

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.721 of 2016

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Bishwanath Choudhary, son of late Ramji Choudhary, Ex-Sub Divisional Engineer,
Office of the Telecom Directors Manger, Hajipur, Vaishali (Bihar) resident of At &
P.O- Dighikala, near DC. College, Hajipur, District- Vaishali-844101 (Bihar).

.... Petitioner/s

Versus

1. The Union of India through the Secretary, Ministry of Communication, Department of Telecommunication, 914, Sanchar Bhawan, Ashoka Road, New Delhi-110001.
2. The Member (Services), Ministry of Communication, Department of Telecommunication, 914, Sanchar Bhawan, Ashok Road, New Delhi-110001.
3. The Chairman & Managing Director, Bharat Sanchar Nigam Limited, Corporate Office, BSNL, New Delhi-11001.
4. The Chief General Manager, Bihar Telecom Circle, BSNL, Patna (Bihar).
5. The Controller of Communication Accounts, Office of the CCA, Bihar Telecom Circle, 2nd Floor, C.T.O. Annexie Building, Patna.
6. The Chief Accounts Officer (CA), Bihar Telecom Circle, Sanchar Bhawan, Buddha Marg, Patna.
7. The T.D.M., BSNL, Hajipur, Vaishali (Bihar).

.... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Munna Pd Dixit (M.P. Dixit), Advocate. Mr. S.K.Dixit, Advocate. Mr. Sanjay Kumar Choubey, Advocate.
For UOI	:	Mr. S.D.Sanjay, Additional Solicitor General Mrs. Nivedita Nirvikar, CGC.
For the BSNL	:	Mr. Prabhat Kumar Singh, Advocate.

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 21-07-2016

The challenge in the present writ petition is to an order
dated 16.01.2015 as well as to an order dated 24.09.2015 passed by

the Central Administrative Tribunal, Patna Bench, Patna, whereby an Original Application filed by the petitioner herein was dismissed.

The challenge in an Original Application was to the order of payment of death-cum-retirement gratuity, commuted value of pension and pension determined on the less amount and also the petitioner claims refund of Rs. 1,19,123/- recovered from the death-cum-retirement gratuity against overpayment alleged to be made to the petitioner.

Before this Court, the argument raised by learned counsel for the petitioner is that pay fixation and the consequent order of recovery was passed without issuing any show cause notice, thus, the said order violates the principle of natural justice.

Learned counsel for the respondents could not controvert the said fact.

In view of the said fact, we find that the order of fixation of pay, leading to reduced amount of pension, violates the principles of natural justice and cannot be sustained. Thus, the said orders are set aside with a direction to the respondents to re-examine the entire issue after giving opportunity of hearing to the petitioner. The question as to whether any recovery can be made from the death-cum-retirement gratuity payable to the petitioner, shall also be examined in the light of the judgment of the Supreme Court in the case of State of Punjab & Ors. vs. Rafiq Masih (White Washer) and Ors, (2015) 4 SCC 334.

In view of the above, the orders passed by the Tribunal are set aside. The respondents are directed to reconsider the pay and pension including other pensionary benefits payable to the petitioner in accordance with law.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Sujit/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	27.07.2016
Transmission Date	