

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

ORIGINAL APPLICATION NO.170/00093/2017

DATED THIS THE 29TH DAY OF NOVEMBER 2018

HON'BLE DR. K.B. SURESH, MEMBER(J)

HON'BLE SHRI CV.SANKAR MEMBER (A)

Hari Patnaik,
S/o Arjun Patnaik,
Aged about 55 years
Working as Assistant
Director (O.L),
Now redesignated as
RajBhasha Adikari (ADOL),
O/o The General Manager Telecom,
Telecom District, (BSNL),
Shimoga 577 205. and Residing at
House No.237, Ashraya,
4th Main, Priyadarshini Layout,
Shimoga 577 204.

... Applicant

(By Advocate Shri MR.Achar)

vs.

1.The Chairman & Managing Director,
Bharat Sanchar Nigam,
Sanchar Bhavan,
Harish Chandra Mathur Lane,
Janpath, New Delhi 110 001.

2.The Chief General Manager ,
BSNL, Karnataka Circle,
No.1, S V Road,
Halasuru, Bangalore.560008

3.The General Manager ,
Telecom District, BSNL,
Shimoga 577 205.

4.Accounts Officer,
O/O The General Manager ,
Telecom District,
Shimoga 577 205.

...Respondents

(By Shri VN.Holla Sr. Standing Counsel)

ORDER (ORAL)

HON'BLE DR. K.B. SURESH, MEMBER (J):

1. Heard. The matter is in a very small compass. It relates to pay fixation following a wrong fixation made on the basis of officiating pay being substituted for substantive pay. The matter seems to be covered by our order in OA.NO.1013/2016 dated 17.9.2018 which we quote:-

“ The case of the applicant, in brief, is as follows:

2. The respondents unilaterally reduced the applicant's pay to Rs. 26300/- starting from 2006. The applicant questioned this before this Tribunal in O.A. No. 119/2014. The Tribunal, by its order dated 25.08.2016, quashed the above action with liberty to the respondents to take action after issuing show cause notice to the applicant. Now the respondents No3 had reduced his basic pay from Rs. 35360/- to Rs. 30290/- from November, 2016, by issuing a revised pay fixation order dated 19.11.2016 (Annexure A-6) claiming it to be a rectification exercise. The applicant has objected to this

action requesting for quashing it on the following grounds:

- i) No show cause notice as directed by this Tribunal was issued to him;
- ii) The impugned order is not a speaking order;
- iii) The alleged correction in the impugned order is contrary to the judgement of CAT, Madras Bench in O.A. No. 440/2014, which was on similar facts.
- iv) Even if the revised pay fixation is to correct an earlier error, recovery cannot be effected following the decision of the Apex Court in Civil Appeal No. 11527 of 2014, State of Punjab and Others vs. Rafiq Masih (White Washer case).

3. The respondents have denied the claim of the applicant. They alleged that the earlier pay fixation with effect from 1.1.2007 was erroneous since it took into consideration the officiating pay that was being given to the applicant and not his substantive pay. They had sent a communication dated 19.11.2016 (Annexure A-6) which was by way of a show cause notice as directed by this Tribunal. The applicant had filed a representation vide letter dated 21.11.2016 (Annexure R-3). They have informed the applicant about their decision in this matter by letter dated 23.11.2016 (Annexure R-4). The respondents have also denied application of the decision in the case of Madras Bench in O.A. No. 440/2014 as

not relevant to the facts of the present case.

4. After going through the pleadings, perusing records and hearing arguments of both sides, it is clear that there are two issues on which this Tribunal has to take a decision.

(i) Whether the reduction in pay was a correct decision and whether it was done after due compliance of the orders of this Tribunal in O.A. No. 1119/2014;

(ii) Even if it was a correct decision whether the excess paid sum can be recovered in the light of White Washer case.

5. The respondents have cited their communication dated 19.11.2016 (Anneuxre A-6) as the show cause notice issued to the applicant in compliance of the order of this Tribunal in O.A. No. 1119/2014. The relevant portion of this communication is reproduced in full below:

“ In pursuance of the CAT orders and also as per the instruction contained in the above cited letter under reference from DGM (HR), O/o.CGMT, Bangalore, I am directed to intimate that revised pay fixation will be done w.e.f. 1.1.2007 in (68.8 % & 78.2% fitment) & overpayment of salary due to this pay fixation will be recovered in suitable instalments from your salary.

