

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH
O.A. No. 417 of 2015
Ahmedabad, this the 21st day of December, 2018**

CORAM :

Hon'ble Ms. Archana Nigam, Member (A)

Hon'ble Sh. M.C. Verma, Member (J)

Date of Reserve : 30/11/2018

Date of Order : 21.12.2018

Savitaben Kantibhai Wankar,
Widow of Kantial Babubhai Wankar,
Age: about 60 years,
5-132 Harijanvas, Kungher, Ta. Patan,
Dist. Patan – 384255.

... Applicant

By Advocate Shri P H Pathak

V/s

- 1 Union of India
(Notice to be served through
The Secretary, Department of Telecom,
Ministry of Communication,
New Delhi – 110 001.
- 2 The Chief General Manager,
Bharat Sanchar Nigam Limited,
Gujarat Circle, Telecom Bhavan,
C.G.Road, Navrangpura,
Ahmedabad 380 006.
- 3 The General Manager,
Mehsana Telecom District,
Padmavati Complex,
Mai Godown Road,
Mehsana 384 002.

... Respondents

By Advocate Ms R R Patel

ORDER**Per Ms. Archana Nigam, Member (A)**

1 The present OA has been filed Smt Savitaben Kantibhai Wankar, widow of Shri Kantilal Babubhai Wankar challenging the illegal recovery amounting to Rs.6,07,540/-and seizing of the applicant's account.

2 The prayers are as follows:-

A) The Hon'ble Tribunal be pleased to declare that the impugned decision dated 1.6.2015 letter no. OA /88/20111 & SCA 5818/2012/2014-15/134 of respondent no.3 at Annexure A/1 and decision of the respondent no.4 dated 19.5.2015 at Annexure A/2 as unjust, arbitrary, illegal and be pleased to quash and set aside the same;

B) Be pleased to declare the exercise of power by the respondents withholding the amount of family pension payable to the applicant and non-granting of all consequential benefits which were granted to the juniors of the husband of the applicant as arbitrary, unjust and illegal and be pleased to declare that the respondents have taken law in their hands and acted with malafide intention to victimize the applicant;

C) Be pleased to declare the action of the respondent-bank to seize the account of the applicant without following any procedure of law, as arbitrary, illegal and unjust and be pleased to set aside the same and direct the respondents to pay special cost and compensation and the amount of interest on the payable amount which is illegally withheld by the respondents;

D) Be pleased to direct the respondents to pay the family pension to the widow and allow her to withdraw the same from said bank account;

E) Any other relief this Hon'ble Tribunal deems fit and proper in interest of justice together with cost."

Applicant pleads that the seizure of the account of applicant without due process of law has now become infructuous and in that context he had filed MA 203/2016 for deletion of respondent no.4 from the array of respondents and hence restricts his prayer clause to A, B, D & E.

3 This is the fourth round of litigation by the applicant who is a widow of Shri Kantibhai Wankar who was employed as casual labourer from 1978 under the SDOT, Patan. It is submitted that the service of the applicant was terminated w.e.f. 1.6.1991 whereupon he approached the Industrial Tribunal vide ITC

No.2/93 which was allowed in favour of applicant vide award dated 6th February, 1999 (Annexure A/3) which reads as follows:-

"The reference is allowed. The first party is directed to reinstate the concerned workman Shri Kantibhai Babubhai Vankar on his original post giving him temporary status from the day the same was given to his junior workers Shri Rameshbhai Prajapati and Pankajkumar Prajapati and to give him back wages and all other benefits available to him from the same day. The first party is also directed to pay Rs.500/- towards cost of reference to the second party. The award should be implemented within one month from the date of publication."

3.1 The respondents aggrieved by the said decision of Industrial Tribunal approached the Hon'ble High Court by filing SCA No.4197/1999 and the applicant filed SCA No 12483/2000 before Hon'ble High Court for getting appropriate relief against the department. Both the Special Civil Application Nos. 4197/1999 and SCA No.12483/2000 were disposed of by a common order dated 19.10.2001 (Annexure A/4) which reads as under:-

