

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

Original Application No.20/1137/2018

Date of Order: 26.06.2019

Between:

1. P. Narasmha Rao, Gr. C
S/o Narasimha Murthy, aged 64 yrs.
Sr. Telecom Office Assistant (Retd.)
R/o D. No.4-55-1, Sri Vidya Niketan School Street
Yellavanigaruvu, Adavipalam Post,
Palakol Rural, West Godavari Dist.534260. Applicant

AND

1. Union of India, Rep. by its
The Secretary,
Ministry of Communications and Posts Dept.
Government of India, Dak Bhawan
Sansad Marg, New Delhi – 110 001.
 2. The Chairman & Managing Director
Bharat Sanchar Nigam Ltd.
Najpath, New Delhi – 110 001.
 3. The Chief General Manager
Telecom, B S N L Bhavan
Chittugunta, Vijayawada 520 004.
 4. The General Manager
Telecom, BSNL
West Godavari, SSA
Eluru. ... Respondents
- Counsel for the Applicant ... Mr. P. Ratnam
Counsel for the Respondents ... Mr.K. Shankar Rao, Sr. CGSC

CORAM:***Hon'ble Mr. B.V. Sudhakar, Member (Admn.)*****ORAL ORDER*****{As per Hon'ble Mr. B.V. Sudhakar, Member (Admn.) }***

2. The OA is filed challenging the withholding of pensionary benefits by the respondents

3. Applicant retired on 31.12.2014 from the respondents organisation. Pension was calculated taking the basic pay as Rs.22,080/- instead of Rs.23,780/- drawn by him. Respondents withheld a sum of Rs.5,00,000/- towards overpayment of pay and allowances for the period 02.6.2000 to 31.12.2014 vide letter dated 5.2.2015. Thereafter, on reconciliation, a sum of Rs.1,27,453/- was released withholding a balance sum of Rs.3,72,547/-. Applicant made a representation on 30.12.2015, which was rejected informing that the recovery was effected due to excess payments made to the applicant. Applicant thereafter made several representations, citing Hon'ble Supreme Court judgment on the subject. However, respondents choose not to grant relief sought and, hence, the OA.

4. The contentions of the applicant are that before revising the pay, no notice was served on the applicant. The order of recovery was ordered for a wrong fixation done some 14 years back. The action of the

respondents is against the orders of the Hon'ble Supreme Court in **State of Punjab and Others etc. v. Rafiq Masih (White Washer) etc.** (Civil Appeal No.11527 of 2014, dated 18.12.2014), case and that of the verdict of the Hon'ble Jabalpur bench of this Tribunal.

5. Respondents state in the reply that the re-fixation of pay has been effected as per rules of the respondents organisation, namely, BSNL, after it was established as a corporate entity on 1.1.0.2000. After reconciliation of the accounts a sum of Rs.3,72,547/- was withheld towards excess payment made due to wrong fixation of pay, as per the prevailing rules and regulation of the respondents organisation.

6. Heard both the counsel and perused the material papers submitted.

7. The issue is about recovery effected for overpayment made to the applicant due to wrong fixation of pay. Recovery was effected on the eve of the retirement of the applicant. It is also seen that the wrong fixation was done some 14 years before the date of retirement of the applicant. The impugned order is neither a speaking nor a reasoned order. It does not specify details as to why the recovery was effected and under what norms. It is a bald order. A decision has to be backed by a reason. If it does not furnish the reason, then the order by itself is invalid in the eyes of law as per the Hon'ble High Court of Jharkhand

observation in **Jit Lal Ray v. State of Jharkhand**, WP(C) No. 469 of 2019, dated on 26-04-2019, which is reproduced hereunder:

“It is settled position of law that a decision without any reason will be said to be not sustainable in the eyes of law, because the order in absence of any reason, also amounts to the violation of the principles of natural justice.”

Further, applicant is a Group `C' employee and recoveries of the nature in question are impermissible under law as per Hon'ble Supreme Court observation in **State Of Punjab & Ors vs Rafiq Masih (White Washer), etc.**, dated 18 December, 2014 in Civil Appeal No. 11527 of 2014 (Arising out of SLP(C) No.11684 of 2012). The relevant portion is extracted hereunder:

“It is not possible to postulate all situations of hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made by the employer, in excess of their entitlement. Be that as it may, based on the decisions referred to herein above, we may, as a ready reference, summarise the following few situations, wherein recoveries by the employers, would be impermissible in law:

(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."

The applicant did not misrepresent nor did he misguide the respondents to avail of the excess payment made by the respondents. It was also not a fraud committed by the applicant. The basic measure of issuing a notice before ordering recovery was not followed. Hence, the Principles of Natural Justice have been violated. Besides, wrong fixation was done 14 years before the date of retirement. Applicant is a Group 'C' employee. Thus, the clauses (i) to (iii) of the **Rafiq Masih**, as extracted supra, squarely apply to the cause of the applicant. Though respondents claim that they have followed the rules but those rules which are not congruent to law are invalid. Hence, the action of the respondents is

against the law laid down by the Hon'ble Supreme court in **Rafiq Masih** case (supra). To be plain, the respondents decision to withhold the excess amount arising out of wrong fixation of pay is not in order.

However, when it comes it to re-fixing the pension by correcting the pay of the applicant, respondents are well within their right to do so. Respondents have admitted that the wrong pay was fixed because of a mistake. Applicant cannot take undue advantage of the mistake committed by the respondents. It was a bonafide mistake which can be corrected and it does not confer any right on to the applicant to demand for the wrong fixation, as observed by the Hon'ble Supreme Court in **VSNL v. Ajit Kumar Kar**, (2008) 11 SCC 591, as under:

“46. It is well settled that a bona fide mistake does not confer any right on any party and it can be corrected.”

Besides, the applicant pleading that the wrong pay fixation be allowed, would mean that the mistake committed by the respondents has to be perpetuated. This is incorrect. Respondents cannot be forced to perpetuate the mistake committed as per Hon'ble Supreme Court judgment in **State of Karnataka v. Gadilingappa**, (2010) 2 SCC 728, at page 730), as under:

“It is a well-settled principle of law that even if a wrong is committed in an earlier case, the same cannot be allowed to be perpetuated.”

Therefore, keeping the aforesaid in view, respondents are entitled to refix the pension based on the actual pay due to the applicant as per rules on the subject. However, they cannot recover the excess amount paid as per the law laid down by the Hon'ble Supreme Court. Consequently, the impugned order dated 3.8.2018 is quashed to the extent of withholding of Rs.3,42,547/- by the respondents. The impugned order having been quashed, respondents are directed to consider, as under:

- i) To release the amount of Rs.3,42,547/- to the applicant, withheld by the respondents.
- ii) Time allowed to comply with the order is 3 months from the date of receipt of a copy of this order.
- iii) No order as to costs.

With the above directions, the OA is allowed.

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

Dated, the 26th day of June, 2019

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