

HAPPENINGS ON PENSION ISSUE FOR BSNL PENSIONERS — KNOWN AND UNKNOWN FACTS.

— Amit Kumar Gupta. AGS/ AIRBSNLEWA

Ever since the problems for implementation of 78.2% IDA merger have been cropped up, and we came to know that so called 60:40 pension sharing order of 2006 is not only an administrative order but there is a cabinet knock behind it we are trying to gather the information through RTI. Cabinet Memos being secret document there was no other means to get access to them. Initially we collected the Cabinet memo of 29-12-2010, wherein approval for 60:40 was taken along with approval for 68.8% IDA merger for pre 2007 pensioners.

But then from the queries of DOE we came to know that in the year 2005 itself there is an exclusive Cabinet memo on this subject. Then we made series of RTI

applications to DOT Establishment and DOT Finance and collected all related documents, about 95 pages, most of which are of 'secret' category. After studying them the entire backdrop and happenings of the pension issue of BSNL pensioners including its present status became clear to us. In this write up we are trying to present all the happenings since 2000 i.e. from formation of BSNL chronologically with extracts of relevant documents obtained through RTI.

All of you are aware that at the time of formation of BSNL, it was assured to us that our pension will be secured and Government will shoulder its responsibility. Let us now see what is written in the Cabinet Memo dated 25-09-2000.

4.4 The main issues raised by the representatives of the Employees Federations representing Group 'C' and 'D' related to pension and retirement benefits, job security and financial viability of the corporate entity. A large number of other grievances/demands had also been raised, many of which were internal to the Department. Most of these have been resolve.

In relation to pension and retirement benefit, a framework has been approved on the basis of decisions taken by the GOM which is at Annexure-I. The salient features are given below :-

Pension and Retirement benefits :

- (i) All employees will be entitled to Government's scheme of pension/family pension even after their absorption.
- (ii) Technical resignation will not be required.
- (iii) Payment of pension would be made by Government.
- (iv) Arrangements would be worked out for obtaining pension contribution from the PSU to be deposited with the Government.
- (v) Facility to carry over Earned Leave and Half Pay Leave would be provided.
- (vi) The pension framework has been made part of the CCS Pension Rules by amending Rule-37 using powers under Article 309 of the Constitution of India.

7. DoT's role management of terminal benefit :

An issue which needs to be specifically addressed is with regard to payment of terminal benefit which, as per the Government decision, will continue to be Government's liability. This liability is likely to be approximately Rs.12,000 crores (at present value). A mechanism is needed both for its funding and disbursement. As per preliminary estimates, it appears that the receipts in the form of pensionary contribution etc. from BSNL may be adequate in the initial years to enable the Government to meet the liability fully. Later on, there may not be enough accruals to match the entire liability. However, if receipt of licence fee from VSNL and MTNL, and later from BSNL (which is presently a part of the accrual of the DOT), is taken into account, the funds available over the next 10 years and thereafter would be adequate to meet the entire liability on account of terminal benefits. Therefore, DoT will have to set up a mechanism to create a corpus for this purpose as part of its budget, and also keep a small skeleton unit in each operating field unit to disburse these payments. In the unlikely event of the accruals mentioned in this para being found insufficient at any stage in future, the general exchequer will need to make good the shortfall in whatever manner considered feasible.

(Memo no 2-2/99-Restg.(Vol-1) dated 25.09.2000)

In this memo para 4.4 it is narrated that pension will be paid by the government and PSU (BSNL) will pay the pension contribution. Also in para 7 again it is narrated that payment of terminal benefits (which include pensionary benefits) is the Government's liability. But in this paragraph also a link between payment of pension and accrual from BSNL in terms of pension contribution etc has been hinted and it

is told that if in future the fund becomes insufficient the general exchequer will need to make good the shortfall. Here we have to remember that the Cabinet Memos are secret documents and one can know about the contents to the extent it is reproduced in the related executive orders. Now let us see what is mentioned in one of the related executive order:-

DoT No.36-15/2000-Pen(T)

dated 09-11-2000

Subject : Entitlement for Pension, other Retirement Benefits, Job Security and Carry Over of Leave in respect of Employees to be Absorbed in BSNL.

It has been decided by the Government that the employees of DOT who will be absorbed in Bharat Sanchar Nigam Limited (BSNL) **will be entitled to the Government's Scheme of Pension/family Pension even after their absorption in BSNL. Payment of pension will be made by the Government and for this, arrangements, are being worked out for obtaining pension contribution from BSNL to be deposited with the Government.** It has also been decided that dismissal or removal from service of an employee after his absorption in the PSU for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal, removal or retrenchment the decisions of BSNL shall be subject to review by the Administrative Ministry. The Government has already issued Notification dated 30.09.2000 to this effect wherein the pension framework has been made part of the CCS (Pension) Rules, amending Rule 37 using powers under Article 309 of the Constitution of India.

