11403/2020

Dt on: 28/2/2020

BEFORE THE HON'BLE HIGHCOURT OF KERALA AT ERNAKULAM

O.P. (CAT) 60 /2020

(Against the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench)

DB

All India BSNL Pensioners Welfare Association & another — Petitioners

V.

Union of India & others — Respondents

ORIGINAL PETITION FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

28/2/2020

THE HIGH COURT OF KERALA 28 FEB 2020 ERNAKULAM

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C/o Adv Mathews K. Philip
SC 860
Sic. For BSNL
28/2/2020

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28/02/2020
P. VIJAYAKUMAR
ASSISTANT SOLICITOR GENERAL OF INDIA

R. SREERAJ (S-605) (K/192/1994)
ADVOCATE

BEFORE THE HON'BLE HIGHCOURT OF KERALA AT ERNAKULAM

O.P. (CAT) 60 /2020

(Against the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench)

All India BSNL Pensioners
Welfare Association & another Petitioners

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INDEX

Sl.No	Particulars	Page No
1	Synopsis	A - B
2	Original Petition	01 – 11
3	Affidavit	12
4	Exhibit P-1: True copy of the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench	13 – 22
5	Exhibit P-2: True copy of the Original Application No. 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench	23 - 34
	Annexure A1 : True copy of the Department of Pension & Pensioners' Welfare OM F. No. 38/37/08-P&PW(A) dated 10.12.2009	35 - 36
	Annexure A2 : True copy of the Department of Telecom letter No. 40-31/2008-Pen(T) dated 16.8.2010	37
	Annexure A3: True copy of the Department of Pension & Pensioner's Welfare Resolution No. 38 / 37 / 2016-P & PW(A) dated 4.8.2016	38 - 42
	Annexure A4 : True copy of the Department of Pension & Pensioner's Welfare OM No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016	43 - 47

	Annexure A5 : True copy of the Department of Pension & Pensioners' Welfare OM No. 38/37/2016-P&PW(A) dated 12.5.2017	48 - 53
	Annexure A6 : True copy of the representation dated 23.6.2017 submitted by the 1st applicant Association to the 1st respondent	54 - 55
6	**Exhibit P-3**: True copy of the reply statement filed by the respondents 1 & 3 to 5 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench	56 – 64
	Annexure R1 : True copy of Rule 37-A of CCS(Pension) Rules, 1972	65 - 68
	Annexure R2: True copy of OM No. 40-31/2008-Pen(T) dated 16.3.2017	69

7. CIA 4/2020 70 - 81
8. IIA 4/2020 82.

Dated this the 26th day of February, 2020

R. Sreeraj
Counsel for the Petitioners

BEFORE THE HON'BLE HIGHCOURT OF KERALA AT ERNAKULAM

O.P. (CAT) 60 /2020

(Against the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench)

All India BSNL Pensioners
Welfare Association & another — Petitioners

V.

Union of India & others — Respondents

SYNOPSIS

With the advent of the OM dated 12.5.2017, bringing parity in pension between Pre-2016 and Post-2016 pensioners, in effect, the pension formula of 50% of the last pay drawn or 50% of the last 10 months average pay which ever is more advantageous, became applicable to the Pre-2006 pensioners as well. Grievance of the petitioners, who were applicants before the Hon'ble Tribunal, was that despite the existence of the agreement and the Gazette Notification dated 30.9.2000 and more importantly Explanation to Sub Rule 8 of Rule 37-A of CCS (Pension) Rules, 1972 which ensures DoT absorbed BSNL pensioners equal treatment as that of Central Government pensioners, the benefit of Exhibit P-2(A-5) OM is not being extended to them. This results in an invidious discrimination and an unreasonable classification, contended them. However, without appreciating the pleadings in their proper perspective, the Hon'ble Tribunal dismissed the Original Application. Hence this Original Petition.

LIST OF DATES

1.10.2000 : BSNL was formed and the employees of DoT were sent on deemed deputation to BSNL, later to be absorbed

1.1.2006 : Pursuant to the recommendations of the 6th CPC, requirement of 33 years for full pension was dispensed with

10.12.2009 : Exhibit P-2(A1) was issued

16.8.2010 : Exhibit P-2(A2) was issued

1.1.2016 : 7th CPC recommendations were implemented

4.8.2016 : Exhibit P-2(A3) & Exhibit P-2(A4) were issued

12.5.2017 : Exhibit P-2(A5) was issued.

23.6.2017 : Exhibit P-2(A6) was submitted by 1st petitioner Association to the 1st respondent

April 2018 : OA 346/2018 was filed

30.10.2019 : OA 346/2018 was dismissed by Exhibit P-1 final order

RULES/ACT/CASE LAW

1) CCS (Pension) Rules 1972, Rule 37A

2) The Constitution of India

3) 2002 (1) KLT 157

THE HIGH COURT OF KERALA
सत्यमेव जयते

Dated this the 26th day of February, 2020

R. Sreeraj
Counsel for the Petitioners

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

OP (CAT) 60 /2020

(Against the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench)

PETITIONERS/APPLICANTS :-

1. All India BSNL Pensioners' Welfare Association (Regd. 1833/09), Central Headquarters, AH 189/61, 3rd Street, Aurovile Flats, Anna Nagar, Chennai-600 040 represented by its President, P.S. Ramankutty, aged 74 years, S/o Late R. Sivaraman Nair, residing at TC 55/1953, CTO Colony, Pappanamcode, Trivandrum-695 018.

2. P. Vadivel, aged 75 years, S/o Late V. Perumal, retired Chief Section Supervisor, O/o Principal General Manager, BSNL Bhavan, Ernakulam, residing at 10/855 Ambady, S.S. Krishnan Road, Fort Kochi, Kochi-682 001.

Vs.

RESPONDENTS/RESPONDENTS :-

1. Union of India represented by the Secretary, Department of Telecom, Sanchar Bhavan, 20, Asoka Road, New Delhi-110 001.
2. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, New Delhi-110 001.
3. The Secretary, Government of India, Ministry of Heavy Industries & Public Enterprises,

Department of Public Enterprises, Public Enterprises Bhawan, Block No. 14, CGO Complex, Lodhi Road, New Delhi-110 001.

4. The Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pensions and Pensioners' Welfare, New Delhi-110001.

5. The Controller of Communication Accounts, BSNL Bhawan, Kerala Circle, Trivandrum-695033.

ORIGINAL PETITION FILED UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

All processes and other notices to the petitioners may be served on their counsel, R. Sreeraj, Advocate, 'J-1', 'Jewel Pearl', Kuttikkattu Lane, Vattaprarmbu Lane, Vyloppilly Lane, Azad Road, Kaloor, Kochi-17.

All processes and other notices to the respondents may be served on their respective addresses shown above.

FACTS OF THE CASE

1. The petitioners are aggrieved by the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench, by which the Original Application, filed by the petitioners, was dismissed. A true copy of the final order dated 30.10.2019 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench is produced herewith and marked as Exhibit P-1.

2. The 1st petitioner is the All India BSNL Pensioners' Welfare Association represented by its President and the 2nd petitioner is a member of the said Association who is an aggrieved individual. A true copy of the Original Application No. 346/2018 filed by the petitioners before the Hon'ble Central Administrative Tribunal, Ernakulam Bench is produced herewith and marked as Exhibit P-2.

3. The pleadings of the petitioners before the Hon'ble Tribunal were as follows:

4. The Government, on acceptance of the recommendations of the 6th Central Pay Commission, issued orders for granting pension @ 50% of the average emoluments for the last 10 months or 50% of the last pay drawn whichever is more beneficial to the pensioner. Consequential amendments were made to the CCS (Pension) Rules, 1972 as well. Since the DoT absorbed BSNL employees are also covered under the CCS (Pension) Rules, 1972, the benefit was extended to those who retired after 1.1.2006 from the BSNL as well. The impact was that, from 1.1.2006, all those with a qualifying service of 10 years, became entitled for full pension. In other words, grant of full pension for those who had a qualifying service of 33 years or more alone, as stipulated under Rule 49 of CCS (Pension) Rules, 1972, was dispensed with. True copy of the Department of Pension & Pensioners' Welfare OM F. No. 38/37/08-P&PW(A) dated 10.12.2009 is Exhibit P-2 (A-1). True copy of the Department of Telecom letter No. 40-31/2008-Pen(T) dated 16.8.2010 is Exhibit P-2 (A-2).

5. It is submitted that the 7th Central Pay Commission, in its Report, recommended 2 formulations for revision of pension of pre-2016 pensioners. In acknowledgment of the same, the Department of Pension & Pensioner's Welfare issued Resolution No. 38/37/2016-P&PW(A) dated 4.8.2016 indicating the decisions taken by the Government on the various recommendations of the 7th CPC on pensionary matters. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued as per the Department of Pension & Pensioner's Welfare OM No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016. It was provided therein that the revised pension/family pension w.e.f

1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at the time of implementation of the recommendations of the 6th CPC, by 2.57. True copy of the Department of Pension & Pensioner's Welfare Resolution No. 38/37/2016-P&PW(A) dated 4.8.2016 is Exhibit P-2 (A-3). True copy of the Department of Pension & Pensioner's Welfare OM No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016 is Exhibit P-2 (A-4).

6. In accordance with the decisions mentioned in Exhibit P-2 (A-3) and Exhibit P-2 (A-4), the feasibility of the first option recommended by the 7th CPC was examined by a Committee headed by Secretary, Department of Pension & Pensioners' Welfare. After considering the recommendations of the said committee, the Government decided that the revised pension/family pension with effect from 1.1.2016 in respect of all Central Civil Pensioners/Family Pensioners, including CAPFs, who retired/died prior to 1.1.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. It was further decided that this will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. True copy of the Department of Pension & Pensioners' Welfare OM No. 38/37/2016-P&PW(A) dated 12.5.2017 is Exhibit P-2 (A-5).

7. Exhibit P-2 (A-5) OM introduced a new and a drastic concept. According to Exhibit P-2 (A-5) OM, the last pay drawn by a pre-2016 pensioner undergoes change notionally after every pay commission till the 7th CPC and the pension is fixed ultimately at 50% of that notional pay finally arrived at. This has 2 impacts

(i) Pro-rata pension, for less than 33 years of qualifying service, is dispensed with even for those who retired prior to 1.1.2006 and

(ii) Ultimately it is 50% of last pay drawn (though notionally) which amounts to pension.

Further Exhibit P-2 (A-5) OM gives an option to the pensioner to choose either the multiplication factor of 2.57 as per OM dated 4.8.2016 or 50% of the notional pay as per the Exhibit P-2 (A-5) OM whichever is more beneficial.

8. Unfortunately, the impact of Exhibit P-2 (A-5) OM has been totally lost as far as the pre-2006 pensioners of BSNL are concerned. While Para 12 of Exhibit P-2 (A-5) OM says that the pension of the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings/autonomous bodies will also be revised in accordance with those orders, so far BSNL pensioners of pre-2006 era are denied the same. In essence, BSNL pensioners are illegally and unreasonably subjected to a further classification as those retired prior to 1.1.2006 and those retired after 1.1.2006, when Exhibit P-2 (A-5) OM unites the two classes.

9. In these circumstances, objecting to this invidious discrimination, the 1st petitioner Association has submitted a representation to the Secretary, Department of Telecom, Sanchar Bhavan, 20, Asoka Road, New Delhi-110 001, true copy of which is Exhibit P-2 (A-6). Finding no response, the petitioners filed OA 346/2018 before the Hon'ble Central Administrative Tribunal, Ernakulam Bench for the following relief:

"To direct the respondents to extend to the pre-2006 DoT absorbed BSNL IDA pensioners, the benefit of Annexure A-5 OM, revise their pension by applying the pension formula of 50% of the last pay drawn or 50% of the last ten months

average pay which ever is advantageous to them and disburse all the consequential benefits to them with arrears and interest."

10. The claim was resisted by respondents 1 and 3 to 5 by filing a reply statement. They mainly attempted to draw a distinction by saying that the petitioners are ex-absorbed combined services pension optee employees of BSNL getting their pension/family pension in IDA pattern from Government as per Rule 37 A of CCS (Pension) Rules, 1972. According to them, only when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, their pension will be updated in terms of Exhibit P-2 (A-5). In otherwords, it was their case that Para 12 of Exhibit P-2 (A-5) is applicable for those pensioners only who are drawing pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government. A true copy of the reply statement filed by the respondents 1 & 3 to 5 in OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench is produced herewith and marked as **Exhibit P-3**.

11. The Hon'ble Tribunal, upon hearing the rival arguments and after perusing the documents/pleadings, was pleased to dismiss the Original Application as per Exhibit P-1 final order.

In these circumstances, the petitioners are constrained to approach this Hon'ble Court under Article 227 of the Constitution of India for appropriate relief on the following among other

GROUNDS

A. The Hon'ble Tribunal erred both in law and on facts while dismissing the Original Application. In the Exhibit P-1 final order, there is material irregularity and non application of mind to the relevant facts which vitiate the order of the Hon'ble Tribunal.

B. The further classification of BSNL pensioners as IDA pensioners & CDA pensioners and IDA pensioners as those retired prior to 1.1.2006 and those retired after 1.1.2006 suffer from the vice of under inclusion and violates Art 14 and 16 of the Constitution of India. The cut off date or the pattern chosen has nexus with the object sought to be achieved and it has no rationale behind it. It brings in an artificial classification among a homo genus class that strikes at the very root of the concept of equality enshrined in the Constitution. The Hon'ble Tribunal failed to appreciate this crucial aspect.

