



2026:DHC:5241-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment reserved on: 21.05.2026
Judgment pronounced on: 01.07.2026

+ W.P.(C) 4946/2024, CM APPL. 20274/2024

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

.....Petitioners

Through: Mr. Kirtiman Singh, Sr. Adv.
with Ms. Laavanya Kaushik, GP with Mr.
Maulik Khurana, Mr. Ritik Saha and Ms.
Khyaati Bansal, Advs.

versus

ALL INDIA RETIRED BHARAT
SANCHAR NIGAM LIMITED EXECUTIVE
WELFARE ASSOCIATION AND ORS.

.....Respondents

Through: Mr. Ankur Chhibber, Ms. Gauri
Puri and Mr. Kashish Bhardwaj, Advs.

+ W.P.(C) 4955/2024, CM APPL. 20291/2024

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Kirtiman Singh, Sr. Adv.
with Ms. Laavanya Kaushik, GP with Mr.
Maulik Khurana, Mr. Ritik Saha and Ms.
Khyaati Bansal, Advs.

versus

ALL INDIA BSNL PENSIONERS
WELFARE ASSOCIATION & ORS.

.....Respondents

Through: Mr. Sanjoy Ghose, Sr. Adv.
with Ms. Asmita Singh, Mr Shashank Jain,
Mr. Rohan Mandal and Ms. Ankita Makan,
Advs.

+ W.P.(C) 4985/2024 & CM APPL. 20392/2024

UNION OF INDIA & ORS.

.....Petitioners

Through: Mr. Kirtiman Singh, Sr. Adv.
with Ms. Laavanya Kaushik, GP with Mr.
Maulik Khurana, Mr. Ritik Saha and Ms.

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Khyaati Bansal, Advs.
versus
RETIRED TELECOM OFFICERS
WELFARE ASSOCIATION & ORS.Respondents
Through: Mr. Ankur Chhibber and Ms.
Gauri Puri, Advs.

CORAM:
HON'BLE MR. JUSTICE C.HARI SHANKAR
HON'BLE MR. JUSTICE OM PRAKASH SHUKLA

JUDGMENT

% **01.07.2026**

OM PRAKASH SHUKLA, J.

1. This batch of writ petitions preferred under Article 226 of the Constitution of India assails the order dated 20.09.2023 passed by the Central Administrative Tribunal, Principal Bench, New Delhi¹, whereby three Original Applications² filed by the respondents herein, were heard together and came to be allowed.

2. By the impugned order, the Tribunal, while acknowledging parity with Central Government employees, directed the petitioners to revise the pension of the respondents in accordance with the recommendations of the Central Pay Commission³.

3. It must be noted at the outset that this batch of writ petitions raises a common question of law and fact, namely, whether the respondents, being erstwhile employees of the Department of

¹ "CAT" or "Tribunal" alternatively

² O.A. No. 1272/2020 (lead), O.A. No. 1271/2020 and O.A. No. 1329/2020

³ "CPC", hereinafter

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Telecommunications⁴ and thereafter choosing to be permanently absorbed in *Bharat Sanchar Nigam Limited*⁵ and *Mahanagar Telephone Nigam Limited*⁶, are entitled to revision of pension in accordance with the recommendations of the 7th CPC.

4. In view thereof, since the present batch of petitions rests on the same set of facts and legal framework, they have been heard together and are being disposed of by this common judgment, with W.P.(C) No. 4946 of 2024, titled as, “*Union of India Through its Secretary Department of Telecommunication & Ors. v. All India Retired Bharat Sanchar Nigam Ltd. Executive Welfare Association & Ors.*”, being treated as the lead matter for the purposes of adjudication.

COMMON FACTUAL BACKRGOUND

5. These writ petitions are brought before us by the Union of India, through DoT. The respondents, who were applicants before CAT, were erstwhile employees of DoT and were subsequently absorbed in BSNL/MTNL.

6. The respondents in W.P.(C) Nos. 4946/2024 and 4955/2024 are pensioners of BSNL, whereas the respondents in W.P.(C) No. 4985/2024 are pensioners of MTNL. Pertinently, all the respondents herein are combined service pensioners.

⁴ “DoT”, hereinafter
⁵ “BSNL”, hereinafter

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7. The facts necessary for adjudication qua the controversy may be summarized as follows.

8. The Government of India, in the interest of efficiency and corporatization of telecommunication services, transferred the service provision and commercial functions of DoT into two separate entities, namely, MTNL and BSNL.

9. MTNL was incorporated on 01.04.1986, comprising the DoT branches in Delhi, Bombay, New Bombay, and Thane districts. Thereafter, the Department of Telecommunication Services⁷ and the Department of Telecommunication Operations⁸ were merged and corporatized into BSNL, which commenced operations on 01.10.2000. Both MTNL and BSNL are Public Sector Undertakings⁹.

10. The seeds of this controversy stem from the *en masse* transfer of DoT employees to BSNL on an ‘as is where is’ basis, on deemed deputation without deputation allowance, effective from 01.01.2000, in accordance with the Office Memorandum¹⁰ dated 30.09.2000 issued by DTS. This OM stipulated that these employees would continue to be governed by all Rules and Regulations applicable to Government servants, including the Central Civil Services (Pension) Rules, 1972¹¹ until they opted for permanent absorption in BSNL. However, the said

⁶ “MTNL”, hereinafter

⁷ “DTS”, hereinafter

⁸ “DTO”, hereinafter

⁹ “PSU”, hereinafter

¹⁰ “OM”, hereinafter

¹¹ “CCS (Pension) Rules” or “Rules” alternatively

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OM did not explicitly address the aspect of pension, gratuity, or other retiral benefits.

11. On the same date as the aforesaid OM i.e., 30.09.2000, Rule 37A came to be inserted in the CCS Pension Rules in light of the aforesaid transfer.

12. Rule 37A lays down the conditions for payment of pension upon absorption of Government employees into a PSU or a Central Autonomous Body¹². In essence, it provided that at the time of retirement from a PSU/CAB, Government servants who are permanently absorbed in the PSUs/CABs shall be entitled to a pension calculated on a “combined service” basis, which includes service rendered under the Government and PSU both, using the same formula applicable to Central Government employees.

13. Following the *en masse* transfer, the deputed employees were granted the option to either seek permanent absorption in the PSU or revert to Government service. The officers who opt for the former would be governed by the aforesaid Rule 37A alone and the ones who choose the latter would continue to be governed by the standard framework under the CCS Rules.

14. As per Rule 37A, if an employee opts for absorption in the PSU, three consequences would follow: (i) they cease to be a Government employee from the date of acceptance of their option, (ii)

Validity unknown¹² “CAB”, hereinafter



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the post held under the Government by such employee will be abolished, and (iii) they would be governed by the rules of the PSU.

15. On the other hand, if an employee chose to revert to Government service, they would be placed in a surplus cell on account of their post being abolished under the Government and would be re-deployed accordingly.

16. These options were crucial in crystalizing the respective liabilities of the Government and the PSUs pertaining to the payment of pensionary benefits.

17. Rule 37A (22)¹³ provides that the Government shall pay the pension of BSNL employees, and for other PSUs, a Pension Fund was to be established in accordance with the sub-Rules 13 to 21. The Government would make a one-time lumpsum contribution, and the PSU concerned would contribute towards the pensionary benefits for service rendered by an employee.

18. In this regard, the aforesaid special dispensation granted to BSNL employees that pensionary benefits would be paid by the Government, was also extended to MTNL *vide* amendment dated 03.03.2014.

Validity unknown¹³ As it stood on 21.12.2012

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19. In furtherance of such absorption, the DoT, *vide* OM dated 28.07.2003, implemented the IDA¹⁴ pay scale as applicable for PSUs corresponding to the CDA¹⁵ pay scale for Central Government employees.

20. It is the petitioners' case that the respondents chose to opt for such absorption because service in the PSU was more lucrative since IDA pay scale was higher and there were greater chances of career progression in PSUs than under Government service. On the other hand, the respondents maintain that they were assured that the rules under Government service would continue to apply to them even after absorption, hence they opted for such absorption.

21. It is relevant to note that as per the record before us, while exercising the aforesaid option to be permanently absorbed in the PSU or revert to Government service, the respondents were furnished with the terms and conditions governing such transfer. Clause 5 of these terms and conditions stipulates that the officers who opt for permanent absorption, i.e., the respondents, would be governed by Rule 37A under IDA pay scale.

22. After having explained the underlying procedure for the *en masse* transfer of Government employees to BSNL/MTNL in the preceding paragraphs, we now turn to the genesis of the dispute at hand.

Validity unknown¹⁴ Industrial Dearness Allowance



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23. According to the petitioners, the present dispute has arisen due to the respondents' misplaced claim of parity with Central Government employees. It is their case that since the pensions of Central Government employees have been timely revised as per CPCs, and the pensions of the respondents have plateaued after 2007 because the 3rd Pay Revision Committee¹⁶ for PSUs did not come into effect, the respondents are now claiming entitlement under 7th CPC for revision of their pensions. A claim which, as per the petitioners, was never earlier sought by the respondents since they were receiving comparatively greater benefits under the IDA pay scale.

24. Coming back to the present dispute, we shall now delineate the parallel timelines of CPC and PRC recommendations and their consequential effects on pension revision.

25. The 6th CPC was introduced with effect from 01.01.2006, pursuant to which the pay scales of Central Government employees were revised. Accordingly, pensions were revised for pensioners who retired prior to 01.01.2006.

26. Significantly, PSUs are generally governed by PRC recommendations and not CPCs. However, at this juncture we note that DoT did indeed apply the revised rules as per the 6th CPC to the absorbed BSNL pensioners with respect to DCRG¹⁷, pension and commutation of pension *vide* OM dated 12.08.2009.

¹⁵ Central Dearness Allowance

¹⁶ "PRC", hereinafter

¹⁷ Death-cum-Retirement Gratuity

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27. With respect to PSUs, the 1st PRC was effected from 01.01.1997 for a period of ten years. Thereafter, by OM dated 26.11.2008, the 2nd PRC was notified w.e.f. 01.01.2007.

28. According to the petitioners, the pay scales of the respondents were revised pursuant to the 2nd PRC w.e.f. 01.01.2007. This created a situation where BSNL/MTNL employees who retired after 01.01.2007 were receiving a higher pension than the employees who retired prior to that date. To remove this anomaly, the Government extended corresponding revision of pensions for the BSNL/MTNL combined service pensioners prior to 01.01.2007 as well. The aforesaid was done by OM dated 15.03.2011 for BSNL and for MTNL, *vide* OM dated 01.10.2012.

29. The respondents claim that their pensions were revised pursuant to the 6th CPC whereas the petitioners maintain that this revision was made pursuant to the 2nd PRC. This distinction is material for the dispute at hand because the basis of the respondents' claim in the underlying OAs before the CAT was that they are entitled to revision as per 7th CPC as they were extended benefits under the 6th CPC as well.

30. Thereafter, with the advent of the 7th CPC, the pay scales of Central Government employees were again revised, and accordingly, their pensions stood revised w.e.f. 01.01.2016. This revision was notified under four OMs, as follows:

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(i) Resolution dated 04.08.2016 accepts 7th CPC recommendations.

(ii) OM dated 04.08.2016 for post-01.01.2016 retirees based on the fitment formula.

(iii) OM dated 04.07.2016 for pre-01.01.2016 retirees based on the fitment formula.

(iv) OM dated 12.05.2017 approved the fitment formula and directed that either formula, whichever is higher, could be opted for pre-2016 pensioners.

31. Although CPC recommendations do not ordinarily apply to PSUs, by OM dated 21.03.2017, the rate for death gratuity revised as per 7th CPC was extended to the combined service pensioners of BSNL/MTNL.

32. From a bird's eye perspective, it is on the strength of the OMs dated 12.08.2009 and 21.03.2017, whereby certain benefits of the 6th CPC and 7th CPC respectively were extended to the respondents, that the respondents claim entitlement to pension revision of pension in terms of 7th CPC.

33. After the 2nd PRC and 7th CPC, the 3rd PRC for PSUs was notified by way of OM dated 03.08.2017. However, as per its

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paragraph no. 3, its implementation was subject to the financial affordability of the PSU.

34. It is undisputed that since BSNL/MTNL were incurring losses, the recommendations of the 3rd PRC could not be extended to the respondents.

35. It is in view of the aforesaid that the petitioners claim that since the 3rd PRC did not come into effect, there was no change in pension drawn after 01.01.2017, hence there existed no anomaly in pensions drawn between pre- and post-01.01.2017 pensioners of BSNL/MTNL in order to warrant revision.

36. Aggrieved by the lack of revision of their pension, the respondents submitted multiple representations, but to no avail.

37. It was in this backdrop that the respondents approached CAT by filing three OAs, which were heard together, seeking the following reliefs in the lead O.A. No. 1272/2020:

“(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

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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”

38. The Tribunal, by way of the impugned order, allowed the OAs and returned the following findings:

(i) At the time of absorption in BSNL/MTNL, it was assured that the respondents would continue to be governed by their existing terms and conditions of service, i.e., they shall be treated as Government employees.

