Court Case
Most Immediate

Corporate Office
Pension Section, 5th floor
Bharat Sanchar Bhawan
H.C. Mathur Lane,
New Delhi-110001

भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

No.38-46/2020-Pen (B) Dated: 11-12-2020

To

All Heads of Circles/Telecom Districts/ Regions/Projects/
Telecom Stores/Telecom Factories & Other Administrative Offices
Bharat Sanchar Nigam Limited

Sub: Forwarding the judgement, vindicating the stand of BSNL for recovery of undue/excess amount from the employees - reg.

Sir,

I am directed to forward herewith CAT, Jabalpur Bench judgement dated 24/11/2020 in O.A. No. 200/00323/2020 in the matter of Shri N. K. Nandanwar Vs CMD, BSNL & Others, vide which the Court has vindicated the stand taken by BSNL for the recovery of undue/excess amount paid to its employees. This is for information and necessary action.

2. Accordingly, all the Telecom Circles/Other Administrative Units/Cadre Controlling Units of BSNL Corporate Office are requested to suitably incorporate the aforesaid judgement while preparing the Counter Reply in similar cases.

This issues with the approval of the Competent Authority.

Yours faithfully,

(Sudhanshu Shekhar Ray)
Asstt. General Manager (Estt.)
Tele. No. 011-23766036

Encl: As above.

Copy to :-

1. PPS to CMD, BSNL
2. PS to Dir (HR)/Dir (F)/Dir (Ent.)/Dir (CFA)/Dir (CM), BSNL Board
3. PGMs/Sr. GMs/GMs (Pers./FP/BW/Elect./Arch/Civil), BSNL CO
4. Guard File
5. BSNL CO Intranet Portal

O.A.No.200/00323/2020

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL,
JABALPUR BENCH
JABALPUR

Original Application No.200/00323/2020

Jabalpur, this Tuesday, the 24th day of November, 2020

HON'BLE SHRI RAMESH SINGH THAKUR, JUDICIAL MEMBER
HON'BLE MS. NAINI JAYASEELAN, ADMINISTRATIVE MEMBER

N.K. Nandanwar
s/o Late Shri Ramaji Nandanwar
Aged about 60 years
Retired AGM BSNL
R/o G-22 Kachnar City
Vijaynagar Jabalpur (MP) 482002
Mobile No.9425800847 **-Applicant**

(**By Advocate** –Shri J.B. Singh)

Versus

1. Chairman cum Managing Director
Bharat Sanchar Nigam Limited
HC Mathur Lane, Janpath, New Delhi 110001

2. Chief General Manager, BSNL
MP. Telecom Circle BSNL Bhavan
Hoshangabad Road Bhopal 462015

3. General Manager,
Telecom District
BSNL CTO Compound
Jabalpur 482001 **- Respondents**

(**By Advocate** –Shri Sapan Usrethe)

(Date of reserving the order:14.10.2020)

ORDER

By Ramesh Singh Thakur, JM:-

By way of filing this Original Application the applicant is challenging the order dated 15.11.2019 (Annexure A/-3) and order dated 15.11.2019 (Annexure A/4) whereby the pay of the applicant has been reduced from 01.07.2000 onwards and recovery has been calculated against him.

2. The applicant is praying for the following reliefs in this Original Application:-

> *"8(i) Direct the Respondents to refrain from making the recovery from the Applicant by revising and reducing the pay of the Applicant since 31.07.2000 onwards being unjustified, illegal and arbitrary;*
>
> *(ii) Direct the Respondents to allow the increment to the Applicant due from 01.11.2019 raising his pay to Rs.54900/-*
>
> *(iii) Any other order/orders which this Hon'ble Court deems fit and proper.*
>
> *(iv) Cost of the petition may also kindly be awarded."*

3. The facts of the case are that the applicant was initially appointed as Draftsman in the pay scale of Rs.425-700-1400-2300 since 01.01.1986 in the Department of Telecommunication and joined on 12.09.1983. He was promoted as Junior Telecom Officer (JTO) on 14.11.1994 in pay scale of Rs.2900 (6500-10500 from 01.01.1996). Thereafter he was promoted to the post of Sub-Divisional Engineer vide order dated 19.05.2000 (Annexure A/1) on regular basis in pay scale of Rs.7500-12000/-. He joined on the promotional post on 31.07.2000 and exercised option for fixation of his pay from the Date of Next Increment (DNI) i.e.01.11.2000 as per the provisions of FR-22(1)(a)(1). Meanwhile the erstwhile DOT was converted into BSNL from 01.10.2000 whereby the CDA pay scales were replaced by IDA pay scales. The corresponding pay scale for Rs.7500-250-12000 was given as 11875-300-17275 w.e.f.01.10.2000. Accordingly his

