

IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) 4946 of 2024

IN THE MATTER OF:

UNION OF INDIA THROUGH ITS SECRETARY
DEPARTMENT OF TELECOMMUNICATION & ORS.

...PETITIONER

VERSUS

ALL INDIA RETIRED BHARAT SANCHAR NIGAM
LTD. EXECUTIVE WELFARE ASSO. AND ORS.

...RESPONDENT

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PETITIONER

THROUGH: -

laavanyak
Ms. Laavanya Kaushik
Government Pleader
(Union of India)

FOR RESPONDENT
475, LAWYERS CHAMBERS
DELHI HIGH COURT,
NEW DELHI – 110 002
MOB. 9871049740

DELHI

DATED 19.08.2025

Email: litigation@laavanyakaushik.com

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...RESPONDENT

ADDITIONAL AFFIDAVIT ON BEHALF OF PEITIONERS

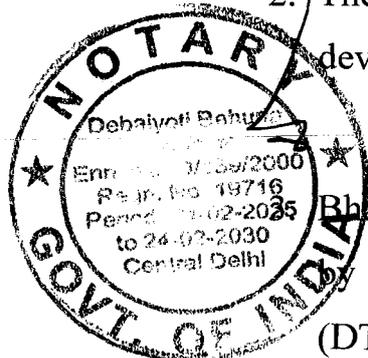
AFFIDAVIT OF Sh. Rakesh Jain S/o Late Shri Kailash Chand Jain, aged about 48 years, presently posted as Assistant Controller of Communication Accounts, Department of Telecommunications, Sanchar Lekha Bhawan, Prasad Nagar, New Delhi-110005.

I, Rakesh Jain, the above captioned deponent, do hereby solemnly affirm and state as under:-

1. That presently I am Assistant Controller of Communication Accounts, Department of Telecommunications, New Delhi. In my official capacity I am conversant with the facts of the case and competent and duly authorised to depose about the same.

2. The present affidavit is being filed to bring on record subsequent developments on the issue under consideration in the present matter.

Bharat Sanchar Nigam Limited (BSNL) was formed on 01.10.2000 by conversion of the erstwhile Department of Telecom. Services (DTS) and Department of Telecom. Operations (OTO) into a Public Sector Undertaking (PSU). The Government employees in these two

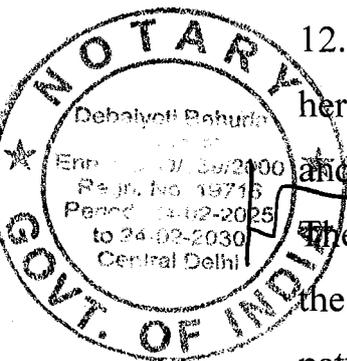


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Departments were first transferred en-masse to BSNL on deemed deputation basis. These employees were later given option to either continue to be in Government Service or to seek permanent absorption in BSNL. Those employees who opted for absorption in BSNL, Presidential Orders were issued in their favour laying down comprehensive terms and conditions of their absorption in BSNL with effect from 01.10.2000 in accordance with Rule 37-A of CCS (Pension) Rules, 1972. The absorbed employees of BSNL were given higher IDA pay scales as compared to their counter parts in Government Service receiving CDA pay scales.

4. After absorption in BSNL, these employees ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule ibid. The absorbed employees of BSNL, who retired or retiring after 01.10.2000 are getting pension and dearness relief thereon in IDA pattern as per Rule 37 (16) of CCS(Pension) Rules, 1972.

5. The Answering Respondent respectfully submits that the case of the Respondents is inter alia that even though there is no change in the pay scale, they are never the less entitled to an enhancement in pension. The Respondents inter alia base their case on the OM dated 12.05.2017 which was issued pursuant to the 7th CPC. As submitted hereinbefore, the Respondents herein are not Government servants and the CPC recommendations are ipso facto not applicable to them. The Respondents being ex-employees of BSNL were governed by the pay scales provided for in the IDA pattern and not the CDA pattern. Contrary to the case of the Respondent the OM dated 12.05.2017 has been issued in continuation of the OM dated



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04.08.2016 providing for the various options for pensioners benefits for Government Servants only.

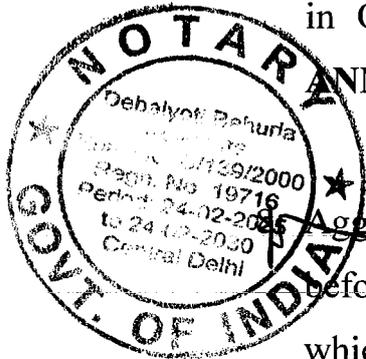
6. It is respectfully submitted however, that the Respondents herein had in fact filed an Original Application before the Ld. CAT at Ernakulam seeking the extension of the benefit of OM dated 12.05.2017 to them. The aforementioned OA was titled, All India BSNL Pensioners Welfare Association and Shri. P. Vadivel (DoB - 18.11.1942, DoE- 19.7.1962 & DoR -30.11.2002) bearing OA No.180/00346/2018 with following prayer:

"To direct the respondents to extend to the pre-2006 DoT absorbed BSNL /Dapensioners, the benefit of Annexure-5 OM (DoPPW OM dated 12.05.2017), revise their pension by applying the pension formula of 50% of the last pay drawn or 50% of the last ten month average pay which ever is advantageous to them and disburse all the consequential benefits to them with arrears and interest."

7. Without prejudice to the submission of the Petitioner that on this ground alone the OA before the Ld. Tribunal at Delhi was not maintainable, and should have been rejected on that ground alone, by judgment and order 30.10.2109 Ld. CAT Ernakulam Bench the aforementioned OA was rejected. Copy of Order dated 30.10.2019 in OA No.180/00346/2018 is annexed herewith and marked as

ANNEXURE - P1.