(ii) Rule 37A of CCS (Pension) Rules shall govern the payment of pension to the respondents. Sub-Rule 21 thereunder mandates that their pension shall be paid by the Government.

(iii) Since BSNL/MTNL are corporate entities, the liability of pension shall be borne by the Government.

(iv) Certain CPC recommendations applicable to Government servants were also extended to the respondents.

(v) The various OMs boil down to only one inference that it was consciously decided to retain the respondents' terms and conditions under Government service even after their absorption into BSNL/MTNL, including the aspect of pension.

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Further, no document was shown to support the argument that the protection granted to the respondents was only limited to a specific period.

(vi) The government made a promise in black and white and cannot retract at this stage.

39. In view of the aforesaid findings, the Tribunal directed the petitioners to revise the pension of the respondents in parity with Central Government pensioners, within a period of ten weeks, as follows:

“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 favor of the applicants, analogous to the revision of such pension in case of Central Government pensioners.”

40. Aggrieved by the aforesaid directions issued by the Tribunal, the petitioners preferred the present writ petition.

SUBMISSIONS

41. Mr. Kirtiman Singh, learned Senior Counsel appearing on behalf of the petitioners in all connected petitions, advanced his

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arguments with force and eloquence to highlight fatal errors in the impugned order.

42. Mr. Singh laid down the backdrop of the dispute by explaining the process governing revision of pay and pensions of Central Government and CPSUs employees. It was submitted that after every 10 years, the Central Government ordinarily constitutes a CPC for revision of pay, allowances and pensionary benefits of Central Government employees, and similarly, PRC is constituted for PSUs. However, the recommendations of the PRC are only extended if the concerned PSU meets the profitability criteria. It was clarified that CPC also covers the aspect of revision of pension for absorbees in PSUs who opt for pro-rata pension. Whereas the employees who are permanently absorbed and choose to draw combined service pension, i.e., pension based on service jointly rendered under the Government and the PSU, is regulated by Rule 37A of the CCS (Pension) Rules, 1972.

43. The learned Senior Counsel further sought to explain the distinction between the CDA and IDA scale pattern: CDA applies to Central Government employees. Upon superannuation, the pension is fixed at 50% of the last drawn basic pay and is also granted Dearness Relief (DR) at the same rate as Dearness Allowance (DA) for serving employees. On the other hand, IDA scale is applicable to CPSU employees. Such employees may either opt for pro-rata pension, which is governed under CDA as per CPC recommendations, or for

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combined service pension, as per Rule 37A under IDA pay scale which is governed by the PRC framework.

44. Mr. Singh largely pivoted on the premise that as per Rule 37A (8), the respondents are only entitled to the same formula as Central Government employees for calculation of pension at the time of retirement and not to any other benefit subsequent to such retirement including revision of pension. Hence, it was submitted that the respondents cannot claim revision of pension under the 7th CPC as a matter of right.

45. Mr. Singh further submitted that the present dispute circles around the respondents' claim for revision of pension on account of parity with Central Government employees. It was averred that the impugned order has proceeded on a very simplistic understanding of the situation and that the Tribunal failed to acknowledge that CPC recommendations are only applicable to Central Government employees and not CPSUs, which are instead governed by PRCs. It was hence submitted that the formula for revision of pension under 7th CPC only applies to Central Government employees under CDA scale, whereas the respondents fall under the IDA scale and are subject to PRCs. It was further submitted that the respondents' pensions were revised as per the 2nd PRC and thereafter remained unchanged since the recommendations of the 3rd PRC were not effected due to financial constraints of the PSU. Consequently, it was submitted that the respondents cannot seek pension revision under the 7th CPC merely on the basis of parity with Central Government pensioners.

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46. Mr. Singh categorically submitted that the finding of the Tribunal that there existed no ambiguity in the terms and conditions of service of the respondents, and that they would continue to be governed as per Central Government rules even after absorption, is blatantly incorrect. Reference was made to paragraph no. 8 of the Notification dated 14.01.2002, whereby options were called from Group 'B' officers. It explicitly stipulated that once the employee chose to be absorbed into the PSU, they would be moved to the IDA scale and only till such option is exercised will these employees be governed by the CDA scale. This was also mentioned in Clause 4 of the terms and conditions for absorption of Group 'B' officers. Further, Clause 5 of these terms clarified that payment of pension shall be payable under the IDA scale. It was further submitted that the aforesaid Option Form clearly indicated to the respondents that, they would cease to be government servants, their terms of service after absorption would be governed by the rules of BSNL/MTNL, they would be fitted under the IDA scale, and their pension would be regulated under Rule 37A. Mr. Singh also highlighted that the legislative intent behind Rule 37A was that upon absorption into BSNL/MTNL, the absorbees/transferees would no longer remain Government servants.

47. It was submitted that the Tribunal largely relied on Rule 37A (21), however, the said provision does not have much bearing on the present dispute. In this light, Mr. Singh drew our attention to the bare words of Rule 37A, particularly sub-Rules (4) & (5), which stipulate

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that once employee's option is accepted, they cease to be Government servants, they are deemed to have retired from Government service, and upon absorption, their post held under the Government stands abolished. It was submitted that sub-Rule 8 only promises the same formula for pension as Government servants as on the date of absorber's retirement. Emphasis was laid on "at the time of his retirement" to submit that this restricts the applicability of the formula to the date of retirement and do not extend to subsequent revisions.

48. Mr. Singh further relied on Rule 37A (13) to (21) to explain the corpus of the Pension Fund to be maintained by PSUs. It was submitted that as far as BSNL is concerned, sub-Rules 22 and 23 provide that the payment shall be made by the Government, and the Government may specify the manner of contribution by BSNL. Hence, the reliance of the Tribunal on sub-Rule 22 (quoted as sub-Rule 21 in the impugned order) is therefore misleading and it is the finding in para no. 22 that the respondents would continue to be governed by rules of government service is starkly contradictory to the scheme of Rule 37A.

49. The learned Senior Counsel further contested the finding of the impugned order that it was a conscious decision to protect the respondents' terms and conditions under DoT post-absorption. It was submitted that the circulars and OMs referred to by the Tribunal had no consequence on the entitlement of the respondents. Mr. Singh further contested the finding in para no. 24 that no document was placed on record to substantiate the claim that the respondents could

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not claim protection in perpetuity. It was also submitted that the finding that BSNL/MTNL are corporate entities, hence the government must pay pension, has no consequence on the issue of revision of pension of the respondents.

50. Mr. Singh averred that the Tribunal's direction to grant pension to the respondents at par with Central Government employees will open the Pandora's box and is contrary to the Scheme of Rule 37A, particularly since Rule 37A stipulates that on absorption, these employees shall cease to be Government servants, and therefore, claims for revision based on CPC parity are not tenable.

51. It was argued that two circulars dated 09.11.2000 and 27.04.2009, referred to in para no. 16 of the impugned order, were not dealt with by the Tribunal. It was highlighted that para no. 2 of the circular dated 27.04.2009 stipulated, "*this OM contains instructions for revision of pension of pre 2006 Central Government pensioners only*". Hence, it did not apply to the respondents.

52. Attention was drawn to para nos. 19 and 20 of the impugned order, which relied on three CAT Orders from Ernakulam¹⁸, Bangalore¹⁹ and Hyderabad²⁰ Benches, specifically on the point of this dispute, however, they were not properly considered and overlooked by CAT. Out of these decisions, it was submitted that the respondents had filed the OA before the Ernakulam Bench, which was dismissed,

¹⁸ Order in O.A. No 346/2018 dated 30.10.2019 by the Ernakulam Bench, Central Administrative Tribunal

¹⁹ Order in O.A. No 116-134/2018 dated 27.11.2019 by the Bangalore Bench, Central Administrative Tribunal

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and the High Court subsequently reversed the decision²¹. Thereafter, they filed an SLP, which was withdrawn with liberty to file a review before the High Court²². This review petition was dismissed on 24.03.2026²³. It was further submitted that the 7th CPC recommended two formulae for revision of pension: “notional fixation” and “fitment method”. Before the Ernakulum Bench, the respondents sought revision based on the notional fixation method as per OM dated 12.05.2017. However, the respondents submitted before this Court on 19.11.2025 that they are claiming revision as per OM dated 04.08.2016, i.e., by applying multiplier of 2.57.

53. Thereafter, our attention was drawn to an order dated 19.08.2025 of this Court, wherein the respondents had undertaken to not rely on the Kerala High Court judgment. Even otherwise, it was submitted that this judgment was not applicable because: (i) it was passed on the basis that OM dated 12.05.2017 does not exclude its applicability to IDA pensioners, without considering the entire scheme of OMs or the distinction between IDA and CDA; (ii) para no. 2 therein holds that a petition filed by an Association is otherwise not maintainable, which principle is also applicable in the present case; (iii) similar claims cannot be agitated repeatedly, since the present O.A. and the O.A. before Ernakulum Bench were both filed by the respondents.

²⁰ Order in O.A. No 21/813/2017 dated 10.12.2018 by the Hyderabad Bench, Central Administrative Tribunal

²¹ Judgment dated 07.02.2025 passed by the High Court of Kerala, Ernakulam in OP (CAT) No.60/2020

²² Order dated 08.08.2025 in SLP (C) Diary No. 39478/2025

²³ Judgment dated 24.03.2026 in R.P. No. 1158/2025 in O.P. (CAT) No. 60/2020

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54. It was submitted that there exists precedent on this issue. In 2007, 2nd PRC was effected with fitment factor of 2.19, which was revised to 2.31. In contrast, 6th CPC was effected with a fitment factor of 1.86. Reliance was placed on the following chart to submit that the respondents did not have any grievance at the time of 2nd PRC, and only because the 3rd PRC is not given effect due to financial health of BSNL/MTNL that the respondents seek entitlement of the 2.57 multiplier as per the 7th CPC, which notably only applies exclusively to CDA pensioners and not IDA pensioners:

Particulars	BSNL Combined Service IDA Pensioners	Central Government CDA Pensioners
Pension Revision	2 nd PRC Pension Revision	6 th CPC Pension Revision
Year of Revision	2011 (effective from 01.01.2007)	2008 (Effective from 01.01.2006)
Trigger for Revision of Pension	Pay Revision w.e.f. 01.01.2007 as per 2 nd PRC	Pay Revision w.e.f. 01.01.2006 as per 6 th CPC
Relevant OM for Pension Revision	DoT OM No. 40-17/2008-Pen (T)-Vol.III dated 15.03.2011	DoP&PW OM No. 38/31/08-P&PW(A) dated 01.09.2008
Multipling Factor	2.31 Eg: Let us take old basic pension before revision = 100 New basic pension after revision = 100*2.31 = 231	1.86 Eg: Let us take old basic pension before revision = 100 New basic pension after revision = 100*1.86 = 186
Trigger for next Pension Revision	There is no Trigger for Pension Revision	Pay Revision as per 7 th CPC w.e.f. 01.01.2016
Next Pension Revision	Can not be done as there is no 3 rd PRC implementation in BSNL	Pension Revision as per 7 th CPC w.e.f. 01.01.2016

55. It was also submitted that the IDA pay scale was higher and the respondents were in fact receiving a higher pension than their Central Government counterparts even without the 3rd PRC. But since 3rd PRC did not come into force, there was no consequent revisions; hence, the

Validity unknown



respondents seek revision as per the 7th CPC, which grants a higher fitment. This calculation is as follows:

PARAMETERS	CASE: 1 Employee A who opted to remain in the Government in the year 2000	CASE: 2 Employee B who opted to be absorbed in BSNL in the year 2000
Pay drawn before absorption process as on 30.09.2000	Assume, Employee A - Rs. 5000 in the Government (CDA) Pay Scale of 4500-125-7000.	Employee B - Rs. 5000 in the Government (CDA) Pay Scale of 4500-125-7000.
Pay drawn after the absorption process in BSNL as on 01.10.2000	Employee A - Rs. 5000 in the Government (CDA) Pay Scale of 4500-125-7000.	Employee B - His pay scale got converted into IDA pay scale (6550-185-9325) and his pay was fixed as Rs. 7290. Basic pay enhanced by 46%
Pay Revision:	Employee A obtained benefits of 6 th CPC w.e.f. 01.01.2006 and 7 th CPC w.e.f. 01.01.2016	Employee B obtained benefit of 2 nd PRC w.e.f. 01.01.2007
Pay after revision:	w.e.f. 01.01.2006 (6th CPC) Earlier pay of Employee A (i.e. Rs. 5000/-) revised to Rs. 12100. w.e.f. 01.01.2016 (7th CPC) Earlier pay of Employee A revised to Rs. 31900.	After 2nd PRC - w.e.f 01.01.2007 Earlier pay of Employee B (Rs. 7290/-) revised to Rs. 16890 /- 3rd PRC - w.e.f 01.01.2017 Benefit not available to Employee B since the conditions for the applicability of the 3 rd PRC have not been met by the BSNL.
Assume both employees retired on 01.01.2017	Basic Pension of Employee A - Rs. 31900/2 = Rs. 15950/-	Basic Pension of Employee B - Rs. 16890/2 = Rs. 8445/-
Gross Pension of Both employees	Gross Pension of Employee A with Central Dearness relief of 4% = Rs. 15950/- X 1.04 = Rs. 16588/-	Gross Pension of Employee B with Industrial Dearness relief of 119.5% = Rs. 8445 /- X 2.195 = Rs. 18537/-

56. Based on the aforesaid comparative calculation, it was submitted that basic pension of Employee A under the IDA scale was more than that of Employee B under the CDA scale. However, the gross pension of Employee B was more due to higher IDA scale. Further, the respondents seek to apply the fitment factor as provided by 7th CPC to their IDA pay scale, which will give them an even higher pension. It was also submitted that if the respondents were granted relief, the resultant financial liability to the Government would be north of Rs. 16,938 crores.

