

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.16073 of 2017
Date of Decision: August 08, 2017

Bharat Sanchar Nigam Limited & others

...Petitioners

Versus

Robinson Sr TOA (Retired) & another

...Respondents

CORAM: HON'BLE MR.JUSTICE AJAY KUMAR MITTAL, JUDGE
HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.D.R.Sharma, Advocate,
for the petitioners.

AMIT RAWAL, J.

1. Petitioners-Bharat Sanchar Nigam Limited assail the order dated 4.1.2017 (Annexure P-4) passed by the Central Administrative Tribunal Chandigarh Bench (for short "CAT"), whereby O.A.No.060/00112/2016 filed by respondent No.1 has been allowed and the order dated 15.2.2017 (Annexure P-6), dismissing the review application filed by the petitioners.

2. Mr.D.R.Sharma, learned counsel representing the petitioners submitted that the facts leading to the filing of the writ petition are that on 7.6.1977, respondent No.1-Robinson was appointed as Lower Division Clerk (LDC). On 10.10.1980, he was promoted as Upper Division Clerk (UDC). Vide letter dated 9.9.1992, the cadre of LDC/UDC was converted into Telecom Office Assistant (TOA) w.e.f. 1.10.1992. Respondent No.1, on completion of sixteen years of service, was promoted under One Time

Bound Promotion Scheme (for short “OTBP”) w.e.f. 16.6.1993 in the pay scale of Rs.4500-7000. With effect from 25.10.1996, respondent No.1 was further promoted as Senior Telecom Office Assistant on adhoc basis in the same pay scale and was granted one advance increment from the aforementioned date. OTBP pay scale was upgraded from Rs.4500-7000 to Rs.5000-8000 effective from 1.12.1998. Accordingly, the pay of respondent No.1 was fixed at the stage of Rs.5900/- instead of Rs.5750/-. The aforementioned mistake was on account of incorrect application of the relevant rules and in contravention of the instructions contained in the letter dated 20.4.1999.

3. It has been further argued by the learned counsel for the petitioners that since respondent No.1 was to superannuate w.e.f. 30.11.2014, on 7.10.2014, he submitted his pension papers to the office of the Chief Engineer (C). The pension sanctioning authority, i.e., Chief Engineer (C) vide letter dated 15.10.2014 forwarded his pension papers to the office of Controller of Communication Accounts (DOT), Punjab Circle, Chandigarh. Vide Annexure A-1 dated 2.3.2015, Annexure A-2 dated 9.3.2015, Annexure A-3 dated 17.3.2015 and Annexure A-4 dated 12.6.2015, the pay and pension of respondent No.1 were re-fixed correctly and the recovery was effected. He challenged the aforementioned orders, i.e., Annexures A-1 to A-4, of re-fixation and recovery before the CAT. Challenge was also laid to letters dated 6.11.2015 and 8.12.2015 (Annexures A-5 and A-6).

4. It has also been contended by the learned counsel for the petitioners that vide letter dated 12.6.2015 (Annexure A-4), petitioners had recovered a sum of Rs.1,56,486/-. However, during the course of the

hearing, respondent No.1, restricted his prayer qua recovery part only. Since the action of the petitioners to correct their mistake was in accordance with the rules and the same was noticed and recorded by the CAT in the order dated 4.1.2017 (Annexure P-1), yet the CAT erred in quashing the other letters and memos relatable to reduction of pay scale and recovery of the amount. In this regard, review application was filed, but the same also met with the same fate. Thus, the orders are not sustainable in the eyes of law as on up-gradation of pay scale from Rs.4500-7000 to Rs.5000-8000 w.e.f. 1.12.1998, by mistake the pay of respondent No.1 was fixed as Rs.5900/- instead of Rs.5750/-, which was in contravention of the instructions dated 20.4.1999.

5. Learned counsel for the petitioners further argued that the irregularity was pointed out to the pension sanctioning authority only in the year 2015 vide Annexure A-1. The CAT erred in setting-aside the order of reduction in the pay scale, whereas respondent No.1 confined his prayer to recovery of arrears. While granting the benefit of OTBP, the pay of respondent No.1 was incorrectly fixed by the petitioners. It is only at the time of his retirement that the irregularity was noticed and, thus, prayer was made for setting-aside the orders under challenge.