Aggrieved thereby, the Respondents herein challenged the said order before the Hon'ble High Court of Kerala vide OP No. 60/2020 which was partially allowed vide Judgment dated 07.02.2025. Copy of judgment dated 07.02.2025 in OP No. 60/2020 is annexed herewith and marked as **ANNEXURE - P2.**

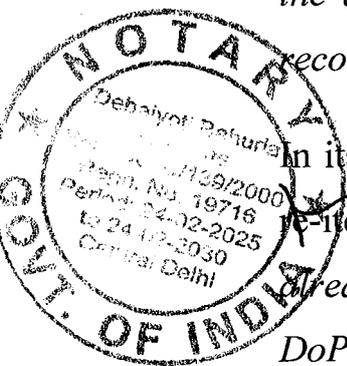


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9. The Union of India, thereafter challenged the said Order before the Hon'ble Supreme Court vide SLP bearing Diary No. 39478/2025. When the matter was taken up before the Hon'ble Supreme Court it was brought to its attention that clarifications dated 17.07.2018 and 27.03.2025 have been issued by DOP&PW which unambiguously and expressly stated that the OM dated 12.05.2017 had no application whatsoever to IDA pensioners such as the Respondents herein. The relevant portion of the said clarification dated 17.07.2018 is reproduced hereunder:

"It is correct that the OMs dated 04-08-2016 and dated 12-05-2017 issued by this Department for revision of pension w.e.f. 01-01-2016 are applicable to Central Government Civil Pensioners drawing pension on CDA pattern and are not applicable to the BSNL absorbee pensioners getting pension under IDA pattern. It may be stated that similar orders issued by this Department for revision of pension of Central Govt. Civil Pensioners based on the recommendations of 6th Central Pay Commission were also not applicable to the BSNL absorbee pensioners under IDA pattern. However, DoT had issued separate orders for revision of pension of the absorbee pensioners of BSNL w.e.f. 01-01-2007 based on the recommendations 2nd Pay Revision Committee.

In its subsequent clarification dated 27.03.2025 also, DoP&PW has reiterated that- *"Vide DoP&PW OM dated 17.07.2018, it has already been clarified that the OM dated 12.05.2017 issued by DoP&PW for revision of pension w.e.f 01.01.2016 are applicable to Central Government Civil Pensioners drawing pension on CDA pattern and are not applicable to the BSNL absorbee pensioners getting pension under IDA pattern".*

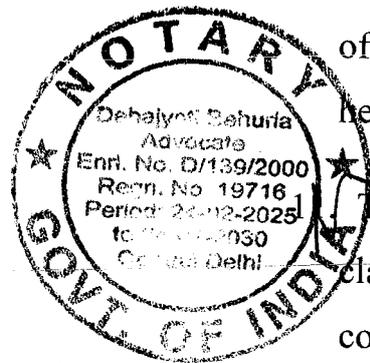


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Further, it is also submitted that the IDA Pay Scales applicable in BSNL are revised by the Deptt of Public Enterprises, Ministry of Finance for all the Central PSUs through a separate mechanism of Pay Revision Committee(PRC); which is different from the Central Pay Commission. As the Pension is the derivative of the Pay, so after revision of the IDA Pay Scales, revision of Pension of IDA Pensioners is examined separately by the Administrative Ministry. Therefore, OM dated 12.5.2017 issued by DoP&PW regarding revision of pension of CDA Pensioners is not applicable to the BSNL absorbee combined service IDA Pensioners.

Copies of OMs dated 17.07.2018 and 27.03.2025 issued by DoP&PW are annexed herewith and marked as **ANNEXURE – P3 & P4.**

10. Keeping in mind the aforesaid, the SLP was withdrawn with liberty to approach the Hon'ble High Court of Kerala and place the said clarification for its consideration in as much as, the said clarification was admittedly not before it when the Order/Judgment dated 07.02.2025 was passed. Liberty was further given to approach the Hon'ble Supreme Court in case the Union was aggrieved by any orders passed by the Hon'ble High Court subsequent thereto. Copy of order dated 08.08.2025 of the Hon'ble Supreme Court is annexed herewith and marked as **ANNEXURE – P5.**



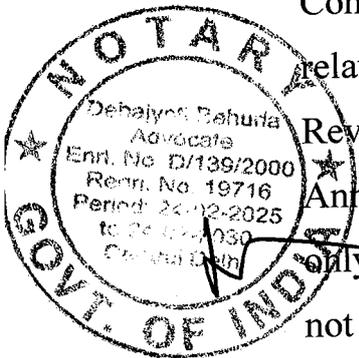
The aforementioned subsequent developments as well as clarification dated 27.03.2025 are being placed on record for the consideration of this Hon'ble Court. The Petitioner respectfully submits that the contentions of the Respondents that they are in anyway entitled to the benefit of OM dated 12.05.2017 is completely

Signature

negated once again in view of the express and unambiguous contents of the clarification dated 27.03.2025.

It is pertinent to mention that the DoP&PW's OM dated 12.05.2017 is in continuation of their OM dated 04.08.2016. Para 7(a) of the letter clearly indicates that when the Government servant on permanent absorption in PSUs continue to draw pension from the Government separately, the pension of such absorbees will be updated in terms of these orders. Accordingly, para 12 of the OM dated 12.05.2017 is applicable for the pensioners who are drawing monthly pension from the Government on permanent absorption in PSUs on a pro-rata basis in CDA pattern based on their service in Government only. Therefore, OM dated 12.05.2017 issued by DoP&PW consequent to recommendations of the 7th Central Pay Commission (CPC) revising the pension/family pension of ex-Government employees are not applicable to the applicants.