It has further been decided that the Earned Leave and the Half Pay Leave at the credit of the employees on the date of absorption shall stand transferred to the PSU.

This may be widely circulated in your circle/unit so that the employees are duly informed of the decision taken by the Government.

In this order nothing is mentioned about the contents of para 7 of the Cabinet Memo. Here only the conditions of para 4.4 is reiterated. It is mentioned that the Government will pay the pension and the PSU(BSNL) will pay the pension contribution. We at the time of absorption understood, that Government will pay the pension means it will be paid by the Government from its exchequer. None realised the jugglery of words and difference between "Government will pay"

and "Government will pay from its exchequer". Otherwise if the contents of para 7 was Known that time that there is a role of BSNL in pension payment apart from pension contribution, nobody would have opted for absorption in BSNL. Afterwards on 31-07-2002, DOT issued terms of settlement between DOT and BSNL and there again it is only mentioned that BSNL has to pay pension contribution as per FR 116 and FR 117. The extract is :

2. The clarifications are as follows :

(i) PENSION CONTRIBUTION : Pension contribution is payable by BSNL (both for the deemed deputationists of all categories as well as the absorbed employees of the Group 'C' and 'D' as per rates of contribution prescribed in the Fundamental Rules 116 and 117 under Appendix 2 of Swamy's Compilation. These will be calculated at the maximum of the scale of the post held by the official of rates varying with the length of service given in the Annexure of appendix 2 (FRs 116 & 117). To avoid the Company having to pay penal interest on delayed pension contributions, as required by rules, the BSNL Circles will pay pension contribution, to the DOT Cell within 15 days of the end of each month in which the employees pay is drawn. Pension contribution so recovered will be credited to the Major Head 0071 01 101 subscriptions and Contributions, by the DOT Cells.

(no 2-1/200.TA-1/17 dt.31.07.2002)

Thereafter as per the available documents the problem started in the year 2004. Violating all assurances given at the time of absorption Department of Expenditure (Finance Ministry) started pressurising DOT that in accordance to

clause 22 of Rule 37A BSNL should shoulder full responsibility of pension payment. To understand the root cause of the problem one has to go through the following paragraphs of the draft cabinet memo prepared by DOT on 29-10-2004.

6. In accordance with sub rule 22 of Rule 37-A, the arrangements regarding pension liability had been under discussion with the Ministry of Finance. There is however a basic divergence of opinion between the two Ministries. The matter having been considered repeatedly at the ministerial level, and the two Ministries not having been able to arrive at a mutually agreeable position, the matter is being placed before the Cabinet for a decision.

7. The Ministry of Finance is of the view that the entire pension liability including that of the existing pensioners as well as that of the future pensioners must be borne by BSNL in full. They are of the view that while Government would pay the pension, the entire amount must be remitted by BSNL to Government every year. Their contention is that before corporatisation, revenues earned from commercial activities were accruing to DOT and did not form part of the general revenues of Government of India. Pension liability of the DOT employees were met out of such revenues and were not charged to the Consolidated Fund in India. The underlying principle, they feel, is that since the DoT was functioning as a commercial entity, expenditure on salaries, allowances, pension and other entitlements of the employees of the department were treated as a part of its working expenses. Consequent upon creation of BSNL, the commercial receipts of the erstwhile DoT are accruing to the company. Moreover, entire assets of DTS/DTO having been transferred to BSNL, the Ministry of Finance feels that it is logical that BSNL should bear the full pensionary liability for all the pensioners, both pre and post 1.10.2000.

8. The Ministry of Finance have further indicated as in the case of other PSUs, all liabilities including pension liability of all employees are to be borne by BSNL and like other PSUs, BSNL would pay dividend to the Government only when it earns a profit after meeting all its liabilities.

9. This Department is however unable to agree with the stand taken by the Ministry of Finance. Firstly, the receipts of the DOT/DTS/DTO prior to 1.10.2000 and BSNL (after 1.10.2000) cannot be taken to be similar. While it is true that the commercial receipts, in terms of collection from customers, would accrue to BSNL as much as it accrued to DOT/ DTS/DTO, there are several receipt that do not accrue to BSNL, such as the dividend from MTNL and Licence fee from MTNL and VSNL. These receipt, which now go to the Consolidated Fund of India, are of the order of about Rs.1100 crore annually as can be seen from the following statement.

(Rupees in crores)

	2000-01	2001-02	2002-03	2003-04
Divident from MTNL	106.31	159.47	159.47	159.47
Licence fee from MTNL	361.53	789.17	483.36	655.00
Licence fee from VSNL	510.15	638.85	331.35	313.00
Total	977.99	1587.49	974.18	1127.47

In addition, unlike the earlier DTS/DTO, BSNL being a corporate entity, pays taxes and levies which accrue to the General Revenue, as can be seen from the following statement.

