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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CALCUTTA BENCH  
KOLKATA

Date of Hearing: 21.06.2016

OA No. 350/01393/2014  
O.A.No. 350/01324/2014

Date of Order : 11/7/2016

*Present :*

*The Hon'ble Mr Justice Vishnu Chandra Gupta, Judicial Member*  
*The Hon'ble Ms Jaya Das Gupta, Administrative Member*

1. OA No. 350/01393/2014

Shri Ankur Kumar Singh, son of Awadh Kishor Singh, aged about 38 years, working as Junior Accounts Officer, Office of the Deputy General Manager, Telecom Project, BSNL, Eastern Zone Optical Fibre Project, 11/1, CIT Scheme, VIIM, P&T, Ultadanga Main Road, Kolkata-700 067, residing at Keshar Apartment, Block-D9, Teghoria, 460, Jhautalla Road, Kolkata-700157.

.....Applicant

-Versus -

1. Bharat Sanchar Nigam Limited through the Chairman & Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7<sup>th</sup> Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
2. The Chairman & Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7<sup>th</sup> floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
3. The Director (HR), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7<sup>th</sup> Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
4. The General Manager (FP), BSNL, Bharat Sanchar Bhawan, 7<sup>th</sup> floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.

*ms*

5. The Chief General Manager, Bharat Sanchar Nigam Limited, West Bengal Telecom Circle, 1, Council House Street, Kolkata-700 001.
6. The Deputy General Manager (Finance), Bharat Sanchar Nigam Limited, West Bengal Telecom Project, Eastern Zone, 2/5A, Judges Court Road, Kolkata-700027.
7. The Chief Accounts Officer (CO), BSNL, Telecom Project, Eastern Zone, 2/5A, Judges Court Road, Kolkata-700 027.
8. Deputy General Manager, Telecom Project, BSNL, Eastern Zone, Optical Fibre Project, 11/1, CIT Scheme, VIIM, P&T Housing Complex, Type-IV, Qtr 7&8, Ultadanga Main Road, Kolkata-700 067.

.....Respondents

2. **O.A. 350/01324/2014**

Shri Kamadev Nayak, son of Late Jogendra Nayak, aged about 46 years, working as Junior Accounts Officer, Office of the Chief General Manager Telecom, BSNL, West Bengal Circle, Kolkata residing at 47, Purba Sinthee Bye Lane, Dum Dum, Kolkata-700030.

.....Applicant

-Versus-

1. Bharat Sanchar Nigam Limited through the Chairman & Managing Director, Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7<sup>th</sup> Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
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3. The Director (HR), Bharat Sanchar Nigam Limited, Bharat Sanchar Bhawan, 7<sup>th</sup> Floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
4. The General Manager (FP), BSNL, Bharat Sanchar Bhawan, 7<sup>th</sup> floor, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
5. The Chief General Manager, Bharat Sanchar Nigam Limited, West Bengal Telecom Circle, 1, Council House Street, Kolkata-700 001.

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6. The General Manager (Finance), Bharat Sanchar Nigam Limited, West Bengal Telecom Circle, 1, Council House Street, Kolkata-700 001.
7. The General Manager (HR&Admin), Bharat Sanchar Nigam Limited, West Bengal Telecom Circle, 1, Council House Street, Kolkata-700 001.
8. The Chief Accounts Officer (FA), BSNL, West Bengal Telecom Circle, 1, Council House Street, Kolkata-700 001.
9. Senior Accounts Officer (Cash), BSNL, Office of the Chief General Manager Telecom, West Bengal Circle, Kolkata.  
.....Respondents

Counsel for the Applicants: Mr. S.K.Datta, Advocate  
Counsel for the Respondents: Mr.D.Mukherjee, Advocate

## O R D E R

**MS.JAYA DAS GUPTA, AM:**

These two Original Applications are analogous and similar question of law and facts are involved hence they are being decided by this common judgment.

