IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL, CHANDIGARH, CIRCUIT BENCH AT SHIMLA

C.P. No. 063/111/2019
In
O.A. No.063/1192/2017

IN RE:

Bhawani Dutt Sharma & Ors. **..... Applicants**

Versus

Dr. Neeraj Mittal & Ors. **..... Respondents**

SUPPLEMENTARY AFFIDAVIT IN COMPLIANCE OF ORDERS DATED 23.01.2019 & 25.07.2025.

I, Dr Neeraj Mittal, aged 57 years, S/o Late Shree Krishan Mittal, presently working as Secretary, Department of Telecommunications, residing at 103, New Moti Bagh New Delhi, do hereby solemnly affirm and declare on oath as under: -

1. That I am working as Secretary with the respondent's department and am well conversant with the facts of the case and as such I am competent to file and maintain the present supplementary affidavit on behalf of the Respondent.
2. That before submitting record in this contempt petition, the Respondents/Contemnors at the very outset tender unconditional and unqualified apology. The Respondents/Contemnors have not committed contempt of this Hon'ble Tribunal and much less deliberately and wilfully. Being law-abiding citizen and holding responsible position, they cannot even imagine committing contempt of Court. The Respondents/Contemnors have the highest regard for the judiciary. However, if this Hon'ble Tribunal comes

to the conclusion that the Respondents/Contemnors herein have committed any contempt, the same must be treated as an unconscious and inadvertent act and therefore, once again, they tender unconditional apology.

3. That the Applicants filed the instant OA No.363/01192/2017 for issuance of direction to the Respondents/Contemnors to release them arrears of pay and allowances w.e.f. 1.1.2007 till their retirement and revised consequential retiral dues like DCRG, commuted vale of pension and leave encashment etc. along with interest @ 12% from 10.6.2013 to March, 2017 for delay caused in release of necessary benefits.

4. The applicants were the absorbed employees of BSNL- now taking the combined service pension on IDA Pay Scales from Government of India, Department of Telecommunications (DoT) as per Rule-37A of the CCS Pension Rules, 1972. And their pension is being paid from the Consolidated Fund of India. On the basis of the recommendations of the 2nd Pay Revision Committee (PRC), Department of Public Enterprises (DPE) issued OM No.2(70)/08-DPE(WC)-GL-XVI/08 dated 26.11.2008, thereby recommending revision of pay scales for Board and below Board level executives of CPSEs with effect from 01.01.2007. Which are applicable to BSNL also being a CPSE. Under this OM, the pay of the employees of CPSEs were allowed with merger of DA @

Dr. NEERAJ MITTAL
Dy. Depti. of Telecom
Communications Commission
Govt. of India
New Delhi

68.8% as on 01.01.2007 with a maximum benefit of 30% fitment. These recommendations of pay revision of DPE were also made applicable to the employees of BSNL with effect from 01.01.2007 vide DoT order No. 61-01/2009-SU dated 27.02.2009. However, pension of BSNL IDA pensioners, who retired between the period from 01.10.2000 to 31.12.2006 could not be revised as there is no provision in Rule 37-A of CCS (Pension) Rules, 1972, for revision of pension of BSNL IDA pensioners. However, keeping in view the general welfare of BSNL IDA pensioners, special efforts were made by Department of Telecommunication (DoT) by moving a Cabinet Note for seeking approval of the Union Cabinet for revision of pension of BSNL IDA pensioners retired between 01.10.2000 to 31.12.2006 with effect from 01.01.2007 and with the approval of Union Cabinet, DoT vide OM No. 40-17/2008-Pen(T)-Vol.III dated 15.03.2011 revised pension of the pre-2007 combined service retirees with effect from 01.01.2007. It is also worthwhile to mention that at this stage DCRG, Leave Encashment and Commutation of pre-2007 was not revised, as these benefits were already paid to them at the time of their retirement based on the actual last pay drawn.

AJ MITTAL
of Telecommunications
Govt. of India
New Delhi

5. Subsequently, Department of Public Enterprises (DPE), vide their OM No.2(70)/08-DPE(WS)-GL-VII/09 dated 02.04.2009 allowed

benefit of merger of 50% Dearness Allowance with Basic Pay for fitment purpose with effect from 01.01.2007, effectively amounting to 78.2% for the purpose of fitment and pay fixation in revised pay scales for Board and below Board level executives of CPSEs (with reference to para 2(1) of DPE's OM dated 26.11.2008). Accordingly, DoT allowed benefit of merger of 50% DA with Basic Pay of BSNL employees with effect from 01.01.2007, effectively amounting to 78.2%, for the purpose of fitment and pay fixation in the revised pay scales, vide order No.61-01/2012-SU dated 10.06.2013. As would be apparent from the above order, this 50% merger of DA was though made effective from 01.01.2007, no arrears were allowed to be paid to the BSNL employees for the period from 01.01.2007 till the date preceding the date of issue of the order i.e. 09.06.2013 because of the financial constraints of BSNL.

