

**Central Administrative Tribunal  
Madras Bench**

**MA/310/00747/2017 (in)(&) OA/310/01540/2017**

**Dated the 5<sup>th</sup> October Two Thousand Eighteen**

**P R E S E N T**

**Hon'ble Mr.P.Madhavan, Member(J)  
&  
Hon'ble Mr.T.Jacob, Member(A)**

S.Subramaniam-III,  
Telecom Mechanic(Retd.),  
S/o Sri N.Palanisamy,  
A-52/16, Hanumar Koil Street,  
Kottai-1, Arantangi 614 616. .. Applicant  
By Advocate **M/s.N.K.Srinivasan**

**Vs.**

1. The Chairman Telecom Commission & Secretary(T), Department of Telecommunications, Sanchar Bhavan, No.20, Ashoka Road, New Delhi 110 001.
2. The Chairman & Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, Harichandra Mathur Lane, Janpath, New Delhi 110 001.
3. The Chief General Manager, BSNL, 7<sup>th</sup> Floor, BSNL ADMN Building, 16, Greams Road, Chennai 600 006.
4. The Principal General Manager, BSNL, O/o Principal General Manager, BSNL, No.4, Bharathidasan Salai, Trichy 620 001.
5. The Senior Accounts Officer(Drawals), O/o General Manager, BSNL, Trichy 620 001. .. Respondents

By Advocate **Mr.R.Priyakumar(R2-5)**

**ORDER**

Pronounced by Hon'ble Mr.P.Madhavan, Member(J)

Heard. The applicant has filed this OA seeking the following relief(s):-

“(i) It is prayed that this Tribunal may be pleased to declare that the DPE's guidelines and the same is endorsed by the DOT ND, OM No.1-1(1)/06-PAT dt. 17.12.2008 and communicated the same under BSNL HQ, ND, No.1-5/2004-PAT (BSNL) dt. 27.9.2012 are inapplicable to applicant's case;

(ii) to set aside the order No.E-33/SS/TM/22 dated 13/17.8.2013 and No.E-33/SS/TM/27 dated 01/07.2014 issued by the AGM(Admn), O/o PGM, BSNL, Trichy 620 001 and direct the respondent to restore the pay fixation from the date of next increment (DNI) of the applicant which falls after 01.10.2000;

(iii) Based on the judgement of the Hon'ble Supreme Court, it is prayed that this Hon'ble Tribunal may be pleased to direct the respondents to repay the amount already recovered from the applicant's leave encashment salary at the time of retirement vide No.E-33/SS/TM/13-14/20 dt. 30.7.2013, within a period of time as stipulated by this Tribunal;

(iv) To award costs and pass such further and other orders as may be deemed fit and proper and thus render justice.”

2. The applicant is a retired Telecom Mechanic. He was promoted as Telcom Mechanic w.e.f. 05.6.2000 and opted for pay fixation after 01.10.2000 ie., w.e.f. 01.6.2001 on next increment date. Thereafter, the option for pay fixation after 01.10.2000 was not permitted by DOT as per OM 1-1(1)/06-PAT dt. 17.12.2008. On the basis of the OM, the BSNL has taken steps to revise and refix the pay of the applicant. An amount of Rs.2,09,808 was found to be as excess payment. There is

no misrepresentation or fraud committed by the applicant. This has occurred due to the formation of BSNL and absorption of the applicant to it. According to the applicant the option for fixation on promotion was filed while he was under DOT. His pay was fixed as per their rules and the respondents are recovering the amount from his terminal benefits. So the applicant prays for paying back the recovered amount from terminal benefits and seeks the aforesaid relief.

3. Respondents filed reply giving the reasons for recovery. According to the counsel for the respondents, the applicant was originally appointed as Line Man in the DOT. On formation of BSNL, he was absorbed to BSNL w.e.f. 01.10.2000 as per option given by him. His pay was earlier fixed as per CDA scale and this was changed to IDA scale after absorption and it had become necessary to revise the scale of pay of the applicant. In the applicant's case, he was placed in a higher CDA scale for Telecom Mechanic w.e.f. 05.6.2000 and another fixation was done on 01.4.2001. Since IDA scale was implemented, the next increment given w.e.f. 01.4.2001 cannot be granted as FR 22 Rule is not applicable to his case. The implementation of order was finalised only in July 2013, the delay occurred. The excess payment has to be recovered in the interest of public exchequer.

4. The counsel for the applicant mainly relies on the Hon'ble Apex Court ruling rendered in ***State of Punjab & Others etc. vs. Rafiq Masih (White Washer) (2015) 4 SCC 334*** wherein it was held that amount paid in excess without fault of the recipient cannot be recovered from Class III and IV (Group C&D) employees.

5. We have gone through the pleadings of both sides and the submissions made

by the counsels appearing on both sides. On a perusal of the reply given by the respondents, it can be seen that the excess payment had occurred only due to the latches of DOT or BSNL as the case may be. The applicant has not committed any misrepresentation or fraud for getting the excess amount. The erstwhile Telecom employees were absorbed by the BSNL in the year 2000, and the option for pay fixation of the applicant was given even before the absorption of the applicant. The BSNL has taken steps to refix the scale only in the year 2013. In *White Washer's* case cited supra it has been laid down that recovery of excess payment is impermissible in following circumstances “(1) recovery from employees belonging to Class II & IV (Group C&D) (2) recovery from retired employees or employees who are due to retire within one year of order of recovery (3) recovery from employees to whom excess payment has been made for a period in excess of 5 years before order of recovery is issued (4) recovery where employee is wrongly required to discharge duties of higher post and has been paid accordingly (5) and in any other case where court concludes that recovery if effected from the employee would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh equitable balance of employer's right to recover.”

6. BSNL is a public sector undertaking owned by the government and the applicant was part of the erstwhile DOT who were absorbed by BSNL in the year 2000. Pay of the applicant was last fixed in the year 2001 and the respondent has recovered the over payments made by it from the terminal benefits of the employee. This is clearly against the spirit of the ruling in *White Washer's* case given by the

Hon'ble Apex Court. It is iniquitous, harsh and arbitrary to such an extent as would for outweigh equitable balance of employers right to recover also.

7. Hence, we are of the view that the respondents are not entitled to recover Rs.2,09,808/- from the retirement benefits of the applicant herein. The recovery effected is against the law laid down by the Hon'ble Apex Court.

8. In the result, OA is disposed of holding that the recovery of Rs.2,09,808/- from the terminal benefits of the applicant is illegal and the respondents are liable to refund the same. Consequently MA for condonation of delay stands allowed. No costs.

(T.Jacob)  
Member(A)

(P.Madhavan)  
Member(J)

05.10.2018

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