

Reserved
(On 18.07.2019)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the **04th** day of **September** 2019

Original Application No. 330/00012 of 2017

Hon'ble Ms. Ajanta Dayalan, Member – A
Hon'ble Mr. Rakesh Sagar Jain, Member – J

Suresh Kumar Agrawal, S/o late Jagdish Prasad, Mohalla – Sabni Gram,
P.O. – Nazibabad, District – Bijnor.

. . . Applicant

By Adv: Shri Arun Kumar Singh and Shri N. Srivastava

V E R S U S

1. Bharat Sanchar Nigam Limited through its Chief Managing Director, New Delhi.
2. Chief General Manager Telecom, B.S.N.L., (U.P. West Circle), Meerut.
3. General Manager, Telecom District, Bijnor.
4. Control of Communication Accounts U.P. (West), Telephone Circle, Meerut.

. . . Respondents

By Adv: Shri D.S. Shukla

O R D E R

By Hon'ble Ms. Ajanta Dayalan, Member – A

The present OA has been filed by the applicant – Suresh Kumar Agrawal seeking direction to the respondents to return the amount of Rs. 1,69,955/- recovered from his retiral dues on account of statedly excess payment made to him due to wrong fixation of pay from 01.07.2007. The applicant has also sought payment of interest on amount recovered as well as on delayed disbursement of gratuity and commuted value of pension. He has further sought quashing of orders dated 09.05.2014 and 23.07.2014 fixing his pay from 01.01.2007 and fixation of his last drawn salary at Rs. 37,740/-.

2. The applicant retired as Junior Telecom Officer on 28.02.2014 from Bharat Sanchar Nigam Limited. Prior to his retirement, his pay was fixed at Rs. 37,740/- on 19.02.2014. However, consequent to objection dated 30.04.2014 (Annexure No. 2 of Compilation No. II) raised by the Accounts Branch regarding wrong pay fixation in his case, the pay of the applicant was revised downwards to Rs. 36,440/- (correct amount as per order is Rs.36,640/-) vide order dated 09.05.2014 (Annexure No. 1 of Compilation No. I). Again an objection was raised on 05.06.2014 (Annexure No. 3 to Compilation No. II) stating that pay as on 01.08.2012 at the time of Time Bound Promotion needs to be revised further to Rs. 34,500/- in place of Rs. 35,570/-. Consequently, his pay was further revised to Rs. 35,540/- vide impugned order dated 23.07.2014 (Annexure No. 2 of Compilation No. I).

3. Learned counsel for the applicant argued that as per Circular dated 23.06.2009 (Annexure No. 5 to Compilation No. II) of Corporate Office, in case an employee gives his option for Time Bound Promotion from the date of notional increment, he will be entitled for two increments – one for Time Bound Promotion and another for notional increment. Accordingly, the petitioner was also entitled for two increments in October 2012 i.e. from the date of his notional increment. Hence, reducing of his pay on account of grant of two increments to him is arbitrary and erroneous.

4. Learned counsel for the applicant further pleaded that one junior to the applicant Abdul Hasnain (the correct name is Abul Hasnain as per his pay fixation order cited) was also given two increments as per order dated 06.08.2014 (Annexure 5A to Compilation No. II). As such the applicant has been discriminated against and recovery of Rs. 1,69,955/- made from his retiral dues (Annexure No. 6) is incorrect.

5. Learned counsel for the applicant also stated that though the applicant retired in February 2014, his gratuity and commuted value of pension amounting to Rs. 16,36,848/- was given to him only on 23.09.2014 through Bank Draft dated 08.09.2014. The said Bank Draft was lost by the applicant and, therefore, the applicant submitted an application immediately thereafter on 26.09.2014 for issuance of duplicate Bank Draft. However the duplicate Bank Draft of the said amount was issued to him only on 08.11.2014 (Annexure No. 10) – i.e. after considerable delay. The applicant took up the matter with the department by letters / representations dated 04.05.2016 and 06.12.2016 (Annexures No. 11 and 12), but no action has been taken by the respondents as yet.

6. In view of the above facts, learned counsel for the applicant pleaded that the applicant is entitled for the relief sought by him in the OA as his pay has been incorrectly reduced, recovery has been made from his retiral dues and payments of other retiral dues has been delayed.

