

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

O.A. No. 2260/2017

M.A. No. 202/2018

With

O.A. No. 2853/2018

M.A. No. 413/2019

M.A. No. 3204/2018

New Delhi, this the 30th day of July, 2019

Hon'ble Mr. Justice L. Narasimha Reddy, Chairman
Hon'ble Ms. Aradhana Johri, Member (A)

O.A. 2260/2017

1. All India Retired Bharat Sanchar Nigam Limited Executives' Welfare Association Through its General Secretary Shri Kishan Singh S/o Shri Tej Singh Aged about 70 years Designation : Retired ADG, Group 'A' Department : BSNL Central Headquarters C-8/230, Yamuna Vihar, New Delhi-110053

alongwith 1198 others (As per memo of parties)
.. Applicants

(By Advocates : Mrs. Rani Chhabra with Shri A.K. Kaushik)

Versus

1. Union of India Ministry of Telecommunication Through its Secretary (Telecom) Department of Telecom

2nd Floor, Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001.

2. Bharat Sanchar Nigam Limited
Through its Chairman-cum-Managing Director
Bharat Sanchar Bhawan,
3rd Floor, H.C. Mathur Lane,
Janpath, New Delhi.

.. Respondents

(By Advocates: Shri Subhash Gosain for R-1 and
Shri R.V. Sinha for R-2)

O.A. 2853/2018

1. All India Bharat Sanchar Nigam Limited
Retired Executives' Association
Through General Secretary
Shri Santimay Basu
Retired Assistant Director General (MST-I)
Aged about 72 years, Group 'A'
Central Headquarters
111, New Ashiana Apartment ,
Plot-10, Sector-6, Dwarka,
New Delhi-110075

alongwith 117 others (As per memo of parties)

.. Applicants

(By Advocates : Ms. C.K. Sucharita with
Ms. Rumi Chanda)

Versus

1. Union of India
Through Secretary (Telecom)
Department of Telecommunications
Ministry of Communications and
Information Technology,

Government of India,
Sanchar Bhawan, Ashoka Road,
New Delhi-110001.

2. Union of India
Through Secretary,
Department of Public Enterprises,
Ministry of Heavy Industries and
Public Enterprises,
Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, Janpath,
New Delhi-110001.
3. Union of India
Through Secretary (Pension),
Department of Pension and Pensioners' Welfare,
Ministry of Personnel, Public Grievances
and Pensions,
Government of India,
Lok Nayak Bhawan,
Khan Market,
New Delhi-110003.
4. Union of India
Through Secretary
Department of Expenditure,
Ministry of Finance,
Government of India,
Room No.76, North Block,
New Delhi-110001.
5. Bharat Sanchar Nigam Limited,
Through its Chairman and Managing Director,
Bharat Sanchar Bhawan,
Janpath, New Delhi-110001.

.. Respondents

(By Advocates: Shri Subhash Gosain for R-1 and
Shri R.V. Sinha for R-5)

O R D E R (ORAL)**Justice L. Narasimha Reddy, Chairman**

On formation of BSNL, the required number of employees of Department of Telecommunications (DoT) of various levels were entrusted with the duties in that Organisation. At a later point of time, many of them got absorbed in BSNL permanently. In that context, a decision was taken to the effect that the pension for the period of service rendered in BSNL shall be paid by the said department - DoT, even for the employees who retired from BSNL. The applicants in both the O.As. are the erstwhile employees of DoT, who retired from the service of BSNL, and they are being paid pension by the DoT.

2. The matter pertaining to revision of the Dearness Allowance (DA) for the employees in the Public Sector Undertakings (PSUs) was under consideration by the Department of Public Enterprises (DPE). A tentative decision was taken to the effect that the revision became

due from 01.01.2007. After laying broad guidelines, the DPE left the matter to be decided by the respective PSUs. It is in this context that the BSNL has taken a decision to revise the DA by extending the benefit of merger of 50% DA effectively amounting to 78.2% as on 01.01.2007. The DoT, in turn, issued an order dated 10.06.2013, directing that the DA shall stand revised to 78.2% w.e.f. 01.01.2007. It is, however, directed that the arrears shall not be payable for that period. In the context of extending the benefit of revised DA to the pensioners of BSNL, an O.M. dated 18.07.2016 was issued by the DoT.