The Para No. 4 & 12 of the OM dated 12.05.2017 cannot be read in isolation, without understanding the Subject, and the Context. And the subject of this OM makes it very clear that it is related to the Seventh Central Pay Commission and the Context is Revision of Pension. Even the Exhibit attached with the OM as Annexure-1 mentions only the Central Pay Commissions (CPCs) only. So, its Clauses cannot be made applicable to anybody who is not covered under Central Pay Commission like the IDA Pensioners. Therefore, OM dated 12.5.2017 issued by DoP&PW regarding revision of pension is not be applicable to BSNL absorbee pensioners.



Rakesh Jain
DEPONENT

राकेश जैन / Rakesh Jain
सहायक नियंत्रक / Assistant Controller
कर्मालय प्रसाद नगर, नई दिल्ली - 110005
Prasad, Nagar, New Delhi-110005

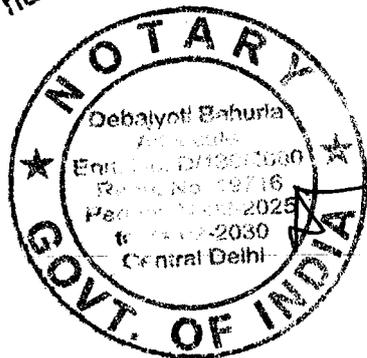
VERIFICATION

I, Rakesh Jain, the above named deponent do hereby solemnly affirm and verify the contents above affidavit are true and correct to my knowledge in my official capacity and on the basis of official records maintained in my office. No part of it is false and nothing material has been concealed therefrom.

Verified at New Delhi in this **19 AUG 2025** day of August, 2025.

Rakesh Jain

DEPONENT
राकेश जैन / Rakesh Jain
सहायक नियंत्रक / Assistant Controller
कार्यालय सहायक नियंत्रक संभार सेवा / O.A. PR CCA
प्रसाद नगर, नई दिल्ली - 110005
Prasad Nagar, New Delhi - 110005 5



CERTIFIED THAT THE DEPONENT
Shri/Smt./Km. *Rakesh Jain*
S/o, W/o R/o *Rakesh Jain*
Identified by *Lawanya Kamal*
Has *SS* at
Delhi on *19/08/2025*
That the contents of the affidavit which
have been read & explained to him/her
are true & correct to his/her knowledge
NOTARY
19 AUG 2025

laavan deponent who has signed in my presence

Annex. P1 B



**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)

Versus

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,

.2.

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 :

ORDER

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 DpT 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

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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.8.

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

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.

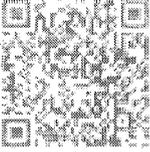
8. In view of the above, this Tribunal does not find any merit in the OA. Accordingly, the OA is dismissed. No order as to costs.

(E.K.BHARAT BHUSHAN)
ADMINISTRATIVE MEMBER

"SA"

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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Annex. P-2 18

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE AMIT RAWAL

&

THE HONOURABLE MR. JUSTICE K. V. JAYAKUMAR

FRIDAY, THE 7TH DAY OF FEBRUARY 2025 / 18TH MAGHA, 1946

OP (CAT) NO. 60 OF 2020

AGAINST THE ORDER/JUDGMENT DATED 30.10.2019 IN OA NO.346 OF
2018 OF CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH

PETITIONERS/APPLICANTS:

- 1 ALL INDIA BSNL PENSIONERS WELFARE ASSOCIATION
AH 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-695018.
- 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, AMBADI,
S.S. KRISHNAN ROAD, FORT KOCHI, KOCHI-682001.

BY ADV
R. SREERAJ

RESPONDENTS/RESPONDENTS:

- 1 UNION OF INDIA
REPRESENTED BY THE SECRETARY,
DEPARTMENT OF TELECOM, SANCHAR BHAVAN,
20, ASOKA ROAD, NEW DELHI-110001.
- 2 BHARAT SANCHAR NIGAM LIMITED,
CORPORATE OFFICE, BHARAT SANCHAR BHAVAN,
HARISH CHANDRA MATHUR LANE, NEW DELHI-110001.



19

OP (CAT) NO. 60 OF 2020 -2-



2025:KER:15196

- 3 THE SECRETARY,
GOVERNMENT OF INDIA, MINISTRY OF HEAVY
INDUSTRIES AND PUBLIC ENTERPRISES,
DEPARTMENT OF PUBLIC ENTERPRISES,
PUBLIC ENTERPRISES BHAWAN, BLOCK NO.14,
CGO COMPLEX, LODHI ROAD, NEW DELHI-110001.
- 4 THE SECRETARY,
GOVERNMENT OF INDIA, MINISTRY OF PERSONNEL,
PUBLIC GRIEVANCES AND PENSIONS,
DEPARTMENT OF PENSIONS AND PENSIONERS'
WELFARE, NEW DELHI-110001.
- 5 THE CONTROLLER OF COMMUNICATION ACCOUNTS,
BSNKL BHAWAN, KERALA CIRCLE, TRIVANDRUM-695033.

BY ADVS.
SRI.T.C.KRISHNA (DSGI IN CHARGE)
SMT.K.R.KRISHNAKUMARI

THIS OP (CAT) HAVING BEEN FINALLY HEARD ON
07.02.2025, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:



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JUDGMENT

AMIT RAWAL, J

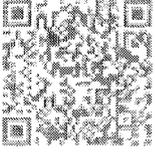
The present O.P.(CAT) is directed against the judgment of the Central Administrative Tribunal denying the following claim laid by the applicants:

“To direct the respondents to extend to the pre-2006 DoT absorbed BSNL IDA pensioners, the benefit of Annexure A-5 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.”

