

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

OA 2173/2014
MA 1824/2014

New Delhi, this the 16th day of December, 2016

Hon'ble Mr. Justice M.S. Sullar, Member (J)
Hon'ble Mr. P.K. Basu, Member (A)

1. All India BSNL Pensioners Welfare Association (Regd. No.1833/09)
Through: Shri Chhidu Singh, Deputy General Secretary
Central Headquarters, RZ-60/5, Gali No.9
Tughlakabad Extn., New Delhi-110019
2. Shri Ved Prakash Gupta, Ex. Sr. SSO
CTO, New Delhi (Retd. on 31.10.2000)
17-F, Pocket-4, Mayur Vihar (Phase-I)
Delhi-91
3. Shri R. Ranganathan
Ex. Chief Telegraph Master (Retd. on 30.11.2000)
40, First Main Rd., Purushothaman Nagar
Chromepet, Chennai
4. Shri G.R. Dharmarajan
Ex. Chief Telephone Operator (Retd. on 31.12.2000)
No.3, Sekkilar Street Extn.,
Bibikulam, Madurai-625002
5. Shri M.S. Murthukrishnan
Ex. SDE Chennai Telephones (Retd. on 31.01.2001)
No.1, 26th Cross Street, Besant Nagar,
Chennai
6. Shri T.K. Sundaramoorthy
Ex. DE, RTTC, Chenna (Retd. on 28.02.2001)
4, Shanti Nagar, 6th Street,
Adambakkam, Chennai
7. Shri Nabin Chandra Nayak,
Ex. Sr. AO, Orissa (Retd. on 28.02.2011)
N-1/253, IRC Village, CRP Square,
Bhubaneswar-751015
8. Shri Roshan Lal Kapoor,
Ex. ADG, DOT, HQ, New Delhi (Retd. on 31.03.2001)

17/64, First Floor, Geeta Colony,
Delhi-110031

9. Shri A.S. Ramachandraiah,
Ex. CSS, Karnataka (Retd. on 30.04.2001)
509, 65th Cross, 5th Block,
Rajaji Nagar, Bangalore-560010
10. Shri V. Ramachandran,
Ex. SDE, Kerala Circle (Retd. on 31.05.2001)
Thiruthi House, Kumaranpadi,
P.O. Niramaram, Malappuram, Kerala
11. Shri U.S.N. Murthy,
Ex. CSS, Andhra Pradesh (Retd. on 30.06.2001)
G-2, Srinidhi Residency, Saptagiri Colony,
Kukatpalli, Hyderabad-500072
12. Shri Vijai Kumar Rustogi,
Ex. Sr. TM(T), CTO, N.D. (Retd. on 30.06.2001)
B-184, Surya Nagar,
Ghaziabad, U.P.

....Applicants

(Through Shri Naresh Kaushik, Advocate)

Versus

1. Union of India
Ministry of Communications & IT
Through the Secretary
Department of Telecommunications
Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110001
2. The Chairman-cum-Managing Director
Bharat Sanchar Nigam Limited
M.S. Mathur Lane, Janpath,
New Delhi-110001
3. Government of India
Ministry of Personnel, Public Grievances & Pensions
Through the Secretary,
Department of Pension & Pensioners' Welfare,
Lok Nayak Bhawan,
New Delhi-110003
4. Government of India
Ministry of Finance
Through the Secretary,
Department of Expenditure,
North Block, New Delhi
5. Department of Public Enterprises

Through Secretary
Block No.14, CGO Complex,
New Delhi-110003

... Respondents

(Through Sh.Rajiv Kumar and Sh.B.S. Rajesh Agrajit,Advocates)

ORDER (Oral)

Mr. P.K. Basu, Member (A)

On the creation of Bharat Sanchar Nigam Limited (BSNL) with effect from 1.10.2000, the applicants were en-masse transferred and absorbed in BSNL. It is stated in the OA that there are about 4230 affected pensioners and the OA has been filed in representative capacity. The Department of Pension and Pensioners Welfare, Ministry of Personnel, Public Grievances and Pensions (Respondent no.3) issued OM dated 27.10.1997 on revision of provisions regulating pension/commutation of pension after the V CPC report, which provided that pension shall continue to be calculated at 50% of average emoluments in all cases and shall be subject to a minimum of Rs.1,275/- and maximum upto 50% of the highest pay in the Government. It further provided that those Government servants who have opted for revised scales of pay and retire within ten months from the coming into force of the revised scales of pay, basic pay for ten months preceding retirement shall be calculated as under:

“(i) For the period during which pay is drawn in the pre-revised scale-

Basic pay plus DA and Interim Relief I and II appropriate to the basic pay at the rates in force on 01.01.1996 drawn during the relevant period and

- (ii) For the period during which pay is drawn in revised scale-

Basic pay in the revised scale.”

