

**Central Administrative Tribunal
Jaipur Bench, Jaipur**

T.A. No. 09/2012

Reserved on: 01.07.2019
Pronounced on: 19.07.2019

**Hon'ble Mr. Suresh Kumar Monga, Member (J)
Hon'ble Mr. A. Mukhopadhyaya, Member (A)**

Laxmi Prashad Sharma S/o Chaturbhuj Sharma R/o Mohini Sadan, Hari Marg, Tonk Road, Jaipur – 18 (Raj.).

...Applicant.

(By Advocate: Shri P.N.Jatti with Ms.A.B.Jatti)

Versus

1. Chairman & Managing Director, Bharat Sanchar Nigam Limited, 10th Floor, Statsman House, B-148, Barakhamba Road, New Delhi-01.
2. Chief General Manager Telecom Raj. Circle, Bharat Sanchar Nigam Limited, Rajasthan Circle, Sardar Patel Marg, Jaipur-302008.
3. Principal General Manager, Telecom District, Bharat Sanchar Nigam Limited, M.I. Road, Jaipur-302010 (Raj).
4. Controller of Communication Accounts, Department of Telecommunication DOT CELL (Pension) Jhalana Doongri, Jaipur-302009. ...Respondents.

(By Advocate: Shri R.P.Singh for Shri Neeraj Batra)

ORDER

Per: A.Mukhopadhyaya, Member (A):

The present Original Application, (OA), arises from the revision in the pay of the applicant from Rs.11,600/- per month

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to Rs.10,850/- per month after his superannuation from the service of the respondent organisation BSNL and its consequent effect on his pension. The applicant has produced the pay slip for his salary for November 2005, i.e. the month of his retirement, (Annexure MA/3), which shows his Industrial Dearness Allowance, (IDA), basic pay as being Rs.11,600/- per month. He contends that this figure was correctly computed and arose as per calculations properly made on conversion of his pay from the Central Dearness Allowance, (CDA), pattern to the IDA pattern when his services were transferred from the Central Government to the respondent organisation BSNL in 2001; (Annexure 2 read with Annexures MA/1, MA/2 and MA/3 refer). After his superannuation, the BSNL however revised his Last Pay Certificate, (LPC), unilaterally on 17.02.2006, (Annexure 3), in which his basic pay was reduced to Rs.10,850/- per month. As a result, a recovery of Rs.69451/-, (Annexure 3 refers), was also ordered to be made from him. His pension was also reduced from Rs.8000/- per month to Rs.6463/- per month. Aggrieved by this, the applicant approached the Hon'ble Rajasthan High Court vide S.B. Civil Writ Petition No.8464 of 2006. The Rajasthan High Court vide its order dated 19.03.2012 transferred the petition to the Central Administrative Tribunal for adjudication.

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2. Thus the applicant now seeks the following relief from this Tribunal:

- i) By an appropriate order or direction impugned order dated 17.02.2006 (Annexure No.3) be quashed and set aside and the petitioner be paid all consequential benefits.
- ii) By an appropriate order or direction respondents be directed to make payment of the recovered amount of Rs.69451/- along with interest @ 24% p.a.
- iii) By an appropriate order or direction respondents be directed to revise pension payment order after placement of the petitioner in the pay scale of Rs.6500-200-10500.
- iv) By an appropriate order or direction respondents be directed to make payment of Rs.5 Lac as cost amount for his mental harassment, humiliation and financial loss to the petitioner.
- v) Any other order which is considered appropriate in the facts and circumstances of the case be passed in favour of the petitioner.

3. In reply, the respondents have averred that at the time of his retirement on 30.11.2005, the applicant was working as Junior Telecom Officer, (JTO), in the respondent organisation BSNL and at that time the IDA pay scale for the post of JTO had not been declared / announced by the BSNL Headquarters, New Delhi. Therefore, the pay of the applicant was fixed in the pre-existing available CDA pay scale of Rs.6500-200-10500. On subsequent declaration of the corresponding IDA pay scale, his

