

(2025) 01 CAT CK 1557

In the Central Administrative Tribunal, Allahabad Bench, Allahabad

Case No : Original Application No. 330, 00705 Of 2021, 330, 00706 Of 2021

Sushil Kumar & Ors.

APPELLANT

Vs

Bharat Sanchar Nigam Limited. Through Its Chairman-Cum-
Managing Director, BSNL Corporate Office, 4th Floor, Bharat
Sanchar Bhawan, Harish Chandra Mathur Lane, Janpath, New
Delhi-110001 & Ors.

RESPONDENT

Date of Decision : 23-01-2025

Acts Referred:

Constitution Of India, 1950 — Article 14, 15, 16, 21

Citation : (2025) 01 CAT CK 1557

Hon'ble Judges : Om Prakash VII, Member (J); Mohan Pyare, Member (A)

Bench : Division Bench

Advocate : A.K. Dave, D.S. Shukla

Final Decision : Allowed

Judgement

Om Prakasah -VII, Member (J)

1. Both the Original Applications are being decided with the consent of learned counsels for the parties by a common order as the controversy involved in both the cases are similar and identical. OA No. 705/2021 is being treated as a leading case.

2. By means of present Original Applications., the applicants have sought the following reliefs:-

Reliefs in OA No. 705/2021

“(i) To quash the impugned order dated 20-04-2020 (Annexure No. A-1), order dated 09/14-07-2020 (Annexure No. A-2) only to the extent related to the Applicant, order dated 17-12-2020 (Annexure No. A-3), order dated 31-05-2021 (Annexure No. A-4) and the order dated 03/05-08-2021 (Annexure No. A-5).

(ii) To direct the Respondent Nos. 3/4 to issue revised PPO of PPO No.

222020012202130 on the basis of Last Pay Drawn Certificate Basic Pay Rs. 27870/- and Form-7 within stipulated time.

(iii) To direct the Respondents to pay difference of amount after revision of Pension Payment Order (PPO) No. 222020012202130 within stipulated time with interest.

(iv) To pay the deducted amount of Rs. 21,100 from the ex-gratia along with interest.

(v) To pass any other or further orders as the Hon'ble Tribunal may deem fit and proper und the circumstances of the case.

(vi) To award cost of the Application.

Reliefs in OA No. 706/2021

(i) To quash the impugned order dated 11-06-2020 (Annexure No. A-1), order dated 09/14-07-2020 (Annexure No. A-2) only to the extent related to the Applicant, order dated 07/08-01-2021 (Annexure No. A-3), order dated 05/06-05-2021 (Annexure No. A-4) and the order dated 06-07-2021 (Annexure No. A-5

(ii) To direct the Respondent Nos. 3/4 to issue revised PPO of PPO No. 222020012202091 on the basis of Last Pay Drawn Certificate Basic Pay Rs. 28590/- and Form-7 within stipulated time.

(iii) To direct the Respondents to pay difference of amount after revision of Pension Payment Order (PPO) No. 222020012202091 within stipulated time with interest.

(iv) To pay the deducted amount of Rs. 21610/- from the ex-gratia along with interest.

(v) To pass any other or further orders as this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.

(vi) To award cost of the Application”.

3. Brief facts of the case in OA No. 705/2021 are that applicant was initially appointed as Gateman w.e.f. 01.07.1981 at Central Telegraph Office at Allahabad. Applicant in the normal channel of promotion promoted as Telegraphist w.e.f. 03-04-1989 in the then scale of Rs. 1660/3200-4900 and posted at Divisional Telegraph Office (D.T.O.) Orai (Jalaun). In the year 1995 applicant transferred from D.T.O. Orai to D.T.O. Fatehpur as Telegraphist. On 15-10-1999 applicant after successful completion of four weeks training, promoted as Sr. T.O.A. (TL) in the scale of Rs. 4000-100-6000 w.e.f. 23-08-1999. After completion of 16 years of service with the approval of the Departmental Promotion Committee under OTBP (One Time Bound Promotion), the applicant promoted in the pay scale of Rs. 7100- 200-10100 w.e.f. 04.04.2005. On 06.04.2011, applicant again transferred from DTO Fatehpur to

