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OA 2853/2018

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 Ltd,
through its Chairman and
Managing Director,
Bharat Sanchar Bhawan,
Janpath,
New Delhi-110001.

...Respondents

**AN APPLICATION UNDER SECTION 19 OF THE
ADMINISTRATIVE TRIBUNAL ACT, 1985.**

DETAILS OF APPLICATION

1(A) PARTICULARS OF THE ORDERS AGAINST WHICH THIS
APPLICATION IS MADE:-

The applicant No.1- herein- Association representing
the interests of pensioners of the Bharat Sanchar
Nigam Ltd, a Central Public Sector Enterprise, and
applicant Nos.2 to 118 herein- individual pensioners-
all senior citizens now residing in different States of
India prefer the present Original Application being
aggrieved by the Office Memorandum No.40-13/2013-
Pen(T) dated 18.7.2016 and the Order No.61-01/2012-
SU dated 10.6.2013 of the Department of
Telecommunication, Ministry of Communications and
Information Technology, Government of India to the
extent it (a) restricts the actual benefit of revised
fitment @ 78.2% (allowed vide Office Memorandum

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No.2 (70)/08- DPE (WC)- GL-VII/09 dated 2.4.2009 of the Department of Public Enterprises, Ministry of Heavy Industries and Public Enterprises, Government of India- the nodal department) for computation of pay/pension to only those who retired on or after 10.6.2013- instead of w.e.f. 1.1.2007 as stipulated in the said Office Memorandum dated 2.4.2009 of the Department of Public Enterprises and (b) denies increase in the amount of DCRG, leave encashment and commutation of pension on this account to the pensioners who retired between 1.1.2007 and 10.6.2013.

- (B) This, as submitted in detail hereinbelow, is in gross violation of the fundamental rights of the applicants/pensioners and in open contravention of the law consistently laid down by the Hon'ble Supreme Court (K.J.S. Bhuttar versus Union of India and another ((2011) 11 SCC 429)) to the effect that when, as in the case of the applicants herein, the pensioners form a homogeneous class in as much as at the time of their retirement they were governed by Rule 37A of the Central Civil Services (Pension) Rules, 1972 which are statutory Rules, the computation of their pension in the event of any upward revision like, vide the enhanced fitment benefit @ 78.2% in the present case, cannot be by different formula affording unequal treatment solely on the ground that some retired earlier and some retired later. The impugned Office Memorandum dated 18.7.2016 read with the impugned Order dated 10.6.2013 of the respondent- Department of Telecommunications, hereinafter referred to as the 'DOT' for the sake of brevity which divides the homogeneous class of pensioners in the

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matter of allowing the fitment benefits @ 78.2% for computation of their pay/pension revision is thus clearly arbitrary and in open breach of their fundamental rights under Article 14 and 21 of the Constitution of India and has resulted in considerable financial loss to them in their old age.

The said Order No.61-01/2012- SU dated 10.6.2013 and the said Office Memorandum No.40-13/2013-Pen(T) dated 18.7.2016 issued by respondent No.1 - 'DOT' and impugned in the present original application are annexed hereto as **ANNEXURE A-1** and **ANNEXURE A-2** respectively.

2. JURISDICTION OF THE TRIBUNAL:

The applicants declare that the subject matter of the order against which they want redressal is within the jurisdiction of the Tribunal.

3. LIMITATION:

The applicants submit that the present Original Application is within the period of limitation prescribed under Section 21 of the Administrative Tribunal Act 1985. However, by way of abundant caution an application for condonation of delay has been filed by the applicants.

4. FACTS OF THE CASE:

- 4.1 That the applicants No.1 herein- All India Bharat Sanchar Nigam Ltd Retired Executives Association is a registered Association representing the interests of the retired executives of Bharat Sanchar Nigam Limited, respondent No.5 herein and hereinafter referred to as

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the 'BSNL' for the sake of brevity Sri S. Basu is its General Secretary and has been duly authorized to file the present application.

- 4.2 That vide notification (No.4/61/99- P & PW(D)) dated 30.9.2000 issued by respondent No.3- Government of India, Ministry of Personnel, Public Grievances and Pensions (Department of Pension & Pensioners' Welfare), in exercise of powers conferred by the proviso to Article 309 and Article 148 (5) of the Constitution of India, the Central Civil Services (Pension) Rules, 1972 hereinafter referred to as the 'Pension Rules' for the sake of brevity, were further amended by inserting Rule 37A (after Rule 37). The said Rule 37A deals with conditions for payment of pension on absorption consequent upon conversion of a Government Department into a central autonomous body or a public sector undertaking.

It is submitted that in terms of the said Rule 37A, of the said 'Pension Rules', the Government servant shall, upon permanent absorption in the 'BSNL' (in the present case) be entitled to pensionary benefits (Sub-Rules 8 and 11 of the said Rule 37A); and the said pensionary benefits including family pension shall be paid by the Government (Rule 37A (21)).

A true photocopy of the said Notification (No.4/61/99- P & PW(D) dated 30.9.2000 issued by the Government of India, Ministry of Personnel, Public Grievances and Pension Department of Pension, and Pensioners' Welfare is annexed hereto as **ANNEXURE A-3**

- 4.3 (a) That upon conversion of the erstwhile Department of Telecom Services and Telecom Operations into the

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'BSNL' a Central Public Sector Enterprise- In the year, 2000, the employees working in the said Departments-like the members of Applicant No.1- Association including Applicant Nos.2 to 118 herein (since retired) were transferred enmasse on deemed deputation basis to 'BSNL' with effect from 1.10.2000.

- (b) That it is further relevant to state that one of the terms and conditions for absorption in BSNL (Clause 5 of the General Terms and Conditions for Absorption of Group 'B' Officers in BSNL) relating to "Payment of Pension" and annexed to the "Option Form for Absorption in BSNL/Retention of Government Status for Group B Officers" stipulated to the following effect:

"The officers who opt for permanent absorption in BSNL would be governed by provisions of Rule 37-A of CCS (Pension) Rules, notification for which was issued by the Department of Pension and Pensioners' Welfare on 30.9.2000. 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 taken. DOT has already clarified that the word "formula" mentioned in Clause 8 of Rule 37-A means payment of pension as per Government Rules in force at that time".

A true photocopy of the said General Terms and Conditions of absorption of Group 'B' Officers in BSNL dated nil (and annexed to the "Option Forms for absorption in BSNL/retention of Government Status for Group 'B' Officers") is annexed hereto as

ANNEXURE A-4

- 4.4 (a) That the members of the Applicant No.1- Association including applicant Nos. 2 to 118 herein were absorbed on permanent basis in the 'BSNL' with effect from

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1.10.2000. It was clearly stipulated In the order of permanent absorption as well to the effect that the said applicants will be eligible to payment of pension including gratuity as per provisions of Rule 37-A of the said 'Pension Rules', as amended from time to time.

That vide order dated 31.3.2004 of the respondent No.1- 'DOT' the sanction of the President was conveyed for the permanent absorption of Shri Santimay Basu, the General Secretary of the applicant No.1- Association, an officer of TES Group 'B' in the 'DOT'.

Similar orders were passed in respect of the other permanent employees of the 'DOT' conveying sanction of the President for their respective permanent absorption in the 'BSNL'.

A true photocopy of the said Order dated 31.3.2004 of the Department of Telecommunication communicating permanent absorption of Shri Santimay Basu in the 'BSNL' is annexed hereto as

ANNEXURE A-5

(b) That, consequently, In terms of the said Rule 37A of the said 'Pension Rules', the members of the applicant No.1- Association including applicant Nos.2 to 118 herein, who were permanently absorbed in the 'DOT', were entitled to payment of pension/family pension upon retirement from service.

4.5 That the absorbed 'BSNL' executives were fitted in the IDA payscale as recommended by the First Pay Revision Committee constituted for revision of payscales of all the Board level and below Board level executives and Non Unionised Supervisors in Central

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Public Enterprises w.e.f. 1.1.1997 and accepted by the Government of India.

