

CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH
(orders reserved on 14.11.2019).

O.A.NO. 060/01228/2018 Date of order:- 20.11.2019.

Coram: **Hon'ble Mr. Sanjeev Kaushik, Member (J)**

1. Amrit Singh son of Sh. Hansa Singh (Retd.) Office Superintendent (P) Punjab Telecom Circle, Unit Patiala TD, now resident of House No.3907, Ward No.15, Railway Road, Hamayunpur Sirhind, Fatehgarh, Punjab-140 406.
2. Ram Dev son of Sh. Shri Ram(Retd.), Sr. TOA(P) Punjab Telecom Circle, Unit-Patiala TD, now resident of House No.232/9, Street No.2, Gurbax Colony, Patiala(Punjab)-140 406.
3. Mukesh Lata wife of late Sh. Ram Nath yADAVV (rETD.) Office Superintendent(P) Punjab Telecom Circle, Unit-Patiala TD, now resident of House No.48, Moti Bagh Colony, Opposite Gurudawara, Patiala-140 401.
4. Madan Lal son of late Sh. Bihari Lal (Retd.) Office Superintendent (P) Punjab Telecom Circle, Unit-Patiala TD now resident of House No.216, Ward No.11, Bassi Pathanan, District Fatehgarh Sahib-140 412.
5. Jagdish Lal son of Sh. Jaishi Ram(Retd.), Assistant Office Superintendent (P) Punjab Telecom Circle, Unit Patiala TD, now resident of House No.126, Street No.1, Darshan Singh Nagar, Alipur Road, Patiala 147 001.
6. Neyna Devi wife of Sh. Tarlochan Singh(Retd.) Office Superintendent (G) Punjab Telecom Circle, Unit Patiala TD, now resident of House No.16, KSM Road, Rajpura, District Patiala-140 401.
7. Sardari Lal son of Sh. Ved Parkash(Retd.) Sr. TOA (P) Punjab Telecom Circle, Unit Patiala TD, now resident of Flat No.304, Tower No.11, Savitri Greens, VIP Road, Zirakpur-140 603.
8. Krishan Kumar son of Sh. Narain Dass Kapoor(Retd.) Office Superintendent (G) Punjab Telecom Circle, Unit-Patiala TD, now resident of House No.B-33/121 (old 968/2) Bhindian Street, Patiala-147 001.
9. Narinder Kaur wife of Sh. Surinder Singh(Retd.) Office Superintendent (G), Punjab Telecom Circle, Unit-Patiala TD, now resident of House No.B-21/507, Nabha Gate Patiala, Tehsil & District Patiala 147 001.

10. Kusam Lata wife of Sh. Hem Raj Jindal (Retd.) Office Superintendent (G), Punjab Telecom Circle, Unit - Patiala TD, now resident of House No.14, Street No.4, Prem Nagar, Bhadson Road, Patiala, Punjab-147 001.
11. Om Parkash son of Sh. Lalli Ram(Retd.) Senior TOA, Punjab Telecom Circle, Unit-Patiala TD, now resident of village Kharauth, PO Ballah, Tehsil Palampur, District Kangra (HP)-176 061.
12. Pal Singh son of Sh. Sarwan Singh(Retd.) Office Superintendent (G), Punjab Telecom Circle, Unit-Patiala TD, now resident of House No.64-A, Green Lehal, Patiala-147 001.
13. Gurdev Singh son of Sh. Kaka Singh(Retd.), Senior TOA, Punjab Telecom Circle, Unit - Patiala TD, now resident of Ganga Vihar Colony, Ghalori Gate, Near Mai Ki Sarai, Patiala-147 001.
14. Puran Chand son of Sh. Narain Dass (Retd.), Senior TOA (P), Punjab Telecom Circle, Unit Patiala TD, now resident of village Garni, P.O.Kaloor, District Hamirpur (HP)-177 033.
15. Krishan Lal son of Sh. Hem Raj(Retd.), Senior TOA (G), Punjab Telecom Circle, Unit - Patiala TD, now resident of Ward No.1, Moti Street, Near Durga Mandi, Amluh District Fatehgarh Sahib-140412.

.....Applicants.

