

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD

(This the 12th Day of March 2019)

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application No.330/830 of 2013
(U/S 19, Administrative Tribunals Act, 1985)

Krishna Kant Kanaujia, S/o Ram Narain
R/o H. No. 892-F, Patel Bihar, Bairi Bithoor Road,
Kalyanpur, District – Kanpur Nagar.

..... Applicant

By Advocate: Shri J. L. Srivastava

Versus

1. Union of India through the Secretary, Department of Telecom, Sanchar Bhawan, New Delhi.
2. The Chairman and Managing Director, B.S.N.L. Corporate Office, New Delhi.
3. Chief Account Officer (Pension), C.C.A., U.P. (East) Circle, Vikas Khand, TL Bledg., Gomti Nagar, Lucknow.
4. Superintending Engineer, B.S.N.L. Civil Circle, Moti Mahal, Kanpur.

..... Respondents

By Advocate: Shri D. S. Shukla

ORDER

1. The O.A. has been filed under section 19 of Central Administrative Tribunals Act, by applicant Krishna Kant Kanaujia seeking following reliefs –

“(A) to quash the letter dated 01.09.2012 and 17.11.2012 issued by respondents.

- (B) to direct the respondents to pay full and correct pension on the basis of pay already fixed.
 - (C) to direct the respondent to pay full pension as being paid earlier and also refund Rs. 35,698/- along with interest which has been wholly wrongly and illegally recovered from the applicant.
 - (D) to issue any other order or direction which this Hon'ble Tribunal may deem fit and proper;
 - (E) to award cost of the original application to the applicant.
2. Before advertng to the facts of the case it be noted that during the final arguments, learned Counsel for applicant confined his arguments to relief regarding refund of Rs.35,698/-. So, the relevant facts as are necessary to the relief sought by applicant is that the pay of applicant was revised and re-fixed by the respondents i.e. the re-fixing had the effect of reducing the pay of applicant and therefore notice was issued to applicant as why the excess payment of Rs.35,698/- made be not recovered from the pension of applicant and the same in fact was ordered to be recovered from the pension by way of impugned order dated 17.11.2012 and was in fact recovered from the pension of the applicant. Applicant seeks the relief of refund of the amount so illegally deducted on the ground that the amount was not paid to him due to any fraud and misrepresentation by him and therefore, no recovery can be affected from him.
3. In the counter affidavit, the relevant facts necessary to decide the O.A. have not been disputed by the respondents but taken the plea that the O.A has been filed belatedly and barred by period of limitation and in any case it was due to

mis-representation on part of applicant and in connivance with Account Officer that the applicant managed to get the annual increment prematurely which was rectified and recovery was effected from the pension of applicant. Hence the O.A. be dismissed.

4. In the rejoinder, the applicant reiterated the averments made in the O.A. and controverted the facts alleged in the counter affidavit and further stated that the respondents are not entitled to recover any amount from him under law.
5. I have heard the learned counsels for the parties and gone through the material on record. Looking to the facts of the case and that no recovery could be effected from the pension of applicant in view of the law laid down by the Hon'ble Apex Court, the delay in filing the O.A. relating to the recovery of amount from pension of applicant is condoned.
6. The issue involved is whether respondents were justified in recovering the excess amount from the pension of the applicant. The department is not entitled to recover the excess amount paid due to wrong fixation of pay to the applicant in view of judgment of Hon'ble Apex Court in State of Punjab and others Vs. Rafiq Masih (White Washer) etc. reported in 1 (2015) 4 SCC 334. In the case of Rafiq Masih (supra), the Hon'ble Supreme Court contended that recovery of excess payment cannot be made from a retired employee. Hon'ble Supreme Court in para 12 of its judgment held as under:-

"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, summarize 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.

(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 recover".

7. It has been contended that in view of item (i) and (ii) above, no recovery of excess payment could be made from the employees belonging to class/group to which the applicant belonged and the order of recovery from the pension of the

applicant is liable to be quashed and the amount be refunded to him.

8. Accordingly, OA is allowed to extent of recovery of Rs.35698/- from the pension of applicant which the respondents could not be effected since no fraud or mis-representation was committed by the applicant. There is no material on record to justify such fraud and mis-representation on behalf of applicant. Consequently the impugned order dated 17.11.2012 is set aside. The respondents are directed refund the amount recovered from the pension of applicant along with simple interest @ 6 % p.a from the date of deduction till its payment. The said exercise shall be completed within a period of 4 months from the date of receipt of a certified copy of the order. No order as to costs.

[Rakesh Sagar Jain]
Member-J

/Shashi/