

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD**

Original Application No.021/0510/2019

Date of Order : 12.06.2019

Between :

Duppala Apparao, Aged 60 years,
S/o D.Pentayya (Late),
Telecom Technician (Retired) Group 'C',
O/o General Manager, Telecom District,
Srikakulam – 532 001,
R/o 6-10, Main Road, Kujiipeta, Kotabommali (M),
Skikakulam – 532 195.

... Applicant

And

1. Union of India,
Rep. by the Secretary,
Department of Telecommunications,
Sanchar Bhavan,
New Delhi – 110 001.

2. The Chairman and Managing Director,
Bharat Sanchar Nigam Limited,
(Corporate Office), Janpath,
New Delhi – 110 001.

3. The Chief General Manager,
Bharat Sanchar Nigam Limited,
A.P.Telecom Circle, Kaleswara rao Market,
Vijayawada – 520 001.

4. The Controller of Communication Accounts,
AP Telecom Circle, Kaleswararao Market,
Vijayawada – 520 001.

5.The General Manager,
Bharat Sanchar Nigam Limited,
Telecom District,
Srikakulam – 532 001.

... Respondents

Counsel for the Applicant ... Mr.M.Bhaskar, Advocate
Counsel for the Respondents ... Mrs.A.P.Lakshmi, S.C. for BSNL

CORAM:

Hon'ble Mr. B.V.Sudhakar ... Member (Administrative)

ORAL ORDER

{ As per Hon'ble Mr.B.V.Sudhakar, Member (Admn.) }

The applicant retired as Telecom Technician on 30.06.2018 from the respondents' organization. He was given the promotion under OTBP Scheme on 19.07.2001 and as per the respondents organization norms, second TBOP was due on 19.07.2008. However the applicant was given promotion on 01.10.2004. After his retirement, the respondents issued an order dated 12.11.2018 stating that the promotion was given by mistake and they have ordered for recovery of Rs.2,41,236/-. Besides the applicant was asked to remit a sum of Rs.16,590/- to release the leave encashment amount due to the applicant. Accordingly the applicant remitted the said amount. Aggrieved over the recovery of the amount stated above, the present OA has been filed.

2. The learned counsel for the applicant contended that as per the Hon'ble Supreme Court judgement in the case of ***State of Punjab Vs. Rafiq Masih in Civil Appeal No.11527/2014 dated 18.12.2014***, recovery should not be made from employees who are retired and that too when the applicant has not misrepresented or misguided the respondents in realizing the benefit. Even DOPT has given similar instructions that such recoveries should not be made from

retired employees. BSNL, being a Central Government undertaking, the said DOPT rule thus apply to the respondents.

3. Heard Mr.M.Bhaskar, learned counsel for the applicant and Mrs. A.P.Lakshmi, learned standing counsel for BSNL.

4. As seen from the facts of the case the applicant has retired on 30.06.2018. After his retirement the respondents have paid a sum of Rs.42,030/- to the applicant towards leave encashment on 15.03.2019. An amount of Rs.2,15,927/- is yet to be released by the respondents. The applicant made a representation on 27.12.2018 to the respondents stating that since he has retired, as per the Hon'ble Supreme Court judgement (supra), recovery should not have been effected. The respondents rejected the request of the applicant on 30.04.2019 without giving any reasons as to why it has been rejected.

5. Generally whenever an order is passed with civil consequences, the authority should clearly indicate the reasons as to why they passed such an order, so that the basis for such a decision is known. The impugned order does not indicate the basis for the decision taken. Further the law is well settled that as per Rafiq Masih (supra) case, recovery should not be made in the following circumstances :

(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.

6. Even this Tribunal in batch of OAs.1834 to 1836 of 2015 had adjudicated on similar issue and directed to refund the amount already recovered from the applicants who were retired employees, when they were not found fault with. The present case is one such case and is a fully covered case. Hence it would be appropriate to direct the 1st respondent to examine the case of the applicant in the context of Hon'ble Supreme Court judgement in Rafiq Masih case (supra), DOPT orders, representation of the applicant and thereafter take a decision within a period of eight weeks from the date of receipt of a copy of this order, by a speaking and reasoned order.

7. With the above directions, the OA is disposed of. There shall be no order as to costs.

(B.V.SUDHAKAR)
MEMBER (ADMN.)

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