

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.C. NO. 4946 OF 2024**

**IN THE MATTER OF:**  
UNION OF INDIA & ORS.

...PETITIONERS

VERSUS

ALL INDIA RETIRED BHARAT SANCHAR NIGAM  
LIMITED EXECUTIVE WELFARE ASSOCIATION & ORS

...RESPONDENTS

**INDEX**

<b>S. No.</b>	<b>Particulars</b>	<b>Page No.</b>
1.	Written Submission on behalf of the Petitioner / UOI	1-5
2.	Proof of Service	6



**Submitted by**

Ms. Laavanya Kaushik  
Government Pleader  
(Union of India)

**FOR PETITIONER**

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

DATE: 25.05.2026  
PLACE: DELHI

Email: [litigation@laavanyakaushik.com](mailto:litigation@laavanyakaushik.com)

**IN THE HIGH COURT OF DELHI AT NEW DELHI  
W.P.C. NO. 4946 OF 2024**

**IN THE MATTER OF:**  
UNION OF INDIA & ORS.

...PETITIONERS

VERSUS

ALL INDIA RETIRED BHARAT SANCHAR NIGAM  
LIMITED EXECUTIVE WELFARE ASSOCIATION & ORS

...RESPONDENTS

**SUPPLEMENTARY WRITTEN SUBMISSIONS ON BEHALF OF THE PETITIONER**

The present written submissions are being filed in addition to the Written Submissions dated 07.08.2024 and the Additional Note handed over during the course of arguments on 04.05.2026 enclosing therewith Charts A, B & C dealing with various aspects concerning the present matter including the financial liability that will occur if the demand for pension revision as per the Respondents is to be accepted. While reiterating the submissions already made hereinbefore in terms of the oral arguments and the notes on submissions already placed on record, it is respectfully submitted as under:

**A. EMPLOYEES ABSORBED IN BSNL/MTNL CEASED TO BE GOVERNMENT SERVANTS UNDER RULE 37-A OF THE CCS (PENSION) RULES, 1972**

5. It is respectfully submitted that MTNL was formed on 01.04.1986 by converting the Delhi and Mumbai telephone units of the Department of Telecommunications into a Public Sector Undertaking. BSNL was subsequently formed on 01.10.2000 by corporatisation of the erstwhile Department of Telecom Services (DTS) and Department of Telecom Operations (DTO). (@PDF Pg 183)
6. Vide Office Memorandum dated 14.01.2002 (@ Pdf pg. 909) and subsequent OM dated 02.09.2003 (@ Pdf pg. 231), options were called for absorption in BSNL. Pursuant to an employee opting for absorption, an order such as the one dated 12.02.2004 (@ Pdf pg. 241) was issued.
7. It is respectfully submitted that a perusal of the aforementioned documents/ forms/ orders would unequivocally indicate that the employees opting for permanent absorption were fully conscious and aware that upon absorption : (a) they would cease to be Government servants; (b) their service conditions would thereafter be governed by PSU norms and their pay scales would be regulated under the Industrial Dearness Allowance ("IDA") pattern and not the Central Dearness Allowance ("CDA") pattern. (C) their pension will be government Rule 37-A of the CCS (Pension) Rules, 1972 further Rule 37-A(4) specifically provides that upon permanent absorption in a PSU, the employee shall be deemed to have retired from Government service from the date of such absorption. (@PDF Pg 198-199)
8. In addition to the above, it is respectfully submitted that even otherwise the legislative intent underlying Rule 37-A was that upon absorption into BSNL/MTNL, the absorbed employees would no longer remain Government servants and their future pay structure and pensionary regime would stand separated from that applicable to Central Government employees.
9. The Ld. Tribunal failed to appreciate this clear statutory distinction and incorrectly proceeded on the assumption that the absorbed employees continued to enjoy parity with Central Government employees for all purposes.

**B. TWO DISTINCT CATEGORIES OF PSU ABSORBEES**

11. The Petitioners respectfully submit that PSU absorbees fall into two distinct categories:
  - (i) **Pro-rata Pensioners:** These are employees who, upon absorption in a PSU draw Government pension from the date of absorption for the period served under the Government; and thereafter commence fresh service

under the PSU. Such employees continue to draw CDA pension separately from the Government and are governed by Central Pay Commission revisions. Para 7(a) in OM dated 02.09.2008 (@ Pdf pg. 1031) and Para 7(a) in OM dated 04.08.2016 (@ Pdf pg. 1104) deal with pro-rata pensioners and the reliance by the Respondents on the said paragraphs is completely misconceived inasmuch as the Petitioners admittedly are not pro-rata pensioners but are combined service pensioners. The Pro-Rata Pension is defined in the Para-d(ii) of the earlier absorption scheme of the GoI vide OM No. 4/18/87-P&PW(D) Dated 5th July, 1989. And there are already some pro-rata pensioners receiving pension from DoT.