2. In nut shell the case of the Applicant in OA No. 350/01393 of 2014 (Shri Ankur Kumar Singh) is that after passing the departmental examination he was promoted from non executive to executive grade as Junior Accounts Officer with effect from 14.06.2010. Accordingly, on exercising option, his pay was fixed in the revised IDA scale of pay with effect from the date of his promotion. Subsequently, the said fixation of pay was upset by an order dated 12.09.2014. He preferred representation dated 18.09.2014 against such order refixing his pay dated 12.09.2014

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which was rejected vide order dated 23.09.2014. Against the said communicated dated 23.09.2014, he preferred another representation dated 23.09.2014. Alleging non consideration of his representation and on the other hand reducing his pay thereby and anticipating recovery from his salary he has filed the instant OA under section 19 of the Administrative Tribunal Act, 1985 seeking the following reliefs:

"(a) An order quashing and/or setting aside the order dated 20.12.2012, 18.5.2011 letter dated 4.9.2014 revision fixation Memo dated 12.9.2014 and communication dated 23.09.2014;

(b) An order holding that the applicant is entitled to the benefits of pay as was granted to him on the basis of its option with effect from 14.06.2010 with all consequential benefits and directing the respondents to grant the said benefits accordingly as well as holding that the clarification dated 18.5.2011 is not applicable to the case of the Applicant.

(c) An order holding that the withdrawal of/cancellation of the option exercised by the applicant as per para 3.6 of BSNL CO order dated 7.5.2010 is bad in law and arbitrary;

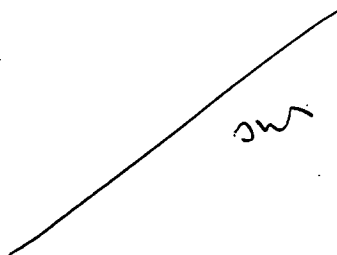
(d) An order directing the respondents to grant all consequential benefits to the Applicant;

(e) An order directing the respondents to produce/cause production of all relevant records;

(f) An order directing the respondents to produce/cause production of all relevant records;

(g) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

3. The Respondents filed counter and supplementary counter also as per the order of this Tribunal. According to the



Respondents, the Applicant while working in the BSNL in a non executive cadre was promoted to the post of Junior accounts Officer vide order dated 14.6.2010 which is an executive <sup>d</sup>care in BSNL. In the said order of promotion it was specifically mentioned that on his appointment and joining as JAO on promotion his pay will be fixed in the IDA Pay scale of Rs. 16400-40500/- as per PAT Branch Co BSNL letter dated 05.03.2008. On his promotion, the applicant submitted an option on 18.07.2010 in terms of para 3.6 of the Office order dated 07.05.2010 which is exclusively applicable for non executive employees of BSNL only and not for Executive cadre employees of the BSNL. In the option there was a specific provision for giving an undertaking to the effect that any excess payment that shall be found to have been made as a result of incorrect fixation of pay or any excess payment effected in the light of discrepancies noticed subsequently will be refunded by the employee concerned to the BSNL. But the applicant intentionally did not sign and furnish such undertaking. The instruction was issued by the BSNL Hqrs, New Delhi dated 20.12.2012 to fix the pay of JAO who were appointed on promotion out of 10 and 40% Departmental quota in 2010, they are entitled to the revised E-1 Pay scale of Rs. 16400-40500/- by granting one notional increment @ 3% of the existing pay in the feeder grade or at Rs. 19020/- by way of granting five advance increments on the minimum of the revised E1 scale, whichever is higher. Accordingly

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the pay of the applicant and two others in the executive grade as JAO was revised/corrected fixing the pay of the applicant at Rs. 19020/- as per rules. Accordingly vide Memo dated 12.09.2014 the pay of the applicant was refixed at Rs. 19020/-. The excess amount was calculated as Rs. 4, 19, 933/- which was sought to be recovered. The representation submitted by the applicant was considered but the same was rejected and intimated to the applicant in a detailed order. Accordingly, the Respondents have prayed for the dismissal of this OA.

