

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH**

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**ORIGINAL APPLICATION NO.290/00080/2014**

**RESERVED ON : 08.05.2018**

**PRONOUNCED ON :**

**21.06.2018**

**CORAM:**

**HON'BLE MR. R. RAMANUJAM, MEMBER (A)**

**HON'BLE MR. SURESH KUMAR MONGA, MEMBER (J)**

**KACHRUMAL BUNKAR S/O SHRI BHERU LAL, AGED ABOUT 55 YEARS, B/C  
BHAMBHI, R/O OPPOSITE ARAVALI PRINTING PRESS, SANIGAON, MOUNT  
ABU.**

**PRESENT OFFICE ADDRESS:- OFFICE OF GMTD, BSNL, PWD COLONY, SIROHI**

**...APPLICANT**

**(BY ADVOCATE: SHRI GAURAV THANVI PROXY COUNSEL FOR  
MR ANKUR MATHUR)**

**VERSUS**

**1. BHARAT SANCHAR NIGAM LIMITED THROUGH ITS CHAIRMAN AND  
MANAGING DIRECTOR, 20, ASHOKA ROAD, NEW DELHI.**

**2. THE GENERAL MANAGER (TELECOM), BHARAT SANCHAR NIGAM  
LIMITED, DISTRICT SIROHI.**

**3. THE CHIEF GENERAL MANAGER (TELECOM), BHARAT SANCHAR NIGAM  
LIMITED, SARDAR PATEL MARG, JAIPUR.**

**4. THE UNION OF INDIA THROUGH ITS SECRETARY, MINISTRY OF  
COMMUNICATION, DEPARTMENT OF TELECOMMUNICATION SERVICE, NEW  
DELHI.**

**5. THE DIVISIONAL ENGINEER (ADMINISTRATION), BSNL, SIROHI.**

**...RESPONDENTS**

**(BY ADVOCATE: MS K. PARVEEN FOR R-1 TO R-3 & R-5  
MR K.S. YADAV FOR R-4)**

**ORDER**

**PER: SURESH KUMAR MONGA, MEMBER (J)**

THE PLEADED CASE OF THE APPLICANT HEREIN IS THAT HE WAS INITIALLY APPOINTED AS TELECOM OPERATOR (TO) ON 7TH APRIL, 1980 IN THE ERSTWHILE DEPARTMENT OF POSTS & TELECOMMUNICATION. HE WAS THEREAFTER PROMOTED AS SENIOR TOA (P) IN THE PAY SCALE OF RS 1320-2040 AND POSTED AT MOUNT ABU VIDE ORDER DATED 15.07.1996. THE GOVERNMENT OF INDIA CAME OUT WITH A SCHEME COMMONLY KNOWN AS TIME BOUND PROMOTION SCHEME (TBOP) OR BIENNIAL CADRE REVIEW SCHEME (BCR). ACCORDING TO THE SAID SCHEME, PERSONS WHO COMPLETE 16/26 YEARS OF SERVICE ARE CONFERRED THE NEXT HIGHER PAY SCALE. IT HAS FURTHER BEEN AVERRED THAT THE ERSTWHILE DEPARTMENT OF POSTS & TELECOMMUNICATION CONSIDERED THE CASE OF THE APPLICANT FOR PROMOTION UNDER THE UPGRADATION SCHEME AND THE APPLICANT WAS ORDERED TO BE CONFERRED THE PAY SCALE OF RS 5000-8000 FROM 16.06.1999 VIDE ORDER DATED 13.09.1999. THE APPLICANT'S PAY WAS FIXED IN THE PAY SCALE OF RS 5500-9000 W.E.F. 16.06.1999. ON 25.01.2001, THE APPLICANT WAS GIVEN AN OPTION FOR ABSORPTION IN BHARAT SANCHAR NIGAM LIMITED (BSNL) W.E.F. 01.10.2000. ACCORDINGLY, HE SUBMITTED HIS OPTION TO GET HIMSELF ABSORBED IN BSNL W.E.F. 01.10.2000. AFTER HIS ABSORPTION, HE WAS CONFERRED THE REVISED PAY SCALE OF RS 7800-11175 AND HIS PAY WAS FIXED AT RS 8,025/- IN THE YEAR 2003. IT HAS FURTHER BEEN PLEADED THAT ALL OF SUDDEN, A COMMUNICATION IS RECEIVED BY THE APPLICANT CONSEQUENT UPON AN AUDIT OBJECTION RAISED IN THE YEAR 2005 AND HE WAS PLACED IN THE REVISED PAY SCALE OF RS 5000-8000 W.E.F. 16.06.1999. HE SUBMITTED A REPRESENTATION AGAINST COMMUNICATION DATED 10.08.2006 AND REQUESTED FOR WITHDRAWAL OF THE ORDER OF RECOVERY. THE APPLICANT PREFERRED WRIT PETITION NO. 5434/06 BEFORE THE HON'BLE HIGH COURT OF RAJASTHAN. THE SAID WRIT PETITION WAS TRANSFERRED TO THIS TRIBUNAL AND APPLICANT'S PETITION WAS REGISTERED AS TA NO. 03/2012. IN THE SAID TA VIDE ORDER DATED 02.09.2013, A DIRECTION WAS ISSUED BY THIS TRIBUNAL TO THE RESPONDENTS TO DECIDE APPLICANT'S REPRESENTATION WITHIN A PERIOD OF 04 MONTHS. CONSEQUENT UPON THE SAID DIRECTION, THE RESPONDENTS PASSED AN ORDER DATED 30.12.2013 VIDE WHICH THE APPLICANT'S REPRESENTATION WAS REJECTED BY UPHOLDING THE ORDER OF RECOVERY OF AN AMOUNT OF RS 78,083/-. AGGRIEVED BY THE SAID ORDER, THE INSTANT OA HAS BEEN PREFERRED U/S 19 OF THE ADMINISTRATIVE TRIBUNALS ACT, 1985.

