

**Central Administrative Tribunal  
Jaipur Bench, Jaipur**

**O.A. No. 60/2018**

Reserved on: 03.09.2019  
Pronounced on:19.09.2019

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

Krishan Kumar Nagar S/o Shri N.C.Nagar, aged 60 years, Cast Brahmin R/o 58 Godara Colony Khatipura Road, Jhotwarak Jaipur-302012 (Raj.) Retired from BSNL as Office Superintendent (P) office of the PGMTD Jaipur (Raj.)

...Applicant.

(By Advocate: Shri H.R.Dhaka)

Versus

1. Chief Managing Director, Bharat Sanchar Nigam Ltd., 4<sup>th</sup> Floor Bharat Sanchar Bhawan, Janpath, New Delhi – 110001.
2. Chief General Manager, Telecom Rajasthan Circle, Sardar Patel Marg, C-Scheme, Jaipur-302010.
3. Principal General Manager, Telecom District Jaipur, Opposite Jaipur GPO MI Road, Jaipur-302010.

...Respondents.

(By Advocate: Shri Jitendra Sharma)

**ORDER**

**Per: A.Mukhopadhaya, Member (A):**

The present Original Application, (OA), arises from the recovery of Rs.1,25,074/- from the applicant on his superannuation, (Annexure A/3), from the respondents' service on 31.03.2017. The applicant states that he became aware of this recovery when the pay slip for the month of March 2017 was received by him after his retirement. Thereupon, he sought

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details of this recovery under Right to Information Act; (Annexure A/5). On receiving the information sought, (Annexure A/6), the applicant found, (a copy of the respondents' notesheet - Notesheet 3 at pages 23 and 24 of the Paper Book), that the recovery from him arose allegedly on account of wrong fixation of his pay by the respondents with effect from 01.10.2004, (Notesheet 4 at page 24 of the Paper Book refers), and the amount to be recovered was computed at Rs.80,703/-, (Notesheets 3 and 4 at pages 23 and 24 of the Paper Book refer), and not at Rs.1,25,074/-. The applicant avers that as confirmed by these notesheets, the recovery in question was approved for being made from his leave salary encashment only on 01.04.2017; (Notesheets 4 and at pages 24 and 25 of the Paper Book refers), i.e. after his superannuation on 31.03.2017. Aggrieved by this, he served a legal notice dated 27.09.2017, (Annexure A/1), on respondent No.3 who however rejected his claim vide the reply dated 30.10.2017, (Annexure A/2), stating that the re-fixation done between 01.10.2004 to 31.03.2017 leads to a conclusion that a sum of Rs.1,25,074/- was paid in excess to the applicant and accordingly that this has been correctly recovered. The applicant points out that even by going their own statement, a substantial proportion of the recovery, if not the whole of it pertains to a period which is more than 10 years prior to his retirement. Aggrieved by the aforementioned action of the

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respondents, the applicant has now approached this Tribunal seeking the following relief:-

- i) That by a suitable writ/order or directions the respondents be directed to return the irregular recovery for Rs.1,25,074/- as soon as possible with 18% interest up to the date of refund as marked Annexure 2.**
- ii) Any other relief, which is deemed fit.**

2. The respondents, while not disputing the chorology or factual matrix of the case, aver that the recovery in question was calculated manually at Rs.80,703/- for the period between 01.10.2004 to 30.11.2014. Thereafter, for the period between 01.12.2014 to 31.03.2017, (the date of the applicant's superannuation), the computerised ERP System calculated a recovery of Rs.44,371/- as being due from the applicant. Thus, they contend that the recovery made of the sum of these two amounts which comes to a total of Rs.1,25,074/- has been correctly made from the applicant and arises out of the correct fixation of his pay for the period between 01.10.2004 to 31.03.2017. They further aver that, as evidenced by Annexure R/1 dated 06.03.2017 a copy of which was given to the applicant, he was informed that his pay fixation with effect from 01.10.2004 and onwards had been found to be incorrect. The respondents accordingly plead that the recovery made is correct and legal and that therefore the OA should be dismissed.

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3. In his rejoinder to the reply as above, the applicant has placed on record a copy of the judgment dated 18.12.2014 of the Hon'ble Supreme Court in the case of **State of Punjab and Others vs. Rafiq Masih** (2015) 4 SCC 334 in support of his contentions; (Annexure A/8).

4. Learned counsels for the applicant and the respondents were heard and the material available on record was perused. Counsel reiterated the arguments made in the OA and its reply to the same respectively.

5. Learned counsel for the applicant also cited the judgment of the Apex Court in the case of **Rafiq Masih** (supra) to argue that the recovery in question falls under the following criteria wherein recoveries by employers have been ruled to be impermissible in law, (para 12 of judgment at Annexure A/8 refers):-

**(ii) Recovery from retired employees, or employees who are due to retire within one year, of the order of recovery.**

**(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.**

**(v) In any other case, where the Court arrives at the conclusion, that recovery if made from the**

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**employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.**

6. A perusal of the reply shows that no specific averment has been made with reference to the applicant's contention at para 5 (b) of the OA that as per Rule 63 (1) of CCS (Pension) Rules, 1972, Government dues recoverable from the applicant, as assessed under Rule 71, were required to be communicated to the Accounts Officer of the respondents' organisation at least two months before the date of retirement of a Government servant. Rather, the reply states that the intimation of dues recoverable from the applicant was sent to the Accounts Officer, (Pension), only vide letter dated 25.02.2017 and an objection raised with regard to the applicant's pay fixation with effect from the period between 01.10.2004 till 31.03.2017 was communicated to the applicant vide letter dated 06.03.2017; (Annexure R/1). The reply also does not specifically contest the applicant's contention that it was authorised and made after the superannuation of the applicant.

7. It is thus undisputed in this case that the recovery of Rs.1,25,074/- made from the applicant was effected after he superannuated from service and related to a period stretching

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back to 01.10.2004, as admitted by the respondents themselves. Given the ruling of the Hon'ble Supreme Court in the case of **Rafiq Masih** (supra), this recovery is therefore found to be impermissible in law as per the stipulations made in para 12 (ii) and (iii) of the judgment as reproduced earlier. The recovery also appears to fall foul of the stipulation made in para 12(v) of the aforementioned judgment in that such substantial recovery from a retired employee on account of what is admittedly the respondents' own error in computing the applicant's pay fixation can certainly be said to be harsh. Therefore, keeping in view the ruling of the Apex Court in the case of **Rafiq Masih** (supra), we find that the recovery of Rs.1,25,074/- made from the applicant in this case is impermissible and unsustainable in law.

8. Accordingly, the OA succeeds. The respondents are directed to return the amount of Rs.1,25,074/- earlier recovered from the applicant within a period of two months from the date of receipt of a certified copy of this order.

9. There shall be no order on costs.

(A.Mukhopadhaya)  
Member (A)

(Suresh Kumar Monga)  
Member (J)

/kdr/

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