

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH

OA 1512/2013
With
OA 1513/2013, MA 2338/2016
OA 1564/2013
OA 1630/2013
OA 3129/2013
OA 3131/2013
OA 3133/2013
OA 2817/2013
OA 3864/2013, MA 33/2015
OA 1565/2013
OA 2816/2013, MA 2339/2016

Reserved on: 22.08.2016
Pronounced on: 31.08.2016

**Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)**

OA 1512/2013

Virendra Kumar, Retired
Chief General Manager,
G/3, Sangam Estate
Under Hill Road,
Civil Lines, Delhi-110054 ... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
14, C.G.O. Complex, Lodhi Road,
New Delhi-110001
 2. The Union of India, through:
The Secretary
Department of Telecom
Sanchar Bhavan
20, Ashoka Road,
New Delhi-110001
 3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan

Janpath, New Delhi-110001 ... Respondents

(Through Dr. Ch. Shamsuddin Khan, Advocate)

OA 1513/2013

Vijay Kumar Mehra
Retired, Chief General Manager
Flat 44, Pocket F, DDA SFS Flats
Sheikh Sarai, Phase I
New Delhi-110017

....Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
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20, Ashoka Road,
New Delhi-110001

3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Dr. Ch. Shamsuddin Khan, Advocate)

OA 1564/2013

N.L. Sahi
Retired, Chief General Manager
A-3/253, Paschim Vihar,
New Delhi-110063

... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,

14, C.G.O. Complex, Lodhi Road,
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2. The Union of India, through:
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New Delhi-110001
3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Shri Subhash Gosain, Advocate)

OA 1565/2013

Rajender Kumar Bhatia
Retired, Senior Deputy Director General
A-160, Vikas Puri,
New Delhi-110018

... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
14, C.G.O. Complex, Lodhi Road,
New Delhi-110001
2. The Union of India, through:
The Secretary
Department of Telecom
Sanchar Bhavan
20, Ashoka Road,
New Delhi-110001
3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Shri Subhash Gosain, Advocate)

OA 1630/2013

A.K. Girotra

Retired, Executive Director
House No.23, Road No.7
Punjabi Bagh, New Delhi-110026

... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
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New Delhi-110001

 2. The Union of India, through:
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20, Ashoka Road,
New Delhi-110001

 3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001

... Respondents

(Through Shri Subhash Gosain, Advocate)

OA 2816/2013

P.A. Mohd. Yasin
Son of Late Shri P.H. Abdul Khader
Resident of 47, Shaik Dawood Street
Royapettah, Chennai-600014

... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
14, C.G.O. Complex, Lodhi Road,
New Delhi-110001
 2. The Secretary
Department of Telecommunication & I.T.
20, Ashoka Road, Sanchar Bhavan,
New Delhi-110001
 3. Chairman and Managing Director

Bharat Sanchar Nigam Limited,
 Corporate Office, Bharat Sanchar Bhawan
 Janpath, New Delhi-110001 ... Respondents

(Through Shri R.N. Singh, Advocate)

OA 2817/2013

K.J. Chacko
 Son of Late Shri Chacko John
 Resident of TC-2/ 3034 (1); PLRA 55;
 Panachamoodu Lane, Pattom
 Trivandrum-695004 ... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
 The Secretary
 Department of Public Enterprises
 Public Enterprises Bhavan,
 14, C.G.O. Complex, Lodhi Road,
 New Delhi-110001
2. The Secretary
 Department of Telecommunication & I.T.
 20, Ashoka Road, Sanchar Bhavan,
 New Delhi-110001
3. Chairman and Managing Director
 Bharat Sanchar Nigam Limited,
 Corporate Office, Bharat Sanchar Bhawan
 Janpath, New Delhi-110001 ... Respondents

(Through Shri R.N. Singh, Advocate)

OA 3129/2013

K. Venkataramani
 Son of Shri V. Krishna Murthy
 Resident of 22/7A; Gandhi Mandapam Road
 Kottupuram, Chennai-600085 ... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
 The Secretary
 Department of Public Enterprises
 Public Enterprises Bhavan,

14, C.G.O. Complex, Lodhi Road,
New Delhi-110001

2. The Secretary
Department of Telecommunication & I.T.
20, Ashoka Road, Sanchar Bhawan
New Delhi-110001
3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Shri Manjeet Singh Reen, Advocate)