GMTD, BSNL Allahabad as Sr. TOA (TL) on 23.03.2010. On 17.10.2012, the AGM (Admin.) O/o GMTD Allahabad after the due approval of Screening Committee, in pursuance of Corporate Office letter dated 23-03-2010 endorsed by CGMT, UP (E) Circle, Lucknow vide letter dated 24-03-2010 promoted/upgraded the applicant along with other BSNL employees under Non-Executive Promotion Policy (NEPP) in the pay scale of Rs. 14900-27850 in the cadre of Sr. TOA (TL). Thereafter on 09.10.2012, the AGM (Admin.) O/o GMTD Allahabad issued promotion/upgradation list of other co-retirees upgraded under NEPP. The name of co-retirees was mentioned at serial No. 2 Sri S.P. Singh and the date of promotion was shown as 03.01.2012 and the name of Sri K.P. Singh was mentioned at serial No. 6 and the date of promotion was shown as 28.11.2012. In pursuance of aforesaid NEPP scheme, applicant submitted an option in the form of application on 20-10-2014 which was duly marked to EC-II (Dealing Clerk) by AGM (HR), O/o GMTD Allahabad. The Applicant in the aforesaid application specifically mentioned in his option for changing his earlier promotion of OTBP under NEPP w.e.f. 2004. Subsequently on 19.10.2019 AGM (HR) O/o GMTD Allahabad promoted the applicant along with other employees under Non-Executive Promotion Policy as Sr. TOA (TL) w.e.f. 01.10.2019 in the pay scale of Rs. 16370-30630 and therefore, the pay of the applicant was fixed at Rs. 27870/- w.e.f. 01.10.2019 by the AGM (HR) O/o GMTD Allahabad. Applicant was retired from service on 31.01.2020. After retirement, Accounts Officer O/o GMTD Allahabad issued Last Pay Certificate to the applicant wherein the Basic Pay was shown as Rs. 27870/-. On the basis of Last Pay Certificate, applicant came to know through his Pension Payment Order (PPO) No. 222020012202130 that the Respondent No. 4 while preparing the PPO of the applicant changed his last paid basic pay of Rs. 27870 to Rs. 27050 without any justification. Therefore, applicant submitted a complaint on April 2020 through Comprehensive Pension Management System before the Respondent No. 4. Based on the complaint of applicant, Deputy CCA (Pension)/Respondent No. 4 issued impugned order dated 20.04.2020 holding that third upgradation under NEPP was wrongly granted to the applicant. Aggrieved against the aforesaid impugned order, applicant sent representation dated 22.06.2020 to the Respondent No. 4 and also a copy to the AGM (HR) O/o GMTD, Allahabad. Deputy CCA (Pension)/Respondent No. 4 vide impugned order dated 09/14.07.2020 refused to revise the date of first and second upgradation. The Applicant sent another application through WhatsApp mode to the CCA/Respondent No. 3 on 10.12.2020. Respondent No. 4 again passed impugned order dated 17.12.2020 and refused to revise the pension and PPO. Aggrieved against the aforesaid impugned order, applicant filed an Appeal before the CCA UP (East) Circle, Lucknow/ Respondent No. 3 on 27.04.2021. Again Deputy CCA (Pension) vide impugned order dated 31.05.2021 refused to revise the pension and further suggested to approach the last employer i.e. GMTD Allahabad. Being aggrieved against the aforesaid impugned orders, applicant filed present original application.

