

IN THE HIGH COURT OF DELHI AT NEW DELHI
WP (C) NO.4955 OF 2025

IN THE MATTER OF:

Union of India & Ors.

...Petitioners

Versus

All India BSNL Pensioners'
Welfare Association & Ors.

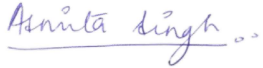
...Respondents

**COMPREHENSIVE WRITTEN SUBMISSIONS ON BEHALF OF THE
RESPONDENTS**

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Note: The reference to the page numbers in the present Note is from the lead matter i.e. WP (C) 4946 of 2024 for the convenience of this Hon'ble Court.

IN THE HIGH COURT OF DELHI AT NEW DELHI
WP (C) NO.4955 OF 2025

Union of India & Ors.

versus

*All India BSNL Pensioners’
Welfare Association & Ors.*

**COMPREHENSIVE WRITTEN SUBMISSIONS ON BEHALF OF THE
RESPONDENTS**

I. CAUSE OF ACTION FOR FILING THE OA

- 1.1 By way of the present writ petition, the Petitioners have challenged the common judgment dated 20.09.2023 of the Ld. Central Administrative Tribunal, Principal Bench at New Delhi in OA NO.1272/2020, OA No.1271/2020 and OA No.1329/2020 whereby the Ld. Tribunal has directed the Petitioners to revise the pension of the Respondents (DOT employees who were absorbed in BSNL) *in accordance with the relevant rules.* (Impugned Order @ **PDF 47, Pr.28 @ PDF 76-77**)
- 1.2 The Respondents in the present writ petition (second matter in the batch) were the Applicants in OA No.1329/2020. The Respondents have filed detailed written submissions on 07.08.2024 which are at **PDF 656 of the court file** in WP No.4955/2024.
- 1.3 At the outset, it is pertinent to note that the present set of writ petitions are premised on the misconceived basis that the Respondents were seeking parity with Central Government employees after giving up their status as such pursuant to their absorption in BSNL. Whereas, the cause of action for filing the OA is not to seek parity in status with Central Government servants but merely revision in pension in accordance with the revision granted to Central Government pensioners in as much as the Respondents were promised the Government’s scheme of pension and parity in this respect with Central Government pensioners at the time of their absorption in BSNL. However, the pension of the Respondents has not been revised since 2007; whereas, that of Central Government pensioners has been revised in 2016 pursuant to the 7th Central Pay Commission (“7th CPC”). Therefore, the limited prayer made by the Respondents before the Ld. Tribunal was revision of their pension in terms of the fitment formula applied to Central Government pensioners by the 7th CPC. Parity in no other respect has been sought. (**Prayers @ Pr.6 @ PDF 57 of the I/O**)
- 1.4 The primary contention raised by the Department of Telecommunications (“DOT”) before the CAT for opposing the prayer made by the Applicants was that since the pay of existing employees of BSNL had not been revised under the 3rd Pay Revision Committee (“PRC”) as BSNL was a loss-making enterprise, any revision of pension of retired employees will result in discrimination between the two sets of absorbed employees. (**Pr.13 @ PDF 63, Pr.14 @ PDF 64 of the I/O**)
- 1.5 This was exactly the stand of the DOT before the DoP&PW as well in response to the representation made by the Respondents herein and therefore DoP&PW had sought a response from DOT to rectify this anomaly. (Letter dated 08.03.2019 of the DoP&PW @ **PDF 980, Pr.3**)
- 1.6 It is the Respondents’ submission that the classification of persons who were absorbed in BSNL from DOT pursuant to corporatization on 01.10.2000 with other existing employees of BSNL who were recruited after 01.10.2000 is overinclusive and in

violation of Article 14 because only the absorbed employees were granted protection of retirement benefits including pension on the basis of combined service by way of incorporation of Rule 37A in the CCS (Pension) Rules, 1972 and constitute a *sui generis* class. (**Original Rule @ PDF 897, See Sub-rule 8 @ 898**) By way of an Explanation inserted on 21.12.2012 to Sub-rule 8 of Rule 37A, it was further clarified that calculation of pension has to be done in the manner applicable to Central Government pensioners. (**PDF 887 @ 889**)