C. The legal position in this regard has been succinctly laid down by the Hon'ble Supreme Court in a catena of decisions and followed by the Hon'ble High Court in its judgment in Kamala Devi v. K.S.F.E Ltd. reported in 2002(1) KLT 157 as follows:

> *"6. Article 14 guarantees equality before law and equal protection of laws, but the same does not prohibit classification. A classification will not be hit by Art 14, if the same satisfies the twin tests:-*
>
> *(1) there is an intelligible differentia between those included in one group and those excluded from it;*
>
> *(2) it has a rational nexus with the object of the law.*
>
> *The Supreme Court has held that if the classification suffers from the vice of under inclusiveness, the same will be hit by Art 14. The Supreme Court has explained the said principle pithily in In Re Special Courts Bill, 1978, in the following words: (AIR 1979 (1) SC 478) :*
>
> *"120. The Court in Mohammed Shujath Ali v. Union of India,(1975)1SCR 449 at p. 477:(AIR 1974 SC 1631 at p.1653) has explained the constitutional facet of classification:*

This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.

But the question is: what does this ambiguous and crucial phrase similarly situated means? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law".

121. After having stated the general proposition, the Court struck a note of warning which is the main crux of the present controversy: ibid at p. 478:(at pp.1653,1654 of AIR)

"The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and down the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud,J in State of Jammu and Kashmir v. Triloki Nath Khosa (1974) 1 SCC 19: (AIR 1974 SC 1), "the

guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterised by different and distinct attainments."...That process will inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in State of Jammu and Kashmir v. Triloki Nath Khosa. "Mini classifications based on micro distinctions are false to our egalitarian faith and only substantial and straight forward classification plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

122. Mathew, J in State of Gujarath v. Shri Ambika Mills, Ahmedabad,(1974) 3 SCR 760 at p 782:(AIR 1974 SC 1300 at pp 1312,1313) placed the same accent from the angle of under inclusion:

"The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify.....A reasonable classification is one which includes all who are similarly situated and none who are not. The question is what does the phrase "similarly situated" means? The answer to the question is that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some public good.

A classification is under inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under inclusive when a State benefits or burdens persons in a manner that further a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well."

The ratio of the decisions cited above apply squarely to the facts and circumstances of the present case.

D. The non extension of the benefit of Exhibit P-2 (A-5) OM to the BSNL IDA pensioners amounts to negation of the rights conferred on them as per the Explanation to Sub Rule 8 of Rule 37-A of the CCS (Pension) Rules, 1972 which interalia states that the amount of pension of the absorbed employee on retirement or on death from the public sector undertaking shall be calculated in the same way as calculated of a Central Government Servant retiring on the same day. The Hon'ble Tribunal failed to note that this vital pleading remained unanswered in Exhibit P-3 reply statement.

E. The Hon'ble Tribunal failed to appreciate the true intent of Exhibit P-2 (4) & Exhibit P-2 (5). There is nothing in Exhibit P-2 (4) & Exhibit P-2 (5) that supports the invidious discrimination meted out to the petitioners. Further, the Hon'ble Tribunal ought to have seen that Exhibit P-2 (4) & Exhibit P-2 (5) are in the nature of administrative

instructions and therefore cannot override the Explanation to Sub Rule 8 of Rule 37 which is statutory in nature.

For the reasons stated above and for other reasons to be urged at the time of hearing, it is humbly prayed that this Hon'ble Court may be pleased to

RELIEF

i) To quash Exhibit P-1 and allow OA 346/2018 on the file of the Hon'ble Central Administrative Tribunal, Ernakulam Bench as prayed for.

ii) Grant such other relief as may be prayed for and this Hon'ble Court may deem fit to grant.

iii) Grant the cost of this Original Petition.

Dated this the 26th day of February, 2020

THE HIGH COURT OF KERALA
सत्यमेव जयते

Petitioners

R. Sreeraj
Counsel for the petitioners

INTERIM RELIEF PRAYED FOR

For the reasons stated in the Original Petition, read with the affidavit filed in support thereof, it is humbly prayed that pending final disposal of the Original Petition, this Hon'ble Court may be pleased to direct the respondents to produce all the records pertaining to the case of the petitioner for perusal of this Hon'ble Court.

Counsel for the petitioners

BEFORE THE HON'BLE HIGHCOURT OF KERALA AT ERNAKULAM

O.P. (CAT) 60 /2020

All India BSNL Pensioners
Welfare Association & another Petitioners

V.

Union of India & others Respondents

AFFIDAVIT

I, P.S. Ramankutty, aged 74 years, S/o Late R. Sivaraman Nair, residing at TC 55/1953, CTO Colony, Pappanamcode, Trivandrum-695 018, do hereby solemnly affirm and state as follows:

1. I am the 1st petitioner in the above Original Petition. I am conversant with the facts and circumstances of the case. I am swearing this affidavit for and on behalf of the 2nd petitioner as well, as I am authorised to do so.

2. OA 346/2018 filed by us was dismissed by the Hon'ble Central Administrative Tribunal, Ernakulam Bench by Exhibit P-1 final order dated 30.10.2019. This OP(CAT) is filed challenging Exhibit P-1 final order.

3. We have not filed any other Original Petition for the same relief.

4. All the facts stated in the Original Petition are true to the best of our personal knowledge and all the exhibits produced along with the Original Petition are true copies of the original documents.

All what is stated above is true to the best of my personal knowledge and belief and I have not suppressed any material facts.

Dated this the 26th day of February, 2020

Deponent

Solemnly affirmed and signed before me
by the above named deponent, personally
known to me on this the 26th day of February, 2020
in my office at Ernakulam

R. Sreeraj
Counsel for the Petitioners

13 Exhibit P1

.1.

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

Original Application No.180/00346/2018

Wednesday, this the 30th day of October, 2019

CORAM:
HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

1. All India BSNL Pensioners' Welfare Association
(Regd.1833/09), Central Headquarters,
A.H 189/61 3rd Street, Aurovile Flats,
Anna Nagar, Chennai-600040.
Represented by its President, P.S.Ramankutty,
Aged 74 years,
S/o Late R.Sivaraman Nair,
residing at TC 55/1953, CTO Colony,
Pappanamcode, Trivandrum-695 018.

2. P. Vadivel,
Aged 75 years,
S/o Late V.Perumal,
Retired Chief Section Supervisor,
O/o Principal General Manager,
BSNL Bhavan, Ernakulam,
residing at 10/855 Ambady,
S.S. Krishnan Road,
Fort Kochi,
Kochi. ....Applicants

THE HIGH COURT OF KERALA सत्यमेव जयते

(By Advocate Mr.R.Sreeraj)

Versus

1. The Union of India
represented by the Secretary,
Department of Telecom,
Sanchar Bhavan,
20, Asoka Road,
New Delhi – 110 001.

2. The Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,

14 P1/2

New Delhi – 110 001.

3. The Secretary,
Government of India,
Ministry of Heavy Industries &
Public Enterprises,
Department of Public Enterprises,
Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi- 110 001.

4. The Secretary,
Government of India,
Ministry of Personnel, Public Grievances
and Pensions, Department of Pensions and
Pensioners' Welfare,
New Delhi – 110 001.

5. The Controller of Communication Accounts,
BSNL Bhawan, Kerala Circle,
Trivandrum-695 033. ....Respondents

THE HIGH COURT OF KERALA

[By Advocate Mr. K.C. Muraleedharan, ACGSC for Respondents (1 & 3-5) & Mrs. Girija K. Gopal (R2)]

सत्यमेव जयते

This application having been heard on 24th October, 2019, the Tribunal on 30th October, 2019 delivered the following :

ORDER

By Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member -

OA No.346/2018 is filed by a Welfare Association of BSNL Pensioners' represented by its President and the 2nd applicant is a member of the Association.

2. They submitted that on acceptance of the recommendations of the VIth Central Pay Commission orders have been issued granting pension @ 50% of

15 P1/3

the average emoluments for the last 10 months or 50% of the last pay drawn whichever is more beneficial to the pensioner. Since the applicants who are Department of Telecommunication absorbed BSNL employees covered under the CCS (Pension) Rules, 1972, the above benefits of VIth Central Pay Commission were extended to those who retired after 1.1.2006 from the BSNL. The impact was that from 1.1.2006 all those with qualifying service of ten years became entitled for full pension and that the grant of full pension for those who had a qualifying service of 33 years or more alone as stipulated under Rule 49 of CCS (Pension) Rules, 1972 was dispensed with. Later based on the decision taken by the Government on the recommendations of the VIIth Central Pay Commission, orders for revision of pension of pre-2016 pensioners/family pensioners were issued whereby it was provided that the revised pension/family pension w.e.f. 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at time of implementation of the recommendations of the VIth Central Pay Commission. Further the Government decided that the revised pension/family pension w.e.f. 1.1.2016 in respect of all Central Civil Pensioners/Family pensioners, including CAPFs who retired/died prior to 1.1.2016 may be revised by notionally fixing their pay in the pay matrix recommended by the VIIth Central Pay Commission in the level, corresponding to the pay in the pay scale/pay band and Grade at which they retired/died. It was further decided that this will be done by notional pay fixation under each intervening Pay Commission based on the formula for

16 P1/4

revision of pay. However, Annexure A5 introduced a new and a drastic concept. It provided that the last pay drawn by a pre-2016 pensioner undergoes notional change after every pay commission till the VIIth Central Pay Commission and the pension is fixed ultimately at 50% of that notional pay finally arrived at. Annexure A5 has been totally lost as far as the pre-2006 pensioners of BSNL are concerned. BSNL pensioners are illegally and unreasonably subjected to a further classification as those retired prior to 1.1.2006 and those retired after 1.1.2006. Objecting to this alleged discrimination, the applicants submitted representations. However, no action has been taken on the same. Aggrieved the applicants have approached this Tribunal seeking relief as under:

> "1) To direct the respondents to extend to the pre-2006 DoT absorbed BSNL IDA pensioners, the benefit of Annexure A5 OM, revise their pension by applying the pension formula of 50% of the last pay drawn or 50% of the last ten months average pay which ever is advantageous to them and disburse all the consequential benefits to them with arrears and interest.
>
> 2) Such other relief as may be prayed for and this Hon'ble Tribunal may deem fit to grant.
>
> 3) Grant the cost of this Original Application."

3. The applicants submit that the further classification of BSNL IDA pensioners as those retired prior to 1.1.2006 and those retired after 1.1.2006 violates Articles 14 & 16 of the Constitution of India. The applicants have relied upon the judgment of the High Court of Kerala in ***Kamala Devi*** v. ***K.S.F.E. Ltd.*** - 2002 (1) KLT 157 wherein it was held that Article 14 guarantees equality before law and equal protection of laws but the same does not

17 P1/5

prohibit classification. Moreover, non-extension of the benefit of Annexure A5 OM to the BSNL IDA pensioners who retired from service prior to 1.1.2006 amounts to negation of the rights conferred on them under sub-rule (8) of Rule 37-A of the CCS (Pension) Rules, 1972 which *interalia* states that the amount of pension of the absorbed employee on retirement or on death from the public sector undertaking shall be calculated in the same way as calculated of a Central Government servant retiring on the same day.

4. A detailed reply statement had been filed by the respondents Nos. 1, 3 to 5 who contend that BSNL was formed on 1.10.2000 by conversion of the erstwhile Department of Telecom Services and Department of Telecom Operations to a public sector undertaking. The Government employees in these two Departments were first transferred en-masse to BSNL on deemed deputation basis. These employees were later given option to either continue to be in Government service or to seek permanent absorption in BSNL. For those employees who opted for absorption in BSNL, presidential orders were issued laying down comprehensive terms and conditions for their absorption in BSNL w.e.f. 1.10.2000. The absorbed employees of BSNL were given higher IDA pay scales as compared to their counterparts in Government service receiving CDA pay scales. These absorbed employees were eligible for pensionary benefits on the basis of combined service rendered by them in the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of

18 P1/6

their retirement from BSNL. The IDA pension was made applicable to BSNL absorbed employees w.e.f. 1.10.2000 onwards and it was subsequently revised w.e.f. 1.1.2007. The applicants are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972. The respondents further submitted that Annexure A5 OM dated 12.5.2017 is applicable to the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings on pro-rata basis in CDA pattern based on their service in Government only. They further contended that certain benefits of Annexure A4 OM have been extended to the BSNL IDA pensioners vide DoT OM dated 16.3.2017 (Annexure R2). Respondents pray for dismissing the OA.

5. Heard Shri R. Sreeraj, learned counsel for the applicants, Mr. K.C. Muraleedharan, learned ACGSC appearing for respondents Nos. 1, 3 to 5 and Mrs. Girija K. Gopal, learned counsel appearing for respondent No. 2. Perused the record.

6. The short point to be considered in this OA is whether Annexure A5 OM dated 12.5.2017 is applicable to the applicants who are BSNL IDA pensioners? On formation of BSNL w.e.f. 1.10.2000 the Government employees in Department of Telecom Services and Department of Telecom Operations were transferred en-masse to BSNL on deemed deputation basis. Later they were given option to either continue to be in Government service or to seek

19 P1/7

permanent absorption in BSNL. The applicants opted for absorption in BSNL and presidential orders were issued in their favour laying down comprehensive terms and conditions of their absorption in BSNL w.e.f. 1.10.2000. The applicants were given higher IDA pay scales as compared to their counterparts in Government service receiving CDA pay scales. The applicants were eligible for pensionary benefits on the basis of combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The IDA pension was made applicable to BSNL absorbed employees w.e.f. 1.10.2000 onwards and it was subsequently revised w.e.f. 1.1.2007. The applicants are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972. Sub-rule (4) of Rule 37-A clearly stipulates as under:

> "(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking shall take effect from the date on which their options are accepted by the Government and **on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.**" (emphasis supplied)

7. In the present case w.e.f. 1.10.2000 i.e. the date of the presidential order of absorption of the applicants in BSNL, they shall cease to be Government servants and shall be deemed to have retired from Government service. Therefore, w.e.f. 1.10.2000 the applicants are not Government

20 P1/8

servants after their absorption and shall be treated as employees of the public sector undertaking. Sub-rule (7) of Rule 37-A of CCS (Pension) Rules, 1972 clearly stipulates that employees opting for permanent absorption in the public sector undertaking shall on and from the date of absorption be governed by the rules and regulations or by-laws of the public sector undertaking. Sub-rule (8) of Rule 37-A and the explanation below it reads thus:

> "(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extraordinary pension) on the basis of combined service rendered by the employee in the Government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or his death or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.
>
> **Explanation** - The amount of pension or family pension in respect of the absorbed employee on retirement from the Public Sector Undertaking or on death shall be calculated in the same way as calculated in the case of a Central Government servant retiring or dying on the same day."

