

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORIGINAL APPLICATION NO. 291/295/2014

Order Reserved on: 16.01.2018

DATE OF ORDER: 17.05.2018

CORAM

HON'BLE MR. SURESH KUMAR MONGA, JUDICIAL MEMBER

Chhote Lal Meena S/o Sh. Kajod Mal Meena, aged about 61 years, R/o 26 Mahesh Colony-I, Jagatpura, Jaipur.
Since retired as DE, office of Principal General Manager Telecom, Bharat Sanchar Nigam Limited, Jaipur.

....Applicant

Mr. Surendra Singh, proxy counsel for
Mr. M.S. Gupta, counsel for applicant.

VERSUS

1. Bharat Sanchar Nigam Limited (A Government of India Undertaking) Corporate Office, Bharat Sanchar Bhawan, 4th Floor, Janpath, New Delhi-1, through its Chairman cum Managing Director.
2. Chief General Manager, Bharat Sanchar Nigam Limited (A Government of India Undertaking) Sardar Patel Marg, Jaipur - 302008.

....Respondents

Mr. Gaurav Jain, counsel for respondents.

ORDER

The pleaded case of the applicant herein is that he was ordered to be promoted from the post of Sub Divisional Engineer to Executive AGM/DE of Telecom Operation Stream vide order dated 07.07.2010 on temporary and adhoc basis. After the said promotion, his pay was fixed at Rs. 36230/- in the pay scale of 29100-54500 on the promotional post and the next grade of increment at Rs. 38410 as on 01.09.2010 vide order dated 13.10.2010. The applicant stood retired on 30.04.2013 after attaining the age of superannuation. It has further been pleaded

that the applicant has been enjoying the pay scale of 29100-54500 until the date of his retirement but on account of an uncalled for, illegal and arbitrary communication dated 30.05.2013 (Annexure A/1) addressed to the Accounts Officer (Cash), BSNL by the office of Controller of Communication Accounts, it was conveyed that his terminal benefits may be authorized on assumed last pay of Rs. 39570/- in place of correct pay at Rs. 40760/-. The Accounts Officer (Estt) BSNL, O/o Principal General Manager Telecom District Jaipur issued revised pay fixation Memo dated 03.06.2013 wherein the applicant's pay was fixed at Rs. 39570/- as on 01.07.2012. Consequent thereto, the applicant's pension has been illegally ordered to be reduced by reckoning his pay at Rs. 39570/- in place of his correct pay at Rs. 40760/-, and a further recovery of Rs. 74,952/- (Rs. 54142/- towards payment of excess salary and Rs. 20810/- towards excess payment of leave encashment) has also been ordered to be affected. Aggrieved by the said action, the applicant has invoked the jurisdiction of this Tribunal under Section 19 of the Administrative Tribunals Act, 1985.

2. The respondents, by way of filing a joint reply, have joined the defence and opposed the claim of the applicant. It has been pleaded that the applicant was promoted purely on temporary and adhoc basis and he submitted his option for pay fixation from the date of next increment i.e. 01.09.2010 but the said option was not admissible in respect of adhoc promotion in terms of para 5 of the Department of Personnel and Administrative Reforms, letter No. F-13/26/82-Estt. P.I. dated 08.02.1983 (Annexure R/3). It has further been pleaded that in compliance

of Controller of Communication Accounts, DOT, Jaipur letter dated 30.05.2013, the pay fixation Memo dated 30.10.2010 was re-checked and it was found incorrect and, therefore, the revised pay fixation Memo dated 03.06.2013 was issued as per the terms of Department of Personnel and Administrative Reforms letter dated 08.02.1983 as the applicant was promoted on adhoc basis and the said adhoc promotion was not followed by regular promotion. With all these pleadings, the prayer for dismissal of the O.A. has been made.

3. The applicant, while filing replication to reply, apart from reiterating the facts pleaded in his O.A., has further pleaded that once he has been given higher pay or enhanced financial benefit till the date of his retirement treating his basic pay at Rs. 40760/- as on 30.04.2013, he could not have been denied the pensionary benefits because of Rule 34 of the Central Civil Services (Pension) Rules, 1972.