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57. In support of their contentions, reliance was placed on *S.I. Roop Lal v. UOI*²⁴ and *K. Ajit Babu & Ors. v. UOI*²⁵, and certain decisions rendered by CAT.²⁶

58. Lastly, Mr. Singh emphasized the distinction between *fixation* of pension at the time of retirement, as provided under Rule 37A and the *revision* of pension pursuant to a subsequent revision of pay. It was submitted that Rule 37A (8) & (9) provide that the pension of absorbees shall be calculated using the same formula applicable to Central Government employees retiring on the same date. It was submitted that this formula has been extended to absorbees for fixation of pension at the time of their retirement; Rule 37A does not envisage revision of pension subsequent to retirement. It was categorically submitted that the respondents are not entitled to revision because: (i) pay scale was not revised; (ii) lack of a provision allowing for revision of pay under the IDA scale. Therefore, the direction of the Tribunal, being directly in the teeth of the present legal framework, is liable to be set aside.

59. *Per contra*, the arguments on behalf of the respondents were advanced by learned Senior Counsel Mr. Sanjoy Ghose in W.P.(C) No. 4955/2024 and by learned Counsel Mr. Ankur Chhibber in W.P.(C) Nos. 4946/2024 and 4985/2024.

²⁴ (2000) 1 SCC 644

²⁵ (1997) 6 SCC 473

²⁶ Order in O.A. No 2287/2008 dated 03.06.2009 by the Principal Bench, Central Administrative Tribunal; Order in O.A. No 533/CH/2013 dated 05.11.2014 by the Chandigarh Bench, Central Administrative Tribunal; Order in O.A. No. 526/1988 dated 03.10.1989 by the Ahmedabad Bench, Central Administrative Tribunal

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60. Mr. Chhibber, the learned Counsel on behalf of the respondents, ably assisted the Court and resisted the present petition with considerable force. He submitted that the impugned order was cogent in its reasoning and did not warrant our interference. It was submitted that the pension of the respondents was last revised almost 17 years ago, as on 01.01.2007.

61. Mr. Chhibber submitted that the respondents were given assurance that their service conditions would remain unchanged post absorption and that this assurance was embodied in Rule 37A, in terms of which, the respondents are entitled to the same pension scheme as Central Government employees. In this regard, reliance was placed on various OMs dated 05.07.1989, 25.09.2000, 30.09.2000, 09.11.2000, 14.01.2002 and 20.07.2016. Mr. Chhibber sought to specifically bring our attention to the abovementioned documents, as follows:

(i) OM dated 05.07.1989 mandates that the government servants who opt for absorption in a PSU would be governed by Central Government rules at the time of their retirement.

(ii) Note dated 25.09.2000 issued by DTS for Cabinet approval states that absorbees are entitled to the Government pension scheme post absorption and in this regard, Rule 37A was inserted.

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(iii) Circular dated 09.11.2000 stipulated that the employees absorbed in BSNL shall be entitled to the Government's pension scheme even after their absorption and the payment will be made by the Government.

(iv) Notification dated 14.01.2002 called for options from Group B employees. Para 8 stipulates that till they are absorbed, they will remain under CDA scale. Clause 5 of the terms and conditions therein, states that the officers who opt for permanent absorption in BSNL would be governed by Rule 37A.

62. Mr. Chhibber relied on OM dated 20.07.2016 to aver that the liability for pensionary benefits of BSNL employees except those recruited after 01.10.2000, shall be borne by the Government, and BSNL shall continue to pay pension contribution in accordance with Fundamental Rule 116. Hence, the respondents are entitled to pension revision irrespective of the financial condition of the PSU.

63. Mr. Chhibber clarified that the respondents do not seek enhancement of their pay scale, but only application of the pension formula extended to Central Government employees for revision of pension, as promised under Rule 37A. It was argued on the strength of Rule 37A (8) and (9) and its accompanying explanation, that the respondents were clearly entitled to revision of pension equivalent to Central Government employees.

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64. It was categorically submitted that the respondents' pensions were revised as per 6th CPC by OM 15.03.2011 and as per OM dated 04.05.2009, including other benefits such as limits of DCRG, commutation table, emoluments, qualifying service, etc. were extended to them. Emphasis was laid on para no. 3.1 which stated these orders were to apply to all combined service pensioners entitled to draw pension on 01.01.2007 as per Rule 37A (21). It was also argued that para no. 11 demonstrated the intent that pensions were to be disbursed expeditiously. Emphasis was also laid on a communication dated 27.04.2009 from the Department of Pension & Pensioners' Welfare²⁷, which in its para no. 2 clarified that since the formula applicable to Central Government pensioners was revised by OM dated 02.09.2008 after 6th CPC, the same will apply to combined service pensioners who were absorbed in PSUs.

65. It was contended that the recommendations of the 6th CPC did not discriminate or create a separate class for the respondents, as was evident by OM dated 01.09.2008 which blanketly applied to "*all pensioners/family pensioners who were drawing pension/family pension on 1.1.2006*" under CCS Rules. Since the respondents drew pension under Rule 37A of CCS (Pension) Rules, they were also entitled to the implementation of these recommendations on the same basis as other combined service pensioners.

66. With respect to 7th CPC, it was submitted that it applied uniformly to all CCS pensioners without creating a separate class for

Validity unknown²⁷ "DP&PW", hereinafter



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absorbees such as the respondents, as evident from OM F. No. 38/37/2016-P&PW(A)(ii) dated 04.08.2016. This OM granted a 2.57 multiplier to pre-01.01.2006 pensioners. Reliance was placed on para no. 7, which stipulated that the pensions of Central Government employees who were permanently absorbed in PSUs would be revised as per 7th CPC. It was submitted that this multiplier is particularly what the respondents are seeking before this Court. It was further submitted that the rate of death gratuity as per 7th CPC was also extended to the respondents by OMs dated 16.03.2017 and 21.03.2017. It was argued that if recommendations of the 7th CPC were not to be applied to the respondents, then how were they extended gratuity under 7th CPC. Reliance was also placed on OM dated 12.05.2017, which issued revision of pension of pre-2016 pensioners as per 7th CPC, to submit that para no. 12 therein stated that it applied to pensioners who were absorbed in PSUs i.e., the respondents.

67. With respect to the contention that respondents' pensions cannot be revised since their pay is not revised, it was submitted that pay revision under a PSU is dependent upon profitability and affordability of the PSU and has no connection with pension revision, which is rather governed by Rule 37A. It was also submitted that PRC do not govern revision of pension for the respondents, since no reference was made in this respect in the PRC recommendations.

68. It was submitted that non-consideration of the 3 CAT decisions (Ernakulam, Hyderabad, and Bangalore Benches) in the impugned

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order was not fatal since those Orders were passed by Single Benches of CAT at Ernakulum and Hyderabad and the Division Bench at Bangalore Bench had passed a non-speaking order. It was submitted that these decisions were otherwise also distinguishable on facts. It was further submitted that the High Court of Kerala upheld the applicability of OM dated 12.05.2017 to an absorbee, similarly placed as the respondents. It was submitted that the SLP²⁸ filed by the petitioners against this decision was withdrawn with the liberty to file a review before the Kerala High Court, which was ultimately dismissed. Mr. Chhibber relied on para no. 10 of the judgment rendered in review²⁹. Further, it was averred that the petitioners were taking the respondents' undertaking of 19.08.2025 out of context; they undertook to not rely on the Kerala judgment in light of petitioners' submission that they were challenging the same before the Supreme Court and did not waive their substantive entitlement.

69. It was submitted that the petitioners were seeking to bring on record certain documents dated 17.07.2018 and 27.03.2025, which were not placed before CAT. It was also submitted that the Kerala High Court, in para no. 20 of the review decision, rejected these very documents by observing that they were internal in nature and to agitate a review on their basis would be far-fetched. It was submitted that presently, there exists a High Court judgment in favor of the respondents directly on the point of controversy.

²⁸ SLP(C) Dairy No. 39478/2025, order dated 07.02.2025

²⁹ RP No. 1158/2025, order dated 24.03.2026

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70. Conclusively, Mr. Chhibber submitted that as such, payment of pension has no link with pay revision or the fact that the respondents ceased to be Government employees in light of Rule 37A. The failure to revise pension has caused grave prejudice to the respondents herein, who are all senior citizens. It was submitted that a Group 'D' retiree was drawing a meagre pension of Rs. 3500/- per month, whereas the minimum pension as per the 7th CPC is Rs. 9000/- per month.

71. Mr. Sanjoy Ghose, the learned Senior Counsel appearing on behalf of the respondents in W.P.(C) No. 4955/2024, advanced certain submissions in addition to the arguments put forth by Mr. Chhibber.

72. Mr. Ghose submitted that since 2007 the pension of the respondents has not been revised. It was argued that the contention regarding difference between IDA and CDA pay scale was a red herring since the respondents do not seek pay revision; revision of pension can be done regardless, as per the formula under Rule 37A. It was also submitted that it is not within the remit of PRC to revise pension. It was submitted that the respondents should be extended the benefit of the same formula for fitment of 2.57 in view of the assurance of similar treatment with Central Government employees. It was argued that the Tribunal did not direct any alteration of IDA or CDA pay scales, but it only directed parity to be maintained, as was assured to the respondents at the time of their absorption.

73. It was also submitted that it is fallacious to suggest that IDA pensioners receive more pension than CDA counterparts; since IDA

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pay scale is higher than CDA, the DR for CDA is higher than in IDA and hence the multiplication factor for pay revision in CDA is greater than for IDA to balance out the difference.

74. With respect to the petitioners' contention before CAT that granting relief to the respondents will create a rift with other BSNL/MTNL employees, it was submitted that the same was not tenable since the respondents constitute a separate class, i.e., erstwhile Government employees absorbed in BSNL/MTNL, and hence, there exists *intelligible differentia* for such differential treatment.

75. It was asserted that the respondents were not seeking general parity with central government employees but merely seeking revision of pension pursuant to the revision granted to central government employees based on the assurance of similar treatment. It was further submitted that classification of absorbees and the ones who were recruited in BSNL is overinclusive and violative of Article 14 since only the absorbees were granted protection under Rule 37A and therefore constitute a *suis generis* class and that this *suis generis* class has been consistently granted parity with central government pensioners by virtue of Rule 37A. Reliance was placed on OMs dated 27.04.2009, 04.05.2009, 12.08.2009, 15.03.2011 and 20.07.2016. To demonstrate the assurance granted to respondents at the time of their absorption, reliance was placed on OM dated 05.07.1989, Note dated 25.09.2000 and Circular dated 09.11.2000. To demonstrate parity, it was highlighted that the absorbees continued with GPF³⁰ post

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absorption, which was not permitted for other PSU employees and were eligible for CGHS facilities (OM dated 20.02.2014), this is because their pensions are disbursed from the Central Civil Estimates at par with Central Government pensioners.

76. It was submitted that once it is accepted that the Government is to bear the liability for pension of the respondents, it is counterintuitive to suggest that their revision of pension would be dependent on recommendation of PRC or the financial health of the PSUs. By OM dated 20.07.2016, DoT reaffirmed this position by rescinding its earlier OM whereby liability of the Government was restricted to 60%. It was clarified that as per 3rd PRC, pay revision is dependent on the financial health of BSNL and does not govern revision of pension. This distinction was acknowledged by DP&PW in its OM dated 08.03.2019 whereby it sought clarification from DoT regarding revision of pension for pre-2017 BSNL pensioners.

77. It was submitted that the General Terms and Conditions floated along with the option forms, did not provide any option to opt for pro-rata pension and, therefore, there are no pro-rata pensioners in BSNL, and all absorbed employees, including the respondents, are combined service pensioners.

78. Reliance was also placed on sub-Rule 8 to submit that respondents are entitled to revision of pension. It was averred that the Explanation inserted on 21.12.2012 to Sub-rule 8 of Rule 37A, which clarifies that pension for absorbees must be calculated on the same

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basis as for Central Government pensioners. It was contended that IDA scales, granted in light of Rule 37A (10), relate solely to pay and have no bearing to the aspect of revision of pension.

79. With respect to petitioners' submission that combined service pensioners are receiving more pension than their Central Government counterparts, it was submitted that as per OM dated 15.03.2011, respondents are drawing minimum pension of Rs. 3500/-, whereas the Central Government employees draw a minimum of Rs. 9000/- as per 7th CPC.

80. Pertaining to the CAT decisions cited by the petitioners, it was submitted that issues of interpretation of statutes or statutory rules should be considered by Division Bench of the Tribunal³¹. Nevertheless, both decisions fail to appreciate the explanation to Rule 37A(8) and writ petitions against both are pending before respective High Courts. Further, the decision of the Division Bench at Bangalore, is *sub-silento* enhanced does not constitute a binding precedent³².