**(ii) Combined Service Pensioners:** These are employees absorbed under Rule 37-A whose pension becomes payable only upon superannuation from the PSU and is calculated on the basis of combined Government and PSU service. The Respondents herein belong to this category. Their pension is calculated on IDA scales and they are therefore IDA pensioners.

### **C. DIFFERENCE BETWEEN INITIAL FIXATION OF PENSION AND REVISION OF PENSION**

12. The Respondents have fundamentally conflated:
  - the formula for initial fixation of pension at the time of retirement; and
  - the framework governing revision of pension post retirement.
13. Sub-rules (8) and (9) of Rule 37-A (@PDF PG 889) provide that pension of absorbed employees shall be calculated in the same manner as that of a Central Government employee retiring on the same date, i.e., at 50% of emoluments or average emoluments, whichever is more beneficial.
14. The Petitioners respectfully submit that the very same formula has consistently been applied for fixation of pension of BSNL/MTNL IDA pensioners in terms of Sub- Rules (8) and (9) of Rule 37A at the time of their retirement.
15. Rule 37-A only ensures parity in respect of the formula for computation of pension at the time of retirement and NOT revision of pension.

### **D. RELIANCE BY THE PETITIONERS ON VARIOUS OMs IS COMPLETELY MISCONCEIVED INASMUCH AS THE SAID OMs HAVE NO APPLICABILITY OR RELEVANCE WHATSOEVER TO CDA PENSIONERS.**

- I. The Petitioners respectfully submit that reliance placed on the OM dated 05.07.1989 is of no consequence whatsoever inasmuch as the same lost its relevance once Rule 37-A came into force as far as respondents are concerned.
- II. Cabinet Note dated 25.09.2000 (@ Pdf pg. 904) and OM dated 09.11.2000 (@ Pdf pg. 908) - The Cabinet Note dated 25.09.2000 and the OM dated 09.11.2000 were issued which merely reiterate that the pensionary benefits of such employees are to be regulated in accordance with Rule 37-A.
- III. 6<sup>th</sup> CPC
  - i. OMs dated 01.09.2008 (@ Pdf pg. 1029) and 02.09.2008 (@ Pdf pg. 1085) – As the subject of the said OMs itself show, they pertain to the implementation of the recommendations of the 6<sup>th</sup> CPC. While OM dated 01.09.2008 applies to pensioners who were already drawing pension on 01.01.2006 (i.e. CDA pensioners who had retired prior to 01.01.2006 (Para 2.1), OM dated 02.09.2008 applies to those who are to retire post 01.01.2006 i.e. while the OM dated 01.09.2008 is on the question of revision of pension of pre 01.01.2006 pensioners, OM dated 02.09.2008 is on the aspect of fixation of pension of those who retire after 01.01.2006.
  - ii. OM dated 27.04.2009 (@ Pdf 926) – the subject of the said OM itself indicates that the said OM pertains to the applicability of the revised rules w.e.f. 01.01.2006 to the ex-DOT employees whose pensionary benefits are regulated under Rule 37A of the CCS Pension Rules. Further, a perusal of the various paragraphs clearly shows that what has been clarified is that the changed formula for fixation of pensionary benefits as provided vide OM dated 02.09.2008 will be applicable to the ex-DOT employees

who had been absorbed in BSNL and that the OM dated 01.09.2008 has no application whatsoever since that deals with revision of pension of pre-2006 central government pensioners only. Reference may be made to Para 2 of the said OM dated 27.04.2009. It is submitted that this is nothing but the application of Rule 37A(8) which provides that the same formulae for calculation of pensionary benefits will be applied to BSNL employees who would retire on the same day as a central government employee. The OM dated 27.04.2009 in fact only applies the said mandate of Rule 37-A(8) while making it clear that the revision of pension which took place pursuant to the acceptance of the 6<sup>th</sup> CPC has no relevance whatsoever as far as BSNL employees are concerned since revision of pension following the 6<sup>th</sup> CPC is applicable only to the central government pensioners only.

#### IV. 2nd PRC

- iii. OM dated 15.03.2011 (Pdf pg. 931) – the aforesaid OM came to be issued for the revision of pension of BSNL pensioners. It is submitted however that the said OM was issued pursuant to the implementation of the 2<sup>nd</sup> PRC and the consequent revisions in pay in the various PSUs including BSNL (Para 2 & 3 of the said OM). It is submitted that subsequently the pension was also revised as is apparent from a perusal of the said OM. It is however relevant to mention that this revision has nothing to do with the recommendation of the CPC. This revision has taken place pursuant to the recommendations of the 2<sup>nd</sup> PRC and the subsequent wage revisions that took place thereafter.

