

**CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH**

...

O.A. No.60/1134/2018

Date of decision: 29.10.2019

(Reserved on: 15.10.2019)

...

CORAM: HON'BLE MR. SANJEEV KAUSHIK, MEMBER (J).

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Pushap Raj (Retd. Officer Supdt.) S/o Sh. Baldev Raj, aged 61 years, R/o House No.164/8, Basant Colony Siali Road, Pathankot (Punjab)-145001. Group C.

...APPLICANT

VERSUS



1. Union of India through its Secretary to Government of India to Ministry of Communications & IT, Department of Telecommunications, Sanchar Bhawan 20, Ashoka Road, New Delhi-110001.
2. Chairman-cum-Managing Director, (CMD) Bharat Sanchar Nigam Limited, Corporate Office, 4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001.
3. Controller of Communication Accounts, Punjab Telecom Circle, Madhya Marg, Sector 27-A, Chandigarh-160027.
4. Chief General Manager, Telecom (CGMT), Bharat Sanchar Nigam Limited, Punjab Telecom Circle, Sector 34-A, Chandigarh-160034.
5. General Manager Telecom District (GMTD), Bharat Sanchar Nigam Limited, Pathankot, Punjab-145001.

...RESPONDENTS

PRESENT: Sh. K.B. Sharma, counsel for the applicant.

Sh. Shailendra Sharma vice Sh. A. K. Sharma, counsel for respondent No.1.

Sh. K.K. Thakur, counsel for respondents no.2 to 5.

ORDER**SANJEEV KAUSHIK, MEMBER (J):-**

1. The applicant lays challenge to order dated 16.3.2017 (Annexure A-1), whereby the respondents have effected a recovery of Rs.2,73,853/- from the amount of gratuity.
2. Solitary issue, which has come up for consideration before this Court is whether the respondents can effect recovery of excess amount from the applicant or not.
3. Facts which led to filing of the O.A. are not in dispute.
4. Applicant joined respondent department on 23.6.1978. During his service, he earned promotion and on 31.10.2016, he retired as Office Superintendent (Group-C). By letter dated 11.1.2017, he was informed about sanction of provisional pension. He was informed that respondents have calculated an amount of Rs.11,47,922/- as gratuity. By another letter dated 24.11.2016, Senior Accounts Officer, DOT informed SDE (HRD) BSNL, Pathankot that they have wrongly fixed pay of the applicant w.e.f. 1.7.1999 in higher pay scale than his entitlement and advised to resubmit his case for pension. By impugned order dated 16.3.2017, respondents ordered recovery of Rs.2,73,853/- on account of excess payment due to wrong fixation of pay and has been recovered from amount of gratuity, against which the applicant submitted representation based upon judicial pronouncement but to no avail. Hence this OA.
5. The respondents have tried to justify their stand but have not disputed factual accuracy about retirement of the applicant. However, they have submitted that applicant has been granted the benefit for which he was not entitled to thus while correcting their

mistake, they have recovered the excess amount. They have submitted that pay of the applicant had been fixed in a higher pay scale of restructured cadre, whereas as per letter dated 16.3.2000, officials who are promoted under OTBP/BCR of pre-structure cadre under short fall of vacancies are not eligible for higher scale prescribed in order dated 20.04.1999 until they complete total service of 16/26 years. Therefore, service book of the applicant was returned to BSNL authorities for resubmission as a result of which it was noticed that excess payment had been made to the tune of Rs.2,73,853/-, which has been recovered from gratuity amount, which is permissible. To support their plea, they have relied upon judgment in the case of **Chairman, Board of Mining Examination and Chief Inspector of Mines and Anr. vs. Ramjee**, AIR 1977 SC 965.

6. I have heard learned counsel for the parties.
7. Sh. K.B. Sharma, learned counsel for the applicant vehemently argued that impugned order recovering the indicated amount from amount of gratuity for no fault of applicant on the ground of alleged excess payment is illegal, arbitrary and against judicial pronouncements and thus liable to be set aside. He argued that the applicant is a group 'C' retired employee, therefore, in terms of exceptions carved out in the case of **State of Punjab vs. Rafiq Masih** (2014 (8) SCC 883), recovery cannot be effected from him. He also argued that even impugned order is in violation of principles of natural justice as before effecting recovery neither applicant was put on notice nor heard and straightway amount has been recovered

from amount of gratuity. Thus, he prayed that impugned order be quashed and set aside.