fixation of pay was done in accordance with the instructions contained in OM dated 12.09.2006 (Annexure A-2). The pay of the applicant has been revised and reduced from 01.07.2000 on 15.11.2019 and reduced pay was fixed as Rs.53610/- from 01.07.2019 without any notice/opportunity of being heard. The respondents prepared a due and drawn statement resulting over payment to the applicant for the period from 01.07.2000 onwards (Annexure A/4). The respondents have not paid increment to the applicant due on 01.11.2019 and only the pay of Rs.53610/- has been continued to be paid to the applicant for the month of October 2019 to January 2020 (Annexure A-5). The applicant made representation to the respondent No.2 on 20.12.2019 (Annexure A/6) praying for waving off the so called recovery. The same was forwarded by the respondent No.3 to respondent No.2 on 28.12.2019 (Annexure A-7). The applicant got retired on 31.01.2020 (Annexure A-8) as per BSNL VRS scheme.

The applicant preferred a reminder to the respondent No.2 on 15.04.2020 but still to no avail. Hence, this Original Application.

4. The respondents have filed their reply wherein it has been submitted that the applicant was working as JTO prior to 31.07.2007. He was given first promotion from JTO to SDE (Regular) post w.e.f.31.07.2000 i.e. from pay scale of Rs.6500-200-10500 to 7500-250-12000 his basic pay was fixed at Rs.7750/- on 31.07.2000 in the pay scale of Rs.7500-250-12000/-. It is submitted by the respondents that the applicant was serving in DOT under Central Govt. and was covered under the extent rules of Central Govt. Department and officer was having choice either to opt promotion w.e.f. date of promotion i.e.31.07.2000 or w.e.f. date of next increment i.e. 01.11.2000 that is with effect from the date of next increment. Later the DOT was converted to PSU i.e. Bharat Sanchar Nigam Limited (BSNL) w.e.f. 01.10.2000 and option was given for all

serving employees of DOT to opt either for DOT or for the PSU BSNL w.e.f.01.10.2000. The applicant opted for PSU (BSNL) and took absorption w.e.f.01.10.2000 and was given IDA pay scale w.e.f.01.10.2000 (Annexure R-2). The option for fixing pay (i.e. opting promotion) from the date of next increment (01.11.2000) was available to employee Government Department only (i.e. DOT) not to PSU BSNL absorbed employees. For all BSNL absorbed employees pay have to be fixed with effect from the date of their promotion (31.07.2000 in this case) and no re-fixation is permitted on the next increment date which is falling after 01.10.2000 which is as per Govt. of India order issued vide DOT order dated 17.12.2008 (Annexure R/3 and R/4). The respondents submits that the applicant had opted for promotion increment w.e.f. next increment dated 01.11.2000 but taken absorption in BSNL w.e.f.01.10.2000 and his pay converted from CDA pay scale to IDA pay scale, his pay anomaly was later on

rectified and promotion pay fixation was given w.e.f. the promotion date i.e.31.07.2000 and later on fixing on IDA scale was given on 01.10.2000 i.e. date of absorption from DoT to BSNL as per the option given by the applicant. The recovery of Rs.122439/- is arising due to above corrective action taken by BSNL in the light of present rulings and due to option to get absorbed in BSNL as exercised by the employee. The recovery of Rs.122439/- was calculated and revised pay of applicant was fixed as Rs.12175/- on 01.10.2000 thereupon further increments/promotional benefits were given (Annexure R-5). The applicant was also informed when pay fixation was made and a copy was given to employee mentioned that "any overpayment detected may be recovered from concerned officer without any further notice." Therefore the proposed recovery is correct and as per law/rules. Respondents further submitted that an enquiry against the applicant is pending and charge sheet was also issued to

applicant for getting appointment on the basis of false caste certificate. It is further submitted by the respondents that the applicant was appointed in the year 1983, under ST category stating has caste as Halba and there was some complaint about the caste certificate submitted by the employee the same was confirmed as per collectorate office Balaghat order dated 21.01.2016 that certificate submitted by employee was not valid and was seen by BSNL Board report of committee that "Halba" does not come under ST and directed to take action against that appointment. The applicant preferred W.P. No.1339/2016 before Hon'ble High Court of Madhya Pradesh against the order dated 16.11.2015 passed by High Level Committee for caste certificate of Scheduled Caste and Scheduled Tribe and the matter is still pending. The major penalty charge sheet was issued on 19.03.2018 and the department enquiry and proceedings is under progress (Annexure R/1). Hence there is no merit in the case of applicant as he

himself agreed that fixation may be done as per Rule vide letter dated 20.12.2019 (Annexure A-6).