(By Advocate :- Mr. Arvinder Singh)

Versus

1. Union of India through its Secretary, Ministry of Communications & IT, Department of Telecommunications, Sanchar Bhawan, 20 Ashoka Road, New Delhi-110 001.
2. Bharat Sanchar Nigam Limited through its General Manager, Harish Chandra Mathur Lane, Janpath, New Delhi-110 001.
3. Office of the Controller of Communications Accounts, Punjab Telecom Circle, Madhya Marg, Sector 27-A, Chandigarh-1600 19 through its Senior Accounts Officer (Pension).
4. Office of Chief General Manager (BSNL) Punjab Circle, Sanchar Sadan, Plot NO.2, Sector 34-A, Chandigarh-1600 022 through DGM(Finance).
5. SDE (HRD), Office of GMTD, BSNL, Patiala-147 001.
6. SDE (HRD) OFFICE OF GMTD, BSNL, Ropar-140001.

...Respondents

(By Advocate : Mr.V.K.Arya, for respondents No.1 & 3
Mr. Rajesh Gupta, for respondents No.2, 4 to 6).

ORDER

Sanjeev Kaushik, Member (J):

The solitary issue is of recovery of excess payment on account of re-fixation and consequently paying higher pay than the entitlement of the applicants.

2. Fifteen applicants have jointly approached this Tribunal by filing present OA, wherein they lay challenge to letters Annexures A-1(i) to A-1(vi) whereby the respondents, while re-fixing the pay of the applicants, have also ordered recovery of excess payment made on different dates from 1996 to 1999. The facts broadly are not in dispute. The applicants were the employees of Bharat Sanchar Nigam Limited, Punjab Circle (for short BSNL) and stand retired as Group ` C' employees between the years 2015 to 2017. The respondents passed impugned orders by re-fixing their pay and consequently recovered the excess payment made to them by re-fixing their pay. Some of the applicants were in service at that time and the others had since retired. The details of amount recovered is given in para 4(III) of the O.A. It is pleaded that it was not in the knowledge of the applicants at that time that the Hon'ble Apex Court had already given a decision in favour of the employees in case of the **State of Punjab & Ors. versus Rafiq Masih (white washer) etc.** (Civil Appeal No.11527 of 2014) decided on 18.12.2014 that no recovery can be made of excess payment from Group ` C ' or from low strata employees. It has also been submitted therein that

pursuant thereto, the Government of India had already issued a circular to this effect, but the respondents without following the ratio laid down in the case of Rafiq Masih (supra) have passed the impugned order and had recovered the said amount. After taking clue from an order passed by this Court in O.A.No.60/729 of 2017 decided on 30.5.2018 which is based upon the judgment passed by the Hon'ble Apex Court in the case of Rafiq Masih (supra), the applicants served a legal notice dated 30.7.2018 which has been replied vide letter dated 6.9.2018 (Annexure A-8). Dis-satisfied with the reply, the applicants are before this Court for invalidation of the impugned order of recovery passed in the year 2016.

3. Though the applicants have challenged to wrong fixation of their pay, but counsel representing the applicants suffered a statement at the bar that he will not press his relief of re-fixation of their pay and his second prayer for recovery of excess amount be considered.

4. The respondents have filed written statement and have taken a preliminary objection of delay in approaching the Court of law and it has been submitted that once the order has been passed way back in 2016, then the applicants had to approach the Court of law at that time in terms of section 21 of the A.T.Act, 1985 and merely their representation has been decided in 2018 will not give them fresh cause of action.

5. On merit, they have not disputed the factual accuracy, as noticed above.

6. I have heard the learned counsel for the parties and perused the material available on record.

7. Shri Arvinder Singh, learned counsel for the applicants vehemently argued that the impugned orders are liable to be set aside having been passed contrary to the law settled by the Hon'ble Apex Court in the case of Rafiq Masih (supra. He urged that once the law has been declared by the Apex Court, then it was incumbent upon the respondents to follow the same across the country without a caveat from an employee against the in action of the respondents in affecting recovery. He thus prayed that the O.A may be allowed and the order of recovery already made by the respondents be quashed and the respondents be directed to release the same.

8. With regard to preliminary objection raised by the respondents, he placed reliance on a judgment passed by the Hon'ble Apex Court in the case of **Union of India & Ors.** versus **Tarsem Singh** (2008(4) S.C.T. Page 19) and in the case of State of **Uttar Pradesh & Ors.** versus **Arvind Kumar Srivastava & Ors.** (2015(1) R.S.J. Page 704) and has submitted that since no 3rd party right has been created in between the time, the applicants approached this Court, therefore, delay in filing the O.A. be condoned.

9. Per contra, the respondents have reiterated what has been stated in the written statement as noticed in the preceding para.