The above quoted sub-rule 8 clearly stipulates that a permanent Government servant absorbed as an employee of a Public Sector Undertaking shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extraordinary pension) on the basis of combined service rendered by the employee in the Government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued

21 P1/9

by the Central Government. Here the applicants have given option for permanent absorption in BSNL and retired on superannuation from BSNL. The applicants have not given any option to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government. Moreover, the explanation only makes it clear that the amount of pension in respect of the absorbed employee on retirement from public sector undertaking shall be calculated in the same way as calculated in case of a Central Government servant retiring or dying on the same day. The respondents in their reply statement submitted that Annexure A5 OM is meant for Central Government CDA pensioners and pro-rata pension optee of BSNL absorbees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners like the applicants. This fact has not been denied by the applicants by filing any rejoinder.

8. In view of the above, this Tribunal does not find any merit in the OA. Accordingly, the OA is dismissed. No order as to costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

"SA"

22 P1/10

List of Annexures in O.A. No.180/00346/2018

1. **Annexure A1:** True copy of the Department of Pension & Pensioners' Welfare OM F.No.38/37/08-P&PW(A) dated 10.12.2009.

2. **Annexure A2:** True copy of the Department of Telecom letter No.40-31/2008-Pen(T) dated 16.08.2010.

3. **Annexure A3:** True copy of the Department of Pension & Pensioners' Welfare Resolution No.38/37/2016-P&PW(A)(ii) dated 4.8.2016.

4. **Annexure A4:** True copy of the Department of Pension & Pensioners' Welfare OM No.38/37/2016-P&PW(A)(ii) dated 4.8.2016.

5. **Annexure A5:** True copy of the Department of Pension & Pensioners' Welfare OM No.38/37/2016-P&PW(A) dated 12.5.2017.

6. **Annexure A6:** True copy of the representation dated 23.6.2017 submitted by the 1st applicant Association to the 1st respondent.

7. **Annexure R1:** Copy of Rule 37-A of CCS (Pension) Rules, 1972.

8. **Annexure R2:** Copy of OM No.40-31/2008-Pen(T) dated 16.03.2017.

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This is the true copy of the original document marked as Exhibit P....1...In the above OP(CAT)

Advocate

23

12 Exhibit P2

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

OA/180/00 346 /2018

All India BSNL Pensioners' Welfare Association

& another Applicants

V.

Union of India & others Respondents

INDEX

Sl. No.	Particulars	Page No
	COMPILATION I	
1	Original Application	01 - 11
	COMPILATION II	
2	Annexure A-1: True copy of the Department of Pension & Pensioners' Welfare OM F. No. 38/37/08-P&PW(A) dated 10.12.2009	12 - 13
3	Annexure A-2: True copy of the Department of Telecom letter No. 40-31/2008-Pen(T) dated 16.8.2010	14
4	Annexure A-3: True copy of the Department of Pension & Pensioner's Welfare Resolution No. 38/37/2016-P&PW(A) dated 4.8.2016	15 - 19
5	Annexure A-4: True copy of the Department of Pension & Pensioner's Welfare OM No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016	20 - 24
6	Annexure A-5: True copy of the Department of Pension & Pensioners' Welfare OM No. 38/37/2016-P&PW(A) dated 12.5.2017	25 – 30
7	Annexure A-6: True copy of the representation dated 23.6.2017 submitted by the 1st applicant Association to the 1st respondent	31 – 32

Dated this the th day of April 2018

R. Sreeraj
Counsel for the Applicant

For the use in the Tribunal Office:
Date of Filing or
Date of receipt by post
Registration No: 902

Signature of the Registrar

ADMINISTRATIVE TRIBUNAL
09 APR 2018
ERNAKULAM BENCH

1 24 P2/2

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL,
ERNAKULAM BENCH

OA/180/00 346 /2018

All India BSNL Pensioners' Welfare Association
& another Applicants

V.

Union of India & others Respondents

SYNOPSIS

With the advent of the OM dated 12.5.2017, bringing parity in pension between Pre-2016 and Post-2016 pensioners, in effect, the pension formula of 50% of the last pay drawn or 50% of the last 10 months average pay which ever is more advantageous, became applicable to the Pre-2006 pensioners as well. Grievance of the applicants is that despite the existence of the agreement and the Gazette Notification dated 30.9.2000 and more importantly Explanation to Sub Rule 8 of Rule 37-A of CCS (Pension) Rules, 1972 which ensures DoT absorbed BSNL pensioners equal treatment as that of Central Government pensioners, the benefit of Annexure A-5 OM is not being extended to them. This results in an invidious discrimination and an unreasonable classification. It is against this denial of equality, illegal classification and invidious discrimination that this Original Application is filed.

R. Sreeraj
Counsel for the Applicants

25

2 P2/3

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

OA/180/00 346 /2018

APPLICANT

1. All India BSNL Pensioners' Welfare Association (Regd. 1833/09), Central Headquarters, AH 189/61, 3rd Street, Aurovile Flats, Anna Nagar, Chennai-600 040 represented by its President, P.S. Ramankutty, aged 74 years, S/o Late R. Sivaraman Nair, residing at TC 55/1953, CTO Colony, Pappanamcode, Trivandrum-695 018.

2. P. Vadivel, aged 75 years, S/o Late V. Perumal, retired Chief Section Supervisor, O/o Principal General Manager, BSNL Bhavan, Ernakulam, residing at 10/855 Ambady, S.S. Krishnan Road, Fort Kochi, Kochi-682 001.

RESPONDENTS

1. Union of India represented by the Secretary, Department of Telecom, Sanchar Bhavan, 20, Asoka Road, New Delhi-110 001.

2. Bharat Sanchar Nigam Limited, Corporate Office, Bharat Sanchar Bhawan, Harish Chandra Mathur Lane, New Delhi-110 001.

3. The Secretary, Government of India, Ministry of Heavy Industries & Public Enterprises, Department of Public Enterprises, Public Enterprises Bhawan, Block No. 14, CGO Complex, Lodhi Road, New Delhi-110 001.

4. The Secretary, Government of India, Ministry of Personnel, Public Grievances and Pensions, Department of Pensions and Pensioners' Welfare, New Delhi-110001.

5. The Controller of Communication Accounts, BSNL Bhawan, Kerala Circle, Trivandrum-695033.

1. PARTICULARS OF THE ORDERS AGAINST WHICH THE APPLICATION IS FILED

NOT AGAINST ANY PARTICULAR ORDER

P2/4

2. JURISDICTION OF THE TRIBUNAL

The applicants declare that the subject matter of the application is within the jurisdiction of the Administrative Tribunal.

3. LIMITATION

The applicants further declare that the application is within the limitation period prescribed under Section 21 of the Administrative Tribunals Act, 1985.

4. FACTS OF THE CASE

1) The 1st applicant is the All India BSNL Pensioners' Welfare Association represented by its President and the 2nd applicant is a member of the said Association who is an aggrieved individual.

2) The Government, on acceptance of the recommendations of the 6th Central Pay Commission, issued orders for granting pension @ 50% of the average emoluments for the last 10 months or 50% of the last pay drawn whichever is more beneficial to the pensioner. Consequential amendments were made to the CCS (Pension) Rules, 1972 as well. Since the DoT absorbed BSNL employees are also covered under the CCS (Pension) Rules, 1972, the benefit was extended to those who retired after 1.1.2006 from the BSNL as well. The impact was that, from 1.1.2006, all those with a qualifying service of 10 years, became entitled for full pension. In other words, grant of full pension for those who had a qualifying service of 33 years or more alone, as stipulated under Rule 49 of CCS (Pension) Rules, 1972, was dispensed with. A true copy of the Department of Pension & Pensioners' Welfare OM F. No. 38/37/08-P&PW(A) dated 10.12.2009 is produced herewith and marked as Annexure A-1. A true copy of the Department of Telecom letter No. 40-31/2008-Pen(T) dated 16.8.2010 is produced herewith and marked as Annexure A-2.

27

P2/S

3) It is submitted that the 7th Central Pay Commission, in its Report, recommended 2 formulations for revision of pension of pre-2016 pensioners. In acknowledgment of the same, the Department of Pension & Pensioner's Welfare issued Resolution No. 38/37/2016-P&PW(A) dated 4.8.2016 indicating the decisions taken by the Government on the various recommendations of the 7th CPC on pensionary matters. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued as per the Department of Pension & Pensioner's Welfare OM No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016. It was provided therein that the revised pension/family pension w.e.f 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at the time of implementation of the recommendations of the 6th CPC, by 2.57. A true copy of the Department of Pension & Pensioner's Welfare Resolution No. 38/37/2016-P&PW(A) dated 4.8.2016 is produced herewith and marked as Annexure A-3. A true copy of the Department of Pension & Pensioner's Welfare OM No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016 is produced herewith and marked as Annexure A-4.

4) In accordance with the decisions mentioned in Annexure A-3 and Annexure A-4, the feasibility of the first option recommended by the 7th CPC was examined by a Committee headed by Secretary, Department of Pension & Pensioners' Welfare. After considering the recommendations of the said committee, the Government decided that the revised pension/family pension with effect from 1.1.2016 in respect of all Central Civil Pensioners/Family Pensioners, including CAPFs, who retired/died prior to 1.1.2016, may be revised by notionally fixing their

28

P2/6

pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. It was further decided that this will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. A true copy of the Department of Pension & Pensioners' Welfare OM No. 38/37/2016-P&PW(A) dated 12.5.2017 is produced herewith and marked as **Annexure A-5**.

5) Annexure A-5 OM introduced a new and a drastic concept. According to Annexure A-5 OM, the last pay drawn by a pre-2016 pensioner undergoes change notionally after every pay commission till the 7th CPC and the pension is fixed ultimately at 50% of that notional pay finally arrived at. This has 2 impacts

(i) Pro-rata pension, for less than 33 years of qualifying service, is dispensed with even for those who retired prior to 1.1.2006 and

(ii) Ultimately it is 50% of last pay drawn (though notionally) which amounts to pension.

Further Annexure A-5 OM gives an option to the pensioner to choose either the multiplication factor of 2.57 as per OM dated 4.8.2016 or 50% of the notional pay as per the Annexure A-5 OM whichever is more beneficial.

6) Unfortunately, the impact of Annexure A-5 has been totally lost as far as the pre-2006 pensioners of BSNL are concerned. While Para 12 of Annexure A-5 OM says that the pension of the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings/autonomous bodies will also be revised in accordance with those orders, so far BSNL pensioners of pre-2006 era are denied the same. In essence, BSNL pensioners are illegally and unreasonably subjected to a further classification as those

29

P2/7

retired prior to 1.1.2006 and those retired after 1.1.2006, when Annexure A-5 OM unites the two classes.

7) In these circumstances, objecting to this invidious discrimination, the 1st applicant Association has submitted a representation to the Secretary, Department of Telecom, Sanchar Bhavan, 20, Asoka Road, New Delhi-110 001. A true copy of the representation dated 23.6.2017 submitted by the 1st applicant Association to the 1st respondent is produced herewith and marked as Annexure A-6.

8) So far, there is no response to Annexure A-6 representation. In these circumstances, the applicants are constrained to approach this Hon'ble Tribunal for appropriate relief.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS

A) The further classification of BSNL IDA pensioners as those retired prior to 1.1.2006 and those retired after 1.1.2006 suffers from the vice of under inclusion and violates Art 14 and 16 of the Constitution of India. The cut off date chosen has nexus with the object sought to be achieved and it has no rationale behind it. It brings in an artificial classification among a homo genus class that strikes at the very root of the concept of equality enshrined in the Constitution.

B) The legal position in this regard has been succinctly laid down by the Hon'ble Supreme Court in a catena of decisions and followed by the Hon'ble High Court in its judgment in Kamala Devi v. K.S.F.E Ltd. reported in 2002(1) KLT 157 as follows:

> *"6. Article 14 guarantees equality before law and equal protection of laws, but the same does not prohibit classification. A classification will not be hit by Art 14, if the*

same satisfies the twin tests:- P2/8

(1) there is an intelligible differentia between those included in one group and those excluded from it;

(2) it has a rational nexus with the object of the law.

The Supreme Court has held that if the classification suffers from the vice of under inclusiveness, the same will be hit by Art 14. The Supreme Court has explained the said principle pithily in In Re Special Courts Bill, 1978, in the following words: (AIR 1979 (1) SC 478):

"120. The Court in Mohammed Shujath Ali v. Union of India,(1975)1SCR 449 at p. 477:(AIR 1974 SC 1631 at p.1653) has explained the constitutional facet of classification:

This doctrine recognises that the legislature may classify for the purpose of legislation but requires that the classification must be reasonable. It should ensure that persons or things similarly situated are all similarly treated. The measure of reasonableness of a classification is the degree of its success in treating similarly those similarly situated.

But the question is: what does this ambiguous and crucial phrase similarly situated means? Where are we to look for the test of similarity of situation which determines the reasonableness of a classification? The inescapable answer is that we must look beyond the classification to the purpose of the law. A reasonable classification is one which includes all persons or things similarly situated with respect to the purpose of the law".