OA 3131/2013

T. Ramamurthy
Son of Shri N. Tayagraja Iyer
Resident of 291, Fourth Cross Street,
Kapaleeswarar Nagar, Chennai-600115 ... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
14, C.G.O. Complex, Lodhi Road,
New Delhi-110001
2. The Secretary
Department of Telecommunication & I.T.
20, Ashoka Road, Sanchar Bhawan
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3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Shri Manjeet Singh Reen, Advocate)

OA 3133/2013

Pradeep Kumar
Son of Late Shri J.S. Gupta,
Resident of A-3/201, Oxford Village
Wanowrie, Pune-411040Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
14, C.G.O. Complex, Lodhi Road,
New Delhi-110001

 2. The Secretary
Department of Telecommunication & I.T.
20, Ashoka Road, Sanchar Bhawan
New Delhi-110001

 3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Shri Manjeet Singh Reen, Advocate)

OA 3864/2013

C. Nityanandham
Resident of Flat No.902, Nilgiri,
Neelkanth Vihar,
Bhagat Ram Kanwar Marg, Ghatkopar (East)
Mumbai-400 077 ... Applicant

(Through Shri Ranvir Singh, Advocate)

Versus

1. The Union of India through:
The Secretary
Department of Public Enterprises
Public Enterprises Bhavan,
14, C.G.O. Complex, Lodhi Road,
New Delhi-110001

 2. The Secretary
Department of Telecommunication & I.T.
20, Ashoka Road, Sanchar Bhawan
New Delhi-110001

 3. Chairman and Managing Director
Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan
Janpath, New Delhi-110001 ... Respondents

(Through Shri Subhash Gosain, Advocate)

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

The prayer in OA 1512/2013, OA 1513/2013, OA 1564/2013, OA 1630/2013, OA 3129/2013, OA 3131/2013, OA 3133/2013, OA 2817/2013, OA 3864/2013, OA 1565/2013 and OA 2816/2013 is identical and, therefore, they have been heard together and a common order is being passed.

2. The applicants retired as Chief General Manager (CGM)/ Senior Deputy Director General/ Executive Director from the Department of Telecommunication (DoT) before 1.01.2007. We will revert to the significance of 1.01.2007 presently.

3. The prayer in the OAs is as follows:

A. Direct respondents to grant pay scale of Rs.75,000-1,00,000 as done for others by respondent No.1; and

B. Pay cost of the Original Application.

4. Admittedly, the applicants in all the OAs retired before 1.01.2007, the last to retire being on 30.06.2005. In order to understand the issue, it is necessary to narrate the background in brief. Consequent upon formation of MTNL in 1986 and BSNL in 2000, Group 'A', 'B', 'C' and 'D' employees of the government departments were transferred to these companies on "as is where is basis" along with their posts on deemed deputation. These officers were required to give option for

absorption in BSNL/MTNL or revert back to the government. About 3,97,000 Group 'B', 'C' and 'D' employees were absorbed in BSNL/ MTNL from 1997 to 2004. Initially, the period of deemed deputation of Group 'A' officers in BSNL/MTNL was approved by the Cabinet till 30.09.2005.

5. An Inter-Ministerial Group (IMG) consisting of Secretaries of Departments of Telecommunications (DoT), Expenditure, Personnel and Training, Public Enterprises and Urban Development was set up in March 2004 to sort out the outstanding issues in the matter of absorption of Group 'A' officers in BSNL/ MTNL. This group was constituted primarily to address the anomalies/ issues which might come in the way of absorption. The IMG deliberated at great length and submitted its recommendations to the government in January 2005.

6. Based on the recommendations of the IMG, the terms and conditions of absorption of Group 'A' officers in BSNL/MTNL were approved by the Cabinet in February 2005. The Group 'A' officers of various services were accordingly asked to exercise their option for absorption in BSNL/ MTNL in March 2005 as per the terms and conditions approved by the Cabinet. As recommended by the IMG and approved by the Cabinet, the effective date of absorption was prescribed as 1.10.2000 and all officers who were on the rolls of DOT/ DTS/ DTO as on 30.09.2000 including those who had retired since 1.10.2000 were eligible to exercise their option for absorption. However, since the response of Group 'A' officers towards absorption

remained very poor, the offers of absorption were again given to the officers in October 2005, August 2008 and September 2011, with the liberalized terms and conditions of absorption approved by the Cabinet. The process of absorption of Group 'A' officers in BSNL/ MTNL was finally concluded in March 2013. The applicants, along with other Group 'A' officers, all were treated as on 'deemed' absorption in BSNL with effect from 1.10.2000 in the better IDA scales offered.

