

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

Original Application No.020/995/2017

Date of Order : 06.06.2018

Between :

Kuna Simhachalm,
61 years, Telephone Mechanic (Retd.),
Group 'C', Telephone Exchange, BSNL, Palasa,
S/o. Late Amasa,
R/o. 13-03-248, Rotary Nagar, Kasibugga,
Srikakulam – 532 222.

... Applicant

And

1. Union of India rep. by the Secretary,
Department of Telecommunications,
Sanchar Bhavan,
New Delhi – 110 001.

2. The Chief General Manager,
Bharat Sanchar Nigam Limited,
A.P.Telecom Circle, Kaleswararao Market,
Vijayawada – 520 001.

3. The Controller of Communication Accounts,
A.P.Telecom Circle, Kaleswararao Market,
Vijayawada – 520 001.

4. The General Manager,
Bharat Sanchar Nigam Limited,
Telecom District,
Srikakulam – 532 001.

5. The Chief Accounts Officer,
Bharat Sanchar Nigam Limited,
O/o The General Manager,
Telecom District,
Srikakulam – 532 001.

... Respondents

Counsel for the Applicant

... Mr. M.Bhaskar

Counsel for the Respondents ... Mrs.K.Rajitha, Sr.CGSC
Mrs. A.P. Lakshmi, S.C.for BSNL

CORAM:

Hon'ble Mr.Justice R.Kantha Rao ... Judl. Member

ORAL ORDER

{ As per Hon'ble Mr.Justice R.Kantha Rao, Judl. Member }

The applicant was appointed as Lineman in the Department of Telecom on 26.08.1980 and was inducted in the cadre of Telecom Mechanic on 26.09.2000. At the time of his promotion, the applicant was allowed pay fixation under FR 22 (1)(a)(1) with an option for allowing the benefit from the date of next increment. Subsequently the Department of Telecom vide memo dated 17.12.2008 which was issued after consulting the Department of Public Enterprises clarified to the applicant and other employees that the option of fixing the pay from the next increment date available under the FR 22 will not be available for the employees of BSNL since the status is changed on 01.10.2000 and as such their pay has to be fixed on the date of their promotion as per the existing Rules prior to 01.10.2000.

2. At the time of retirement of the applicant, the Controller of Communication Accounts, A.P.Telecom Circle, Vijayawada while according sanction of terminal benefits in favour of the applicant recovered an amount of Rs.1,32,287/- as over payment. The said action of the respondents is impugned in the present OA.

3. The OA is filed to set aside the action of the respondents in recovering the excess amount from the applicant and to direct the respondents to refund the same with interest at the rate allowed on GPF from the date of recovery till the date of refund.

4. The claim of the applicant is opposed by the respondents in their reply statement contending that as per the memo dated 17.12.2008 the option of fixing the pay from the next date is not available under FR 22 to the employees of BSNL since their status is changed on 01.10.2000 and their pay has rightly been refixed on the date of promotion as per the rules existing prior to 01.10.2000. It is contended by the Respondents that as per Rule 71(2) & (3) of CCS (Pension) Rules 1972, the Government dues as ascertained and assessed by the Head of Office which remain outstanding till the date of retirement of the Government servant, shall be adjusted against the amount of the Retirement Gratuity becoming payable and the expression of 'Government Dues' include overpayment of pay and allowances also. As to this, it requires to be stated that even if Government Dues include over payment, as per the judgement of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No.11527/2014 dated 18.12.2014*, the recovery shall not be effected in case of the Applicant who is a Group 'C' employee after lapse of 16 years period. Therefore, the said contention is of no avail to the Respondents.

5. I have gone through the rival submissions and perused the judgement of the Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih (White Washer) etc. in Civil Appeal No.11527/2014 dated 18.12.2014.*

6. The recovery from the terminal benefits of the applicant was made virtually after a lapse of more than 16 years. In the above referred judgement, the Hon'ble Supreme Court held that recovery from the employees belonging to Class-III and Class-IV Service (or Group 'C' and Group 'D' service), recovery from retired employees or employees who are due to retire within one year of the order of recovery, 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, would be impermissible in law. Therefore, in my view, the recovery affected in case of the applicant is liable to be set aside in the light of the above judgement of the Hon'ble Supreme Court.

7. Consequently, the action of the respondents in effecting recovery of an amount of Rs.1,32,287/- from the retiral benefits of the applicant is set aside. The respondents are directed to refund the said amount to the applicant with interest which is allowed on GPF deposits from the date of recovery till the date of refund. The respondents shall refund the amount within three months from the date of receipt of a copy of the order.

8. In the result, the OA is allowed. There shall be no order as to costs.

(JUSTICE R. KANTHA RAO)
JUDL. MEMBER

pv