121. After having stated the general proposition,

31

P2/9

the Court struck a note of warning which is the main crux of the present controversy: ibid at p. 478:(at pp.1653,1654 of AIR)

"The fundamental guarantee is of equal protection of the laws and the doctrine of classification is only a subsidiary rule evolved by courts to give a practical content to that guarantee by accommodating it with the practical needs of the society and it should not be allowed to submerge and down the precious guarantee of equality. The doctrine of classification should not be carried to a point where instead of being a useful servant, it becomes a dangerous master, for otherwise, as pointed out by Chandrachud,J in State of Jammu and Kashmir v. Triloki Nath Khosa (1974) 1 SCC 19: (AIR 1974 SC 1), "the guarantee of equality will be submerged in class legislation masquerading as laws meant to govern well marked classes characterised by different and distinct attainments."...That process will inevitably end in substituting the doctrine of classification for the doctrine of equality: the fundamental right to equality before the law and equal protection of the laws may be replaced by the overworked methodology of classification. Our approach to the equal protection clause must, therefore, be guided by the words of caution uttered by Krishna Iyer, J. in State of Jammu and Kashmir v. Triloki Nath Khosa. "Mini classifications based on micro distinctions are false to our egalitarian faith and only substantial and straight forward classification plainly promoting relevant goals can have constitutional validity. To overdo classification is to undo equality."

32

P2/10

122. Mathew, J in State of Gujarath v. Shri Ambika Mills, Ahmedabad,(1974) 3 SCR 760 at p 782:(AIR 1974 SC 1300 at pp 1312,1313) placed the same accent from the angle of under inclusion:

"The equal protection of the laws is a pledge of the protection of equal laws. But laws may classify.....A reasonable classification is one which includes all who are similarly situated and none who are not. The question is what does the phrase "similarly situated" means? The answer to the question is that we must look beyond the classification to the purpose of the law. The purpose of a law may be either the elimination of a public mischief or the achievement of some public good.

A classification is under inclusive when all who are included in the class are tainted with the mischief but there are others also tainted whom the classification does not include. In other words, a classification is bad as under inclusive when a State benefits or burdens persons in a manner that further a legitimate purpose but does not confer the same benefit or place the same burden on others who are similarly situated. A classification is over inclusive when it includes not only those who are similarly situated with respect to the purpose but others who are not so situated as well."

The ratio of the decisions cited above apply squarely to the facts and circumstances of the present case.

C) The non extension of the benefit of Annexure A-5 OM to the BSNL IDA pensioners who retired from service prior to 1.1.2006 amounts to negation of the rights conferred on them as per the Explanation to Sub

33

P2/11

Rule 8 of Rule 37-A of the CCS (Pension) Rules, 1972 which interalia states that the amount of pension of the absorbed employee on retirement or on death from the public sector undertaking shall be calculated in the same way as calculated of a Central Government Servant retiring on the same day.

6.DETAILS OF THE REMEDIES EXHAUSTED

No other statutory remedy.

7.MATTERS NOT PREVIOUSLY FILED OR PENDING WITH ANY OTHER COURT

The applicants further declare that the applicants have not filed any application, writ petition or suit, regarding the matter in respect of which the application is made, before any Court or any other authority or any other Bench of this Hon'ble Tribunal nor any such application or suit is pending before any of them.

HIGH COURT OF KERALA
सत्यमेव जयते

8.RELIEF(S) SOUGHT

1) To direct the respondents to extend to the pre-2006 DoT absorbed BSNL IDA pensioners, the benefit of Annexure A-5 OM, revise their pension by applying the pension formula of 50% of the last pay drawn or 50% of the last ten months average pay which ever is advantageous to them and disburse all the consequential benefits to them with arrears and interest.

2) Such other relief as may be prayed for and this Hon'ble Tribunal may deem fit to grant.

3) Grant the cost of this Original Application.

34

P2/12

9.INTERIM ORDER,IF ANY PRAYED FOR

Pending final disposal of the Original Application, this Hon'ble Tribunal may be pleased to

Direct the respondents to consider Annexure A-6 representation and communicate a decision thereupon to the applicants

10.NOT APPLICABLE

11.PARTICULARS OF POSTAL ORDER IN RESPECT OF APPLICATION FEE

1. No. of the Indian Postal Order
2. Date of issue of the Postal Order
3. Name of the issuing Post Office
4. Post Office at which payable

12.LIST OF ENCLOSURES

1. Compilation 1 & 2
2. Vakalath
3. Postal Order

THE HIGH COURT OF KERALA

IN VERIFICATION

We, (1) All India BSNL Pensioners' Welfare Association (Regd. 1833/09), Central Headquarters, AH 189/61, 3rd Street, Aurovile Flats, Anna Nagar, Chennai-600 040 represented by its President, P.S. Ramankutty, aged 74 years, S/o Late R. Sivaraman Nair, residing at TC 55/1953, CTO Colony, Pappanamcode, Trivandrum-695 018 and (2) P. Vadivel, aged 75 years, S/o Late V. Perumal, retired Chief Section Supervisor, O/o Principal General Manager, BSNL Bhavan, Ernakulam, residing at 10/855 Ambady, S.S. Krishnan Road, Fort Kochi, Kochi-682 001 do hereby verify that the contents from Para 1 to 12 are true to the best of our personal knowledge and belief and that we have not suppressed any material facts.

Dated this the 8th day of April, 2018 at Ernakulam

P.S. Ramankutty

2) P. Vadivel

R. Sreeraj
Counsel for the Applicants

(35)

12

P2/13

ANNEXURE A1

F.No.38/37/08-P&PW(A)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners' Welfare
Lok Nayak Bhawan, New Delhi-110003

Dated the 10th December, 2009.

OFFICE MEMORANDUM

Sub: Implementation of Government's decision on the recommendations of the Sixth Central Pay Commission regarding revision of pension of pensioners/family pensioners etc. – Grant of full pension to Government servants who retired on or after 1.1.2006

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Sixth Central Pay Commission, orders were issued vide this Department's O.M. No. 38/37/08-P&PW(A) dated 2.9.2008 for introducing modifications in the rules regulating pension, Retirement/Death/Service Gratuity/Family Pension/ disability pension and ex-gratia lump-sum compensation. In accordance with para 5.2 and para 5.3 of that OM, once a Government servant becomes entitled to pension on completion of 20 years/10 years of qualifying service, he shall be paid pension at 50% of the emoluments or average emoluments received during the last 10 months, whichever is more beneficial to him. In terms of para 5.4 of the OM, these revised provisions have come into force w.e.f. 2.9.2008 and shall be applicable to Government servants retiring on or after that date. Subsequently, it was clarified vide O.M. No. 38/37/08-P&PW(A) dated 11.12.2008 that pension of Government servant retiring on or after 1.1.2006 will also be calculated based on the emoluments or average emoluments received during the last 10 months, whichever is more beneficial to him but his pension would continue to be proportionate to the pension on completion of 33 years of qualifying service. Para 5.4 of this Department's O.M. No. 38/37/08-P&PW(A) dated 2.9.2008 was modified to that extent.

2. This matter has been reconsidered by the Government. In partial modification of the instructions/order issued in this respect, it has now been decided that linkage of full pension with 33 years of qualifying service shall be dispensed with, with effect from 1.1.2006 instead of 2.9.2008. The revised provisions for calculation of pension in para 5.2 and 5.3 of the OM No.38/37/08-P&PW(A) dated 2.9.2008 shall come into force with effect from 1.1.2006 and shall be applicable to the Government servants retired/retiring after that date. Para 5.4 will further stand modified to that extent.

.....2/-

(36)

13 P2/14 A1/2

3. Consequent upon the above revised provisions, in partial modification of para 7.1 of the OM No.38/37/01-P&PW(A)-P&PW(A) dated 2.9.08, the extant benefit of adding years of qualifying service for the purpose of computation of pension and gratuity shall stand withdrawn with effect from 1.1.2006.

4. The overall calculation may take into account revised gratuity and revised pension, including arrears up to date of revision based on these instructions. However, no recoveries would be made in the cases already settled.

5. It is impressed upon all the Ministries/Departments of the Government of India to keep in view the above modifications/clarifications while disposing of the cases of revision of pension. They are also advised to dispose of the representations received by them from pensioners on the above issues without referring the same to this Department.

6. This issues with the concurrence of Ministry of Finance (Department of Expenditure) vide their U.O. No.375/EV/2009 dated 19.11.2009.

7. In their application to the employees of the Indian Audit and Accounts Departments, these orders issue in consultation with the Comptroller & Auditor General of India.

8. Hindi version will follow.

सत्यमेव जयते

(Raj Singh)
Director

To

1. All Ministries/Departments of Government of India
2. All Pensioners' Association

This Annexure A 1 is the true copy of the original documen

Advocate

(37)

14 P2/15

Annexure A2

No. 40-31/2008-Pen(T)
Government of India
Department of Telecommunications
(Pension Section)

New Delhi, dated the 6 August, 2010

To

1. All Principal CCAs/CCAs/Joint CCAs
2. CMD, BSNL

Subject: Applicability of revised rules of CCS (Pension) 1972 consequent to the 6th CPC to the Government employees absorbed in BSNL – clarification regarding.

Sir,

With reference to this office letter of even number dated 12th August, 2009, it is clarified that the provision of admissibility of full pension on completion of 20 years of qualifying service, which was earlier applicable from 2.9.2008 in terms of Deptt. of Pension and Pensioners' Welfare's O.M. No. 38/37/2008-P&PW(A) dated 2.9.2008 has since been revised vide DoP&PW's O.M. No.38/37/08-P&PW(A) dated 10.12.2009, is now admissible with effect from 1.1.2006. This amendment in CCS (Pension) Rules with regard to admissibility of full pension on completion of 20 years of qualifying service is also applicable to absorbed employees of BSNL.

Yours faithfully,

(R.S. Rawat)
Under Secretary (STP)
Tele No. 2303 6854

Copy for information to:

1. Sr. PPS to Chairman, Telecom Commission, New Delhi.
2. Sr. PPS to all Members, Telecom Commission, Sanchar Bhawan, New Delhi.
3. Sr. PPS to all Advisors, DoT, Sanchar Bhawan, New Delhi.
4. Sr. DDG(TEC), Khursid Lal Bhawan, New Delhi.
5. Controller General of Accounts, MoF, 7th Floor, Lok Nayak Bhawan, New Delhi.
6. DG of Audit (P&T), Sham Nath Marg, Near Old Secrt. Civil Lines, New Delhi-54.
7. DDG(A/Cs)/DDG(FEB)/DDG(LF)/DDG(WPF)/DDG(TFP)
8. All Sr. DDGs/DDGs,DoT, Sanchar Bhawan, New Delhi.
9. DDG(Corporate Accounts), BSNL, Statesman House, New Delhi
10. Sr. A.O(PFP)
11. Pay Bill/Cash Section, DoT, Sanchar Bhawan, New Delhi.
12. Guard File/Reference Folder

This Annexure A 2 is the true copy of the original documen.
Advocate

(38)

15 P2/16 Annexure A3

F. No 38/37/2016-P&PW(A) (i)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners' Welfare
Lok Nayak Bhawan, New Delhi-110003
Dated the 4th August, 2016

OFFICE MEMORANDUM

Sub: Implementation of Government's decision on the recommendation of the Seventh Central Pay Commission - Revision of provisions regulating pension/gratuity/ commutation of pension/family pension/disability pension/ex-gratia lump-sum compensation, etc.

The undersigned is directed to state that in pursuance of Government's decision on the recommendation of the Seventh Central Pay Commission, the President is pleased to introduce the following modifications in the rules regulating pension, Retirement/Death/Service Gratuity, Family Pension, disability pension, ex-gratia lump-sum compensation, etc. under the CCS (Pension) Rules, 1972 and Commutation of Pension under CCS (Commutation of Pension) Rules, 1981, CCS (Extraordinary Pension) Rules, 1939, etc.

2. These orders apply to Central Government Employees governed by the CCS (Pension) Rules, 1972. Separate orders will be issued by the Ministry of Defence, Ministry of Railways and the AIS Division of the DOPT in respect of Armed Forces personnel, Railway employees and the officers of All India Services respectively on the basis of these orders.

DATE OF EFFECT

3.1 The revised provisions as per these orders shall apply to Government servants who retire/die in harness on or after 1.1.2016. Separate order have been issued in respect of employees who retired/died before 1.1.2016.

3.2 Where pension/family pension/Gratuity/Commutation of pension, etc has already been sanctioned in cases occurring on or after 1.1.2016, the same shall be revised in terms of these orders. In cases where pension has been finally sanctioned on the pre-revised orders and if it happens to be more beneficial than the pension

(39)

16 P2/17 A3/2

becoming due under these orders, the pension already sanctioned shall not be revised to the disadvantage of the pensioner in view of Rule 70 of the CCS (Pension) Rules, 1972.

EMOLUMENTS

4.1 The term 'Emoluments' for purposes of calculating various pensionary benefits other than various kinds of Gratuity shall have the same meaning as in Rule 33 of the Central Civil Services (Pension) Rules, 1972.

4.2 Basic pay in the revised pay structure means the pay drawn in the prescribed level in the Pay Matrix with effect from 01.01.2016 but does not include any other type of pay like special pay, etc.

4.3 In the case of all kinds of gratuity, dearness allowance admissible on the date of retirement/death shall continue to be treated as emoluments along with the emoluments as defined in Paragraph 4.1 above.

PENSION

5.1 Subject to para 5.2, there shall be no change in the provisions regulating the amount of pension as contained in Rule 49 of the CCS(Pension) Rules.

5.2 The amount of pension shall be subject to a minimum of Rs.9000/- and the maximum pension would be 50% of highest pay in the Government (The highest pay in the Govt. is Rs 2,50,000 with effect from 1.1.2016). The provisions of sub-rule (2) of Rule 49 of the CCS (Pension) Rules, 1972 shall stand modified to this extent.