7. The IDA pay scales of various grades in BSNL corresponding to the CDA pay scales, as recommended by the IMG and approved by the Cabinet, were as follows:

Sl.No.	Existing CDA pay scale	Corresponding IDA pay scale
1.	22400-525-24500	25000-650-30200 (E9A)
2.	18400-500-22400	23750-600-28550 (E9)
3.	14300-400-18300	18500-450-23900 (E7)
4.	12000-375-16500	16000-400-20800 (E5)
5.	10000-325-15200	14500-350-18700 (E4)
6.	8000-275-13500	13000-350-18250 (E3)

8. While the corresponding IDA pay scales at serial Nos.2 to 6 above were standard pay scales as per DPE guidelines, IDA pay scale at sl.no.1 i.e. Rs.25000-650-30200 (E9A) corresponding to CDA pay scale of 22400-525-24500 was recommended by the IMG and approved by the Cabinet as a special dispensation with a view to ensuring that there was no loss of emoluments on absorption in BSNL and to facilitate smooth conclusion of the absorption process. The applicants belong to this category.

9. A Pay Revision Committee (2nd PRC) was constituted by the government under the Chairmanship of Justice M. Jagannadha Rao, Retd. Judge of Hon'ble Supreme Court of India to recommend revision of pay and allowances of Board Level and below Board Level executives and Non Unionised Supervisors in Central Public Sector Enterprises (CPSEs) with effect from 1.01.2007. BSNL management duly communicated its views on pay revision of executives including the replacement scale for Rs.25000-650-30200 (E9A) to the Department of Public Enterprises for submission to the 2nd PRC. The Committee submitted its report to the Government in May 2008.

10. After due consideration of the recommendations of the above Committee (2nd PRC), an Office Memorandum No.2(7)/08-DPE (WC) dated 26.11.2008 was issued by the Department of Public Enterprises conveying decision of the government on revision of pay of board level and below Board Level executives and Non Unionised Supervisors in CPSEs with effect from 1.07.2007. As per the said OM, the revised pay scales for below Board Level executives were as under:

Grade	Existing	Revised
E0	6550-200-11350	12,600-32,500
E1	8600-250-14600	16400-40,500
E2	10,750-300-16750	20,600-46,500
E3	13,000-350-18,250	24,900-50,500
E4	14,500-350-18700	29,100-54,500
E5	16,000-400-20,800	32,900-58,000
E6	17,500-400-22,300	36,600-62,000

E7*	18,500-450-23,900	43,200-66,000
E8*	20,500-500-26,500	51,300-73,000
E9*	23,750-600-28,550	62,000-80,000

*E7 only in CPSEs of Schedule A, B & C

*E8 only in CPSEs of Schedule A & B

*E9 only in CPSEs of Schedule A

11. As per the above decision, a total of 10 replacement scales of pay were prescribed for grades E0 to E9 and no replacement scale was prescribed for E9A viz. Rs.25000-650-30200. Thus, the executives holding the said E9A were required to be fitted in the highest revised pay scale, viz. Rs.62000-80000 (E9).

12. Thereafter, the government constituted a Committee of Ministers to look into the demands made by CPSE executives of Oil and Power Sectors in the context of the aforesaid orders issued by the Department of Public Enterprises regarding revision of pay in CPSEs. The Government decisions on the recommendations of the Committee of Ministers were circulated by the Department of Public Enterprises vide its Office Memorandum No. 2(7)/08-DPE(WC) dated 2.04.2009. One of the decisions so circulated by the Department of Public Enterprises (DPE) was as follows:

“vi) Introduction of intermediary pay scales to correspond with existing pay scales: It has been decided that there will be no change in the ten pay scales of below board level posts as indicated in O.M. dated 26.11.2008 and there is no justification for introducing

intermediary pay scales. If there have been any aberrations, they need to be corrected. Every officer has to be fitted into the corresponding new pay scale.

However, if there is any exceptional case regarding intermediary pay scales, the same may be referred by the administrative Ministry concerned to the DPE. The issue will be decided by DPE with the concurrence of Department of Expenditure on a case to case basis without altering the minimum and the maximum of the revised pay scale.”