(Rupees in crores)

Item	2000-01	2001-02	2002-03	2003-04
Corporate Tax	283.00	540.00	204.32	691.58
Excise Duty	18.00	35.00	31.00	35.00
Divident	0.00	0.00	250.00	281.25
Total	301.00	575.00	485.32	1007.83

Thus, BSNL, being a corporate entity, suffers an annual loss of revenue (as compared to DTO/DTS) of about Rs.1100 crore and an annual liability (again compared to DTO/DTS) of over Rs. 1000 crore. These amount now constitute additional receipts to the Consolidated Fund of India.

10. The Ministry of Finance contends that BSNL is simultaneously being granted several concessions. It is true that Government have granted certain concessions to BSNL, but these cater to specific items and do not cover the expenses related to pension. The concessions are intended to cover BSNL's rural and social obligations. It is to be pointed out that even here, the amounts as given to BSNL do not match the cost of obligations imposed on BSNL. While this Department is addressing this issue separately, the point at issue is that BSNL cannot bear the additional burden of pensionary liability for the employees of erstwhile DoT/DTS/DTO, as well as for current employees for the service rendered in the erstwhile DoT/DTS/DTO.

But DOT never agreed to the arguments and logic of the DOE. They were always of the opinion that the Government should shoulder full responsibility of pension, and BSNL should have

no liability in this respect. Narrating the dispute and their opinion, DOT placed the cabinet memo dated 29-10-2004 to the Cabinet for their opinion to settle the issue. The proposal of DOT was as below:-

12. Keeping the above in view, this Department recommends that the liability for pension payment be organized as follows :

- A) The pension liability in respect of the employees of DoT/DTS/DTO who retired prior to 1.10.2000 may be solely borne by the Government. BSNL will have no liability in respect of these employees.
- B) In respect of the employees who have worked / are working in BSNL on deemed deputation, BSNL will be required to discharge its pension liability by way of pension contribution in accordance with the FR 116 (*Annexure-IV*) for the period they so work / worked.
- C) For those employees who are absorbed in BSNL, BSNL will discharge its pension liability by paying the pension contribution again in accordance with FR116.
- D) This arrangement will be effective from 1.10.2000. The amount so far paid by BSNL as pension contribution will be set off against the payment due and balance, if any, will be

reimbursed to BSNL or recovered from BSNL in the year 2004-05, along with the payment due as per FR 116 suggested above, from BSNL for the current year.

E) Pension payment will be effective by the Government.

13. Since a new pension scheme has been introduced for Government servants w.e.f. 1.1.2004, the proposal in para 12 above would apply to Government servants appointed only on or before 31st December 2003 vide Notification No. SO 1483(E) dated 30.12.2003.

15. Approval of the Cabinet is sought for the proposals contained in para 12 and 13 above.

But the Cabinet did not agree to the proposal of the DOT instead it formed a Committee of Secretaries (COS) to settle the dispute. Cabinet asked DOT to place the cabinet memo before the Committee and thereafter to resubmit the Cabinet Memo along with the opinion of the Committee. Accordingly COS comprising Secretaries of DOT, DOE and also the Cabinet

Secretary met on 14-10-2004. From the minutes of the meeting it is seen that the secretaries of DOE and DOT placed the same views as expressed in the Cabinet Memo dated 29-10-2004. DOE was sticking to the same point that BSNL should shoulder 100% responsibility of Pension. Then the Cabinet Secretary opined the following:

6. Cabinet Secretary observed that income accruing to the Government from activities of BSNL and MTNL appeared to be sufficient to discharge the pensionary liabilities of employees who had retired before 1.10.2000 as well as of those employees who were transferred to BSNL if the company made contributions according to FR 116. Since the idea behind corporatisation of BSNL was not to draw benefits for the Government from the organization but to enable it to provide better services to the people, it would be reasonable for government to accept some liability if it did not lead to net out-go from government exchequer.

Kindly note the statement of the Cabinet Secretary carefully. In his opinion the Government can bear some responsibility without leading to net out-go from exchequer.

This means that Government can only spend something from the income accrued from BSNL not from exchequer. That in turn leads to the following decision of the COS :

8. After detailed deliberations, COS decided to recommend that :

(i) The annual pension liability of the Government shall not exceed 60% of the annual receipts to Government from the following items :-

(a) Dividend income from MTNL / BSNL.

(b) Licence Fee from MTNL / BSNL.

(c) Corporate Tax / Excise Duty (Service Tax) paid by BSNL.

(ii) Any amount exceeding (i) above shall be borne by BSNL.

(iii) Existing system of payment of pension would continue.

(iv) Pensionary contribution from BSNL would be made to Government as per FR-116.