81. It was reiterated that all benefits as per 7th CPC, except for revision of pension, were extended to the respondents.

³¹ Mahabal Ram (Dr) v ICAR, (1994) 2 SCC 401; L Chandra Kumar v Union of India, (1997) 3 SC 261; Govt. of T.N. v. S. Balasubramanian, (1995) 6 SCC 642; State of M.P. v. B.R. Thakare, (2002) 10 SCC 338; Union of India v. Madras Bar Assn., (2010) 11 SCC 1

³² Municipal Corporation of Delhi v Gurnam Kaur, (1989) 1 SCC 101

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82. In rejoinder, Mr. Singh submitted that the reliance on the OM dated 05.07.1989 Cabinet Note dated 25.09.2000 is of no avail, since they have materialized into Rule 37A.

83. Mr. Singh clarified that there were two kinds of pensioners absorbed into BSNL/MTNL: (i) pro-rata pensioners who draw pension separately from the Government for the period for their service till their date of absorption under CDA scale. They are defined in Para d(ii) of the OM dated 05.07.1989. It was submitted that the OMs dated 02.09.2008 and 04.08.2016 pertain to these pensioners; (ii) combined service pensioners are governed under Rule 37A. Their pension becomes payable once they retire from the PSU and is calculated based on the service rendered under both the Government and the PSU together. These employees are fitted into the IDA scale. All respondents fall under this latter category. In this light, Mr. Singh sought to distinguish the OMs/communications relied upon by the respondents as follows:

(i) OM dated 01.09.2008 gives effect to 6th CPC. applies to pre-01.01.2006 retirees. It pertains to pro-rata pensioners, not combined service pensioners as per para no. 7.

(ii) OM dated 02.09.2008 applies to post-01.01.2006 retirees for revision of various provisions in terms of 6th CPC. It will not apply to respondents since they ceased to be Government employees after absorption.

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(iii) OM dated 15.03.2011 was issued for revision of pension of BSNL pensioners pursuant to the 2nd PRC and has nothing to do with CPC recommendations.

84. It was submitted that the OMs dated 01.09.2008 and 02.09.2008 operates as a cohesive scheme. Since the former applies to pre-01.01.2006 retirees, it pertains to revision of pension and the latter applies to post-01.01.2006 retirees, therefore, it is for fixation. In this regard, it was submitted that the OM dated 27.04.2009 is only a clarification on OM dated 02.09.2008 (fixation), It only clarifies that that the formula revised as per OM of 02.09.2008 shall also be applied to combined service pensioners and that the previous OM dated 01.09.2008 has no application whatsoever since it deals with revision of pension of pre-2006 Central Government retirees. In other words, the change in formula for fixation of pension (02.09.2008) will be applicable to the respondents but not the formula for revision of pension (01.09.2008). It was submitted that this mechanism is indeed aligned with Rule 37A and was mirrored in the 7th CPC framework.

85. Mr. Singh argued that 3 OMs issued on the same date (04.08.2016) gain significance for the purpose of 7th CPC, as follows:

(i) OM No. 38/37/2016-P&PW(A) is a resolution by which 7th CPC recommendations were accepted. It provides two formulae: fitment and notional fixation. Fitment factor of 2.57 was to be applied immediately, and the latter was subject to feasibility.

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(ii) OM No. 38/37/2016-P&PW(A)(i) is for revision of pension for post-01.01.2016 retirees. Hence, it was submitted that it essentially fixates pension.

(iii) OM No. 38/37/2016-P&PW(A)(ii) applies to revision of pension of pre-01.01.2016 retirees.

86. In light of these three OMs, it was submitted that the OM 12.05.2017, (ultimately relied upon by the respondents), completes the chain. It was highlighted that this OM accepted the notional fixation method to revise pension for pre-01.01.2016 Central Government retirees. It was also submitted that these OMs did not apply to BSNL/MTNL combined service pensioners governed by the IDA pay pattern, as also clarified by the Department by OMs dated 17.07.2018 and 27.03.2025. It was, however, also submitted that these clarifications were not part of the record in the underlying OAs but were subsequently placed before the High Court of Kerala at Ernakulum in the proceedings arising from a similar dispute.

87. Mr. Singh submitted that the respondents were extended the benefit of enhanced gratuity pursuant to the 7th CPC as per OM dated 16.03.2017 because gratuity form part of the pensionary formula under Rule 37A (8). This OM also clearly stipulates that there is no change in the existing formula for pension post 7th CPC and the absorbees shall remain on the existing formula.

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88. It was submitted that there is a direct link between revision of pension and revision of the pay scale. Accordingly, if the pension of the respondents were to be revised in the manner claimed, it would result in an anomalous situation whereby employees who retired earlier would get a much higher pension as opposed to the employees who retire now on the same pay scale. It was further submitted that this anomaly was covered by the OM dated 18.03.2019.

89. Reliance was also placed on Section 149 of the Finance Act, 2025 to contest the argument of parity since this provision entitles the Central Government to differentiate between different classes of pensioners.

90. Lastly, it was submitted that the benefits as envisaged by Rule 37A have already been extended to the respondents. Further, it was again clarified that the respondents were never extended the benefit of the 6th CPC, which only applies to Central Government employees and pro-prata absorbees, instead, they received benefits of the 2nd PRC and therefore, cannot claim entitlement to pension revision under the 7th CPC.

91. In surrejoinder, Mr. Chhibber submitted that the 6th or the 7th CPC do not create any distinction between the IDA and CDA pensioners, as evident from para no. 19 of the OM dated 12.05.2017 which explicitly applies uniformly to all pensioners drawing pension before and after 01.01.2016 under the CCS (Pension) Rules. It was further submitted that the IDA-CDA distinction is a legal fiction and was not argued by the petitioners before the Tribunal.

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92. Mr. Chhibber reiterated that the respondents were guaranteed parity with their Central Government counterparts at the time of their absorption, which was solidified by insertion of Rule 37A. It was averred that Mr. Singh's contention that pension revision was only applicable to Central Government employees under CDA scale was fallacious since no such classification has been made in the statute or the various Orders/OMs. These orders instead apply to "pensioners/family pensioners" governed by CCS Rules.

93. It was highlighted that a conjoint reading of sub-Rules 8 and 10 of Rule 37A provides that the respondents are entitled to revision of pension after retirement in the same manner as Central Government employees. It was reiterated that the respondents were extended various benefits in furtherance of 7th CPC, thereby evidencing continued parity in matters of pensionary benefits.

94. With respect to the finding of the Kerala High Court that an OA by an Association is not maintainable, Mr. Chhibber sought to clarify that an Association can indeed file an OA as per Rule 5 of the Administrative Tribunal Rules, also evident from the fact that their OA was allowed and regardless, there were also independent applicants in the present matter.

95. While concluding, it was contended that a mere difference in pay structure (IDA-CDA) does not amount to forfeiture of the statutory right to draw an equivalent pension under Rule 37A. The respondents were extended the benefit of 6th CPC and various benefits

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under 7th CPC except pension revision. The respondents have a legitimate expectation for pension revision since they were assured at the time of their absorption that they would be at par with government employees. Hence, they cannot be denied revision of pension by linking it with IDA pay revision (especially since IDA pay revision of working employees does not deal with pensioners governed under CCS Rules). The Tribunal has only ordered adherence to the scheme envisaged under Rule 37A and committed no error warranting interference under Article 226 of the Constitution of India.

REASONING AND ANALYSIS

96. We have heard the learned Counsel appearing for all parties at great length and carefully perused the material on record. We record our appreciation for the valuable assistance rendered by the learned Counsels before us, which has been of significant aid in adjudicating this matter.

97. Notice in the present matter was issued on 01.08.2024. Thereafter, on 19.08.2025, the learned Senior Counsel and Mr. Ankur Chhibber on behalf of the respondents, submitted that they will not place reliance on the judgment of the High Court of Kerala, Ernakulum in OP (CAT) No. 60/2020. Subsequently, on 19.11.2025, it was submitted on behalf of the respondents that they only seek revision of their pension as per the same formula extended to Central Government employees in terms of OM No. F.No.38/37/2016-P&PW(A)(i) dated 04.08.2016, i.e., by applying the multiplier of 2.57

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and categorically submitted that they do not seek re-fixation of pay in terms of the 3rd PRC.

98. After having given due consideration to the present *lis*, we can safely deduce that the primary grievance of the petitioners is that the respondents cannot be treated at par with Central Government employees for the purposes of revision of their pension as per the 7th CPC recommendations, particularly since: (i) the respondents ceased to be Government employees upon their permanent absorption in BSNL/MTNL; (ii) they are governed by PRC recommendations and not CPC recommendations; (iii) they are fitted under a different pay scale, i.e., the IDA scale; and (iv) Rule 37A only grants them the same formula as Central Government employees for calculation of pension at the time of retirement. On the other hand, the respondents maintain that they were assured that their service conditions as under the Government shall remain intact even after their absorption. It is their case that such assurance also materialized in the form of Rule 37A of the CCS (Pension) Rules, 1972, specifically sub-Rule (8).

99. While this Court has met with the opportunity to interpret and apply Rule 37A on numerous occasions since its advent, the question before us today is quite peculiar.

100. As per the aforementioned facts, the question of the hour is whether the respondents before us, who were erstwhile DoT employees, and thereafter permanently absorbed into BSNL/MTNL and fitted in the

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IDA pay scale, are entitled to revision of their pension as per the 7th CPC, in light of Rule 37A?

101. In our endeavor to fairly adjudicate the present dispute, we are required to undertake a comprehensive reading of the rigmarole of the legislative framework, relevant Circulars, Office Memoranda, and other communications issued by the Government of India and BSNL/MTNL, so as to arrive at a coherent and harmonious understanding of the entire statutory and administrative scheme governing pension of absorbees as envisaged by the Government and Legislature.

102. Needless to state, that this Court must exercise its extraordinary jurisdiction under Article 226 of the Constitution of India sparingly and in a circumscribed manner. Further, re-appreciation of evidence is impermissible unless the impugned decision of the learned Tribunal is, *inter alia*, rendered de hors its jurisdiction, is perverse or suffers from manifest illegality or procedural irregularity³³. Judicial review in matters of economic policy should be exercised on the anvil of, *inter alia*, manifest arbitrariness, patent illegality, and legislative competence.³⁴

103. Before embarking on this journey, we deem it appropriate to refer to judicial precedents relevant to the dispute at hand. However,

³³ *Ajay Singh v. Khacheru*, (2025) 3 SCC 266; *Chandavarkar Sita Ratna Rao v. Ashalata S. Guram*, (1986) 4 SCC 447; *Subhash Chander v. UOI in W.P(C) No. 2468/2025*

³⁴ *Rattan Chand v. Bhakra Beas Management Board & Ors.*, MANU/PH/1158/2002; *UOI & Ors v Sub Trilok Chand Retd No. JC374073A & Anr.*, W.P.(C) 12781/2024, pronounced on 29.05.2026 (2026:DHC:4843-DB)

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we do not wish to burden this judgment with innumerable excerpts. Hence, we deem it fit to objectively recapitulate the relevant precedents without reproduction as far as possible.

104. It is well settled that pension is neither a bounty nor an act of grace of the employer, instead, it is a valuable right of a government employee for the service rendered by him. It is the legal obligation of an employer to pay pension as it accrues³⁵. However, this right is subject to the provisions of Rule 9 of the CCS (Pension) Rules, which reserves the power to withhold or withdraw pension under certain circumstances³⁶.

105. It is also well settled that any discriminatory action of the Government is liable to be quashed unless it can be established that such action was based on some rationale and cogent principle and was not arbitrary³⁷.

106. The Supreme Court in *A.K. Bindal v. UOI*³⁸ recognized that a government company is legally distinct from the Government and that employees of the Government company are not civil servants and, therefore, are not entitled to protection under Article 311 of the Constitution of India. It was also held that since these employees are not Government servants, they have no legal right to claim that their

³⁵ D.S. Nakara v. UOI, 1983 SCC (L&S) 145

³⁶ BSNL v. Manilal Ambalal Patel, (2019) 14 SCC 232 : (2020) 1 SCC (L&S) 845 : 2019 SCC OnLine SC 344

³⁷ Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489, 506 : AIR 1979 SC 1628

³⁸ (2003) 5 SCC 163 : 2003 SCC (L&S) 620 : (2003) 114 Comp Cas 590 : 2003 SCC OnLine SC 580; P. S. D. Sharma v. Managing Director, (1989) 3 SCC 448 : 1989 SCC (L&S) 484 : AIR 1989 SC 1854

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salaries should be paid by the Government. This responsibility is to be borne by the Government company, and if such company is not financially viable, the employees cannot claim any legal right to ask for a direction to the Central Government to meet this expenditure.

107. However, in the present case, we note that the liability to pay pensionary benefits for BSNL/MTNL absorbees lies with the Government itself in terms of Rule 37A. Hence, the aforementioned decision is applicable to the extent that it carves out a distinction between government servants and employees of government companies.