6. Similarly, to save pensioners from any anomaly in pension between the employees who retired prior to 10.06.2013 (like- Applicants) and who retired on or after 10.06.2013, Government with the approval of Union Cabinet revised the pension of pre 10.06.2013 retirees (like Applicants) notionally with effect from 01.01.2007 and actual benefits from 10.06.2013 vide DoT OM No. 40-13/2013-Pen(T) 18.07.2016 with the condition that since these pensioners do not get actual benefit of increase in pay/ pension during the period between 01.01.2007 to

Dr. NEERAJ MITTAL
Deptt. of Telecommunications
Govt. of India
New Delhi

09.06.2013, and they would not get increase in the amount of DCRG, Leave Encashment and Commutation of Pension on this account, as these pensioners were already paid DCRG , Leave Encashment and Commutation of Pension at the time of their retirement on the basis of their actual last pay drawn. This revision of pension was only to save them from the anomaly in pension between pre and post 10.06.2013 retirees. And now the Applicants though they are pre 10.06.2013 retirees, they are getting the monthly pension same as their equivalent- post 10.06.2013 retirees.

7. That the Hon'ble tribunal on the last date of hearing i.e. 25.07.2025 directed the Respondent no.6 to appear before the Hon'ble Tribunal. The operative portion of the order as mentioned in thereof is as under:

   (i) "In furtherance to our order dated 16.05.2025, supplementary affidavit dated 10th June 2025, has been filed by the Secretary, Department of Telecommunications. We have perused the affidavit. In the supplementary affidavit the respondent No.6 has further adopted the same ground as has been decided in the main O.A vide order dated 23.01.2019. Furtherance to our order dated 23.01.2019 in the main O.A, the respondents have approached the Hon'ble Jurisdictional High Court and the Hon'ble Jurisdiction High Court has dismissed their writ petition and thereafter the Hon'ble Apex Court has also dismissed the SLP. We are of the affirmed view that now at this stage, the respondents cannot take the same ground which has already been

डॉ. नीरज मित्तल / Dr. NEERAJ MITTAL
सचिव, दूरसंचार विभाग एवं
अध्यक्ष, डिजिटल संचार आयोग
Secretary, Deptt. of Telecom
& Digital Communications Commission
भारत सरकार / Govt. of India
नई दिल्ली / New Delhi

decided by this Tribunal. We are also clear that as the revised pay scale has been given and the pension has been fixed, all the retirement dues like DCRG, Leave Encashment and commuted value of pension are the part of retirement dues. We are of the affirmed view that our order dated 16.05.2025 has not been fully complied with. Respondent No.6 is directed to comply with our order in the letter and spirit and pay the petitioners all the retirement dues like DCRG, Leave Encashment and commuted value of pension on the basis of revised pension by the next date of hearing, failing which, the respondent No.6 shall be present in the Court on the next date of hearing"

8. There is an additional new ground which is restricting the implementation of the Hon'ble CAT Order dated 23.01.2019, and that is the Finance Act-2025 passed by the Parliament on 29.03.2025. It has rendered the CAT Order dated 23.01.2019 as against the law and non-implementable.
9. That the matter was referred to Nodal Department related to Pension matters i.e. Department of Pension & Pension Welfare (DoP&PW) for seeking their advice in the light of extant legislation i.e. The Finance Act, 2025. DoP&PW vide ID Note dated 22.08.2025 (**Annexure-R1**) advised that the Government of India has notified "Validation of Central Civil Services (Pension) Rules and Principles for Expenditure on Pension Liabilities from the Consolidated Fund of India" on 29.03.2025 as Part IV of the Finance Act,2025. Section 150 of the said act states that:

Validation

150.Notwithstanding anything contrary contained in any judgment, decree or order of any court, tribunal or authority and notwithstanding anything contained in the pension rules,—

(a) it is hereby clarified that the Central Government has the authority and shall always deemed to have had the authority, to classify its pensioners, and may create or maintain distinction amongst pensioners as deemed expedient for implementing the recommendations of the Central Pay Commissions under this Part;

(b) It is also clarified that the date of retirement of pensioners shall be the basis of distinctions and for classification in regard to pension entitlement.

