

**SIN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD**

Original Application No. 21/473/2017

Date of Order: 08.01.2019

Between:

C. Kaleswara Rao, S/o.C. Panduranga Rao,
Aged 57 years, Occ: JTO,
Customer Service Centre, Erragadda,
Hyderabad Telecom District – BSNL.

... Applicant

And

1. The Chairman & Managing Director,
Bharat Sanchar Nigam Limited,
Regd. & Corporate Office: Bharat Sanchar Bhawan,
H.C. Mathur Lane, Janpath, New Delhi – 110 001.
2. The General Manager (West),
Bharath Sanchar Nigam Limited,
Hyderabad Telecom District,
Ameerpet, Hyderabad – 500 073.

... Respondents

Counsel for the Applicant	...	Mr. M. Venkanna
Counsel for the Respondents	...	Mr. M.C. Jacob, SC for BSNL

CORAM:

Hon'ble Mr. B.V. Sudhakar ... ***Member (Admn.)***

ORAL ORDER

{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }

2. The applicant is challenging the order of recovery of Rs.8,21,932/- from his salary by the respondents vide their letter dated 12.04.2017.

3. The applicant was appointed as Technician in the respondent organization on 09.07.1980. Thereafter, he got promotion as Technical Assistant in 1986. He appeared in the Limited Departmental Competitive Examination and got promoted as Junior Telecom Officer (JTO) on 28.08.2000. The JTO post is an

executive cadre post. The respondent organization provides accelerated financial upgradations to the employees in executive cadre after rendering 5 years, 10 years of service and so on. These executive levels are termed as E1, E2, E3, etc. The applicant was accordingly granted first time bound financial upgradation w.e.f. 01.10.2006 from E1 to E2 level. The financial upgradation is granted subject to the employee completing 2 weeks of training and passing the qualifying online test within a period of two years from the date of financial upgradation. Unless he qualifies in the prescribed test, the employee shall not be eligible for second financial upgradation from E-2 to E-3. The respondents vide letter dated 12.04.2017 have ordered recovery of Rs.8,21,932/- from the salary of the applicant in equal monthly instalments on the ground that he did not qualify in the prescribed test prescribed to be cleared for the first financial upgradation from E1 to E2 granted to him w.e.f. 1.10.2006.

4. The contentions of the applicant are that he was not put on notice in regard to the condition prescribed in the financial upgradation order dated 30.08.2007. The applicant in fact, got qualified in the online examination for the second financial upgradation from E2 to E3 held on 25.06.2013. While appearing for the online examination from E2 to E3, the respondents did not object that he was not qualified in the examination while moving from E1 to E2 level. However, when the respondents insisted that he should take the examination to continue to be eligible for financial upgradation from E1 to E2 level, he did take the online examination on 25.06.2013 and was declared successful. Despite clearing the said examination, the respondents have commenced the recovery of the said sum in monthly instalments of Rs.10,000/- from the salary of the applicant. The applicant contends that the action of the respondents is against the observations

of the Hon'ble Supreme Court in State of Punjab & Others Vs. Rafiq Masih (White Washer) etc., reported in CA No. 11527/2014.

5. The respondents in their reply statement intimate that they have introduced an executive promotion policy vide order dated 18.01.2007 which provides for a maximum of four financial upgradations to the next higher grades in regular intervals with certain conditions to be satisfied. One of the condition is to take two weeks training and qualify in the prescribed online test. The applicant was found eligible for first financial upgradation under the scheme and he was accordingly upgraded vide order dated 30.08.2007 from E1 to E2 pay scale of Rs.11,875-300-17,275 w.e.f. 01.10.2006. The applicant was expected to clear the test on or before 30.09.2008 to be eligible for second financial upgradation. Further, the applicant was expected to complete the mandatory training, but his increment was inadvertently drawn on 01.10.2008 without complying with the twin conditions. On verification, it was found that the applicant has passed online examination from E2 to E3 level, but not from E1 to E2 level. However, the applicant on being aware of the discrepancy, passed the online examination on 21.09.2016. Nevertheless, as the applicant did not complete mandatory training and qualify in the examination within stipulated period, the impugned recovery was ordered as per the rules in vogue. The applicant being an executive in the department, he is fully aware of the rules and therefore, taking the plea that the recovery should not be made is unreasonable.

6. Heard learned counsel and perused the records.

7A. The dispute is about not passing the examination and undergoing mandatory training within the stipulated period of time. The details placed

before the Tribunal does indicate that the applicant did not pass the examination or took the mandatory training within two years of getting his first financial upgradation. Further, it is also evident that the respondents did not take objection in time, by perusing the records. They have admitted that by mistake, they continued to allow the benefit to the applicant. Moreover, even after detecting the anomaly, the respondents did not order notice as to why such a recovery should not be made. This is the preliminary step which the respondents should have taken to order for recovery. Obviously, not doing so is violation of principles of natural justice. Besides, it is also to be noted that the applicant did pass the mandatory examination in 2016. Further, he was also moved from E-2 to E-3 level after passing the requisite online examination. These factors do establish that the applicant is a competent employee, who had the ability to clear the examinations. It was more because of a communication gap that the clearance could not occur within the stipulated time. Besides, he has also rendered the services required to the respondents organization after getting the financial upgradation from E1 to E2 level as is required by the respondents organization. Having taken his services in the elevated financial level for a certain period of time and later ordering recovery is unfair. The mistake lies with the respondents. They have fairly admitted the same. Had they detected the folly in time, the issue would not have cropped up. The mistake of the respondents should not recoil on the applicant and make him suffer. Hon'ble Supreme Court in the case of Nirmal Chandra Bhattacharjee v. Union of India, 1991 Supp (2) SCC 363 has held that *"The mistake or delay on the part of the department should not be permitted to recoil on the appellants."* Even in *Union of India vs. Sadhana Khanna, C.A. No.8208/01*, the Apex Court has

held that the mistake of the department cannot be permitted to recoil on employees. In yet another recent case of *M.V. Thimmaiah vs. UPSC, in C.A. No. 5883-5991 of 2007* decided on 13.12.2007, it has been observed by the Hon'ble Supreme Court that if there is a failure on the part of the officers to discharge their duties the incumbent should not be allowed to suffer.

B. Going a step further, the Hon'ble Supreme Court has ordered in Rafiq Masih case (supra) 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.

C. The applicant is a Group C employee and he did neither misrepresent nor did he commit any fraud on the respondent organization. Further, he has rendered services for the upgradation he got. He also cleared the stipulated examination in 2016. Therefore, in all respects, the applicant has fulfilled the conditions laid down by the respondents. It was a matter of some time delay in fulfilling the conditions laid. Even this could have been avoided had the respondents been alert. The applicant cannot be faulted on the ground that since he is an executive he is well aware of the rules. The same applies to the

respondents as well. It is also their bounden duty to review and direct action in time. As they have failed to do so, it is not proper to penalize the applicant by ordering the recovery. Therefore, keeping in view the observations of the Hon'ble Supreme Court cited supra, and the facts enumerated above, the OA fully succeeds.

D. In the result, the OA is allowed and the impugned order dt. 12.04.2017 is quashed. The respondents are directed to refund to the applicant the amount already recovered, if any, pursuant to the impugned order, within a period of two months from the date of receipt of this order.

E. There shall be no order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

Dated, the 8th day of January, 2019

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