4.6 That thereafter upon consideration of the recommendations of the 2nd Pay Revision Committee set up by the Government (as the next pay revision was due from 1.1.2007), the respondent No.2- Department of Public Enterprises in the Ministry of Heavy Industries and Public Enterprises in the Government of India hereinafter referred to as the 'DPE' for the sake of brevity, issued Office Memorandum dated 26.11.2008 containing the government decision on the revision of payscales w.e.f. 1.1.2007 of the Board level and below Board level executives and Non- unionised Supervisors in Central Public Sector Enterprises (CPSEs). The said Office Memorandum stipulated to the effect that

"a uniform fitment benefit @ 30% on basic pay plus DA @ 68.8% as on 1.1.2007 would be provided to all executives".

A true photocopy of the said Office Memorandum (No.2 (70)/08-DPE (WC) dated 26.11.2008 of the Department of Public Enterprises in the Government of India is annexed hereto as **ANNEXURE A-6**

4.7 That thereafter vide communication/order No.61-01/2009-SU dated 27.2.2009, of the 'DOT', the administrative department of the 'BSNL', It was stated that the President was pleased to approve the proposal of the 'BSNL' regarding the payscales, fitment formula and other relevant issues as per the abovementioned Office Memorandum dated 26.11.2008, with effect

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from 1.1.2007. It was further stipulated to the effect that:

- (i) payment of arrears of revised IDA pay scales shall be in two instalments i.e. 40% and 60% as proposed by BSNL. Detailed modalities shall be finalized by BSNL (Para 9).
- (ii) annual increment will be at the rate of 3% of the revised basic pay (Para 3).
- (iii) all instructions/guidelines issued by 'DPE' in this regard from time to time may be scrupulously followed (Para 12).

A true copy of the said communication/Order No.61-01/2009-SU dated 27.2.2009 of the Department of Telecommunication is annexed hereto as

ANNEXURE A-7

4.8 That vide subsequent Office Order No. 1-50/2008-PAT (BSNL) dated 5.3.2009, issued pursuant to the abovementioned Order/Circular dated 27.2.2009 of the 'DOT', the 'BSNL' conveyed the approval of the competent authority for revising the pay scales of Board level and below Board level executives and Non-unionized supervisors with effect from 1.1.2007 and allowing fitment benefit which included dearness allowance @ 68.8% as on 1.1.2007.

Thus, the revised pay scales/pension in terms of the abovementioned Office Memorandum dated 26.11.2008 of the nodal department- 'DPE' were duly allowed w.e.f. 1.1.2007 on actual basis to all the 'BSNL' employees/pensioners uniformly.

A true photocopy of the said Office Order No.1-50/2008- PAT (BSNL) dated 5.3.2009 of the Bharat Sanchar Nigam Ltd. is annexed hereto as **ANNEXURE A-8**

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4.9 That thereafter upon due consideration of the recommendation of the Committee of Ministers constituted after the intervention by the Prime Minister, the 'DPE' issued Office Memorandum No.2(70)/08-DPE (WC)- GL- VII/09 dated 2.4.2009 stipulating to the effect that the Government have decided further that the benefit of merger of 50% DA with Basic pay w.e.f. 1.1.2007 effectively amounting to 78.2% would be allowed for the purpose of fitment and pay fixation in the revised payscales (Para 2 (1) of DPE OM dated 26.11.2008).

Para 3 of the said Office Memorandum made it clear beyond doubt to the effect:

"Government has also decided that benefit under this O.M. read with the earlier decision as conveyed vide O.M. dated 26.11.2008 and 9.2.2009 has to be viewed as a total package. It has also decided that the pay revision package as communicated by earlier OMs along with the above notifications would be applicable to all the CPSEs".

The said decision of the government stipulated change in the fitment formula without any change either in the basic pay or with regard to the effective date (1.1.2007) for payment of enhanced pay/pension.

Thus, it is respectfully reiterated, for the sake of emphasis, the said Office Memorandum dated 2.4.2009 is only a modification of the Office Memorandum dated 26.11.2008 regarding further revision of fitment formula already available to the pensioners/family pensioners and not a new order for revision of payscales.

A true photocopy of the said Office Memorandum No.2 (70)/08-DPE (WC)- Vol- VII/09 dated 2.4.2009 issued by respondent

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No.2- Department of Public Enterprises is annexed hereto as **ANNEXURE A-9**

4.10 That it is relevant to state, at this stage, that vide Office Memorandum (F.No.40-17/2008- Pens (T)- Vol III dated 15.3.2011, issued by the 'DOT' the pension of the pre- 2007 pensioners/family pensioners of 'BSNL' was revised allowing the fitment benefit @ 30% on basic pension plus DA @ 68.8% as on 1.1.2007- with effect from 1.1.2007 in terms of earlier Office memorandum dated 26.11.2008. The revision was effective from 1.1.2007 on actual basis.

A true photocopy of the said Office Memorandum (F. No.40-17/2008- Pen (T)- Vol-III dated 15.3.2011 issued by the Department of Telecommunication is annexed hereto as **ANNEXURE A-10**

4.11 Vide agreement dated 12.6.2012 between the Forum of BSNL Unions/Associations and the National Union of BSNL Workers on the one hand, and the BSNL management on the other hand, it was agreed to following effect:

"Revision of pay is agreed as per fitment benefit @ 78.2% w.e.f. 1.1.2007 subject to approval by the competent authority. However, actual payment will be made prospectively and arrears thereof will be deferred for the time being and will be paid only when the fiscal position of the company improves. This will be applicable for pensioners also".

A true photocopy of the said agreement dated 12.6.2012 between the Forum of 'BSNL' Unions/Associations and the National Union of 'BSNL' Workers

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management on the other hand- is annexed hereto as **ANNEXURE A-11.**

4.12 That however more than four years thereafter, while implementing the said Office Memorandum dated 2.4.2009 of the 'DPE', the respondent No.1- 'DOT' issued an Order (No.61-01/2012-SU) on 10.6.2013, stipulating suo moto that the benefit of merger of 50% DA effectively amounting to 78.2% as on 1.1.2007 for the purpose of fitment in respect of Board level and below Board level executives and Non- Unionized Supervisors and Non- executives of 'BSNL' as stipulated in the DPE's Office Memorandum dated 2.4.2009, is "allowed from the date of issue of this order" (that is, 10.6.2013).

Para 2 thereto reads that "No arrears will be paid and the revised fitment on the basis of DPE OM dated 2.4.2009 will be paid with prospective effect only".

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

Para 4 reiterates to the effect that "All instructions/guidelines issued by DPE from time to time in this regard may be scrupulously followed".

It is relevant to state, at this stage, that as per Government Instructions (DPE Office Memorandum No.6(6)/88(Coord) dated 8.4.1991), it is mandatory that 'Orders' like the impugned order dated 10.6.2013 and the impugned Office Memorandum dated 18.7.2016, in the present case, are to be issued by the administrative Ministries of the concerned public

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sector undertakings- 'DOT' in case of 'BSNL' in consultation with the nodal department- the 'DPE'. However, the Impugned communication/Order dated 10.6.2013 and the Impugned Office Memorandum dated 18.7.2016 were issued unilaterally by the 'DOT' without any valid justification in apparent violation of the Office Memorandum dated 2.4.2009 of the 'DPE' (the nodal department) in regard to allowing the "benefit of merger of 50% DA with Basic pay w.e.f. 1.1.2007, effectively amounting to 78.2% for fitment and pay fixation in the revised payscales with effect from 1.1.2007-and that too without consulting the 'DPE'. Moreover, the benefit of the revised fitment formula contained in the said Office Memorandum dated 2.4.2009 of the 'DPE' has been restricted to apply with prospective effect- from the date of issue of the order on 10.6.2013 and not 1.1.2007 as stipulated in the said Office Memorandum dated 2.4.2009 of the nodal department, although, as the stated above, para 4 of the said order clearly states that "all instructions/guidelines issued by DPE from time to time in this regard may be scrupulously followed by the 'BSNL'.

