

Relevant extract from Judgement

CENTRAL ADMINISTRATIVE TRIBUNAL PRINCIPAL BENCH,
NEW DELHI

O.A. No. 1272/2020

With

O.A. No. 1271/2020 &

O.A. No. 1329/2020

Reserved on : 24.08.2023

Pronounced on : 20.09.2023

Hon'ble Mr. Tarun Shridhar, Member (A)

Hon'ble Mrs. Pratima K. Gupta, Member (J)

OA No 1272/2020

1. All India Retired Bharat Sanchar Nigam Limited
Executive Welfare Association
Through its General Secretary
Shri Prahlad Rai
Registration Number: S/00108/NE-12010 C-8/230,
Having its registered office at:
8/230, Yamuna Vihar,
Delhi-110053

**2. Sanchar Nigam Pensioners Welfare Association
Through its General Secretary
Shri Girdhari Lal Jogi
Having its office at:
SNEA Bhawan, B-11/1&2, Ground Floor,
Opp. to Sanatan Dharma Mandir.
Ramesh Nagar, New Delhi-110015**

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With the request and consent of learned counsel for the parties, all the O.A(s) have

been taken up together for disposal and these are being decided by a common order. However, facts of only **OA No. 1272/2020** are being discussed.

RELIEF SOUGHT:

5. The background and history of the case as briefly explained by Shri Sanjay Ghosh, learned senior advocate for the applicants is that at the time of their initial placement and absorption in BSNL and MTNL, it was stipulated that they shall continue to be governed by the terms and conditions of service as were applicable upon them in their capacity as government servants prior to corporatization.

6..Learned counsel clarifies that the terms and conditions which were to remain in operation in the case of the applicants included pensionary benefits; he draws attention to the documents annexed to the O.A. to substantiate this claim. He further informs that pursuant to the recommendations of the various Central Pay Commissions (CPCs) necessary benefits as recommended by the CPCs and accepted by the Government have been extended in favour of the applicants except for revision of pensionary benefits pursuant to Pay Commission recommendations. Aggrieved by the same, they seek the following relief(s) by way of the present O.A.:-

"(a) Pass an Order directing the Department of Telecommunications to revise the pension/family pension/minimum pension w.e.f. 01.01.2017 for the BSNL combined service Pensioners, who were absorbed from DOT/DTS/DTO w.e.f. 01.10.2000 and retired prior to 01.01.2017 by applying the fitment formula on IDA pension as on 01.01.2017;

(b) Pass an Order directing the Department of Telecommunications to revise the pension/family pension/minimum pension w.e.f. 01.01.2017 for the BSNL combined service Pensioners, who were absorbed from DOT/DTS/DTO w.e.f. 01.10.2000 analogous to the revision of pension/family pension/minimum pension for the Central Government Pensioners based on the recommendations of the 7th Central Pay Commission;

(c) Pass an Order directing the Department of Telecommunications to revise the pension for BSNL combined service pensioners parallel to the revision of pension of the Central government servants without linking with Pay revision in BSNL:

(d) Pass such other further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts

and circumstances of the present case and in the interest of justice."

17. He argues that it is abundantly clear that not only is the claim of pension of the applicants, being ex-employees of DOT who were absorbed in BSNL, to be determined strictly on the pattern of entitlement of regular Government employees but it is to be revised from time to time, without exception, strictly on the same analogy.

18. Ms. Gauri Puri, learned counsel for the applicants in O.A. Nos. 1271/2020 and 1272/2020 argues that right from the stage of deputation of the applicants from DOT to BSNL till the clarification of 2009, each and every communication/document/notification establishes that the applicants are to be governed by pension and family pension in accordance with the entitlement of regular Government employees. She emphatically states that their initial terms of deputation leading to absorption have specific terms and conditions to this effect. Reversing the situation now amounts to denying their legitimate claim and expectation. These employees agreed to get absorbed in BSNL only on account of assurance of social security by way of pension which was made applicable to them in their status as the Government servants. She also draws attention to the Office Memorandum dated 20.07.2016

which states that pension liability in respect of employees of DOT who were absorbed in BSNL and retired on 01.10.2000 is solely to be borne by the Government of India; she clearly mentions that BSNL has no liability in respect of these employees. She further submits that a condition imposed earlier that the liability of pension shall not consist more than 60% of the annual revenue; however, this condition has also been since rescinded. Alleging discrimination she submits that the benefits of revision on account of recommendations of the 7th Central Pay Commission have been extended to serving absorbed BSNL and MTNL employees except for the ones who had retired. This is in contravention to what has been set forth in the amended Central Civil Services Pension Rules, specifically Rule 37 A.

21. We have gone through the voluminous pleadings on record and also heard the detailed arguments put forth by the learned counsel on more than a couple of occasions.

22. The facts of the case are not disputed, nor is questioned any documents relied upon by the respective parties. There is no ambiguity that at the time of their placement and absorption in BSNL and MTNL, it was categorically stated that the

erstwhile employees of the Department of Telecommunication shall continue to be governed by their existing terms and conditions of the service which means that they shall continue to be treated as government servants for all intents and purposes. It is also not in dispute that from time to time, the recommendations of the Central Pay Commission, as accepted and notified by the government, were made applicable in their case too. There is no ambiguity with respect to the general terms and conditions governing absorption, as circulated and quoted in para 5 of this order, stating categorically that provisions of Rule 37 (A) of the CCS (Pension) Rules, shall guide payment of pension to these employees.

23. Section 37 (A) of the CCS (Pension) Rules has to be read in totality and sub para 21 of the same further clarifies that pensionary benefits of these employees, including family pension shall be paid by the government. In fact, several communications and memoranda, extracts of which have been quoted in this judgment, lead only to one inference that a very well-considered conscious decision was taken and expressly stated that the terms and conditions of the service of employees of Department of Telecommunications shall remain protected even on their absorption in BSNL/MTNL and further, it has been emphasized that these terms and conditions are inclusive of pension and family pension.

27. We have no hesitation in concluding that the present application deserves positive consideration. The government had given a promise and stated it in black and white. How could it now retract from the promise, that too not by any law or rules but by simply a refusal to honour it?

28. In view of the elaborate discussion above, the OA stands allowed. The competent authority amongst the respondents is directed to forthwith revise the pension and family pension wherever applicable, strictly in accordance with the relevant rules and the entitlement governing pension to various sets of employees of the Central Government, maintaining strict parity. It is clarified that the benefits of revision of pension and family pension as notified by the Central Government on the recommendations of the Pay Commission, shall stand extended in favour of the applicants, analogous to the revision of such pension in case of Central Government pensioners.

29. The directions contained herein shall be complied with within a period of ten weeks from the date of receipt of a certified copy of this order.

30. The OA stand allowed against the background of the aforesaid directions.
Pending MA(s), if any, stands disposed of accordingly.

There shall be no orders as to costs.

(Pratima K. Gupta)

Member (J)

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(Tarun Shridhar)

Member (A)