2. The above OM was further revised by way of OM dated 17.12.1998, wherein it was specified that the pension shall not be less than 50% of the minimum pay in the revised scale.

3. Again vide OM dated 18.10.1999, the respondents modified the aforementioned OM dated 27.10.1997 and provided that the average emoluments for employees like the Applicants who retire within ten months of coming over to the revised scales shall be calculated as under:

“The average emoluments based on the basic pay of the preceding ten months of those Government Servants who had opted to come over to the revised scales of pay and had retired within a period of 10 months reckoned from January 1, 1996 shall be calculated as follows for the purpose of determining their pension entitlement.”

(A) For the period during which pay was drawn in the pre-revised pay scales.

The total emoluments for the number of months for which pay was drawn in the pre-revised pay scales shall be calculated after taking into account the following:

- i. Basic Pay (including increments if any drawn during the intervening period).
- ii. Dearness allowance upto CPI 1510. i.e. @ 148%, 111% and 96% of the basic pay as the case may be.

- iii. The first and second installments of Interim Relief appropriate to the Basic Pay drawn during the relevant period.
- iv. Notional increase of the Basic Pay by applying the Fitment Benefit of 40 percent on the Basic Pay in the pre-revised pay scale.

(B) For the period during which pay was drawn in the revised pay scales:

The aggregate of the Basic Pay for the number of months for which pay was drawn in the revised pay scales.

The average emoluments of the preceding ten months will thereafter be calculated by adding (A) and (B) and dividing the result by 10. Pension admissible will consequently be 50% of the average emoluments so calculated.

The object behind this modification was to eliminate the anomaly in pension drawn by those retiring within ten months of coming over to the revised pay scale during the period from 1st January to 30th September, 1996 and those who retired after completion of ten months period with effect from 1.01.1996.

4. At the time, the government employees were transferred to BSNL, it was agreed to extend the retirement benefits on combined service in accordance with CCS (Pension) Rules 1972. The Government of India agreed to pay pension/ family pension from the consolidated funds. Accordingly Rule 37A was

incorporated in CCS (Pension) Rules 1972 which was published in Government Gazettee on 30.09.2000. The Rule 37-A of CCS (Pension) Rules, 1972 (hereinafter referred to as 'The Rules'), provided the conditions for payment of Pension on absorption consequent upon conversion of a Government Department into a Central Autonomous Body or a Public Sector Undertaking. The relevant portion of the Rule is as under:

“(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking or 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.

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

(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking or Autonomous Body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Government and in the Public Sector Undertaking or Autonomous Body in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from the Public Sector Undertaking or Autonomous Body, as the case may be.

“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 the basis of his last ten months average pay.

(10) In addition to pension or family pension, as the case may be the employees shall also be eligible to Dearness relief as per industrial Dearness Allowance pattern.

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(21) Nothing contained in sub-rule (12) to (20) 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 pensioner benefits including family pension shall be paid by the government.

(22) For the purpose of payment of pensionary benefits including family pension referred to in sub-rule (21), the Government shall specify the arrangements and 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."

5. The above provides that all those government servants who are permanently absorbed in PSU or Autonomous Body will be entitled to pension in the same manner as is calculated for Central Government employees.

6. To eliminate any doubts on New Pension Rules, Shri O.P. Gupta, Secretary General, NFTE, New Delhi sought clarifications from Respondent No.1 on certain provisions of Rule 37-A including Clause '8' and '9' of the said Rules for calculation of pensionary benefits after absorption in BSNL with effect from 1.10.2000. The clarifications were issued vide DOT No.33-14/2000/SR dated 19.02.2001 with the approval of Chairman (Telecom Commission) stating that "the word formula in clause '8' of rule 37-A means payment of pension as per Government

rules in force at the relevant time” and further stating that “for the purpose of reckoning emoluments for calculation of pension and pensionary benefits, the emoluments as defined in CCS (Pension) Rules, in PSU in the IDA pay scales shall be treated as emoluments.