4. Brief facts of the case in OA No. 706/2021 are that the applicant was initially

selected as Reserved Trained Pool in the cadre of Telegraphist (RTP Telegraphist) in November, 1983 in Allahabad Telegraph Traffic Division, Allahabad. After completion of five weeks job training, the applicant started working on daily wage basis in Central Telegraph Office, Allahabad. In 1985 the Applicant had undergone for regular Telegraphist training in Telegraph Training Center, Central Telegraph Office, Agra with effect from 01.01.1985 to 30.06.1985 (six months Telegraphist training). After completion of regular training and daily wage working experience, the applicant's name was considered for regular absorption. Applicant joined his Government Service in regular capacity as Telegraphist in the Departmental Telegraph Office, Moradabad in the pay scale of Rs. 975-1660 and pay was fixed at Rs. 1050/-. On 11.05.1992, applicant had been transferred from Moradabad to Central Telegraph Office, Allahabad and joined in Telecom Centre at Lalgopalganj (Allahabad). On completion of 16 years satisfactory service by the applicant, OTBP (One Time Bound Promotion) was given in the IDA Pay-Scale of Rs. 7100-200- 10100 along with other counterparts. On 23.03.2010 BSNL Corporate Office, New Delhi issued a Non- Executive Promotion Policy (NEPP) for employee in the IDA Pay Scale of NE-1 to NE-10 of Bharat Sanchar Nigam Limited. Applicant opted for first up-gradation as per this Policy (NEPP) by forgoing the promotion already availed under the erstwhile OTBP scheme. The AGM (Admin.) O/o GMTD Allahabad issued second up-gradation/promotion list of other co-retirees upgraded under NEPP. The name of co-retirees was mentioned at serial No. 2 Sri S.P. Singh and the date of promotion was shown as 03-01-2012, and the name of Sri K.P. Singh was mentioned at serial No. 6 and the date of promotion was shown as 28.11.2012. On 17.10.2012, AGM (Admin.) O/o GMTD Allahabad after the due approval of Screening Committee promoted/upgraded the Applicant along with other BSNL employees under Non-Executive Promotion Policy (NEPP) in the pay scale of Rs. 14900-27850 in the cadre of Sr. TOA (TL). AGM (Estt-1) Corporate Office, New Delhi issued a letter dated 17.09.2014 in respect of settlement of grievances arisen due to implementation of Non-Executive Promotion Policy (NEPP). As per BSNL Corporate Office letter No. 13-5/2013-Pen. (B) dated 17.09.2014, the applicant gave his option for foregoing his earlier up-gradation granted under OTBP under Para 6.4 of NEPP. AGM (HR) O/o GMTD Allahabad promoted the applicant along with other employees under Non- Executive Promotion Policy as Sr. TOA (TL) w.e.f. 01.10.2019 in the pay scale of Rs. 16370-30630. The pay of the applicant was fixed at Rs. 28590/- w.e.f. 01.10.2019 by the Accounts Officer (Claim), O/o GMTD Allahabad. After acceptance of Applicant's option under BSNL VRS-2019, Applicant retired from service on 31.01.2020. His Basic Pay was Rs. 28590/-. PPO No. 222020012202091 was issued in the name of Applicant by the O/o CCA, UP (East) Circle, Lucknow showing LPD Rs. 27750/- instead of LPD Rs. 28590/-. Thereafter the Applicant raised his grievance immediately on Comprehensive Pension Management System. Thereafter applicant sent representation dated 06.05.2020 through proper channel to the CCA Lucknow/Respondent No. 3 raising his grievance for not issuing PPO as per LPD (Last Pay Drawn) and Form-

7. On the representation of the applicant respondent No. 6 passed the impugned order dated 11.06.2020 denying third upgradation. Applicant sent another representation against the aforesaid order dated 11.06.2020. GMTD Allahabad (Appellate Authority) in his order dated 09.10.2020 accepted that all three upgradations have been rightly given to the applicant along with other co-employees/co-retirees. Deputy CCA (Pension)/Respondent No. 4 vide impugned order dated 09/14.07.2020 refused to revise date of first and second upgradation. Against the aforesaid impugned order, applicant filed an Appeal before the CCA, UP (East) Circle, Lucknow/Respondent No. 3 against the Dy. CCA's orders dated 09/14-07-2020 and 07/08-01-2021. It was also sent on Grievance Portal, which was again rejected vide impugned order dated 05/06.05.2021. In May 2021 applicant approached before GMTD Allahabad in pursuance of letter dated 05/06-05-2021 for revision of his PPO, and made request orally. The office of GMTD Allahabad submitted his report/reply to the Grievance Cell that applicant's LPD & Form-7 was correctly issued at Rs. 28590/- at earlier, which has been wrongly withdrawn. Hence applicant has filed the present Original Application.

5. Rejoinder affidavits have also been filed in which the applicants have reiterated the facts as stated in the OAs and denied the contents of the counter affidavits. Nothing new has been asserted in the rejoinder affidavits.