That after the assent of the President, the Finance Act,2025 is published in Gazette of India on 29.03.2025 to incorporate "VALIDATION OF CENTRAL CIVIL SERVICE (PENSION) RULES AND PRINCIPLES FOR EXPENDITURE ON PENSION LIABILITIES FROM THE CONSOLIDATED FUND OF INDIA"

The Copy of the Finance Act, 2025 is annexed herewith as **Annexure –R2.**

10. It is submitted that Section 149 of the "Validation of Central Civil Services (Pension) Rules and Principles for Expenditure on Pension Liabilities from the Consolidated Fund of India" states the Core Principle. The Central Government shall have the authority to establish distinctions among pensioners as a general principle. A distinction may be made or maintained having regard to accepted recommendations of Central Pay Commissions,

Dr. NEERAJ MITTAL
Dept. of Telecom Communications Commission
Govt. of India/New Delhi

including on the basis of the date of retirement or the date of operationalization of an accepted recommendation. The provision also clarifies that the norms and methods of pension revision under a given Commission shall take effect from the date determined by the Government and the benefit shall not be given from an earlier date. Further, Section 150 is a validation clause with a non-obstante override. It clarifies that the Central Government has the authority and shall always be deemed to have had the authority to classify its pensioners and to create or maintain distinctions in implementing Pay Commission recommendations. It further clarifies that the date of retirement shall be the basis for such distinctions and for classification regarding pension entitlement. This clause operates notwithstanding anything to the contrary in any judgment, decree or order of any court, tribunal or authority and notwithstanding anything in the pension rules.

11. Once Sections 149 and 150 are taken in to consideration the relief of complete parity is incompatible with the statute. Parliament has recognized that accepted Pay Commission recommendations may produce different pension outcomes for different cohorts and has authorized and validated those differences on a retrospective basis. The non-obstante clause ensures that any contrary view taken earlier does not prevail for purposes of this classification or the entitlements flowing from it.

12. It is further submitted that that Section 149(4) states that the norms and methods under a given Pay Commission shall take effect from the date determined by the Government and that benefits shall not be given from an earlier date. The request to backdate a different methodology to a past retiree (like- the Applicants) is therefore directly at odds with the statute. In light of these provisions and

EERAJ MI
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वसार आयोग
tt. of Telecom
unications Com
/Govt. of India
/New Delhi

the facts on record, the Applicant's claim for parity in DCRG, Leave Encashment and Commutation through notional pay fixation as should be rejected on enactment of the Validation Rules enacted vide Finance Act with retrospective effect from 01.06.1972.

13. That with utmost respect, it is most humbly submitted that in view of the subsequent legislation enacted by the Parliament, namely Section 150 of Part IV of the said Act, the statutory position regarding pension entitlement and classification of pensioners now stands clearly defined. The said provision explicitly validates and deems to have always vested the authority in the Government of India to classify its pensioners and to create or maintain necessary distinctions amongst them in order to implement the recommendations of the Pay Commissions. Further, Section 150 provides that pension entitlement shall be determined strictly in accordance with the Finance Act, 2025, and the rules framed thereunder which have come into effect retrospectively w.e.f. 01.06.1972

14. That in this background, the legal framework has undergone a material change and, with the greatest respect, any earlier orders or directions, including those dated 23.01.2019 and 25.07.2025, which may be inconsistent with the present statutory mandate, may kindly not be capable of implementation by the Respondent. It is most respectfully prayed that this Hon'ble Tribunal may be pleased to consider vacating the interim relief orders referred to above and pass such directions as may be deemed just and proper. This affidavit is being filed only to bring these subsequent developments to the kind notice of this Hon'ble Tribunal and not to cause any disrespect, while reaffirming the Respondent's

Dr. NEERAJ MITTAL
Secretary, Deptt. of Telecom
& Digital Communications Commission
Govt. of India
New Delhi

utmost regard for the authority of this Hon'ble Tribunal and readiness to comply with the law as finally settled."

15. It is, therefore, most respectfully prayed that this supplementary application may kindly be allowed, in view of the emergence of the new additional grounds of Finance Act, 2025. In view of the submissions made herein above, it is most humbly prayed that the contempt proceedings initiated against the Contemnor/Respondent before this Hon'ble Tribunal may very kindly be dropped, in the interest of justice and fair play.

DEPONENT

डॉ नीरज मित्तल/Dr. NEERAJ MITTAL
सचिव, दूरसंचार विभाग एवं
अध्यक्ष डिजिटल संचार आयोग
Secretary, Deptt. of Telecom
Chairman Digital Communications Commission
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

VERIFICATION:

I, Neeraj Mittal ,aged 57 years S/o Late Shree Krishan Mittal , working as Secretary Department of Telecommunications, residing at 103, New Moti Bagh, New Delhi, do hereby verify that the contents of Paras 1 to 13 of the supplementary affidavit supra are true and correct to the best my knowledge and as per information derived from official records. No part of it is wrong and nothing material has been kept concealed there from.

Verified at Shimla on this 12th day of September, 2025.

DEPONENT

डॉ नीरज मित्तल/Dr. NEERAJ MITTAL
सचिव, दूरसंचार विभाग एवं
अध्यक्ष डिजिटल संचार आयोग
Secretary, Deptt. of Telecom
Chairman Digital Communications Commission
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi