

U/b

**CENTRAL ADMINISTRATIVE TRIBUNAL,  
MUMBAI BENCH, MUMBAI.**

**O.A.210/00714/2017**

**Dated this Tuesday the 2<sup>nd</sup> day of April, 2019.**

**Coram: Dr.Bhagwan Sahai, Member (Administrative).**

Shri Ashok Kumar Jha,  
Working as General Manager  
(QA & Inspection), BSNL Mumbai.  
Residing at:  
6 Narmada, BSNL Complex,  
Juhu Road, Santacruz (West),  
Mumbai - 400 054. .. Applicant.

**( By Advocate Shri S.V. Marne ).**

**Versus**

1. Union of India,  
Bharat Sanchar Nigam Ltd.,  
through Chief General Manager,  
QA & Insp. Circle, BSNL  
Sanchar Vikas Bhawan,  
Residency Road,  
Jabalpur - 482 001.
2. The Chief Accounts Officer,  
Office of Chief General Manager  
(QA & Inspection Circle),  
Sanchar Vikas Bhawan,  
Residency Road,  
Jabalpur - 482 001.
3. Accounts Officer (Pay),  
Office of Principal General Manager  
(QA & Inspection Circle),  
Jaynagar, Bangalore - 560 070. .. Respondents.

**( By Advocate Shri V.S. Masurkar ).**

Order reserved on : 26.02.2019  
Order delivered on : 02.04.2019

**O R D E R**

Shri Ashok Kumar Jha working as General  
Manager (QA & Inspection), Bharat Sanchar Nigam

Limited (BSNL) Mumbai has filed this O.A. on 17.11.2017. This O.A. has not been filed against any specific order. He seeks relief in the form of declaration that action of the respondents to recover Rs.3,88,887/- from the applicant for alleged excess payment of Transport Allowance is illegal and restraining the respondents from recovering it from salary and allowances of the applicant.

He is also seeking direction to the respondents to refund the amount of Rs.64,815/- recovered from his salary from the month of October, 2017 along with 12% interest, as well as to pay his Transport Allowance of Rs.18,138/- for the period from 29.08.2017 to 30.09.2017 along with 12% interest.

**2. Brief facts of the case:**

**2(a).** The applicant was initially appointed with Department of Telecommunications (DoT), Government of India from 04.02.1991. On formation of BSNL, he was posted with BSNL on deputation from 01.10.2000 upto 11.03.2013. Then he was again deployed with BSNL. Similarly he was repatriated to DoT on 24.07.2015 but redeployed with BSNL on 21.08.2015. He was promoted as General Manager, BSNL on entrustment basis on 03.03.2016 and later on was promoted to Sr.Administrative Grade (SAG) i.e.

posted on regular basis as General Manager on 28.08.2017. The applicant states that he has not been absorbed in the services of BSNL and continues to be DoT officer on deputation with BSNL.

**2(b).** He further states that there is provision for payment of Transport Allowance to Government of India officers who are not provided vehicles for commuting between their office and residence, and this allowance is linked to the Grade Pay and Dearness Allowance (DA) drawn by the officers. As per OM of Department of Expenditure, Government of India dated 29.08.2008 (Annex-A-1), for officers drawing Grade Pay of Rs.5400/- and above, the TA payable is Rs.3200/- + DA. As per Para 3 of that OM, officers drawing Grade Pay of Rs.10000/- and Rs.12000/- and those in the HAG + Scale, are entitled to use official car in terms of OM dated 28.01.1994 and shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs.7,000/- p.m. Plus dearness allowance thereon (Annex-A-1, page 14 and 15).

**2(c).** When posted as Dy. General Manager (Director) till 2012, he was drawing the grade pay of Rs.8,700/- and was entitled for payment of TA @ Rs.3200+DA. After February, 2012 when the

Department was unable to provide official car to the applicant, TA was paid to him @ Rs.1400/- although he should have been paid TA @ Rs.3,200+DA.