5.3 The quantum of additional pension/family pension available to the old pensioners/ family pensioners shall continue to be as follows:-

Age of pensioner/family pensioner	Additional quantum of pension
From 80 years to less than 85 years	20% of revised basic pension/ family pension
From 85 years to less than 90 years	30% of revised basic pension / family pension
From 90 years to less than 95 years	40% of revised basic pension / family pension
From 95 years to less than 100 years	50% of revised basic pension / family pension
100 years or more	100% of revised basic pension / family pension

The Pension Sanctioning Authorities should ensure that the date of birth and the age of a pensioner is invariably indicated in the pension payment order to facilitate payment of additional pension by the Pension Disbursing Authority as soon as it becomes due. The

(40)

17 D2/18 A3/3

amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and his pension is Rs.10,000 pm, the pension will be shown as (i) Basic pension=Rs.10,000 and (ii) Additional pension = Rs.2,000 pm. The pension on his attaining the age of 85 years will be shown as (i).Basic Pension = Rs.10,000 and (ii) additional pension = Rs.3,000 pm.

Retirement/ Death Gratuity

6.1 The rates for payment of death gratuity shall be revised as under:

Length of qualifying service	Rate of Death Gratuity
Less than One year	2 times of monthly emoluments
One Year or more but less than 5 years	6 times of monthly emoluments
5 years or more but less than 11 years	12 times of monthly emoluments
11 years or more but less than 20 years	20 times of monthly emoluments
20 years or more	Half month's emoluments for every completed six monthly period of qualifying service subject to a maximum of 33 times of emoluments.

Accordingly, Rule 50(1)(b) of CCS (Pension) Rules, 1972 shall stand modified to this extent.

6.2 The maximum limit of Retirement gratuity and death gratuity shall be Rs. 20 lakh. The ceiling on gratuity will increase by 25% whenever the dearness allowance rises by 50% of the basic pay. Accordingly, first proviso under Rule 50(1)(b) of CCS (Pension) Rules, 1972 shall stand modified to this extent.

FAMILY PENSION 1964

7.1 Family pension shall be calculated at a uniform rate of 30% of basic pay in the revised pay structure and shall be subject to a minimum of Rs.9000/-p.m. and maximum of 30% of the highest pay in the Government. Rule 54(2) relating to Family Pension, 1964 under CCS (Pension) Rules, 1972 shall stand modified to this extent.

7.2 The amount of enhanced family pension shall be 50% of basic pay in the revised pay structure and shall be subject to a minimum of Rs.9000/-p.m. and maximum of 50% of the highest pay in the Government. (The highest pay in the Govt. is Rs. 2,50,000 with effect from 1.1.2016).

7.3 There will be no other change in the provisions regulating family pension, enhanced family pension and additional family pension to old family pensioners.

(41)

18

P2/19 A3/4

COMMUTATION OF PENSION

8.1 There will be no change in the provisions relating to commutation values, the limit upto which the pension can be commuted or the period after which the commuted pension is to be restored.

9.1 The pension/family pension under para 5 and 7 above shall qualify for dearness relief sanctioned from time to time, in accordance with the relevant rules/instructions.

FIXED MEDICAL ALLOWANCE

10.1 Fixed Medical Allowance to the pensioners who are residing in non-CGHS areas and are not availing OPD facility of CGHS shall continue to be paid at the existing rate till a final decision is taken on the basis of recommendations of the Committee constituted for the purpose.

CONSTANT ATTENDANT ALLOWANCE

11.1 The amount of Constant Attendant Allowance to pensioners who retired on disability pension with100% disability under the CCS (Extraordinary) Pension Rules, 1939, (where the individual is completely dependent on somebody else for day to day functions) shall continue to be paid at the existing rate till a final decision is taken on the basis of recommendations of the Committee constituted for the purpose.

EX GRATIA LUMPSUM COMPENSATION

12.1 The amount of ex gratia lump sum compensation available to the families of Central Government Civilian employees, who die in the performance of their *bona fide* official duties under various circumstances shall be revised as under:

Circumstances	Amount
Death occurring due to accidents in course of performance of duties	25 lakh
Death in the course of performance of duties attributed to acts of violence by terrorists, anti social elements etc.	25 lakh
Death occurring in border skirmishes and action against militants, terrorists, extremists, sea pirates	35 lakh
Death occurring while on duty in the specified high altitude, unaccessible border posts, etc. on account of natural disasters, extreme weather conditions	35 lakh
Death occurring during enemy action in war or such war like engagements, which are specifically notified by Ministry of Defence and death occurring during evacuation of Indian Nationals from a war-torn zone in foreign country	45 lakh

(42)

19

D2/20 A3/5

13.1. Formal amendments to CCS (Pension) Rules, 1972 and CCS (Extraordinary) Pension Rules, 1939 in terms of the decisions contained in this order will be issued in due course. Provisions of the CCS (Pension) Rules 1972, CCS (Extraordinary) Pension Rules, 1939, and CCS(Commutation of Pension) Rules, 1981 which are not specifically modified by these orders, will remain unchanged.

14.1. These orders issue with concurrence of the Ministry of Finance Department of Expenditure vide their U.O. No. 30-1/33(c)/ 2016-IC dated 03.08.2016

15.1. In their application to the employees of the Indian Audit and Accounts Department, these orders issue in consultation with Comptroller and Auditor General of India.

16. Ministry of Agriculture etc. are requested to bring the contents of these orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and Subordinate Offices under them on a top priority basis.

(Vandana Sharma)
Joint Secretary to the Government of India

To

1. All Ministries/ Departments of Government of India
2. Principal Director, Office of Comptroller & Auditor General of India, New Delhi
3. Contorller General of Accounts, New Delhi
4. CCA, Central Pension Accounting Office, New Delhi.

THE HIGH COURT OF KERALA

This Annexure A3 is the true copy of the original document

ADVOCATE

(43)
20

P2/21
Annexure A4

F.No.38/37/2016-P&PW(A) (ii)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners' Welfare
Lok Nayak Bhawan, New Delhi-110003

Dated the 4th August, 2016.

OFFICE MEMORANDUM

Sub: Implementation of Government's decisions on the recommendations of the Seventh Central Pay Commission - Revision of pension of pre-2016 pensioners/family pensioners etc.

The undersigned is directed to say that in pursuance of Government's decision on the recommendations of Seventh Central Pay Commission, sanction of the President is hereby accorded to the regulation, with effect from 01.01.2016, of pension/ family pension of all the pre-2016 pensioners/ family pensioners in the manner indicated in the succeeding paragraphs. Separate orders are being issued in respect of employees who retired/died on or after 01.01.2016.

2.1 These orders shall apply to all pensioners/family pensioners who were drawing pension/family pension before 1.1.2016 under the Central Civil Services (Pension) Rules, 1972, Central Civil Services (Extraordinary Pension) Rules and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973. A pensioner/family pensioner who became entitled to pension/family pension with effect from 01.01.2016 consequent on retirement/death of Government servant on 31.12.2015, would also be covered by these orders.

2.2 Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

2.3 These orders also do not apply to retired High Court and Supreme Court Judges and other Constitutional/Statutory Authorities whose pension etc. is governed by separate rules/orders.

3. In these orders :

a. 'Existing pensioner' or 'Existing Family pensioner' means a pensioner/family pensioner to whom these orders are applicable in terms of para 2.1 above.

b. 'Existing pension' or 'Existing Family Pension means the basic pension (inclusive of commuted portion, if any) or basic family pension, as had been fixed at the time

(44)

21

P2/22 A4/2

of implementation of 6th CPC recommendations, which an existing pensioner or family pensioner was entitled to.

4.1 For existing pensioners, who have retired before 01.01.2016, the revised pension/family pension with effect from 01.01.2016 shall be determined by multiplying the pension/family pension, as had been fixed at the time of implementation of 6th Central Pay Commission (CPC) recommendations, by 2.57. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee.

Illustration:

Case I

Pensioner 'A' retired at last pay drawn of Rs. 79,000 on 31st May, 2015 under the 6th CPC regime in the scale of Rs. 67000-79000:

		Amount in Rs.
1.	Basic Pension fixed in 6th CPC	39500
2.	Revised Pension fixed under 7th CPC (using a multiple of 2.57)	101515

Case II

Pensioner 'B' retired at last pay drawn of Rs. 4,000 on 31st January, 1989 under the 4th CPC regime in the pay scale of Rs. 3000-100-3500-125-4500:

		Amount in Rs.
1.	Basic Pension fixed in 4th CPC	1940
2.	Basic Pension as revised in 6th CPC	12600
3.	Revised Pension fixed under 7th CPC (using a multiple of 2.57)	32,382

4.2 For this purpose, the existing pension/family pension will be the basic pension/family pension only without the element of additional pension available to the old pensioners/family pensioners of the age of 80 years and above. The additional pension/family pension payable to the old pensioners/family pensioners will be worked out in accordance with para 4.5 of this O.M.

4.3 Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

4.4 The minimum pension with effect from 01.01.2016 will be Rs. 9000/- per month (excluding the element of additional pension to old pensioners). The upper ceiling on pension/family pension will be 50% and 30% respectively of the highest pay in the Government (The highest pay in the Government is Rs. 2,50,000 with effect from 01.01.2016).

(45)

22

P2/23 A4/3

4.5 The quantum of pension/family pension available to the old pensioners/ family pensioners shall continue to be as follows:-

Age of pensioner/family pensioner	Additional quantum of pension
From 80 years to less than 85 years	20% of revised basic pension/ family pension
From 85 years to less than 90 years	30% of revised basic pension / family pension
From 90 years to less than 95 years	40% of revised basic pension / family pension
From 95 years to less than 100 years	50% of revised basic pension / family pension
100 years or more	100% of revised basic pension / family pension

The amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and his/her revised pension in terms para 4.1 above is Rs.10,000 pm, the pension will be shown as (i).Basic pension=Rs.10,000 and (ii) Additional pension = Rs.2,000 pm. The pension on his/her attaining the age of 85 years will be shown as (i).Basic Pension = Rs.10,000 and (ii) additional pension = Rs.3,000 pm. Dearness relief will be admissible on the additional pension available to the old pensioners also.

4.6 The revised pension/family pension arrived at as per paragraph 4.1 includes dearness relief sanctioned from 1.1.2016.

5. Where the revised pension/family pension in terms of paragraph 4.1 above works out to an amount less than Rs. 9000/-, the same shall be stepped up to Rs. 9000/-. This will be regarded as pension/family pension with effect from 1.1.2016.

6. The existing instructions regarding regulation of dearness relief to employed/re-employed pensioners/family pensioners, as contained in Department of Pension & Pensioners Welfare O.M. No. 45/73/97-P&PW(G) dated 02.07.1999, as amended from time to time, shall continue to apply.

7. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:-

(a) PENSION

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be updated in terms of these orders. In cases where the Government servants have drawn one time lump sum terminal benefits equal to 100% of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per the instructions issued by this Department from time to time, their cases will not be covered by these orders. Orders for regulating pension of such pensioners will be issued separately.

(46)

23

P2)24 A4/4

(b) FAMILY PENSION

In cases where, on permanent absorption in public sector undertakings/autonomous bodies, the terms of absorption and/or the rules permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.

8. The matter regarding Constant Attendant Allowance admissible to the existing pensioners shall be examined by a Committee comprising Finance Secretary and Secretary (Expenditure) as Chairman and Secretaries of Home Affairs, Defence, Posts, Health & Family Welfare, Personnel & Training and Chairman, Railway Board as Members. Till a final decision is taken based on the recommendations of the Committee, Constant Attendant Allowance shall be paid at existing rates.

9. All Pension Disbursing Authorities including Public Sector Banks handling disbursement of pension to the Central Government pensioners are hereby authorised to pay pension/family pension to existing pensioners/family pensioners at the revised rates in terms of para 4.1 and 5 above without any further authorisation from the concerned Accounts Officers/Head of Office etc. Wherever the age of pensioner/ family pensioner is available on the pension payment order, the additional pension/ family pension in terms of para 4.4. above may also be paid by the pension disbursing authorities immediately without any further authorisation from the concerned Account Officer/ Head of Office, etc. A suitable entry regarding the revised pension shall be recorded by the pension Disbursing Authorities in both halves of the Pension Payment Order.

10 The pension/family pension as worked out in accordance with provisions of Para 4.1. and 5 above shall be treated as 'Basic Pension' with effect from 01.01.2016. The revised pension/family pension includes dearness relief sanctioned from 1.1.2016 and shall qualify for grant of Dearness Relief sanctioned thereafter.

11. Further orders in regard to revision of pension based on the recommendations of the Committee to be constituted in terms of the Government's decision on Item No. 11 of this Department's Resolution No. 38/37/2016-P&PW (A) dated 4th August, 2016, will be issued in due course.

12. After a decision as in para 11 above is taken by the Government and orders are issued in this regard, the Head of the Department of the Ministry, Department, Office, etc. from which the government servant had retired or where he was working prior to his demise will revise the pension/family pension of all pensioners/ family pensioners with

(47)

24 P2/25-A4/5

effect from 1st January 2016 in accordance with those orders and issue revised Pension Payment Order (PPOs) accordingly.

13. It is considered desirable that the benefit of these orders should reach the pensioners as expeditiously as possible. To achieve this objective it is desired that all Pension Disbursing Authorities should ensure that the revised pension and the arrears due to the pensioners in terms of para 4.1. and para 5 above is paid to the pensioners or credited to their account by 31st August, 2016 or before positively.

14. In their application to the persons belonging to Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

15. Ministry of Agriculture etc. are requested to bring the contents of these Orders to the notice of Controller of Accounts/Pay and Accounts Officers and Attached and subordinate Offices under them on a top priority basis. All pension disbursing offices are also advised to prominently display these orders on their notice boards for the benefit of pensioners.

16. Hindi version will follow.

(Vandana Sharma)
Joint Secretary to the Government of India

To

All Ministries/ Departments of Government of India

Copy to : As per mailing list

- Central Pension Accounting Office, New Delhi
-CMDs of All Pension Disbursing Banks

This Annexure A4 is the true copy of the original document

ADVOCATE

(48)

25

Annexure A5

12/26

No.38/37/2016-P&PW(A)
Ministry of Personnel, PG & Pensions
Department of Pension & Pensioners' Welfare

3rd Floor, Lok Nayak Bhawan
Khan Market, New Delhi
Dated, the 12th May, 2017

Office Memorandum

Sub:- Implementation of Government's decision on the recommendations of the Seventh Central Pay Commission – Revision of pension of pre-2016 pensioners/family pensioners, etc.