II. THE PROMISE MADE TO THE RESPONDENTS AT THE TIME OF ABSORPTION

- 2.1 The aforesaid regime laid down under **Rule 37A** of the CCS (Pension) Rules, 1972 whereby parity was granted to the persons absorbed from DOT in BSNL in respect of retirement benefits including pension, with Central Government pensioners, was a consequence of the negotiations made by Employees' Unions prior to absorption and was, in fact, a condition of absorption.
- 2.2 In this regard, attention is invited to **Cabinet Note dated 25.09.2000** which incorporated the Framework proposed by the Government for pension of existing employees pursuant to corporatization of Department of Telecom Services (“DTS”) and Department of Telecom Operations (“DTO”). (**PDF 904**) The Note expressly stated that:
 - 2.2.1 All employees will be entitled to Government's scheme of pension / family pension even after absorption (**Pr.4.4(i) @ PDF 907**);
 - 2.2.2 Payment of pension will be made by the Government (**Pr.4.4(iii) @ PDF 907**);
 - 2.2.3 The amended pension framework will be made part of the CCS Pension Rules by incorporating Rule 37A (**Pr.4.4(vi) @ PDF 907**).
- 2.3 The proposal made to the Cabinet by the Government was, in fact, consistent with an earlier **OM of DoP&PW dated 05.07.1989** which provided that upon conversion of a Government Department into Central Public Sector Undertaking / autonomous body, Government employees who opt for pensionary benefits on combined service available under the Government shall be entitled to pension in accordance with the Central Government rules in force at the time. (**PDF 901, Pr.b**)
- 2.4 Consequently, Rule 37A which was inserted in the CCS (Pension) Rules, 1972 on 30.09.2000, in exercise of powers under the *proviso* to Article 309 and Clause (5) of Article 148 of the Constitution, created a special dispensation for employees of BSNL absorbed from DTS / DTO as a result of which the entire liability for their pension had to be borne by the Government under **Sub-Rule 21**. Furthermore, **Sub-Rule 8** provided for calculation of service benefits in accordance with the formula in force at the time of his retirement. (Original Rule, **PDF 897 @ 898**)
- 2.5 Thereafter, once again *vide* **Circular dated 09.11.2000**, it was clarified by DOT that employees of DOT absorbed in BSNL will be entitled to the Government's scheme of pension / family pension even after absorption. (**PDF 908**)
- 2.6 Finally, BSNL called for options *vide* **letter dated 14.01.2002** and the General Terms and Conditions of Absorption as included in the letter stated that in the matter of payment of pension, the employees would be governed by Rule 37A. It was further clarified that “formula” as used in Rule 37A(8) means payment of pension as per *Government Rules in force at that time*. (**PDF 909, See General Terms and Conditions for Absorption, PDF 913, Pr.5 @ PDF 913**) The option letter ***did not*** provide the option

to opt for *pro rata* pension and therefore there are no *pro rata* pensioners in BSNL. All absorbed employees received combined service Government pension.

2.7 **Therefore, the record contemporaneous to exercise of the option for absorption discloses that the promise held out to employees of DOT / DTS was that their pension will be protected in a manner as if they were still Government servants.**

2.8 Finally, pursuant to insertion of **Explanation in Sub-Rule 37A(8)** on 21.12.2012 which provides that pension of persons absorbed in BSNL will be calculated in the same manner as that of a Central Government servant, there can be no manner of doubt that the combined service pensioners of BSNL are entitled to parity with Central Government employees in so far as their pensionary benefits are concerned. **(PDF 887 @ 889)**

III. THE COMBINED SERVICE PENSIONERS OF BSNL CONSTITUTE A SUI GENERIS CLASS OF PENSIONERS WHO HAVE BEEN CONSISTENTLY GRANTED PARITY WITH CENTRAL GOVERNMENT PENSIONERS AS A CONSEQUENCE OF RULE 37A

The DoP&PW and DOT have consistently acted on the basis of the understanding that combined service pensioners of BSNL are entitled to parity with Central Government pensioners in the matter of retirement benefits including pension.

The DoP&PW *vide* its OM dated 27.04.2009 clarified that the formula for calculation of pension revised pursuant to the recommendations of the 6th CPC had to be applied to BSNL pensioners in terms of the special dispensation granted to BSNL under Rule 37A. **(PDF 926)**

3.1 Thereafter, *vide* Circulars dated 04.05.2009 and 12.08.2009 of DOT, revised rules for pension calculation as per the recommendations of the 6th CPC with respect to the limit of DCRG, commutation table, emoluments, qualifying service etc. were made applicable to IDA pensioners of BSNL. **(PDF 928 R/w PDF 929)**

3.2 Moreover, *vide* OM dated 15.03.2011 **(PDF 931)**, minimum pension **(Pr.4.4 @ PDF 932)** and additional pension with increase in age **(Pr.4.5 @ PDF 932)** was also fixed in accordance with the recommendations of the 6th CPC.