Thus COS in turn accepted the original argument of DOE that BSNL has to shoulder 100% pension liability, only in a round about way. In

this arrangement 60% of the amount paid by BSNL in terms of License Fee etc will be utilised for pension payment and if this amount become

insufficient them BSNL will also pay the additional amount separately. Pension contribution will be over and above this arrangement. Therefore for pension payment BSNL is made 100% responsible. Thereafter DOT as per earlier instruction of the Cabinet

made necessary changes in the Cabinet memo accommodating opinions of the COS and resubmitted the new Cabinet Memo to the Cabinet on 14-01-2005. Cabinet accorded its approval on 27-01-2005: The extract of the new Cabinet Memo is as below:

Case No. 35/4/2005

Item 14

Liability of Bharat Sanchar Nigam Limited (BSNL) towards Payment of Pension to retired employees.

The Cabinet considered the note dated 14.01.2005 from the Ministry of Communications and Information Technology (Sanchar aur Sookhana Praudyogiki Mantralaya), Department of Telecommunications (Doorsanchar Vibhag) and approved the proposals contained in paragraph 11 thereof.

11. Accordingly, approval of the Cabinet is solicited on payment of pension by the Government in respect of employees of DoT/DTS/DTO who retired prior to 01.10.2000 and those who have worked/are working in BSNL on deemed deputation and for those who are absorbed in BSNL subject to following conditions :

(i) The annual pension liability of the Government shall not exceed 60% of the annual receipts to Government from the following items :-

(a) Dividend Income from MTNL / BSNL.

(b) Licence Fee from MTNL / BSNL.

(c) Corporate Tax / Excise Duty / Service Tax / paid by BSNL.

(ii) Any amount exceeding (i) above shall be borne by BSNL.

(iii) Existing system of payment of pension would continue.

(iv) Pensionary contribution from BSNL would be made to Government as per FR-116.

(v) Employees recruited directly by BSNL on or after 01.10.2000 shall not be covered under this decision.

Apart from the change in the pension payment arrangements contrary to what was promised at the time of absorption, please note another significant change. As per para 11, now three categories of pensioners are brought under the purview of this new payment system. 1) Those who retired before 1-10-2000, 2) Those who took absorption and 3) Those who are on deemed deputation in BSNL i.e ITS Officers. Provision of the third category was not there in Rule 37A, now they are freshly included. Thereafter pension of all the three groups will be met from the same fund which will be formed from 60% of the payment received from BSNL.

Thus DOT was succumbed to the pressure of DOE. But they preferred to keep it secret in fear

of staff agitation and strike. Not only to the Unions and Associations they kept it secret from BSNL also. On 21-02-2005 there was a meeting between DOT and BSNL on pension issue but nothing on the Cabinet Approval was discussed which is evident from the DO letter written by CMD BSNL after the meeting. In that letter CMD is extending his gratitude for accepting the responsibility of pension by the Government. He also requested DOT to reconfirm the points mentioned in his letter. The issue of keeping the cabinet decision secret in the meeting was mentioned in a note sheet by DOT itself afterwards, which is reproduced later in this write up. The DO letter of CMD BSNL was as below:

Kindly recall the discussions which were held in the meeting on 21st February, 2005 in Sanchar Bhawan regarding the pension payment to BSNL employees. BSNL was informed that :-

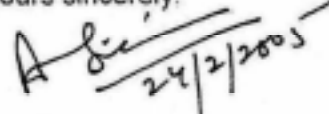
1. Pension in respect of DOT retirees will be paid by the Govt. of India.
2. In respect of employees who were on deemed deputation in BSNL. BSNL will be liable to pay pension contribution in accordance with FR 116 for the period they have worked in BSNL and the pension liability will be met by the Govt. of India.
3. In respect of officials / officers absorbed in BSNL will be liable to pay the pension contribution in accordance with FR 116. The liability on account of pension payable will be that of Govt. of India.
4. Regarding the amount which was to be paid as requested by the former Chariman (TC) vide his letter No. 1-45/2003-B dated 10.12.2003. BSNL will not liable to pay the amount in the light of the latest decision taken by the Union Cabinet as indicated above under para 1,2 and 3.
5. BSNL on their part will pay the pension contributions in respect of absorbed employees till the date of their retirement and also in respect of employees who were on deemed deputation till the retirement or till the date they are reverted back to the Govt. of India.
6. It was pointed out that the pension contribution of the employees has already been paid to the respective CCAs in the Circle offices on a monthly basis by BSNL. The system is fully operational and regular payment is being released every month.

In a nut shell, the Govt. of India has very kindly agreed to meet the pension liability of all the employees who have either been on deemed deputation or else have been absorbed in BSNL. BSNL is liable only to the extent of paying the pension contribution in accordance with FR 116. The pension liabilities of those employees who retired prior to 1.10.2000 will be the sole responsibility of the Govt. of India.

