

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No.180/00346/2018

Wednesday, this the 30th day of October, 2019

CORAM:

HON'BLE Mr.E.K.BHARAT BHUSHAN, ...ADMINISTRATIVE MEMBER

1. All India BSNL Pensioners' Welfare Association (Regd.1833/09), Central Headquarters, A.H 189/61 3rd Street, Auroville Flats, Anna Nagar, Chennai-600040.
Represented by its President, P.S.Ramankutty, Aged 74 years, S/o Late R.Sivaraman Nair, residing at TC 55/1953, CTO Colony, Pappanamcode, Trivandrum-695 018.
2. P. Vadivel,
Aged 75 years,
S/o Late V.Perumal,
Retired Chief Section Supervisor,
O/o Principal General Manager,
BSNL Bhavan, Ernakulam,
residing at 10/855 Ambady,
S.S. Krishnan Road,
Fort Kochi,
Kochi.Applicants

(By Advocate Mr.R.Sreeraj)

V e r s u s

1. The Union of India
represented by the Secretary,
Department of Telecom,
Sanchar Bhavan,
20, Asoka Road,
New Delhi – 110 001.
2. The Bharat Sanchar Nigam Limited,
Corporate Office, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,

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New Delhi – 110 001.

3. The Secretary,
Government of India,
Ministry of Heavy Industries &
Public Enterprises,
Department of Public Enterprises,
Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi- 110 001.
4. The Secretary,
Government of India,
Ministry of Personnel, Public Grievances
and Pensions, Department of Pensions and
Pensioners' Welfare,
New Delhi – 110 001.
5. The Controller of Communication Accounts,
BSNL Bhawan, Kerala Circle,
Trivandrum-695 033.Respondents

**[By Advocate Mr. K.C. Muraleedharan, ACGSC for Respondents (1 & 3-5) &
Mrs. Girija K. Gopal (R2)]**

This application having been heard on 24th October, 2019, the Tribunal
on 30th October, 2019 delivered the following :

O R D E R

By Hon'ble Mr. E.K. Bharat Bhushan, Administrative Member -

OA No.346/2018 is filed by a Welfare Association of BSNL Pensioners'
represented by its President and the 2nd applicant is a member of the
Association.

2. They submitted that on acceptance of the recommendations of the VIth
Central Pay Commission orders have been issued granting pension @ 50% of

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the average emoluments for the last 10 months or 50% of the last pay drawn whichever is more beneficial to the pensioner. Since the applicants who are Department of Telecommunication absorbed BSNL employees covered under the CCS (Pension) Rules, 1972, the above benefits of VIth Central Pay Commission were extended to those who retired after 1.1.2006 from the BSNL. The impact was that from 1.1.2006 all those with qualifying service of ten years became entitled for full pension and that the grant of full pension for those who had a qualifying service of 33 years or more alone as stipulated under Rule 49 of CCS (Pension) Rules, 1972 was dispensed with. Later based on the decision taken by the Government on the recommendations of the VIIth Central Pay Commission, orders for revision of pension of pre-2016 pensioners/family pensioners were issued whereby it was provided that the revised pension/family pension w.e.f. 1.1.2016 of pre-2016 pensioners/family pensioners shall be determined by multiplying the pension/family pension as had been fixed at time of implementation of the recommendations of the VIth Central Pay Commission. Further the Government decided that the revised pension/family pension w.e.f. 1.1.2016 in respect of all Central Civil Pensioners/Family pensioners, including CAPFs who retired/died prior to 1.1.2016 may be revised by notionally fixing their pay in the pay matrix recommended by the VIIth Central Pay Commission in the level, corresponding to the pay in the pay scale/pay band and Grade at which they retired/died. It was further decided that this will be done by notional pay fixation under each intervening Pay Commission based on the formula for