2. Before we could dictate the judgment, we have seen that the O.A. was filed on behalf of the association and none of the persons. It is settled law that the association cannot espouse the grievance of the major persons. Therefore, the present O.P.(CAT) will be only confined to the relief viz-a-viz petitioner No.2.



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3. Brief facts of the petitioners/applicants giving them a cause to claim the benefit aforementioned is enumerated hereinbelow:

There were two departments of the Government i.e., Department of Posts & Telegraph and Telecommunications. Department of Posts and Telegraph was bifurcated in 1987 into Department of Posts and Department of Telecommunications, thereafter Department of Telecommunications merged into BSNL on 01.10.2000. The Government, on acceptance of the recommendations of the 6th Central Pay Commission, issued orders granting pension at the rate of 50% of the average emoluments for the last of ten(10) months of 50% of the last pay drawn whichever is more beneficial to the pensioner. Accordingly, Rule 37A was also incorporated in the CCS (Pension) Rules, 1972, in 2002. Thereafter, 7th Central Pay Commission also came into



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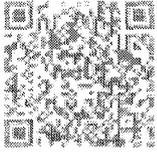


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force with effect from 01.01.2016. On merging, option was given to the employees to opt for combined service benefit i.e., consisting of government and the public undertaking or separately from the Government. Petitioner No.2 is a retiree opted for combined services benefits. On 12.05.2017, Ministry of Personnel, PG & Pensions, Department of Pension & Pensioners' Welfare came out with an Office Memorandum with the subject of implementation, the decision of the Government on recommendations of the 7th Pay Commission that revision of pension of pre-2016 pensioners/family pensioners. Concededly, petitioner No.2 is a pre-2016 pensioner.

4. Paragraph Nos.4 and 12 of the aforementioned implementation letter reads as under:

".....4. The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's,



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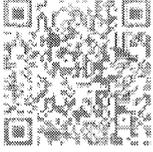


who retired/died prior to 01.01.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. While fixing pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional pay as on 01.01.2016 shall be the revised pension and 30% of this notional pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to family pension at enhanced rate, the revised family pension shall be 50% of the notional pay as on 01.01.2016 and shall be payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee.

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12. The pension of the pensioners who are



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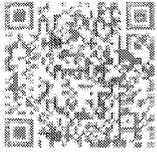
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drawing monthly pension from the Government on permanent absorption in public sector undertakings/autonomous bodies will also be revised in accordance with these orders. However, separate orders will be issued for revision of pension of those pensioners who had earlier drawn one time lump sum terminal benefits on absorption in public sector undertakings, etc. and are drawing one-third restored pension as per the instructions issued by this Department from time to time."

On perusal of the above, it is evident that the aforementioned benefit has been given to the Government employee on permanent absorption in the public sector undertaking or autonomous bodies and their monthly pension will be revised in accordance with the orders i.e., in terms of 50% of notional pay as on 01.01.2016 and 30% of family pension with effect from 01.01.2016 strictly as per the provisions of Condition No.4. A representation was submitted by the petitioner to accord the aforementioned benefit on recommendation of 7th Central Pay Commission as the similar benefit on



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the recommendation of 6th Central Pay Commission was granted to the other pensioners. However, there was no decision on the aforementioned representation giving cause to file the original application.

5. Learned tribunal, vide order under challenge, rejected the claim by observing as under:

"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 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:

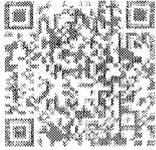
"(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking and his family shall be eligible for pensionary benefits (including commutation of pension, gratuity, family pension or extraordinary pension) on the basis of combined service rendered by the employee 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 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



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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.”

6. The aforementioned findings in our considered view are not sustainable in the eyes of law for the reason that it failed to notice the condition Nos.4 and 12 of the Office Memorandum dated 12.05.2017. It is pertinent to mention here that the respondents had emphatically relied upon the Office Memorandum dated 04.08.2016 Annexure A4 regarding the implementation of Government decisions on the recommendations of the 7th Central Pay Commission ie., Revision of pension of pre-2016 pensioners/family pensioners etc. Clause 7 of the aforementioned Office Memorandum deals with the pension, the same reads as under:



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"7. The cases of Central Government employees who have been permanently absorbed in public sector undertakings/autonomous bodies will be regulated as follows:-

(a) PENSION

Where the Government servants on permanent absorption in public sector undertakings/autonomous bodies continue to draw pension separately from the Government, the pension of such absorbees will be updated in terms of these orders. In cases where the Government servants have drawn one time lump sum terminal benefits equal to 100% of their pensions and have become entitled to the restoration of one-third commuted portion of pension as per the instructions issued by this Department from time to time, their cases will not be covered by these orders. Orders for regulating pension of such pensioners will be issued separately.

(b) FAMILY PENSION

In cases where, on permanent absorption in public sector undertakings/autonomous bodies, the terms of absorption and/or the rules permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All



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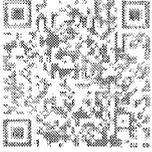
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India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.”

(emphasis supplied)

It was urged that Ext.A5 was in continuation of the aforementioned guideline, i.e., to be read in conjunction and not disjointly.

