

CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

OA/021/00263/2017

Date of CAV : 09-10-2018
Date of Order : 24-10-2018

Between :

K.Prasad Rao S/o Venkateswarlu,
Aged about 57 years, T.T.A(Telecom Technical
Assistant), retired from Bhongir under GMTD,
Nalgonda and now resident of H.No.11-14-3/A,
“O” City, Near Seetha Ramanjaneyulu Temple,
Kdashibugga, Warangal-506002.

....Applicant

AND

1. The Pr. Controller of Communication, Accounts,
A.P.TelecomCircle, 3rd Floor, Triveni Complex,
Abids, Hyderabad-500 001.
2. The General Manager, Telecom District, BSNL,
Nalgonda.
3. The Chief General Manager, Telecom, A.P.
Circle, BSNL Doorsancharj Bhawan, Nampally
Station Road, Abids, Hyderabad-500 001.
4. The Chairman & Managing Director, BSNL
Corporate Office, Bharat Sanchar Bhavan,
4th Floor, Janapath, New Delhi.
5. Union of India, represented by its Secretary,
Department of Telecommunication and I.T,
20, Ashok Road, New Delhi-500 001.
6. The Chief General Manager, Telangana Circle,
Hyderabad.

...Respondents

Counsel for the Applicant: Mr. K. Venkateswara Rao

Counsel for the Respondents : Mrs.K.Rajitha, SC for BSNL
Mr. M.Brahma Reddy, SC for BSNL

CORAM :

THE HON'BLE MR.SWARUP KUMAR MISHRA, JUDICIAL MEMBER

(Order per Hon'ble Mr.Swarup Kumar Mishra, Judicial Member)

This application is filed under section 19 of the Administrative Tribunal's Act, 1985 to call for the records relating to Lr. No.CCA/23-VR/41638/DEC, 2014 dated 28.09.2015 issued by the first respondent and quash and set aside the same to the extent of recovering Rs.3,45,475/- towards the alleged over payment of pay and allowances and recovering a sum of Rs.35,560/- towards the excess paid leave encashment amount and also setting his retiral benefits on his voluntary retirement on 30.11.2014 at the basic pay of Rs.26,370/- in the scale of Rs.14900-27850 instead of at basic pay of Rs.29,150/- in the scale of Rs.16,370-30,630 as illegal, arbitrary, unjust, opposed to the CCS (Pension) Rules, 1972 and also in terms of dictum of law laid down by Hon'ble Apex Court in State of Haryana Vs. Rafiq Masih and consequently be pleased to direct the respondent to recalculate his retiral benefits on the basic pay of Rs.29,150/- in the scale of Rs.16370-30630 and

- (a) Pay the difference in pension from 1.12.2014 to till date of payment with interest @ 18% per annum.
- (b) Refund the recovered amount of Rs.3,45,475/- towards the alleged over payment of pay and allowances (OP & PA) from DCRG amount with interest @ 18% per annum from 1.12.2014 to till date of payment.
- (c) Refund of Rs.35,560/- from gratuity amount towards alleged excess paid EL encashment with interest @ 18% per annum from 1.12.2014 to till date of payment.
- (d) Pay the difference in DCRG amount from 1.12.2014 to till date of payment.
- (e) Pay the difference in commutation from 1.12.2014 to till date of payment.

- (f) Pay the difference in other attendant benefits like leave encashment etc., and pass such other order or orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The brief facts of the case are that, the applicant was initially appointed as Technician on 01.05.1986 and was promoted as Telecom Technical Assistant on 28.10.1996. He was absorbed in BSNL on 01.10.2000. It is submitted that the pay scale of TTA was upgraded from 4500-7000 to Rs.5,000-8,000 from 01.10.2000.

3. It is further submitted that the 4th Respondent issued letter dated 23.03.2010 on the subject of four promotions in the Non Executive Cadre. The applicant was granted the benefit of upgradations and he was placed finally in the scale of Rs.16,370-30,630 and his basic pay was Rs.29,150/- as on 30.11.2014 and as such his retiral benefits should be fixed and paid on the basic pay of Rs.29,150/-. However, his retiral benefits were settled on the basic pay of Rs.26,370/- in the scale of Rs.14,900-27,850 besides recovering a sum of Rs.3,63,371 from DCRG. This way of settling his retiral benefits and recovering Rs.3,63,371/- from his DCRG amount is illegal, arbitrary, unjust and in violation of CCS (Pension Rules, 1972).

4. It is further stated that this OA is filed for recalculating his retiral benefits on the basic pay of Rs.29,150/- in the scale of Rs.16,370-30,630 and for the refund of Rs.3,81,035/- with interest @ 18% per annum from 1.12.2014 to till the date of payment. The applicant further submits that as per the CCS (Pension) Rules, 1972 the retiral benefits like monthly pension,

DCRG, commutation, leave encashment should be paid to the applicant on the basis of average emoluments or the last pay drawn whichever is more beneficial. Hence this OA.

5. Respondents have filed reply statement stating that the pay of the applicant was fixed at Rs.4500/- from 01.01.1996 by the Unit in the pay scale of Rs.4500-125-7000 with date of next increment on 01.01.1996 (DNI advanced due to stepping up). The pay should have been fixed in the pay scale of Rs.6550-185-9325 from 01.10.2000 and then re-fixed in the upgraded pay scale of Rs.7100-200-10100 from 01.05.2002 on OTBP as per BSNL Hqrs.Lr.No.250-51/2002-Part-III,dt.24.09.2008.

6. The Respondents further state that, contrary to the above, the applicant's pay was directly fixed in the next corresponding scale of Rs.7100-200-10100 as on 01.10.2000 by the Unit as per the pay fixation Memo No.11935/TTA/2003, dt.09.05.2003 which resulted in drawal of excess pay from 01.10.2000 upto the date of Voluntary Retirement.