7. Learned counsel for the respondents has contested the claim of the applicant. He stated that the OA has been filed after more than two years from the date of passing of impugned orders. This is because two impugned orders have been passed in May and July 2014 whereas the OA has been filed only in January 2017. Despite this, no delay condonation application is filed alongwith this OA. The applicant has failed to approach the competent court of law in time and has failed to explain the delay in approaching the Tribunal. He has brought our attention to Section 21 of the Administrative Tribunals Act, 1985, which reads as under:-

“21. Limitation - (1) A Tribunal shall not admit an application, -

(a) in a case where a final order such as is mentioned in clause (a) of subsection (2) of section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made;

(b) in a case where an appeal or representation such as is mentioned in clause (b) of sub-section (2) of section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.

(2) Notwithstanding anything contained in sub-section (1), where –

(a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates ; and

(b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in clause (a), or, as the case may be, clause (b), of sub-section (1) or within a period of six months from the said date, whichever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in clause (a) or clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section(2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period.”

As such, the case is barred by period of limitation itself and needs to be dismissed on this ground.

8. Learned counsel for the respondents further pleaded that prior to his retirement, salary of the applicant was fixed at Rs. 37,740/- on 19.02.2017. However, consequent to objection dated 30.04.2014, this was revised to Rs. 36,440/- (Rs.36,640/- and not Rs.36,440/- as per order) vide order dated 09.05.2014. On 05.06.2014, another objection was raised and consequently pay was further reduced to Rs. 35,540/- vide order dated 23.07.2014. The applicant had given his option that he wishes to take Time Bound Promotion from the date of his notional increment in October 2012. So, reduction of his salary was not on account of grant of two increments to him. In view of overpayment, deduction of Rs. 1,69,955/- was made from his retiral dues. His gratuity and commuted value of pension of Rs. 16,36,848/- was given to the applicant on 23.09.2014 through Bank Draft dated 08.09.2014. However, the said Bank Draft was lost by the applicant and, therefore, after completing formalities with regard to application dated 26.09.2014

submitted by the applicant, duplicate Bank Draft was issued in his favour on 08.11.2014.

9. The department has stated that the applicant did not submit any application or representation to the General Manager (Telecom) before his retirement for finalization of his pension case. He submitted his pension papers only after his retirement i.e. on 18.03.2014. This is despite the fact that as per Department of Telecom norms, pension papers of retirees should reach the concerned officer 8 months before retirement. Thus, the applicant himself delayed in submitting his pension papers by almost 9 months.

10. The department has also stated that during scrutiny of documents, some discrepancies in fixation of salary of the applicant were found and an amount of Rs. 62,068/- was found due from him on account of overpayment of pay and allowances. This was because the applicant was charge-sheeted and got punishment of detention of two increments vide order dated 01.12.2011. The same was modified vide order dated 18.07.2012, whereby the penalty of reduction to two stages lower in time scale of pay for a period of 6 months was awarded with further direction that the employee will earn increments of pay during the period of such reduction and on expiry of above period, reduction will not have the effect postponing the future increments of his pay. Copies of two orders are annexed at Annexure CR-2. The applicant never protested against these two orders. Besides these, objections vide letter dated 30.04.2014 were raised which are just and proper and correct within the four corners of law.

11. Regarding Abdul Hasnain's case, the respondents have stated that Abdul Hasnain retired on 30.06.2014 i.e. after four months of applicant's retirement and during this period, he earned one increment. Even

otherwise, Abdul Hasnain had no charge sheet or penalty operating against him and as such, no comparison could be made with him. The applicant is, therefore, not entitled to get differential amount of salary

12. The respondents have further stated that the applicant himself after his retirement deposited Rs. 19,888/- vide receipt No. 26 of Book No. 387 on 15.05.2014 and gave his oral consent to deduct remaining amount.

13. The respondents have further stated that the applicant himself lost the Bank Draft dated 08.09.2014. Thereafter, respondents had to write letters to the concerned bank for stop payment to ensure that there is no double payment of the amount and also to confirm that no payment against earlier Bank Draft had already been made. As such, delay in issuing duplicate Bank Draft was due to applicant's own fault and was beyond their jurisdiction. The duplicate Bank Draft was issued by the Bank on 08.11.2014 and was immediately sent to the applicant. As the applicant himself was responsible for this delay, no case is made out against the department.