7. Mr.R.Sreeraj, learned counsel appearing on behalf of the petitioners submitted that learned tribunal failed to address the issue raised particularly that similar benefits was being accorded to the pensioners on recommendation of the 6th Central Pay Commission in the manner of 50% of the pension by calculating the formula as they had also opted for combined services. None of the conditions in the letter Annexure A5 takes away the claim by the retirees who had opted for combined services benefits. Our attention has been drawn to each and every condition noted in the letter Annexure A5.



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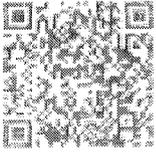
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8. On the other hand, Sri.T.C.Krishna, learned Deputy Solicitor General (in charge) appearing on behalf of the Union of India and Smt.K.R.Krishnakumari, learned Standing Counsel appearing on behalf of the BSNL countered the aforementioned arguments and submitted that pension had already been defined in the letter Annexure A4 in paragraph No.7 therein. The applicant do not fall into that category as they have been drawing the IDA pay scale, whereas the benefit accorded was of the CDA pay scale.

9. We have heard learned counsel for the parties and appraised the paper book.

10. The contents of letter Annexure A5 is required to be extracted in complete. The same reads as under:

"Sub:- Implementation of Government's decision on the recommendations of the Seventh Central Pay Commission - Revision of pension of pre-2016 pensioners/family



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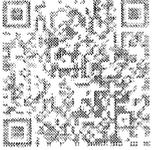
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pensioners, etc.

The undersigned is directed to say that the 7th Central Pay Commission (7th CPC), in its Report, recommended two formulations for revision of pension of pre2016 pensioners. A Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 was issued by this Department indicating the decisions taken by the Government on the various recommendations of the 7th CPC on pensionary matters.

2. Based on the decisions taken by the Government on the recommendations of the 7th CPC, orders for revision of pension of pre-2016 pensioners/family pensioners in accordance with second Formulation were issued vide this Department's OM No. 38/37/2016-P&PW (A) (ii) dated 04.08.2016. It was provided in this O.M. 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 the time of implementation of the recommendations of the 6th CPC, by 2.57.

3. In accordance with the decision mentioned in this Department's Resolution No. 38/37/2016-P&PW (A) dated 04.08.2016 and OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016,



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the feasibility of the first option recommended by 7th CPC has been examined by a Committee headed by Secretary, Department of Pension & Pensioners' Welfare.

4. The aforesaid Committee has submitted its Report and the recommendations made by the Committee have been considered by the Government. Accordingly, it has been decided that the revised pension/family pension w.e.f. 01.01.2016 in respect of all Central civil pensioners/family pensioners, including CAPF's, who retired/died prior to 01.01.2016, may be revised by notionally fixing their pay in the pay matrix recommended by the 7th CPC in the level corresponding to the pay in the pay scale/pay band and grade pay at which they retired/died. This will be done by notional pay fixation under each intervening Pay Commission based on the Formula for revision of pay. While fixing pay on notional basis, the pay fixation formulae approved by the Government and other relevant instructions on the subject in force at the relevant time shall be strictly followed. 50% of the notional pay as on 01.01.2016 shall be the revised pension and 30% of this notional pay shall be the revised family pension w.e.f. 1.1.2016 as per the first Formulation. In the case of family pensioners who were entitled to



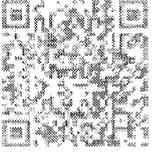
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family pension at enhanced rate, the revised family pension shall be 50% of the notional pay as on 01.01.2016 and shall be payable till the period up to which family pension at enhanced rate is admissible as per rules. The amount of revised pension/family pension so arrived at shall be rounded off to next higher rupee.

5. It has also been decided that higher of the two Formulations i.e. the pension/family pension already revised in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 or the revised pension/family pension as worked out in accordance with para 4 above, shall be granted to pre-2016 central civil pensioners as revised pension/family pension w.e.f. 01.01.2016. In cases where pension/family pension being paid w.e.f. 1.1.2016 in accordance with this Department's OM No. 38/37/2016-P&PW(A) (ii) dated 04.08.2016 happens to be more than pension/family pension as worked out in accordance with para 4 above, the pension/family pension already being paid shall be treated as revised pension/family pension w.e.f. 1.1.2016.

6. Instructions were issued vide this Department's OM No. 45/86/97 -P&PW(A) (iii) dated 10.02.1998 for revision of pension/ family



pension in respect of Government servants who retired or died before 01.01.1986, by notional fixation of their pay in the scale of pay introduced with effect from 01.01.1986. The notional pay so worked out as on 01.01.1986 was treated as average emoluments/last pay for the purpose of calculation of notional pension/family pension as on 01.01.1986. The notional pension/family pension so arrived at was further revised with effect from 01.01.1996 and was paid in accordance with the instructions issued for revision of pension/family pension of pre-1996 pensioners/family pensioners in implementation of the recommendations of the 5th Central Pay Commission.

7. Accordingly, for the purpose of calculation of notional pay w.e.f. 1.1.2016 of those Government servants who retired or died before 01.01.1986, the pay scale and the notional pay as on 1.1.1986, as arrived at in terms of the instructions issued vide this Department's OM 45/86/97-P&PW(A) dated 10.02.1998, will be treated as the pay scale and the pay of the concerned Government servant as on 1.1.1986. In the case of those Government servants who retired or died on or after 01.01.1986 but before 1.1.2016, the actual pay



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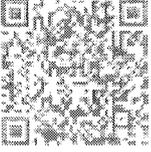
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and the pay scale from which they retired or died would be taken into consideration for the purpose of calculation of the notional pay as on 1.1.2016 in accordance with para 4 above.