A true photocopy of the said DPE OM No.6(6)/88 (Coord) dated 8.4.1991 is annexed hereto as **ANNEXURE A-12**

4.13 That vide representation dated 29.7.2013 to the Secretary, 'DPE' with copies, to the Secretary, Department of Pension and Pensioners' Welfare and Secretary, 'DOT', the General Secretary of the applicant No.1- Association representing the interests of the 'BSNL' executive pensioners, including applicant Nos.2 to 118 herein, protested against the said Order

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dated 10.6.2013 and sought payment of pension to all pensioners as per the revised fitment @ 78.2% in terms of the DPE's Office Memorandum dated 2.4.2009.

A true photocopy of the said representation/letter dated 29.7.2013 from the General Secretary of the applicant No.1- Association to the Secretary, Department of Public Enterprises is annexed hereto as

ANNEXURE A-13

4.14 That further vide letter dated 21.10.2013 to the Secretary (Telecom), 'DOT', the Chairman and Managing Director of the 'BSNL' respondent No.5 herein requested the 'DOT' to reconsider its decision contained in the said Order dated 10.6.2013 on the issue of payment of arrears to the 'BSNL' employees in terms of the revised fitment @ 78.2%.

A true copy of the said letter dated 21.10.2013 of the Chairman cum Managing Director, BSNL, to the Secretary, 'DOT' is annexed hereto as **ANNEXURE A-14**

4.15 That three years thereafter, on 18.7.2016, the 'DOT'-respondent No.1 herein issued another Office Memorandum (No.40-13/2013- Pension (T)) on the **Issue of revision of pension/family pension of BSNL IDA pensioners/family pensioners who retired prior to 10.6.2013 stating that the Government has decided to the following effect:**

- (a) "the pension/family pension of BSNL IDA pensioners/family pensioners who retired prior to 1.1.2007 may be revised as on 1.1.2007 "notionally" with actual benefit w.e.f. 10.6.2013 by adding together-

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- (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 10.6.2013".

- (b) "In case of the BSNL IDA pensioners/family pensioners who retired between 1.1.2007 and 9.6.2013, their pay may be revised notionally with effect from 1.1.2007 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. 10.6.2013 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 1.1.2007 to 9.6.2013, and they would not get increase in the amount of DCRG, leave encashment and commutation of pension on this account".
- (c) "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 the O.M. No.40-17/2008- Pen (T) Vol III dated 15.3.2011 shall remain the same".

Thus,

- (i) in terms of the abovementioned Office Memorandum dated 18.7.2016 of the 'DOT', the enhanced fitment benefit with 78.2% DA for pay fixation in revised pay scales w.e.f. 1.1.2007 by modifying the earlier fitment benefit with 68.8% DA allowed vide the said Office Memorandum dated 2.4.2009 of the nodal department- 'DPE'- was denied on actual basis to the applicants herein who retired prior to

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- 10.6.2013- the date of issue of Its Order on 10.6.2013.
- (ii) the applicants who retired prior to 10.6.2013 are denied the revised fitment @ 78.2% (upward revision by 9.4%) although the said Office Memorandum dated 2.4.2009 of the 'DPE', makes it abundantly clear that the said Office Memorandum (dated 2.4.2009) and the earlier Office Memorandum dated 26.11.2008 of the 'DPE' have to be viewed as a 'total package' and would be applicable to all the Central Public Sector Enterprises (CPSEs).
- (iii) the applicant- pensioners of the 'BSNL'- who constitute one homogeneous class and were allowed, on actual basis the revised pension with effect from 1.1.2007 pursuant to the revision of paycales with a uniform fitment benefit @ 30% on basic pay plus DA @ 68.8% as on 1.1.2007 have, however been denied the revised benefit of enhanced fitment @ 78.2% allowed vide DPE's Office Memorandum dated 2.4.2009 In as much as the enhanced fitment benefit of merger of 50% DA with Basic Pay w.e.f. 1.1.2007 effectively amounting 78.2% (that is, difference of 9.4%) for the purpose of fitment and pay fixation In the revised paycales has been allowed on actual basis with prospective effect from 10.6.2013- the date of issue of the 'Order' dated 10.6.2013 of the 'DOT' and on notional basis w.e.f. 1.1.2007.
- (iv) the Order dated 10.6.2013 and the Office Memorandum 18.7.2016- of 'the DOT' are thus not only in open contravention of the Office

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Memorandum dated 2.4.2009 of the nodal department,- the 'DPE' in the matter- but also in blatant violation of the law consistently laid down by the Hon'ble Supreme Court in a catena of judgements including in V. Kasturi versus SBI (1998) 8 SCC 30 at page 51 para 220; K.J.S. Bhuttar versus Union of India and another ((2011) 11 SCC 429 at 433-434) to the effect that any liberalisation of an existing scheme (like vide the said Office Memorandum dated 2.4.2009 of the 'DPE') whereby the fitment formula was enhanced to 78.2% IDA from 68.8% allowed vide the earlier Office Memorandum dated 26.11.2008 of the Department) all pensioners are to be treated equally. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution of India.

That the applicants herein- all retired employees of the Bharat Sanchar Nigam Ltd- who are sustaining on their pension in their old age are put to tremendous mental stress and agony on account of monetary loss suffered as result of the said wholly arbitrary, discriminatory and illegal decisions of the respondent- 'DOT'- In violation of the fundamental rights guaranteed to them under Article 14 and 21 of the Constitution of India.

A tabular statement dated nil setting out the loss suffered by petitioner Nos.2 to 39 herein (who retired prior to 1.1.2007 by the impugned arbitrary decision of the 'DOT' is annexed hereto as **ANNEXURE A-15**

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A tabular statement dated nil setting out the loss suffered by applicant Nos.40 to 93 herein (who retired between 1.1.2007 to 9.6.2013) by the impugned arbitrary decision of the 'DOT' is annexed hereto as **ANNEXURE A-16**

A tabular statement setting out the loss suffered by applicant Nos.94 to 118 herein (who retired after 10.6.2013 by the Impugned arbitrary decision of the 'DOT' is annexed hereto as **ANNEXURE A-17**

4.16 That vide Office Memorandum No.40-13/2013-Pen(T) dated 20.7.2016 issued by the 'DOT' on the issue of modifying the liability of 'BSNL' towards the payment of pensionary benefits to the retired employees, it was stated that the government has decided to the effect that-

"The liability towards pensionary benefits including family pension to the BSNL employees (excepting those recruited after 1.10.2000) as per Rule 22 of Rule 37-A of CCS (Pension) Rules, 1972 lies with the Government of India. The condition that the annual pension liability of the government shall not exceed 60% of the annual receipts to Government from the items specified in the O.M. dated 15.6.2006 is hereby rescinded"

Thus, the liability to pay/pension to the applicants/pensioners lies squarely on the Government of India and the fiscal health of the 'BSNL' is inconsequential in the matter.

A true copy of the said Office Memorandum No. 40-13/2013-Pen(T) dated 20.7.2016 of respondent No.1-

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Department of Telecommunication is annexed hereto as **ANNEXURE A-18**

4.17 That in the circumstances, vide letter dated 22.7.2016, the applicant No.1 herein- Association representing the interests of the applicant Nos.2 to 118 herein and other similarly placed retired employees of 'BSNL' **protested against the arbitrary decision of the 'DOT'** contained in the Office Memorandum dated 18.7.2016 denying them the benefit of the revised fitment at 78.2% w.e.f. 1.1.2007 stipulated in the Office Memorandum dated 2.4.2009 of the 'DPE'- but to no avail.

A true photocopy of the said letter/representation dated 22.7.2016 by petitioner No.1- Association to the Secretary, Department of Telecommunications is annexed hereto as **ANNEXURE A-19**.

4.18 (a) That, in the circumstances, and ,particularly so, as the applicants are in their old age scattered in different parts of the country and as the matter concerns the denial of their rightful pension, the applicant/pensioners preferred writ Petition (C) No.32 of 2018 in Hon'ble Supreme court under Article 32 of the Constitution of India.