The undersigned is directed to say that the 7th Central Pay Commission (7th CPC), in its Report, recommended two formulations for revision of pension of pre-2016 pensioners. A Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 was issued by this Department indicating the decisions taken by the Government on the various recommendations of the 7th CPC on pensionary matters.

2. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued vide this Department's OM No. 38/37/2016-P&PW (A) (ii) dated 04.08.2016. It was provided in this O.M. that the revised pension/family pension w.e.f. 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at the time of implementation of the recommendations of the 6th CPC, by 2.57.

3. In accordance with the decision mentioned in this Department's Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 and OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016, the feasibility of the first option recommended by 7th CPC has been examined by a Committee headed by Secretary, Department of Pension & Pensioners' Welfare.

4. The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. While fixing pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional pay as on 01.01.2016 shall be the revised pension and 30% of this notional pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to family pension at enhanced rate, the revised family pension shall be 50% of the notional pay as on 01.01.2016 and shall be

(49)

26

P2/27 A5/2

payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee.

5. It has also been decided that higher of the two Formulations i.e. the pension/family pension already revised in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 or the revised pension/family pension as worked out in accordance with para 4 above, shall be granted to pre-2016 central civil pensioners as revised pension/family pension w.e.f. 01.01.2016. In cases where pension/family pension being paid w.e.f. 1.1.2016 in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 happens to be more than pension/family pension as worked out in accordance with para 4 above, the pension/family pension already being paid shall be treated as revised pension/family pension w.e.f. 1.1.2016.

6. Instructions were issued vide this Department's OM No. 45/86/97-P&PW(A) (iii) dated 10.02.1998 for revision of pension/ family pension in respect of Government servants who retired or died before 01.01.1986, by notional fixation of their pay in the scale of pay introduced with effect from 01.01.1986. The notional pay so worked out as on 01.01.1986 was treated as average emoluments/last pay for the purpose of calculation of notional pension/family pension as on 01.01.1986. The notional pension/family pension so arrived at was further revised with effect from 01.01.1996 and was paid in accordance with the instructions issued for revision of pension/family pension of pre-1996 pensioners/family pensioners in implementation of the recommendations of the 5th Central Pay Commission.

7. Accordingly, for the purpose of calculation of notional pay w.e.f. 1.1.2016 of those Government servants who retired or died before 01.01.1986, the pay scale and the notional pay as on 1.1.1986, as arrived at in terms of the instructions issued vide this Department's OM 45/86/97-P&PW(A) dated 10.02.1998, will be treated as the pay scale and the pay of the concerned Government servant as on 1.1.1986. In the case of those Government servants who retired or died on or after 01.01.1986 but before 1.1.2016, the actual pay and the pay scale from which they retired or died would be taken into consideration for the purpose of calculation of the notional pay as on 1.1.2016 in accordance with para 4 above.

8. The minimum pension with effect from 01.01.2016 will be Rs. 9000/- per month (excluding the element of additional pension to old pensioners). The upper ceiling on pension/family pension will be 50% and 30% respectively of the highest pay in the Government (The highest pay in the Government is Rs. 2,50,000 with effect from 01.01.2016).

9. The pension/family pension as worked out in accordance with provisions of Para 4 and 5 above shall be treated as 'Basic Pension' with effect from 01.01.2016. The revised pension/family pension includes dearness relief sanctioned from 1.1.2016 and shall qualify for grant of Dearness Relief sanctioned thereafter.

(50)

27

P2/28 A5/3

10. The existing instructions regarding regulation of dearness relief to employed/re-employed pensioners/family pensioners, as contained in Department of Pension & Pensioners Welfare O.M. No. 45/73/97-P&PW(G) dated 02.07.1999, as amended from time to time, shall continue to apply.

11. These orders would not be applicable for the purpose of revision of pension of those pensioners who were drawing compulsory retirement pension under Rule 40 of the CCS (Pension) Rules or compassionate allowance under Rule 41 of the CCS (Pension) Rules. The pensioners in these categories would continue to be entitled to revised pension in accordance with the instructions contained in this Department's O.M. No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016.

12. The pension of the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings/autonomous bodies will also be revised in accordance with these orders. However, separate orders will be issued for revision of pension of those pensioners who had earlier drawn one time lump sum terminal benefits on absorption in public sector undertakings, etc. and are drawing one-third restored pension as per the instructions issued by this Department from time to time.

13. In cases where, on permanent absorption in public sector undertakings/autonomous bodies, the terms of absorption and/or the rules permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.

14. Since the consolidated pension will be inclusive of commuted portion of pension, if any, the commuted portion will be deducted from the said amount while making monthly disbursements.

15. The quantum of age-related pension/family pension available to the old pensioners/ family pensioners shall continue to be as follows:-

Age of pensioner/family pensioner	Additional quantum of pension
From 80 years to less than 85 years	20% of revised basic pension/ family pension
From 85 years to less than 90 years	30% of revised basic pension / family pension
From 90 years to less than 95 years	40% of revised basic pension / family pension
From 95 years to less than 100 years	50% of revised basic pension / family pension
100 years or more	100% of revised basic pension / family pension

The amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and

(51)

28

122/29 A5/4

his/her revised pension is Rs.10,000 pm, the pension will be shown as (i).Basic pension=Rs.10,000 and (ii) Additional pension = Rs.2,000 pm. The pension on his/her attaining the age of 85 years will be shown as (i).Basic Pension = Rs.10,000 and (ii) additional pension = Rs.3,000 pm. Dearness relief will be admissible on the additional pension available to the old pensioners also.

16. A few examples of calculation of pension/family pension in the manner prescribed above are given in Annexure-I to this O.M.

17. No arrears on account of revision of Pension/Family pension on notional fixation of pay will be admissible for the period prior to 1.1.2016. The arrears on account of revision of pension/family pension in terms of these orders would be admissible with effect from 01.01.2016. For calculation of arrears becoming due on the revision of pension/ family pension on the basis of this O.M., the arrears of pension and the revised pension/family pension already paid on revision of pension/family pension in accordance with the instructions contained in this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 shall be adjusted.

18. It shall be the responsibility of the Head of Department and Pay and Accounts Office attached to that office from which the Government servant had retired or was working last before his death to revise the pension/ family pension of pre – 2016 pensioners/ family pensioners with effect from 01.01.2016 in accordance with these orders and to issue a revised pension payment authority. The Pension Sanctioning Authority would impress upon the concerned Head of Office for fixation of pay on notional basis at the earliest and issue revised authority at the earliest. The revised authority will be issued under the existing PPO number and would travel to the Pension Disbursing Authority through the same channel through which the original PPO had travelled.

19. These orders shall apply to all pensioners/family pensioners who were drawing pension/family pension before 1.1.2016 under the Central Civil Services (Pension) Rules, 1972, and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973. A pensioner/family pensioner who became entitled to pension/family pension with effect from 01.01.2016 consequent on retirement/death of Government servant on 31.12.2015, would also be covered by these orders. Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

20 These orders do not apply to retired High Court and Supreme Court Judges and other Constitutional/Statutory Authorities whose pension etc. is governed by separate rules/orders.

21 These orders issue with the concurrence of Ministry of Finance (Department of Expenditure) vide their I.D. No. 30-1/33(c)/2016-IC dated 11.05.2017 and I.D. No. 30-1/33(c)/2016-IC dated 12.05.2017.

22. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

(52)

29

P2/30 A5/5

23. Ministry of Agriculture etc. are requested to bring the contents of these orders to the notice of Heads of Department/Controller of Accounts, Pay and Accounts Officers, and Attached and Subordinate Offices under them on top priority basis. All Ministries/Departments are requested to accord top priority to the work of revision of pension of pre-2016 pensioners/family pensioners and issue the revised Pension Payment Authority in respect of all pre-2016 pensioners.

24. Hindi version will follow.

(Harjit Singh)
Director

To

1. All Ministries/Departments of Government of India (as per standard mailing list)
2. Central Pension Accounting Office, New Delhi
3. Comptroller & Auditor General of India, New Delhi

THE HIGH COURT OF KERALA
सत्यमेव जयते

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ADVOCATE

(53)

30

P2/31 A5/6

ANNEXURE I

EXAMPLES

(Reference Para 16 of OM No.38/37/2016-P&PW(A) dated 12th May, 2017.)

S.No	Description	1st case	2nd Case	3rd Case	4th Case
1.	Date of Retirement	31.12.1984	31.01.1989	30.06.1999	31.05.2015
2.	Scale of Pay (or Pay Band & G.P.) at the time of retirement OR Notional pay scale as on 1.1.1986 for those retired before 1.1.1986	975-1660 (4th CPC Scale)	3000-4500 (4th CPC Scale)	4000-6000 (5th CPC Scale)	67000-79000 (6th CPC Scale)
3.	Pay on retirement OR Notional pay as on 1.1.1986 for those retired before 1.1.1986	1210	4000	4800	79000
4.	Pension as on 01.01.2016 before revision	4191	12600	5424	39500
5.	Family pension as on 01.01.2016 before revision	3500	7560	3500	23700
6.	Family pension at enhanced rate as on 01.01.2016 before revision (if applicable)	NA	N.A.	NA	39500
7.	Revised pension by multiplying pre-revised pension by 2.57	10771	32382	13940	101515
8.	Revised family pension by multiplying pre-revised family pension by 2.57	9000	19430	9000	60909
9.	Revised family pension at enhanced rate by multiplying pre-revised enhanced family pension by 2.57	NA	NA	N.A.	101515
10.	Pay fixed on notional basis on 1.1.1996	3710 (3200-4900)	11300 (10000-15200)	N.A.	NA
11.	Pay fixed on notional basis on 1.1.2006	8910 (PB-I, GP 2000)	27620 (PB-3, GP 6600)	11330 (PB-I, GP-2400)	NA
12.	Pay fixed on notional basis on 1.1.2016	23100 (Level -3)	71800 (Level-11)	29600 (Level-4)	205100 (Level-15)
13.	Revised pension w.e.f. 1.1.2016 as per first formulation.	11550	35900	14800	102550
14.	Revised family pension w.e.f. 1.1.2016 as per first formulation.	9000	21540	9000	61530
15.	Revised family pension at enhanced rate w.e.f. 1.1.2016 as per first formulation.	NA	N.A.	N.A.	102550
16.	Revised pension payable (Higher of S.No. 7 and 13)	11550	35900	14800	102550
17.	Revised family pension payable (Higher of S.No. 8 and 14)	9000	21540	9000	61530
18.	Revised family pension at enhanced rate payable (Higher of S.No. 9 and 15)	NA	N.A.	N.A.	102550

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Advocate

(54)

31

A2/32

Annexure A6/1

ALL INDIA BSNL PENSIONERS' WELFARE ASSOCIATION
(REGD. 1833/09)
CENTRAL HEADQUARTERS
AH 189/61, 3rd Street, Aurovile Flats, Anna Nagar, Chennai-600040
President: P.S.Ramankutty
Mobile – 09447551555
General Secretary:G.Natarajan
Mobile – 09444929799

Date: 23/6/2017

To
The Secretary,
Department of Telecom,
Sanchar Bhavan,
20, Asoka Road,
New Delhi-110001

Respcted Madam,

Sub:- **Grant of pension @ 50% of last ten months average or last pay drawn whichever is beneficial to BSNL IDA pensioners who retired prior to 1/1/2006 – reg**

Accepting 6th CPC recommendation, Government issued orders for granting pension @ 50% of last ten months average or last pay drawn whichever is beneficial to the pensioner. Accordingly CCS (Pension) Rules 1972 was also amended. This benefit was given to those who retired after 1/1/2006 not only from Central Government but also from BSNL (DoT absorbed BSNL employees are covered under CCS (Pension) Rules 1972).

2. Grant of full pension for those who had a qualifying service of 33 years under Rule 49 of CCS (Pension) Rules 1972 was dispensed with from 1/1/2006 as per 6th CPC recommendations. In effect, those who had a qualifying service of 10 years are entitled for full pension from 1/1/2006.

3. On the basis of 7th CPC recommendation, Government issued orders vide OM No.38/37/2013-P&PW(A) on 4/8/2016 revising the pension of those who retired prior to 1/1/2016. As per this OM, the existing pension was multiplied by 2.57 and that became the basic pension from 1/1/2016.

4. Later Government issued another OM on 12/5/2017. According to this OM, the revised pension/family pension w.e.f. 1/1/2016 who retired/died prior to 1/1/2016 may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. This is done by notional pay fixation under each intervening Pay Commission based on the formula for revision of pay. This is a new concept. According to this concept, the last pay drawn was correspondingly changed notionally after every pay commission till 7th CPC and the pension is fixed at 50% of that notional pay. This has two impacts viz. 1) pro-rata pension, for less than 33 years of qualifying service, is dispensed with even for those who retired prior to 1/1/2006 and 2) It amounts to 50% of last pay drawn as pension. This OM also provides a choice for the pensioner to choose either multiplication factor of 2.57 as per OM dated 4/8/2016 or 50% notional pay as per OM dated 12/5/2017 whichever is beneficial to the pensioner.

5. Dividing the pensioners on the basis of date of retirement as pre-2006 and post-2006 is discriminatory and dividing the pensioners' class as two without any rationale.

6. When the Central Government pensioners and permanently absorbed PSU/autonomous bodies (para 13

(55)

32

P2/33 A6/2

-2-

of OM dated 12/5/2017) who are having CDA pattern, were given the benefit, denial of such option to BSNL IDA pensioners is arbitrary & discriminatory.