8. The minimum pension with effect from 01.01.2016 will be Rs. 9000/- per month (excluding the element of additional pension to old pensioners). The upper ceiling on pension/family pension will be 50% and 30% respectively of the highest pay in the Government (The highest pay in the Government is Rs. 2,50,000 with effect from 01.01.2016).

9. The pension/family pension as worked out in accordance with provisions of Para 4 and 5 above shall be treated as 'Basic Pension' with effect from 01.01.2016. The revised pension/family pension includes dearness relief sanctioned from 1.1.2016 and shall qualify for grant of Dearness Relief sanctioned thereafter.

10. The existing instructions regarding regulation of dearness relief to employed/re-employed pensioners/family pensioners, as contained in Department of Pension & Pensioners Welfare O.M. No. 45/73/97-P&PW(G) dated 02.07.1999, as amended from time to



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time, shall continue to apply.

11. These orders would not be applicable for the purpose of revision of pension of those pensioners who were drawing compulsory retirement pension under Rule 40 of the CCS (Pension) Rules or compassionate allowance under Rule 41 of the CCS (Pension) Rules. The pensioners in these categories would continue to be entitled to revised pension in accordance with the instructions contained in this Department's O.M. No. 38/37/2016-P&PW(A)(ii) dated 4.8.2016.

12. The pension of the pensioners who are drawing monthly pension from the Government on permanent absorption in public sector undertakings/autonomous bodies will also be revised in accordance with these orders. However, separate orders will be issued for revision of pension of those pensioners who had earlier drawn one time lump sum terminal benefits on absorption in public sector undertakings, etc. and are drawing one-third restored pension as per the instructions issued by this Department from time to time.

13. In cases where, on permanent absorption in public sector undertakings/autonomous bodies, the terms of



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absorption and/or the rules permit grant of family pension under the CCS (Pension) Rules, 1972 or the corresponding rules applicable to Railway employees/members of All India Services, the family pension being drawn by family pensioners will be updated in accordance with these orders.

14. 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.

15. The quantum of age-related pension/family pension available to the old pensioners/ family pensioners shall continue to be as follows:-

Age of pensioner/family pensioner	Additional quantum of pension
From 80 Years to less than 85 years	20% of revised basic pension/family pension
From 85 Years to less than 90 years	30% of revised basic pension/family pension
From 90 Years to less than 95 years	40% of revised basic pension/family pension
From 95 Years to less than 100 years	50% of revised basic pension/family pension
100 Years or more	100% of revised basic pension/family pension



The amount of additional pension will be shown distinctly in the pension payment order. For example, in case where a pensioner is more than 80 years of age and his/her revised pension is Rs.10,000 pm, the pension will be shown as (i).Basic pension=Rs.10,000 and (ii) Additional pension = Rs.2,000 pm. The pension on his/her attaining the age of 85 years will be shown as (i).Basic Pension = Rs.10,000 and (ii) additional pension = Rs.3,000 pm. Dearness relief will be admissible on the additional pension available to the old pensioners also.

16. A few examples of calculation of pension/family pension in the manner prescribed above are given in Annexure-I to this O.M.

17. No arrears on account of revision of Pension/Family pension on notional fixation of pay will be admissible for the period prior to 1.1.2016. The arrears on account of revision of pension/family pension in terms of these orders would be admissible with effect from 01.01.2016. For calculation of arrears becoming due on the revision of pension/ family pension on the basis of this O.M., the arrears of pension and the revised pension/family pension already paid on revision of pension/family pension in accordance with the instructions contained in



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this Department's OM No. 38/37/2016-P&PW(A)
(ii) dated 04.08.2016 shall be adjusted.

18. It shall be the responsibility of the Head of Department and Pay and Accounts Office attached to that office from which the Government servant had retired or was working last before his death to revise the pension/ family pension of pre - 2016 pensioners/ family pensioners with effect from 01.01.2016 in accordance with these orders and to issue a revised pension payment authority. The Pension Sanctioning Authority would impress upon the concerned Head of Office for fixation of pay on notional basis at the earliest and issue revised authority at the earliest. The revised authority will be issued under the existing PPO number and would travel to the Pension Disbursing Authority through the same channel through which the original PPO had travelled.

19. These orders shall apply to all pensioners/family pensioners who were drawing pension/family pension before 1.1.2016 under the Central Civil Services (Pension) Rules, 1972, and the corresponding rules applicable to Railway pensioners and pensioners of All India Services, including officers of the Indian Civil Service retired from service on or after 1.1.1973. A pensioner/family pensioner who



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became entitled to pension/family pension with effect from 01.01.2016 consequent on retirement/death of Government servant on 31.12.2015, would also be covered by these orders. Separate orders will be issued by the Ministry of Defence in regard to Armed Forces pensioners/family pensioners.

20. These orders do not apply to retired High Court and Supreme Court Judges and other Constitutional/Statutory Authorities whose pension etc. is governed by separate rules/orders.

21. These orders issue with the concurrence of Ministry of Finance (Department of Expenditure) vide their I.D. No. 30-1/33(c)/2016-IC dated 11.05.2017 and I.D. No. 30-1/33(c)/2016-IC dated 12.05.2017.

22. In their application to the persons belonging to the Indian Audit and Accounts Department, these orders issue in consultation with the Comptroller and Auditor General of India.