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pay was however erroneously fixed at Rs.11,100/- per month as this was the corresponding stage in the IDA pay scale for the pay being drawn by the applicant on 01.07.2003. This error was corrected with the applicant's pay being converted from the CDA scale to the IDA scale on the date of formation of BSNL, i.e. 01.10.2000 subsequently and thus the impugned order of fixation dated 17.02.2006, (Annexure 3), and resultant Pension Payment Order, (PPO), are correct in every respect, as is the recovery computed at Rs.69,451/- which was made from the gratuity payable to the applicant. The respondents further contend that this recovery from gratuity has been made in accordance with the undertaking given by the applicant enabling the same, (Annexure R/4), and that this is in accordance with the Central Civil Services (Pension) Rules, 1972, (hereafter called "**Pension Rules**"), which permits recovery of outstanding government dues from the amount of gratuity payable to an employee. The respondents further contend that since the applicant had in effect opted for the IDA pay scale of his own volition when he opted for absorption in BSNL with effect from 01.10.2000; (Annexure R/7), the correction made in the fixation of his pay cannot be termed as a reduction of pay.

4. Learned counsels for the parties were heard and the material available on record was perused.

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5. Learned counsel for the applicant stated in his arguments that effective reduction in the pay of the applicant after his superannuation from service without giving him an opportunity/hearing to represent against the same constitutes a clear violation of the basic principles of natural justice and the doctrine of *audi alteram partem*. In support of this contention, learned counsel for the applicant cited the following cases:

- i) Bhagwan Shukla vs. Union of India, AIR 1994 SC 2480.
- ii) Sahibram vs. State of Haryana & Others 1995 Supp. (1) SC 18.

6. *Per contra*, learned counsel for the respondents argued that since the applicant had opted to be absorbed in BSNL as per the respondent organisation's rules and had further given an undertaking at the time of his superannuation enabling the recovery of any excess amount paid to him by way of salary or allowances from his gratuity, refixation of his pay fixed erroneously earlier as per the rules of BSNL could not be termed a reduction of pay or indeed a violation of any principle of natural justice.

7. It is undisputed in this case that the respondent organisation reduced the pay of the applicant by the issue of an order refixing his pay, (Annexure 3), well after his date of superannuation.

In the case of **Bhagwan Shukla vs. Union of India**, (supra), cited by the applicant, the Apex Court has clearly ruled that where such a reduction in pay is made, albeit on account of wrong fixation earlier due to "**administrative lapses**", the result of the exercise obviously has "**civil consequences**" and if the affected party is not granted an opportunity to show cause against such reduction of his pay and is not even put on notice before such reduction is made, then the order is "**made behind his back without following any procedure known to law.**"

In the cited case, the Apex Court has ruled this to be a flagrant violation of the principles of natural justice, where the affected appellant in that case had been made to suffer a huge financial loss without being heard. The Apex Court has further ruled as follows:-

".....Fair play in action warrants that no such order which has the effect of an employee suffering civil consequences should be passed without putting the concerned to notice and giving him a hearing in the matter....."

8. The circumstances of this case appear to be identical in that the applicant's basic pay has admittedly been retrospectively reduced by the respondents after his superannuation without affording him an opportunity of hearing to represent against the

same. Consequently, there appears to have been a clear violation of the principles of natural justice by the respondent BSNL in this case also.

9. As regards the recovery of Rs.69,451/- from the gratuity paid to the applicant as a consequence of the aforementioned re-fixation, the principles laid down by the Hon'ble Supreme Court in the case of **State of Punjab and Others vs. Rafiq Masih** (2015) 4 SCC 334, clearly stipulate that such a recovery from a retired employee by the employer is harsh and impermissible in law. The present recovery is thus impermissible, not least because it arises as a consequence of an admitted error on the part of the respondents.

10. Since the order dated 17.02.2006 (Annexure A/3) has been held to be violative of principles of natural justice, therefore, the same is hereby quashed with liberty to the respondents to pass a fresh order regarding re-fixation of the applicant's pay after affording him an opportunity of hearing. As the recovery from a retired employee cannot be affected in view of the principles laid down by the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), therefore, the respondents are directed to refund a sum of Rs.69451/- to the applicant with interest @ 8% per annum. The whole exercise shall be completed within a period of two months from the date of receipt of a certified copy of this order

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with a revised PPO being issued in the case if and as found necessary.

11. There will be no order on costs.

(A.Mukhopadhyaya)
Member (A)

(Suresh Kumar Monga)
Member (J)

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