(b) That, upon hearing, the Hon'ble Supreme Court was pleased to **pass the following order on 5.2.2018 at the admilssion stage:**

"We are not inclined to entertain the writ petition under Article 32 of the Constitution of India.

Learned counsel for the petitioner seeks leave to withdraw the writ petition and approach the appropriate High Court

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under Article 226 of the Constitution of India.

Leave and liberty granted.

The writ petition is dismissed as withdrawn".

A true copy of the said order dated **5.2.2018 of the Hon'ble Supreme Court** In Writ Petition (C) No.32 of 2018 is annexed hereto as **ANNEXURE A-20**

4.19 (a) That thereafter on 15.5.2018 the applicant No 1- Association and individual pensioners preferred Civil Writ Petition (No.5565 of 2018) before the Hon'ble High Court of Delhi.

(b) That upon hearing the Hon'ble High Court was pleased to pass the following order on 23.5.2018.

"1. In the first instance, petitioner-Association had directly approached the Supreme Court of India and SLP was withdrawn by petitioners' counsel with liberty to approach this Court.

2. Learned counsel for respondents at the outset raises a question of jurisdiction by submitting that the relief sought in this petition is against respondent-Bharat Sanchar Nigam Limited, which is notified in Section 14 of the Administrative Tribunals Act, 1985. It is also pointed out that another Association i.e. All India Bharat Sanchar Nigam Limited Retired Executives' Association and Others has already filed an original application before the Central Administrative Tribunal, New Delhi in which challenge has been laid to the Office Memorandum of 18th July, 2016.

3. Learned counsel for petitioners submits that the challenge herein is also to another Office Memorandum of 10th June, 2013 and since the petitioner nos. 2 to 39 are Senior Citizens who seek speedy relief and so this petition has been filed before this Court.

4. Since the jurisdiction to entertain this petition is with the Central Administrative Tribunal (CAT), therefore, this petition and the application are disposed of while relegating petitioners to approach the Central Administrative Tribunal (CAT), New

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Delhi.

5. With the aforesaid liberty, this petition and the application are accordingly disposed of".

A true copy of the said order dated 23.5.2018 of the Hon'ble High Court in Civil Writ Petition No.5565 of 2018 is annexed hereto as **ANNEXURE A-21**

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS:

That being aggrieved by the wholly illegal, irrational, and arbitrary Office Memorandum dated 18.7.2016 and the order dated 10.6.2013 Issued by the respondent- 'DOT' by fixing an artificial cut off date (10.6.2013- the date of issue of the said 'Order' dated 10.6.2013 by the 'DOT') to deny them the actual benefit of revision in pay/pension based on the enhanced fitment formula w.e.f. 1.1.2007 as stipulated by the 'DPE'- nodal department vide Office Memorandum dated 2.4.2009, the applicants herein prefer the present Original Application on the following amongst other.

- 5.1 IMPUGNED OFFICE MEMORANDUM DATED 18.7.2016 READ WITH THE IMPUGNED ORDER DATED 10.6.2013- OF THE 'DOT'- ARBITRARILY DIVIDES HOMOGENEOUS CLASS OF PENSIONERS/APPLICANTS HEREIN IN THE MATTER OF GRANTING THE ADDITIONAL BENEFIT OF ENHANCED FITMENT @ 78.2% IN COMPUTATION OF PENSION IN AS MUCH AS THOSE WHO RETIRED ON OR AFTER 10.6.2013 ARE ALLOWED FITMENT @ 78.2%, THAT IS, 9.4% MORE THAN THOSE WHO RETIRED PRIOR TO 10.6.2013, WHO GET FITMENT @ 68.8% AND HENCE WHOLLY DISCRIMINATORY AND VIOLATIVE OF THE FUNDAMENTAL RIGHTS OF THE SAID PENSIONERS UNDER ARTICLE 14 OF THE CONSTITUTION OF INDIA. CONSEQUENTLY THE IMPUGNED OFFICE MEMORANDUM AND ORDER OF THE 'DOT' DESERVES TO BE READ DOWN REVERSING THE OBJECTIONABLE PORTION- THE FORTUITOUS CIRCUMSTANCE (DATE OF ISSUE OF THE SAID 'DOT' ORDER ON 10.6.2013) FOR COMPUTATION OF PENSION AND PENSIONARY BENEFITS BASED ON THE

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SAID ENHANCED FITMENT AND RETAINING THE
CONSTITUTIONAL PORTION:

- (I) That as held by the Constitution Bench of the Hon'ble Supreme Court in D.S. Nakara versus Union of India ((1983) 1 SCC 305), the criterion of date of enforcement of the revised scheme entitling benefits of the revision of pension to those retiring after a specified date while depriving the benefits to those retiring prior to that date was violative of Article 14 of the Constitution of India. The impugned Office Memorandum dated 18.7.2016 read with the Order dated 10.6.2013- of the 'DOT'- restricting, on actual basis, the benefit of the revised fitment benefit (at 78.2% IDA) for computation of pay/pension in terms of the 'DPEs' Office Memorandum dated 2.4.2009 to those who retired on or after 10.6.2013 is thus clearly illegal and violative of fundamental rights of the petitioners under Article 14 of the Constitution of India.
- (II) That vide the impugned Office Memorandum dated 18.7.2016 read with the said 'Order' dated 10.6.2013 of the 'DOT', the fitment formula inter alia the benefit of merger of 50% DA effectively amounting to 78.2% as on 1.1.2007 for the purpose of fitment revised vide Office Memorandum dated 2.4.2009 of the 'DPE' in respect of the Board level and below Board level executives and Non-Unionized Supervisors and Non- executives of 'BSNL', was made applicable on actual basis w.e.f. 10.6.2013- the date of issue of the said 'Order'. Thus, pensioners who retired prior to 10.6.2013 are denied the revised existing benefit- fitment at 78.2% w.e.f. 1.1.2007 in computation of pension. This, as held by the Hon'ble Supreme Court in a series of judgements (K.J.S. Buttar versus Union of India and another (2011) 11 SCC 429 at 433-434), V. Kasturi versus SBI (1998) 8 SCC 30 at page 51 para 22) is both arbitrary and

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unprincipled.

- (III) That as held by the Hon'ble Supreme Court (D.S. Nakara versus Union of India (supra)) and followed in a series of judgements including in State of Punjab versus Justice S.S. Dewan ((1997) 4 SCC 569) "If the State considered it necessary to liberalize the pension scheme" (as vide the impugned Office Memorandum dated 18.7.2016 and Order dated 10.6.2013 issued by the 'DOT' pursuant to the Office Memorandum dated 2.4.2009 of the 'DPE', the nodal department enhancing fitment from the then existing 68.8% to 78.2% for computation of pay/pension) "we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date (10.6.2013) simultaneously denying the same to those who retired prior to that date".
- (IV) That, in the circumstances, as held by the Hon'ble Supreme Court in K.J.S. Bhuttar versus Union of India (supra), the applicants herein who constitute one homogeneous class of pensioners are entitled to the benefit of the revised fitment formula on actual basis w.e.f. 1.1.2007 for computation of their pension as stipulated vide Office Memorandum dated 2.4.2009 of the 'DPE'- the nodal department. The object of the 'Pension Rules' was not to create a class within a class, but to ensure that the benefits of pension were made available to all persons of the same class equally.
- (V) That as held by the Hon'ble Supreme Court in V. Kasturi versus SBI (1998) 8 SCC 30) at pg 51 para 22)
"If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as per the

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new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case would cover this category of cases".

The Impugned Office Memorandum dated 18.7.2016 read with the 'Order' dated 10.6.2013 by the 'DOT' issued (pursuant to the Office Memorandum dated 2.4.2009 of the 'DPE') being in the nature of revision of an existing benefit- enhancement in fitment formula for computation of pay/pension from 68.8% to 78.2%- the applicants/pensioners as a class are entitled to the enhanced fitment formula on actual basis w.e.f. 1.1.2007- the date it came into effect vide Office Memorandum dated 2.4.2009 of the 'DPE'.

