

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

OA/021/1158/2017

**Reserved on: 01.04.2019
Order pronounced on: 02.04.2019**

Between:

R. Kanaka Lingeswara Rao,
S/o. Bala Koteswar Rao,
Aged about 62 years, Telecom Mechanic,
Retd. From GMTD, BSNL, Guntur and now
R/o. D.No.2-1-36/1, Near Railway Station,
Sattenpally, Guntur District,
Andhra Pradesh.

...Applicant

And

1. The Pr. Controller of Communication, Accounts,
A.P. Telecom Circle, 3rd floor,
Triveni Complex, Abids,
Hyderabad.
2. The General Manager,
Telecom District, BSNL,
Guntur.
3. The Chief General Manager, Telecom,
A.P. Circle, Vijayawada.
4. The Chief General Manager, Telecom,
A.P. Circle, Hyderabad.
5. The Chairman & Managing Director,
BSNL Corporate Office,
Bharat Sanchar Bhavan,
4th floor, Janapath,
New Delhi.

6. The Pr. Controller of Communication Accounts,
(Attached Office), Kaleswar Rao Market,
Vijayawada.

7. Union of India rep. by its Secretary,
Dept. of Telecommunication and I.T.,
20, Ashok Road,
New Delhi – 500 001.

...Respondents

Counsel for the Applicant ... Mr. K. Venkateswara Rao
Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC
Mrs. A.P. Lakshmi, SC for BSNL

CORAM:

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

ORDER

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

2. The OA is filed for withholding of a sum of Rs 2,00,000 from the DCRG of the applicant for overpayment of pay and allowances and settling his retirement benefits based on a basic of Rs 20,970 instead of Rs 22,640.

3. Brief facts are that the applicant joined the respondents organisation as wire man on 3.10.1978 and later promoted as Phone Mechanic. On the formation of BSNL , applicant was granted the first pay up gradation (NEPP-1) under Non Executive Policy on 1.10.2004 in the IDA scale of Rs 6550-9325 and later granted the second up gradation (NEPP-II) to the scale of Rs 13,600-

25,420 on 1.10.2011. Thereafter when the applicant retired on 31.7.2015, his retiral benefits were drawn showing the last pay drawn as Rs 20,970 though his actual last pay drawn was Rs 22,640. Besides, a sum of Rs.2,00,000 were withheld from the DCRG for alleged overpayment of pay and allowances. Applicant was also forced to credit Rs 33,671 towards excess payment received against leave encashment. Applicant represented on 13.8.2017 but there being no response the OA has been filed.

4. The contentions of the applicant are that the recovery of Rs 2,00,000 from DCRG was without furnishing any details. The recovery from DCRG and forcing the applicant to pay Rs 33,671 towards excess payment of leave encashment is in violation of the norms laid down by Hon'ble Supreme Court in Rafiq Masih case.

5. Respondents in their counter affidavit intimate that the pay of the applicant was wrongly fixed and as a result the last pay drawn was shown as Rs 22,640. This was corrected at the time of retirement and hence to cover any excess payment towards pay and allowance a sum of Rs 2 lakhs was withheld from DCRG. Besides, an SLP is pending on the issue of NEPP in Hon'ble Supreme Court and hence a decision is awaited to decide the issue.

6. Heard both the counsel and perused the documents plus the material papers submitted.

7. I) It is an admitted fact that the pay of the applicant was wrongly fixed and that the same was corrected at the time of the applicants retirement. The mistake has been owned by the respondents. In such circumstances the legal principle laid by the Hon'ble Apex Court in Rafiq Masih case comes into play. Recovery from Group C employees, as per the cited judgment, is impermissible under law in the following circumstances:

“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.

(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.”

Provisions i, ii and iii referred to above fully cover the case on hand. The applicant is a Group C employee. The recovery and credit towards leave encashment were events that occurred on the eve of the retirement of the applicant. The excess payment was made by mistake by the respondents. The applicant did not misrepresent nor did he misguide the respondents to obtain higher pay and allowances. There is no undertaking from the applicant, brought on record, stating that any excess payment will be repaid to the respondents. The mistake of wrong fixation of pay happened more than 10 years prior to the order of recovery. Hence the recovery effected and forcing the applicant to credit certain amount towards leave encashment are actions which go against the principle tenets of the Hon'ble Supreme Court judgment cited.

II) Besides, it was adduced in the reply statement that an SLP is pending in the Hon'ble Supreme Court in regard to NEPP and therefore the amount continues to be withheld. The learned counsel for the applicant has submitted the order of the Hon'ble Supreme Court in *BSNL v G.Rami Reddy and ors* reported in CA 2190-2191 of 2011 where in BSNL has sought permission to withdraw the SLP and the same was granted by the Hon'ble Supreme Court. Further, the applicant is not a party in the said SLP. Therefore

the objection that the SLP has been filed is untenable in view of the fact that the same has been withdrawn.

III) Applicant has sought relief to grant difference of monthly pension, gratuity and commutation from 1.8.2015 by working out the retiral benefits on the last pay drawn of Rs 22,460. This cannot be conceded to since only excess payments made by mistake are precluded from recovery as per Rafiq Masih case. Respondents are duty bound to correct the mistake. They cannot be forced to perpetuate the mistake by allowing the above relief as per Hon'ble Supreme Court observation in *State of Karnataka v. Gadilingappa*, (2010) 2 SCC 728, at page 730 where in it was held as under:

“It is a well-settled principle of law that even if a wrong is committed in an earlier case, the same cannot be allowed to be perpetuated.”

IV) The applicant's last pay drawn is Rs 20,970 after due correction as per para 6 and 7 of the reply statement filed on 20.3.2019 by the 1st, 6th and 7th respondents respectively. Respondents can re-fix the pension as per applicant's eligibility after correcting the mistake but they cannot recover the excess payment already made because of the mistake committed in properly fixing the pay and allowances of the applicant. Hence the decision of the respondents to this extent, in view

of the aforementioned facts, is arbitrary and illegal. Therefore, respondents are directed to consider as under:

- i) 1st and 7th Respondent to refund the amount of Rs 2,00,000 recovered from the DCRG of the applicant
- ii) 5th and 6th respondent to refund a sum of Rs 33,671 which was got credited for excess payment towards leave encashment.
- iii) Time allowed is 3 months from the date of receipt of this order.

With the above directions the OA is allowed. No order as to costs.

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

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