It may be noted here that the existing pay fixation was done erroneously taking officiating pay into consideration; the same is rectified in this pay fixation

memo. Revised pay fixation memo enclosed herewith for reference.

This is for your kind information.”

The enclosure to this communication has a note, which is reproduced below:

“Note: Any excess payment/short payment due to this pay fixation will be adjusted in due course. This may be treated a notice for pay fixation.”

6. The letter sent by the applicant on 21.11.2016 (Annexure R-3), cited by the respondents as the applicant’s representation in reply to the communication mentioned above. The said letter is reproduced below in full:

“Sub: Preponement of date of increment on fixation of pay as on 1.1.2007, from November to January – request reg.

Respected Sir,

With reference to above, I humbly requested here that, I have been promoted from Sr. Hindi Translator post to Rajbhasha Adhikari (ADOL) from 07.11.2008 and further my scale of pay has been upgraded from E1 to E2 under Executive Promotion Policy EPP/TBP from 07.11.2012. But my pay has been fixed from the date of promotion i.e. November, 2008/2012. My date of increment in substantive cadre was 1st of January. As such my humble request you sir, kindly prepone my date of annual increment from November to January for

fixation of pay as on 01.01.2007 and oblige.

Thanking you in anticipation.”

7. The final communication dated 23.11.2016 (Annexure R-4) from the respondents in this connection is also reproduced below:

“Your representation dated 21.11.2016 is reviewed and it is intimated that the pay fixation done vide this office letter No. LC/CAT/OA No.1119/2014/8 DTD. 19.11.2016 holds good.”

8. A plain reading of the communications quoted above will make it clear to anyone that neither Annexure A-6 (which ends with “this is for your kind information”) can be taken as a show cause notice nor can Annexure R-3 be considered as a representation in response to this “show cause notice”. Annexure R-4, too, is visibly, not a speaking order. Thus, it is apparent that the respondents have not complied with the orders of this Tribunal in O.A. No. 1119/2014. The order of the respondents reducing the pay without giving an opportunity to the applicant to show cause against it, and without issuing a speaking order is, therefore, not correct.

Regarding the second issue (mentioned in para 4 above), what is sought to be recovered has admittedly been paid for more than 5 years. It would, therefore,

attract the judgement in White Washer case. Recovery of any such sum already paid, even if it is done erroneously, cannot be made now in the light of this decision of the Apex Court.

10. The O.A is, therefore, allowed. The order at AnnexureA-6 dated 19.11.2016 is quashed. We again grant an opportunity to the respondents to issue proper show cause notice to the applicant within one month of this order, giving an opportunity to the applicant to file representation within 15 days. A final speaking order should be passed by the respondents within 15 days thereafter. Any reduction in pay, if it is still ordered, with reference to sums that have been paid for more than 5 years, will have only prospective effect. No orders as to costs. “

2. We, therefore, queried the learned counsel for the respondents to find out whether any juncture of the applicant existent in fixation of a wrong pay. He is gracious enough to concede that, there is no juncture of the applicant. It was a mistake of the respondents.

3. At this point of time, Shri VN.Holla, learned counsel seeks to correct himself and say that it might be a small misinterpretation of the rules. But the fact remains that it is a mistake of the respondents alone and nobody else's. Therefore, while the

respondents have a right to issue show cause notice to the applicant and in consequence correct the pay with prospective effect. They cannot recover any, following the Hon'ble Apex Court judgement. OA is, therefore, allowed to this limited extent. Recovery is hereby quashed.