(VI) That as modification/enhancement of the fitment formula from 68.8% to 78.2% for the purpose of fixing the revised pay/pension clearly constitutes liberalisation of an existing scheme wholly distinct from introduction of new benefit, all pensioners- the petitioners herein and other similarly placed retired employees of the 'BSNL'- are to be treated equally. Its applicability on actual basis cannot be restricted to only those who retire on or after 10.6.2013- the date when 'DOT' chose to issue the said 'Order' on the issue. Any such restriction would amount to vicious discrimination violative of

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Article 14 of the Constitution of India. Consequently, the impugned 'Order' dated 10.6.2013 and the impugned Office Memorandum dated 18.7.2016 which restrict the actual benefit of the revised fitment formula only to those who retired after the issue of the impugned Office Memorandum dated 10.6.2013- deserves to be read down reversing the arbitrary fortuitous circumstance to ensure that the benefit of the revised fitment @ 78.2% is uniformly applicable to all the 'BSNL' pensioners irrespective of their date of retirement.

5.2 APPLICANT- PENSIONERS- CONSTITUTE
HOMOGENEOUS CLASS WHO IN TERMS OF RULE 37A
OF THE SAID 'PENSION RULES' ARE ENTITLED TO
PAYMENT OF PENSION ON ABSORPTION IN THE 'BSNL'
UPON CONVERSION OF THE DEPARTMENTS OF
TELECOM SERVICES AND TELECOM OPERATIONS INTO
THE SAID PUBLIC SECTOR UNDERTAKING. IMPUGNED
OFFICE MEMORANDUM DATED 18.7.2016 READ WITH
THE 'ORDER' DATED 10.6.2013 ARBITRARILY DIVIDES
THE SAID HOMOGENEOUS CLASS GOVERNED BY THE
STATUTORY RULE INTO THOSE WHO RETIRED PRIOR
TO 10.6.2013 (THE DATE OF ISSUE OF THE SAID
PRESIDENTIAL DIRECTIVE) AND THOSE WHO RETIRED
ON OR AFTER 10.6.2013- IN TOTAL VIOLATION OF
EQUAL TREATMENT GUARANTEED TO THE SAID
HOMOGENEOUS CLASS UNDER ARTICLE 14 OF THE
CONSTITUTION OF INDIA AND HENCE
UNSUSTAINABLE:

- (I) That all the absorbed employees of the 'BSNL' are upon retirement entitled to pension under Rule 37A of the said 'Pension Rules' and form a class by themselves and no discrimination can be permitted within the said class. As held by the Hon'ble Supreme Court (D.S. Nakara versus Union of India (Supra) and followed in a series of judgements including in A.C. Sachdeva versus Maharshi Dayanand University (2015) 10 SCC 117) "if the State considered it necessary to liberalize the pension scheme (as vide Office Memorandum

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dated 26.11.2008 read with Office Memorandum dated 2.4.2009 of the nodal department- 'DPE', in the present case, whereby the fitment formula for the purpose of commutation of pay (and consequently pension) was revised "we find no rational principle behind it for granting these benefits only to those who retired subsequent to that date" (10.6.2013- when the 'DOT' issued Order pursuant to the said Office Memorandum dated 2.4.2009 of the nodal department- 'DPE'), "simultaneously denying the same to those who retired prior to that date" (10.6.2013).

- (II) That the impugned division which classified pensioners into classes of those who retired prior to 10.6.2013 and those who retired after 10.6.2013 is not based on any rational principle and if the rational principle is of dividing pensioners governed by the very same statutory 'Pension Rules' with a view to giving something more to persons otherwise equally placed, it would be discriminatory. To illustrate, two persons one retired just a day prior and another a day just succeeding the specified date (10.6.2013, in the present case). Both were in the same pay bracket, the average emoluments were the same and both had put in equal number of years of service. How does a fortuitous circumstance of retiring a day earlier or a day later permit totally unequal treatment in the matter of pension.
- (III) That as held by the Hon'ble Supreme Court in *K.J.S. Bhuttar versus Union of India and another (supra)*, the object sought to be achieved by the Pension Scheme (the said 'Pension Rules') read with the DPE's Office Memorandum dated 2.4.2009 in the present case) was not to create a class within a class. To hold otherwise would cause violence to the provisions of Article 14 of the Constitution.
- (IV) That the artificial division of the pensioners who retired pre- 10.6.2013 and post-

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10.6.2013 created by virtue of the impugned Office Memorandum dated 18.7.2016 with read with the said 'Order' dated 10.6.2013 of the 'DOT' stares into face and is unrelated to any principle, and whatever principle, if there be any, has absolutely no nexus to the object sought to achieved by liberalizing the fitment formula in the matter of computation of pay/pension. This arbitrary division runs counter to the whole gamut of the Pension Scheme (Rule 37A of the said 'Pension Rules'), which envisages that the absorbed employees of 'BSNL' as one homogeneous class.

(V) That by virtue of the impugned Office Memoranda dated 18.7.2016 read with the 'Order' dated 10.6.2013 of the 'DOT' which accord discriminatory and differential treatment to the equally placed homogeneous class of pensioners/applicants herein envisaged by Rule 37A of the said 'Pension Rules' and guaranteed under Article 14 of the Constitution of India- stands violated.

(VI) That the Impugned Office Memorandum dated 18.7.2016 read with the said 'Order' dated 10.6.2013 of the 'DOT' specifying a cut- off date (10.6.2013) for entitlement to the enhanced fitment formula (as stipulated vide Office Memorandum dated 2.4.2009 of the 'DPE' allowing the benefit of merger of 50% DA/DR with basic pay w.e.f. 1.1.2007 effectively amounting to 78.2%) for the purpose of fitment and pay fixation in the revised payscales) is clearly violative of the fundamental rights of the petitioners under Article 14 of the Constitution of India. Having grouped all the similarly circumstanced employees, fixing the cut-off date and giving benefit to those who retire thereafter is obviously arbitrary. (M.C. Dhingra versus Union of India and others ((1996) 7 SCC 564).

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(VII) That arbitrariness and discrimination within the homogeneous class of pensioners- the applicants herein- is writ large on the face of the impugned Office Memorandum dated 18.7.2016 in as much as while the retired 'BSNL' employees who were in service on 10.6.2013 have been allowed the benefit of merger of 50% DA effectively amounting to 78.2% IDA, for fixing their revised pension those who were in service as on 1.1.2007 but retired before 10.6.2013 have been denied the said benefit by arbitrarily allowing the revised fitment formula w.e.f. 10.6.2013- the date of issue of the said 'Order' by the 'DOT'.

5.3 IMPUGNED OFFICE MEMORANDUM DATED 18.7.2016 OF THE 'DOT' IS EXFACIE ILLEGAL BEING WHOLLY ARBITRARY, UNREASONABLE AND DEVOID OF A SINGLE ACCEPTABLE OR PERSUASIVE REASON FOR THE DIVISION IN AS MUCH AS THE HOMOGENEOUS CLASS OF BSNL IDA PENSIONERS/FAMILY PENSIONERS WHO RETIRED BETWEEN 1.1.2007 AND 9.6.2013 AND THOSE WHO RETIRED ON AND AFTER 10.6.2013 STAND DIVIDED INTO TWO CLASSES WITHOUT ANY JUSTIFICATION:

(I) That the impugned arbitrary Office Memorandum dated 18.7.2016 is clearly unsustainable as the homogeneous class of BSNL IDA pensioners/family pensioners who retired between 1.1.2007 and 9.6.2013 and those who retired on and after 10.6.2013 stand divided into two classes without any justification in as much as in case of the former pay has been fixed only notionally with effect from 1.1.2007 (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 the

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notional pay) with actual benefit w.e.f. 10.6.2013, while those who retired on or after 10.6.2013 are allowed actual benefit of increase in pay/pension alongwith the increased value of the other pensionary benefits- Death cum retirement Gratuity, commutation value of pension and leave encashment with effect from the date of their retirement.