7. The applicants and all other employees were on deemed deputation to BSNL with effect from 1.10.2000 and were paid pensionary benefits by the Respondent No.1 in CDA scales of pay as applicable for the Central Government Employees, as and when they retired till the IDA scales of pay were introduced subsequently with retrospective effect from 1.10.2000. The Respondent No.2 issued office order dated 7.08.2002 for introduction of IDA pay scales in replacement of CDA pay scales for Non-Executive staff (Group 'C' and 'D') absorbed from DOT/DTS/DTO in BSNL with effect from 1.10.2000. The order was issued in pursuance of Agreement dated April 26, 2002 signed with new Applicant Unions and the approval of BSNL Board of Directors and the approval of Department of Telecommunications vide their letter dated 7.08.2002. Para 2.1(a) of the said order provided that the basic pay of the non-executives as on 1.10.2000 in the IDA pay scales would be fixed at the stage corresponding to the stage which they had reached under CDA Pay Scale on 30.09.2000 i.e. pay-fixation will be on point to point basis. Para 2.1(b) provide that “Net minimum increase of Rs.1500/- per month (Basic Pay + DA taken together) will be allowed to each employee. In case where the minimum benefit falls short of Rs.1500/-p.m., it will be

enhanced to Rs.1500/-p.m.” All other details for change over from CDA to IDA pay scales with dearness allowance in IDA pattern and payment of arrears of pay and allowances with effect from 1.10.2000 were mentioned in the said order.

8. It is pertinent to point out that on 20.12.2002 a clarification was issued by respondent no.3 in respect of Sub Rules 8, 9, and 10 of Rule 37A of the Rules, which clearly provided that for the purposes of calculating the average emoluments for determining the pension the same shall be done on the IDA pattern of scale with dearness relief in IDA pattern.

9. It is the case of the applicants that the Respondent no.1 issued a clarificatory O.M. dated 15.01.2003 for calculation of average emoluments in respect of payment of pension to its retired employees absorbed in BSNL, without consultation with Respondent No.3 and provides that pension shall be calculated on the basis of average pay of the last ten months irrespective of the fact whether the same or part thereof is in CDA/IDA pattern, while Dearness Relief will be calculated on IDA pattern, thereby causing loss in the pension at the time of change over from CDA pay scales to IDA pay scales for those who retired during the 9 months period from 1.10.2000 to 30.06.2001 after their absorption in BSNL with effect from 1.10.2000. It is alleged that the Respondent No.1 has issued the impugned O.M. dated 15.01.2003 in spite of relevant provisions of Rule 37A of CCS (Pension) Rules and clarifications issued on 2.01.2001 mentioned

in all the Presidential orders issued by Respondent No.1 and also the clarifications issued on 19.02.2001.

10. The Respondent No.2 issued letter dated 2.09.2003 to all CGMs, BSNL and Senior Officer in DOT/BSNL Corporate Office for calling of option for absorption from Group 'B' Officers/officiating Group 'A' officers who were transferred to BSNL on deemed deputation with effect from 1.10.2000. In this letter, certain clarifications were given in Annexure-1 to the earlier letter dated 14.01.2002 on the guidelines and terms and conditions for permanent absorption of Group 'B'/officiating Group 'A' officers in BSNL. The IDA pay scales, fitness formula and the promotional avenues were given in Annexure II, III & IV respectively. The Group 'B'/officiating Group 'A' officers were paid an adhoc sum of Rs.2000/- per month by BSNL till their absorption and fixation of pay in IDA scales was implemented. The detailed guidelines for change over from CDA pay scales to IDA pay scales after absorption in BSNL with effect from 1.10.2000 were given in the letter dated 2.09.2003. The Respondent No.2 vide letter dated 4.09.2003 and Respondent No.1 vide letter dated 12.09.2003 intimated last date of 20.10.2003 for submitting the options.