5. The applicant has filed rejoinder to the reply filed by the respondents and have reiterated its earlier stand taken in the Original Application. It is further submitted by the applicant that the applicant is entitled for being paid pension as per Rule 69 of the CCS (Pension) Rules, 1972 and entitled for leave encashment as per para 7(ii) of order dated 04.11.2019. It is submitted by the applicant the charge sheet issued to the applicant on 19.03.2018 on the basis of the High Level Committee order dated 16.11.2015 (Annexure R/1) has been stayed by Hon'ble High Court of Madhya Pradesh, Jabalpur vide order dated 18.01.2019 in W.P. No.1339/2016 (Annexure A-11). BSNL Corporate office as per order dated 27.11.2019 (Annexure R/1) issued instructions contained in DoPT OM dated 08.04.2019 based on Hon'ble Supreme Court order in Civil Appeal No.10396/2018 and Civil appeal No.10387-

10388/2018 has held that candidates belonging to Halba/Halba Koshti/Koshti Communities shall be placed below the list of general category candidates as on 28.11.2000 while the applicant has been promoted on 31.07.2000 i.e. prior to crucial date given by Hon'ble Supreme Court. Accordingly, the applicant is protected by the said judgment of Hon'ble Supreme Court being squarely covered under that judgment. The applicant submitted that there is no provision under the rules to opt promotion from the date of next increment rather there exists a provision to opt for fixation of pay from the date of next increment under FR 22(1)(a)(1). Accordingly the applicant accepted his promotion from date of his joining i.e.31.07.2000 and opted for fixation of his pay from the date of his next increment in the feeder post of JTO i.e.01.11.2000.

S.N.	Date	Post	Pay in JTO P/S	Pay in SDE P/S	Pay in IDA Pay Structure	Remarks

			(6500-200-10500)	(7500-200-12000)	(11578-300-17275)	
(1)	(2)		(3)	(4)	(5)	(6)
1.	01.11.1999	JTO	7500			
2.	31.07.2000	SDE	(7500)			Promotion
3.	01.10.2000	"	(7500)	7500	12175	
4.	01.11.2000	"	(7700)	(8000)	12475	As per option
5.	01.11.2001	"			12775	

Therefore, the above pay fixation was in accordance with Rules i.e. FR 22(1)(a)(1) and Para 2(b)(e) of order issued by the respondents on 18.03.2004 read with query (iv) of clarification dated 11.01.2005 (Annexure A/13 and A/14 respectively). The said pay fixation was also covered by the clarification issued by the respondents as per OM dated 12.09.2006 (Annexure A/2). Therefore any subsequent instructions issued on 17.12.2008 (Annexure R/3) and implemented as per order dated 31.10.2019 (Annexure R/4) after 11 years are unjustified, illegal and arbitrary.

6. The applicant submitted that Hon'ble Supreme Court has already held in order dated 18.12.2014 in Civil Appeal

No.11527/2014, ***State of Punjab and others*** vs. ***Rafiq Masih (White Washer)*** that any recovery by the employers from retired employees or employees who are due to retire within one year of the order of recovery or from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued, would be impermissible in law.

7. The respondents submitted their additional reply to the rejoinder filed by the applicant wherein it has been stated that the applicant was not retired on superannuation on completing 60 years of age as he has opted for special VRS having its own term and condition. The BSNL vide letter dated 04.11.2019 (Annexure R-9) offered the VRS scheme to all employees having attained 50 years of age. The applicant has opted the scheme and filled the application form on 08.11.2019 (Annexure R-10) vide which he has given his consent for all terms and conditions and also undertaking that any dues/excess payment may be

recovered from the ex-gratia/leave encashment (Annexure R-7). The respondents have further referred Rule 69 of the Central Civil Services (Pension) Rules, 1972 wherein provisional pension where departmental or judicial proceedings may be pending is stated and the applicant is already been given provisional pension as per the said Rule. It is submitted by the respondents that in Rule 71 of the CCS (Pension) Rules 1972 empowers right for "recovery and adjustment of Government Dues" from Government servant due for retirement. The vigilance/disciplinary action is undergoing on applicant so leave encashment payment is suitable to be done after ascertaining actual amount of recovery (if any) consequent upon conclusion of undergoing vigilance/disciplinary action. Copy of Rule 69 and 71 are at Annexure R-11. The applicant himself has given undertaking that recovery can be made by ex-gratia payment after the VRS. It is further submitted that as the rule of opting increment under

FR 22(1) (a)(1) is not applicable to him vide order dated 17.12.2008 wherein it is clearly mentioned that option of fixing pay (i.e. opting promotional increment) from the date of next increment (01.11.2000 in this case) was available to employee of Government department only (i.e. DOT) and not to PSU BSNL absorbed employees.

8. Heard the learned counsel for both the parties and have also perused the pleadings and documents annexed with the file.