- (II) That the impugned Office Memorandum dated 18.7.2016 has arbitrarily divided the homogeneous class of 'BSNL' pensioners covered by sub- rules 21 to 23 of Rule 37-A of CCS (Pension) Rules, 1972 into those who retired between 1.1.2007 to 9.6.2013 who do not get increase in the amount of DCRG, leave encashment and commutation of pension as they are denied the actual benefit of increase in pay/pension during the period 1.1.2007 to 9.6.2013 as they are unjustly denied the benefit of 78.2% IDA for the purpose of fitment, while those who retired on or after 10.6.2013 are allowed the increased value of the said retirement benefits.

5.4 ARBITRARY RESTRICTION VIDE THE IMPUGNED OFFICE MEMORANDUM DATED 18.7.2016, AND THE 'ORDER' DATED 10.6.2013 REGARDING THE EFFECTIVE DATE OF ENTITLEMENT OF THE BENEFIT OF THE LIBERALIZED FITMENT FORMULA @ 78.2% FOR COMPUTATION OF PAY/PENSION (AS PER THE DPE'S OFFICE MEMORANDUM DATED 2.4.2009) AS 10.6.2013 (DATE OF ISSUE OF THE ORDER BY 'DOT') INSTEAD OF 1.1.2007 AS STIPULATED IN THE SAID OFFICE MEMORANDUM DATED 2.4.2009 OF THE 'DPE' AND THE WHOLLY IRRATIONAL DIVISION OF THE HOMOGENEOUS CLASS OF PENSIONERS IN THE SAID

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PUBLIC SECTOR UNDERTAKING TO THE THREE CATEGORIES OF 'BSNL' PENSIONERS (I) APPLICANTS/PENSIONERS WHO RETIRED PRIOR TO 1.1.2007; (II) APPLICANTS- PENSIONERS WHO RETIRED BEFORE 10.6.2013, BUT WERE IN SERVICE ON 1.1.2007; (III) APPLICANTS- PENSIONERS WHO RETIRED AFTER 10.6.2013 HAS RESULTED IN UNWARRANTED FINANCIAL LOSS TO THE APPLICANTS IN THEIR OLD AGE IN BREACH OF THEIR FUNDAMENTAL RIGHTS UNDER ARTICLE 14 AND 21 OF THE CONSTITUTION OF INDIA:

- (I) That consequent to the impugned Office Memorandum dated 18.7.2016 read with the Order dated 10.6.2013 of the 'DOT', applicant Nos.2 to 39/pensioners who have retired prior to 1.1.2007 are put to unjustified financial loss in their old age upon denial of their legitimate dues- pensionary benefits from 1.1.2007 (effective date for entitlement of the enhanced fitment @ 78.2% for computation of pension in terms of the Office Memorandum dated 2.4.2009 of the 'DPE') to 9.6.2013 (as stipulated vide the impugned Office Memorandum read with the 'Presidential Directive' of the 'DOT'). As held by the Hon'ble Supreme Court in a catena of judgements including in T.S. Thiruvengadam versus Secretary to Government of India (1993) 2 SCC 174), the applicants already forming part of the same class of pensioners, additional benefit (enhanced fitment @ 78.2% for computation of pension) could not be denied. Such denial would be arbitrary and fall foul on the touchstone of Article 14 and 21 of the Constitution of India.

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- (II) That the illegal and irrational fixation of cut-off date (10.6.2013) in the impugned Office Memorandum read with the 'Order' of the 'DOT' has resulted in unjustified financial loss to applicants Nos.40 to 93 herein who retired before 10.6.2013 but were in service on 1.1.2007 in as much as they are denied (i) computation of pay/pension on the basis of the modified fitment benefit by merger of 78.2% IDA w.e.f. 1.1.2007 though in service on that date; (ii) pay arrears from 1.1.2007 till the date of retirement which falls before 10.6.2013; (iii) additional Increased DCRG, commutation of Pension, leave encashment on the basis of the modified fitment benefit by merger of 78.2% IDA w.e.f. 1.1.2007; (iv) arrears of pension from the date of retirement upto 9.6.2013- which they are legitimately entitled in terms of the Office Memorandum dated 2.4.2009 of the 'DPE'.
- (III) That the fixation of the arbitrary cut off (10.6.2013) for entitlement of the revised fitment @ 78.2% for the purpose of computation of pay/pension on actual basis has resulted in unjust denial to the pensioners/applicant Nos.94 to 118 herein who retired after 10.6.2013, arrears of pay with revised fitment of merger of 78.2% IDA from 1.1.2007 to 9.6.2013 when in service.

5.5 PARA 3 OF THE OFFICE MEMORANDUM DATED 2.4.2009 OF THE 'DPE' CLEARLY STIPULATES THAT THE BENEFITS UNDER THE SAID OFFICE MEMORANDUM READ WITH ITS EARLIER DECISION

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INCLUDING OFFICE MEMORANDUM DATED 26.11.2008 HAS TO BE VIEWED 'AS A TOTAL PACKAGE'. VIDE THE SAID OFFICE MEMORANDUM DATED 2.4.2009 THE FITMENT BENEFIT @ 30% ON BASIC PAY PLUS DA @ 68.8% AS ON 1.1.2007 PROVIDED TO ALL EXECUTIVES VIDE THE EARLIER OM DATED 26.11.2008 WAS REVISED TO 78.2%, THAT IS, BY 9.4%. WHILE THE EARLIER FITMENT @ 68.8% AS ON 1.1.2007 HAS BEEN UNIFORMLY ALLOWED TO ALL THE BSNL PENSIONERS, THE REVISED FITMENT IS DENIED ON ACTUAL BASIS TO THOSE WHO RETIRED PRIOR TO 10.6.2013 WITHOUT ANY PLAUSIBLE REASON AND HENCE UNSUSTAINABLE:

- (I) That as stated in clear terms in Para 3 of the Office Memorandum dated 2.4.2009 of the 'DPE' the nodal department in the Central Government for all the public sector undertakings "Government has decided the benefit under this O.M. read with the earlier decision as conveyed vide O.M. dated **26.11.2008** and **9.2.2009** has to be viewed as total package. It has also been decided that the pay revision package as communicated by earlier OMs alongwith the above modifications would be applicable to all the CPSE- thus uniformly applicable to all without discrimination whatsoever. Yet, vide the impugned Office Memorandum dated 18.7.2016 read with the 'Order' dated 10.6.2013 of the 'DOT' the pensioners of 'BSNL' who retired pre and post- 10.6.2013 are differently treated in the matter of allowing the additional benefit of enhanced fitment @ 78.2% (revision by 9.4%) for computation of pension- without any justifiable rationale or basis.

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- (II) That the impugned Office Memorandum dated 18.7.2016 denying the actual benefit of the enhanced fitment @ 78.2% with effect from 1.1.2007 in terms of the Office Memorandum dated 2.4.2009 of the nodal Department- 'DPE' which was merely modification of the fitment formula contained in Office Memorandum dated 26.11.2008 of the nodal department- 'DPE' stipulating fitment benefit @ 68.8% (as on 1.1.2007) is wholly illogical and irrational in as much as the fitment benefit @ 68.8% has been Implemented on actual basis w.e.f. 1.1.2007 to all the B.S.N.L. pensioners irrespective of their date of retirement.
- (III) That the Office Memorandum dated 2.4.2009 of the nodal department- 'DPE' does not envisage any revision of wages but was issued in modification/revision of fitment formula and thus in effect a continuation of the Office Memorandum dated 26.11.2008 of the said nodal department allowing a uniform fitment benefit @ 30% of basic pay plus DA @ 68.8% as on 1.1.2007. The said Office Memorandum dated 2.4.2009 does not stipulate any change in the basic pay or the effective date. Yet, while the benefit of the Office Memorandum dated 26.11.2008 has been allowed to all those who were in service/retired- irrespective of the date of retirement, the revised fitment (difference of 9.4%) has been made notional with effect from 1.1.2007 to those who retired prior to

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10.6.2013, with actual benefit from 10.6.2013- without any rational basis.