4. Similarly, the case of the Applicant in OA No. 350/01324 of 2014 (Shri Kamadev Nayak) is that after passing the departmental examination he was promoted from non executive to executive post of Junior Accounts Officer with effect from 14.06.2010. Accordingly, on exercising option, his pay was fixed in the revised IDA scale of pay with effect from the date of his promotion. Subsequently, the said fixation of pay was upset by an order dated 12/16.09.2013. Being aggrieved by such re fixation of his pay de hors his option, he approached this Tribunal in OA No. 1260 of 2013 which was disposed of at the stage of admission by granted liberty to the applicant to make an exhaustive representation and with direction to the Respondents to consider and dispose of the same within a period stipulated in the order dated 19.08.2014. Applicant submitted representation on 23.08.2014 which was considered and rejected by the

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Respondents. The reason of rejection was communicated to the applicant vide order dated 20.09.2014. Being aggrieved by such order of rejection dated 20.09.2014; the applicant has filed this second round of litigation under section 19 of the Administrative Tribunals Act, 1985 with the following reliefs:

"(a) An order quashing and/or setting aside the order dated 12/16.09.2013, 12.12.2012, 18.5.2011 and letter dated 22.12.2012 and 26.02.2013;

(b) An order holding that the applicant is entitled to the benefits of pay as was granted to him on the basis of its option with effect from 14.06.2010 with all consequential benefits and directing the respondents to grant the said benefits accordingly.

(c) An order holding that the withdrawal of/cancellation of the option exercised by the applicant as per para 3.6 of BSNL CO order dated 7.5.2010 is bad in law and arbitrary;

(d) An order quashing and/or setting aside the impugned communication dated 20.09.2014;

(e) An order directing the respondents to grant all consequential benefits to the Applicant;

(f) An order directing the respondents to produce/cause production of all relevant records;

(g) Any other order or further order/orders as to this Hon'ble Tribunal may seem fit and proper."

5. The Respondents, in their reply, filed on 9<sup>th</sup> March, 2015 have submitted that the applicant was promoted to the executive grade post of Junior Accounts Officer (JAO) from the non executive grade post of UDC by an office order dated 11.6.2010 after being qualified in the JAO Part II examination against 40% quota. Accordingly, he joined the said post on

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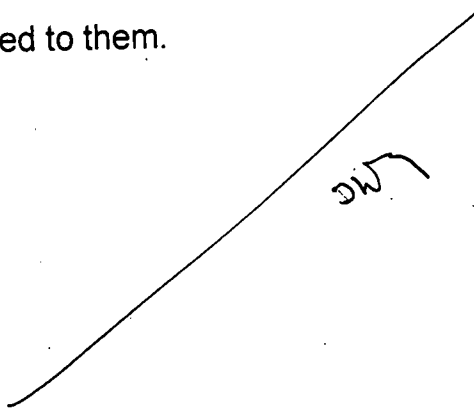
14.6.2010. The applicant joined the post of JAO on 14.6.2010. The post of Junior Account Officer (JAO) is an Executive Post and the applicant was appointed from the non executive grade post of UDC to the Executive Grade post of JAO. An Office Order No. 1-16/2010-PAT (BSNL) dated 07.05.2010 was issued by the BSNL Corporate Office, New Delhi dealing with the revision of IDA pay scales of non executive employees of the BSNL with effect from 01.01.2007 wherein, besides, fitment method and other criteria, it was provided that the non executives can opt for revision of pay from 01.01.2007 or from the date of promotion after 01.01.2007 or from the date of next increment in the existing scale. The option was sought to be exercised in writing in the form prescribed for the purpose within a period of three months from the date of receipt of the order dated 07.05.2010. Subsequently, a clarification was issued vide order dated 18.5.2011 on the revision of pay of non executive employees of BSNL with effect from 01.01.2007 as there was confusion in the field units in respect of para 3.6 of the order dated 07.05.2010. The provision for exercising option as per para 3.6 of the office order dated 07.05.2010 was not applicable for the applicant as he was promoted to executive grade as JAO on 14.6.2010, accordingly joined the promotional post on 14.6.2010 and thus he was not entitled for submission of any such

