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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 1370/2003

New Delhi this the 5th day of February, 2004

Hon'ble Shri Bharat Bhushan, Member (J)

Jawahar Lal Kaul,
H.No.705/21 A, Ward No.3,
Mehroli, New Delhi-30

Applicant

(By Advocate Shri S.C. Saxena)

VERSUS

1. Union of India
through Secretary,
Ministry of Communication,
Sanchar Bhawan,
20 Ashoka Road,
New Delhi-1
2. Chairman and Managing Director,
MTNL, Jeevan Bharati Building,
Tower-1, Connaught Circus,
New Delhi-1
3. Chief Accounts Officer, MTNL,
Tower-II, Connaught Circus,
New Delhi-110001

Respondents

(By Advocate Shri Satish proxy counsel
for Shri V.K.Rao)

O R D E R

Hon'ble Shri Bharat Bhushan, Member (J)

Applicant has filed the present application under Section 19 of the Administrative Tribunals Act, 1985 stating therein that he had retired from the post of Senior Time Scale cadre of Group 'A' in MTNL w.e.f. 30.6.2002. His case is that from 12.8.1994 till the date of his retirement on 30.6.2002 he was serving as AGM, Divisional Engineer and Vigilance Officer of the MTNL. His grievance is, that the respondents by issuing the impugned order dated 27.8.2002 (Annexure A) had effected the recovery of a sum of Rs.78250/- from the gratuity of

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the applicant stating therein that the recovery was on account of over payment of pay and allowances. The representation made against such such recovery was also rejected vide Annexure B dated 23.1.2003. Hence, this act of the respondents has been termed as arbitrary, illegal and against the principles of natural justice since the recovery has been made without issuing him any show cause notice and without affording him an opportunity of being heard. Consequently both Annexures A and B have been challenged in this OA.

2. Respondents have, however, contended that the recovery orders made/issued by them are just and proper since it was found that an over payment on account of pay and allowances was made to the applicant at the time of his promotion to Sr. Time Scale, due to wrong fixation of pay on the basis of his promotion to the Jr. Time Scale of ITS (Group A) on temporary/ad hoc basis w.e.f. 15.7.1994. Hence, by effecting the recoveries they have merely rectified the mistake committed by them 7 years back.

3. Heard the learned counsel for the parties and perused the records. A similar matter regarding order of recovery from gratuity and leave encashment issued after superannuation of the employee came up for consideration before the Jammu and Kashmir High Court and while deciding the O.W.P. 155 of 1997 on 2.12.1999 in **Hans Raj Vs. Union of India** reported in (2000 (2) ATJ 476), the recovery was held to be illegal and without ^{FC} authority of

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law. Therein it was observed that as per CCS (Pension) Rules, Government was required to assess the dues two years prior to the date of retirement but in no case later than eight months before superannuation. Hence, the impugned order was quashed. Principal Bench of this Tribunal in yet another case **Smt. Narinder Marwah Vs. Union of India** reported in (ATJ 1993(2)401) was also pleased to quash the impugned order wherein the applicant had prematurely retired from service in 1992 and his pay fixation of 1984 was reduced after 8 years i.e. in the year 1992, without giving him an opportunity of being heard. It was held in the said case that it was against the principles of natural justice. The Apex Court in the case of **P.H.Reddy and Others Vs. National Institute of Rural Development and Others** (2002(20)ATJ 208) held as under:-

"The general rule of law is that, where excess amount has been paid erroneously to an employee, and in the payment of which he had no role to play, or committed no misrepresentation or fraud, in that event (even though the pay and the emoluments had been reduced as a result of refixation/revision of pay scales), the amount so overpaid cannot be recovered from him unless there are certain glaring facts and circumstances to take a different view".

Similar view was taken by the Apex Court in an earlier decision in the case of **Sahib Ram Vs. State of Haryana** (1995(2) RSJ 139) which reads as under:-


"In that case, the appellant Sahib Ram, was appointed as a Librarian in Government College. He did not possess the required educational qualification and, therefore, he was not entitled to the relaxation. The Principal of the College herein granted him the relaxation. Since, the date of the

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relaxation, Sahib Ram, had been paid his salary on revised scale, the Apex Court had found that it was not on account of any misrepresentation made by Sahib Ram that the benefit of higher pay scale was given to him but by wrong construction made by the principal for which he (Sahib Ram) could not be held to be at fault. Under the circumstances, the Hon'ble Supreme Court held that the amount paid till date may not be recovered from the appellant".

4. I have given my careful thought to the rival contentions and the law as referred to above. In the case in hand too, there is nothing on record to suggest that the benefit of higher pay scale was given to the applicant on account of any misrepresentation or fraud on his part. Consequently, effecting recovery of the amount, after a mistake allegedly committed by the respondents 8 years back is termed to be against the principles of natural justice, especially when no show cause notice before the recovery had been given to him. This being so, the impugned orders are hereby quashed and set aside and the recovery made by the respondents is directed to be returned back to the applicant within a period of two months from the date of receipt of a copy of this order.

No costs.


(BHARAT BHUSHAN)
MEMBER (J)

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