the applicants.
Sh. V.K. Arya, counsel for respondents no.1 and 2.
Sh. Rakesh Verma, counsel for respondents no.3, 4 and 5.

ORDER

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SANJEEV KAUSHIK, MEMBER (J):-

1. Applicants have jointly filed present O.A. challenging the orders of recovery (Annexure A-1 to A-4) whereby the respondents have ordered recovery of amount on the pretext that they have made excess payment to which the applicants were not entitled to.
2. Facts are not in dispute.
3. Conjunctive perusal of pleadings makes it clear that applicants were initially appointed in the erstwhile department of Telecommunication. On creation of BSNL, their services were transferred to BSNL on 1.1.2000. Detailed service particulars of the applicants are reproduced in Para 4(ii) of the O.A.
4. Applicants are aggrieved against the orders whereby respondents while re-fixing their pay have ordered recovery of amount which they have paid to the applicants beyond their entitlement and recovered the same from their retiral dues.
5. Solitary plea raised in the O.A. by the applicants is that being Class-III and retired employees, the respondents cannot effect recovery. Additional plea has been raised that they cannot recover amount beyond the date of 5 years of order of recovery. To buttress his claim, learned counsel for the applicants placed reliance on **State of Punjab Vs. Rafiq Masih (White Washer)**, (2015 (4) SCC 334).
6. Respondents while resisting the claim of the applicants did not dispute factual accuracy. However, they submitted that since applicants have given undertakings, therefore, they are well within their right to effect

recovery. They submitted that in a similar case of same very department in O.A. No.792/2016 decided on 12.05.2017 a similar order has been upheld by the Single Bench of Principal Bench where order of recovery has been approved based upon judgment of Hon'ble Supreme Court in the case of **High Court of Punjab and Harayana vs. Jagdev Singh** (2016) 14 SCC 267). In view of this, Sh. Verma submitted that present petition be dismissed.

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 had paid to the applicants during the period from 01.07.2001 to 16.10.2004 on the plea that unlawfully they have paid higher rates than their 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 applicants have given undertakings for recovery of excess payment, thus their 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 undertakings which the respondents are relying upon were not given by the applicants when they were given higher pay i.e. in the year 2001. The undertakings are of 2015, which the applicants had given at the time of their 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 may not suffer. Thus, undertaking given in 2015 cannot be used as tool to effect recovery of amount which they paid from

2001 to 2004, therefore, ratio laid down in the case of Jagdev Singh (supra) is not applicable.

9. The case of the applicants 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 applicants is invalidated. If respondents have already affected recovery from the applicants, then they are directed to refund the same immediately.

(P. GOPINATH)
MEMBER (A)

(SANJEEV KAUSHIK)
MEMBER (J)

Date: 30.05.2018.
Place: Chandigarh.

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