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option. However, under misconception, the applicant exercised his option and based on his option his pay in the grade of JAO was fixed at Rs. 21620 though the pay of the applicant in the executive grade as JAO ought to have been fixed at Rs. 16400-40500/-. It has been stated that the aforesaid wrong fixation of pay having come to the notice of the Department, the same was sought to be rectified and the excess payment made to the applicant due to such wrong fixation of pay was sought to be recovered. The applicant submitted representation in compliance of the earlier order of this Tribunal which was duly considered with reference to Rules and the stand taken by the Applicant in his representation was found to be not in accordance with Rules, the same was rejected and intimated the result thereof to the applicant vide order dated 12/16.09.2013. Accordingly, the Respondents have prayed for the dismissal of this OA.

6. After the closure of the arguments, opportunity was granted to the learned Counsel for the Respondents to file written note of submission if any, by 24<sup>th</sup> June, 2016. The learned Counsel for both sides was also granted opportunity to file citation, if they so desire by 24.6.2016. But nothing was forthcoming by the date so granted to them.



7. The learned counsel appearing for both sides have reiterated the stand taken in their respective pleadings and having heard them at length, consulted the records.

8. Admittedly, both the applicants were initially appointed in the **Non Executive Cadre** in BSNL. On **14.06.2010** & **11.06.2010** respectively, they were promoted to **Executive Cadre** of BSNL as Junior Accounts Officer.

9. On 07.05.2010 an order of pay revision from 01.01.2007 was announced for **Non Executive Grade** employees of the BSNL only. Para 3.6 of the said Office Order provides exercising of option for revision of pay from 01.01.2007 or from the date of promotion after 01.01.2007 or from the date of next increment in the existing scale. Accordingly, option was exercised by both the applicants. The option exercised by **Shri Ankur Kumar Singh**, the applicant in OA No. 350/01393 of 2014 is extracted hereunder for ready reference:

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#### FORM OF OPTION

- (i) I,.....hereby elect the revised scale with effect from 1<sup>st</sup> January, 2007.
- (ii) I, Ankur Kumar Singh hereby elect to continue on the existing scale of pay of my substantive/officiating post mentioned below until;  
the date of my next ~~increment~~ promotion i.e. 14.6.2010  
the date of my subsequent increment raising my pay to Rs.....  
I vacate or cease to draw pay in the existing scale.

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Date 18.7.2010  
Station: Kolkata

Existing scale.

Signature Sd/-  
Name Ankur Kumar Singh  
Designation JAO  
Office to which employed DGM,"

10. From the above, it would be evident that the option given is defective because the applicant has changed the format of the form of option. He had scored through the word "increment" and added in his own hand writing "promotion i.e. 14.06.2010". However, para 3.6 of the order dated 07.05.2010 was superseded vide clarification order No. 1-37/2010-Pat (BSNL) dated 18.05.2011 wherein it was stated that promotion from Non Executive Grade to Executive Grade between the period 01.01.2007 i.e. the date of revision of IDA pay scale and 07.05.2010 i.e. the date from issuance of office order No.1-16/2010-PAT(BSNL) may be allowed to exercise option for fixation of pay in the revised pay from the date of their promotion/financial up gradation under ACP Scheme. The clarification dated 18.5.2011 is filed herewith as Annexure-A/6 which reads as under:

"BHARAT SANSCHAR NIGAM LTD  
(A Govt. of India Enterprise)  
No. 1-37/2010-PAT(BSNL) dated the 18.5.2011  
To  
All Heads of Telecom Circles/  
All Heads of other Administrative Units,  
Bharat Sanchar Nigam Ltd.,

Sub: Revision of pay of Non executive  
Employees in BSNL w.e.f. 1.1.2007 -  
clarification reg.

