

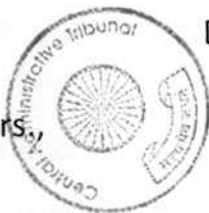
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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
HYDERABAD

O.A/020/00624/2017

Between:

Sri Syed Mastan Vali, Age 67yrs.,
S/o. Syed Mahaboob,
Retired Telecom Mechanic,
(HRMS No. 1198001975 while in service)
D.No. 24-28/7-24, Rokallapalem,
Vijayawada.



Dated: 01.10.2018

... Applicant

A N D

1. The Union of India,
Rep. by its Secretary,
Department of Telecommunications,
Ministry of Communications and
Information Technology,
20, Ashok Road, New Delhi.
 2. Bharath Sanchar Nigam Limited,
Represented by its
Chairman cum Managing Director,
Corporate Office, Barakamba Road,
Stateman House, New Delhi -1.
 3. The Chief General Manager,
A.P. Telecom Circle, Chuttugunta,
Vijayawada.
 4. The Sr. General Manager,
BSNL Telecom District, Vijayawada.
Vijayawada.
 5. The Accounts Officer (CA),
O/o. General Manager,
VJ Telecom District,
Bharath Sanchar Nigam Ltd.
Vijayawada 520 004.
 6. Accounts Officer(Pension-1),
O/o.Pr. Controller of Communication Accounts,
3rd Floor, Triveni Complex, Abids,
Hyderabad 500 004.
- ... Respondents

Counsel for the applicant :Mrs. S. Anuradha

Counsel for the respondents :Mrs. K. Rajitha, Sr.CGSC
for R-1 & R-6.
Mr. A. Radhakrishna, CGSC
for R-2 to R-5.

CORAM:



THE HON'BLE MR. B.V. SUDHAKAR, MEMBER (ADMIN)

ORAL ORDER

(Per Hon'ble Mr. B. V. Sudhakar, Member(ADMIN))

This OA is filed challenging the action of the respondents in unilaterally recovering the pension and other benefits amounting to Rs.1,06,866/-

2. The brief facts of the case are that the applicant joined the respondent organisation as Lineman on 03.10.1981. Later he was promoted as Telecom Mechanic and retired on 30.06.2014. When the terminal benefits were to be released to the applicant the Sr. Accounts Officer (Pension-1), O/o. the Principal Controller of Communication Accounts has pointed out an erroneous pay fixation done in respect of the applicant. Accordingly the respondents banker was directed to recover the excess amount from the future pension to be paid to the applicant. Hence the OA.
3. The contention of the applicant is that he has not been given any prior notice before the recovery was ordered. It was not the fault of the applicant but it is the fault of the respondents in fixing the pay. The applicant is neither having the knowledge nor aware of the calculations for drawing the pension. It was entirely the responsibility of the respondents to work out pension properly and disburse. The applicant claims that he neither misrepresented the facts nor did he do any mischief to claim the amount from the respondents. He also claims that his case is fully covered by the Hon'ble Supreme Court judgment in State of Punjab & Others vs. Rafiq Masih (White Washer) etc. (2015)4 SCC 334. The applicant also contends that the respondents have ordered the recovery mechanically without applying their mind to the issue and the recovery is violative of Articles 14 and 16 of the Constitution.

BV Sudhakar



4. The respondents in their counter stated that the overpayment was caused due to erroneous pay fixation done on OTBP w.e.f. 03.10.1996. This has been noticed by the Sr. A.O(Pen.1)O/o. Pr. CCA, DOT HYD and accordingly on his direction the recovery of excess payment was ordered to be recovered. The last pay drawn was also reduced based on the fact of erroneous fixation of pay. It was reduced from Rs. 21,340/- to Rs.20,800/-. After detailed examination and due verification an amount of Rs.1,06,866/- was ordered to be recovered. It is well within the rules to order for such recovery.

5. Heard both sides counsel and perused the documents.

6. This is a covered case wherein the Hon'ble Supreme Court in Rafiq Masih case (supra) has prescribed the following provisions:

- (i) Recovery from employees belongs 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."

Besides the Hon'ble Supreme Court in High Court of Punjab and Haryana vs. Jagdev Singh, 2016 (14) SCC 267 also observed that if there is an undertaking then the respondents can order any recovery. In the present case no such undertaking was taken from the applicant. Hence recovery

BV *[Signature]*

cannot be ordered. Besides in Hon'ble Supreme Court judgment in Paras Nath Singh vs. State of Bihar, 2009(6) SCC 314, it is stated that in case of Class-IV employees even if the recovery is done after accepting an undertaking from the applicant the amount recovered can be waived to certain extent.

7. This Tribunal has also passed orders in OA No. 176/18 quashing such recovery from the pension of the applicants. Hon'ble co-ordinate Bench of Ernakulam has also issued similar orders in OA No. 859/16. As the case in question is fully covered the respondents are directed to consider repaying the amount recovered, if any, from the applicant within a period of two months from the date of receipt of this order.

8. Respondents are also directed to consider regulating any similar cases in future by following the guidelines laid down by the Hon'ble Supreme Court stated at para 6 supra.

9. The OA is thus allowed. No order as to costs.

प्रमाणित प्रत
CERTIFIED TRUE COPY

केस नं. /
CASE NUMBER OA-624/17
निर्णय का तारीख
DATE OF JUDGEMENT 1/10/18
उपरोक्त प्रमाणित प्रत तैयार की गई है
COPY HERE READY ON 9/10/18

Section Officer / Court Officer
केन्द्रीय प्रशासनिक न्यायाधिकरण
Central Administrative Tribunal
हैदराबाद न्यायपीठ/Hyderabad Bench