

110 (2 cases)

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2025:PHHC:039401-DB



CM-4171-CWP-2025 in/and
CWP-17835-2024
Date of Decision: 24.03.2025

UNION OF INDIA AND OTHERS

...Petitioners

V/S

CENTRAL ADMINISTRATIVE TRIBUNAL AND OTHERS

...Respondents

2025:PHHC:039402-DB



CM-4172-CWP-2025 in/and
CWP-17845-2024
Date of Decision: 24.03.2025

BHARAT SANCHAR NIGAM LIMITED AND OTHERS

...Petitioners

V/S

CENTRAL ADMINISTRATIVE TRIBUNAL AND OTHERS

...Respondents

**CORAM: HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Present: Mr. Rajesh Gupta, Advocate for the petitioner(s).

SANJEEV PRAKASH SHARMA, J. (Oral)

1. The matter comes up before us on applications for preponing the main cases.

2. We preponed the main case and heard learned counsel for the petitioner(s) on merits.

3. The issue raised in the present writ petitions has been finally adjudicated by a similar judgment taken up against the order passed by the Central Administrative Tribunal at the High Court of Madhya Pradesh in **MP-3270-2020, decided on 17.02.201, in case titled N.K. Nandanwar v. Chairman-cum-Managing Director and others**, wherein, after considering the law as laid down in **State of Punjab and others v. Rafiq Masih (White Washer) and another (2015) 4 SCC 334** as well as in the case of **High Court of Punjab and Haryana and others vs. Jagdev Singh (2016) 14 SCC 267**, held as under:-

“Considering the submissions made by the learned counsel for the parties and on perusal of the order passed by the Tribunal, we are of the opinion that the clarification has been made by issuing office memorandum on 17.12.2008 stating therein that FR-22 will not be applicable for the employees of BSNL and it is further clarified that office memorandum earlier issued on 12.09.2006 makes it clear that the Tribunal has not committed any error in holding that pay fixation made by the respondents was erroneous, granted benefit to the petitioner mistakenly and therefore the same was lateron rectified. However, the view taken by the Tribunal in respect of recovery of excess amount paid to the petitioner due to wrong fixation is not sustainable because the same is contrary to the law laid down by the Supreme Court in the case of Rafiq Masih (supra). The case of

Jagdev Singh (supra) is not applicable in the present case for the reason that option given by the employee at the relevant point of time i.e. at the time of fixation of pay, binds him and claim regarding quashing the recovery cannot be accepted, but here in this case, the respondents are relying upon the option given by the petitioner at the time of taking VRS and accepting the retiral dues in pursuance to his VRS. The submission made by the learned counsel for the respondents that if such an option had not been given, retiral dues would not have been paid to the petitioner. This submission of the respondents has no substance and is not acceptable. Indubitably, at the time of alleged erroneous fixation, no option was taken from the petitioner and therefore if such pay fixation in which the petitioner has not made any misrepresentation, excess amount paid to him, cannot be recovered in view of the law laid down by the Supreme Court in the case of Rafiq Masih (supra). Even otherwise, if the petitioner had not been retired voluntarily on 31.01.2020, he was due for retirement on 30.06.2021 upon attaining the age of retirement. Recovery is being sought to be made for a period in excess of five years. Thus, the case of the petitioner would fall within the category (ii) and (iii) mentioned in para 12 of the judgment in case of Rafiq Masih (supra). The respective categories are reproduced for ready reference:-

"12.(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."

Indubitably, the erroneous fixation was done somewhere in the year 2000 and recovery order has been issued in the year 2020. Thus, the aforesaid category as has been laid down by the Supreme Court in the case of Rafiq Masih (supra) will be applicable to the petitioner. Accordingly, the order passed by the Tribunal deserves to be corrected to the extent that excess amount paid to the petitioner i.e. Rs.1,22,439/- cannot be recovered from him. Therefore, the recovery proposed against the petitioner is hereby set aside. If the amount has already been recovered, the same be refunded to the petitioner within a period of three months from today.

The petition is accordingly allowed to the above extent.

In the facts and circumstances, the parties shall bear their own costs."

4. The challenge to the said order was taken up before the Hon'ble Supreme Court in SLP (C) No.7445-7446-2022, wherein the Hon'ble Supreme Court held as under:-

"We are not inclined to interfere with the impugned judgment and order passed by the High Court. The Special Leave

Petitions, are, accordingly, dismissed. Pending application(s), if any, shall stand disposed of.”

5. Taking notice of the aforesaid aspects, we find that there is no distinction between the case taken up relating to the employees of the BSNL who had sought voluntary retirement and recovery was being sought to be effected relating to their earlier pay fixations and the present case where too a similar action is being sought to be taken by the BSNL which has been set aside by the Central Administrative Tribunal Chandigarh Bench vide its order dated 24.07.2023 and affirmed in review application on 29.08.2023.

6. Keeping in view the above, we need not further delve upon the issue again. However, we notice that the law has already been settled by the Hon’ble Supreme Court in the case of Rafiq Masih (White Washer) (supra) and Thomas Daniel v. State of Kerala 2022 INSC 498.

7. In view thereto, both the petitions are dismissed.

8. All pending misc. application(s) also stand disposed of.

(SANJEEV PRAKASH SHARMA)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

24.03.2025
rajesh

1. Whether speaking/reasoned?	:	Yes/No
2. Whether reportable?	:	Yes/No