23. Ministry of Agriculture etc. are requested to bring the contents of these orders to the notice of Heads of Department/Controller of Accounts, Pay and Accounts Officers, and Attached and Subordinate Offices under them



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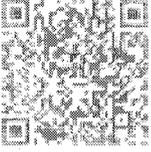


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on top priority basis. All Ministries/Departments are requested to accord top priority to the work of revision of pension of pre-2016 pensioners/family pensioners and issue the revised Pension Payment Authority in respect of all pre-2016 pensioners." (emphasis supplied)

11. On perusal of the above, it is evident that none of the conditions of the letter have excluded the applicability of the conditions to the IDA or applicability to the CDA pay scale. Concededly, the applicant is a pre-2016 pay scale retiree. Paragraph No.7 and the explanation of the sub-rule 8 of Rule 37-A are also worth extraction, the same reads as under:

"7. Accordingly, for the purpose of calculation of notional pay w.e.f. 1.1.2016 of those Government servants who retired or died before 01.01.1986, the pay scale and the notional pay as on 1.1.1986, as arrived at in terms of the instructions issued vide this Department's OM 45/86/97-P&PW(A) dated 10.02.1998, will be treated as the pay scale and the pay of the concerned Government servant as on 1.1.1986. In the case of those Government servants who retired or died on or after 01.01.1986 but before



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1.1.2016, the actual pay and the pay scale from which they retired or died would be taken into consideration for the purpose of calculation of the notional pay as on 1.1.2016 in accordance with para 4 above.”

“Sub-rule 8 of Rule 37-A:

(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



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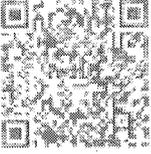


Government servant retiring or dying on the same day."

12. On cumulative reading of the Rule as well as paragraph No.7 of Annexure A5 Office Memorandum, it is evident that the benefit of 50% of the notional pay on the basis of the recommendation of the 7th Central Pay Commission revising the pay scales including the pensions have not explicitly excluded the retirees, who were drawing the IDA pay scales.

13. From the tenor and mode of the finding, extracted above of the tribunal it is evident that none of the aforementioned conditions particularly condition Nos.4 and 12 (emphasis supplied) have been taken into consideration.

We are of the view that it is a fit case where interference is required. Accordingly, judgment of the Central Administrative Tribunal is set aside. O.A. is allowed. Consequently, O.P.(CAT) stands allowed. Respondents are directed to grant relief in terms of



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OP (CAT) NO. 60 OF 2020 -29-



2025:KER:15196

Annexure A5 to the petitioner No.2/applicant, who is a pre- 2016 pensioner, within a period of two months from the date of receipt of certified copy of the judgment.

Sd/-

AMIT RAWAL
JUDGE

Sd/-

K. V. JAYAKUMAR
JUDGE

vv



47

OP (CAT) NO. 60 OF 2020 -30-



2025:KER:15196

APPENDIX OF OP (CAT) 60/2020

PETITIONER ANNEXURES

- ANNEXURE A1 TRUE COPY OF THE DEPARTMENT OF PENSION AND PENSIONER'S WELFARE OM F.NO.38/37/08-P & PW(A) DATED 10.12.201
- ANNEXURE A2 TRUE COPY OF THE DEPARTMENT OF TELECOM LETTER NO.40-31/2008-PEN(T) DATED 16.8.2010.
- ANNEXURE A3 TRUE COPY OF THE DEPARTMENT OF PENSION & PENSIONER'S WELFARE RESOLUTION NO.38/37/2016-P & #42; PW(A) DATED 4.8.2016
- ANNEXURE A4 TRUE COPY OF THE DEPARTMENT OF PENSION & PENSIONER'S WELFARE OM NO.38/37/2016-P&PW(A) (ii) DATED 4.8.2016
- ANNEXURE A5 TRUE COPY OF THE DEPARTMENT OF PENSION & PENSIONER'S WELFARE OM NO.38/37/2016-P&PW(A) DATED 12.5.2017
- ANNEXURE A6 TRUE COPY OF THE REPRESENTATION DATED 23.6.2017 SUBMITTED BY THE 1ST APPLICANT ASSOCIATION TO THE 1ST RESPONDENT
- ANNEXURE R1 TRUE COPY OF RULE 37-A OF CCS (PENSION) RULES, 1972
- ANNEXURE R2 TRUE COPY OF THE OM NO.40-31/2008-PEN(T) DATED 16.3.2017.
- EXHIBIT P1 TRUE COPY OF THE FINAL ORDER DATED 30.10.2019 IN OA 346/2018 ON THE FILE OF THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, ERNAKULAM BENCH.

78



OP (CAT) NO. 60 OF 2020 -31-



2025:KER:15196

EXHIBIT P2

**TRUE COPY OF THE ORIGINAL APPLICATION
NO.346/2018 ON THE FILE OF THE HON'BLE
CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH.**

EXHIBIT P3

**TRUE COPY OF THE REPLY STATEMENT FILED
BY THE RESPONDENTS 1 & 3 TO 5 I OA
346/2018 ON THE FILE OF THE HON'BLE
CENTRAL ADMINISTRATIVE
TRIBUNAL,ERNAKULAM BENCH.**

#

Digitally Signed by:
Seena K A
HIGH COURT OF KERALA ERNAKULAM
highcourt

Date: 2025-03-05T11:03:56.3471617+05:30



99

**HIGH COURT OF KERALA
AT ERNAKULAM**

Number and Year of the Case : OP (CAT) 60/2020
Name Of Applicant : SHRI.T.C.KRISHNA, SCGC
Number and Date of Application : A 11096/2025 , 14-02-2025
Date when the copy was delivered : 05-03-2025

Examiner



50

**HIGH COURT OF KERALA
AT ERNAKULAM**

Number and Year of the Case : OP (CAT) 60/2020
Name Of Applicant : SHRI.T.C.KRISHNA, SCGC
Number and Date of Application : A 11096/2025 , 14-02-2025
Date when the copy was delivered : 05-03-2025

Examiner



ONLINE COPY APPLICATION

STP

Digitally Signed by:
Seena K A
HIGH COURT OF KERALA ERNAKULAM
highcourt

Date: 2025-03-05T11:04:01.9062386+05:30



Annex P-3 57

Most Immediate
Court Case
Time Bound

4/20/2018-P&PW(D)
Government of India
Ministry of Personnel, Public Grievances & Pensions
Department of Pension & Pensioners Welfare
3rd Floor, Lok Nayak Bhavan,
Khan Market, New Delhi
Dated: 17-07-2018

OFFICE MEMORANDUM

Subject: O.A. No.180/00346/2018 filed by All India BSNL Pensioners' Welfare Association before CAT, Ernakulam Bench.