108. Further, the Supreme Court has consistently highlighted that the financial ability of an employer/government undertaking is crucial and cannot be ignored, as otherwise, the unit itself may not be able to function³⁹. We note that while these decisions were rendered in context of fixing of wages/pay to workers and revision thereof, the reasoning adopted squarely applies to the dispute at hand.

109. The Supreme Court in *VSNL v. Ajit Kumar Kar*⁴⁰ duly recognized that IDA and CDA scales are distinct. It was held that the respondent-retirees therein did not have any right to receive Dearness Relief as per CDA scale on the pension drawn by them under IDA scale.

³⁹ *Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L.*, (2003) 6 SCC 490 : 2003 SCC (L&S) 916 : 2003 SCC OnLine SC 738; A.K. Bindal (supra)

⁴⁰ (2008) 11 SCC 591 : (2008) 2 SCC (L&S) 1047 : 2008 SCC OnLine SC 599

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110. Significantly, a three-Judge Bench of the Supreme Court held that classifications created by an expert body after detailed study should not be disturbed except for compelling reasons which may indicate arbitrariness or unreasonableness⁴¹. It was further clarified in *UOI v. M.V. Mohanan Nair*⁴² that the Pay Commission is an expert body, and when such body has comprehensively examined all issues to arrive at a conclusion, the court should not interfere with its recommendations. Once the government has accepted its recommendations and implemented the same, any interference by the court would have grave impact on public exchequer. Since the Pay Commission goes to the root of the matter, it is the proper authority, and interference is only warranted if there is “hostile discrimination”⁴³. The decision of the Pay Commission should not ordinarily be subject to judicial review⁴⁴. The Supreme Court and this Court have held that the Tribunal cannot substitute its own views for the views of the Government or direct a new policy based on its views⁴⁵.

111. Further, it is trite that a classification is within the bounds of Article 14 if it is based on some intelligible differentia and has some rational nexus with the object sought, and Article 14 of the Constitution of India will only get triggered if there is discrimination

⁴¹ *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521

⁴² (2020) 5 SCC 421

⁴³ *Union of India v. M.V. Mohanan Nair*, (2020) 5 SCC 421 : (2020) 2 SCC (L&S) 1 : 2020 SCC OnLine SC 302

⁴⁴ *State of U.P. v. U.P. Sales Tax Officers Grade II Assn.*, (2003) 6 SCC 250; *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 : 2002 SCC (L&S) 822

⁴⁵ *State of T.N. v. S. Arumugham*, (1998) 2 SCC 198 : 1998 SCC (L&S) 493; *UOI v. M.V. Mohanan Nair*, (2020) 5 SCC 421; *Ekta Shakti Foundation v. Govt. of NCT of Delhi*, (2006) 10 SCC 337 : AIR 2006 SC 2609; *UOI v. P.V. Hariharan*, 1997 SCC (L&S) 838; and *UOI v. Makhan Chandra Roy* (1997) 11 SCC 182 : AIR 1997 SC 239; *Virendra Kumar v. UOI*, 2024 SCC OnLine Del 1059

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between same classes of employees. On similar lines, it was held that the State, while implementing a new scheme for pensionary benefits, may deny the same to a class of retired employees who were governed by different set of rules⁴⁶.

112. The Supreme Court held that pension is akin to a right of property and has a direct nexus with the salary payable to the employees as on the date of retirement⁴⁷. The formula adopted for determining last average emoluments drawn has an impact on the quantum of pension⁴⁸. It is also settled that in order to get similar pay there must be “complete and wholesale identity between two groups”⁴⁹. To find out such identity, the competent authority is an expert body, not the writ court. It was further warned that granting pay parity by a court may result in an adverse cascading effect⁵⁰.

113. With respect to entitlement to revised pension, the Supreme Court in *V. Kasturi v. Managing Director, State Bank of India*⁵¹, carved out two categories, of which Category-I is relevant to the present dispute. Hence, it merits reproduction hereinbelow:

“Category I

22. If the person retiring is eligible for pension at the time of his retirement and if he survives till the time of subsequent amendment of the relevant pension scheme, he would become eligible to get enhanced pension or would become eligible to get more pension as

⁴⁶ U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630

⁴⁷ U.P. Raghavendra Acharya v. State of Karnataka, (2006) 9 SCC 630

⁴⁸ D.S. Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145

⁴⁹ S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279 : (2007) 2 SCC (L&S) 897; State of Haryana v. Tilak Raj, (2003) 6 SCC 123 : 2003 SCC (L&S) 828; State of Bihar v. Bihar Veterinary Assn., (2008) 11 SCC 60 : (2008) 2 SCC (L&S) 1111 : 2008 SCC OnLine SC 361

⁵⁰ S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279

⁵¹ (1998) 8 SCC 30 : 1999 SCC (L&S) 78

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per the new formula of computation of pension subsequently brought into force, he would be entitled to get the benefit of the amended pension provision from the date of such order as he would be a member of the very same class of pensioners when the additional benefit is being conferred on all of them. In such a situation, the additional benefit available to the same class of pensioners cannot be denied to him on the ground that he had retired prior to the date on which the aforesaid additional benefit was conferred on all the members of the same class of pensioners who had survived by the time the scheme granting additional benefit to these pensioners came into force. The line of decisions tracing their roots to the ratio of Nakara case [(1983) 1 SCC 305 : 1983 SCC (L&S) 145] would cover this category of cases.”

114. In light of the aforementioned excerpt, we note that in the present case, while the respondents fall in this category, their entitlement to revision of their pension as per the 7th CPC stands on murky waters, since the 3rd PRC has not been given effect, i.e., there is no “new formula of computation of pension” or amendment in the pension scheme in order to give rise to their right to enhancement of pension.

115. Pertinently, the Supreme Court in *Sureshchandra Singh v. Fertilizer Corpn. of India Ltd.*⁵², held as follows:

“4. By OMs dated 25-1-1991 and 8-4-1991, the Ministry of Programme Implementation and Department of Public Enterprises made it clear that all instructions/guidelines issued by the Government of India would be of two kinds: (a) directives issued in the name of the President of India, and (b) guidelines. Directives would be issued by the Administrative Ministry in the name of the President while all other instructions issued by the Department of Public Enterprises or by the Administrative Ministry are only advisory which the Board of Directors of the public sector undertakings concerned may in their discretion adopt or not for reasons to be recorded in writing.



5. *Here the Government of India took a policy decision to increase the retirement of Central Government employees. Application of that decision in respect of employees of public sector enterprises is dependent upon so many factors that are to be taken into account in the light of the peculiar characteristics of each company or corporation or department. So the first OM itself provides that the order will come into force only with effect from the date of notification of amendment to the relevant rules and regulations. So it is for the authority concerned to make necessary changes in the rules and regulations after taking into account all the relevant aspects. Immediately after the first OM dated 13-5-1998 the Department of Public Enterprises, Ministry of Industry, Government of India issued OM dated 19-5-1998 wherein the modalities of the implementation of the first OM in this Department was detailed. Here it is pertinent to note that the OM dated 19-5-1998 is not an instruction issued in the name of the President. On the other hand, it was issued by the Department of Public Enterprises, which is advisory in nature. It accorded a broad discretion to the corporations or companies for the implementation of the enhanced retirement age after taking into account all the relevant factors...*

6. *It is also to be noted that the OM dated 19-5-1998 itself does not raise the retirement age to sixty years. It is only an administrative direction and court cannot issue a writ to enforce such administrative instructions that is not having the force of law. The appellants do not have any right to continue in service till the age of sixty years. The decision of the Board of Directors is not arbitrary or unreasonable or unrelated to the question of enhancement in the age of retirement. Hence the first contention stands rejected."*

116. It is evident from the aforesaid extract that the instructions/guidelines issued by the Government through Department of Public Enterprises⁵³ are of two categories: instructions/guidelines issued by the Government of India and directives issued in the name of the President of India. The former is only advisory in nature.

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117. Having considered the judicial precedents relevant to the present dispute, we now deem it fit to delineate Rule 37A, as it lies at the center of the controversy.

Scheme of Rule 37A of CCS (Pension) Rules, 1972

118. On 30.09.2000, OM No. 2-29/2000-Restg. was issued by DTS regarding setting up of BSNL. In pursuance thereof, Rule 37A was inserted in the CCS (Pension) Rules, 1972.

119. While interpreting Rule 37A, a co-ordinate Bench of this Court in *Indian Telecom Service Association v. UOI*⁵⁴, held that the Court must give a meaningful effect to all provisions of this Rule, as much as possible, and not read it in isolation without considering the intent and purpose behind the sub-Rules.

120. In the aforesaid light, we deem it fit to analyse Rule 37A, as inserted in 2000, to understand the Scheme which would have formed the basis for the respondents' choice to be absorbed in the PSUs. The relevant sub-Rules are reproduced thus:

“(1) On conversion of a department of the Central Government into a public sector undertaking or an autonomous body, all Government servants of that Department shall be transferred en-masse to that public sector undertaking or autonomous body, as the case may be, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking or body, as the case may be and such transferred Government servants shall be absorbed in the public sector

⁵³ “DPE”, hereinafter

⁵⁴ 2012 SCC OnLine Del 2168

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undertaking or autonomous body, as the case may be, with effect from such date as may be notified by the Government.

*(4) The permanent absorption of the Government servants as employees of the Public Sector Undertaking or Autonomous Body 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.***

*(5) Upon absorption of Government servants in the public sector undertaking or autonomous body, **the posts which they holding in the Government before such absorption shall stand abolished.***

*(7) The employees including quasi-permanent and temporary employees but excluding casual labourers, who opt for permanent absorption in the Public Sector Undertaking or Autonomous Body, shall on and from date of Absorption, **be governed by the rules and regulations or bye-laws of the Public Sector Undertaking or Autonomous Body, as the case may be.***

(8) A permanent Government servant who has been absorbed as an employee of a Public Sector Undertaking or autonomous body shall be eligible for pensionary benefits on the basis of combined service rendered by him in the government and the Public Sector Undertaking or autonomous body in accordance with the formula for calculation of such pension/family pension under these rules as may be in force at the time of his retirement from the public sector undertaking or autonomous body, as the case may be.

(9) The pension of an employee under sub-rule (8) shall be calculated on the basis of his last ten months' average pay.

(10) In addition to pension or family pension, as the case may be, the employees shall also be eligible to Dearness relief as per Industrial Dearness Allowance pattern.

*(21) Nothing contained in sub-rules (12) to (20) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited, in which case the **pensionary benefits including family pension shall be paid by the Government.***

(22) The arrangements under sub-rule (22) shall be applicable to the existing pensioners and to the employees who are deemed to have retired from the Government service for absorption in Bharat Sanchar Nigam Limited and shall not apply to the employees directly recruited by the Bharat Sanchar Nigam Limited for whom it shall devise its own pension scheme and make arrangements for funding and disbursing the pensionary benefits.”

(emphasis supplied)

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121. Upon a plain reading of this Rule, it can be discerned that once the transferees opt to be absorbed in the PSU, they shall cease to be Government servants and are deemed to have retired from Government service. The Government post held by them would also stand abolished. From the date of such absorption, they shall be governed by the rules of the PSU. The heart of this Rule is sub-Rule (8), which mandates that a government servant who has been absorbed in a PSU shall be eligible for pensionary benefits at the time of his retirement based on combined service rendered by him under the Government and the PSU, as per the formula provided under the CCS Rules. It is stipulated that Dearness Relief would be ascertained as per the IDA scale. Further, the pensionary benefits shall be paid by the Government.

122. Therefore, we note that Rule 37A, as it stood on 30.09.2000, created a legal fiction that upon absorption, such employees would be deemed to have retired from Government service. It also mandated that upon such absorption, the employees would be governed by the rules of the PSU. There is a stipulation that absorbed employees are not Government servants. Notably, sub-Rule (8) only provided for combined service pension and does not contemplate other ancillary benefits beyond those specified.

123. Further, the words in sub-Rule (8), *“in accordance with the formula for calculation of such pension/family pension under these rules as may be in force at the time of his retirement from the public*

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sector undertaking”, clearly stipulate that the formula extended to Central Government servants will be applied to such absorbed employee for the purposes of calculation of pension which is in force at the time of retirement of the absorbed employee from the PSU. The provision does not extend any entitlement to subsequent revisions arising from future Pay Commissions.

124. Since an employee ceases to be a Government servant upon absorption and is arguably promised retention of his Government service conditions post such absorption, the same formula as that of Central Government servants is extended to such absorber by way of Rule 37A (8) in furtherance of this promise. Sub-Rule 8, therefore, only extends the formula for calculating pension, which is applicable at the time of his retirement from the PSU. Thus, this promise of retention of the same conditions as under government service is only with respect to the calculation of pension and is restricted to the time of retirement. To extend any other subsequent benefits would be giving an expansive reading to the black and white letters of this provision, which may have not been envisaged by the Legislature.

125. We also note that a co-ordinate Bench of this Court in *UOI v. All India BSNL Pensioners Welfare Assn.*⁵⁵, while interpreting Rule 37A, noted as follows:

“13. A clarification was issued by the DOT on 19th February, 2001 stating that “the word formula in clause ‘8’ of rule 37-A



means payment of pension as per Government rules in force at the relevant time” and further stating that “for the purpose of reckoning emoluments for calculation of pension and pensionary benefits, the emoluments as defined in CCS (Pension) Rules, in PSU in the IDA pay scales shall be treated as emoluments”.

