

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH: HYDERABAD**

## Original Application No.021/00239/2017

**Date of Order: 28.09.2018**

## Between:

D. Rasool, S/o. Peersaheb,  
Aged about 62 years,  
Retired TTA with HRMS No. 197502608 from  
Telephone Exchanger, SDE (Groups),  
Suryapeta, under GMTD, Nalgonda.

... Applicant

And

1. The Pr. Controller of Communication, Accounts, A.P. Telecom Circle, 3<sup>rd</sup> Floor, Triveni Complex, Abids, Hyderabad – 500 001.
2. The General Manager, Telecom District, BSNL, Nalgonda.
3. The Chief General Manager, Telecom, AP Circle, BSNL, Doorsanchar Bhawan, Nampally Station Road, Abids, Hyderabad -500001.
4. The Chairman & Managing Director, BSNL Corporate Office, Bharat Sanchar Bhavan, 4<sup>th</sup> Floor, Janapath, New Delhi.
5. Union of India, Rep. by its Secretary, Department of Telecommunications and IT, 20 Ashok Road, New Delhi – 500 001.
6. The Chief General Manager, Telecom Telangana Circle, Hyderabad.  
... Respondents

Counsel for the Applicant ... Mr. K. Venkateswara Rao  
Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC for RR 1 & 5  
... Mr. M. Brahma Reddy, SC for BSNL

*CORAM:*

***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)***

## *ORAL ORDER*

*{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.)}*

Heard learned counsel for the applicant and the learned Standing counsel for the respondents.

2. The OA is filed against the inaction in issuing pension payment order for payment of pension from 01.07.2015 and the order No.CCA/20-Sup/42361/Jun-2015 dated 7.9.2015 issued by the 1<sup>st</sup> respondent withholding Rs.2,00,000/- (Rupees two lakh only) from the DCRG amount of the applicant.

3. Brief facts of the case are that the applicant worked in the respondent organization and retired in the grade of Telecom Technical Assistant on 30.06.2015. While releasing his terminal benefits, a sum of Rs.2,00,000/- was withheld from his DCRG amount and a sum of Rs.26,155/- was paid less from the commutation amount due. Further, no pension payment order was issued to him from 01.07.2015. Hence, he has filed this OA.

4. The applicant contends that as per the judgment of the Hon'ble Supreme Court in the *State of Punjab Vs. Rafiq Masih* in CA No.11527/2014, the respondent organization should not recover the amount from his pension. The applicant also states that the details of how the overpayment was worked out was also never informed to the applicant and that he has no information in regard to the overpayment or wrong fixation done by the respondent organization. The applicant also points out that despite representations dated 30.07.2016 and 07.10.2016, the respondent organization has not granted pension nor released the DCRG withheld amount. Applicant claims that, being a Group C employee and pensioner, he is fully covered by the said judgment of the Hon'ble Supreme Court. Applicant states that he has unblemished record of service and the Audit and Accounts Officers of the respondent organization are expected to verify the pension payment in advance and thereafter release the same. If any mistake has occurred in the respondents organization, he should not be held responsible. As

the respondent organization is not resolving his grievance, the OA has to be necessarily filed in this Tribunal.

5. The respondents filed a reply statement contending that the pay of the applicant was fixed as Rs.7900 instead of Rs.7300 from 01.10.2000 and therefore, it resulted in excess payment. Noticing this, the excess payment was withheld. The respondents also claim that there was some internal correspondence, which took some time and therefore, there was delay in releasing the pension. Pension has been drawn and released vide Pension Payment Order dated 27.06.2018 instructing Andhra Bank which is the banker for the respondent organization to pay pension arrears w.e.f. 1.7.2015. In view of the wrong fixation of pay, it has to be recovered from the applicant.

6. Learned counsel for the applicant relies upon section 13 of the Payment of Gratuity Act, 1972, which reads as under:

*“13. Protection of gratuity:- No gratuity payable under this Act and no gratuity payable to an employee employed in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in executing of any decree or order of any civil, revenue or criminal court.”*

7. The plea of the applicant has force since he is not responsible for the error committed by the respondent organization. There is no record placed before the tribunal stating that the applicant has given an undertaking to the effect that if any excess amount is paid while disbursing terminal benefits, it shall be recovered from the applicant. Neither did he misrepresent nor misguide the respondent organization for any gain in this context. The recovery was effected at the time of retirement without putting him on notice. The applicant is a Group C employee. In regard to the recovery from pension, Hon'ble Supreme Court in the State of Punjab Vs. Rafiq Masih (*supra*) has clearly spelt out that such

recovery should not be effected. The essential elements of the judgment are 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.*

8. Learned counsel for the respondents opposes the issue on the ground that excess payment has been made and if not recovered, it will lead to undue enrichment.

9. Based on the above judgment in Rafiq Masih, recovery effected is illegal. This Tribunal vide OAs bearing Nos. 368/2013, 893/2013, 1308/13, 1432/2013 and 722/2014 on 27.07.2015 and in OA No. 176/2018 on 14.08.2018 has allowed such pleas by the applicants therein, by ordering repayment of recovery done from pension based on the judgment of the Hon'ble Supreme Court cited. Therefore, in continuation of the same, this Tribunal takes a similar view in this OA as well. Further, recovery from DCRG is not permitted under Section 13 of the Payment of Gratuity Act, 1972. Accordingly, the OA succeeds and the impugned order dt. 7.9.2015 is quashed.

10. Hence, the respondents are directed to consider:

- i) repayment of the amount of Rs.2,00,000/- recovered from DCRG;
- ii) the amount of Rs.26,155/- reported to be drawn less towards commutation be paid after due examination;
- iii) Prevailing GPF rate of interest to be paid on the DCRG amount and the pension amount held over by the respondents from the date due till the date of payment;

Time allowed for implementing the order is two months from the date of receipt of this order.

11. It is left open to the respondents to fix responsibility on those who have committed the error in fixing the pension wrongly thereby allowing excess payment to the applicant resulting in causing financial loss to the respondent organisation.

12. The OA is accordingly allowed. No order as to costs.

**(B.V. SUDHAKAR )  
MEMBER (ADMN.)**

(Dictated in open court)  
Dated, the 28<sup>th</sup> day of September, 2018

*evr*