6. We have heard Shri A.K. Dave, learned counsel for the applicants and Shri D.S. Shukla, learned counsel for the respondents and perused the record.

7. Learned counsel for the applicant strongly argued that the reduction in the basic pay and subsequent recovery of Rs. 21,100/- from the fourth ex-gratia payment was done arbitrarily and without following due process of law, thus violating the principles of natural justice. It was also argued that the applicant is entitled to parity with his counterparts, who have been granted the third upgradation/promotion w.e.f. 01.10.2019 under the NEPP scheme and have had their pensions fixed accordingly. The arbitrary refusal by the respondents to revise the applicant's PPO and correct the errors in the pay fixation is discriminatory and undermines the applicant's legitimate rights. The learned counsel further submitted that the respondents' actions are contrary to the provisions of the NEPP scheme and the principles enshrined in Articles 14 and 16 of the Constitution of India, which guaranteed the equality before the law and prohibit discrimination in employment matters. Thus, referring to the entire facts and circumstances of the case as well as documents annexed with the original application, it was further argued that impugned orders be set aside and respondents be directed to afford opportunity to the applicant before issuing the impugned orders.

8. In response, learned counsel for the respondents countered the applicant's claims, emphasizing that the applicant himself opted for the changes in his promotion timeline as per the BSNL Corporate Office letter regarding the settlement and implementation of the Non-Executive Promotion Policy (NEPP).

The respondents argued that the applicant submitted an option form on 27.09.2014 and subsequently followed it with a letter dated 20.10.2014, requesting to shift his promotion from the year 2004 in alignment with the new promotional scheme. It was further submitted that, based on the applicant's request, the competent authority revised the applicant's promotion timeline as follows:

1. First upgradation effective from 01.10.2004,
2. Second upgradation and Third upgradation effective from 01.10.2019 under the NEPP Promotion Policy.

It was also argued that the NEPP Screening Committee, during its meeting on 15.10.2019, recommended the applicant's promotion on the basis of their option. Subsequently, the Assistant General Manager (HR) of BSNL Allahabad issued an order on 19.10.2019, approving the pay fixation of the applicant at Rs. 27,870/- in the relevant pay scale. The service records, along with the last pay certificate and Form 7, were then forwarded to the Accounts Officer, Pension, at Sub Office in Varanasi for finalization of pension and other retirement benefits. Learned counsel for the respondents also argued that the actions taken by the department were in accordance with the existing rules and policies. The claim that the applicant's basic pay was arbitrarily reduced or that his pension was improperly fixed was refuted, as the fixation was done based on the details provided and verified by the competent authorities. The respondents also contended that no illegality or procedural infirmity exists in the issuance of the impugned order, as the applicant's entitlements were calculated and granted as per the departmental rules. Learned counsel for the respondents lastly argued that the Original Application filed by the applicant lacks merit and should, therefore, be dismissed.

9. We have considered the rival submissions advanced by the learned counsel for the parties and have gone through the entire record.

10. From the perusal of record, it is evident that by not following due process before reducing the basic pay and recovering the amount, the respondents have violated the principles of natural justice. The applicants were not given fair opportunity to present their case or respond to the actions taken against them. It is also evident from the record that applicants are entitled to the same treatment as their counterparts under the NEPP scheme, who were granted the third upgradation/promotion effective from 01.10.2019 and had their pensions fixed accordingly.

11. From the analysis of the present case, we are of the view that the refusal by the respondents to correct the errors in pay fixation and revise the PPO is not only arbitrary but also discriminatory. It undermines the applicant's legitimate rights and goes against the principles enshrined in Articles 14 and 16 of the Constitution of India, which guaranteed the equality before the law and prohibit discrimination in employment matters. The Hon'ble Supreme Court has observed

in a catena of judgments in response to the breach of principle of natural justice. Some of the leading decisions of the Hon'ble Supreme Court judgment are as under:-

1. Maneka Gandhi Vs. Union of India and others reported in 1978 AIR page 597;
2. Union of India v. Tulsiram Patel reported in 1985 AIR 1416;
3. Board of Control for Cricket in India v. Cricket Association of Bihar reported in (2015 3 SCC 251

12. In the case of Maneka Gandhi (supra), the Hon'ble Supreme Court has held that the right to a fair hearing and the principles of natural justice are an integral part of the right to life and personal liberty under Article 21 of the Constitution. The Court emphasized that the right to be heard is a basic requirement of natural justice, and any violation of this principle would render the decision null and void.