"Since both the petitions arise out of the same Award, both the petitions are disposed of by this common order. Mr Shah, learned Advocate appearing for the petitioner-Department, contended that at the relevant time, the concerned workman has left the service on his own and he had joined some other Department for some time. Mr Shah also further submitted that, in any case, in order to get temporary status, an employee is supposed to work for 365 days in the preceding year by actually serving the Department physically for that preceding year. In that view of the matter, it would not be proper to deny the said benefit which otherwise he would be entitled and which were given to his juniors, whose names have been mentioned in the Award. Considering the reasoning given by the Tribunal, which is based purely on appreciation of evidence, I do not find any substance in the said argument of Mr. Shah in so far as the question about reinstatement of the said workman is concerned. However, Mr Mishra has fairly conceded that he has no objection if the Award of backwages is suitably modified by this Court. In the facts and circumstances of the case, therefore, I direct that the concerned workman will be entitled to the status of temporary employee as per the Award of the Industrial Tribunal and whatever benefits which are given by the Tribunal regarding reinstatement is upheld in this order. The concerned workman will be entitled to his regular wages from the date of the order of the Industrial Tribunal and he will also be entitled to the temporary status from the date of the order of the Industrial Tribunal. Whatever amount is required to be paid on the basis of the same, will be paid to the concerned workman within a period of one month from today. So far as reinstatement is concerned, the Department is directed to reinstate the

petitioner forthwith and, in any case, within a period of two weeks from today.

It is clarified that the Department, while giving the amount of backwages, as stated above, may give 50% by account payee cheque and so far as the other 50% is concerned, the said amount may be invested in a fixed deposit for a period of two years in the name of the concerned workman. The workman will be entitled to withdraw interest periodically and when the F.D. matures, at that stage, he will be entitled to withdraw the amount which is invested in the F.D. Both these petitions are disposed of in the aforesaid terms and rule in both the petitions is partly made absolutely accordingly with no order as to costs."

3.2 Thereafter the respondents have issued the order of reinstatement of the deceased employee dated 27.08.2004 (Annexure A/5). By order dated 03.09.2004 (Annexure A/6), the husband of the applicant was granted temporary status. On resuming duty under respondent no.2 at village Ved, the respondents continued to victimize applicant by not drawing his salary in time and many times it was paid 10-15 days after completion of the month. As the benefits granted to temporary status was not given to applicant, he was constrained to approach the Hon'ble High Court by moving Misc. Civil Application No.921/2005 which came to be disposed off by order dated 26.06.2009 (Annexure A/8) with following directions:-

"5 Reading both the orders together, the order to be read as if the benefit of temporary status is to be granted as per the Award of the Industrial Tribunal. The Misc. Civil Application is disposed of accordingly. Rule is made absolute to the aforesaid extent. There shall be no orders as to costs."

3.3 The husband of the applicant was required to be granted the benefits of temporary status and consequential benefits. As he was not granted the benefits, an Advocate's notice dated 09.02.2009 was sent to the respondents, still the same were not extended to the applicant's husband. Thereupon the husband of the applicant filed OA 321/2010 which was disposed off by order dated 01.01.2011(Annexure A/10) which reads as under:-

"On examination of the matter, precise date on which the respondents have granted benefits of regularization is neither disclosed in pleadings raised nor in legal notice preferred. If the applicant is aggrieved with the fact that similar benefit has not been extended to him, he ought to have rake up this issue before appropriate authorities by appropriate

means. In this view of the matter, we do not find any prima facie case made out by the applicant requiring interference and issuance of notice at this stage. It is accordingly held that the OA is premature and the same is dismissed in limine under section 19(3) of Administrative Tribunal Act, 1985. However, he would be at liberty to file appropriate representation before concerned authority giving particulars and details of juniors, date etc. from which they were granted certain benefits, which ought to have been extended to the applicant. Order accordingly."

3.4 Being aggrieved by the order dated 01.01.2011, the applicant filed OA 88/2011 which came to be disposed of by order dated 19.12.2011 (Annexure A/12) which reads as under:-

"10 On careful consideration of facts and circumstances, as noticed hereinabove, we are satisfied that basic direction issued by the Industrial Tribunal that applicant shall be reinstated and granted temporary status from the date Shri Rameshbhai Prajapati & Pankaj Prajapati were granted has been duly complied with w.e.f. 1.10.1989.

11 In view of discussion made hereinabove, we do not find any illegality committed by the respondents and finding no merits, OA is dismissed. No Costs."

3.5 Being aggrieved by the order of the Tribunal dated 19.12.2011 in OA 88/2011, the applicant approached the Hon'ble High Court by filing SCA No.5818/2012 and during pendency of the application, the husband passed away and the SCA was disposed of by order dated 21.04.2014 (Annexure A/13) with the following direction:-

"6 The petition is allowed. The authorities are directed to pay consequential benefits of reinstatement in service of the petitioner to his wife alongwith all arrears arising on account of fixation of pay at par with his juniors as referred to in the award of the Hon'ble Industrial Tribunal.

6.1 Taking into consideration the time which is consumed by the department in pursuing the matter right upto the Supreme Court, which should be paid separately to the poor widow even before giving the benefits of this order, as early as possible but not later than 31.5.2014. In the event this amount of cost is not paid to her, the Court will be constrained to pass further orders. Rule is made absolute."