11. The Respondent No.2 issued office order dated 18.03.2004 for introduction of IDA Pay Scales in replacement of existing CDA Pay Scales for Executive Staff (Group 'B') absorbed from DOT/DTS/DTO in BSNL with effect from 1.10.2000. It is stated that the pay of the absorbed executives will be fixed in the

respective replacement/corresponding IDA pay scales after issue of Presidential Order for absorption in BSNL in the manner described in this order. In para 2.1, it is stated that in respect of the DOT/DTS/DTO Group 'B' and 'A' Officers on absorption in BSNL with effect from 1.10.2000, the basic pay of the executives as on 1.10.2000 in the IDA pay scales would be fixed at the stage corresponding to the stage which they had reached under CDA pay scale on 30.09.2000 i.e. pay fixation will be on point to point basis. In cases where the minimum benefit (pay + DA taken together) on absorption in BSNL on 1.10.2000, falls short of Rs.2500/- per month, it will be enhanced to Rs.2500/- per month. However, as per actual calculation, the net benefit in IDA pay + IDA DA is more than Rs.2500/- per month for most of the scales for Executive staff. The relevant paragraph No.10 regarding pension reads as under:

"The DOT/DTS/DTO executives absorbed in BSNL will be eligible to pension from the Central Government as per provisions of Rule 37-A of Pension Rules, as notified vide Ministry of Personnel, Public Grievances and Pensioners Welfare No.4/61/99-P&PW(D) dated the 30th September 2000 (Note: Sub Rule (8), (9), (10), (21), (22) and (23) thereof and clarifications issued vide DOT No.33-14/2000/SR dated 19.02.2001 stating that "for the purpose of reckoning emoluments for calculation of pension and pensionary benefits, the emoluments as defined in CCS (Pension) Rules, in PSU in the IDA pay scales shall be treated as emoluments".

12. Respondent No.4 issued an OM dated 1.03.2004 providing for merger of 50% DA/DR with basic pay/pension with effect from 1.04.2004. In para 3 of the order, it has been provided that "To ensure that pensioners retiring between 1.4.2004 to 31.1.2005 do not face any loss in fixation of pension, as a

special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay for purpose of computation of pension in respect of basic pay received by them prior to 1.4.2004.”

13. Learned counsel also pointed out that the employees of the Food Corporation of India (FCI), in similar situation were being paid pension in accordance with the formula as is applicable to central government employees. The relevant portion is as under:

“(A) For the period during which pay was drawn in the pre-revised pay scales.

The total emoluments for the number of months for which pay was drawn in the pre-revised pay scales shall be calculated after taking into account the following:

- i. Basic Pay (including increments, if any drawn during the intervening period).
- ii. Actual Variable Dearness Allowance (VDA) upto AICPI 1708.
- iii. Notional increase of the Basic Pay by applying the Fitment Benefit of 20 percent on the Basic Pay in the pre-revised pay scale.

(B) For the period during which pay was drawn in the revised pay scales:

The aggregate of the Basic pay for the number of months for which pay was drawn in the revised pay scales.

The average emoluments of the preceding ten months will thereafter be calculated by adding (A) and (B) and dividing

the result by 10. Pension admissible will consequently be 50% of the average emoluments so calculated.....”

14. The respondent no.3 on 25.10.2007 issued a Gazette Notification substituting sub-rule (8) of Rule 37A of CCS (Pension) Rules 1972, which takes effect from 30.09.2000, as under:

“(8) A permanent Government servant who has been absorbed as an employee of a public sector undertaking or autonomous body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the Government and in the public sector undertaking or autonomous body in accordance with the formula for calculation of pension/family pension under these rules as may be in force at the time of his retirement from the public sector undertaking or autonomous body, as the case may be or at his option to receive pro-rata retirement benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

EXPLANATION – The amount of pension/family pension of the absorbed employee on superannuation from Public Sector undertaking/Autonomous Body shall be calculated in the same way as would be the case with a Central Government servants, retiring on superannuation on the same day.”

15. In implementation of Government’s decision on the recommendation of the Sixth Central Pay Commission, OM dated 2.09.2008 was issued on revision of provisions regulating

pension/ gratuity/ commutation of pension/ family pension/disability pension/ex-gratia lump-sum compensation, which was further amended vide OM dated 3.10.2008 for those Government servants who retired within 10 months from the date of coming over to the revised Pay Structure after 1.01.2006.