13. In this case of Tulsiram Patel (supra), the Hon'ble Supreme Court has held that the principles of natural justice are applicable to administrative proceedings as well. The Court emphasized that any decision taken by an administrative authority must be in accordance with the principles of natural justice, and any violation of these principles would render the decision null and void.

14. In the case of Board of Control for Cricket in India (supra), the Hon'ble Supreme Court has held that the principle of natural justice requires that any person against whom an adverse order is proposed must be given an opportunity to be heard. The Court emphasized that even in cases where the rules do not explicitly provide for a hearing, the principles of natural justice must be followed.

15. Thus, the Hon'ble Supreme Court has consistently emphasized the importance of principles of natural justice in ensuring fairness and justice in legal proceedings. Hence, in our considered view that principle of natural justice must be followed, which has not been followed in the instant case.

16. In this case, the next point has arisen that whether recovery can be imposed upon the applicant without issuing any show cause notice. We find that in this case recovery would be initiated against the applicant without issuing any show cause notice. On this point, we may refer the case of State of Punjab and others Vs. Rafiq Maish and others Civil Appeal No.11527 of 2014 decided on 18.12.2014 in which it has been held that no recovery can be made from Group 'C' and 'D' employees if overpayment has not been made on the basis of any fraud or misappropriation, which has been played on the part of the applicant. It is also pertinent to mention here that the applicants are Group 'C' employee and did not face any disciplinary action and have not made any fraud or misappropriation, revision/modification has been made after their retirement which could not be done. It was incumbent upon the respondents that when they were going to revise the LPD, they must afford opportunity of hearing to the applicants to place their stand. It is also noteworthy that similarly situated employees have been given same benefits, it must be also allowed to the applicants. Hence, the

impugned orders are against the settled law and are liable to be quashed.

18. It is also notable here that before recovering aforesaid amount, respondents have not followed the principle of natural justice, which is essential before recovering any amount from the employee. Thus, 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. The bare reading of the entire counter affidavits there is no whisper about a word notice is shown. It is really very surprising that as to why without issuance of show cause notice, the recovery in question was made.

19. Considering the facts and circumstances of the case and in the light of the observations made by the Hon'ble Apex Court, the both Original Applications are allowed and impugned order dated 20.04.2020 (Annexure No. A-1), order dated 09/14-07-2020 (Annexure No. A-2) only to the extent related to the Applicant, order dated 17-12-2020 (Annexure No. A-3), order dated 31-05-2021 (Annexure No. A-4) and the order dated 03/05-08-2021 (Annexure No. A-5) in respect of OA No. 705/2021 and impugned order dated 11-06-2020 (Annexure No. A-1), order dated 09/14-07-2020 (Annexure No. A-2) only to the extent related to the Applicant, order dated 07/08-01-2021 (Annexure No. A-3), order dated 05/06-05-2021 (Annexure No. A-4) and the order dated 06-07-2021 (Annexure No. A-5) in respect of OA No. 706 of 2021 are hereby quashed. Respondents are directed to revise the PPOs of both the applicants as per Last Pay Certificate at the basic pay of Rs 27870/- in respect of applicant of OA No. 705 of 2021 and Basic Pay Rs. 28590/- in respect of applicant of OA No. 706/2021. Respondents are also hereby directed to refund the recovered amount to the applicants along with 6% simple per annum interest within the period of four months from the date of supplying the certified copy of the order. The liberty is given to the respondents that if they intend to rectify the mistake said to have been occurred on their part firstly they have to issue show cause notice against the applicants and after affording opportunity to explain the fact and hearing, they may rectify their mistake considering the submissions of applicants in accordance with law but in no case recovery could be made from the applicants as they have retired from the service. No order as to costs. All MAs pending in this O.A. stand disposed off.

20. Copy of the judgment and order be also placed in the record of OA No. 706/2021.