**2(d).** The applicant was granted Non-Functional upgradation in the grade pay of Rs.10,000/- with effect from 04.04.2012 vide order dated 27.09.2012 (Annex-A-3). In view of this the applicant believed that he became entitled for payment of TA @ Rs.7,000+DA. So when he was paid TA of only Rs.1,400/- p.m., he submitted a letter dated 27.05.2013 (Annex-A-4) to the Accounts Officer (Cash), Chief General Manager, Telecom (CGMT), Maharashtra Circle, Mumbai for increasing TA to him as applicable to the Government officers with the grade of Rs.10,000/-. In this letter he also mentioned letter of BSNL Corporate Office dated 21.05.2013. To this he received a reply dated 18.06.2013 (Annex-A-5) mentioning that a clarification had been sought from the Corporate Office, Delhi and his request would be considered on receipt of such clarification. The applicant continued to draw TA @ Rs.1,400/- p.m. till July, 2013 and it was enhanced to Rs.12,600/- from August, 2013 till June, 2017.

**2(e).** On 20.07.2017, the Respondent No.3 i.e. Accounts Officer, Office of the Principal General

Manager, Bengaluru informed him that his TA would be reduced from July, 2017 onwards and a copy of a Note dated 21.07.2017 from Respondent No.2 i.e. Chief Accounts Officer, O/o CGM, Jabalpur addressed to Shri Mukesh Mandal directing recovery from his pay because of reason that he was not entitled for TA @ Rs.7000+DA on grant of Non-Functional upgradation with grade pay of Rs.10,000/- was emailed to him, under which it was been mentioned that the Non-Functional upgradation officers drawing grade pay of Rs.10,000/- are not entitled to draw TA @ Rs.7000/- p.m. + DA thereon. The applicant states that his TA was reduced to Rs.3328/- from July, 2017 though he was paid TA @ Rs.7200/- for July, 2017 and August, 2017, but his Transport Allowance was reduced from July, 2017 onwards.

**2(f).** The applicant was promoted as General Manager with Grade Pay of Rs.10,000/- by order dated 28.08.2017 (Annex-A-10), so he became entitled for TA @7200+DA atleast from 29.08.2017 when he joined as General Manager on regular basis. The applicant submitted representation dated 05.10.2017 (Annex-A-12) to Chief Accounts Officer, O/o CGM Jabalpur informing that he had joined in Sr.Administrative Grade from 29.08.2017 and requested for drawal of higher TA therewith. Then on 27.10.2017 he was

informed by the respondent No.3 that recovery would be made from his salary for the excess payment of TA made to him.

Then he made another representation from 30.10.2017 that no deduction should be made from his salary for the TA paid to him earlier and such recovery after 5 years defies all general sense and he also mentioned two decisions of Delhi High Court in **Radhacharan Shakiya (Director/SE) and others Vs. Union of India and others (W.P. (C) 3445/2014)** decided on 03.09.2014, and **Union of India & another Vs. JS Sharma and others (WP(C) 5555/2013)** decided on 04.09.2013 and Apex Court decision in **Syed Abdul Qadir & Others Vs. State of Bihar & Others (Civil Appeal Nos.3351-3354/2003)** decided on 16.12.2008.

**2(g).** Thereafter an amount of Rs.64,815/- was deducted from his salary of October, 2017, and an amount of Rs.3,88,887/- was also sought to be recovered. He claims that although he was paid TA @ Rs.7000+DA from August, 2013, the respondents are seeking to recover the TA right from March, 2013. Thereafter the applicant submitted two more representations dated 02.11.2017 and 09.11.2017 (Annex-A14) for immediate refund of amount of Rs.64,815/- deducted from salary of October, 2017.

**3. Contentions of the parties:**

The applicant contends that -

**3(a).** the action of the respondents in seeking recovery of the TA paid to him after lapse of more than four years is without issuing any show cause notice and without passing any written order is illegal. The action of the respondents in seeking this recovery is based on whimsical and capricious stand and they have not followed the principles of natural justice;

**3(b).** as held by the Apex Court in the case of **State of Punjab Vs. Rafiq Masih (White Washer) etc** in CA No.11527/2014 (Arising out of SLP(C) No.11684/2012), and as per the DOPT OM dated 02.03.2016, (copy at Annex-A-15, page 47 of the OA), the applicant is fully covered by Direction No.(v) of the above judgment. The recovery being sought from him is iniquitous, harsh and arbitrary as per DOPT OM dated 06.02.2014 (Annex-A-16). Issuance of show cause notice is necessary;