10. Having completed all the codal formalities, having heard the learned counsel for the parties, having gone through the record as well as legal provisions with the valuable assistance, I am of the considered view that this petition deserves acceptance.

11. It is not the case of the respondents that while fixing their pay way back in the years 1998-1998, the applicants have mis-led the respondents, which led to wrong re-fixation of pay or in any way they are instrumental in wrong fixation of their pay. It is also clear from the impugned orders that the amounts which they sought to recover and had already recovered as an excess payment, which they had made by making wrong payment as salary relate back to the years 1998-1999 and it is a belated recovery. It is also clear that the applicants were not instrumental in wrong fixation of their pay which resulted into excess payment of salary than their entitlement.

12. The issue of recovery has attained the attention of the Hon'ble Apex Court for a petty long time. The Supreme Court in the case of **Shyam Babu Verma & Ors. versus Union of India & Ors.** (1994(2) S.C.C. Page 521 have recorded their findings in para 11 which reads as under:-

" 11. 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 to adjust any excess amount paid to the petitioners due to 1 (1993) 1 SCC 539: 1993 SCC (L&S) 221: (1993) 23 ATC 657 the fault of the respondents, the petitioners being in no way responsible for the same."

Subsequently, in the case of **Col. B.J.Akkara (Retd.)** versus **Government of India & Ors.** (2006(11) S.C.C.Page 709), the Lordships have observed as under:-

"28. Such relief, restraining recovery back of excess payment, is granted by courts not because of any right in the employees, but in equity, in exercise of judicial discretion, to relieve the employees, from the hardship that will be caused if recovery is implemented. A Government servant, particularly one in the lower rungs of service would spend whatever emoluments he receives for the upkeep of his family. If he receives an excess payment for a long period, he would spend it genuinely believing that he is entitled to it. As any subsequent action to recover the excess payment will cause undue hardship to him, relief is granted in that behalf. But where the employee had knowledge that the payment received was in excess of what was due or wrongly paid, or where the error is detected or corrected within a short time of wrong payment, Courts will not grant relief against recovery. The matter being in the realm of judicial discretion, courts may on the facts and circumstances of any particular case refuse to grant such relief against recovery."

Thereafter in the case of **Syed Abdul Qadir & Ors.** versus **State of Bihar & Ors.** (2009(3) S.C.C Page 475), the Lordships have recorded in observations in para 58, after considering the law on the subject, that the issue of recovery revolved on the action being iniquitous. Dealing with the subject of the action being iniquitous, it was sought to be concluded that when the excess unauthorised payment is detected within a short period of time, it would be open for the employer to recover the same. Conversely, if the payment had been made for a along duration of time, it would be iniquitous to make any recovery and held that such arbitrary actions are truly,

actions in violation of Article 14 of the Constitution of India. Subsequently, the Lordship have thread barely considered the law in a recent judgment in the case of Rafiq Masih(supra) where the Lordships while concluding the judgment have summarized their views in para where they have carved out exceptions which reads 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".

A perusal of the above extracted part of the judgment reveals that the case of the applicants is squarely come within four corners of the said law, firstly that they belong to Class III (Group C) services; secondly some of them have retired before issuance of order of recovery and thirdly the amount so ordered to be recovered is beyond the five years from the date of recovery. Thus, I am left with no other option, but to accept the OA and to quash the impugned orders. I would be failing in my duty if I will not consider the issue raised by the respondents regarding delay. It is not in dispute that belated claims can be rejected on the ground of delay and laches,

but one of the exceptions of the said ruling comes to the rescue of the applicants is that if there is a long delay in pursuing the matter before the judicial forum. There is another thought that if no 3rd party right is affected by an order, even then the claim cannot be rejected. In the present case, though the applicants lay challenge to order of wrong re-fixation of their pay and consequential recovery thereto, but the applicants, for the reasons best known to them, have pressed for the second relief only and their claim for re-fixation of their pay was withdrawn by their counsel.

13. In view of above discussion, I am left with no other option, but to invalidate the action of the respondents in recovering the amount in view of the law laid down by the Hon'ble Apex Court in the case of Rafiq Masih(supra) on equitable ground. Thus, the objection of the respondents qua limitation is turned down and the OA is allowed and the impugned order of recovery is quashed and set aside. The respondents are directed to Release the recovered amount without element of interest.

(SANJEEV KAUSHIK)
MEMBER (J)

Dated:- 20.11.2019.

Kks