- (IV) That the Office Memorandum dated 2.4.2009 of the 'DPE' is not an order of any revision of pay scales but only an order modifying its earlier order allowing fitment benefit with 78.2% DA as against its earlier Office Memorandum dated 26.11.2008 giving fitment benefit with 68.8% DA with no change in the date of its implementation (1.1.2007). Yet, while the earlier Office Memorandum (dated 26.11.2008) has been implemented uniformly, the benefit of the revised fitment at 78.2% (revision by 9.4%) has been without any justifiable reason, denied to the applicants/pensioners who retired prior to 10.6.2013.

5.6 NOTIONAL FIXATION OF THE ENHANCED FORMULA FOR THE PURPOSE OF FITMENT W.E.F. 1.1.2007 IS AIMED AT DENYING WITHOUT ANY JUSTIFIABLE REASON THE INCREASED VALUE OF DEATH CUM RETIREMENT GRATUITY, COMMUTATION VALUE OF PENSION, LEAVE ENCASHMENT AS WELL AS THE ANNUAL INCREMENT BASED ON REVISED FITMENT BENEFIT FROM 1.1.2007 TO THE DATE OF RETIREMENT TO THOSE 'BSNL' EMPLOYEES WHO RETIRED FROM SERVICE BETWEEN 1.1.2007 TO 9.6.2013, WHILE ALLOWING THE BENEFIT TO THOSE WHO RETIRED AFTER 10.6.2013- HENCE BLATANTLY DISCRIMINATORY:

- (I) That the impugned Office Memorandum dated 18.7.2016 stipulating the effective date for allowing the revised enhanced fitment- 1.1.2007- stipulated vide Office Memorandum dated 2.4.2009 of the 'DPE' as notional to

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those who retired between 1.1.2007 to 9.6.2013 with actual benefit w.e.f. 10.6.2013 is without any plausible reason aimed to deny the increased value of DCRG, Commutation Value of Pension and Leave Encashment for those who retired from 1.1.2007 to 9.6.2013 although those who retired on or after 10.6.2013 have been granted the same and hence clearly unsustainable.

- (II) That the impugned Office Memorandum dated 18.7.2016 allowing the benefit of the revised fitment formula on notional basis w.e.f. 1.1.2007 with actual benefit from 10.6.2013 is aimed at denying the pension arrears accruing as a result of the modified fitment formula vide Office Memorandum dated 2.4.2009 of the nodal department the 'DPE'.

5.7 IMPUGNED OFFICE MEMORANDUM DATED 18.7.2016 AND THE 'ORDER' DATED 10.6.2013 OF THE 'DOT' RESTRICTING THE ACTUAL BENEFIT OF REVISED FITMENT @ 78.2% ALLOWED BY THE 'DPE'- THE NODAL DEPARTMENT FOR ALL CENTRAL PUBLIC SECTOR ENTERPRISES (CPSEs) W.E.F. 1.1.2007 TO ONLY THOSE WHO RETIRED ON OR AFTER 10.6.2013 IS NOT ISSUED IN CONSULTATION WITH THE 'DPE' AND HENCE WITHOUT AUTHORITY:

- (I) That the 'DPE' being the nodal department for the Central Public Sector Enterprises (CPSEs), for the purpose of maintaining uniformity, the administrative ministries ('DOT' in case of 'BSNL') are required to consult the 'DPE' before issue of the Presidential Directives/orders conveying sanction of President (like the impugned order dated 10.6.2013) or Office Memorandum. The impugned Office memorandum dated 18.7.2016 and the Order dated 10.6.2013 issued by the 'DOT' without consulting the

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'DPE' and in apparent variance from the 'DPE's Office Memorandum dated 2.4.2009 allowing fitment @ 78.2% (enhancement by 9.4%) for computation of pay/pension, is apparently invalid on this count as well.

- (III) That, consequently the impugned Office Memorandum dated 18.7.2016 and the 'Order' dated 10.6.2013 of the 'DOT' deserves to be set naught to the extent of inconsistency with the DPE's Office Memorandum dated 2.4.2009 in order to ensure uniform treatment to all the pensioners of the 'BSNL' in as much as the additional benefit (revision by 9.4% in the fitment) available on actual basis to the pensioners who retired on or after 10.6.2013 cannot be denied to those who retired prior thereto.

5.8 LIABILITY TO PAY PENSIONARY BENEFITS INCLUDING FAMILY PENSION TO 'BSNL' EMPLOYEES (EXCEPTING THOSE RECRUITED AFTER 1.10.2000) AS PER SUB-RULE 22 OF RULE 37-A OF 'PENSION RULES' LIES WITH GOVERNMENT OF INDIA (RULE 37-A (21) READ WITH OFFICE MEMORANDUM NO.40-13/2013-Pen(T) DATED 20.7.2016 OF 'DOT'). THE FISCAL HEALTH OF THE 'BSNL' IS THEREFORE INCONSEQUENTIAL IN THE MATTER OF ALLOWING THE ENHANCED FITMENT OF 78.2% IN THE TERMS OF THE NODAL DEPARTMENT DPE's OFFICE MEMORANDUM DATED 2.4.2009:

- (I) That as the liability/responsibility in respect of payment of pension to the applicants lies squarely with the Government of India in terms of Rule 37-A (21) of the said 'Pension Rules' read with the Office Memorandum dated 20.7.2016 of the 'DOT', the fiscal health of the 'BSNL' is inconsequential in the matter of allowing the revised pensionary benefits to the petitioners- pensioners in terms of the Office Memorandum dated 2.4.2009 of the 'DPE' enhancing the fitment by 9.4% from 68.8% for computation of pay/pension. The said Rule, 37-A (21) of the 'Pension Rules' and Para 2 (b) of

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the said Office Memorandum dated 20.7.2016 read as follows:-

Rule 37A (21) of the said 'Pension Rules':

"Nothing contained in sub-rules (12) to (20) shall apply in the case of conversion of the Department 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".

Para 2 (b) of the said Office memorandum dated 20.7.2016:

"Para 2: The instructions with regard to the financial liability on this account were issued vide DOTs letter No. 1-45/2003-B dated 15.06.2006. Subsequently, the matter of modifying the Pension liability of BSNL towards the payment of pensionary benefits including family pension to the retired employees has been considered by the Government, and the following has been decided:

- (a) X X X X
- (b) "The liability towards pensionary benefits including family pension to the BSNL employees (excepting those recruited after 01.10.2000), as per sub-Rule 22 of Rule 37-A of CCS (Pension) Rules, 1972, lies with the Government of India. The condition that the annual pension liability of the government shall not exceed 60% of the annual receipts to Government from the item specified in the O.M. dated 15.06.2006, is hereby rescinded".
- (c) X X X X.

(II) That the earlier Office Memorandum dated 26.11.2008 of the 'DPE' allowing fitment @ 68.8% for computation of pay/pension has already been implemented in respect of all the petitioner- petitioners w.e.f. 1.1.2007 on

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actual basis. The subsequent Office Memorandum dated 2.4.2009 of the 'DPE' which in terms of para 3 thereof form part of the total package contained in the earlier Office Memorandums including Office Memorandum dated 26.11.2008- merely allows a further enhancement by 9.4% to 78.2% in the fitment formula for computation of pay/pension. Having allowed the fitment @ 68.8% on actual basis w.e.f. 1.1.2007 there is no acceptable or persuasive reason to deny the enhancement by 9.4% and that too by creating a artificial, arbitrary and unprincipled division of those who retired prior to and after 20.6.2013.