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revision of pay. However, Annexure A5 introduced a new and a drastic concept. It provided that the last pay drawn by a pre-2016 pensioner undergoes notional change after every pay commission till the VIIth Central Pay Commission and the pension is fixed ultimately at 50% of that notional pay finally arrived at. Annexure A5 has been totally lost as far as the pre-2006 pensioners of BSNL are concerned. BSNL pensioners are illegally and unreasonably subjected to a further classification as those retired prior to 1.1.2006 and those retired after 1.1.2006. Objecting to this alleged discrimination, the applicants submitted representations. However, no action has been taken on the same. Aggrieved the applicants have approached this Tribunal seeking relief as under:

- “1) To direct the respondents to extend to the pre-2006 DoT absorbed BSNL IDA pensioners, the benefit of Annexure A5 OM, revise their pension by applying the pension formula of 50% of the last pay drawn or 50% of the last ten months average pay which ever is advantageous to them and disburse all the consequential benefits to them with arrears and interest.
- 2) Such other relief as may be prayed for and this Hon'ble Tribunal may deem fit to grant.
- 3) Grant the cost of this Original Application.”

3. The applicants submit that the further classification of BSNL IDA pensioners as those retired prior to 1.1.2006 and those retired after 1.1.2006 violates Articles 14 & 16 of the Constitution of India. The applicants have relied upon the judgment of the High Court of Kerala in *Kamala Devi v. K.S.F.E. Ltd.* - 2002 (1) KLT 157 wherein it was held that Article 14 guarantees equality before law and equal protection of laws but the same does not

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prohibit classification. Moreover, non-extension of the benefit of Annexure A5 OM to the BSNL IDA pensioners who retired from service prior to 1.1.2006 amounts to negation of the rights conferred on them under sub-rule (8) of Rule 37-A of the CCS (Pension) Rules, 1972 which *inter alia* states that the amount of pension of the absorbed employee on retirement or on death from the public sector undertaking shall be calculated in the same way as calculated of a Central Government servant retiring on the same day.

4. A detailed reply statement had been filed by the respondents Nos. 1, 3 to 5 who contend that BSNL was formed on 1.10.2000 by conversion of the erstwhile Department of Telecom Services and Department of Telecom Operations to a public sector undertaking. The Government employees in these two Departments were first transferred en-masse to BSNL on deemed deputation basis. These employees were later given option to either continue to be in Government service or to seek permanent absorption in BSNL. For those employees who opted for absorption in BSNL, presidential orders were issued laying down comprehensive terms and conditions for their absorption in BSNL w.e.f. 1.10.2000. The absorbed employees of BSNL were given higher IDA pay scales as compared to their counterparts in Government service receiving CDA pay scales. These absorbed employees were eligible for pensionary benefits on the basis of combined service rendered by them in the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of

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their retirement from BSNL. The IDA pension was made applicable to BSNL absorbed employees w.e.f. 1.10.2000 onwards and it was subsequently revised w.e.f. 1.1.2007. The applicants are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972. The respondents further submitted that Annexure A5 OM dated 12.5.2017 is applicable to the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings on pro-rata basis in CDA pattern based on their service in Government only. They further contended that certain benefits of Annexure A4 OM have been extended to the BSNL IDA pensioners vide DoT OM dated 16.3.2017 (Annexure R2). Respondents pray for dismissing the OA.

5. Heard Shri R. Sreeraj, learned counsel for the applicants, Mr. K.C. Muraleedharan, learned ACGSC appearing for respondents Nos. 1, 3 to 5 and Mrs. Girija K. Gopal, learned counsel appearing for respondent No. 2. Perused the record.