8. Sh. K.K. Thakur, learned counsel for respondents no.2 to 5 argued what has been stated in the written statement. He has not cited any judgment contrary to what has been cited by counsel for the applicant.
9. I have given my thoughtful consideration to the entire matter.
10. Law on recovery of excess payment is no more res-integra. In the case of **Shyam Babu Verma vs. Union of India**, 1994 (2) SCC 521, Lordships have opined that if excess payment made on account of mis-representation or fraud on the part of employee then employer has right to recover the said amount otherwise if there is no misrepresentation or fraud play by employee then excess payment cannot be recovered. It was held that though petitioners were entitled to lower scale of pay than they actually enjoyed, yet, since they received a higher scale of pay due to no fault of theirs, therefore, it shall only be just and proper not to recover any excess amount which had already been paid to them. In the case of **Syed Abdul Qadir vs. State of Bihar** (2009 (3) SCC 475, Hon'ble Apex Court observed that the relief against recovery is granted by the Courts not because of any right in the employees, but in equity exercising judicial discretion to relieve the employees from the hardship that will be caused if recovery is ordered. However in a given case, if it is proved that the employee had knowledge that he was receiving payment in excess of what he was entitled to wrongly paid, or in cases where the error is detected or corrected within a short time of wrong payment, the matter being in the realm of

judicial discretion, Court may on facts and circumstances of any particular case, order for recovery of the amount paid in excess. In the facts of that case, the Hon'ble Apex Court found that the excess amount that has been paid to the appellant teachers, was not because of any misrepresentation or fraud on their part and appellants also had no knowledge that the amount that was being paid to them was more than what they were entitled to. Accordingly, Court ordered that no recovery of amount that had been paid in excess to the appellant teachers should be made.

11. In the case of **Chandi Prasad Uniyal vs. State of Uttarakhand** (2012(8) SCC 417), Lordships have laid down their law in para 14 and 15 of the judgment where they have held that recovery can be made, the same reads as under:-

"14. We are concerned with the excess payment of public money which is often described as "tax payers money" which belongs neither to the officers who have effected over-payment nor that of the recipients. We fail to see why the concept of fraud or misrepresentation is being brought in such situations. Question to be asked is whether excess money has been paid or not may be due to a bona fide mistake. Possibly, effecting excess payment of public money by Government officers, may be due to various reasons like negligence, carelessness, collusion, favouritism etc. because money in such situation does not belong to the payer or the payee. Situations may also arise where both the payer and the payee are at fault, then the mistake is mutual. Payments are being effected in many situations without any authority of law and payments have been received by the recipients also without any authority of law. Any amount paid/received without authority of law can always be recovered barring few exceptions of extreme hardships but not as a matter of right, in such situations law implies an obligation on the payee to repay the money, otherwise it would amount to unjust enrichment.

15. We are, therefore, of the considered view that except few instances pointed out in Syed Abdul Qadir case (supra) and in Col. B.J. Akkara (retd.) case (supra), the excess payment made due to wrong/irregular pay fixation can always be recovered."

12. Subsequently, in the case of **High Court of Punjab and Haryana vs. Jagdev Singh** (2017(2) SCC (L&S) 789, Lordships observed that if an employee has undertaken to refund any excess amount that can be recovered from him/her. After considering various judgments including in the case of Chandi Prasad Uniyal (supra), Lordships in the case of **Rafiq Masih** (supra) have summarized their view in para 8 and 12 of the judgment. Lordships have carved out exceptions in para 12 of the judgment, which read as under:-

- "(i) Recovery from employees belonging to Class-III and Class-IV service (or Group 'C' and Group 'D' service).
- (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.
- (iv) Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.
- (v) In any other case, where the Court arrives at the conclusion, that recovery if made from the 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."

Perusal of above extracted para of the judgment makes it clear that recovery cannot be effected from (a) Group C and D employees, (b) from retired employees or employees who are due to retire within one year, (c) also in cases where the excess payment has been made beyond a period of five years, before the order of recovery is issued has been held to be bad in law.

13. In the present case, admittedly, the respondents have sought to recover amount paid to the applicant w.e.f. 1.7.1999 till the date of his retirement on account of wrong fixation of his pay. There is not a whisper in the written statement or during the course of arguments that applicant was instrumental in wrong fixation of pay. It is also

clear that applicant has since retired in the year 2016 while order of recovery has been passed in 2017 and amount has been recovered from gratuity. In view of the exceptions carved out by Lordships in the case of Rafiq Masih (surpa), the case of the applicant comes within four corners of those exceptions. The cases relied upon by the respondents in reply do not help at all. Thus, the impugned order of recovery is bad in law and accordingly, the same is quashed and set aside. The respondents are directed to refund the amount of Rs.2,73,853/- recovered from the applicant forthwith. No costs.

**(SANJEEV KAUSHIK)
MEMBER (J)**

Date: 29.10.2019.

Place: Chandigarh.

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