6. In support of his contention, learned counsel has relied upon judgments of the Apex Court in **U.T.Chandigarh and Ors. Versus Gurcharan Singh and Anr., 2014 (1) SCT 512** and **Union of India and Ors. Versus Shri Bhanwar Lal Mundan, 2013 (4) SCT 503** to contend that rectification of mistake in the fixation of pay can always be done and in case of incorrect up-gradation of pay scale, employee would not be getting pension on the basis of pay drawn by him, but there shall be no recovery.

7. Before learned counsel for the petitioners concluded his arguments, he urged that the department is not contemplating to recover further arrears.

8. We have heard the learned counsel for the petitioners, appraised the paper book and are of the view that the order of the CAT does not call for any interference as the same has been passed after considering the rival contentions of the parties and on the basis of the documents.

9. The order of the CAT does not reflect that respondent No.1 had restricted his claim only to the recovery part, instead had confined to order Annexure A-8. The order dated 29.11.2014 (Annexure A-8) in favour of the applicant is passed before his superannuation and respondent No.1 had not made any misrepresentation or played fraud. In such circumstances, the applicant cannot be made to suffer for the lapse of the department. The order dated 29.11.2014 (Annexure A-8) reads as under:-

“ *BHARAT SANCHAR NIGAM LIMITED*
(A Govt.of India Enterprises)
O/o CHIEF ENGINEER (CIVIL),
T.E.Bldg.3rd Floor SECTOR 17,
CHANDIGARH-160017

No.2 (135)-07/CE(C)/CHD/3975-77 Dated 29-11-2014

SANCTION MEMO

Sanction of the Chief Engineer (C),BSNL, Chandigarh is hereby conveyed for grant of encashment of leave amounting to Rs.6,06,780/- (Rupees Six Lacs Six thousand Seven hundred Eighty only) as per details given below to Sh.Robinson, Sr.TOA-III (HRMS No.197701499) who is retiring on superannuation on 30.11.2014. The details are as under:-

- 1. Total E/L at credit as on 30.11.2014 = 300 days*
- 2. Basic pay as on 30.11.2014 = 30630/-*
- 3. DA rate 98.1% =30048/-*

4. *Formula for Leave encashment* = (Basic pay on the date
of retirement + DA on
the date of retirement
x E.L.balance/30)
= 30630 + 30048 = 60678x
300/30 = Rs.6,06,780/-

The amount is chargeable to head of "Salaries"

Chief Accounts Officer

Copy to:

1. *The CAO (Banking) O/o CGMT Pb.Circle, Chandigarh*
2. *The AO (Cash) % CGMT Pb.Circle, Chandigarh for making payment.*
3. *Sh.Robinson, SSS, for information.*

Chief Accounts Officer

10. In other words, the petitioners are estopped from recovering the amount from the retiral benefits of respondent No.1 in view of the ratio decidendi culled out in **State of Punjab and others Versus Rafiq Mashhi (White Washer) etc., 2015 (1) SCT 195**, wherein it has been held that it is not possible to postulate all situations including hardship, which would govern employees on the issue of recovery, where payments have mistakenly been made to the employees in excess of their entitlement. There was no occasion for the department to reduce the pay scale of respondent No.1 as no opportunity of hearing was ever afforded to the applicant.

11. Adverting to the judgments relied upon by learned counsel for the petitioners, in **Gurcharan Singh's case (supra)**, the employee had agreed to get his pay fixed as per the minimum of pay in the pay-scale. However, in the instant case, the factual situation being different, the petitioner-employer has not been able to bring the case within the
aforementioned ratio.

12. Next examining the judgment in **Shri Bhanwar Lal Mundan's case (supra)**, the point involved therein was that the employee was getting higher pay scale in the post while on deputation. It was in these circumstances, the recovery was being made. The facts in the instant case would reveal that the same are totally distinguishable as the department had upgraded the income of respondent No.1 by fixing his pay as Rs.5900/- with effect from 1998, but sought to reduce only after his retirement and commence recovery, which gave cause of action to respondent No.1 to file the Original Application.

13. For the above-noted reasons, we find that the impugned order of the CAT does not call for interference and cannot be said to be opaque or repugnant. Resultantly, while upholding the same, writ petition is dismissed.

**(AJAY KUMAR MITTAL)
JUDGE**

**(AMIT RAWAL)
JUDGE**

**August 08, 2017
ramesh**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No