3. These two O.As. are filed by the applicants challenging the orders dated 10.06.2013 and 18.07.2016, with different emphasis. They seek directions for extension of the benefit of arrears for the period from 01.01.2007 to 10.06.2013.

4. The applicants contend that they are entitled to be paid the benefit of the revised DA from 01.01.2007 and there was absolutely no justification for denying them, the arrears from 01.01.2007 to 10.06.2013. It is also stated

that both the impugned orders which are in the form of Presidential Directives are not in accordance with the guidelines issued for this purpose. Several other contentions are also urged.

5. The respondents filed detailed counters in both the O.As. According to them, the DPE has examined the issue in detail and after laying the broad guidelines, left it open to the PSUs to take a final decision, depending upon the financial viability and other implications. It is stated that the BSNL has taken a decision to effect the revision with retrospective effect w.e.f. 01.01.2007 in respect of serving employees and as regards the retired employees, it was reflected through O.M. dated 18.07.2016. It is stated that the prescribed procedure was followed at every stage and the applicants have no right to claim arrears of DA or the revision of their pension.

6. We heard Mrs. Rani Chhabra with Shri A.K. Kaushik, learned counsel for the applicants in O.A. No.2260/2017

and Ms. C.K. Sucharita with Ms. Rumi Chanda, learned counsel for the applicants in O.A. No.2853/2018 and Shri Subhash Gosain, learned counsel for respondent - DoT and Shri R.V. Sinha, learned counsel for respondent - BSNL.

7. The arrangement in the DoT, on the one hand, and in BSNL, on the other hand, as regards payment of pension to the retired employees of BSNL is not in dispute. The DoT has taken up the responsibility, to pay pension. However, the manner of fixation of pension is left to the BSNL. Naturally, it depends upon the pay structure of the employees while in service.

8. The DPE issued Office Memorandum dated 26.11.2008. The Preamble, Para-1, Para-2 and Para-17 are relevant for this purpose. They read as under:

“Sub.: Board level and below Board level executives and Non Unionised Supervisors in Central Public Sector Enterprises (CPSEs) – revision of scales of pay w.e.f. 01.01.2007.

The last revision of the scale of pay of below Board level and Board level executives and non-unionised supervisors. In Central Public Sector Enterprises was made effective from 1.1.1997 for a period of ten years. As the next pay revision fell due from 1.1.2007, the

Government had set up a Pay Revision Committee (2nd PRC) under the chairmanship of Justice M. Jagannadha Rao, Retd. Judge of Supreme Court of India, to recommend revision of pay and allowances for above categories of employees following IDA pattern of pay scales. The Government after due consideration of the recommendations of 2nd Pay Revision Committee, have decided as follows:-

1. Revised Pay Scales :- The revised Pay Scales for Board and below Board level executives would be as indicated in Annex.-I.

2. Fitment Benefit :

- (i) A uniform fitment benefit @ 30%, on basic pay plus DA @ 68.8% as on 01.01.2007 would be provided to all executives. The aggregate amount would be rounded off to the next ten rupees and pay fixed in the revised pay scale.
- (ii) If any extra ordinary increment(s) and / or increase in the pay in respect of executives/non-unionized supervisors have been granted with retrospective effect, which affects the revision of pay as on 1.1.2007, such increment and / increase in pay will be ignored for the purpose of fitment/pay revision.
- (iii) Where executives drawing pay at two or more consecutive stages in an existing scale get bunched, then, for every two stages so bunched, benefit of one increment shall be given.