7. The Respondents further submit that the Respondent NO.1 pointed out this wrong pay fixation to the Unit ie Respondent No.2 on 19.3.2015 asking them to regulate the pay from 1.1.1996 onwards and resubmit the proposals. It is submitted that the Respondent No.2 resubmitted the pension proposals vide their letter No. E-III/VSRS/198602841/KPR/TTA/NGD/2014-15/19, dt.10.09.2015 with the revised pay fixation with a request to recover over payment of pay of

Rs.3,45,475+ Rs.35,560 towards excess of paid EL encashment.

8. The Respondents further submit that this office Respondent No.1 authorized retirement gratuity taking LPD as Rs.26,370/- duly recovering Rs.3,81,035/- from RG and his pension was fixed as Rs.13,185/-. The Respondents further contend that the action of the 1st Respondent in authorising the pensionary benefits by taking the Last Pay drawn as Rs.26,370/- is in order, in terms of BSNL Hq Letter No.250-51/2002-Part-III dated 24.09.2008 and the recovery of Rs.3,81,035/- being excess payment of pay and allowances and leave encashment is legal and covered by Rules and orders governing fixation of pay.

9. Respondents further submit that the mandate to grant pay scales to various categories of BSNL employees is given to BSNL Authorities under MOU. However, pay fixation on promotion / upgradation of BSNL employees are regularized as per Government Rules such as FRs, etc., since pensionary benefits including family pension of absorbed BSNL employees is paid by the Government from the Consolidated Fund of India under Rule 37-A of CCS (Pension) Rules, 1972. Any deviation from established rules such as FRs, etc., are brought to the notice of the BSNL authorities at the time of scrutiny of the service book of BSNL employees on their retirement. As such, Controller of Communication Accounts, DoT has been entrusted with the task of scrutinizing the service books / pension cases of retiring BSNL employees to satisfy that the entire pay fixation in particular pay scales have been done as per Government Rules such as FRs, etc., since pensionary

benefits including family pension of absorbed BSNL employees is paid by the Government from the Consolidated Fund of India under Rule 37-A of CCS (Pension) Rules, 1972. Any deviation from established rules such as FRs, etc., are brought to the notice of the BSNL authorities at the time of scrutiny of the service book of BSNL employees on their retirement. As such, Controller of Communication Accounts, DoT has been entrusted with the task of scrutinizing the service books / pension cases of retiring BSNL employees to satisfy that the entire pay fixation in particular pay scales have been done as per Government Rules such as FRs, etc., as in the instant case.

10. We have heard Mr.K.Venkateswara Rao, learned counsel for the applicant, Mrs.K.Rajitha, learned Sr Central Govt., Standing Counsel for Respondent No.1 and Mr.Brahma Reddy, learned Standing Counsel for BSNL.

11. After hearing counsel on both sides and having gone through the material placed on the record, we find that there is no material on record to show that any undertaking was given by the applicant or any such undertaking was obtained from him at the time of fixation of pay to the effect that any excess amount drawn by him shall be refunded by him or will be recovered from him. No notice for recovery was issued to the applicant who retired on 01.12.2014. The excess payment was detected on 19.03.2015 by the office of 1st Respondent. The amount sought to be recovered from the applicant is a huge amount of Rs.3,45,475/- and the period of recovery of excess payment relates from 01.01.1996 till the date

on which the applicant took Voluntary Retirement. The applicant was working as Telecom Technical Assistant. In support of his contentions, learned counsel for the applicant relies on the decision of Hon'ble Apex Court in the case of State of Punjab & Ors Vs. Rafiq Masih (White Washer), dated 18.12.2014. As per the principle decided in the case of Rafiq Masih, this Tribunal finds that the action of the Respondents in recovering the amount in question from the withheld gratuity amount of the applicant is illegal.

12. However, the materials on record clearly show that there has been wrong fixation of pay of the applicant and it should have been fixed in the pay scale of Rs.6550-185-9325 from 1.10.2000. Contrary to the above, the applicant's pay was directly fixed in the next corresponding scale of Rs.7100-200-10100 as on 1.10.2000 by the Unit as per the pay fixation memo dated 09.05.2003 which resulted in drawl of excess pay from 1.10.200 upto the date of Voluntary Retirement. Therefore the said wrong and error in fixing the pay of the applicant was subsequently detected. The applicant cannot take advantage of the mistake committed by the office of 1st Respondent for the purpose of claiming that he is entitled to retiral benefits on the basic pay of Rs.29,150/- in the scale of Rs.16370-30630. Therefore this Tribunal find that the action of the applicant in re-fixing the pay of the applicant is in order and there is no illegality in doing so. However this Tribunal finds that the recovery of amount of Rs.3,45,475/- from the applicant is illegal being not in accordance with the principles decided by the Hon'ble Supreme Court in the judgment in the case of State

of Punjab & Ors Vs. Rafiq Masih (White Washer), dated 18.12.2014 (cited supra).

13. Learned counsel for the applicant has not filed any rejoinder refuting the contentions raised by the respondents in their reply statements.

14. In the circumstances, it will not be just and proper to direct the Respondents to pay any interest on the said recovered amount. Accordingly this Tribunal directs the 1st Respondent to refund the applicant Rs.3,45,475/- already recovered from the gratuity of the applicant within a period of three months from the date of receipt of a copy of this order, failing which, the Respondents shall pay the above stated amount together with interest at the rate applicable to GPF deposits.

15. OA is allowed accordingly with no order as to costs.

(SWARUP KUMAR MISHRA)
JUDICIAL MEMBER

Dated : 24th October, 2018.

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