**3(c).** BSNL vide letter dated 09.09.2016, 23.03.2017 and 07.11.2016 (Annex-A-17, pages 53 to 55) has also issued orders in line with DOPT OM and provided that only the Head of the Department has been empowered to send proposal for waiver of recovery in deserving cases, but these instructions

have been completely ignored by the respondents;

**3(d).** as per order of Corporate Office of BSNL dated 17.03.2014, approval of Management Committee of BSNL Board was conveyed to permit the officers of DGM and equivalent in the field units for use of official vehicle for coming to and from from residence to office. In that order it has been stated that TA shall not be paid to such officers (Annex-A-18, page 56);

**3(e).** since the applicant was not provided with the facility of official car for commuting from residence to office and office to residence, he was entitled for TA and the moment he was granted Grade Pay of Rs.10,000/-, the TA is required to be automatically enhanced. He was paid TA by the respondents @ Rs.7000/- + DA to him from March, 2013 onwards on the basis of their own interpretation of OM dated 29.08.2008. Even as DGM, he was entitled for use of official car as per order dated 17.03.2004 and if there was any misinterpretation on the part of the respondents with regard to Para 3 of OM dated 29.08.2008, since they had already paid the applicant higher TA for last 4 years, they should not be allowed to recover the amount retrospectively from March, 2013. Because of recovery of Rs.64815/- from the salary of October, 2017, his carry home

salary was highly reduced and the amount recovered is iniquitous, harsh and arbitrary. Based on the decision of Delhi High Court in the cited two cases and of the Apex Court in Syed Abdul Qadir, the respondents should be restrained from making recovery of all the earlier paid TA from the applicant; and

**3(f).** in the OM dated 29.08.2008 of Department of Expenditure, any particular post or grade has not been specified. The claim of the respondents that exercise of option by the officers of SAG needs approval of the Competent Authority is misleading. The claim of the respondents that Apex Court decision in the case of Rafiq Masih is not applicable to the present applicant is misleading. The applicant was not given any intimation about recovery to be made from him. The claim of the respondents that applicant wrongly drew TA @ Rs.7000/- p.m. is misleading. Although he was entitled for TA @ Rs.7000/- p.m. + DA from April, 2012 till May, 2013, wrongfully the respondents did not pay him the higher TA. Therefore, the O.A. be allowed.

The respondents in their reply contends that -

**3(g).** officers of rank of only Joint Secretary

and above are entitled to exercise option to avail of the official car or to draw Transport Allowance. Hence prior to 28.08.2017, the applicant was not entitled for exercising any option for drawal of such TA @ Rs.7000/- per month as he was not in the grade of regular General Manager. The exercise of option given by the officers of SAG rank for not availing of transport facility of official car and to draw TA needs approval of the Competent Authority. Since recovery ordered against the applicant was of the excess amount paid over a period of less than 5 years, the caselaw of State of Punjab Vs. Rafiq Masih is not applicable to this case;

**3(h).** the applicant himself requested for drawing TA at higher rate according to Grade Pay of Rs.10000/- per month when he actually was given that Grade Pay only as Non-Functional upgradation. While being on the Non-Functional upgradation, he drew the higher TA from March, 2013 onwards, but only the post of SAG is equivalent to the post of Joint Secretary to the Government of India. On this grade he joined only on 29.08.2017 and, therefore, prior to that date he was not entitled for the TA of Rs.7200/-+DA per month;

**3(i).** prior to 29.08.2017 he being the officer

only in the Junior Administrative Grade, he was entitled for TA of Rs.3200+DA per month, but he actually draw the TA @ Rs.7000+DA per month from March, 2013. Hence the recovery of Rs.3,88,887/- has been approved against the applicant by the Competent Authority in six instalments of Rs.64,815/- each and to avoid tax related problems, it was ordered to be recovered in six instalments during the same financial year. This was informed to the applicant over telephone and also by email on 27.10.2017 and, therefore, his claim that he was not informed about it in advance is misleading;

**3(j).** he became entitled for higher pay of Rs.15,750/-+DA on his promotion to the Sr.Administrative Grade from 29.08.2017, and during the period of Non-Functional upgradation, he was not entitled for the higher TA which he had already drawn. In view of mails and letters by the respondents, the claim of the applicant is not true that he was not informed in advance;