I shall be grateful if the above facts are reconfirmed through a letter from the Department of Telecom.

With kind regards.

Sri Nripendra Misra,
Secretary
Department of Telecom.
Sanchar Bhawan, Ashoka Road,
New Delhi-110001
(DO NO 550/57/2003-04/CA II BSNL dated 24.02.2005)

Yours sincerely,

(A.K. SINHA)

In reply Secretary DOT confirming the points replied :-

D.O.No.1-45/2003-B

March 15, 2005

Dear



Please refer to your D.O. letter No. 500-57/2003-04/CAII/BSNL dated February, 24, 2005 regarding the decision of the Government with reference to pension payment. The status is as follow :-

i) Pension in respect of DOT retirees will be paid by the Government of India.

ii) In respect of employees who were on deemed deputation to BSNL, BSNL will be liable to pay pension contribution in accordance with FR 116 for the period they have worked in BSNL and the pension liability will be met by the Government of India.

iii) In respect of officials/officers absorbed in BSNL, BSNL will be liable to pay the pension contribution in accordance with FR 116. The liability on account of pension payable will be that the Government of India.

iv) BSNL on their part will pay the pension contributions in respect of absorbed employees till the date of their retirement and also in respect of employees who were on deemed deputation till the retirement or till the date they are reverted back to the Government of India.

2. The Finance and Accounts Wing would work out the modality for payment by BSNL towards pension contribution on the basis of the above decision. You have clarified that BSNL is presently regularly paying the pension contribution of the employees to the respective CCAs in the circle offices. This is noted.

With regards,

Shri A. K. Sinha,
CMD, BSNL,
New Delhi

Yours sincerely,

(Nripendra Misra)

We have seen these two letters individually many times earlier and felt assured that our pension is secured. But now after knowing the background of issuance of the letters, the meanings of the letters are totally changed. Now we are to think why after the meeting of 21-02-05, CMD wrote the letter asking re-confirmation of the points and Secretary DOT in turn tactfully confirmed them without mentioning the main point i.e. now Govt responsibility is limited to 60% of the collection from BSNL and rest have to be borne by BSNL. The main fact behind this hide and seek game may be that, in the year 2005 BSNL was in huge profit and DOT in turn was also receiving huge amount from BSNL. 60% of that earning was more than sufficient to cater the expenses of pension. DOT might have

thought that the same situation will continue for coming years also and the 60% content of the collected amount from BSNL will be always enough for the pension expenditure, hence the cabinet decision may be kept secret to avoid staff agitation or strike. Perhaps based on this belief they misinformed the cabinet secretariat also about compliance of the cabinet decision. In reply to the query made by the Cabinet Secretariat vide 93/2/5/2004-Cab dated 06-06-2005, DOT replied that the decision of the Cabinet has been conveyed by Secretary DOT to CMD BSNL vide DO No 1-45/2003-B dated 17-06-2005. But in that letter the main decision of the Cabinet on limiting Government responsibility to 60% of collection from BSNL is not mentioned.

(No 93/2/5/2004-Cab dated 06-06-2005)

The undersigned is directed to refer to the Cabinet Secretariat Memo No.4/CM/2005(i) dated 2nd February, 2005 forwarding the minutes of meeting of the Cabinet held on 27th January, 2005 (Case No. 35/4/2005) on the subject mentioned above and to request that details of action taken/orders issued in pursuance of the decision of the Cabinet may be forwarded to the Cabinet Secretariat at an early date.



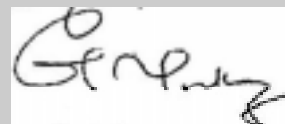
(K.L. Sharma)
Deputy Secretary (Cabinet)
Tele: 23015802

(No 93/2/5/2004-Cab dated 06-06-2005)

The undersigned is directed to refer to the Cabinet Secretariat's O.M.No.93-2/5/2004-Cab. dated 06-06-2005 on the above subject. The decision of the Cabinet has been conveyed to BSNL by Secretary, Telecom vide D.O. letter No.1-15/2004-B dated 15-03-2005 (copy enclosed). The implementation report of the Cabinet decision is also enclosed.

This issues with the approval of competent authority.

To
Shri K. L. Sharma.
Dy. Secretary (Cabinet)
Cabinet Secretary,
Rastrapathi Bhawan,
New Delhi



(G. Muthuswamy)
Director (Bgt)

Ph. No. 2303 6185/2373 7713
Fax No. 2337 2376

(1-45/2003-B dated 17-06-2005)

Hereafter on 15-06-2006 DOT issued the letter reproduced below. Here for the first time, one and half year after the Cabinet Decision, DOT mentioned the contents of the Cabinet Decision without indicating that the decisions have got approval of the Cabinet. Immediately huge staff

agitation started and all unions/associations demanded withdrawal of this order. CMD BSNL also protested against this letter. But even after the pressure DOT never disclosed that this is a Cabinet Decision and pretended as if it is a decision of DOT only.

