

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/310/2017

Date of decision: 22.04.2019

**CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).
HON'BLE MRS. P. GOPINATH, MEMBER (A).**

...

Baljinder Singh (Senior Telephone Office Assistant Retd./Group "C" Service), aged about 60 years, son of Sh. Raunaq Singh, R/o V.P.O. Jalaldiwal, Tehsil Raikot, Distt. Ludhiana.

... APPLICANT

VERSUS

1. Union of India through its Secretary, Ministry of Communications & IT, Department of Telecommunications, Sanchar Bhawan, 20, Ashoka Road, New Delhi-110001.
2. Bharat Sanchar Nigam Ltd. through its General Manager, Harish Chandra Mathur Lane, Janpath, New Dehi-110001.
3. Office of the Controller of Communication Accounts, Punjab Telecom Circle, Madhya Marg, Sector 27-A, Chandigarh-160019, through its Senior Accounts Officer (Pension).
4. Office of Chief General Manager (BSNL), Punjab Circle, Sanchar Sadan, Plot No.2, Sector 34-A, Chandigarh-160022 through DGM (Finance).
5. SDE (HRD) Office of GMT, BSNL, Sangrur.

... RESPONDENTS

PRESENT: None for the applicant.

Sh. Arvind Moudgil, counsel for respondents No.1 and 3.
Sh. D.R. Sharma, counsel for respondents No.2, 4 and 5.

ORDER (Oral)

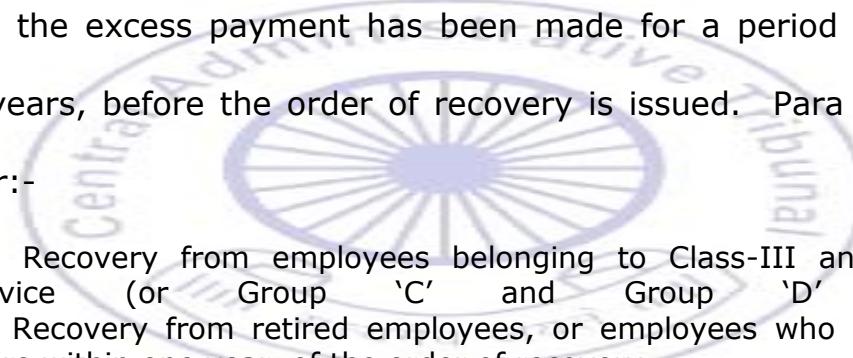
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SANJEEV KAUSHIK, MEMBER (J):-

1. Present O.A. has been filed by the applicant for issuance of direction to the respondents to immediately release entire amount of Rs.1,19,467/-, which they have deducted on account of recovery from the applicant due to wrong fixation of pay.

2. After exchange of pleadings matter came up for hearing today.
3. Applicant initially entered into service as Lineman on 25.2.1977. He was promoted as Senior Telephone Office Assistant (Sr. TOA) on 25.8.1981 and retired on attaining the age of superannuation on 31.8.2016. Vide office letter dated 13.10.2016, respondent no.3 asked respondent no.5 to give detail of the amount which is to be recovered from the applicant on account of wrong fixation of pay which led to excess payment to him than his entitlement. Vide communication dated 22.10.2016, it was informed that a sum of Rs.1,19,467/- is to be recovered from the applicant which has been paid to him in excess to his entitlement. In this regard, the Union of BSNL Employees Union also submitted representation dated 24.8.2015 for refund of amount based on judgment in Civil No.111527 of 2014 decided on 18.12.2014 titled **State of Punjab & Ors. vs. Rafiq Masih (White Washer)**, where identical issue of recovery has been decided by the Hon'ble Supreme Court and it was held that recovery cannot be effected from retired Group C/D employee. Thus, the applicant is before this Court against recovery of the said amount.
4. Respondents have filed separate written statements stating that since applicant's pay was wrongly fixed, which led to excess payment than his entitlement, therefore, when this fact came to their notice, they ordered recovery and have recovered that amount, hence there is not illegality. They also relied upon the judgment in the case of **Chandi Prasad Uniyal & Ors. vs. State of Uttrakhand and others**, 2012 AIR SCW 4742 (2012) 8 SCC 417. Therefore, it is submitted that the O.A. may be dismissed.

5. None is present on behalf of the applicant.
6. Heard Sh. D.R. Sharma, and Sh. Arvind Moudgil, learned counsel for the respondents.
7. Issue of recovery is no more res-integra. Lordships in the case of **Rafiq Masih (White Washer)** (supra) have considered all the judgments on the issue and have summarized their view in para 12 of the judgment, wherein it has been held that recovery from employees belonging to Group C and D cannot be made and it has also been held that no recovery can be effected from retired employee or employee who is due to retire within one year of order of recovery. The Hon'ble Court has further held that no recovery be made from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued. Para 12 reads as under:-



"(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."□ (emphasis supplied).

8. On the basis of law laid down in the case of Rafiq Masih (supra), Govt. of India, Ministry of Personnel, Public Grievances & Pensions DoP&T has vide OM dated 02.3.2016 has advised all the concerned departments to deal with recovery of wrongful/excess payment made

to Government service in accordance with direction given by Hon'ble Supreme Court in aforesaid case. The case of the applicant is squarely covered by exceptions carved out by Lordships as he is retired and Group C employee and recovery was also in excess of 5 years because benefit was granted to him in the year 1998, whereas, respondents have recovered amount in the year 2016.

9. In the wake of above, we left with no option but to allow this O.A. in terms of judgment in the case of Rafiq Masih (supra). Accordingly, the respondents are directed to refund the amount of Rs. 1,19,467/- to the applicant, which they have recovered.
10. The O.A. stands disposed of accordingly. No costs.

**(P. GOPINATH)
MEMBER (A)**

Date: 22.04.2019.
Place: Chandigarh.

**(SANJEEV KAUSHIK)
MEMBER (J)**

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