- (III) That as pension and pensionary benefits are to be paid by the Government of India from the Consolidated Fund of India, the financial position of the 'BSNL' cannot in any event come in the way of payment of pension and pensionary benefits.
- (IV) That the impugned order of the 'DOT' is exfacie contrary to the judgement of the Hon'ble Supreme Court in Haryana State Minor Irrigation Tube Wells Corporation versus G.S. Uppal (2008) 7 SCC 375) to the effect that even if the financial health of the Corporation is bad, denial of the revised payscales (in the present case, allowing enhanced fitment benefit by 9.4% for computation of revised pay/pension) cannot be denied as long as the posts exists, being violative of the fundamental rights of the employees under Article 14 and 16 of the Constitution of India.
- (V) That, in any event, as repeatedly ruled by the Hon'ble Courts, pension is right and its payment does not depend upon the discretion of the Government. The respondent- 'DOT' cannot take a plea of financial burden to deny the legitimate dues to the applicants in terms of the Office

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Memorandum dated 2.4.2009 of the 'DPE'-
the nodal department for all the CPSEs.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicants declare that they have no other statutory remedy available to them except to approach this Hon'ble Tribunal by way of filing the present application.

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

I(a) That applicants herein all senior citizens- many of them being septuagenarians- and scattered in different parts of the country in their old age, had initially ,on 8.12.2017 ,preferred Writ Petition (C) No.32 of 2018 in the Hon'ble Supreme Court under Article 32 of the Constitution of India.

(b) That upon hearing, the Hon'ble Supreme Court was pleased to pass the following order on 5.2.2018 (Annexure A-20 to the present OA) at the admission stage:

"We are not inclined to entertain the writ petition under Article 32 of the Constitution of India.

Learned counsel for the petitioner seeks leave to withdraw the writ petition and approach the appropriate High Court under Article 226 of the Constitution of India.

Leave and liberty granted.

The writ petition is dismissed as withdrawn".

II(a) That subsequently and pursuant to the leave and liberty granted by the Hon'ble Supreme Court, some of the applicants herein preferred Civil Writ Petition No.5565 of 2018 in the Hon'ble High Court of Delhi.

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(b) That upon hearing the Hon'ble High Court was vide order dated 23.5.2018 (Annexure A-21 to the present OA) while noting the submission on behalf of the applicants that since the petitioners are senior citizens who are seeking speedy relief pleased to pass the following order:-

"1. In the first instance, petitioner-Association had directly approached the Supreme Court of India and SLP was withdrawn by petitioners' counsel with liberty to approach this Court.

2. Learned counsel for respondents at the outset raises a question of jurisdiction by submitting that the relief sought in this petition is against respondent-Bharat Sanchar Nigam Limited, which is notified in Section 14 of the Administrative Tribunals Act, 1985. It is also pointed out that another Association i.e. All India Bharat Sanchar Nigam Limited Retired Executives' Association and Others has already filed an original application before the Central Administrative Tribunal, New Delhi in which challenge has been laid to the Office Memorandum of 18th July, 2016.

3. Learned counsel for petitioners submits that the challenge herein is also to another Office Memorandum of 10th June, 2013 and since the petitioner nos. 2 to 39 are Senior Citizens who seek speedy relief and so this petition has been filed before this Court.

4. Since the jurisdiction to entertain this petition is with the Central Administrative Tribunal (CAT), therefore, this petition and the application are disposed of while relegating petitioners to approach the Central Administrative Tribunal (CAT), New Delhi.

5. With the aforesaid liberty, this petition and the application are accordingly disposed of".

8. RELIEFS SOUGHT:

In view of the facts mentioned in para 6 above the applicants pray for the following relief:

- (i) to set aside Office Memorandum No.40-13/2013-Pension(T) dated 18.7.2016 of the respondent No.1- Department of Telecommunication, Government of

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- India to the extent the said Office Memorandum is inconsistent with the Office Memorandum No.2 (70)/08-DPE(WC)-GL-VII/09 dated 2.4.2009 of the respondent No.2- Department of Public Enterprises in the Government of India and denies the benefit of merger of 78.2% IDA in revised payscales for the purpose of fitment on actual basis w.e.f. 1.1.2007 and consequential revised pension to all the pensioners irrespective of their date of retirement;
- (ii) to set aside the communication/order No.61-01/2012-SU dated 10.6.2013 of the respondent No.1- Department of Telecommunication, Government of India, to the extent it restricts the entitlement of enhanced fitment benefit @ 78.2% on actual basis w.e.f. 1.1.2007 in terms of the said Office Memorandum No.2(70)/08-DPE (WC)- GL-VII dated 2.4.2009 of the respondent No.2- Department of Public Enterprises in the Government of India and arbitrarily divides the homogeneous class of pensioners into pre and post- 10.6.2013 retirees;
- (iii) to direct the respondent No.1- Department ,of Telecommunications- to extend the benefit of the modified/enhanced fitment @ 78.2% on actual basis w.e.f. 1.1.2007- in terms of the abovementioned Office memorandum dated 2.4.2009 of respondent No.2- Department of Public Enterprises, Government of India for computation of revised pay/pension- uniformly to all the pensioners of the 'BSNL' irrespective of their date of retirement;
- (iv) to direct the respondent- Department of Telecommunications- to extend the modified/enhanced fitment @ 78.2% on actual basis w.e.f. 1.1.2007 for computation of pension to all the

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pensioners/family pensioners like the applicant Nos.2 to 39 herein who retired prior to 1.1.2007, and consequent arrears of pension/family pension;

- (v) to direct the respondent No.1- Department of Telecommunications- to extend the benefit of the modified/enhanced fitment @ 78.2% on actual basis w.e.f. 1.1.2007 to all the pensioners/family pensioners like the applicant No.40 to 93 who were in service on 1.1.2007 but retired before 10.6.2013 in the matter of consequent re-fixation of pay with effect from 1.1.2007 to the respective dates of their retirement with consequential increase in pensionary benefits of 'DCRG', commutation of pension and leave encashment and arrears of pay pension;
- (vi) to direct the respondent No.1- Department of Telecommunications- to allow the revised fitment @ 78.2% on actual basis w.e.f. 1.1.2007 for computation of pay to all the pensioners like of applicant Nos.94 to 118 herein who retired on and after 10.6.2013 and consequent arrears of pay w.e.f. from 1.1.2007 till 9.6.2013.
- (vii) to pass such other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and render justice.

9. INTERIM ORDER, IF ANY, PRAYED FOR:

The applicants are not praying for any interim relief.

10. Not Applicable.

11. PARTICULARS OF BANK DRAFT/POSTAL ORDER FILED IN RESPECT OF THE APPLICATION FEE:

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12 LIST OF ENCLOSURES:

The list of enclosures are detailed in the index of the paper book.

Basu

Applicant

Through

**GENERAL SECRETARY
A.I.B.S.N.L.R.E.A.
New Delhi**

(C.K. SUCHARITA)
Advocate for the applicants

Filed on: 18/7-2018
At New Delhi

VERIFICATION:

I Santimay Basu, S/o Phani Bhusan Basu, aged about 72 years worked as ADG (MST-I) in the office of BSNL Corporate Office, New Delhi, resident of Flat No.111, New Ashiana Apartments, Plot-10, Sector-6, Dwarka, New Delhi-110075, and General Secretary of the applicant No.1- Association, do hereby verify that the contents of paras 1, 4, 5 to 7 are true to my personal knowledge and paras 2, 3, 6, 8 to 12 are believed to be true on legal advice and that I have not suppressed any material fact.

Basu

Applicant

**GENERAL SECRETARY
A.I.B.S.N.L.R.E.A.
New Delhi**

Date.....18/7-2018
Place.....NEW DELHI

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12. LIST OF ENCLOSURES:

The list of enclosures are detailed in the index of the paper book.

B. (S)
Applicant

Through

(C.K. SUCHARITA)
Advocate for the applicants

Filed on: 18-7-2018
At New Delhi

VERIFICATION:

I B. C. DAS....., S/o A. K. DAS....., aged about 77 yrs., worked as A. D. G., T. E. C...... in the office of T. E. C., New Delhi, resident of B-305, Annsandhan Apts., Plot-22, Sector-6, Dwarka, New Delhi-110075 do hereby verify that the contents of paras 1, 4, 5..... to 7..... are true to my personal knowledge and paras 2, 3, 6 &..... to 12..... are believed to be true on legal advice and that I have not suppressed any material fact.

B. (S)
Applicant

Date..... 18-7-2018
Place..... New Delhi