15. On 20th December, 2002 a clarification was issued by the DPPW in respect of Rule 37A(8), (9) & (10) of the CCS (Pension) Rules to the effect that “for the purposes of calculating the average emoluments for determining the pension the same shall be done on the IDA pattern of scale with dearness relief in IDA pattern.”

126. Therefore, as per DoT, sub-Rule 8 refers to payment of pension as per Rules in force “at the relevant time” and further that emoluments for this purpose would be calculated under the IDA scale.

127. We now take the liberty to reproduce this Rule as it stood on 21.12.2012 after various amendments⁵⁶ overtime, as follows:

“(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 extra-ordinary 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".

⁵⁶ (i) On 28.12.2002, by OM No.4/61/99-P&PW(D) issued by DP&PW, the Explanation to sub-Rule 8 was inserted; (ii) On 21.12.2012, sub-Rule 9 was modified and sub-Rule 22 was modified to incorporate the content of sub-Rule 21

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(9) The pension of an employee under sub-rule (8) shall be calculated on fifty percent of emoluments or average emoluments, whichever is more beneficial to him.

(10) In addition to pension or family pension, as the case may be, the employee who opts for pension on the basis of combined service shall also be eligible to dearness relief as per industrial Dearness Allowance pattern.

(22) Nothing contained in sub-rules (13) to (21) shall apply in the case of conversion of the Departments of Telecom Services and Telecom Operations into Bharat Sanchar Nigam Limited, in which case the pensionary benefits including family pension shall be paid by the Government.”

128. It is evident from sub-Rule (8) and its accompanying explanation that a permanent Government servant absorbed into a PSU may get pension in two ways. The first is based on the combined service rendered by the employee, i.e. for the purposes of pension, the employee's service under the Central Government and the PSU would be counted together. The second way of computation is based on government service alone, i.e. the employee would draw pension for the service rendered under the Government till the date of his absorption and draw a separate pension from the PSU upon retirement therefrom. It is an admitted position that the respondents are not pro-rata pensioners, i.e., they fall under the first category. The explanation to sub-Rule (8) further clarifies that the method of calculation of pension for absorbed employees will be the same as adopted for Central Government employees.

129. Further, sub-Rules (13) to (21) shed light on the framework of liability shared by the PSU and the Government with respect to pension. It provides that the Central Government shall create a

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Pension Fund in the form of a Trust, and the pensionary benefits are to be paid from this Fund. Further, the Government shall make a one-time lumpsum payment to this Fund for the service rendered till the date of absorption of the employee in the PSU. The PSU is also required to make contribution to this Fund for the period of service to be rendered by the employees of the said PSU. This Fund is envisaged to be self-sustaining. If the pension liability cannot be fulfilled by the Fund and the PSU is also not able to cover-up the shortfall, the Government is liable to meet such expenditure. However, by virtue of sub-Rule 22, this aforesaid framework shall not apply to BSNL/MTNL; the consequence being that for BSNL/MTNL, pension shall be paid by the Government directly.

130. In this light, we also note that MTNL was brought at par with BSNL, as notified by DP&PW by G.S.R. No. 138(E) dated 03.03.2014. Consequently, for the purposes of pensionary liability, employees absorbed in BSNL and MTNL shall stand on the same footing, and the obligation to disburse pensionary benefits in both cases rests upon the Central Government.

131. Further, Rule 3(c) of the Rules defines “emoluments” to mean emoluments as stipulated under Rule 33. Hence, Rule 33 is as follows:

“33. Emoluments.—The expression ‘emoluments’ means basic pay as defined in Rule 9(21)(a)(i)⁵⁷ of the Fundamental Rules

⁵⁷ Rule 9 (21)(a)(i) the pay, other than special pay or pay granted in view of his personal qualifications, which has been sanctioned for a post held by him substantively or in an officiating capacity, or to which he is entitled by reason of his position in a cadre, and (ii) overseas pay, special pay and personal pay, and (iii) any other emoluments which may be specially classed as pay by the President.

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which a government servant was receiving immediately before his retirement or on the date of his death, and also includes non-practising allowance granted to medical officers in lieu of private practice.”

Note 10 below Rule 33 provides:

“Note 10.—When a government servant has been transferred to an autonomous body consequent on the conversion of a department of the Government into such a body and the government servant so transferred opts to retain the pensionary benefits under the rules of the Government, the emoluments drawn under the autonomous body shall be treated as emoluments for the purpose of this Rule.”

132. Thus, the aforesaid Note clarifies that if an absorbee opts to retain pensionary benefits under the Government (pro-rata pension), they shall draw emoluments as per the CCS Rules i.e., CDA scale.

133. After laying down the scope of Rule 37A and relevant judicial precedents, we shall now proceed to give a comprehensive reading to the various OMs and Circulars relied upon by the parties.

(i) OM dated 05.07.1989

134. The genesis, as per the respondents, is the OM No.4/18/87-P&PW(D) dated 05.07.1989 issued by DP&PW, inasmuch, it provides the overarching framework for absorption of Government servants to PSUs. The relevant excerpt is reproduced below for convenience:

“Subject:- Settlement of pensionary terms etc., in respect of Government employees transferred en masse to Central Public Sector Undertakings/Central Autonomous bodies.

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The President is now please to decide that, in a partial modification of above mentioned Office Memoranda, the following terms and conditions will be applicable in the case of en masse transfer of employees:

*a) **The permanent Government servants shall have an option to retain the pensionary benefits available to them under the Government rules or be governed by the rules of the Public Sector Undertaking/Autonomous Body, This option shall also be available to quasi-permanent and temporary employees after they have been conformed in the Public Sector Undertaking/Autonomous Body.***

*b) **The Government servants who opt to be governed by the pensionary benefits available under the Government, shall at the time of their retirement, be entitled to pension etc. in accordance with the Central Government rules in force at that time.***

*d) **The permanent Central Government servants who have completed 10 years or more of service and who opt for the retirement benefits of a PSU/Autonomous Body will receive pro-rata retirement benefits for the service rendered under the Government. These will be regulated as follows:-***

*i) **Employees who have an option either to draw pro-rata pension monthly or to draw a lump sum amount in lieu of 100% pro-rata pension.***

*ii) **Where the employees opt in favor of monthly payment of pro-rata pension, the same shall be allowed to be drawn with effect from the date of permanent absorption in a PSU/Autonomous Body. No part of pro-rata pension will be allowed to be commuted either at the time of permanent absorption or any time thereafter.***

*iii) **In the case of employees who opt in favor of a lumpsum amount in lieu of 100% pro-rata pension, the lumpsum value shall be worked out on the basis of table prescribed under the CCS (Commutation of Pension) Rules, 1981.***

*iv) **In the case of employees covered by clause (if), the retirement gratuity and for those covered by clause (iii) above, both retirement gratuity as well as lumpsum commuted value shall be paid on the expiry of a period of 7 years from the date of permanent absorption. The amounts,***

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however, can be paid earlier in the event of death/retirement/resignation/discharge from service.

v) The amounts of retirement gratuity and lump sum value in lieu of pension mentioned in clause (iv) above shall remain with the Government, and earn interest at the rate prescribed for General provident Fund deposits from time to time for the period they remain with the Government.

2. The family pension entitlements will be regulated in accordance with the instructions being issued separately.

3. As soon as a Central Government Department, Office or segment of a Government Department is converted into a PSU/Autonomous Body, the concerned Government servants will be transferred to such new organisation on foreign service terms in the initial period. The Government servants will be permanently absorbed in the PSU/Autonomous Body with effect from prospective date to be fixed by the concerned administrative Ministry/Department and from that date they will cease to be Government servants. Such of the Government servants who are not willing to be absorbed will have an option to revert back to Govt. service. In that event, if no suitable vacancies are available in the Office/Department/Ministry for such employees, their names will be transferred to Surplus Staff Cell.

4. The Public Sector Undertaking/Autonomous Body will formulate the terms and conditions of service in the new body at the earliest possible date. The employees will however have an option to retain Government pay scales till their promotion or retirement (whichever is earlier) or to come over to the service conditions of the PSU/Autonomous Body. However, until the exercise of this option, they will continue to be governed by the pay scales, leave entitlements and terminal benefits under the Government.”

135. A plain reading of this OM provides that Government servants shall have the option to retain pensionary benefits of Government service or be governed by the rules of the PSU. Those who opt for the former shall, at the time of their retirement, be entitled to pension in accordance with the Central Government rules in vogue. Paragraph No. 3 provides that those who opt for the latter option i.e., permanent absorption in the PSU, will cease to be Government servants and those

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who are not willing to be absorbed, shall have the option to revert to government service. However, till this option is exercised, the Government service rules shall remain applicable to them. It is noteworthy that this OM provides pro-rata pensionary benefits under clause (d) and is silent on combined service pension.

136. It is clear as day from the said OM that an alternative was extended to the respondents that either be absorbed in the PSU and hence be governed by its rules and cease to be Government servants or to remain in Government service. By the very fact, that such an option was extended, does not leave room for the possibility that the absorbees were promised retention of their Government service conditions post absorption, especially in the light of the explicit disclaimer that they shall cease to be Government servants.

(ii) Note dated 25.09.2000

137. A Note bearing No. 2-2/00-Restg. (Vol. I) dated 25.09.2000 was sent for Cabinet approval regarding formulation of BSNL. It was submitted seeking additional approvals highlighting the financial ramifications, the change in structure of DTS and DTO and the conditions of the vast number of the employees absorbed in BSNL. In this regard, it was suggested that all employees would be entitled to the Government scheme of pension, even after their absorption, and that the payment would be made by the Government. The Note also proposed the insertion of the relevant pension framework into the CCS Rules by amending Rule 37.

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138. It is, however, well settled that a Cabinet Note is only an administrative proposal and does not carry the force of law. Therefore, it is needless to state that this Note is merely an approval sought by DTS. Nevertheless, the respondents have laid reliance on the same as it may reveal the intent of DTS and may have also formed the basis of the information available to the respondents while exercising their options. In this context, we deem it important to analyze the same.

139. With respect to pension and retirement benefits, it stipulated that, “*all employees will be entitled to Government's scheme of pension/family pension even after their absorption*” and further that, pensionary framework in this respect was to be incorporated in the CCS Pension Rules by inserting Rule 37A.

140. Paragraph No. 12 of this Note delineates the approvals ultimately sought, as follows:

“12. Approvals sought

Accordingly, approval of the cabinet is sought to the following:-

(A) Approval for HRD Issues
(reference para 4 above)

(a) *All officers and employees other than those being retained in Department of Telecommunications (DoT), would be transferred w.e.f. 1.10.2000 on deemed deputation without deputation allowance to Bharat Sanchar Nigam Ltd. On as is where is basis along with their posts on existing terms and conditions. **Their status as Central Government employees would continue till the date of absorption.***

(b) *As per agreement with the ‘C’ & ‘D’ categories of employees, such of those who agreed to get absorbed w.e.f.*

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1.10.2000 would be given the benefit of pay scale of PSUs as and when they get fixed and an ad hoc sum of Rs.1000/- would be given to be adjusted against their future salary. A cutoff date would be given for giving their options.

*(e) Pension & retirement, job security benefits would be as per the scheme at **Annexure-I**.*

*(i) **All employees will be entitled to Government's scheme of pension/family pension even after their absorption.***

(ii) Payment of pension would be made by the Government. ... ”

(emphasis supplied)

141. The reference made hereinabove to Annexure-I, is nothing but the draft of Rule 37A. The relevant portion of this Rule, as reproduced in this Note, reads as under:

*“(2) The transferred employees shall be given the option to revert back to Government or to seek permanent absorption in the PSU/Autonomous Body. They shall exercise the option in such manner and within such period as maybe stipulated by the Government. The permanent absorption in the PSU/Autonomous Body shall take effect from the date their option is accepted by the Government and from that date, **they will cease to be Government servants.** They shall be deemed to have retired from the Government service and their posts in the Government will automatically stand abolished. Such of the Government servants who opt to revert back to Government shall be redeployed through the Surplus Cell.*

*(3) Those employees including quasi permanent and temporary but excluding casual labourers who opt to be permanently absorbed in the PSU, shall, from the date of such absorption, be governed by the service rules etc. of the PSU. **The permanent employees shall, however, be eligible for pensionary benefits on the basis of combined service in the Government and the PSU, in accordance with the formula for calculation of pension/family pension under the Central Government Rules in force at the time. The benefits will be calculated on the last ten months' average pay drawn in IDA scale in the PSU.** In addition to pension/family pension, they shall also be eligible to dearness relief as per IDA pattern. These benefits shall also be available to quasi permanent/temporary*

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employees after they have been confirmed in the PSU/Autonomous Body.”

142. It is evident from the above that approval was sought for retaining the Government scheme of pension even after absorption, but only in the context of calculating pension under combined service.

143. We note that the proposed Rule 37A clarified that the employees choosing to be permanently absorbed, though will be governed by service rules of the PSU, they will also be eligible for pensionary benefits based on their combined service in accordance with the formula for calculation of pension under the Central Government rules in force. However, the proposal also clarified that their status as Government employees would cease after such absorption.