7. Explanation under sub rule 8 of Rule 37A of CCS (Pension) Rules 1972 states **"The amount of pension/family pension of the absorbed employee on retirement or on death from Public Sector Undertaking shall be calculated in the same way as calculated in the case with a Central Government servant, retiring/or dying on the same day"**

In the light of the above submission, we request you, madam, to consider of granting the choice of 50% of last ten months average or last pay drawn, whichever is beneficial to the pensioner, as pension for those who retired from BSNL between 1/10/2000 and 31/12/2005.

Thanking you

Yours faithfully,

(G.Natarajan)
General Secretary.

Copy to:-

1) Secretary,
   Department of Pension & Pensioners' Welfare,
   Lok Nayank Bhavan, Khan Market, New Delhi-110003

2) Secretary,
   Department of Expenditure,
   Ministry of Finance,
   North Block, New Delhi-110001

THE HIGH COURT OF KERALA
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Advocate

This is the true copy of the original document marked as Exhibit P.....In the above OP(CAT)

Advocate

5b Exhibit P3

BEFORE THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

O.A. NO.346/2018

All India BSNL Pensioner's Welfare Association :Applicant
Union of India and Another : Respondents

INDEX

SL No.	Particulars	Page No
1	Reply Statement	1-8
2	**Annexure R1**-Copy of Rule 37-A of CCS(Pension) Rules,1972	9-12
3	**Annexure R2**-Copy of OM No.40-31/2008-Pen (T) dated 16.03.2017	13

Dated this the day of September 2018.

K. C. MURALEEDHARAN (ACGSC)
Counsel for the Respondents 1,3 to 5

1

57 P3/2

BEFORE THEHON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH, ERNAKULAM

O.A. NO.346/2018

All India BSNL Pensioner's Welfare Association :Applicant
Union of India and Another :Respondents

REPLY STATEMENT ON BEHALF OF RESPONDENTS No.1,3,4&5

I, T Radhakrishnan, S/o Late T Thukkan, aged 53 years, working as Dy. Controller of Communication Accounts in the Office of the Controller of Communication Accounts, Department of Telecommunications, Ministry of Communication, Kerala, under the replying respondent, do hereby solemnly affirm and declare as under: -

1. That I am acquainted with facts and circumstances of the present case. I am competent and authorized to depose this reply affidavit on behalf of respondents 1,3,4&5 in my official capacity.

2. That I have read the contents of the present application under reply and I state that the contents mentioned therein to the extent they are inconsistent with the submissions made hereinafter in this reply affidavit are incorrect and denied. Unless any averment and contention is specifically admitted or traversed, the same may be treated as denied.

3. Bharat Sanchar Nigam Limited (BSNL) was formed on 01.10.2000 by conversion of the erstwhile Department of Telecom. Services (DTS) and Department of Telecom. Operations (DTO) into a Public Sector Undertaking (PSU). The Government employees in these two Departments were first transferred en-masse to BSNL on deemed deputation basis. These employees were later given option to either continue to be in Government Service or to seek permanent absorption in

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O/o the Controller of Communication Accounts
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Govt. of India, Dept. of Telecommunications
संचार मंत्रालय / Ministry of Communications
केरल,तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

2
58 P3/3

BSNL. Those employees who opted for absorption in BSNL, Presidential Orders were issued in their favour laying down comprehensive terms and conditions of their absorption in BSNL with effect from 01.10.2000 in accordance with Rule 37-A of CCS (Pension) Rules, 1972 **(Annexure R1)**. The absorbed employees of BSNL were given higher IDA pay scales as compared to their counter parts in Government Service receiving CDA pay scales.

4. After absorption in BSNL, these employees ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. As per Sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 22 of Rule ibid.

5. In case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards and it was subsequently revised with effect from 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee (PRC) for serving employees. Thus, the applicants of the OAs are ex-absorbed combined services pension optee employees of BSNL and they are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972 (**Annexure R-1**).

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3 59

P3/4

6. DoP&PW's OM dated 12.05.2017 (Annexure A-5 of the OA) is in continuation of their OM dated 04.08.2016 (Annexure A-4 of the OA). Para 7(a) of the latter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, the pension of such absorbees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 (Annexure A-5 of the OA) is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the applicants of OA No. 180/00346/2018.

7. From the above, it is abundantly clear that DoP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) is meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No. 38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) has been extended to them, vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 **(Annexure R-2)**.

8. With regard to para 1 to para 3 no comments is needed as they being matter of record.

9. With regard to para 4.1 to 4.7 it is respectfully submitted that as submitted in the above background note, after absorption in BSNL, the applicants in the OA ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. As per Sub-rule 8 of Rule 37-

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4 60

P3/5

A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 22 of Rule ibid. In case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards and it was subsequently revised with effect from 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee (PRC). Thus, the applicants of the OA are ex-absorbed combined service pension optee employees of BSNL and they are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972 (**Annexure R-1**). DoP&PW OM dated 12.05.2017 (Annexure A-5 of the OA) is in continuation of their OM dated 04.08.2016 (Annexure A-4 of the OA). Para 7(a) of the latter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, the pension of such absorbees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 (Annexure A-5 of the OA) is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the applicants of OA No. 180/00346/2018. From the above, it is abundantly clear that DoP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) is meant for Central Government

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केरल, तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

5 b1

P316

CDA pensioners and pro-rata pension optee BSNL absorbees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No. 38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) have been extended to them, vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 **(Annexure R-2)**.

10. With regard to para 5 A to 5 C it is respectfully submitted that as submitted in the above background note, after absorption in BSNL, the applicant in the OAs ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. As per Sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 22 of Rule ibid. In case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards and it was subsequently revised with effect from 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee for serving employees. Thus, the applicants of the OAs are ex-absorbed employees of BSNL and they are getting their pension/family pension in IDA from Government as per Rule 37-A of CCS (Pension) Rules, 1972 **(Annexure R-1)**. DoP&PW OM dated 12.05.2017 (Annexure A-5 of the OA) is in continuation of their OM dated 04.08.2016 (Annexure A-4 of the OA). Para 7(a) of the latter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government

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6 62

P3/7

separately, the pension of such absorbees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 (Annexure A-5 of the OA) is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the applicants of OA No. 180/00346/2018. From the above, it is abundantly clear that DoP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) is meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No. 38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) has been extended to them, vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 **(Annexure R-2)**.

11. With regard to para 6 and 7 it is respectfully submitted that these this para need no comments, they being matter of record.

12. With regard to para 8 and 9 it is respectfully submitted that as submitted in the above background, DoP&PW's OMs dated 04.08.2016 (Annexure A-4 of the OA) and dated 12.05.2017 (Annexure A-5 of the OA) are to give effect to the recommendations of the 7th CPC, which deals with Government pensioners receiving their pension/family pension in CDA. It is also applicable to some of the Government employees, who are permanently absorbed in PSUs and are drawing pro-rata pension in CDA for the service rendered in Government only. The applicants in this OA were permanently absorbed in BSNL and are getting pension/family pension in IDA pattern for combined service in DoT and BSNL and,

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संचार मंत्रालय / Ministry of Communications
केरल,तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

7 63 P3/8

therefore, OMs No.38/37/2016-P&PW(A) dated 04.08.2016 (Annexure A-4 of the OA) and dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to the recommendations of 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to them. Thus, it is abundantly clear that DoP&PW's OMs dated 04.08.2016 (Annexure A-4 of the OA) and 12.05.2017 (Annexure A-5 of the OA) are meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbees drawing pension in CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No. 38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) have been extended to the latter vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 **(Annexure R-2)**.

In view of the above, the applicant is not entitled to any of the reliefs sought for and the OA is liable to be dismissed as devoid of merits with cost to these respondents.

HIGH COURT OF KERALA
सत्यमेव जयते

VERIFICATION

I, T Radhakrishnan, S/o Late T Thukkan, aged 53 years, working as Dy. Controller of Communication Accounts in the Office of the Controller of Communication Accounts, Department of Telecommunications, Ministry of Communication, Kerala, do hereby verify that the contents of the above paragraphs are to the best of my knowledge information and belief and that I have not deliberately suppressed any material facts in connection with the above original application.

Dated this the 12th day of September 2018.

Deponent

टी. राधाकृष्णन / T. RADHAKRISHNAN
उप संचार लेखा नियंत्रक / Deputy Controller of Communication Accounts
संचार लेखा नियंत्रक का कार्यालय
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केरल,तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

8 64

P3/9

ATTESTATION

Solemnly offered and signed before me by the deponent at my office at Thiruvananthapuram on this the 12th day of September 2018.

वी. राजेश/ B. RAJESH
सहायक लेखा अधिकारी / Asst. Accounts Officer
संचार लेखा नियंत्रक का कार्यालय
O/o the Controller of Communication Accounts
Govt. of India, Dept. of Telecommunications
संचार मंत्रालय / Ministry of Communications
केरल,तिरुवनंतपुरम - 33 / Kerala. Thiruvananthapuram-33

Attesting Officer

K.C.MURALEEDHARAN
Advocate and ACGSC

THE HIGH COURT OF KERALA
सत्यमेव जयते

(65)

ANNEXURE R-1

P3/10

In the said rules, for rule 37A, the following rule shall be substituted, namely;--

"37A. **Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking.--** (1) On conversion of a department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred *en-masse* to that Public Sector Undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government.

(2) The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Public Sector Undertaking.

(3) The option referred to in sub-rule (2) shall be exercised by every transferred Government servant in such manner and within such period as may be specified by the Government.

(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.

(5) Upon absorption of Government servants in the Public Sector Undertaking, the posts which they were holding in the Government before such absorption shall stand abolished.

(6) The employees who opt to revert to Government service shall be re-deployed through the surplus cell of the Government.

(7) The employees including quasi-permanent and temporary employees but excluding casual labourers, who opt for permanent absorption in the Public Sector Undertaking shall, on and from the date of absorption, be governed by the rules and regulations or bye-laws of the Public Sector Undertaking.

(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extra-ordinary pension), on the basis of combined service rendered by the employee in the government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or his death or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

radhakrishnan

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10 (66) P3/11

"*Explanation*:- The amount of pension or family pension in respect of the absorbed employee on retirement from the Public Sector Undertaking or on death shall be calculated in the same way as calculated in the case of a Central Government servant retiring or dying, on the same day".

(9) The pension of an employee under sub-rule (8) shall be calculated on fifty percent of emoluments or average emoluments, whichever is more beneficial to him.

(10) In addition to pension or family pension, as the case may be, the employee who opts for pension on the basis of combined service shall also be eligible to dearness relief as per industrial Dearness Allowance pattern.

(11) The benefits of pension and family pension shall be available to quasi-permanent and temporary transferred Government servants after they have been confirmed in the Public Sector Undertaking.

(12) A Permanent Government servant absorbed in a Pubic Sector Undertaking or a temporary or quasi-permanent Government servant who has been confirmed in the a Public Sector Undertaking subsequent to his absorption therein, shall be eligible to seek voluntary retirement after completing ten years of qualifying service with the Government and the Public Sector Undertaking taken together, and such person shall be eligible for pensionary benefits on the basis of qualifying service.

(13) The Central Government shall create a Pension Fund in the form of a trust and the pensionary benefits of absorbed employees shall be paid out of such Pension Fund.

(14) The Secretary of the administrative Ministry of the Public Sector Undertaking shall be the Chairperson of the Board of Trustees which shall include representatives of the Ministries of Finance, Personnel, Public Grievances and Pensions, Labour, concerned Public Sector Undertaking and their employees and experts in the relevant field to be nominated by the Central Government.

(15) The procedure and the manner in which pensionary benefits are to be sanctioned and disbursed from the Pension Fund shall be determined by the Government on the recommendation of the Board of Trustees.

(16) The Government shall discharge its pensionary liability by paying in lump sum as a one time payment to the Pension Fund the pension or service gratuity and retirement gratuity for the service rendered till the date of absorption of the Government servant in the Public Sector Undertaking.

(17) The manner of sharing the financial liability on account of payment of pensionary benefits by the Public Sector Undertaking shall be determined by the Government.

Radhamoni

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(18) Lump sum amount of the pension shall be determined with reference to Commutation Table laid down in Central Civil Services (Commutation of Pension) Rules, 1981.

(19) The Public Sector Undertaking shall make pensionary contribution to the Pension Fund for the period of service to be rendered by the concerned employees under that undertaking at the rates as may be determined by the Board of Trustees so that the Pension Fund shall be self-supporting.

(20) If, for any financial or operational reason, the Trust is unable to discharge its liabilities fully from the Pension Fund and the Public Sector Undertaking is also not in a position to meet the shortfall, the Government shall be liable to meet such expenditure and such expenditure shall be debited to either the Fund or to the Public Sector Undertaking.

(21) Payments of pensionary benefits of the pensioners of a Government Department on the date of conversion of it into a Public Sector Undertaking shall continue to be the responsibility of the Government and the mechanism for sharing its liabilities on this account shall be determined by the Government.

(22) Nothing contained in sub-rules (13) to (21) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited, in which case the pensionary benefits including family pension shall be paid by the Government.

(23) For the purposes of payment of pensionary benefits including family pension referred to in sub-rule (22), the Government shall specify the arrangements and the manner including the rate of pensionary contributions to be made by Bharat Sanchar Nigam Limited to the Government and the manner in which financial liabilities on this account shall be met.

(24) The arrangements under sub-rule (23) shall be applicable to the existing pensioners and to the employees who are deemed to have retired from the Government.

(25) Upon conversion of a Government Department into a Public Sector Undertaking,-

(a) the balance of provident fund standing at the credit of the absorbed employees on the date of their absorption in the Public Sector Undertaking shall, with the consent of such undertaking, be transferred to the new Provident Fund Account of the employees in such undertaking;

(b) earned leave and half pay leave at the credit of the employees on the date of absorption shall stand transferred to such undertaking ;

(c) the dismissal or removal from service of the Public Sector Undertaking of any employee after his absorption in such undertaking for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the

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12 (68) P3/13

service rendered under the Government and in the event of his dismissal or removal or retrenchment the decisions of the undertaking shall be subject to review by the Ministry administratively concerned with the undertaking .