3.3 Finally, *vide* OM dated 20.07.2016 it was once again clarified by DOT that the entire liability for payment of pension to BSNL employees recruited till 01.10.2000 lay with the Government. **(PDF 942)**

3.4 Once, it is accepted by the Government that the entire liability for pension of the combined service optee pensioners of BSNL lies with it, is counter-intuitive to suggest that the revision of their pension can be made dependent upon recommendations of the PRC which recommends revision of pay in Public Sector Enterprises subject to their profitability. In this regard, it is also pertinent to note that the Terms of Reference of the PRC does not include revision of pension. (ToR of 3rd PRC **@ PDF 959)**

IV. THE RESPONDENTS ARE ENTITLED TO THE BENEFIT OF THE 7TH CENTRAL PAY COMMISSION AS THEY ARE PENSIONERS UNDER THE CCS (PENSION) RULES, 1972

4.1 OM dated 04.08.2016 of DoP&PW (No.38/37/2016) revised the pension of pre-2016 pensioners in terms of the recommendations of the 7th CPC by multiplying existing pension by 2.57. **(PDF 945, Pr.4.1 @ PDF 946)**

4.2 The OM clearly states that the order applies to all pensioners / family pensioners drawing pension under the CCS (Pension) Rules, 1972. **(Pr.2.1 @ PDF 945)**

4.3 Para.7(a) of the same OM further provides that pension of Government servants on permanent absorption in public sector enterprises who continue to draw pension from

- the Government, shall be updated in terms of these orders. **(Pr.7(a) @ PDF 947)** Para.7(b) mandates the same for family pension. **(Pr.7(b) @ PDF 948)**
- 4.4 The benefit of the said revision also has to be granted to combined service pensioners who will retire after 2016 in order to maintain parity in pension in the class of absorbed employees of BSNL (the 4th Applicant in the OA / Respondent No.4 herein comes under this category).
- 4.5 In this context, it is also pertinent to note that *vide* OM dated 12.05.2017, the DoP&PW further sought to implement the recommendations of the 7th CPC by fixing pension at 50% of the notional pay arrived at in terms of the recommendations in the grade of the employee at the time of retirement. **(PDF 953, Pr.4)** The Respondent Association sought the benefit of this OM for the pre-2016 pensioners of BSNL, on the basis that they were entitled to parity with Central Government pensioners, by way of OA No.180/00346/2018 before the Ernakulam Bench which was rejected by the Ld.Tribunal *vide* judgment dated 30.10.2019. **(PDF 992)** A writ petition (OP (CAT) No.60 of 2025) was preferred against the aforesaid judgment which was allowed *vide* judgment dated 07.02.2025. **(Page 44 of Compilation dated 13.05.2025)** The Hon'ble High Court noticed that by way of the Explanation to Sub-Rule 8 of Rule 37A, combined service pensioners of BSNL are entitled to calculation of their pension in the same way as that of a Central Government servant. The Hon'ble Court also noticed that OM (No.38/37/2016) dated 04.08.2016 did not distinguish between the CDA and the IDA Scale. **(Pr.11-13 @ 69-71)** In the SLP preferred against the aforesaid judgment, the Government was granted liberty to prefer a review before the Hon'ble High Court. (Order dated 08.08.2025, **Page 84A of Compilation dated 13.05.2025**) The Review Petition was also dismissed by the Hon'ble High Court *vide* judgment dated 24.03.2026. **(Page 84C of Compilation dated 13.05.2025, Pr.19-20)**

V. IDA SCALE GRANTED TO THE RESPONDENTS IS AN ISSUE EXTRINSIC AND UNRELATED TO THE REVISION OF PENSION

- 5.1 The contention of the Petitioners that the OM (No.38/37/2016) dated 04.08.2016 does not apply to pensioners who are drawing pension as per the IDA scale but only to pensioners drawing pension as per the CDA scale is contrary to the express language of the OM, which as stated above, states that it applies to persons drawing pension under the CCS (Pension) Rules, 1972. **(PDF 945, Pr.4.1 @ PDF 946)**
- 5.2 Moreover, the Hon'ble Kerala High Court in its judgment dated 07.02.2025 in OP (CAT) No.60 of 2025 which has been affirmed *vide* judgment dated 24.03.2026 in RP No.1158 of 2025 has also rejected the said argument and categorically held that the OM dated 12.05.2017 does not distinguish between CDA scale and IDA scale.
- 5.3 At this juncture, it is pertinent to reiterate that the combined service pensioners have got IDA scale in terms of the option letter dated 14.01.2002. **(PDF 909, Pr.5 @ PDF 913)** In furtherance of the same, **Rule 37A(10)** categorically provides that an employee who opts for pension on the basis of combined service shall be eligible to DA as per the IDA pattern. **(PDF 897 @ 898)**. It is, therefore, respectfully submitted that the grant of the IDA scale to the Respondents is an issue entirely unrelated to the revision of pension and has no bearing on the same. Pertinently, IDA scales have been granted to employees of Public Sector Enterprises pursuant to the judgment of the Hon'ble Supreme Court in *Jute Corporation of India Officers' Assn v Jute Corporation of India*, (1990) 3 SCC 436