Sir,

References have been received from several field units seeking clarification on exercise of option for fixation of pay from the date of promotion after 1.1.2007 in respect of Non executives with reference to Para 3.6 of this office order No. 1-16/2010-PAT (BSNL) dated 7.5.2010.

2. The matter has been examined in consultation with BSNL Finance and accordingly, it is clarified that the Non executives, who got promotion/financial up gradation under ACP Scheme from Non executive grade to Executive grade between the period 1.1.2007 i.e. the date of revision of IDA pay scales and 7.5.2010 i.e. the date of issuance of Office Order No. 1-16/2010-PAT (BSNL) may be allowed to exercise of option for fixation of pay in the revised pay from the date of their promotion/financial up gradation under ACP Scheme.

3. Regarding furnishing of option for revision of pay from the date of next increment, the non executive can opt from the DNI in the existing scale if the next increment falls subsequently to 1.1.2007.

4. Any change of option as per this clarification shall be exercised in writing within one month from the date of issue of this order.

Hindi version will follow.

Yours faithfully,

Sd/-

(Sheo Shankar Prasad)

Asstt. General Manager (Pers.V)"

As stated above, the applicants got promotion on 14.06.2010 & 11.06.2010 respectively, which was not falling under the period from 01.01.2007 to 07.05.2010. As such, the option dated 18.07.2010 by Shri Ankur Kumar Singh became invalid and their pay was revised with effect from 01.01.2007 by default. It has been submitted at the Bar that no option was given following to the option given on 18.7.2010 by Shri Singh. Shri Kamdev Nayak had given his option but no change of option was given by him as required, which he fairly admitted in para 10 of his rejoinder.

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11. Further an office order dated **20.12.2012** was issued in the matter of promotion from Non Executive Cadre to Executive Cadre involving the issue of grant of five advance increments on the minimum of the revised E1 IDA pay scale of Rs. 16400-40500/- of JAO (Departmental) to make their pay at par with directly recruited JTOs/JAOs. Such order is set out below:

**"BHARAT SANCHAR NIGAM LIMITED**  
(A Govt. of India Enterprise)  
No. 1-5/2012-PAT (BSNL) dated **20.12.2012**  
**OFFICE ORDER**

Sub: Issue of grant of 5 (five) advance increments on the minimum of revised E1 IDA pay scale of Rs. 16400-40500/- to JAO (Departmental) at par with directly recruited JTOs/JAOs.

Pay of internal candidates who were promoted as JAO after they qualified in LICEs held for the post of JAO under 10% quota & 40% quota (Main exam) in Nov, 2009 & Jan/Mar, 2010 was fixed in the revised E1 pay scale in the absence of revised E1A pay scale. As per BSNL Corporate office letter No. 1-29/2010-PAT (BSNL) dated 3.1.2012 and 19.3.2012, the pay of directly recruited JTOs of 2007 and 2008 batch and directly recruited JAOs in respect of whom result declared in 2010 have been ordered to be fixed at Rs. 19020/- after grant of whom result declared in 2010 have been ordered to be fixed at Rs. 19020/- after grant of 5 (five) advance increments on the minimum of the revised E1 pay scale of Rs. 16400-40500/-.

2. Accordingly, it has been decided with the approval of BSNL Board that on promotion to the grade of JAO through Internal departmental competitive exams for which results were declared in year 2010 (both 10% Quota & 40% Quota), **the pay of such JAOs may be fixed in the revised E1 pay scale of Rs. 16400-40500/- by granting one notional increment @ 3% of their existing pay in the feeder grade or at Rs. 19020 by way of granting five advance increments on the minimum of the revised E1 scale whichever is higher.**

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3. The Board of Directors has further approved that in case revised E1A pay scale is approved by the Government subsequently, the same may be extended to those JAOs and accordingly their pay may be regulated in the revised E-1A pay scale. An undertaking in this regard may be obtained from the officers.