9. From the pleadings it is admitted case of the parties that the applicant was appointed as Draftsman on 01.01.1986 thereafter was promoted as Junior Telecom Officer on 14.11.1994. Further the applicant was promoted to the post of Sub Divisional Engineer on 19.05.2000 (Annexure A/1) and the applicant joined on the promotional post on 31.07.2000. It is also admitted fact by the parties that the applicant exercised option for fixation of his pay from the Date of Next Increment (DNI) i.e.

01.11.2000 as per the provisions of FR-22(1)(a)(1). In the meanwhile the erstwhile DOT was converted into BSNL from 01.10.2000 whereby the CDA pay scales were replaced by IDA pay scales. Accordingly the pay of the applicant was fixed as per instructions contained in OM dated 12.09.2006 (Annexure A-2). On 15.11.2019 the pay of the applicant was reduced w.e.f. 01.07.2000 on the reasons that there is over payment to the applicant for the period from 01.07.2000 onwards (Annexure A/4). The contention of the applicant is that the respondent-department has not paid increment to the applicant due on 01.11.2019 because the applicant has deferred the increment on account of promotion till the next date of increment. The contention of the applicant is that the applicant was given due permissible pay after fixing as per his option and only the pay of Rs.53610/- has been continued to be paid to the applicant for the month of October 2019 to January 2020 (Annexure A-5). It is also

admitted fact that the applicant had made representation to the respondent No.2 for waving off the recovery, which was further forwarded by respondent No.3 to respondent No.2 on 28.12.2019 (Annexure A-7). The applicant got retired on 31.01.2020 (Annexure A-8) as per BSNL VRS scheme and as per law settled in the judgment of Hon'ble Apex Court in the matter of ***Rafiq Masih*** (supra) wherein it has been held that any recovery by the employers from retired employees or employees who are due to retire within one year of the order of 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, would be impermissible in law.

10. On the other hand, the contention of the respondents are that the applicant was not retired on superannuation but the applicant has opted for special VRS having its own term and condition. So, the law settled by the Hon'ble Apex Court in the matter of ***Rafiq Masih*** (supra) is not

applicable to the applicant. Secondly. The contention of the respondents is that the applicant has opted for VRS scheme as per Annexure R/10 and has given his consent for all terms and conditions and also undertaking that any dues/excess payment may be recovered from the ex-gratia/leave encashment (Annexure R-7) and in view of Rule 69 of the Central Civil Services (Pension) Rules, 1972 the applicant has been granted provisional pension and it has been specifically submitted by the respondents that as per Rule 71 of the CCS (Pension) Rules, 1972 empowers right for "recovery and adjustment of Government Dues" from Government servant due for retirement. So, as per undertaking given by the applicant the recovery can be made from ex-gratia payment after his VRS. Regarding the exercise of option for deferring the increment under FR 22(1)(a)(1) it has been submitted by the respondents that this provision is not applicable to the

applicant as it was available to employees of Government department only (i.e. DOT).

11. From the record it is itself clear that the BSNL came into existence on 01.10.2001 and as per option given by the applicant increment was deferred till 01.11.2000. Admittedly by this time the applicant had joined the BSNL and has been taken on absorption in BSNL. So, it is clear that after absorption the pay of the applicant has to be converted from CDA to IDA pay scales. It is also clear from the record that recovery of Rs.122439/- was calculated by the respondents and revised pay of applicant was fixed as Rs.12175 on 01.10.2000 and as per Annexure R/5 increment/promotional benefits were given. Later on the fault on the behalf respondents was corrected and have issued the order of recovery of Rs.122439/-. The applicant opted the VRS scheme on 08.11.2019 (Annexure R/10). It is also very clear from the record that the applicant has given his consent for all terms and conditions and also

undertaking that any dues/excess payment may be recovered from the ex-gratia/leave encashment (Annexure R-7). From this it is very clear that the applicant while retiring on the basis of VRS has given the undertaking for recovery by the respondent-department for any dues/excess payment. The respondent department has relied upon the judgment passed by the Hon'ble Apex Court in the matters of ***Chandi Prasad Unyal and others*** vs. ***State of Uttrakhand and others*** (2012) 8 SCC 417 wherein the case of ***Rafiq Masih*** (supra) has also been discussed and it has been settled by Hon'ble Apex Court that where any undertaking is given by the applicant which is specific, the respondent department can recover the excess payment if made by the respondents. In view of such position in the instant case, the yardstick settled by Hon'ble Apex Court in the matter of ***Rafiq Masih*** (supra) is not applicable. Needless to say that while taking the VRS, the applicant himself has given the undertaking

where the recovery from ex-gratia/leave encashment can be made.

12. In view of the above and the law settled by Hon'ble Apex Court in the matter of ***Chandi Prasad Unyal*** (supra), there is no merit in this case. Resultantly, this Original Application is dismissed. No order as to costs.

(Naini Jayaseelan)
Administrative Member

(Ramesh Singh Thakur)
Judicial Member

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