

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

Original Application No.20/1135/2018

Date of Order: 26.06.2019

Between:

1. Y. Rajeswara Rao, Gr.- C
S/o Veeraswamy, Aged 65 yrs
Sr. Telecom Supervisor (Operative) (Retd)
R/o D. No.4-3-3, Christian Peta
Palakol, West Godavari Dist. 534260. Applicant

AND

1. Union of India rep. by its
The Secretary
Ministry of Communications and I T Dept.
Government of India, Dak Bhawan
Sansad Marg, New Delhi – 110 001.
2. The Chairman & Managing Director,
Bharat Sanchar Nigam Ltd.,
Janpath, New Delhi – 110 001.
3. The Chief General Manager
Telecom, B S N L Bhavan
Chittugunta, Vijayawada 520004.
4. The General Manager
Telecom, B S N L
West Godavari, S S A
Eluru. ... Respondents

Counsel for the Applicant ... Mr. P. Ratnam.
Counsel for the Respondents ... Mrs. K. Rajitha, Sr. CGSC
Mr. K.Shankar Rao, SC for BSNL

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 rejection of the request made to refund an amount of Rs.1,50,000/- and waiver of Rs.75,884/- withheld from the pensionary benefits.

3. Applicant retired from respondents organisation on 31.8.2014 with a basic pay of Rs.31,880/-. However, the pensionary benefits were fixed based on the basic pay of Rs.30,220/- and adjusted an amount of Rs1,50,000/- from pensionary benefits towards excess payment without issue of notice. Further, an amount of Rs.75,884/- was directed to be recovered from the applicant, on grounds that his pay was wrongly fixed. Applicant represented but as no relief was forthcoming, OA has been filed.

4. The contentions of the applicant are that he is a retired Group 'C' employee and that he is not responsible for the wrong fixation of pay. Action of the respondents in adjusting a sum of Rs.1,50,000/- without notice is against the Principles of Natural Justice. Impugned order is not a speaking or a reasoned order. His case is fully covered by the case 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) and the verdict of the Hon'ble Jabalpur Bench on a similar issue.

5. Heard both the counsel and perused the material papers placed on record.

6. Respondents did not file the reply statement despite being given ample opportunities. In the interest of the Justice and the applicant being a senior citizen, the case was heard.

7. (I) Applicant contends that his pension has to be revised since it was wrongly fixed by the respondents. Respondents did make a bonafide mistake which can be corrected. One cannot take undue advantage of bonafide mistake as was observed by the Hon'ble Supreme Court in **VSNL v. Ajit Kumar Kar**, (2008) 11 SCC 591.

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

Hence, the submission of the applicant to refix his pension is not tenable.

(II) However, when it comes to adjustment of certain sum due to the applicant, it is seen from the details of the case, that respondents have revised the basic pay of the applicant on the eve of his retirement

as Rs.30,220/- instead of Rs.31,880/-. The reason given is that the pay was wrongly fixed, some 14 years back. Applicant ought to have been given a notice before adjusting an amount of Rs.1,50,000/- which is considerable. The basic Principle of Natural Justice of being heard before taking a decision has not been followed. Besides, the cause of the applicant is well supported by the Hon'ble Apex Court verdict in **State Of Punjab & Ors vs Rafiq Masih (White Washer)**, decided on 18 December, 2014 CIVIL APPEAL NO. 11527 OF 2014 (Arising out of SLP(C) No.11684 of 2012), where in it was held as under:

"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."

Applicant is a Group 'C' employee. Recovery is being affected for wrong fixation of pay done 14 years before the retirement of the applicant. Further, the applicant did not misrepresent or misguide or did commit a fraud to get the pay wrongly fixed and take undue advantage of the same. Thus, as can be seen, the request of the applicant is fully covered by the clauses (i) to (iii) of the Hon'ble Supreme Court Judgement cited supra.

(III) Besides, it is to be emphasized that the mistake has been committed by the respondents and, hence, their mistake should not be rubbed on to the applicant. This is impermissible as per Hon'ble Apex Court observation in **Rekha Mukherjee v. Ashis Kumar Das**, (2005) 3 SCC 427 :

"36. The respondents herein cannot take advantage of their own mistake."

(IV) Even the impugned order is neither a speaking nor a reasoned order. An order which is not reasoned is invalid in the eyes of law as observed by the Hon'ble High Court of Jharkhand in Jit Lal Ray v. State of Jharkhand, WP(C) No.469 of 2019, decided on 26-04-2019

"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."

(V) Therefore, based on the aforesaid, action of the respondents is against the well laid down legal principles of the Hon'ble Apex Court cited. The impugned order dated 3.8.2018 is quashed. Consequently, the respondents are directed to consider as under:

- i) To refund the amount of Rs.1,50,000/- withheld from the pensionary benefits and waive the recovery of Rs.75,884/- ordered due to excess payment of pay and allowances.
- ii) Time allowed to implement the judgment is 3 months from the date of receipt of the 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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