3.6 As the order of the Hon'ble High Court was not complied with by the respondents, the applicant was constrained to approach Hon'ble High court by filing Miscellaneous Civil Application for Contempt being MCA No.3205/2014

which came to be disposed off by order dated 24.12.2014 (Annexure A/14). The operative portion of the order reads as under:-

“5.0 Heard learned advocates appearing on behalf of the respective parties at length. At the outset it is required to be noted that despite the fact that earlier while allowing the Special Civil Application No.5818/2012, the learned Division bench of this Court imposed the cost upon the respondent quantified at Rs.25,000/- making serious observations with respect to the conduct on the part of the respondents, still the message has not reached the concerned respondents and there is non-compliance of the order passed by the Division Bench of this Court. After the issuance of the notice by this Court in the present proceedings, subsequently the respondents have given a cheque of Rs.10,39,330/- drawn in favour of the applicant – widow of the deceased employee. The concerned respondents have also assured the court that on completion of legal formalities the applicant shall be paid the family pension including the arrears of family pension within a period of eight weeks. Though the concerned respondents / officers of the BSNL do not deserve any sympathy, still we close the present proceedings by accepting the unconditional apology tendered on behalf of the respondents and close the present proceedings by giving warning to the respondents that if in future non-compliance of any of the order passed by this Court is noticed, the same shall be viewed very seriously. However, while disposing of the present application we impose the cost upon the respondents to be paid to the applicant which is quantified at Rs.10,000/- which shall be paid to the applicant directly within a period of two weeks from today without fail.

5.1 The concerned respondents are also directed to act as per their undertaking and affidavit in so far as the family pension is concerned and on submitting the proforma application by the applicant for getting the family pension, the respondents shall disburse the same at the earliest, however not later than eight weeks from the date of submitting such application. It is also observed that if there is any dispute with respect to the actual entitlement and the applicant disputes the calculation and is of the opinion that the applicant is entitled to much more amount than Rs.10,39,330/-, it will be open for the applicant to submit an appropriate application / representation to the concerned authority and as and when such application/representation is made, the same be considered in accordance with law and on merits at the earliest but not later than four weeks from the date of receipt of such representation.

6.0 With this the present application is disposed of.”

3.7 The applicant thereafter submitted proforma application for getting family pension to the respondents and respondents fixed the pension of applicant w.e.f. 1.5.2015. The applicant was shocked that in the order of sanctioning pension, they have mentioned that an amount of Rs.3,21,875/- is to be adjusted against the excess payment of arrears and that the order was forwarded to the State

Bank of India, Pension Processing Centre, Ahmedabad vide letter dated 19.05.2015 and the Bank was informed accordingly. That applicant is aggrieved by the action of the respondents in freezing the account and non-payment the amount of pension.

3.8 In the pleading applicant has also stated that the Chief Manager, State Bank of India, CPPC, Gandhinagar has also addressed a letter dated 25.05.2015 (Annexure A/16) to the Chief Manager, State Bank of India, Kungher Branch, Patan to recover the amount of Rs.3,21,875/- on account of excess payment. Thereafter the applicant was in receipt of letter dated 01.06.2015 informing her the figures and calculation details of benefits and arrears paid to her and also about recovery on account of an earlier order for excess payment according to the respondents. The total recovery of overpaid amount of Rs.6,07,540/- has been arranged from the applicant.

3.9 Aggrieved by the action of the respondents in freezing her account and non-payment of the family pension, the applicant again approached the Hon'ble High Court by filing Miscellaneous Civil Application No.1775/2015 for disobedience of the order of Hon'ble High Court in MCA 3205/2014, but the Hon'ble Court by order dated 09.07.2015 (Annexure A/17) was of the view that there was no willful disobedience of the order passed in MCA No.3205/2014. It was also observed by the Hon'ble High Court that if the applicant is aggrieved by the action of the respondents, it will be open for her to initiate appropriate proceedings afresh.

3.10 Aggrieved by the action of the respondents in freezing the account of the applicant and not payment amount of pension, the applicant has filed the present OA.

4 In response to notice, respondents have filed a detailed reply denying the stand of applicant. In the reply it is stated that the total pay and allowances due to the applicant was Rs.20,61,981/- out of which the applicant had already drawn Rs.8,29,045/- and the amount to be paid was only Rs.12,32,936/- and after

deducting TDS of Rs.1,93,606/- amount of Rs.10,39,330/- (Annexure R/2) was paid to the applicant vide cheque No.02098296 dated 24.12.2014.

4.1 Regarding the issue of late Shri K B Wankar with Shri R K Prajapati, that the alleged junior Shri R K Prajapati had earned a pay up-gradation by promotion as a result of qualifying departmental examination and posted as Telephone Mechanic from Mazdoor in 1997 and that such pay up-gradation would not be available to deceased Shri K B Wankar due to non passing of qualifying departmental examination. As per the criteria, 10th standard pass was the criteria for the departmental examination (Annexure R/4), Shri R K Prajapati was 10th standard pass and applicant was only 4th standard pass (Annexure R/5 and R/6).