6. The short point to be considered in this OA is whether Annexure A5 OM dated 12.5.2017 is applicable to the applicants who are BSNL IDA pensioners? On formation of BSNL w.e.f. 1.10.2000 the Government employees in Department of Telecom Services and Department of Telecom Operations were transferred en-masse to BSNL on deemed deputation basis. Later they were given option to either continue to be in Government service or to seek

permanent absorption in BSNL. The applicants opted for absorption in BSNL and presidential orders were issued in their favour laying down comprehensive terms and conditions of their absorption in BSNL w.e.f. 1.10.2000. The applicants were given higher IDA pay scales as compared to their counterparts in Government service receiving CDA pay scales. The applicants were eligible for pensionary benefits on the basis of combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The IDA pension was made applicable to BSNL absorbed employees w.e.f. 1.10.2000 onwards and it was subsequently revised w.e.f. 1.1.2007. The applicants are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972. Sub-rule (4) of Rule 37-A clearly stipulates as under:

“(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking shall take effect from the date on which their options are accepted by the Government and **on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.”** (emphasis supplied)

7. In the present case w.e.f. 1.10.2000 i.e. the date of the presidential order of absorption of the applicants in BSNL, they shall cease to be Government servants and shall be deemed to have retired from Government service. Therefore, w.e.f. 1.10.2000 the applicants are not Government

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servants after their absorption and shall be treated as employees of the public sector undertaking. Sub-rule (7) of Rule 37-A of CCS (Pension) Rules, 1972 clearly stipulates that employees opting for permanent absorption in the public sector undertaking shall on and from the date of absorption be governed by the rules and regulations or by-laws of the public sector undertaking. Sub-rule (8) of Rule 37-A and the explanation below it reads thus:

“(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extraordinary pension) on the basis of combined service rendered by the employee in the Government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or his death or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government.

Explanation - The amount of pension or family pension in respect of the absorbed employee on retirement from the Public Sector Undertaking or on death shall be calculated in the same way as calculated in the case of a Central Government servant retiring or dying on the same day.”

The above quoted sub-rule 8 clearly stipulates that a permanent Government servant absorbed as an employee of a Public Sector Undertaking shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extraordinary pension) on the basis of combined service rendered by the employee in the Government and in the Public Sector Undertaking in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement from the Public Sector Undertaking or at his option, to receive benefits for the service rendered under the Central Government in accordance with the orders issued

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by the Central Government. Here the applicants have given option for permanent absorption in BSNL and retired on superannuation from BSNL. The applicants have not given any option to receive benefits for the service rendered under the Central Government in accordance with the orders issued by the Central Government. Moreover, the explanation only makes it clear that the amount of pension in respect of the absorbed employee on retirement from public sector undertaking shall be calculated in the same way as calculated in case of a Central Government servant retiring or dying on the same day. The respondents in their reply statement submitted that Annexure A5 OM is meant for Central Government CDA pensioners and pro-rata pension optee of BSNL absorbees drawing pension on CDA pattern for Government service period only and not for combined service pension optee BSNL IDA pensioners like the applicants. This fact has not been denied by the applicants by filing any rejoinder.

8. In view of the above, this Tribunal does not find any merit in the OA. Accordingly, the OA is dismissed. No order as to costs.

**(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER**

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List of Annexures in O.A. No.180/00346/2018

- 1. Annexure A1:** True copy of the Department of Pension & Pensioners' Welfare OM F.No.38/37/08-P&PW(A) dated 10.12.2009.
 - 2. Annexure A2:** True copy of the Department of Telecom letter No.40-31/2008-Pen(T) dated 16.08.2010.
 - 3. Annexure A3:** True copy of the Department of Pension & Pensioners' Welfare Resolution No.38/37/2016-P&PW(A)(ii) dated 4.8.2016.
 - 4. Annexure A4:** True copy of the Department of Pension & Pensioners' Welfare OM No.38/37/2016-P&PW(A)(ii) dated 4.8.2016.
 - 5. Annexure A5:** True copy of the Department of Pension & Pensioners' Welfare OM No.38/37/2016-P&PW(A) dated 12.5.2017.
 - 6. Annexure A6:** True copy of the representation dated 23.6.2017 submitted by the 1st applicant Association to the 1st respondent.
 - 7. Annexure R1:** Copy of Rule 37-A of CCS (Pension) Rules, 1972.
 - 8. Annexure R2:** Copy of OM No.40-31/2008-Pen(T) dated 16.03.2017.
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