To
The Chairman and Managing Director,
Bharat Sanchar Nigam Limited
New Delhi-110001

Sir,

Kindly refer to this office Department's D.O. of even No. dated 15th March 2005 regarding the decision of Government with reference to pension payment.

In this context, It is further stated that :

(i) The annual pension liability of the Government in respect of employees of DoT/ DTS/DTO who retired prior to 01.10.2000 and those who have worked/are working in BSNL on deemed deputation and for those who are absorbed in BSNL shall not exceed 60% of the annual receipts to Government from the following items :-

(a) Dividend income from MTNL/BSNL.

(b) Licence Fee from MTNL/BSNL.

(c) Corporate Tax/Excise Duty/Service Tax paid by BSNL.

(ii) Any amount exceeding (i) above shall be borne by BSNL.

(iii) Pensionary contribution from BSNL would be made to Government as per FR-116.

(iv) Employees recruited directly by BSNL on or after 01.10.2000 shall not be covered under this decision.



(Annie Moraes)

DDG (FEB)

Ph.No.2337 2085/2303 6176

Fax No.2335 6499

(I-45/2003-B dated 15-06-2006)

From the four page note sheets of File No 1-45/2003-B (Pt I) from Director (B&P) dt 04-09-2006 it is seen that the incidence and reactions of the Unions/Associations after issuance of the letter dated 15-06-2006 is

narrated. In one place the fact that the cabinet decision was kept secret from BSNL was also mentioned. The reason for mentioning the full text of the Cabinet Memo in the letter dated 15-06-2006 was also mentioned.

The Chairman (TC) held a meeting with the representatives of BSNL and MTNL on 21st February, 2005 to address the details of the Pension Scheme approved by the Cabinet for the purpose of implementation. The decision of the Cabinet was then communicated to CMD, BSNL by Chairman (TC) vide D.O. Letter No.1-45/2003-B dated 15th March 2005. However, the ceiling prescribed by the Cabinet was not indicated in the said D.O. letter. As a result BSNL was not aware about caveat of the Cabinet and the potential liability which has to be provided for. **Hence, it was decided with the approval of Chairman (TC) to intimate the full text of the Cabinet's approval and the letter in this regard was issued on 15-06-2006.**

Finally after describing all the events since formation of BSNL to the protests lodged by being the Unions /

Associations, approval of the secretary DOT was sought on two proposals as mentioned below.

In view of the issues enumerated above following is proposed :

I. In the Note for CoS the department reiterated the same views i.e. the pension liability of the employees who retired prior to 01.10.2000 should be solely borne by the Government. However, this was not agreed to by the Committee of Secretaries. Now for any relaxation in existing orders, it will also require amendments of Rule 37-A with the Cabinet's Approval. If approved, we may revive the case in consultation with Establishment.

II. Regarding the funding of the pensionary liability it is proposed that we may moot a case for keeping 60% of the receipts in a rolling fund since the date of inception of BSNL. This fund which can be exclusively used for discharging the pension liability of BSNL.

Submitted for consideration & approval please.

DDG (FEB)
Adv.(E)/Member(F)
Special Secretary (on leave)
Secretary(T)
M(F)

Kotwal
(Ms. Vinod Kotwal)
Director (B&P)
04.09.2006
CHA
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Pl. release 'A' further
D. S. S. S.
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Secretary DOT was silent on the first proposal for revival of the case regarding the Cabinet Approval, but he approved the proposal of formation of a "Rolling Fund" since inception of BSNL from the 60% of the receipts for exclusive purpose of paying pension. Therefore we are receiving our pensions from the collections of this rolling fund where excess amount has been accumulated from year 2000 to 2010 when BSNL was in profit. Now

although the 100% payment of BSNL on license fee etc is insufficient for full pension payment, still pension is paid to us because of the earlier accumulated excess amount in the rolling fund from year 2000 to 2010. Naturally the question arose, what will happen when this accumulated rolling fund will get exhausted? In reply many refer to the following letter issued on 2009. Let us now analyse the content and context of the letter:

Subject : Pension liability of Bharat Sanchar Nigam Ltd. (BSNL) towards pensionary benefits including Family Pension to its employees - Regarding

Reference this Department's letter No. 1-45/2003-B dated 15th June, 2006 on the above noted subject conveying the following position :-

(i) Annual pension liability of the Government in respect of employees who retired prior to 01.10.2000 and those who have worked / are working in BSNL on deemed deputation and

those who are absorbed in BSNL shall not exceed 60% of the receipt to the Government on the following items :

- (a) Dividend Income from MTNL / BSNL.
- (b) Licence fee from MTNL / BSNL.
- (c) Corporate Tax / Excise Duty / Service Tax paid by BSNL.