144. Therefore, the aforesaid clearly implies that, the absorbed employees, do not stand on the same footing as Central Government employees. The only aspect where they are extended an equitable treatment is for the calculation of their pension, which will also be calculated on their pay drawn under the IDA scale in the PSU.

(iii) OM and Notification dated 30.09.2000

145. OM No. 2-29/2000-Restg dated 30.09.2000 was issued by DTS pertaining to establishment of BSNL pursuant to the New Telecom Policy, 1999.

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146. On the same date, a Notification was issued by DP&PW by which Rule 37A was inserted in CCS (Pension) Rules. The respondents placed reliance on sub-Rule (8) and accompanying Explanation to assert that it guarantees the application of the same pension formula as extended to Central Government employees. They seek revision of pension in light of the similar treatment granted by this Rule.

147. However, in order to ascertain the assurance granted to the respondents, we must look at the Rule as it stood in 2000 at the time during the *en masse* transfer, and not in its subsequent amended form of 2012.

148. We have taken the view in the preceding discussion that Rule 37A (8) (the Explanation was inserted on 28.12.2002) only extend the formula for calculation of pension applicable to Central Government servants to the absorbees on the date of their retirement from the PSU. It does not confer entitlement to subsequent revisions, nor does it preserve any other aspect of Government service beyond pension calculation, nothing more and nothing less.

(iv) Circular dated 09.11.2000

149. The DoT Circular No. 36-15/2000-Pen(T) dated 09.11.2000 was issued stating that the employees of DoT who will be absorbed in BSNL, will be entitled to the government pension scheme post absorption. It was further stated that payment of pension will be made

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by the government, and that in this regard, Rule 37A was inserted on 30.09.2000. However, as we have noted in the preceding paragraphs, the entitlement flowing from Rule 37A is required to be understood in the context of the scheme of the Rule itself as it stood on 30.09.2000. The Circular cannot confer a benefit beyond that contemplated under the statutory framework. Consequently, the reference to the Government pension scheme must necessarily be read as an extension of pensionary benefits in terms of Rule 37A and not as a continuation of the respondents' status as Central Government employees after absorption. This entitlement, thus, is restricted to calculation of pension of the absorbed employees at the time of their retirement.

150. After the *en masse* transfer, BSNL/MTNL called for options from the transferees. In this regard, only the Notification dated 14.01.2002 calling for options from Group 'B' officers is placed on record. This Notification, in para 8, provided that the optees will be governed by CDA scale till the IDA scale is announced and will be paid arrears after fixation of pay in IDA. The Option Form and accompanying General Terms and Conditions were made part of the record before us. It is reproduced as follows:

*“GENERAL TERMS & CONDITIONS
FOR ABSORPTION OF GROUP 'B' OFFICERS IN BSNL*

4. Change over to IDA Pay Scales

The IDA pay scale and the fitment formula will be announced by BSNL separately. Till that time the optees will continue to remain in CDA pay scale. The IDA pay scales will be effective from 01.10.2000. After fixation of the pay of the absorbed employees in IDA pay scale, they will be paid arrears.

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However, after their absorption is finalized by BSNL and till they are fitted in the IDA pay scale such officials will be paid an ad-hoc sum of Rs.2000 per month by BSNL. This will be an advance payment against the arrears receivable by them on their fitment in the IDA pay scales. This advance payment will be adjusted from their IDA emoluments, perks and benefits on fixation of their pay in IDA pay scales. In case of optees accepted for absorption from MTNL any ad-hoc amount paid to them by MTNL would also be adjusted against their IDA emoluments, perks and benefits on fixation of their pay in IDA pay scales.

5. Payment of Pension

The officers who opt for permanent absorption in BSNL would be governed by the provisions of Rule 37 - A of CCS (Pension) Rules, notification for which was issued by the Department of Pension & Pensioners Welfare on 30.09.2000. For the purpose of reckoning emoluments for calculation of pension and pensionary benefits, the emoluments as defined in CCS (Pension) Rules, in PSU in the IDA pay scales shall be taken.

DOT has already clarified that the word "formula" mentioned in clause 8 of Rule 37 - A means payment of pension as per Government Rules in force at that time. BSNL will not dismiss/remove an absorbed officer without prior approval of the Administrative Ministry/Department."

151. These conditions leave little room for ambiguity. A plain reading of these terms clarifies that the respondents, after absorption, would be governed under the IDA scale applicable to PSU employees. Only till the time of their absorption will they remain in the CDA scale. It is also clear that post such absorption, their pension would be governed by Rule 37A but under the IDA pay scale.

152. At this juncture, it is relevant to note the well-recognized distinction between the CDA and IDA scales. The Central Government employees are fitted in the CDA scale, and their service conditions are revised by the CPC. It is trite that CPC

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recommendations only apply to Central Government servants. Conversely, CPSU employees are governed by the IDA scale, and revision of their pay structure are ordinarily considered based on the recommendations of the PRC.

153. Moreover, 01.01.1989 onwards, all PSUs employees fall under the IDA pay scale following the judgment of the Supreme Court in *Jute Corpn. of India Officers' Assn. v. Jute Corpn. of India*⁵⁸, and the subsequent OM No. 2(43)/90-DPE(WC) dated 12.06.1990⁵⁹ issued by DPE. It is also trite that PRCs issue recommendations for the service conditions of CPSU employees. Therefore, without any legislative or administrative direction to the contrary, in ordinary course, CPC recommendations do not apply to PSU employees and PRC recommendations do not apply to Central Government employees.

154. Viewed in this backdrop, coming back to the aforementioned General Terms and Conditions, they clearly stipulate that absorbees will be governed under IDA scale and Rule 37A, which entails that: (i) absorbees cease to be Government servants after absorption; (ii) CDA scale is not applicable to absorbees after absorption; (iii) only for calculation of their pension at the time of their retirement, the absorbees are entitled to the Central Government formula. The terms do not indicate that the absorbees would continue to receive every future benefit extended to serving or retired Central Government

⁵⁸ (1990) 3 SCC 436

⁵⁹ The OM in Para 3(iii) stipulates that appointments of all categories of employees in CPSEs on or after 01.01.1989 will be under IDA pay scale.

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employees irrespective of the statutory and administrative distinctions between the CDA and IDA pattern.

155. Therefore, the Circular dated 09.11.2000 and the absorption conditions, when read harmoniously with Rule 37A, support the conclusion that the respondents were assured continued pensionary protection through the mechanism of combined service pension, but were not assured perpetual assimilation with Central Government employees for all future purposes. Any such interpretation would render otiose the express provisions of Rule 37A which provide that, upon absorption, the employees cease to be a Government servant and becomes subject to the rules governing the PSU.

156. It is noted that the options for Group 'B' officers were again floated on 29.08.2003 in furtherance of the Tribunal's order dated 06.08.2003 in O.A. No. 298/2002, which directed timely completion of the absorption process. Hence, the process of calling for options was revived by OM dated 02.09.2003⁶⁰, whereby the aforesaid General Terms and Conditions remained the same with respect to application of IDA scale for absorbed employees.

157. Thereafter, by OM No. 616/2002-SU dated 28.07.2003, DoT issued the corresponding IDA pay scales and the method for fixation of pay to be implemented w.e.f. 01.10.2000. Paragraph No. 2 therein clarified that the scales of pay prescribed were only an indicative

Validity unknown ⁶⁰ OM No. BSNL/11/SR/2003 dated 02.09.2003 issued by BSNL



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ceiling and the actual fixation and payment would depend on the PSU's financial capacity.

158. In the interregnum, the DP&PW by OM No. 4/61/99-P&PW(D) dated 20.12.2002 clarified that for calculation of pension of absorbees in terms of Rule 37A (9), the average emoluments would be based on the pay drawn in the PSU, i.e., under IDA scale.

159. Now that we have delineated the various Office Memoranda surrounding the corporatization of BSNL/MTNL and the *en masse* transfer of erstwhile DoT employees, we proceed to the effect of the CPC and PRC recommendations on the present dispute.

(v) 6th CPC – OM dated 01.09.2008 (Pre-01.01.2006 Pensioners)

160. The recommendations of the 6th CPC were to be given effect from 01.01.2006.

161. By OM F.No. 38/37/08-P&PW(A) dated 01.09.2008, DP&PW sought to implement the recommendations of the 6th CPC with respect to revision of pension for pre-2006 pensioners. It categorically did not apply to employees retiring on or after the cut-off date, i.e., 01.01.2006.

162. Paragraph no. 2.1 clarified that the OM applied to all pensioners drawing pension as on 01.01.2006 under the CCS (Pension) Rules, i.e., Central Government servants. Pertinently, it is the contention of

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the respondents that they are also pensioners who are drawing pension under the CCS Rules by virtue of Rule 37A, hence, this OM applies to them.

163. Further, paragraph no. 4.2 provided that under no circumstance will the revised pension be lower than 50% of the minimum of the pay in the pay, plus the grade pay corresponding to the pre-revised pay scale from which the pensioner had retired. Paragraph no. 4.5 stipulates the quantum of pension. Paragraph no. 7 is most relevant, as follows:

“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 Supreme Court Judgement dated 15.12.1995, their cases will not be covered by these orders.

(b) FAMILY PENSION

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

(emphasis supplied)

164. It is evident from the above that while the 6th CPC recommendations were to apply to all pre-01.01.2006 pensioners

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drawing pension under the CCS Rules; however, a separate class was created under Paragraph No. 7 for the erstwhile Central Government employees who stand permanently absorbed in PSUs, i.e., including the respondents. It is also manifest from Clause (a) of Paragraph No. 7 that the OM only pertains to government servants permanently absorbed in PSUs who continue to draw pension separately from the government, i.e., pro-rata pensioners and not combined service pensioners. The respondents, as combined service pensioners, are therefore not covered under this category.

165. In our considered view, such classification is based on *intelligible differentia*, particularly since the absorbees who opt for combined service pension draw pension at the time of their retirement from the PSU, based on service rendered under both the Government and the PSU, and received pay under the IDA scale, as opposed to absorbees who draw separate pension from the Government, in which case they fall under CDA scale for the service already rendered. The distinction is rational, directly correlates to the nature of the pension elected, and does not violate Article 14 of the Constitution of India.

(vi) 6th CPC – OM dated 02.09.2008 (Post-01.01.2006 Pensioners)

166. The OM F. No. 38/37/08-P&PW(A) dated 02.09.2008 sought to implement 6th CPC recommendations with respect to, *inter alia*, revision of pension/gratuity/commutation of pension for Government servants governed by CCS Rules retiring on or after 01.01.2006.

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Notably, there is no separate provision for permanently absorbed employees in PSUs, as under OM dated 01.09.2008.

167. The petitioners contend that these OMs pertain to pro-rata pensioners and not the respondents, who are admittedly combined service pensioners. Further, it is also their contention that since the OM dated 02.09.2008 applies to post-01.01.2006 pensioners, it will not apply to the respondents who ceased to be government employees post their absorption in BSNL/MTNL. On the other hand, the respondents maintain that their pensions were revised pursuant to the 6th CPC and that the formula prescribed for the same was stipulated in these OMs, formed the basis of such revision.

168. We have already noted that the respondents are admittedly combined service pensioners and do not draw pension separately from the Government in respect of their pre-absorption Government service. Hence, the OM dated 01.09.2008, as per Paragraph No. 7(a), which expressly applies to Government servants permanently absorbed in PSUs who continue to draw pension separately from the Government, has no direct application to the present dispute.

169. Further, we are equally cognizant that no such categorical exclusion exists in OM dated 02.09.2008. Therefore, the contention of the petitioners that this OM does not apply to the respondents because they ceased to be Central Government employees, does not come to their rescue as this OM clearly applies to all "*Central Government Employees governed by the CCS (Pension) Rules, 1972*". The

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respondents are governed by Rule 37A of CCS (Pension) Rules, therefore, they *prima facie* fall under the broad ambit of this OM.

170. However, it would be anomalous to hold that persons of the same category (absorbed PSU employees), who retired prior to 01.01.2006 stand excluded by OM dated 01.09.2008, while those retiring after the cut-off date are entitled to the benefits solely because the subsequent OM does not expressly reiterate the exclusion. It is trite that a pension scheme cannot create an artificial divide by bifurcating an otherwise homogenous group solely based on cut-off date without any discernible rationale, as also held in *D.S. Nakara (supra)*.

171. The earlier OM dated 01.09.2008 expressly confines its applicability to pro-rata pensioners. No such restriction is stipulated in the OM dated 02.09.2008. However, the mere absence of this stipulation does not imply that the intent was to enlarge the class of beneficiaries, particularly when no such intention is discernible from the scheme of the OMs.

172. It is also to be borne in mind that the subsequent OM is an extension of the earlier OM, both were issued contemporaneously for the implementation of the 6th CPC recommendations and therefore constitute integral parts of a single scheme. Hence, they cannot be read in isolation and must be construed harmoniously as a composite whole rather than as independent and disconnected instruments. In the clear absence of any indication that the latter OM dated 02.09.2008

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was intended to enlarge the class of beneficiaries, the lack of reiteration of the excluding provision cannot be construed in a way to confer benefit upon the respondents who are combined service pensioners. Pertinently, the aspect of pension for PSU employees is governed by the PRC, not CPC.