(26) In case the Government disinvests its equity in any public sector undertaking to the extent of fifty-one per cent or more, it shall specify adequate safeguards for protecting the interest of the absorbed employees of such Public Sector Undertaking.

(27) The safeguards specified under sub-rule (26) shall include option for voluntary retirement or continued service in the undertaking or voluntary retirement benefits on terms applicable to Government employees or employees of the Public Sector Undertaking as per option of the employees and assured payment of earned pensionary benefits with relaxation in period of qualifying service, as may be decided by the Government."

(11) In the said rules, after rule 37A, the following rule shall be inserted, namely;--

"37B. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body.--

(1) On conversion of a department of the Central Government into an Autonomous Body, all Government servants of that Department shall be transferred *en-masse* to that Autonomous Body on terms of foreign service without any deputation allowance till such time as they get absorbed in the said body and such transferred Government servants shall be absorbed in the Autonomous Body with effect from such date as may be notified by the Government.

(2) The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the Autonomous Body.

(3) The option referred to in sub-rule (2) shall be exercised by every transferred Government servant in such manner and within such period as may be specified by the Government,

(4) The permanent absorption of the Government servants of the Autonomous Body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.

(5) Upon absorption of Government servants in the Autonomous Body, the posts which they were holding in the Government before such absorption shall stand abolished.

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13 (69) ANNEXURE R-2

P3/14

No.40-31/2008-Pen(T)*
Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20 – Ashoka Road
New Delhi – 110 001
*****

Dated: 16th March, 2017.

OFFICE MEMORANDUM

Subject: Implementation 7th CPC recommendations: Applicability to the BSNL/MTNL absorbees opting for pension for combined service governed under Rule 37-A of CCS(Pension) Rules, 1972.

The undersigned is directed to refer to this Department's OM No.36-02/2016-Pen(T)(i) dated 22.08.2016 and to give the following clarification on the applicability of the revised rules of CCS(Pension) Rules, 1972 to the BSNL/MTNL absorbees (opting for pension for combined service and whose pension is governed under Rule 37-A of CCS(Pension) Rules) consequent to 7th CPC with regard to DoP&PW's OM No. 38/37/16-P&PW(A)((i) dated 04.08.2016:

2. The rates for payment of death gratuity shall be revised as per para 6.1 of DoP&PW's O.M. No. 38/37/2016-P&PW(A)(i) dated 4th August, 2016. The maximum limit of Death/Retirement gratuity shall be Rs 20 lakh w.e.f. 01.01.2016.

3. There is no change in the formula for pension/family pension w.e.f. 01.01.2016. BSNL/MTNL absorbee employees will, therefore, continue to get pension based on the same formula.

4. There will be no change in the provisions relating to commutation values.

This issues with the approval of competent authority.

Yours faithfully,

(K.S. Dahiya)
Under Secretary (STP)
Tel. 23036260

To:
1. All the CCAs/ TERM Cells.
2. Sr. DDG(TEC), Khurshid Lal Bhavan, Janpath, New Delhi.
3. Sr. DWA, 6th floor, Sanchar Bhawan, 20-Ashoka Rd, New Delhi-110001.
4. DDG(Estt.)/DDG(Accounts), DoT, Hqrs, New Delhi.
5. DDG (T & A), NTIPRIT, Admin Building, ALT Centre, Govt. of India Enclave, Near Raj Nagar, Ghaziabad-201002.

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*Amended vide No. No.40-31/2008-Pen(T) dated 19.04.2017.

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This is the true copy of the original document marked as Exhibit P.....In the above OP(CAT)

Advocate

M/A filed herewith TO.

H/SW

08/12/20

Presented on: 8.12.2020

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

C.M.Appl. No. 1 of 2020

in

OP (CAT) No. 60 of 2020

All India BSNL Pensioner's Welfare Association & another : Petitioners

Vs

Union of India & others : Respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDDENTS 1,3,4, & 5

(13) 8/12/20

Copy Received on 8/12/20 - Adv. B.R. KRISHNAKUMARI

c/o Adv. B.R. KRISHNAKUMARI

Rec'd Copy Sri. C/o Adv. R. Sreelal

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8/12/20

P.VIJAYAKUMAR(V-125)
Assistant Solicitor General of India
Counsel for the Respondents 1, 3, 4 & 5

Copy served for all appearing counsel

71

BEFORE THE HON'BLE HIGH COURT OF KERALA
AT ERNAKULAM

OP (CAT) No. 60 of 2020

All India BSNL Pensioner's
Welfare Association & another : Petitioners

Vs

Union of India & others : Respondents

INDEX

Sl.No.	Particulars	Pages
1.	Counter Affidavit	1 to 10
2.	Petition to condone delay	11

Dated this the 30th day of November, 2020.

Counsel for the Respondents 1,3,4& 5

-72-

BEFORE THE HON'BLE HIGH COURT OF KERALA AT ERNAKULAM

OP (CAT) No.60 of 2020

All India BSNL Pensioner's Welfare Association & another : Petitioners/Applicants

Vs

Union of India & others : Respondents/respondents

COUNTER AFFIDAVIT FILED ON BEHALF OF RESPONDENT Nos.1, 3, 4 & 5

I, T. Radhakrishnan S/o Late. Thukkan aged 54 years working as Deputy Controller of Communication Accounts, Office of the Controller of Communication Accounts, Kerala, under the replying respondents, do hereby solemnly affirm and declare as under.

1. That I am acquainted with facts and circumstances of the present case. I am competent and authorized to swear this Counter affidavit on behalf of respondents 1, 3, 4 & 5 in my official capacity.

2. That I have read the contents of the present application under reply and I state that the contents mentioned therein to the extent they are inconsistent with the submissions made hereinafter in this Counter Affidavit are incorrect and denied. Unless any averment and contention is specifically admitted or traversed, the same may be treated as denied.

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3. The above Original Petition is filed by the Petitioners aggrieved by the Ext. P1 final order dated 30.10.2019 in OA No.346/2018 on the file of the Central Administrative Tribunal, Ernakulam Bench by which the Original Application, filed by the petitioners was dismissed. The Respondents herein are the respondent Nos. 1, 3, 4 & 5 in OA No. 346/2018.

4. It is submitted that Bharat Sanchar Nigam Limited (BSNL) was formed on 01.10.2000 by conversion of the erstwhile Department of Telecom. Services (DTS) and Department of Telecom Operations (DTO) into a Public Sector Undertaking (PSU). The Government employees in these two Departments were first transferred en-masse to BSNL on deemed deputation basis. These employees were later given option to either continue to be in Government Service or to seek permanent absorption in BSNL. Those employees who opted for absorption in BSNL. Presidential Orders were issued in their favour laying down comprehensive terms and conditions of their absorption in BSNL with effect from 01.10.2000 in accordance with Rule 37-A of CCS (Pension) Rules, 1972, which is produced as Annexure R-1 in the Reply Statement. The absorbed employees of BSNL were given higher IDA pay scales as compared to their counter parts in Government Service receiving CDA pay scales.

5. After absorption in BSNL, these employees ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. As per

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Sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 22 of Rule ibid.

6. It is submitted that, in the case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards and it was subsequently revised with effect from 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee (PRC). Thus, the applicants of the Original Application are ex-absorbed combined services pension optees employees of BSNL and they are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972, (Annexure R-1).

7. It is also submitted that DoP&PW's OM dated 12.05.2017 (Annexure A-5) is in continuation of their OM dated 04.08.2016 (Annexure A-4).Para

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7(a) of the latter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, the pension of such absorbed employees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 (Annexure A-5 of the OA) is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5) issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the applicants and petitioners of OA No. 180/00346/2018 and this OP (CAT) No.60/2020 respectively.

8. From the above, it is abundantly clear that DoP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) is meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbed employees drawing pension on CDA pattern for Government service period only and not for combined service pension optees BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No. 38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) has been extended to them, vide DoT OM No.40-31/2008-Pen (T)

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dated 16.03.2017, which is produced as Annexure R-2 in the Reply Statement

9. It is respectfully submitted that as submitted in the above background note, after absorption in BSNL, the Petitioners in the OP(CAT) ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. As per Sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 22 of Rule ibid. In case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards and it was subsequently revised with effect from 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee (PRC). Thus, the Petitioners in this OP (CAT) are ex-absorbed combined service pension optee employees of BSNL and they

THE HIGH COURT OF KERALA
सत्यमेव जयते

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are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972 (Annexure R-1). DoP&PW OM dated 12.05.2017 (Annexure A-5 of the OA) is in continuation of their OM dated 04.08.2016 (Annexure A-4 of the OA). Para 7(a) of the latter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, the pension of such absorbed employees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 (Annexure A-5 of the OA) is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the Applicants/Petitioners of OP(CAT) No.60/2020. From the above, it is abundantly clear that DoP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) is meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbed employees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No.

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38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) has been extended to them, vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 produced as Annexure R-2 in the reply statement .

10. With regard to para 5 A to 5 C it is respectfully submitted that as submitted in the above background note, after absorption in BSNL, the Petitioners in the OP (CAT) ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. As per Sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 22 of Rule ibid. In case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards and it was subsequently revised with effect from 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee. Thus, the Petitioners of the OP (CAT) are ex-

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भारत सरकार, दूरसंचार विभाग
Govt. of India, Dept. of Telecommunications
संचार मंत्रालय / Ministry of Communications
केरल,तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

absorbed employees of BSNL and they are getting their pension/family pension in IDA from Government as per Rule 37-A of CCS (Pension) Rules, 1972 (Annexure R-1). DoP&PW OM dated 12.05.2017 (Annexure A-5 of the OA) is in continuation of their OM dated 04.08.2016 (Annexure A-4 of the OA). Para 7(a) of the latter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, the pension of such absorbees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 (Annexure A-5 of the OA) is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the applicants of OP(CAT) No.60/2020. From the above, it is abundantly clear that DoP&PW OM No.38/37/2016-P&PW(A) dated 12.05.2017 (Annexure A-5 of the OA) is meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbed employees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No.

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केरल,तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) has been extended to them, vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 (Annexure R-2).

11. It is respectfully submitted that as submitted in the above background, DoP&PW's OMs dated 04.08.2016 (Annexure A-4 of the OA) and dated 12.05.2017 (Annexure A-5 of the OA) are to give effect to the recommendations of the 7th CPC, which deals with Government pensioners receiving their pension/family pension in CDA. It is also applicable to some of the Government employees, who are permanently absorbed in PSUs and are drawing pro-rata pension in CDA for the service rendered Government only. The applicants in this OP (CAT) were permanently absorbed in BSNL and are getting pension/family pension in IDA pattern for combined service in DoT and BSNL and, therefore, OMs No.38/37/2016-P&PW(A) dated 04.08.2016 (Annexure A-4 of the OA) and dated 12.05.2017 (Annexure A-5 of the OA) issued by DoP&PW consequent to the recommendations of 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees is not applicable to them. Thus, it is abundantly clear that DoP&PW's OMs dated 04.08.2016 (Annexure A-4 of the OA) and 12.05.2017 (Annexure A-5 of the OA) are meant for Central Government CDA pensioners and pro-rata pension optee BSNL absorbed employees drawing pension in CDA pattern for Government service period only and

THE HIGH COURT OF KERALA
सत्यमेव जयते

टी. राधाकृष्णन / T. RADHAKRISHNAN
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के.रल,तिरुवनंतपुरम - 33 / Kerala, Thiruvananthapuram-33

81

not for combined service pension optee BSNL IDA pensioners. However, certain benefits of the DoP&PW OM No. 38/37/2016-P&PW(A)(i) dated 04.08.2016 (Annexure A-4 of the OA) has been extended to the latter vide DoT OM No.40-31/2008-Pen (T) dated 16.03.2017 (Annexure R-2).

In view of the above, the petitioners are not entitled to any of the reliefs sought for and the OP (CAT) is liable to be dismissed as devoid of merits with cost to these respondents.

All the facts stated above are true and correct to the best of my knowledge, information and belief.

Dated this the 30th day of November, 2020.

HIGH COURT OF KERALA
सत्यमेव जयते

DEPONENT

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Solemnly affirmed and signed before me by the Deponent on this the 30th day of November 2020 at my office at Thiruvananthapuram

ATTESTING OFFICER

पवित्रा. जी.एल / PAVITHRA. G.L
लेखा अधिकारी / Accounts Officer
संचार लेखा नियंत्रक का कार्यालय
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केरल,तिरुवनंतपुरम- 33 / Kerala, Thiruvananthapuram-33

82

11

BEFORE THE HONOURABLE HIGH COURT OF KERALA, AT ERNAKULAM

C.M.Appl. No. 1 of 2020

In

OP(CAT) 60 of 2020

Union of India & others	:	Petitioners/Respondents 13, 4 & 5
	Vs.	
All India BSNLPensioner's Welfare Association & another	:	Respondents/Petitioner & Respondent No. 2

VERIFIED PETITION TO CONDONE THE DELAY IN FILING THE COUNTER AFFIDAVIT UNDER SECTION 5 OF THE LIMITATION ACT

The petitioner herein are the respondents 1,3,4 & 5 in the above W.P.(C). Since the various averments contained in the Writ Petition had to be checked and verified and other relevant details and documents to be collected, the Counter Affidavit of the petitioners herein could not be filed in time. It is submitted that the delay in filing the Counter Affidavit is not willful but for the reasons explained above.

It is therefore most respectfully prayed that this Hon'ble Court may be pleased to condone the delay in filing the Counter Affidavit, in the interests of justice.

Dated this the 3rd day of December, 2020.

P.VIJAYAKUMAR
Assistant Solicitor General of India
Counsel for the Petitioner

All the facts stated above are true and correct.

P.VIJAYAKUMAR
Assistant Solicitor General of India
Counsel for the Petitioner