2. THE RESPONDENTS BY WAY OF FILING A JOINT REPLY HAVE JOINED THE DEFENCE AND OPPOSED THE CAUSE OF THE APPLICANT. IT HAS BEEN PLEADED THAT THE PAY SCALE OF RESTRUCTURED CADRE IS ADMISSIBLE ON COMPLETION OF TOTAL SERVICE OF 16 OR 26 YEARS INCLUDING SERVICE RENDERED IN PRE-RESTRUCTURED CADRE. THE APPLICANT ENTERED INTO THE SERVICES ON 07.04.1980 AND HE

COMPLETED 26 YEARS OF SERVICE ON 06.04.2006. AS SUCH, HIS PROMOTION UNDER BCR SHOULD HAVE BEEN ON 07.04.2006 INSTEAD OF 01.07.1999. WITH THESE ASSERTIONS, THE ORDERS ISSUED BY THE RESPONDENTS VIDE OM DATED 15/17.07.2006 AND 08.09.2006 AND THE CONSEQUENT RECOVERY OF RS 78,083/- IS SOUGHT TO BE JUSTIFIED.

3. HEARD LEARNED COUNSELS FOR THE PARTIES.

4. AT THE VERY OUTSET, LEARNED COUNSEL FOR THE APPLICANT SUBMITTED THAT HE DOES NOT WISH TO CONTEST THE ORDERS PASSED BY THE RESPONDENTS EXTENDING THE DATE FOR GRANT OF HIGHER PAY SCALE TO THE APPLICANT IN RESTRUCTURED CADRE. HOWEVER, HE SUBMITTED THAT THE RECOVERY OF RS 78,083/-, AS ORDERED AGAINST THE APPLICANT, CANNOT BE SUSTAINED IN VIEW OF THE ORDER DATED 15.12.2008 PASSED BY THE HON'BLE HIGH COURT OF RAJASTHAN IN SBCWP NO. 1136/2008 (HANSA RAM MEENA V. UOI & ANR). HE ALSO PLACED RELIANCE UPON THE JUDGMENTS OF HON'BLE SUPREME COURT IN THE CASE OF STATE OF PUNJAB & ORS V. RAFIQ MASIHI (WHITE WASHER) (2015) 4 SCC 334 AND SAYED ABDUL QADIR & ORS V. STATE OF BIHAR & ORS (2009) 3 SCC 475 TO FURTHER SUPPORT HIS CONTENTION. ON THE OTHER HAND, LEARNED COUNSEL FOR THE RESPONDENTS ARGUED THAT THE RESPONDENTS ARE WITHIN THEIR RIGHTS TO AFFECT THE RECOVERY OF RS 78,083/- AS THE SAID AMOUNT WAS ERRONEOUSLY PAID TO THE APPLICANT.

5. WE HAVE CONSIDERED THE RIVAL CONTENTIONS OF THE LEARNED COUNSELS FOR THE PARTIES.

6. UNDOUBTEDLY, THE APPLICANT WAS GRANTED HIGHER PAY SCALE IN RESTRUCTURED CADRE BY THE RESPONDENTS VIDE ORDER DATED 16.06.1999. THERE WAS NO MISREPRESENTATION OR FRAUD PLAYED BY THE APPLICANT TO GET THE SAID HIGHER PAY SCALE. THE RESPONDENTS ON THEIR OWN ALLOWED THE HIGHER PAY SCALE TO HIM. AS SUCH, THE RECOVERY OF AN AMOUNT OF RS 78,083/- SOUGHT TO BE AFFECTED FROM THE APPLICANT CANNOT BE SAID TO BE JUSTIFIED IN VIEW OF THE ORDER DATED 15.12.2008 PASSED BY THE HON'BLE HIGH COURT OF RAJASTHAN IN HANSA RAM MEENA V. UOI & ANR (SUPRA) AND IN VIEW OF THE JUDGMENTS OF THE HON'BLE SUPREME COURT IN STATE OF PUNJAB & ORS V. RAFIQ MASIHI (WHITE WASHER)(SUPRA) & SAYED ABDUL QADIR & ORS V. STATE OF BIHAR & ORS (SUPRA).

7. ACCORDINGLY, THE INSTANT O.A. IS PARTLY ALLOWED. THE RECOVERY OF AN AMOUNT OF RS 78083/- SOUGHT TO BE AFFECTED FROM THE APPLICANT IS HEREBY QUASHED.

8. ORDERED ACCORDINGLY. NO ORDER AS TO COSTS.

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**(SURESH KUMAR MONGA)  
MEMBER (J)**

**(R. RAMANUJAM)  
MEMBER (A)**

**SS**

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