which was implemented by OM dated 12.06.1990 of the DPE. (**Pr.3(iii), PDF 325 of WP 4955**)

VI. RESPONSE TO ARGUMENTS OF PREJUDICE RAISED BY THE PETITIONERS

- 6.1 The Petitioners have sought to argue that combined service pensioners are getting more pension than Central Government pensioners without being granted the benefit of the revision as per the recommendations of the 7th CPC. (**PDF 1028**) However, no details with regard to the employees that the Petitioners are seeking to compare have been mentioned.
- 6.2 Whereas, the Respondents have demonstrated that the minimum pension in BSNL is Rs.3,500/- in accordance with the OM dated 15.03.2011 (**Pr.4.4 @ PDF 932 R/w PDF 936**); while, for Central Government employees pursuant to implementation of recommendations of 7th CPC it is Rs.9,000/- (**Pr.4.4 @ PDF 946**).
- 6.3 In fact, it is the case of the Respondents that Applicant No.2 / Respondent No.2 was receiving atleast Rs.1,317/- less per month than his contemporary in the Central Government.
- 6.4 The Respondents, therefore, respectfully urge this Hon'ble Court to disregard arguments of prejudice which are without any basis in facts presented before the Tribunal raised before this Hon'ble Court for the first time by the Petitioners.

VII. THE LD.TRIBUNAL DID NOT DISREGARD ANY BINDING PRECEDENT OF A COORDINATE BENCH

- 7.1 The Petitioners have also sought to submit that the Ld.Tribunal disregarded judgments of coordinate benches on the issue and therefore the impugned order deserves to be set aside on this ground alone.
- 7.2 In support of this argument, the Respondents have sought to rely on the judgment of the Ernakulam Bench dated 30.10.2019 (**PDF 992**), an order dated 10.12.2018 of the Hyderabad Bench of the Tribunal in OA No.21/813/2017 (**PDF 981**) and an order dated 27.11.2019 of the Bangalore Bench in OA No.170/00116-134/2018 (**PDF 1004**).
- 7.3 At the outset, it is pertinent to note that the judgments of the Ernakulam Bench and the Hyderabad Bench were of a single administrative member contrary to the law laid down by the Hon'ble Supreme Court in *Mahabal Ram (Dr) v ICAR*, (1994) 2 SCC 401 (**Pr.5-6**) and reiterated in *L Chandra Kumar v Union of India*, (1997) 3 SC 261 (**Pr.98**) that issues pertaining to interpretation of statutes or statutory rules should be considered by a Division Bench of the Tribunal comprising of a judicial member. Needless to state, the issue of pension revision in accordance with the recommendations of the 7th CPC involved the interpretation of Rule 37A which was inserted in the CCS (Pension) Rules, 1972 and therefore should have been considered by a Division Bench. In any event, the judgment of the Ernakulam Bench has been reversed by the Hon'ble High Court as discussed above.
- 7.4 In so far as the order of the Bangalore Bench is concerned, it is pertinent to note that the same does not consider Rule 37A, is *sub-silentio* and therefore did not constitute a binding precedent in terms of the law laid down by the Hon'ble Supreme Court in *Municipal Corporation of Delhi v Gurnam Kaur*, (1989) 1 SCC 101 (**Pr.11-12**).



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WP (C) No.4955 of 2024: Union of India v All India BSNL Pensioners' Welfare Association & Ors.

1 message

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28 May 2026 at 23:41

To: CMPRAVEENKUMAR.DHC@gov.in, Gauri Puri <gauri@gpuri.in>, litigation@laavanyakaushik.com

Dear Ma'am / Sir,

PFA the written submissions being filed on behalf of the Respondents by way of advance service.

Thanking you,
Office of Asmita Singh
Asmita Singh
Advocate on Record
Supreme Court of India

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