

Central Administrative Tribunal, Principal Bench, New Delhi

O.A.No.2815/2003

Hon'ble Mr.Justice V.S. Aggarwal, Chairman
Hon'ble Mr.S.A. Singh, Member(A)

New Delhi, this the 7th day of February, 2005

Shri Mahendra Singh Tyagi,
S/o late Shri Suraj Bhan Tyagi,
R/o L/86, Govind Puram,
Ghaziabad-201002

....Applicant

(By Advocate: Shri V.P.S. Tyagi)

Versus

1. Union of India,
Through Secretary,
Ministry of Communication,
New Delhi
2. The D.D.G.(Personnel),
Department of Telecommunication,
Sanchar Bhawan,
New Delhi.
3. The C.G.M., N.T.R., Kidwai Bhawan,
New Delhi
4. The Chief General Manager,
M.T.N.L., Khurshid Bhawan,
New Delhi.
5. The C.G.M.
Bharat Sanchar Nigam Limited,
Telecom MTCE (NR) DTO Building,
Prasad Nagar, New Delhi-5

6. The Chief Accounts Officer,
(A/c) - S - II,
Mahanagar Telephone Nigam Limited,
Office of G.M. South - II,
Nehru Place, Telephone Exchange Building,
New Delhi-19

...Respondents

(By Advocate: Shri Satish Kumar)

Order(Oral)

Justice V.S. Aggarwal, Chairman

The applicant was working as Sub-Divisional Engineer in the Telephone Engineering Service, Group 'B'. It is stated that he was promoted to Senior Time Scale in group 'A' from Junior Time Scale group in August 1994. He superannuated on 31.10.2000.

2. While fixing his pension, the respondents contended that Rs.72,191/- had been paid in excess to the applicant and recovery was made from him in this regard. His pension had accordingly been fixed at Rs.6,349/- p.m.

3. The applicant by virtue of the present application states that recovery could not have been effected because he had not misrepresented any fact nor played any fraud and further that fixation of the pension has not been done correctly.

4. The petition is being opposed.

5. So far as the first contention of the applicant is concerned, indeed it is not shown by the respondents that the applicant had misrepresented or played any fraud. When the payment had been made erroneously, in that event the decision of the Supreme Court

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in the case of Shyam Babu Verma v. Union of India and others, (1994) 2 SCC 521 comes to the rescue of the applicant. The Supreme Court held:

"Although we have held that the petitioners were entitled only to the pay scale of Rs.330-480 in terms of the recommendations of the Third Pay Commission w.e.f. January 1, 1973 and only after the period of 10 years, they became entitled to the pay scale of Rs.330-560 but as they have received the scale of Rs.330-560 since 1973 due to no fault of theirs and that scale is being reduced in the year 1984 with effect from January 1, 1973, it shall only be just and proper not to recover any excess amount which has already been paid to them. Accordingly, we direct that no steps should be taken to recover or adjust any excess amount paid to the petitioners due to the fault of the respondents, the petitioners being in no way responsible for the same."

6. Keeping in view the ratio deci dendi of the abovesaid decision, we have no hesitation in concluding that in the absence of any fraud or misrepresentation on behalf of the applicant, when the payment had been made voluntarily, the respondents could not recover the same.

7. Pertaining to the second contention, the learned counsel for the applicant stated that he would submit a detailed representation explaining it to the respondents as to how his pay had to be fixed and correspondingly his pension had also to be increased. To this effect, in the absence of any objection, we allow his to do so.

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8. Resultantly, we dispose of the present O.A. directing:

(a) the recovery of Rs.72,191/- effected from the applicant is declared to be illegal;

(b) respondents are directed to refund the said amount to the applicant preferably within three months from today; and

(c) pertaining to the fixation of pension, the applicant as per his own statement made through the counsel, may represent to the respondents.

O.A. is disposed of.


(S.A. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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