“For the purpose of computing average emoluments in the case of Government servants who have opted for fixation of pay in the revised Pay Structure and retire within 10 months from the date of coming over to the revised Pay Structure basic pay for 10 months period proceeding retirement shall be calculated by taking into account pay as follows:

- (i) For the period during which pay is drawn in revised Pay Structure-

Pay drawn in the prescribed pay band plus the applicable grade pay or the pay in the pay scale in the case of HAG + and above.

- (ii) For the remaining period during which pay is drawn in pre-revised scale of pay-

- (a) Basic Pay plus dearness pay and actual D.A. appropriate to the basic pay at the rates in force on 1.01.2006 drawn during the relevant period.

- (b) Notional increase of the basic pay by applying the fitment benefit of 40% on the basic pay in the pre-revised pay scale.”

16. In view of the fact that notional benefit to revise the pay drawn in CDA scales before 1.10.2000 at par with the pay drawn in IDA scales after 1.10.2000 during the 10 months period before retirement in BSNL was not being extended to applicants as was being done to retirees in Government and other similarly placed as the Applicants, the applicants represented against the manner of calculation of pension in respect to them.

17. In the meantime, the Respondent No.1 vide O.M. dated 15.03.2011 issued order for revision of pension/family pension in respect of all pre-2007 pensioners/family pensioners who retired during the period from 1.10.2000 to 31.12.2006 in IDA scales, pursuant to wage revision in BSNL with effect from 1.01.2007. The pension of all the applicants was also revised in the IDA scales with effect from 1.01.2007. The applicants grievance is that again they got less pension with effect from 1.01.2007 as compared to those who had retired on or after 31.07.2001 after completion of ten months period at the time of change over from CDA scales to IDA scales after absorption in BSNL with effect from 1.10.2000. It is prayed that the pension of the applicants has to be revised again at all stages after rectification of the anomaly in fixation of pension from the date of their retirement after absorption in BSNL with effect from 1.10.2000. The orders for revision of pension as per the above OM dated 15.03.2011 were issued for all the applicants with effect from 1.01.2007.

18. Since there were many representations and apparent anomaly in the pension being paid to the applicants the matter

was examined by Respondents No.1 and 2 in consultation with Respondent No.3. The Respondent No.1 vide letter dated 27.09.2011 advised the Respondent No.2 that the pension cases of the employees absorbed in BSNL, who retired within ten months from 1.10.2000 i.e. the date of their absorption in BSNL, may be settled by granting them the benefit of minimum pension at not less than 50% of the minimum of pay in the revised scale of pay held by them at the time of retirement, if it is beneficial to them.

19. The applicants filed representation for redressal of their grievance. Ultimately, respondent no.1 issued OM dated 15.01.2003 clarifying that for the purpose of calculation of pension, average of last ten months pay is to be taken irrespective of whether the pay in all ten months or part thereof is in IDA/CDA pay scale. Being aggrieved by this order, the applicants have filed the instant OA seeking the following reliefs:

- a) Quash the impugned order dated 15.01.2003 and/or
- b) Direct the respondents to re-fix pension from the date of retirement by calculating the pension in the same manner as is calculated for central Government Employees/ Public Sector Undertaking like Food Corporation of India by adopting the formula as contained in OM dated 18.10.1999 and give notional benefit of the IDA pay scales and thereafter grant all

consequential benefits from the date of retirement in accordance with law.

20. Learned counsel for the applicants placed before us following grounds for grant of prayers made:

- (i) The actions of the respondents and the impugned order are contrary to the OM dated 18.10.1999, which was specifically to deal with such kind of a situation, where there was anomaly in pension of those retiring within ten months of coming over to the revised pay scale with effect from 1.01.1996 and those retiring prior thereto. The Government with the objective to remove this anomaly evolved a formula as contained therein, which ought to be implemented to the case of the applicants also.
- (ii) The actions of the Respondents are totally contrary to the OM dated 20.12.2002, wherein it is categorically provided that the average emoluments have to be calculated on the basis of the IDA pattern. This means that the benefit of notional fixation of pay in the IDA pattern is to be followed for the purpose of calculation of pension along with the DR on the IDA scale.
- (iii) Even the FCI had adopted a similar formula for calculating the pension as is applicable to

Government Employees retiring within ten months of coming over to the revised scale in order to remove any anomaly in calculation of pension.