(ii) Any amount exceeding (i) shall be borne by BSNL.

(iii) Pensionary contribution from BSNL would be made to Government as per FR-116.

(iv) Employees recruited directly by BSNL on or after 01.10.2000 shall not be covered under this Section.

2. In this context, it is hereby clarified that the above-said limit of 60% is for normal funding. This does not in any way distract from the fact that the ultimate liability towards Pensionary benefit including family pension to the BSNL employees (excepting those recruited after 10.10.2000) as per sub-rule 21 of Rule 37A of CCS (Pension) Rules, 1972, lies with the Government of India. If BSNL, for any reason, is not able to contribute to the extent prescribed in para 1 above the Government of India will still pay the admissible pensionary benefits including Family pension of BSNL employees (excepting those recruited after 01.10.2001).



(Siddhartha Behura)
Secretary

No. 40-12/2007-Pen(T) dated 05.01.2009)

If the content of the second para is seen one may rightly think that there is no concern for our pension at all. One may also think that particularly after the Cabinet Decision of 2005, certainly this letter might have been issued under proper approval. To ascertain this, we collected the note sheets which led into the issuance of such letter through RTI. After studying the note sheets, it is revealed that the letter was issued to convince the ITS officers who were refusing to take absorption under the backdrop of the Cabinet Approval of 2005. It is also revealed that, at least Sh S S Sirohi and Sh Satis Sarma the President and the Secretary of ITSA respectively were fully aware about the content of the Cabinet Memo 2005. To make them convince about the absorption, a meeting was

convened on 16-12-2008 at 11 AM at the chamber of Secretary DOE. In the said meeting apart from above mentioned ITSA leaders, Secretary DOT and his officers, Secretary DOE with her officers were present. In that meeting under the objections of ITSA leaders, it was decided that Secretary DOT will issue a letter clarifying the provisions of section 21 of rule 37A that even if the money from BSNL become insufficient for pension payment still Government will pay the pension. Surprisingly it was also decided that for this new provision no Cabinet Approval is required. But neither the minutes of the meeting were issued nor any written approval of DOE in favour of this decision were taken anywhere. The related note sheets were processed within the DOT before issuance of the letter. Even the

opinion of Member (F) DOT that, simultaneous action should be taken for annulation of the cabinet decision along with the issue of the order, was overruled by the secretary DOT as the legal advisor opined so. Perhaps the Secretary DOT was desperate that time to get the ITS officers absorbed in BSNL, but they did not believe the letter and did not take absorption. The validity of this letter without the proper approval of either member(F) or DOE can always be questioned. Perhaps that is why DOT is neither referring the meeting dated 16-12-2008 nor the letter dated 05-01-2009 while justifying

the queries of DOE regarding the additional expenditure required for 78.2% IDA merger issue. That is also the reason for excluding the reference of this letter from the final Cabinet Memo dated 29-12-2010 regarding 68.8% IDA merger for pre 2007 pensioners, although it was mentioned in the draft memo. In the present system a government order which is in contrary of a Cabinet decision cannot be issued based on some verbal discussion. The complete note sheet has been uploaded in our website www.aibsnlretd.org on 03-10-2015. However the final page is reproduced below.

advised to drop its ongoing proposal for changing the cabinet decision dated 27.11.2005.

8. May kindly see and approve before action is taken as per para 7 above. In anticipation of the approval, a draft note giving the clarification is put up for consideration and approval before issue.

(L. N. Anchal)
DS(PSA)
16-12-2008

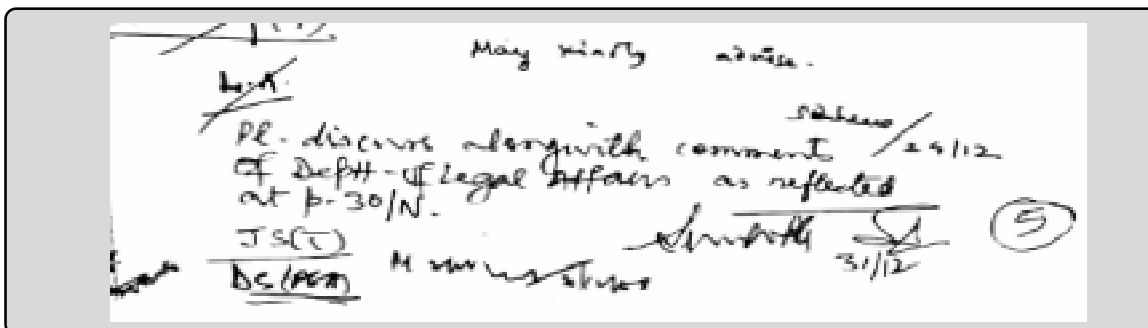
JS(T)	ON TOUR	
AS(T)		DFA for favour of afford to issue.
Member (Finance)		(2) On issue of this classification, there is no need to keep the proposal before cabinet note further.
Secretary(T)		

L. N. Anchal

- The clarification is in line (c/cabB
with the decision which took
place with Secy /x & Secy / Pension
and Action 21 of sub 37A, c/s (P) note.

- While issuing it, we need to
sufficiently note a proposal
to the cabinet for annulling its
decision since that decision cannot
be left unattended.

Mr
24/12/08



Here one more information is relevant. On 30-08-2007, as per memo no 30-04/2007-SR one committee was constituted to discuss the issues raised by BSNLEU in which GS/BSNLEU was a member. In the report

submitted after four rounds of discussion, it is found that on pension issue no where the decision of the cabinet was discussed. On the contrary only general statements are made as below:

Item No. 1

Pension to BSNL Employees

Comments of BSNL

Prior to formation of BSNL, Pension Rules were amended and rule 37-A was inserted so as to make BSNL absorbed employees eligible for pension from the Government fund. Subsequently, the position was ratified by the Secretary, Telecom vide his do letter dated 15.03.2005 that in respect of employees who have taken absorption in BSNL, BSNL is liable to pay the pension contribution in accordance with FR 116 and the liability on account of pension payable will be that of the Government.

For the reasons unknown to BSNL. DoT issued another letter on 15th June 2006 reversing its earlier decision and linked the payment of pension with the receipts of revenues from BSNL / MTNL. To counter the move of DOT, BSNL has already taken up the issue with DoT and in a meeting held on 10th January 2007, Secretary (T) decided that the Department might examine the matter again placing before the Cabinet. Further, developments in this case are not known to BSNL.

Comments of DoT

The issue was discussed in a meeting held on 10.1.2007 and again on 02.08.2007. Finance Wing has intimated vide letter dated 07.06.2007, 13.06.2007 and 10.8.2007 that the case has been submitted to Secretary (T).

Status of the case.

DDG (TPF) informed the Committee that the case has been resubmitted for consideration on 14.09.2007.

We hope that after reading all the facts narrated above, the actual status regarding pension of BSNL pensioners is clear to all. It is crystal clear that till such time the 60% ceiling arrangement

exists, no pension revision is possible, be it 78.2% IDA merger or expected pension revision in 2017. At present, due to loss making, the entire collection from BSNL on licence fee etc

is less than the required amount for pension payment. From where the additional fund for pension revision will come. DOE will never agree to provide the additional amount from the exchequer till the 60% ceiling decision of cabinet is annulled. Not only the BSNL pensioners, even the CDA pensioners (those who retired before 1-10-2000 and the ITS officers on deemed deputation) who are expecting their pension to be revised as per 7th CPC may also face the similar problem in fund provisioning required for their pension revision. Because at present, as per the decision of the cabinet their pension is also being paid from the same rolling fund created out of 60% collection from BSNL on licence fee etc. One point has to be realised by all that the Government till now did not spend single paisa from its exchequer for our pension payment.

The purpose of this write up is not to panic the pensioners. We are aware that it is not easy to change the conditions of our absorption unilaterally. But still we cannot shy away from the happenings and developments on this vital issue of pension. Presently DOT is pursuing with

the DOE for annulment of 60% ceiling provision in the proposed Cabinet Memo for 78.2% IDA merger. If they are successful in their effort then we are relieved. But if they are unsuccessful then a very difficult battle is waiting for the pensioners to fight out. And for that purpose all the pensioners associations has to come under a single umbrella to fight out the battle. We from AIRBSNLEWA has written to all Association and Unions with this request. The big Associations, who are having large membership has to take the lead in this respect. If anyone wants to see the complete documents from which extracts are used in this write up, they may visit www.aibsnlretd.org and see the documents uploaded on 27-05-2015,19-09-2015,03-10-2015. To conclude this write up we are furnishing the following information. Till now we have submitted six applications under RTI to DOT. In reply they have supplied about 150 pages of document and replied all questions except the following four questions. Even after review petition and application to RTI commission they did not reply and maintained their silence. The questions were:

- 4.a. Whether BSNL is paying the exceeded amount for paying of pension as per the provision of the above mentioned cabinet memo (para-3.5)?
- 4.b. If answer of question 4.a. is "No", then Whether any claim has been raised by DoT to BSNL till now ? Copy may be given.
- 4.c. In case BSNL not paying the exceeded amount beyond 60% as per the provision of above mentioned cabinet memo, how DoT is paying full pension to BSNL pensioners?
- 4.d. Whether any special approval is being taken for payment of the exceeded pension of BSNL pensioners? How many times such approval is taken. Copy of such approval (note sheets) may be given.

(We shall be grateful if you kindly send your opinion on this write up through email to sdebhl@yahoo.co.in or text to 9433000088).