14. In view of all above, the respondents have concluded that the applicant has no case and no relief needs to be granted to him.

15. We have heard learned counsels for both the parties and have also gone through the pleadings of the case. We have also given out thoughtful consideration to the entire matter.

16. We find that the basic facts of the case are not disputed. The applicant retired in February 2014. Based on objections by Accounts Branch in April and June 2014, his pay was revised downwards vide the two impugned orders. Recovery of Rs. 1,69,955/- was made from his

retiral dues. Payment of gratuity and commuted value of pension of Rs. 16,36,848/- was paid to him on 23.09.2014 vide Bank Draft dated 08.09.2014. This Bank Draft was, however, lost by the applicant and duplicate Bank Draft was issued to him on 08.11.2014. The applicant is now claiming correct fixation of pay at the original level as well as payment of interest on recoveries made from him and on delayed payment of gratuity and commuted value of pension. He is also claiming parity with Abdul Hasnain.

17. Firstly, we note with displeasure that in the O.A. filed by the applicant, he has hidden the fact that punishment had been imposed on him vide order dated 01.12.2011, later modified vide order dated 18.07.2012. He has also ignored the fact that another person Abdul Hasnain with whom he is seeking parity, was never awarded any punishment. This amounts to effort by the applicant to mislead the Court by hiding relevant facts in order to gain reliefs to which he may otherwise not have been entitled to. We definitely do not appreciate such an effort by the applicant. It is settled law that one who claims equity must come before the court with clean hands. Thus, purely on this ground alone, this case deserves to be dismissed.

In the rejoinder, the applicant has explained that the penalty did not have the effect of changing his pay and pension and as such this fact was not relevant to the case in the O.A. We, however, observe that the very first relief being sought by the applicant is refund of amounts recovered from him and interest thereon 'in the garb of excess payment due to wrong fixation of pay of the petitioner' from 01.07.2007 onwards. In this calculation, penalty imposed vide orders dated 01.12.2011 and 18.07.2012 will matter as recoveries made from him include recoveries due to wrong fixation of his pay from 01.07.2007 onwards. Therefore, these recoveries take into consideration pay drawn by him during penalty

period as well. A reference in this regard is invited to paragraph 8 (A) of the O.A. As such, this plea of the applicant is an afterthought and is not acceptable to us.

18. We further note that the applicant has approached this Tribunal with a delay of over one year. Section 21 of the Administrative Tribunals Act, 1985 is very clear on this issue. Moreover, Section 21 is worded in negative terms. It is quoted in para 7 above. As per these provisions, no application can be admitted by this Tribunal unless it is within time line stipulated in the said Section. Else, the delay in filing application needs to be explained to the satisfaction of the Tribunal. In this case, there is delay in filing of OA; but there is no delay condonation application and hence, no cause of delay is given in the O.A.

Later, in the rejoinder, the applicant has stated that he approached Pension Adalat and other departmental authorities first. Only after he failed to obtain any results therefrom, he approached this Tribunal. He has also stated that his cause is a recurring cause - being correct fixation of his pay and pension. We are, however, of the clear view that repeated representations do not extend the time lines given in the Act. The Hon'ble Apex Court in the case of C. Jacob has held that the law of limitation is to be applied strictly and dead and stale matters cannot be allowed to be revived. The Hon'ble Apex Court has also held that person who is not vigilant about his rights, loses his rights. The O.A., therefore, needs to be dismissed on the ground of limitation as well.

19. Besides above, we find that as per Department of Telecom Rules, the retiree was to submit his pension papers 8 months in advance. However, in case of the applicant, he has submitted his pension papers only after his retirement i.e. 18.03.2014.

In the rejoinder, the applicant has claimed that he was given papers by the department only in December 2013 and the date marked on pension papers is only an internal process. But he has not produced any evidence to support his contention. We believe that officer needed to take some efforts on his own part as well to get pension papers from the department in time. His rejoinder does not show any such effort at all. It does not even talk of this aspect. We are, therefore, of the view that this delay is directly attributable to him. He cannot, by any means, claim interest on account of consequent delay in payment of his dues towards gratuity and commuted value of pension.