- (iv) The actions of the respondents are contrary to the judgment of the Hon'ble Apex Court in the matter of **D.S. Nakara and Ors. Vs. Union of India**, 1983 SCC (L&S) 145, which provided for equality of treatment in matters of payment of pension. However, by the actions of the Respondents the applicants have arbitrarily and illegally been classified as a separate class to discriminate as a different category of employees whose 10 months period of calculating pension falls partly in the CDA Scale and partly in IDA pattern and deny the vested right of being treated equally with other retirees of BSNL and retirees either of Central Government or PSU/Autonomous bodies.
- (v) The actions of the Respondents are violative of the fundamental rights of the applicants as enshrined under Article 14, 16 of the Constitution of India, besides being contrary to the law laid down by the Hon'ble Apex Court in the matter of **Union of India (UOI) and Anr. Vs SPS Vains (Retd.) and Ors.** 2008 (12) SCALE 360, wherein it was observed and held as under:

"26. The question regarding creation of different classes within the same cadre on the basis of the doctrine of intelligible differentia having nexus with the object to be achieved, has fallen for consideration at various intervals for the High Courts as well as this Court, over the years. The said question was taken up by a Constitution Bench in the case of D.S. Nakara (supra) where in no uncertain terms throughout the judgment it has been repeatedly observed that the date of retirement of an employee cannot form a valid criterion for classification, for if that is the criterion those who retired by the end of the month will form a class by themselves. In the context of that case, which is similar to that of the instant case, it was held that [Article 14](#) of the Constitution had been wholly violated, inasmuch as, the Pension Rules being statutory in character, the amended Rules, specifying a cut-off date resulted in differential and discriminatory treatment of equals in the matter of commutation of pension. It was further observed that it would have a traumatic effect on those who retired just before that date. The division which classified pensioners into two classes was held to be artificial and arbitrary and not based on any rational principle and whatever principle, if there was any, had not only no nexus to the objects sought to be achieved by amending the Pension Rules, but was counterproductive and ran counter to the very object of the pension scheme. It was ultimately held that the classification did not satisfy the test of [Article 14](#) of the Constitution."

- (vi) The actions of the respondent are evidently contrary to the OM dated 20.12.2002, which clearly provides that average emoluments shall be calculated on the IDA pattern alone without any mention even remotely of a mix of CDA and IDA scales.

- (vii) The actions of the respondents are contrary to BSNL letter dated 2.01.2001 and DOT letter dated 19.02.2001.
- (viii) The actions of the respondents are also contrary to BSNL office order dated 7.08.2002 and 18.03.2004.
- (ix) The impugned order is only an executive instruction issued illegally and is in utter violation of provisions of Rule 37-A of CCS (Pension) Rules. It is settled law that executive instruction cannot over rule the statutory rules.
- (x) The actions of respondents are contrary to OM dated 25.10.2007, which provides that calculation of pension for applicants shall be in the same manner as per Central Government Employees.
- (xi) The ratio of judgment of the Hon'ble Supreme Court in the matter of **Videsh Sanchar Nigam Limited Vs. Ajit Kumar Kar**, (2008) 11 SCC 591 is squarely applicable to the present case, wherein it has specifically been held as under:

"40. Note 10 below Rule 33, CCS (Pension) Rules, as extracted in the earlier part of this judgment was also made. As per this Office Memorandum, earlier clarification has been repeated and reasserted that in the case of transferred employees of VSNL who were drawing IDA pay scales prior to their retirement, the emoluments for the purpose of pension shall be calculated on the basis of

emoluments drawn in the IDA pay scales. It was also categorically stated that such employees shall not be entitled to the payment of DR on pension at Central Government rates."