xxx xxx xxx xxxx xxx

17. Issue of Presidential Directive, effective date of implementation and payment of allowances etc. :

The revised pay scales would be implemented by issue of Presidential Directive in respect of each CPSE separately by the concerned Administrative Ministry/Department. The revised pay scales will be effective from 1.1.2007. The payment of HRA, perks and allowances based on the revised scales will, however, be from the date of issue of Presidential Directive. The Board of Directors of each CPSE would

be required to consider the proposal of pay revision based on their affordability to pay and submit the same to the Administrative Ministry/Department for approval. The concerned Administrative Ministry with the concurrence of its Financial Advisor will issue the Presidential Directive. A copy of the Presidential Directive issued to the CPSEs concerned may be endorsed to the Department of Public Enterprises.”

From this, it is evident that the DPE has laid down the broad guidelines for revision of DA and left the final decision to the respective PSUs. The BSNL, being one of the PSUs, was required to take a decision with the approval of the concerned Ministry, namely, DoT. It is in this process, that one of the impugned orders dated 10.06.2013 was issued. It reads as under:

“In exercise of the powers conferred by the Article 145 of Articles of Association of the Bharat Sanchar Nigam Limited (BSNL), the President is pleased to approve the proposal of BSNL regarding the fitment formula as per Department of Public Enterprises OM No. 2(70)/08-DPE(WC)-GL-VII/09 dated 02.04.2009. Accordingly, in partial modification of this Department’s Order No. 61-01/2009-SU dated 27.02.2009, the benefit of merger of 50% DA effectively amounting to 78.2% as on 01.01.2007 for the purpose of fitment in respect of the Board level & below Board Level executives and Non-Unionized Supervisors and Non-executives of BSNL is hereby allowed from the date of issue of this order.

2. No arrears will be paid and the revised fitment on the basis of DPE OM dated 02.04.2009 will be paid with prospective effect only.

3. BSNL has to bear the additional financial implication on account of revised fitment benefit for pay revision from its own resources and no budgetary support will be provided.

4. All instructions/guidelines issued by DPE from time to time in this regard may be scrupulously followed.

5. This has the concurrence of Internal Finance Division (TPF), Department of Telecommunications vide Dy. No. 05/171/PSF/13 dated 10.06.2013.”

9. This governs the service conditions of the serving employees. The same Department issued O.M. dated 18.07.2016 in relation to the Pensioners. It reads as under:

“Sub: Revision of pension of BSNL pensioners/family pensioners, who retired prior to 10.06.2013 by allowing the benefit of merger of 50% DA/DR with Basic Pay/Pension, effectively amounting to 78.2% DA/DR for the purpose of fitment

The pension to combined service optee absorbed employees in BSNL is paid by Government as per sub-rules 21 to 23 of Rule 37-A of CCS (Pension) Rules 1972.

2. Consequent to the Department of Public Enterprises (DPE) orders dated 26.11.2008, revision of pay of employees of BSNL was allowed with effect from 1.1.2007 vide Letter No. 61-01/2009-SU dated 27.02.2009. Subsequently, pension/family pension of employees retired from BSNL who retired between 01.10.2000 and 1.1.2007, was revised vide this office O.M. No. 40-17/2008-Pen(T) Vol.III dated 15.3.2011.

3. Further to Department of Public Enterprises O.M. No. 2(70)/08-DPE (WC)-GL-VII/09 dated 02.04.2009, the benefit of merger of 50% DA with Basic Pay effectively amounting to 78.2% IDA as on 1.1.2007 for the purpose of fitment, was granted to the BSNL

serving employees w.e.f. 10.6.2013 vide Order No. 61-01/2012-SU dated 10.6.2013.

4. The issue regarding revision of pension/family pension of BSNL IDA pensioners/family pensioners, who retired prior to 10.06.2013 has been considered by the Government, and the following has been decided:

(a) The pension/family pension of BSNL IDA pensioners/family pensioners, who retired prior to 01.01.2007, may be revised as on 01.01.2007 notionally with actual benefit w.e.f. 10.06.2013 by adding together

(i) Existing basic pension/family pension including commuted portion of pension, if any

(ii) Dearness relief (IDA) @ 78.2%

(iii) Fitment weightage @ 30% of the existing pension/family pension and dearness relief (IDA) thereon.