**3(k).** the payment of higher TA to the applicant was made by the Accounts Officer on his own request and it was not a decision of the respondents i.e. the approval of the Competent Authority and that is why he had been specifically informed by the Accounts Officer on 18.06.2013 with respect to his

request for higher TA, that a clarification had been sought from Corporate Office, New Delhi and his request would be considered on receipt of such clarification. But even then the applicant continued to draw the TA at the higher rate for which he was not entitled;

**3(1).** the caselaw cited by the applicant i.e. Radha'charan Shakiya and JS Sharma decided by the Delhi High Court is not applicable to his case. BSNL is a loss making Undertaking and it cannot afford any excess payment to the applicant and, therefore, O.A. should be dismissed;

**3(m).** as per OM dated 28.01.1994 and the OM of Department of Expenditure on 29.08.2008, the mere upgradation of the applicant to the Non-Functional grade with Grade Pay of Rs.10,000/- cannot be treated as eligible for higher TA. Also in the subsequent OM of Department of Expenditure dated 19.08.2016, it has been clarified that officers who are not entitled for use of official car in terms of Department of Expenditure OM dated 28.01.1994 are not eligible for opting for drawal of Transport Allowance @ Rs.7000/- per month + DA, even though they are drawing Grade Pay of Rs.10,000/- in PB-4 in dynamic ACP Scheme of Non-Functional Upgradation. This clarification has been issued after considering

various decision of Principal Bench of the Tribunal dated 13.05.2014 filed by Shri Radhacharan Shakiya and others, and decision of the Delhi High Court in that case. Therefore, the present O.A. should be dismissed.

**4. Analysis and conclusions:**

I have carefully perused the O.A. memo along with its Annexes, rejoinder filed by the applicant, reply and sur-rejoinder filed by the respondents and considered the arguments advanced by both the parties.

**4 (a).** In this O.A., no specific order of the respondents has been challenged by the applicant. The main issue in the O.A. is whether the applicant was entitled for payment of TA of Rs.7000/- per month on granting of Non-Functional Upgradation to him in the Grade Pay of Rs.10,000/- from 04.04.2012 by order dated 27.09.2012 and whether the recovery of the higher TA paid to him at that rate is justified.

**4 (b).** The applicant was granted Non-Functional Upgradation with Grade Pay of Rs.10,000/- from 04.04.2012 (Annex-A-3). The applicant drew higher TA @ Rs.7000/- + DA per month since 27.05.2013. He was promoted as regular General Manager with Grade Pay of Rs.10,000/- in the Sr.Administrative Grade

only from 28.08.2017.

**4(c).** The relevant Government orders and BSNL orders on the issue of TA are these -

(i). as per OM dated 29.08.2008 issued by the Department of Expenditure, Ministry of Finance, Government of India, employees drawing Grade Pay of Rs.5400/- and above were eligible for TA in 13 A-1 cities @ Rs.3200/- + DA thereon. As per Para 3 of that OM, officers drawing Grade Pay of Rs.10,000 and Rs.12,000 and those in the HAG + Scale , who are entitled to use the official car as per OM dated 28.01.1994 shall be given the option to avail themselves of the existing facility or to draw the Transport Allowance at the rate of Rs.7000/- per month plus dearness allowance thereon.

(ii). As per OM of Department of Expenditure dated 28.01.1994, officers of the rank of Joint Secretary and above, who desire to avail facility of use of Staff Cars for journeys from residence to office and back shall now pay at the following rates:-

Joint Secretaries - Rs.100/- per month

Additional Secretary and above - Rs.125 per month.

The rates were prescribed for recovery of that amount from their salary for use of the staff car.

(iii). BSNL Corporate Office order dated

17.03.2004 related to transport facility to JAG officers in field units. By this approval was granted to use official vehicle for coming from residence to office and back without payment of any Transport Allowance to such officers.

**4 (d) .** A careful examination of the stipulations under these orders clearly shows that before his promotion to SAG on 28.08.2017, the applicant was not holding any post equivalent to Joint Secretary to the Government of India and he was granted only Non-Functional Upgradation from 04.04.2012 and, therefore, during that period i.e. from 04.04.2012 upto 28.08.2017, the applicant was obviously not entitled for payment of TA @ Rs.7000/- per month + DA thereon.

