

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

OA/20/124/2019

CAV on :10/04/2019

Order Dated: 30/4/2019

BETWEEN:

Y. Samba Siva Rao,
S/o.Veerappadu,
Assistant General Manager (Retired),
Group.A (Non. Gazetted),
O/o. The General Manager,
Bharat Sanchar Nigam Limited,
Telecom District, Vizianagaram – 535 002,
R/o. Plot No.17, Deepa Mahal Back Side,
Rajeev Nagar colony, Srikakulam – 532 001.

..... Applicant

AND

1. Union of India rep. by
The Secretary,
Department of Telecommunications,
Sanchar Bhavan, New Delhi – 110 001.
2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
(Corporate Office), Janpath,
New Delhi – 110 001.
3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
A.P. Telecom Circle, Kaleswararao Market,
Vijayawada – 520 001.
4. The Controller of Communication Accounts,
AP Telecom Circle, Kaleswararao Market,
Vijayawada – 520 001.
5. The General Manager,
Bharat Sanchar Nigam Limited,
Telecom District,
Vizianagaram – 535 002.

6. The Accounts Officer (Pay and Cash),
Bharat Sanchar Nigam Limited,
O/o. The General Manager,
Telecom District,
Vizianagaram – 535 002.

..... Respondents

Counsel for the Applicant : Mr. M. Bhaskar, Advocate
Counsel for the Respondents : Mrs. K. Rajitha, Sr. CGSC
Mr. M.C. Jacob, SC for BSNL

CORAM

Hon'ble Mrs. Naini Jayaseelan, Admn. Member

ORDER

{ Hon'ble Mrs. Naini Jayaseelan, Admn. Member }

Heard Mr. B. Bhaskar, learned counsel for the applicant, Mr. M.C. Jacob, learned counsel for the respondents for BSNL and Mrs. K. Rajitha, learned Sr. Central Government Standing Counsel for the Respondents.

2. Brief facts of the case are that the applicant was appointed as Clerk, Group. C Post in the Department of Telecom on 02.02.1980 and subsequently he was promoted as JTO (Junior Telecom Officer) on 08.12.1997 and as SDE (Sub Divisional Engineer). On account of formation of BSNL on 01.10.2000. the applicant was absorbed in the BSNL from 01.10.2000 onwards and further promoted as DE (Divisional Engineer) / AGM (Assistant General Manager), Group.A Non-Gazetted, from 28.08.2014. The applicant was granted pay fixation under FR 22(1)(a)(1) with option facility for allowing from the date of next increment at the time of his promotion.

3. The applicant retired on 30.04.2018. On 20.09.2018 the 6th

respondent while issuing last Pay Certificate in favour of the Applicant indicated that an amount of Rs,5,75,822/- was to be recovered as over payment. The applicant represented against this recovery order and the respondents in their reply on 27.11.2018 have admitted that while preparing the said pay fixation, a mistake of over fixation of Pay occurred during his promotion from JTO to SDE regular on 30.11.1998 which resulted in over payment of Rs.5,75,822/-. The order also stated that since applicant is a Group-B employee over payment does not effect his financial position and hence recovery of over payment will be as per existing Rules. 4. It is the contention of the applicant that the action of the respondents is against the law laid down by the Hon'ble Supreme Court State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014 dated 18.12.2014 wherein the Hon'ble Supreme Court in para 12 of the judgement has summarized the following citations:-

“It is not possible to postulate all situation of hardship, which would govern employees on the issue of recover, 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, summarize 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 recover.
- 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 out weight the equitable balance of the employer's right to recover."

The applicant's case covered under sub (para)2&3 and the case of the applicant as well in other decided cases in CAT, Hyderabad in OA.1834/2015 to 1836/2015 Dumpala Venkatesam Vs. Union of India and others wherein respondents were directed to refund the amounts already recovered from the applicants. In addition, it was held the applicants are also entitled for interest at the rate applicable to GPF deposits from the due dates till the date of actual refund. Another OA.977/2017 CAT, Hyderabad Bench in the case of Union of India B.V. Chalapathi Rao Vs. South Central Railways by stating that *"consequently the action of the respondents in effecting recovery of an amount of Rs,4,73,331/- from the retiral benefits of the applicant is set aside. The respondents are directed to refund the said amount to the applicant with interest which is allowed on GPF from the date of recovery till the date of refund"*. Subsequently, the Hon'ble High Court disposed of the WP.No.43760/2018 on 17.12.2018.

5. In the instant case the recovery after a lapse of more than 19 years comes within the purview of the Hon'ble Supreme Court judgment in State of Punjab vs. Rafiq Masih in Civil Appeal No.11527/2014 dated 18.12.2014.

6. In their reply statement the respondents have contended that the basic pay of the applicant as on 01.10.1998 has been erroneously fixed at

Rs.8750/- instead of Rs.8000/- and he was granted fixation benefits under FR 22 (a) (i) fixing his pay at Rs. 9250/- w.e.f. 30.11.1998 and this wrong pay fixation was detected only when his service register was sent for scrutiny for settlement of retirement benefits of the applicant .

7. It is an undisputed fact that mistake has occurred several years ago and it was detected at the time of settling the pensionary benefits of the applicant. In the present case, the respondents ordering recovery from the applicant is iniquitous, since there are specific directions as per Office Memorandum No. F.No.18/03/2015-Estt.(Pay-I) Government of India, Ministry of Personnel, Public Grievances & Pensions, Department of Personnel & Training, New Delhi, dated 02.03.2016 which was issued after consultation with the Department of Expenditure and the Department of Legal Affairs wherein the Ministries/ Departments are advised to deal with the issue of issue wrongful /excess payments made to Government servants in accordance with above decision of the Hon'ble Supreme Court in CA. NO.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. The present case is covered under para.4(ii) &4(iii) of the said OM.

8. In view of the above, the OA is allowed. No order as to costs.

(NAINI JAYASEELAN)
ADMN. MEMBER

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