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"45. In the facts and circumstances of the case, we are of the opinion that the clarification given by the Government of India in its O.M. dated 22.11.1996 (Annexure P-14) is clear and unambiguous terms stated that the employees of VSNL were drawing the IDA pay scales with the ADR under the IDA pay scales were entitled to pensionary benefits only on the basis of IDA pay scales as IDA pay scales with IDA pattern of DR was already taken into account for pension and other benefits at the time of retirement of such employees of VSNL. It appears from the various communications exchanged between the Government of India and VSNL referred to earlier that due to some error or bona fide mistake, VSNL made wrong payments of DA to the respondent retirees calculated on the IDA pay scales and such employees were getting double benefits of DR. Employees who were getting IDA pay scales with IDA pattern of DR could not draw pension calculated on IDA emoluments with CDA pattern of DR."

- (xii) Another Corporation namely FCI also revised the IDA pay scales for its employees with effect from 1.01.1997 vide letter dated 31.05.2005. The relevant para of this letter are quoted below:

"4. The Deptt. of P&PW have also issued general guidelines for pension and related benefits of the IDA retirees of the Central PSUs vide their O.M.No.4/14/2001-P&PW(D) dated 19.09.2003. According to these guidelines, the IDA pay scales are required to be brought notionally to the equivalent CDA pay scales. The pension and other related benefits will then be calculated on the notional pay in the CDA pay scales. In addition, the IDA retirees

will be entitled to DR on CDA pattern. Subsequently, the D/P&PW advised that it would not be advisable to work out the modalities pending receipt of judgment of the Supreme Court of India as finalization of modalities when the matter including point of sanction of Dearness Relief is subjudice.

5. The Ministry of Law and Justice was consulted and they advised that there may not be any legal objection in resuming payment of Dearness Relief on IDA basis which was being paid before the dispute arose. They, however, advised against the proposal for revision of pension/ family pension of the IDA retirees of the FCI based on the revised IDA pay scales w.e.f. 1.01.1997 till the disposal of the SLP by the Supreme Court."

21. Learned counsel for the respondents, first of all, raised the preliminary objection that this OA has been filed with considerable delay in May 2014. Learned counsel for the applicants countered this with the argument that this is continuous cause of action as it relates to pension/ family pension. Therefore, limitation will not apply in view of the judgment of the Hon'ble Supreme Court in **M.R. Gupta Vs. UOI & ors.**, 1995 (5) SCC 628.

22. Learned counsel for the respondents basically contends that the pension of the applicants has to be governed by sub-rule 9 of Rule 37-A of CCS (Pension) Rules and according to that, last ten months average pay has to be taken where a part of the pay was in CDA pattern and for part period, it was in IDA pattern. It is stated that the applicants had opted for IDA pattern as these were better pay scales and they had the option

to revert back to government, which they did not and now they cannot challenge the order dated 15.01.2003, firstly on the ground of delay and secondly because it is as per Rule 37-A and sub-rule 9 of CCS (Pension) Rules.

23. We have heard the learned counsel for the parties, gone through the pleadings available on record and perused the judgments cited.

24. In D.S. Nakara (supra), the Hon'ble Supreme Court has settled the basic principle that the government cannot distinguish between the same class of pensioners by introducing a cut-off date. It is for this reason that the formula devised by the government and as communicated in the OMs of 27.10.1997 and 17.12.1998 was according to this principle. So by creating an artificial distinction between those who retired between 1.10.2000 and 31.07.2001 and others, the respondents have clearly not only gone against the decision in D.S. Nakara (supra) but also against their own circulars. Sub-rule 8 of Rule 37 (A) also states that pensionary benefits will be counted on the basis of combined service in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement in the same manner as is calculated for Government servants. In view of M.R. Gupta (supra) limitation would not apply.

25. There is, therefore, no ground whatsoever for the respondents to deny the benefit of formula adopted in OM dated 18.10.1999. The impugned order dated 15.01.2003 is thus quashed with direction to the respondents to refix pension of the

applicants from the date of their retirement in the same manner as calculated for Central Government employees/ Public Sector Undertaking like FCI by adopting the formula as contained in OM dated 18.10.1999 and give notional benefit of the IDA pay scales and, thereafter, grant all consequential benefits from the date of retirement in accordance with law. We fix a time frame of 90 days from the receipt of a certified copy of this order for implementation of our directions. No costs.

(P.K. Basu)
Member (A)

(Justice M.S. Sullar)
Member (J)

/dkm/