

Reserved on 24.04.2024.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 25th day of APRIL 2024

Hon'ble Mr. Justice Om Prakash VII, Member (J)

Original Application No. 330/00511 of 2019

Rajendra Ram, son of Shri Ram Saran Ram, presently posted as J.E.

.....Applicant

By Adv: Shri M.S. Khan/Shri Jaswant Singh/Shri Dharmendra Tiwari

V E R S U S

1. Chief Managing Director, Harish Chand Mathur Lane, Janpath, New Delhi.
2. Senior General Manager, Telecom, Telephone Exchange Sigra, Shivpurwan, Varanasi.
3. Deputy General Manager (Admin) Telephone Exchange Sigra, Shivpurwan, Varanasi.
4. Assistant General Manager (Admin), Telephone Exchange Sigra, Shivpurwan, Varanasi.
5. S.D.E. (Admin), Telephone Exchange Sigra, Shivpurwan, Varanasi.

. . Respondents

By Adv: Shri Anil Kumar

ORDER

The present O.A has been filed by the applicant under section 19 of the Administrative Tribunal Act, 1985 seeking following reliefs:-

- “(i) The Hon'ble Tribunal may graciously be pleased to direct the respondents to returned the recover amount and also to give one increment which was being withdrawn while making the recovery by the respondents.*
- “(ii) The Hon'ble Tribunal may graciously be pleased to grant any other suitable relief in favour of the applicant, which the Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the present case.*
- “(iii) To award cost of the application in favour of the applicant”.*

2. Brief facts of the case are that applicant was appointed as Lineman on 11.03.1983 and he was directed to join at Manea Station (Punjab). The applicant was promoted to the post of Phone Mechanic in the year 1995. After working for some time at Manea Station, he had requested to transfer from Manea Station (Punjab) to Noida in December 1999. His request was considered and he was transferred to Noida (Uttar Pradesh). Applicant was again transferred on his request from Noida to Deoria and from Deoria he was transferred to Varanasi in the year 2010. Department has issued a circular in which those persons who have worked for more than 10 to 16 years they were given the benefit of next higher grade and this upgradation is called one time bound promotion (O.T.B.P.). The applicant has got this higher grade promotion because he has completed requisite number of years. Applicant was promoted to the post of Senior T.O.A.G. by an order dated 06.06.2003. Applicant admitted that while filling of the form of promotion for scheme he has wrongly entered his promotion date as 09.06.2003 in place of 31.12.2002 and requested that it should be corrected for which he has send his representation dated 01.02.2018 through proper channel. Respondents without considering the representation of the applicant, they started the recovery of the applicant without giving any show cause notice and without any intimation to the applicant from his salary. They have recovered Rs. 10,739/- and also one increment was also stopped. Being aggrieved, applicant has sent a detailed representation to the General Manager, Bharat Sanchar Nigam Ltd and requested to decide his representation and also about the recovery which was being made on month to month basis. The aforesaid representation has not been decided till date. Hence, applicant preferred present original application before this Tribunal.

3. I have heard Shri Dharmendra Tiwari, learned counsel for the applicant and Shri Anil Kumar, learned counsel for the respondents and perused the record.

4. Submission of the learned counsel for the applicant is that respondents, without considering request made by the applicant on the representation, they started the recovery of the applicant without giving

any show cause notice and without any intimation to the applicant from salary of the applicant. They have recovered Rs. 10,739/- and also one increment was stopped. Learned counsel further submitted that respondents is making illegal and arbitrarily recovery from the applicant and it is against the principle of natural justice and is in violation of Articles 14 and 16 of the Constitution of India. Learned counsel also submitted that the illegal recovery made by the respondents without assigning any reason should be stopped immediately and whatever amount which has been recovered should be refunded to the applicant. It is also argued that no notice was issued to the applicant before making recovery. It is next argued that since applicant is Group 'C' employee, no recovery could be made from him in case any excess payment/overpayment has been made. To substantiate his argument, learned counsel for the applicant has placed on record a judgment of Hon'ble Supreme Court in the case of *State of Punjab and others Vs. Rafiq Masih and others reported in (2015) 2 Supreme Court Cases (L&S) 33* in which Hon'ble Supreme Court has held that no recovery could be made from Group 'C' employee, thus recovery from Group 'C' government servant could not be made. He further argued that on the basis of aforesaid judgment, respondents be directed to refund the amount which has been recovered from the applicant with interest.

5. In rebuttal, learned counsel for the respondents argued that since applicant has got two increments in the same year and due to aforesaid mistake excess payment has been made, which has been rectified on the knowledge of the aforesaid facts. The mistake can be rectified at any stage, thus there is no illegality or infirmity in making the recovery from the applicant. It is also argued that since excess payment/overpayment has been made while granting two increments in a year to the applicant, therefore, respondents are enough competent to recover the excess amount/overpayment made in lieu of excess payment. Thus, prayer was made to dismiss the OA.

6. I have gone through the rival submissions of the learned counsel for the parties and perused the entire pleadings.

7. It is worthwhile to mention that it is settled law on the point that firstly no recovery can be made unless any fraud or misrepresentation is alleged on the part of any person from whom the recovery is being sought to be made and secondly, if at all there is any justification for making any recovery, then also adhering to the Principle of Natural Justice, a show cause notice is a pre-condition for making any such recovery. Respondents have not filed any documents which shows that show cause notice was issued to the applicant before recovery. It is very surprising that as to why without issuance of show cause notice, the recovery in question was made. From perusal of record, it is also evident that there was neither any misrepresentation on the part of the applicant nor mistake can be attributed to him. The mistake, if any, can be said to be that of the department. Therefore, the respondents were not justified to recover any amount from the salary of the applicant.

8. In the case of *State of Punjab and others Vs. Rafiq Masih and others reported in (2015) 2 Supreme Court Cases (L&S) 33*, Hon'ble Supreme Court has been pleased to observe 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".*

9. Not only this, the Hon'ble Supreme Court in the case of ***Chandi Prasad Uniyal and others Vs. State of Uttarakhand and others reported in (2012) 8 Supreme Court Cases 417***, has been pleased to observe as under:-

“8. We are of the considered view, after going through the “various judgments cited at the Bar, that this Court has not laid down any principle of law that only if there is misrepresentation or fraud on the part of the recipients of the money in getting the excess pay, the amount paid due to irregular/wrong fixation of pay be recovered.”

10. In the case of ***Davinder Singh and others Vs. State of Punjab and others reported in (2010) 13 Supreme Court Cases, 88***, the Hon'ble Apex Court has also been pleased to observe that ***“opportunity of hearing is to be given to the delinquent before passing an order.”***

11. Admittedly, in the instant case, applicant was Group 'C' employee and as per Rafiq Masih (supra) case, no recovery could be made from the employee who was Group 'C' employee and has not committed any fraud in getting the excess amount. Since applicant was Group 'C' employee and has not committed any fraud or misrepresentation in getting the excess amount, thus the recovery from salary of the applicant cannot be made.

12. Considering the facts and circumstances of the case and in the light of the observations made by the Hon'ble Apex Court, the present O.A. is allowed. Respondents are directed to refund the entire recovered amount to the applicant @ 6% per annum simple interest within a period of 03 months from the date of receipt of a certified copy of this order. If any amount is still to be recovered, same shall not be recovered. So far as rectifying the mistake for granting two increments in a year is concerned, respondents may rectify their mistake but after issuing show cause notice to the applicant and considering the reply given by him. No order as to costs. All associated MAs are disposed of.

(JUSTICE OM PRAKASH VII)

Member (J)

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