4. Therefore, we need to examine whether either any unjust enrichment on the part of the applicant. For somebody in administration makes a mistake for years together and he gets pay fixed wrongly and get the benefit of it also, thinking it is rightful due, he would have spent all the money. The first thing to consider is that the government cannot go against the law of limitation. Assuming that the government can go after amounts due to it by a wrong fixation within the limitation period, there also the question of promissory estoppel will come against it, because pay is fixed by the government or its authorities. After having done so, they cannot turn around and say that we have made a mistake and therefore, you suffer. That is against the tenets of natural justice. What they can possibly do is that they can prospectively correct it and give him the correct pay only. But, what had been given under the guise of correct pay cannot be, at a given moment retracted and tried to be recovered as this is covered by several judgements of the Hon'ble Apex Court. In the District

Judges Court case the Hon'ble Apex Court held that he himself is the authority to fix the pay, a junction is established in the infraction. Here, there is no such juncture is established on the part of the applicant as pay fixation was done by some one else, even though he may been a beneficiary of a wrong pay fixation. Therefore, White Washer judgement is equally applicable in this case also, so that there cannot be any recovery. OA is, therefore, allowed to this limited extent only.

5. At this point of time, it came to our notice that the government can, without any doubt take action against the concerned person who made the mistake. OA is, allowed to this limited extent.

6. At this point of time, Shri VN.Holla, points out one more point. The recovery of any amount from the date of show cause notice is justified. We have quashed only the recovery prior to that. It is made clear.

7. At this point of time one other aspect is also brought to our notice. When erroneously or not, they pass an order of correction, it ought to have served as notice to the applicant. After consideration, we think that this is also correct. Therefore, we modify the order to the effect that recovery prior to that order cannot be made but recovery post that period can be made because applicant is in

notice and therefore, has no legitimate expectation to hold on to it unless he has a case that pay fixation was correctly done earlier also. It is hereby modified.

8. OA is, allowed to this limited extent. No order as to costs.

(CV.SANKAR)
MEMBER (A)

(DR. K.B. SURESH)
MEMBER (J)

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Annexures referred to by the applicant in OA No.93/2017

- Annexure A1: Copy of fixation of pay dated 19.3.2002
- Annexure A2: Copy of the pay fixation dated 19.3.2002
- Annexure A3: Copy of the pay fixation dated 19.3.2002
- Annexure A4: Copy of the pay fixation memo dated 22.4.2003
- Annexure A5: Copy of the pay fixation memo dated 22.4.2003
- Annexure A6: Copy of the pay fixation memo dated 25.3.2004
- Annexure A7: Copy of the pay fixation memo dated 1.12.2005
- Annexure A8: Copy of the pay fixation memo dated 21.9.2005
- Annexure A9: Copy of the pay fixation on 15.12.2005
- Annexure A10: Copy of the pay fixation on 1.11.2006
- Annexure A11: Copy of the pay fixation on 7.5.2007
- Annexure A12: Copy of the pay fixation memo dated 14.1.2008
- Annexure A13: Copy of the pay fixation memo dated 4.7.2008
- Annexure A14: Copy of the promotion order dated 07.11.2008
- Annexure A15: Copy of the pay fixation memo dated 10.12.2008
- Annexure A16: Copy of the pay fixation memo dated nil
- Annexure A17: Copy of the pay fixation memo dated 7.8.2013
- Annexure A18: Copy of pay fixation memo dated 26.2.2014
- Annexure A19: Copy of office order dated 5.3.2009
- Annexure A20: Copy of order dated 7.5..2010
- Annexure A21: Copy of office order dated 10.6.2013
- Annexure A22: Copy of clarification letter dated 10.6.2016
- Annexure A23: Copy of the order in O.A. No. 519/2014
- Annexure A24: Copy of the show cause notice dated 27.12.2016
- Annexure A25: Copy of reply dated 12.1.2017
- Annexure A26: Copy of order dated 8.2.2017

Annexure A27:Copy of order in O.A. No. 440/2014 dated 12.07.2016

Annexure referred to by the Respondents in the OA

Annexure R1: Copy of option letter of the applicant dated 28.1.2001

Annexure R2: Copy of pay fixation memo of BSNL

Annexure R3: Copy of Hon.Apex Court judgement in Chandi Prasad case

Annexure R4: Copy of the representation of the applicant

Annexures referred in rejoinder

Annexure A28: Copy of BSNL letter dated 28.2.2017

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