4. Heard learned counsel for the parties.

5. Learned counsel appearing for the applicant contended that after the applicant's promotion, his pay fixation was rightly made by the respondents and he had been getting the enhanced financial benefit till the date of his retirement treating his basic pay at Rs. 40760/- as on 30.04.2013. He further submitted that as per the provisions of Rule 34 of the CCS (Pension) Rules, 1972, the applicant was rightly allowed the pension on the basis of average emoluments drawn by him during the preceding 10 months from the date of his superannuation. Learned counsel

further contended that even the recovery of Rs. 74952/- cannot be affected from the applicant in terms of the principles laid down by the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors. (2015) 4 SCC 334 : (2015) 2 SCC (L&S) 33. He further argued that the letter dated 30.05.2013 (Annexure A/1) and the order dated 03.06.2013 (Annexure A/2) are contrary to the principles of law and, therefore, the same deserve to be quashed.

6. Per contra, learned counsel appearing for the respondents argued that the applicant was granted adhoc promotion, which was not followed by a regular appointment and, therefore, in terms of letter No. F-13/26/82-Estt. P.I. dated 08.02.1983 (Annexure R/3), the option for pay fixation from the date of next increment was not admissible in respect of the said adhoc promotion. He further submitted that in compliance of letter dated 30.05.2013 issued by the Controller of Communication Accounts, DOT Jaipur, the pay fixation Memo dated 30.10.2010 was re-checked and found incorrect and the said error was rightly corrected by way of issuance of a revised pay fixation Memo dated 03.06.2013. By placing reliance upon letter dated 08.02.1983, learned counsel for the respondents sought to justify the action of the respondents and submitted that the letter dated 30.05.2013 (Annexure A/1) and order dated 03.06.2013 (Annexure A/2) deserve to be upheld.

7. Considered the rival contentions of learned counsel for the parties and perused the record.

8. There is no dispute with regard to the fact that the applicant was given promotion as Executive AGM/DE purely on temporary and adhoc basis. The said promotion was not followed by a regular appointment. In terms of clause 5 of Department of Personnel and Administrative Reforms, letter No. F-13/26/82-Estt. P.I. dated 08.02.1983, the option for pay fixation from the date of next increment was not admissible to the applicant as his promotion to Executive AGE/DE was on adhoc basis, which was not followed by a regular appointment. The moment said error was pointed out by the office of Controller of Communication Accounts, DOT vide letter dated 30.05.2013, the applicant's pension was rightly revised while taking his pay at Rs. 39570/- instead of Rs. 40760/- as his pay fixation w.e.f. 01.09.2010 was found incorrect. The said error of wrong pay fixation took place because of a wrong option submitted by the applicant, which was contrary to letter dated 08.02.1983 (Annexure R/3). Thus, I do not find any infirmity in the communication dated 30.05.2013 (Annexure A/1), consequent upon which the re-fixation of the correct pay at Rs. 39570/- has been made by the respondents vide revised pay fixation Memo dated 03.06.2013 (Annexure A/2).

9. So far as the argument raised by learned counsel for the applicant that in view of Rule 34 of the Central Civil Services (Pension) Rules, 1972, the applicant's pension cannot be reduced as he had been drawing the pay at Rs. 40760/- as on 30.04.2013, I do not find any substance in the said argument as the pay fixation consequent upon the adhoc promotion was a result of an error and an error cannot be perpetuated forever.

However, the recovery of Rs. 74952/- from the applicant cannot be allowed to be affected as the same goes contrary to the principles laid down by the Hon'ble Supreme Court in the case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors. (supra).

10. In the conspectus of discussions made in the foregoing paras, recovery of Rs. 74952/- pursuant to communication dated 30.05.2013 (Annexure A/1) and the order dated 03.06.2013 (Annexure A/2) cannot be sustained and the same deserve to be quashed.

11. Consequently, the instant Original Application is partly allowed. The recovery of Rs. 74952/- from the applicant pursuant to communication dated 30.05.2013 (Annexure A/1) and the order dated 03.06.2013 (Annexure A/2) is hereby quashed. The respondents are directed to refund the amount of Rs. 74952/- to the applicant within a period of two months from the date of receipt of a certified copy of this order. There shall be no order as to costs.

**(SURESH KUMAR MONGA)
JUDICIAL MEMBER**

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