The amount so arrived will be regarded as consolidated pension/family pension, with effect from 10.06.2013.

(b) The pension/family pension of BSNL IDA pensioners/family pensioners, who retired between 01.01.2007 and 09.06.2013, their pay may be revised notionally with effect from 01.01.2007 by allowing the benefit of merger of 50% DA/DR with Basic Pay/ Pension effectively amounting to 78.2% IDA for the purpose of fitment, and consequential revision of pension on notional pay with actual benefit w.e.f. 10.06.2013, at par with the serving employees of BSNL. However, these pensioners do not get actual benefit of increase in pay/pension during the period between 01.01.2007 to 09.06.2013, and they would not get increase in the amount of DCRG, leave encashment and commutation of pension, on this account.

5. The other conditions with regard to commuted portion of pension, minimum pension and increase in the quantum of pension/family pension to the old pensioners/family pensioners, as mentioned in this office O.M. No. 40-17/2008-Pen(T) Vol.III dated 15.3.2011 shall remain the same.

6. Action to revise pension/family pension in terms of these provisions may be initiated suo-moto by the concerned Heads of offices. All administrative offices of BSNL handling preparation of pension papers of BSNL pensioners may be directed to initiate the process of consolidation of pension/family pension to the BSNL IDA pensioners/family pensioners, who retired prior to 10.06.2013, at the consolidated rates in terms of para 4 above immediately and forward the same to the concerned CCAs for consolidation and issue of revised Pension Payment Orders (PPOs).

7. The exercise to extend benefit of these orders to the pensioners/family pensioners should be completed by 31.12.2016.”

This was followed by an order dated 26.07.2016 issued by the BSNL providing further details.

10. The contention of the applicants is that they are entitled to be paid arrears from 01.01.2007 to 10.06.2013. The date of 01.01.2007, no doubt, is mentioned in the order as effective day for revision of the DA. However, the applicants are not able to state as to how they are entitled to be paid the arrears from that date.

11. The Govt. has the right to decide :

- (a) whether or not to enhance the DA;
- (b) if so, with effect from what date and what rate;
- (c) whether to pay the arrears for any particular period and, if so,
- (d) the method of payment thereof.

12. Except stating that they are entitled to be paid the arrears from 01.01.2007, the applicants did not mention any provisions of law or a binding precedent, in support of their claim. In **Union of India & Anr. vs P.V. Hariharan & Anr., 1997 SCC (L&S) 838**, the Hon'ble Supreme Court observed that Courts and Tribunals cannot enter the field of the determination of pay scales or the benefits to the pensioners and the like and that it is exclusive prerogative of the State to take decision on these aspects. The only area where the Courts and Tribunals can examine is whether the prescribed procedure was followed and whether the

decision has any element of discrimination or arbitrariness. Barring that the Tribunal cannot sit as an Appellate Authority.

13. The plea that the DPE was not consulted is not true. As a matter of fact, the entire issue started from the DPE, and it is only on the basis of directives issued by them, that the BSNL, being one of the PSUs, has taken a decision regarding extension of benefit of enhanced DA to its employees and pensioners. There is nothing on record to disclose that the serving employees were being paid the arrears. The material, if any, would suggest otherwise. When the serving employees were not extended the benefit of arrears, it is very difficult to assume that the pensioners are entitled to be extended the same.

14. Though across the bar, a plea was raised to the effect that BSNL made distinction between the executives and non-executive employees, we hardly find any relevance of that, in the context of pensioners. All of them are claiming

in unison, the same relief. Hardly, there exists any material to differentiate among themselves.

15. We do not find any merit in both the OAs and dismiss them accordingly. All the Pending MAs stand disposed of. There shall be no order as to costs.

(Aradhana Johri)
Member (A)

(Justice L. Narasimha Reddy)
Chairman

/jyoti/