4. Errors & Omissions occurred while calculating the arrears therein are subject to rectifications and correction. Overpayments made, if any, shall be recovered as per rules.

Sd/-

(Sheo Shankar Prasad)

Assistant General Manager (Pers.V)"

12. It is clearly mentioned in para 4 of the aforesaid office order that errors & Omissions occurred while calculating the arrears therein are subject to rectifications and correction and any overpayments made, shall be recovered as per rules.

Thereafter, pay fixation was made in respect of the applicants and it would suffice to extract the pay fixation made in respect of Shri Ankuar Kumar Singh which is quoted herein below:

"Pay fixed As on 1.1.07	Pay	7140		7140.00
	68.80%	4912.32	78.20%	5583.48
	Total	12052.32		12723.48
	80%	3615.696		8817.044
	Total	15688.016		16510.524
	Say R/o	15670 (pre revised IDA scale 5700-160-8100 (revised IDA Sale 10900-20400)		
01.07.2007		16140		17040
01.07.2008		16630		17560
01.07.2009		17130		18090

Fixation of pay on promotion as JAO w.e.f.14.06.2010 in the scale of pay of Rs. 16400-40500/-.

A) 3% Inc on old basic pay	17650	18640
B) Min of the scale i.e. Rs.16400 Plus 5 increments which is Beneficial to the official	19020	19020

B. Is more beneficial to official. Hence pay should be re fixed at Rs. 19020/- on 14.6.2010 in the scale of pay 16400-40500/-."

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13. This shows that his pay w.e.f. 14.6.2010 i.e. the date of promotion has been fixed at Rs. 19020/-. Earlier on 21.6.2013, (Ref. SR-4) the pay of the applicant was erroneously fixed based on the invalid option submitted by the applicant Shri Ankur Kumar Singh on 18.7.2010 and this error was detected within five years and the over drawn amount was bound to be recovered.

14. As discussed above, the option was defective and therefore, could not be acted upon. Any pay revision based on such invalid option cannot be entertained.

15. The learned counsel for the applicants placed reliance on the decision of the Hon'ble Apex Court in the case of **State of Punjab and Others etc. Vs. Rafiq Masih (White Washer) etc**, Civil Appeal No. 11527 of 2014 (arising out of SLP ( C) No. 11684 of 2012 dated 18<sup>th</sup> December, 2014 to emphasise that recovery is bad in law. We have gone through the said decision. The relevant portion of the decision of the Hon'ble Apex Court in the case of Rafiq Masih (supra) is quoted hereunder:

"12. It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery where payments have mistakenly been made by the employer, in excess of their entitlement. Be it as it may, based on the decisions referred to herein above, we may as a ready reference, summarize the following few situations wherein recoveries by the employers, would be impermissible in law:

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- (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 recovery."

In the case of Ankur Kumar Singh wrong fixation of pay was made on 21.6.2013 (SR-4) which was corrected on 12.09.2014 which is less than 5 years and therefore, the decision in the case of Rafiq Masih (supra) shall not be applicable in this case.

16. It is also noteworthy that while making payments, on the basis of revisions under a Pay Commission, a certificate is invariably obtained from the employee, undertaking to refund any excess drawal. This is a regular practice in dealing with fixation of

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emoluments on the basis of Pay Commission recommendations. Therefore, the applicants are aware that any overpayment has to be recovered.

17. The Hon'ble Apex Court in the case of **Chandi Prasad Uniyal v. State of Uttarkhand** reported in AIR 2012 SC 2951 ruled that when payments are being effected in many situations without any authority of law, the same can always be recovered barring few exceptions of extreme hardship. And when it is not payers or payees money, it is tax payers money, as it neither belonging to the officers who had effected over payment nor that of the recipient, and once an excess payment has been made due to bona fide mistake, the Government Officer have every right to recover the same.