4.2 It is also submitted by respondents in their reply that to be absorbed in BSNL which came into existence w.e.f. 01.01.2000, the concerned employee had to submit option form and that only a regular employee could do and that due to pendency of litigation, deceased Shri K B Wankar's services could not be regularized. In pursuance of and in compliance of order dated 15.09.2014 passed by Hon'ble Apex Court, deceased husband of applicant's services was regularized along with all benefits including back-wages. Applicant's husband expired on 23.09.2012 much prior to the decision of Hon'ble Apex Court on 15.09.2014. As the deceased Shri K B Wankar could not exercise option to be absorbed in BSNL, the deceased Shri K B Wankar remained an employee of DoT to whom govt scale or CDA scale would be applicable and therefore there is a difference of maximum allowable cadre as well as applicable scales. In view of the above circumstances, the OA contains distorted version of facts and has no merits and hence, is required to be rejected.

5 Applicant has filed a rejoinder reiterating the stand taken in the OA.

6 Heard Shri P H Pathak, learned counsel for applicant and Ms R R Patel, learned counsel for respondents. Perused the pleadings and documents on record.

6.1 Learned counsel for applicant placing reliance on the judgment of Hon'ble Supreme Court in the case of ***State Of Punjab & Ors vs Rafiq Masih (White Washer)*** urged to allow the OA.

7 Learned counsel for respondents on behalf of respondent nos. 2 & 3 chose to give written argument in the matter instead of adducing arguments in the matter and these were submitted on 18.09.2018.

7.1 It has been stated in this that when the matter was taken up on the file of Hon'ble High Court vide order dated 21.04.2014 (Annexure A/13 to OA page No.59) in S.C.A. 5818 of 2012 as already reproduced in para 3.4. Further in the submissions it has been mentioned that due to old case, calculation could not be arrived at as to the amount of benefits required to be granted to the deceased employee (applicant was brought on record due to demise of the employee during the pendency of the said petition before the Honourable High court) and therefore, aggrieved, the applicant had filed a Contempt Petition before the Honourable High Court. During the pendency of the said Contempt Petition, the applicant was paid a sum of Rs.10,39,330/- after deducting TDS as requisite. Since applicant had to filled in family pension form yet, she could not be granted such benefit to her during the pendency of the said contempt petition and therefore, the Honourable High court had directed that, on submission of proforma application by the applicant for getting the family pension, the respondents shall disburse the same at the earliest. The said Contempt petition was disposed off on 24.12.2014 and that the deceased was entitled for salary for a period between 17.05.1991 to 31.05.2012 (i.e. from reinstatement to superannuation) for the amount of Rs.14,54,441/-, however, deceased was already paid salary in the amount of Rs.20.61.981/- therefore, the applicant was paid Rs.6,07,540/- in excess in terms of the said award. (Annexure A/1 page no. 19 to OA). The respondents have filed their affidavit on 26.06.2018 (page 205) along with which, calculation sheet of the said R K Prajapati and Pankaj Prajapati and deceased employee have been produced, wherefrom, it is discernible that, the applicant had been paid the said amount in excess.

7.2 It has also been clarified in her written argument that both R K Prajapati and Pankaj Prajapati were promoted to the cadre of PM after qualifying departmental examination whereas the deceased had never passed such an examination and he was not even eligible for taking the examination. It is also reiterated that he was not absorbed in BSNL as such CDA pay-scale was admissible to him and not IDA admissible to him. That two reasons have been advanced for the excess payment made.

8 Be that as it may. In the light of the judgment of Hon'ble Supreme Court in the case of ***State Of Punjab & Ors vs Rafiq Masih (White Washer)(supra)***, the Hon'ble Supreme Court has given a clear dictum as to the situations, a recovery made mistakenly by the employer would be impermissible in law.

"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 that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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."

9 In view of the legal and factual scenario discussed above, order of respondents dated 1.6.2015 – Annexure A/1 herein as it rerebrates to recovery of the amounts alleged to have been overpaid as well the decision vide order dated 19.05.2015 to mark hold of Rs.3,22,000/- from pension account (Annexure A/2) are quashed and set aside. The respondents are directed to refund back the amount, with interest admissible as per law, if any had been recovered pursuant to orders at Annexure A/1 and A/2 within one month of receipt of copy of this order.

10 In view of aforesaid observations and directions, this OA stands disposed of. MA if any, also deemed to be disposed of.

(M C Verma)
Member(J)

(Archana Nigam)
Member(A)

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