#### V. 7th CPC

- iv. OMs dated 04.08.2016 and 12.05.2017 - Similarly, the reliance placed by the Respondents on the OMs dated 04.08.2016 and 12.05.2017 is also misconceived. In this regard, it is submitted as under:
- a) Pursuant to the acceptance of the 7th Pay Commission, the following three circulars came to be issued on the same day:
    - i. Resolution dated 04.08.2016 bearing no. 38/37/2016-P&PW(A) (@ Pdf pg. 1092) - by virtue of this resolution, the Central Govt. adopted the recommendation of 7<sup>th</sup> CPC
    - ii. OM dated 04.08.2016 bearing no. 38/37/2016-P&PW(A)(i) (@ Pdf pg. 1098) - the said OM deals with fixation of pension of the Central Govt who retire/ dying in harness on or after 01.01.2016
    - iii. OM dated 04.08.2016 bearing no. 38/37/2016-P&PW(A)(ii) (@ Pdf pg. 1102) - the said OM deals with the revision of pension of the Central Govt. Employees who retire before 01.01.2016. Under the aforesaid OM, two methods for revision of pension were contemplated for pre-7th CPC retirees:
      - o revision on the basis of notional fixation in the revised pay matrix (Para no. 4; Pdf pg. 1107); and
      - o revision by multiplying the existing 6th CPC pension by the fitment factor of 2.57 (Para no. 4.1; Pdf pg. 1103).
  - b) Pensioners were entitled to receive pension under whichever formulation was more beneficial to them.
  - c) Initially, revision based on the fitment factor of 2.57 was implemented immediately, whereas implementation of the notional fixation method was made subject to feasibility examination by a committee constituted for the said purpose.
  - d) Thereafter, OM dated 12.05.2017 was issued providing that the Government had accepted the feasibility of the notional fixation method and accordingly directed that pension of pre-01.01.2016 Central Government pensioners be revised under the higher of the two formulations (Para no. 4; Pdf pg. 1107).
  - e) Thus, the Resolution dated 04.08.2016, OM dated 04.08.2016(ii) and OM dated 12.05.2017 together formed one composite scheme governing revision of pension of Central Government CDA pensioners pursuant to implementation of the 7th CPC.

- f) The aforesaid circulars have no applicability to BSNL/MTNL absorbed IDA pensioners, as such employees ceased to be Government servants upon their permanent absorption in BSNL/MTNL in terms of Rule 37A of the CCS (Pension) Rules, 1972. The said position has also been expressly clarified by the nodal department itself vide clarifications dated 17.07.2018 (@ Pdf pg. 1229) and 27.03.2025 (@ Pdf pg. 1231), wherein it has been categorically stated that the aforesaid OMs are not applicable to BSNL IDA pensioners.
- v. OM dated 16.03.2017 (@ Pdf pg. 950) – the reliance placed on the said OM by the Respondents to claim that the recommendations of the 7<sup>th</sup> CPC are applicable to them is once again misplaced. It is submitted that like the OM dated 27.04.2009, the OM dated 16.03.2017 extends a change in the formula effected by the OM dated 04.08.2016 bearing no. 38/37/2016-P&PW(A)(i) towards gratuity for BSNL absorbees. This is once again a reflection of the application of Rule 37-A(8).
17. It is pertinent to note that the Respondents had earlier sought applicability of OM dated 12.05.2017 before the CAT, Ernakulam in OA No. 180/00346/2018. Though the Tribunal rejected the claim vide order dated 30.10.2019, the Kerala High Court subsequently allowed the same vide judgment dated 07.02.2025.
18. The said judgment was thereafter challenged before the Hon'ble Supreme Court, which disposed of the SLP vide order dated 08.08.2025 granting liberty to seek review before the High Court in light of the clarification dated 27.03.2025. The review petition thereafter came to be dismissed on 24.03.2026.
19. It is further relevant that before this Hon'ble Court, the Respondents themselves stated on 19.08.2025 that they would not rely upon the judgment dated 07.02.2025 passed by the Hon'ble Kerala High Court, submitting that the said judgment pertained to a different issue altogether. In any case, without prejudice, a perusal of the judgment of the Hon'ble Kerala High Court would clearly establish that the said judgment has been passed only on the basis that the OM dated 12.05.2017 does not exclude its applicability to IDA pensioners; none of the submissions made hereinabove have been considered nor has the entire scheme as set out before this Hon'ble Court on the fundamental distinction between CDA and IDA pensioners has been considered by the Hon'ble Kerala High Court.
20. The present attempt of the Respondents to seek the benefit of the fitment factor under the guise of reliance on OM dated 04.08.2016 is therefore merely a circuitous attempt to indirectly claim the benefit of OM dated 12.05.2017, which is wholly misconceived and legally untenable.