18. The Hon'ble Apex Court has also ruled in several cases that genuine mistake can always be corrected.

19. Here the applicant Shri Ankur Kumar Singh had submitted an invalid option on which erroneously the respondent authorities had initially fixed the pay o 21.6.2013 (Annexure SR-4) which was subsequently corrected on 12.09.2014.

20. Further the applicant depended on a communication dated 24.07.2015 which is set out below to advance his cause that no overdrawn amount may be recovered because the authorities are facing financial constraints. The Applicants did not give any



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option in furtherance to the letter dated 24.07.2015 also which is set out below:

"BHARAT SANCHAR NIGAM LIMITED  
(A Govt. of India Enterprise)  
No. 7-4/2010-SEA-BSNL (Pt.1) dated 24.7.2015

To  
All Heads of Telecom Circles/Dist.  
& Other Admn. Units, BSNL.

SUB: Issue regarding pay fixation of JAOs (Dep'tt.) (40% quota) of 2010 Batch arising out of Non Executives 'Wage revision orders dated 7.5.2010 and subsequent clarification dated 18.5.2011 – Allowing option for revision of pay from the date of promotion to the grade of JAO.

The undersigned is directed to invite attention to para 3.6 of Non executives' Wage Revision order No. 1-16/2010-PAT (BSNL) dated 7.5.2010 (which provides option for revision of pay on 01.01.2007, DNI or the date of promotion after 1.1.2007 and further clarification No. 1-37/2010-PAT (BSNL) dated 18.5.2011 according to which, those Non executives who got promotion to Executive grade between the period 1.1.2007 and 7.5.2010 were allowed to exercise the option for fixation of pay, in the revised pay from the date of their promotion.

2. The Service Associations represented on the issue on various grounds such as after clarification dated 18.5.2011 there has been reduction in pay of JAOs under reference, who have earlier opted for revision of their pay, from the date of promotion in the grade of JAO as per orders dated 7.5.2010. Accordingly, the committee was formed to examine the issue of pay fixation of JAO (Dep'tt.) (40% quota) 2010 batch, who were promoted after 7.5.2010 and to exercise option for revision of pay from the date of their promotion in the grade of JAO.

3. In view of the recommendation of the committee, it has been decided with the approval of the competent authority that as per the Non executives' wage revision orders dated 7.5.2010

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JAOs (Deptt) (40% quota) of 2010 batch may be allowed to exercise the option for fixation of pay in the revised pay from the date of promotion in the grade of JAO as one time dispensation. However, due to financial constraints of BSNL, no arrears will be paid and effect of actual pay revision will be prospective i.e. from the date of issue of this order. Any change from earlier option shall be exercised within a period of one month.

4. The above orders may be brought to the notice of all concerned for information and necessary action.

Sd/-  
(Sunil Rajput)  
Asst. General Manager (SEA)

21. The issues are completely different. The communication dated 24.7.2015 applies to the pay fixation of Executive Cadres only where pay on promotion to Executive Cadre, though due to be paid from the date of promotion, nevertheless, will be paid from the date of this order i.e. 24.7.2015 which means that no arrears from the date of promotion to 3.7.2015 will be paid due to financial constraints.

22. The case of the Applicants are entirely different. They were erroneously over paid by the Respondents because of wrong fixation based on an invalid option exercised in pursuance of the order dated 7.5.2010 which applies to Non Executive Cadre employees only. The applicants did not take any action on clarification dated 18.5.2011 of order dated 7.5.2010, to the effect that the date of promotion to Executive Cadre should be between

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1.1.2007 and 7.5.2010 for exercising option. The Applicants were promoted after 7.5.2010.

23. On examination of the matter we do not see any merit in both the OAs which are accordingly dismissed by leaving the parties to bear their own costs.

24. Let a copy of this judgment be placed on record in OA No. 350/01324 of 2014.

(Ms. Jaya Das Gupta)  
Member (Admn.)

(Justice V.C. Gupta)  
Member (Jud.)

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