The applicant received Bank Draft dated 08.09.2014 in September 2014 – i.e. after a delay of less than 7 months from the date of his retirement – the delay which is attributable to him. Thereafter, he lost the said Bank Draft by his own fault. The duplicate Bank Draft was issued to him in November 2014. Considering that the issue of duplicate Bank Draft will obligatorily involve requirements such as no payment has been made against the first Bank Draft, stop payment order to the Bank for the first Bank Draft etc., we do not see any unusual delay in issuing the duplicate Bank Draft to the applicant. In any case, another agency i.e. Bank was also involved in this exercise and as such, this portion of exercise was not completely under control of the respondents department alone.

In view of all the above, we are of the clear view that the respondent department cannot be held responsible for delay in payment of the retiral dues of the applicant.

20. The applicant has relied upon circular dated 23.06.2009 to show that he was entitled for two increments at the time of his Time Bound Promotion – one increment for Time Bound Promotion and another for next increment – as he gave his option for Time Bound Promotion from the date of his notional increment. However, we find from the perusal of

the said circular that there is no mention of entitlement of the employees for two increments in the said circular. The said circular basically discusses date of next increment in case of Time Bound Promotions. This is the question posed in the circular. The answer given is that “on post based promotion of an executive to the scale in which he is already upgraded under time bound scale upgradation, only an additional increment is to be added in the basic pay of the promoted officer in his current scale. As the scale of the executive is to remain unchanged on such post based promotion, DNI fixed with w.r.t. financial up-gradation granted earlier will also remain unaltered”. A plain reading of this circular, does not support the contention of the applicant. As such, the applicant is not able to establish his case for wrong fixation.

21. We also note that the applicant himself deposited Rs. 19,888/- vide receipt No. 26 of Book No. 387 on 15.05.2014. This deposit made by him clearly indicates that he was aware of some overpayment having been made to him. The department has also stated that the applicant gave his oral consent to deduct rest of the amount overpaid to him. In any case, we note that the recovery has been made from the applicant way back in 2014. The applicant is not Group ‘C’ or Group ‘D’ employee. He also cannot take shelter of judgment of Hon’ble Supreme Court in the case of State of Punjab and others etc. vs. Rafiq Masih (White Washer) etc. – Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No. 11684 of 2012). This judgment has been pronounced by the Hon’ble Apex Court only on 18.12.2014, whereas the recovery being questioned by the applicant through this OA had already been made on that date and the case of the applicant stood settled. We also observe that the case of Rafiq Masih is regarding recoveries to be made from the employees. The whole judgment does not talk of reimbursement of recoveries already made. It also does not at all discuss cases already settled in past.

22. Regarding parity with Abdul Hasnain, the department has already stated that there was no charge sheet against Abdul Hasnain and there was no penalty against him. As such, these two cases are not at par. Besides, Abdul Hasnain retired 4 months after the applicant i.e. in June 2014 and in the meanwhile, he earned one more increment as his date of increment was 1st June every year. We also note from the document relied upon by the applicant himself (Annexure 5 A) that Abdul Hasnain was already drawing increments earlier than the applicant every year. While the applicant was drawing his increment in October every year, Abdul Hasnain drew his increments in June every year. From the comparison of the two statements of these two persons (Annexures 1 & 2 of Compilation No. 1 and Annexure 5 A of Compilation No. II), it is clear that from 2007 onwards Hasnain was reaching the applicant's pay level four months earlier. In other words, Hasnain was drawing more pay than the applicant for four months every year even prior to 2014. Besides, Hasnain drew his next increment on 01st June 2014 and retired on 30.06.2014. On the other hand, the applicant retired in February 2014 itself and could not draw his equivalent increment in October 2014 prior to his retirement. Obviously, pension of the applicant would be less in these circumstances. As such, the applicant is not able to establish parity with Abdul Hasnain.

23. In view of all above – specifically the fact that while the OA has been filed with delay of over one year but there is no delay condonation application as well as the effort on behalf of the applicant to hide relevant facts and other factors as narrated above, we do not find any grounds for granting any relief to the applicant.

24. The OA No. 12 of 2017 is, therefore, dismissed both on merit and on limitation. There is no order as to costs.

(Rakesh Sagar Jain)
Member – J

(Ajanta Dayalan)
Member – A

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