

78.2% fitment – Understanding what we have lost

The news circulating on social media about the Supreme Court of India dismissing the Union of India's Review Petition arising from the decision of Chandigarh CAT regarding the 78.2% fitment benefit, has sparked curiosity among our members. Given that AIBSNLREA's Writ Petition on the matter is still pending in the Delhi High Court, it is but natural that our members are eager to know more details.

We have been following the developments ever since CAT Chandigarh in January 2019 partly allowed the prayer of the 29 applicants (BSNL absorbed pensioners) and till the Supreme Court recently dismissed the Review Petition filed by Union of India (DoT). CAT Chandigarh while ordering that *“the applicants are held entitled to revised DCRG, Leave encashment and Commuted Value of Pension on the basis of revised pay”*, did not agree for actual payment for the period 1.1.2007 to 9.6.2023 on the ground that *“there is no information available on record that in-service employees have been paid the actual benefits”*.

DoT issued orders on 18.7.2016, notionally revising the pension of those who had retired prior to 1.1.2007, with actual benefit from 10.6.2013 and revising the pay of pensioners who retired between 1.1.2007 and 9.6.2013 notionally w.e.f. 1.1.2007 with consequent revision of pension on notional pay, with actual benefit of 78.2% fitment from 10.6.2013, specifically mentioning that they would not get increase in the amount of DCRG, leave encashment and commutation of pension on this account. The glaring discrimination that caught the eyes of everyone was that those who retired before 10.6.2013 will get lesser amount of DCRG, leave encashment and commutation of pension than those retiring after that date. This discrimination was bound to be struck down by any court as it sought to divide the homogenous class of pensioners arbitrarily fixing a cut of date without any rational principle.

But we in AIBSNLREA saw the larger issue that DoT had no authority to implement the DPE OM dated 2.4.2009 from a date of its own choice. DPE OM dated 2.4.2009 was just a modification to its earlier OM dated 26.11.2008, replacing the fitment benefit of 68.8% with 78.2%, as earlier, DPE had failed to take into account the additional 9.4% of IDA we were drawing from 1.1.2007 consequent to merger of 50% IDA w.e.f. 1.1.2007 [50% of 68.8 – 50], with all the other terms remaining the same. DPE OM dated 2.4.2009 did not provide any scope to the PSUs to choose any date other than 1.1.2007 for revising the pay with 78.2 fitment benefit. It had only specified that the effective date of revised **allowances** will be the date of issue of Presidential Directive.

Implementation DPE OM on 78.2% fitment, on **actual basis** w.e.f. 1.1.2007 will result in pension arrears to those who retired before 1.1.2007, pay & pension arrears to those who were in service on 1.1.2007 and retired before 10.6.2013 and pay arrears to those who retired after 9.6.2013.

For this reason, our prayers before PCAT Delhi and now before Delhi High Court are: pension arrears to those who retired prior to 1.1.2007, pay and pension arrears to those who were in service on 1.1.2007 and retired before 10.6.2013, pay arrears w.e.f. 1.1.2007 to those who retired after 9.6.2013 and enhanced DCRG, Leave encashment and commuted pension for those who retired before 10.6.2013.

Our OA in PCAT Delhi was dismissed as the court was misled by the claim by DoT that **“DPE had ordered revision of DA and left the final decision to the respective PSUs.”** Through our Writ Petition before Delhi High Court assailing the decision of PCAT Delhi, we are seeking to clear the air on the DoT's misquoting of DPE OM **Para v) Effective date for revised allowances**, as if revision of pay with 78.2 fitment benefit is effective from the date of issue of Presidential

Directive. Due to undue delay in DoT submitting its counter affidavit and due to change in the Bench twice, the case is unusually dragging on. A verdict allowing pay revision with 78.2% fitment benefit on **actual basis from 1.1.2007** alone will render complete justice to the BSNL employees as well as the BSNL absorbed pensioners.

We should not forget that we were availing the benefit of merger of 50% IDA right from 1.1.2007 till our pay/pension was revised with 68.8% in 2009/2011 w.e.f 1.1.2007 due to defective order by DPE on 26.11.2008. DoT/BSNL duly implemented it w.e.f. 1.1.2007. As a result, the benefit of merger we had been already availing was taken away. But when DPE made amends by correcting the mistake, DoT/BSNL refused to incorporate the correction w.e.f. 1.1.2007. **Unless we realise that grave injustice has been done to us**, we may feel satisfied that removal of the discrimination will suffice.

CAT Chandigarh has ordered that *“the **applicants** are held entitled to revised DCRG, Leave encashment and Commuted Value of Pension on the basis of revised pay”*. Although Supreme Court in the past and even recently has observed that *“where a citizen aggrieved by an action of the government department has approached the court and obtained a declaration of law in his/her favour, others similarly situated ought to be extended the benefit without the need for them to go to court”*, our experience is that the Government departments concerned rejoice calling it ‘in personam’ and refuse to implement it for all similarly placed persons. We only wish that DoT will approach the matter differently.

It will be worth mentioning that OA in Chandigarh CAT was filed in individual capacity while AIBSNLREA’s petition has been filed by the General Secretary AIBSNLREA as first petitioner on representative capacity, meaning the benefit of the verdict as and when it is delivered, will be available to all the members.

-----AIBSNLREA CHQ-----26.12.2024-----