#### **E. REVISION OF PENSION FOR COMBINED SERVICE IDA PENSIONERS FROM THE YEAR 2007.**

21. The issue of revision of pension of combined service IDA pensioners is not being examined for the first time. A clear precedent exists from the year 2007 when pension of BSNL/MTNL absorbed IDA pensioners was revised pursuant to implementation of the recommendations of the 2nd Pay Revision Committee (PRC).
22. Upon revision of IDA pay scales of PSU employees w.e.f. 01.01.2007, pension of BSNL absorbed IDA pensioners was correspondingly revised by the Department of Telecommunications on the basis of the fitment factor prescribed under the 2nd PRC, which was initially 2.19 and subsequently revised to 2.31.
23. In contrast, pension of Central Government CDA pensioners was revised separately pursuant to implementation of the recommendations of the 6th Central Pay Commission (CPC) w.e.f. 01.01.2006 with a fitment factor of 1.86 in terms of OM dated 01.09.2008 issued by the DoP&PW.
24. Significantly, at the time of implementation of the 2nd PRC, no demand was ever raised by BSNL absorbed pensioners seeking extension of the fitment factor applicable to Central Government pensioners under the 6th CPC framework, as the IDA pensioners were in fact benefitted by the PRC regime applicable to them.

#### **F. RECOMMENDATIONS OF 7TH CPC FOR GOVERNMENT EMPLOYEES AND 3RD PRC FOR PSU EMPLOYEES**

25. Subsequently, pursuant to implementation of the 7th CPC, pension of Central Government pensioners stood revised w.e.f. 01.01.2016 vide OM dated 04.08.2016 bearing No. 38/37/2016-P&PW(A)(ii) with a fitment factor of 2.57.
26. On the other hand, the 3rd PRC recommended revision of pay scales of PSU employees w.e.f. 01.01.2017 with different fitment factors depending upon the profitability of the PSU, namely:
  - 2.30 for 5% fitment;
  - 2.41 for 10% fitment; and
  - 2.52 for 15% fitment.
27. Since BSNL has not fulfilled the prescribed profitability criteria under the applicable DPE guidelines, implementation of the 3rd PRC and corresponding revision of IDA pension has not yet taken place. However, upon implementation of the applicable PRC fitment factor, revision of pension of BSNL IDA pensioners would also take place accordingly.
28. It is further pertinent to note that even after implementation of the 7th CPC for Central Government employees, pension being drawn by BSNL absorbed IDA pensioners under the 2nd PRC framework continues to be higher than the revised pension of Central Government CDA pensioners.
29. The Petitioners respectfully submit that principally the case of the Respondents is that they are entitled to claim parity with government servants in the matter of grant of pensionary benefits. As submitted above, the grant of pensionary benefits to the Respondents is governed by Rule 37-A of the CCS Pension Rules and all that Rule 37-A guarantees is the application of the same formulae to IDA pensioners that are available to CDA pensioners on the day of their retirement. Admittedly, this benefit already stands extended to the Respondents (Chart B of Additional Note). As submitted hereinbefore, Rule 37-A does not in any manner deal with revision of pension and as far as the IDA pensioners are concerned, revision of pension takes place pursuant to the acceptance of the recommendations of the PRC and not on the recommendations of the CPC that are applicable only to CDA pensioners (Chart A of the Additional Note).
30. It is however respectfully submitted that with the introduction of Section 149 of the Finance Act 2025, the Central Government Pensioners are not one homogenous class and in terms of the said provision, the Government is entitled to establish distinctions among different classes of pensioners.
31. The provision specifically recognises that distinctions may be made:
  - on the basis of date of retirement;
  - operationalisation of Pay Commission recommendations; and
  - differing pension revision methodologies.
32. Thus, the present statutory framework itself recognises the legality of maintaining separate pension revision structures for different classes of pensioners.

In light of the submissions made hereinabove, it is most respectfully submitted that the impugned order dated 20.09.2023 in O.A. Nos. 1272/2020, 1271/2020 and 1329/2020 deserves to be set aside, and the present writ petition be allowed in the interest of justice.



SUBMITTED BY  
Ms. Laavanya Kaushik  
Government Pleader  
(Union of India)

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

DATE: 25.05.2026  
PLACE: DELHI

Email: [litigation@laavanyakaushik.com](mailto:litigation@laavanyakaushik.com)