13. To take one example, the applicant in OA 2816/2013 was absorbed in BSNL as per the provisions of Rule 37-A of CCS (Pension) Rules 1972 and his pension on absorption was also fixed under the same rule. However, the said Rule 37-A does not contain any provision for revision of pension consequent to revision of pay scales in the CPSEs. The recommendations made by the 2nd Pay Revision Committee and the government's decision thereon also did not provide for revision of pension/ family pension of the employees retired from the CPSEs prior to the implementation of the government decision on these recommendations i.e. 1.01.2007. Thus, Group 'A' officers absorbed in BSNL and drawing pension/ family pension in terms of Rule 37-A(21) of CCS (Pension) Rules, 1972 were not entitled to revision of their pension/ family pension on revision of pay scales in BSNL with effect from 1.01.2007.

14. In order to address the above issue, the matter regarding revision of pension in respect of BSNL IDA pensioners who had retired during the period from 1.10.2000 to 31.12.2006 (like the

applicants) pursuant to wage revision in BSNL with effect from 1.10.2007 was considered by the DoT and a proposal in this regard was submitted to the Cabinet for its consideration. In pursuance of the Cabinet decision, necessary order for revision of pension of pre-2007 pensioners/ family pensioners of BSNL was issued by the DoT vide Office Memorandum No.40-17/2008-Pen(T)-Vol.III dated 15.03.2011. With the issue of the said order, the applicants in the instant OAs also became entitled to revision of their pension consequent to revision of pay scales in BSNL with effect from 1.01.2007. The pension of the applicant has accordingly been revised on the basis of replacement scale applicable to them i.e. Rs.62,000-80,000.

15. The prayer of the applicant, as stated above, is for grant of pay scale of Rs.75000-100000. Clearly, this prayer is inadmissible because all the applicants have retired before 1.01.2007, the date from which new pay scales became effective. Therefore, there is no question of grant of upgraded pay scales to the applicants. In case, this prayer is to be read as a demand for the upgraded pay scales for those who are still in service holding the post of CGM/ Senior Deputy Director General/ Executive Director, then this OA is in the nature of Public Interest Litigation and cannot be entertained. The OA is, therefore, not maintainable and needs to be dismissed.

16. Having gone through the OA, we also do not find any specific reference to what the applicants want beyond the specific prayer made in the relief clause. In fact, the argument of

the learned counsel for the applicants was primarily for grant of pay scale of Rs.75000-100000. However, on digging deeper we find that the real issue is revision of pension, which the applicants should have clearly brought out in the OAs and the relief clause framed accordingly. But in the prayer there is not a whisper about pension. We explain this further. In accordance with the OM dated 15.03.2011 issued by the DoT, the government had provided for revision of pension of pre-1.01.2007 pensioners/ family pensioners i.e. those who retired between the period 1.10.2000 till 31.12.2006 and the basic formula was explained in para 4.1 to 4.3, quoted below:

“4.1 The pension/ family pension of pre-2007 BSNL pensioners/ family pensioners will be consolidated with effect from 1.1.2007 by addition together:

- i. The existing pension/ family pension, including commuted portion of pension, if any.
- ii. Dearness Relief upto AICPI (IW) average index 126.33 (Base year 2001=100) i.e. @ 68.8% of Basic Pension/ Basic family pension.
- iii. Fitment weightage @ 30% of the sum of existing pension/ family pension and Dearness Relief thereon.

The amount so arrived at will be regarded as consolidated pension/ family pension with effect from 1.1.2007.

4.2 The fixation of pension will be subject to the provision that the revised pension, in no case, shall be lower than fifty percent of the minimum of the pay in the pay scale corresponding to the pre-revised

pay scale from which the BSNL pensioner had retired.

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

4.4 The lower and upper ceiling on pension/ family pension shall be Rs.3500/- and Rs.45000/- respectively."

Therefore, if the revised pay scale is treated as Rs.75000-100000 instead of what has been granted to the applicants namely Rs.62000-80000 for the erstwhile pay scale of Rs.25000-30200 held by them, they would get a hike in their pension. This is what they intend to ask for but prayer clause of the OAs pray for pay scale hike.