The undersigned is directed to refer to Department of Telecommunications (DoT) letter no.38-49/2018-Pen(T) dated 2nd July, 2018 on the above subject and to say that in the case of BSNL absorbed employees, IDA pension was made applicable with effect from 01-10-2000 onwards and it was subsequently revised w.e.f. 01.01.2007 after implementation of the recommendations of the 2nd Pay Revision Committee. The applicants of the OAs are absorbee pensioners of BSNL and they are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS(Pension) Rules, 1972.

2. Central Government Civil Pensioners are entitled to revision of pension/family pension w.e.f. 01-01-2016 on CDA pattern on the basis of recommendations of 7th Central Pay Commission.

3. Among others, Department of Pension and Pensioners Welfare, Department of Telecommunications, and BSNL are the Respondents in the instant case.

4. The draft counter reply sent by DoT has been examined in this Department. In the draft reply the DoT has stated that the Orders issued by this Department vide OMs dated 04-08-2016 and 12-05-2017 are applicable only to the Central Government Civil Pensioners drawing pension under CDA pattern and these orders are not applicable to BSNL absorbee pensioners drawing pension under IDA pattern. DoT has, therefore, prayed for dismissal of the OA.

5. It is correct that the OMs dated 04-08-2016 and dated 12-05-2017 issued by this Department for revision of pension w.e.f. 01-01-2016 are applicable to Central Government Civil Pensioners drawing pension on CDA pattern and are not applicable to the BSNL absorbee pensioners getting pension under IDA pattern. It may be stated that similar orders issued by this Department for revision of pension of Central Govt. Civil Pensioners based on the recommendations of 6th

Central Pay Commission were also not applicable to the BSNL absorbee pensioners under IDA pattern. However, DoT had issued separate orders for revision of pension of the absorbee pensioners of BSNL w.e.f. 01-01-2007 based on the recommendations 2nd Pay Revision Committee. It is not clear whether similar orders for revision of pension of BSNL absorbees pensioners under IDA pattern are proposed to be issued for revision of pension on the basis of recommendations of 3rd Pay Revision Committee. DoT may consider including factual position in this regard in the draft reply.

6. Department of Telecommunication is requested to take necessary action accordingly.

Sanjay Wadhawan
 (Sanjay Wadhawan)
 Deputy Secretary to the Govt. of India
 Tel. No. 24655523

✓ To

Shri Sanjay Aggarwal,
 Director (Estt-II)
 Department of Telecommunication
 Sanchar Bhawan, 20, Ashoka Road,
 New Delhi-110 011

Consultant (Estt-II)
 13.07.18
 on file

To

C-336188/Att (Estt-II)/2018
 12/07

Annex. P-5
1 sy

ITEM NO.18

COURT NO.14

SECTION XI-A

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 39478/2025

[Arising out of impugned final judgment and order dated 07-02-2025 in OPCAT No. 60/2020 passed by the High Court of Kerala at Ernakulam]

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

P. VADIVEL & ANR.

Respondent(s)

IA No. 180561/2025 - CONDONATION OF DELAY IN FILING

Date : 08-08-2025 This matter was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AHSANUDDIN AMANULLAH
HON'BLE MR. JUSTICE S.V.N. BHATTI

For Petitioner(s) Mr. Vikramjeet Banerjee, ASG
Mr. Nachiketa Joshi, Sr. Adv.
Ms. Pankhuri Shrivastava, Adv.
Mr. VVV Pattabhiram, Adv.
Mr. Abhishek Singh, Adv.
Mr. Amrish Kumar, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

At the outset, Mr. Vikramjeet Banerjee, learned Additional Solicitor General (ASG) appearing for the petitioners, fairly submits that one of the major points which goes in support of the contentions raised before this Court has come by way of a clarification letter issued by the concerned authorities.

Signature Not Verified

Digital Signed By
VARSHI MEMORATTA
Date: 2025.08.12
18:47:20 IST
Reason: []

However, he also fairly submits that the said issue could not be brought to the notice of the High Court at the time of passing of the impugned judgment.

3. Accordingly, he prays that the Court may permit him to withdraw the present petition with liberty to seek review of the impugned order before the High Court itself, with an observation that the case may be heard on merits and not dismissed at the threshold on the ground of limitation.

4. Having regard to the aforesaid, the Special Leave Petition stands disposed of as withdrawn with liberty aforesaid.

5. However, if such a review petition is filed within four weeks from today, the High Court shall not dismiss it on the ground of limitation and would decide the matter on merits, after issuing due notice to all parties concerned.

6. We further make it clear that we have not expressed any opinion on the merits of the case.

7. Additionally, we grant liberty to the parties to move this Court again, depending on the outcome of the review.

8. Pending application(s), if any, shall also stand disposed of.

(VARSHA MENDIRATTA)
COURT MASTER (SH)

(ANJALI PANWAR)
COURT MASTER (NSH)