

**Central Administrative Tribunal
Principal Bench, New Delhi**

OA No.1504/2017

New Delhi, this the 8th day of January, 2019

**Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Mr. Pradeep Kumar, Member (A)**

Chaturbhuj Rathore
Aged 62 years, Group 'A'
S/o Shri Patiram Rathore
R/o 40/4A, Gautam Nagar,
New Delhi 110 049.

... Applicant.

(By Advocate : Shri Ashish Nischal)

Vs.

1. Union of India
Through Secretary
Ministry of Communication & IT
Department of Telecommunications
DTO Building, Prasad Nagar,
New Delhi 110 005.
2. Bharat Sanchar Nigam Limited
Through its Chief General Manager
7th Floor, Bharat Sanchar Bhawan,
New Delhi 110 001.
3. The Controller of Communication Accounts
Ministry of Communication & IT,
Government of India
UP (West) Telecom Circle,
Brahmpuri Telecom Building,
Meerut 250002.
4. Bharat Sanchar Nigam Limited
Through its Telecom District manager
Avas Vikash Colony,
Mainpuri 205001. Respondent.

(By Advocate : Shri Gyanendra Singh with Shri S. K. Tripathi for respondent Nos.1 & 3 and Shri Sanjeev Kumar for respondent No.4).

: O R D E R (ORAL) :

Justice L. Narasimha Reddy, Chairman:

The applicant joined the service of Department of Telecommunication (for short, DOT) in the Accounts Section. Half way through, he came to be absorbed in the Bharat Sanchar Nigam Limited (for short, BSNL), and he retired as Chief Accounts Officer on 30.09.2014. His pay scale was reduced through a Memo dated 18.04.2015 and the deductions were also made from his Gratuity through order dated 26.06.2015. This OA is filed challenging both the orders.

2. The applicant contends that he was not issued any show cause notice before the pay was reduced to his detriment or when the recovery was effected. Reliance is placed upon the judgment of Hon'ble Supreme Court in ***State of Punjab & ors. Vs. Rafiq Masih*** [(2014) 8 SCC 883].

3. The respondents filed the counter affidavit opposing the OA. It is stated that during the verification of the service particulars of the applicant in the context of fixing his pension and other retirement benefits, it was noticed that his upgradation from E-2 to E-3 was not supported by the certificate which is mandatory under the service rules, and though he was issued a letter dated 05.03.2015 to provide

the proof of training/certificate, he did not respond to it. They contend that left with no alternative, promotion was withdrawn and that, in turn, necessitated the re-fixation of the pay scale. It is also stated that on finding that a sum of about Rs.2,70,000/- was paid in excess to the applicant, it was deducted through order dated 26.06.2015. The allegation as to violation of principles of natural justice is denied.

4. We heard Shri Ashish Nischal, learned counsel for the applicant, Shri Gyanendra Singh with Shri S. K. Tripathi, learned counsel for respondent Nos.1 & 3 and Shri Sanjeev Kumar, learned counsel for respondent No.4.

5. Part of service of the applicant was in DOT and part, in BSNL. The service conditions of employees of this nature are defined through various memoranda issued by the Government from time to time. On retirement, both the organisations undertake an assessment as to the entitlement of the employee for the retiral benefits. The applicant retired from service on 30.09.2014 on attaining the age of superannuation. Obviously, verification was undertaken both in DOT and BSNL in the context of fixation of such benefits. It was noticed that the upgradation of the applicant from E-2 to E-3 was not supported by any certificate. According to the service rules, it is only the

employees in E-2, that have undergone two weeks training of a particular description, that can be upgraded to E-3.

6. To be fair to the applicant, the respondents addressed a letter dated 05.03.2015 requesting him to provide proof in this behalf. The letter reads as under:-

“Sub Pay fixation of Shri CB Rathore, Retired CAO

Sir,

With respect to subject cited above it is to intimate you that E2 to E3 upgradation vide circle letter No.-UPW/CR-Cell/TBP/ETA/2007/47 dated 24/12/2010 was given to you, but no administrative orders/approval from O/o TDM Mainpuri is available in your service book.

The orders for passing/completing the 2 weeks compulsory training/online examination are also not available in service book.

You were also given E3 to E4 upgradation vide letter no-TDM/MPI/Upgradation/2011-12/15 dated 09/11/2011 but the orders for passing/completing the 2 weeks compulsory training/online examination are also not available in service book.

So please provide the photo copies of the said/above mentioned letters within 7 days so that your case may be processed further.”

However, in reply to this, the applicant did not make any mention about the certificate at all. The reply reads as under:

“Ref: Your letter No.E1/Pension/Chuturbhuj Rathore CAO/2014-15 dated 05.03.2015.

In respect to above subject it is stated that the order of my First TBP from E2 to E3 was issued on dated 24.12.2010 while I was working in officiating

category of CAO/IFA in Higher grade and scale. The effective date of this promotion was 01-10-2004 but implemented w.e.f. February 2005. The month of my regular post based Promotion in the same scale of E3 category. The administrative orders/approval is the part of administration please.

I was also given E3 to E4 upgradation on dated 09-11-2011 wef 1-10-2009 and opted wef February 2010 the month of by DNI on the date of issuing these order I was already working as CAO/ISA under officiating category of the same scale and grade. More over I got my regular post based promotion in the grade of CAO Ad hoc wef from September 2012 not only 10 months latter of issuing the TBP order of E4 the same scale but I opted the post based promotion wef February 2013 the month of my next DNI.

According to above facts and orders my pay fixation as it is in order please. All the orders are available in my service book.”

7. Once the applicant did not reveal whether he has undergone training required for upgradation from E-2 to E-3 or not, in spite of there being a specific query in this behalf, the respondents had no alternative except to withdraw the upgradation. This, in turn, has its cascading effect on his further upgradation to E-4. It is in this context, that the respondents passed order dated 18.04.2015 refixing the salary of the applicant, with effect from the date he was upgraded on the assumption he has undergone training. Naturally, the amount referable to the difference of salary drawn by the applicant without basis needs to be recovered. Such recovery was effected through order dated 26.06.2015. Once it has emerged that the applicant was put on notice about the proposed action, he cannot complain about the violation of principles of natural justice.

8. Reliance is placed upon the judgment of ***Rafiq Masih*** (supra). In that judgment, the Hon'ble Supreme Court was mainly dealing with the recoveries sought to be effected against Class-III and Class-IV employees. The applicant herein, is a Group 'A' Officer, that too, in the Accounts Section. He was required to be very cautious and careful as regards his upgradation. Once, it is not disputed that the upgradation was not proper, consequences are bound to follow.

9. We do not find any merit in the OA. It is accordingly dismissed.

(Pradeep Kumar)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/pj/