**4 (e) .** The claim of the applicant on page 8 of the O.A. that once he was granted the Non-Functional upgradation, his Transport Allowance was required to be enhanced automatically and he was entitled for grant of TA @ Rs.7000/- p.m. + DA is misleading, it is not justified. His plea that he had only requested the Accounts Officer is also not tenable because his letter dated 27.05.2013 to AO (Cash), CGMT, Maharashtra Circle, Mumbai was in fact an instruction for paying him TA applicable to Government officers with Grade Pay of Rs.10000/- per

month. Therefore, his claim that he had only requested and the respondents on their own decided to grant him the higher TA is totally misleading.

**4(f).** In fact the response of the AO (Claims) dated 18.06.2013 with reference to the applicant's letter of 27.05.2013 was correct that his request would be acted upon only after receipt of necessary clarifications from the Corporate Office. However, the applicant has not brought on record any evidence to show that the Corporate Office of BSNL had approved payment of higher TA to him. In fact instead of drawing the TA at higher rate, he should have waited for the clarification from the Corporate Office of the BSNL which he did not.

**4(g).** The claim of the applicant that his case is covered by the decision of Delhi High Court dated 04.09.2013, Union of India and another Vs. Sharma and others, by which the decision of the Tribunal dated 05.02.2013 was upheld by the High Court. In that case, the Tribunal had held that grant of Non-Functional Upgradation to Rs.10,000/- would not bestow any right to the officers to claim promotion or deputation benefit and such officers were held not entitled for the Transport Allowance.

The facts of the case of Radhacharan Shakiya and others Vs. Union of India and others

decided by the Delhi High Court on 03.09.2014 were different, when the Court observed that a condition binding the parties for recovery of excess payment of salary or pension resulting from wrong fixation was not produced. These decisions of the High Court were also prior to the decision of the Apex Court in the case of State of Punjab Vs. Rafiq Masih decided on 18.12.2014.

**4(h).** In this case, the categories of cases in which recovery of excess payment made in the past would not be permissible as per the Apex Court decision in the case of State of Punjab Vs. Rafiq Masih are not applicable. The applicant does not fall any of those five categories. The applicant occupies a very senior position in the BSNL i.e. General Manager. The recovery of past excess payment was initiated from him after informing him in the month of October, 2017 for that excess payment of TA drawn by him from March, 2013 onwards. From these facts it is clear that the recovery initiated by the respondents because of wrongful drawal of higher TA by the applicant in the past was not for a period older than 5 years from the time of initiation of recovery.

**4(i).** The OM dated 19.08.2016 issued by the Department of Expenditure, Government of India on

the subject matter of this O.A. i.e. admissibility of Transport Allowance in cases where the officers are drawing Grade Pay of Rs.10,000/-, is after considering the decision of the Principal Bench in case of Radhacharan Shakiya and others, and it was clarified that officers who are not entitled for the use of official car for commuting between residence to office and back in terms of Department of Expenditure OM dated 28.01.1994 are not eligible to opt for drawal of Transport Allowance @ Rs.7000/- p.m. + DA thereon, in terms of Department of Expenditure OM dated 29.08.2008, even though when such officers are drawing Grade Pay of Rs.10,000/- under the dynamic ACP Scheme of Non-Functional Upgradation. Thus the case of the applicant is totally covered by this clarification also and, therefore, he was not entitled for drawal of Transport Allowance of Rs.7,000/- p.m. from March, 2013 onwards. As laid down by the Apex Court in Chandi Prasad Uniyal's case, unlawful payment can always be recovered. Consequently the recovery initiated by the respondents is fully justified. Also there is no case of hardship caused to the applicant by the recovery initiated against him.

**4(j).** In fact when the respondents communicated to him about recovery of the excess Transport

Allowance claimed wrongfully by the applicant in the past, as a senior responsible officer, he himself should refunded the excess payment claimed and received by him. But he did not do so. Instead of doing that, he has filed this O.A. agitating against the recovery by the respondents of the excess payment received by him for which he was not entitled. In view of the above position in this case, the present O.A. is totally devoid of merit and is liable for dismissal.

5. Decision:

The O.A. is dismissed. The parties to bear their own costs. Interim relief stands vacated.

(Dr. Bhagwan Sahai)  
Member (A).

H.

JWP  
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