17. The applicant has placed reliance on the following judgments:

- i) **Chintamanrao and another Vs. The State of M.P.**, AIR 1951 SC 118
- ii) **H.L. Trehan and others Vs. Union of India**, (1989) 1 SCC 764
- iii) **National Insurance Co. Ltd. Vs. Gulab Nabi and anr.**, 2009 (1) SLR 760
- iv) **State of Punjab Vs. M/s Bandeep Singh and others**, 2015 (9) SCALE 240

- v) **East Coast Railways and another Vs. Mahadev Appa Rao and others**, JT 2010 (6) SC 522
- vi) **Gurmail Singh Dahdli and others Vs. Union of India and others**, 2008 (5) SLR 591
- vii) **Ravi Yashwant Bhoir Vs. District Collector, Raigad and others**, JT 2012 (3) SC 186
- viii) **Confederation of Ex-servicemen Associations and others Vs. Union of India and others**, 2006 (8) SCALE 399
- ix) **Official Liquidator Vs. Dayanand and others**, 2008 (13) SCALE 558
- x) **Smt. Badami (Deceased) By her L.R. Vs. Bhali**, JT 2012 (5) SC 607
- xi) **State of Punjab Vs. Justice S.S. Dewan (Retired Chief Justice) and others**, (1997) 4 SCC 569
- xii) **Dipankar Sengupta Vs. United Bank of India and others**, 1998 (5) SLR 553
- xiii) **Subrata Sen Vs. Union of India**, 2001 (8) SCC 71
- xiv) **Vinod Kumar Vs. State of Haryana and others**, 2013 (16) SCC 293
- xv) **Medical Council of India Vs. Christian Medical College Vellore and others**, 2016 (4) SCC 344
- xvi) **Dalip Singh Vs. State of Uttar Pradesh**, 2010 (2) SCC 114
- xvii) **M/s Sciemed Overseas Inc. Vs. BOC India Limited and others**, 2016 (1) SCALE 264

xviii) Competition Commission of India Vs. Steel**Authority of India Ltd., (2010) 10 SCC 744****xix) Chandra Bhawan Boarding and Lodging,****Bangalore Vs. State of Mysore and another, AIR**

1970 SC 2042

However, in view of the position explained above, we are of the opinion that none of the judgments are relevant in this case.

18. Willy-nilly what the applicants are asking for is grant of pay scale of Rs.75000-100000 for the erstwhile pay scale of Rs.25000-30200 and, for reasons explained above, this is not maintainable at all. Even otherwise, the Hon'ble Supreme Court has held time and again that the Tribunal shall not enter into deciding pay scales and that should be left to be decided by the executive based on recommendations of expert bodies like Pay Commissions. On this issue, the learned counsel for the applicants has stressed that the matter of replacement scale for Rs. 25000-30200 in which the applicants were drawing their pay, was never before the 2nd PRC. In fact, it was never placed before the DPE either. It is his contention that, therefore, the expert body namely 2nd PRC had no occasion to examine this issue. However, the respondents have clarified, as stated above, that in 2009 itself, the Committee of Ministers constituted by the government has decided that there is no justification for introducing intermediary pay scales and if there is any exceptional case regarding intermediary pay scales, the same has to be referred to DPE, who, with the concurrence of

Department of Expenditure, on case to case basis, without altering the minimum and the maximum of the revised pay scale, will take a view. However, the DoT, in consultation with its Internal Finance Division and in the light of the DPE guidelines, found the proposal to be devoid of merit having regard to various relevant considerations including the affordability and sustainability in view of declining revenue of the Company.

19. The contention is that the government has applied its mind and keeping in view several factors including the financial position, it took a view not to refer the matter to the DPE. It is contended that this is a policy issue and the Tribunal may not interfere in this. Therefore, in our view, even on merits, there is no ground for interference as the government has considered this aspect at the highest level and then taken a policy decision.

20. Therefore, apart from the fact that the prayer made by the applicants is not maintainable for reasons mentioned above, this Tribunal cannot even interfere it being a matter of pay revision and policy issue, in view of the judgments of the Hon'ble Supreme Court in **Ekta Shakti Foundation Vs. Govt. of NCT of Delhi**, AIR 2006 SC 2609; **Union of India & Another Vs. P. V. Hariharan & Anr.**, 1997 SCC (L&S) 838; and **Union of India & Ors. Vs. Makhan Chandra Roy** AIR 1997 SC 239.

The OAs are, therefore, dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

/dkm/

(P.K. Basu)
Member (A)