173. Hence, in our considered view, the OM dated 02.09.2008, akin to OM dated 01.09.2008, only applies to pro-rata pensioners in PSUs and not to combined service pensioners such as the respondents.

(vii) Clarification dated 27.04.2009

174. A clarification was issued by DP&PW *vide* OM No. 4/19/2009-P&PW(D) on 27.04.2009 regarding the applicability of revised pensionary rules in light of 6th CPC. The relevant part is reproduced thus:

“2. The en-mass transferred absorbees opting for pension for combined service in Govt. and PSU/CAB are entitled for pension in terms of Rule 37 A(8) "in accordance with the formula for calculation of pension/ family pension under these rules as may be in force at the time of his retirement from fer the PSU/CAB". The formula applicable to Central Govt. pensioners has been changed vide DoP&PW O.M. dated 2.9.2008 and therefore, the changed formula provided in O.M. dated 2.9.2008 is applicable to such absorbees also. The DoP&PW OM dated 1.9.2008 referred to in Deptt. Of Telecommunication reference has no relevance as this the OM contains instructions for revision of pension of pre 2006 central Government pensioners only”

(emphasis supplied)

175. A plain reading of the aforesaid clarification clearly states that the formula for calculation of pension of Central Government pensioners was revised, therefore, such revised formula is applicable

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to the absorbed employees of PSUs. It further states that the OM dated 01.09.2008 has no relevance in this regard because it pertains to revision of pension of pre-2006 Central Government pensioners. The clarification expressly states that it is *only* the changed formula contained in the OM dated 02.09.2008 which would apply to absorbees governed by Rule 37A.

176. The respondents relied heavily on this clarification to contend that it reaffirmed that since the formula applicable to Central Government pensioners was revised after the 6th CPC, it shall also apply to absorbees drawing combined service pension. Whereas the petitioners maintain that this clarification if of no consequence in this dispute as it only clarifies the applicability of the OM dated 02.09.2008 and merely reiterates the position already contemplated under Rule 37A (i.e., the formula for calculating pension of Central Government employees would be extended to absorbees governed by Rule 37A) and does not confer any independent right of pension revision.

177. In this regard, the petitioners advanced a premise that OM dated 01.09.2008 applied to pre-01.01.2006 pensioners and OM of 02.09.2008 pertained to post-01.01.2006 pensioners; hence, the logical corollary is that the former OM is for revision of pension and the latter is for fixation (because it applies to employees who have not yet retired). They further submitted that this clarification only provides that the formula to calculate pension, as revised by OM dated 02.09.2008, shall also be applied to combined service pensioners,

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which is squarely in terms of Rule 37A, but OM dated 01.09.2008 had no relevance since it dealt with revision of pension of pre-01.01.2006 Central Government retirees. The petitioners' submission, in essence, was that the formula for fixation of pension as revised by OM of 02.09.2008 was to be extended to the respondents, but not the formula for revision of pension, as per OM dated 01.09.2008.

178. In our considered view, fixation and revision of pension are distinct concepts. Fixation determines the initial pension at the time of retirement, whereas revision enhances the already existing pension, usually due to a revision in underlying pay.

179. As we have noted in the forgoing discussion, Rule 37A (8) only extends the formula at the time of retirement, i.e., with respect to fixation of pension. This Rule cannot automatically mean that the absorbees (combined service pensioners) in PSUs are entitled to revision of their pension pursuant to CPC recommendation for such revision in respect of Central Government employees under the CDA scale. To read such a right into Rule 37A would amount to enlarging its scope beyond the intent and language employed by the competent legislative authority.

180. Hence, in our considered view of the OMs dated 01.09.2008 and 02.09.2008 along with the clarification of 27.04.2009, we are inclined to agree with the stance advanced by Mr. Singh on behalf of the petitioners. Therefore, all that this clarification provides is that the formula applicable to Central Government employees, as it stood

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revised by OM of 02.09.2008, would be extended in its revised form to the absorbed PSU employees in furtherance of Rule 37A. Equally significant is the categorical observation that the OM dated 01.09.2008, dealing with revision of pension of pre-2006 Central Government pensioners, had “no relevance” to such absorbees. The clarification, therefore, reinforces the distinction between fixation of pension under Rule 37A and subsequent revision of pension under the CPC framework.

(viii) OMs dated 04.05.2009 and 12.08.2009

181. It is noteworthy to mention that the DoT by OM No. 40-31/2008-Pen(T) dated 04.05.2009 extended the revised rules of pension calculation as per 6th CPC with respect to the limit of DCRG, revised commutation tables, revised treatment of emoluments, qualifying service and allied matters, to IDA pensioners of BSNL governed by Rule 37A w.e.f. 01.01.2006. Further, by a subsequent OM F. No. 40-31/2008-Pen(T) dated 12.08.2009, DoT issued clarifications in this regard.

182. In our view, the extension of the revised rules of pension calculation is aligned with the aim and object behind Rule 37A. This OM is only concerned with the method of pension calculation and extends the same to the absorbed employees, as was envisaged by Rule 37A(8). It does not, by itself, revise the underlying pay scale in order to warrant a consequential revision of pension.

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183. Significantly, neither the OM dated 04.05.2009 nor the clarification dated 12.08.2009 directs a revision of the basic pension payable to combined service pensioners. They do not alter the underlying pay structure, revise the pension already fixed, or confer a fresh entitlement analogous to that granted pursuant to the 6th CPC. Rather, they merely regulate ancillary pensionary components and the manner of calculation of pensionary benefits.

184. In ordinary course, the revision of pension flows from specific orders, linked to the recommendations of CPC. In the present case, it was clarified by the afore-noted communication dated 27.04.2009 that the “OM dated 1.9.2008 referred to in Deptt. Of Telecommunication reference has no relevance as this the OM contains instructions for revision of pension of pre 2006 central Government pensioners only”. The referenced OM dated 01.09.2008 essentially pertains to revision of pension. In the clear absence of a statutory mandate or executive order, directing the revision of pension, the extension of the revised rules as per 6th CPC cannot be construed in a way to confer a right of pension revision. Therefore, the OM dated 04.05.2009 does not, by itself, give rise to any entitlement of revision of the basic pension.

185. We are therefore unable to accept the respondents’ contention that the OMs dated 04.05.2009 and 12.08.2009 constitute recognition of a right to pension revision under the 6th CPC. These OMs merely facilitate implementation of revised pensionary parameters for the purposes of computation and disbursement of benefits under Rule 37A and do not, by themselves, create any entitlement to revision of

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pension analogous to that granted to Central Government pensioners under the CPC.

(ix) 2nd PRC

186. On parallel lines, the 2nd PRC was notified by the DPE on 26.11.2008, whereby the revised pay scales and allowances were approved w.e.f. 01.01.2007 for CPSUs. However, it stipulated that revised pay scales would be adopted subject to the profit before tax not falling below a certain level, as follows:

“3. Affordability for implementation of pay revision:- The revised pay scaled would be adopted, subject to the condition that the additional outgo by such a revision for a period of 12 months should not result in more than 20% dip in profit before tax (PBT) for the year 2007-08 of a CPSE in respect of executives as well as non-unionized supervisory staff taken together in a CPSE. CPSEs that cannot afford to pay full package, can implement with either part PRP or no PRP. These CPSEs may pay the full package subsequently, provided the dip in the profit (PBT) is fully recouped to the original level.

4. The CPSEs, which are not able to adopted revised pay scales (2007), may give an increase on the basic pay plus DA drawn in the pre-revised scale as on 01.01.2007, with a uniform lower fitment of 10% or 20%, depending upon their affordability, with the approval of their Ministry/Department.”

187. Thereafter, on 29.12.2010, DoT submitted a Note⁶¹ for Cabinet approval for revision of IDA pension for employees of BSNL, who retired after 01.10.2000 but before 01.01.2007. This Note highlighted that DPE issued orders for revision of pay of BSNL employees w.e.f. 01.01.2007, however, no such orders were issued by the Government

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for revision of pension and as a result, the employees who retired after this date received 30% higher pension than employees who retired before the cut-off date.

188. Upon perusal of this Note, it is pertinent to note that the proposal was in line with the 2nd PRC recommendations.

(x) OM dated 15.03.2011

189. Subsequently, DoT issued OM F. No. 40-17/2008-Pen(t)-Vol.III dated 15.03.2011, whereby DoT ordered revision of pension of pre-01.01.2007 pensioners of BSNL. The OM applies to the DoT employees permanently absorbed in BSNL who were entitled to draw pension from 01.01.2007 based on combined services rendered under the Government and BSNL.

190. By Circular No. 09 dated 04.04.2011, BSNL initiated the process for revision of pension of eligible pre-2007 pensioners in light of this OM dated 15.03.2011.

191. The respondents have vehemently submitted that their pensions were revised pursuant to the 6th CPC, as evident by this OM of 15.03.2011. They further contended on the strength of this OM that since their pensions were revised pursuant to 6th CPC, they were equally entitled to revision of pension as per the 7th CPC.

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192. We are afraid that we cannot accept this contention of the respondents after a collective reading of the 2nd PRC recommendations, the Note for Cabinet approval dated 29.12.2010, and this OM dated 15.03.2011.

193. In our view, the OM of 15.03.2011 is nothing but the acceptance of the recommendations of the 2nd PRC, as also evident from the proposal submitted by Note dated 29.12.2010 seeking revision of pension consequent to 2nd PRC.

194. The 2nd PRC recommended a fitment benefit of 30% on basic pay plus DA at 68.8% as on 01.01.2007, which is what has been granted by OM dated 15.03.2011. To buttress, even the cut-off date stipulated in OM dated 15.03.2011 is 01.01.2007, i.e., the cut-off date as per the 2nd PRC. It is evident from OMs dated 04.05.2009 and 12.08.2009 that if the recommendations of the 6th CPC were to be extended, the benefits would have been granted from the cut-off date as per the 6th CPC i.e., 01.01.2006.

195. Subsequently, on 20.07.2016⁶², the liability of BSNL towards the payment of pensionary benefits was modified in the following terms:

“As stipulated in Rule 37-A of CCS (Pension) Rules, 1972, the pensionary benefits in the case of BSNL shall be paid by the Government, and the Government shall specify the arrangement and the manner including the rate of pensionary contribution to be made by BSNL and the manner in which financial liabilities on this

Validity unknown ⁶² OM No. 43-13/2013-Pen(T) dated 20.07.2016 issued by DoT

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account shall be met. As per sub-rule 24 of the said Rule, the arrangement thus worked out shall be applicable to the existing pensioners and to the employees who are deemed to have retired from Government.

The instructions with regard to the financial liability on this account were issued vide DoT's letter no. 1-45/2003-B dated 15.06.2006. Subsequently, the matter of modifying the Pension liability of BSNL towards the payment of pensionary benefits including family pension to the retired employees has been considered by the Government, and the following has been decided.

(a) The pension liability in respect of employees of DOT/DS/DTO who retired prior to 01.10.2000 is solely borne by Government of India and the BSNL will have no liability in respect of these employees.

(b) The liability towards pensionary benefits including family pension to the BSNL employees (excepting those recruited after 01.10.2000) as per sub-Rule 22 of Rule 37-A of CCS (Pension) Rules, 1972, lies with the Government of India. The condition that the annual pension liability of the government shall not exceed 60% of the annual receipts to Government from the items specified in the O.M. dated 15.06.2006 is hereby rescinded.

BSNL will continue to discharge pension liability by way of pension contribution in accordance with FR 116."

196. While the aforesaid communication unequivocally affirms that the liability for payment of pension to BSNL absorbees rests upon the Central Government, it does not deal with, much less confer any entitlement to revision of pension in accordance with recommendations of CPC. The communication pertains solely to the incidence of pensionary liability and the financial arrangement between BSNL and the Government. Consequently, the respondents cannot derive any substantive right of pension revision from the said communication.

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(c) 7th CPC

197. The pension of Central Government employees was again revised with the advent of the 7th CPC from 01.01.2016. We note that the recommendations of the 7th CPC were given effect by way of 3 OMs issued on the same date, i.e., 04.08.2016 and a subsequent OM dated 12.05.2017.

198. The Resolution F. No. 38/37/2016-P&PW(A) indicated that the terms of the 7th CPC recommendations were accepted by the Government. With respect to revision of pension, two methods were recommended: (i) Notional Fixation and (ii) Fitment Multiplier of 2.57⁶³. It was stated that the first method may be applied if found feasible after scrutiny by the competent authority, while the second method was implemented with immediate effect.

199. OM F. No. 38/37/2016-P&PW(A)(i) was issued to revise the existing conditions of service as per 7th CPC for the employees governed by CCS (Pension) Rules who retire or die after 01.01.2016. As per an Order of this Court of 19.11.2025, it is on the basis of this OM that the respondents confined their prayer to revision of pension by applying the 2.57 multiplier instead of 3rd PRC.

⁶³ (i) All the Civilian personnel including CAPF who retired prior to 01.01.2018 (expected date of implementation of the Seventh CPC recommendations) shall first be fixed in the Pay Matrix being recommended by this Commission, on the basis of the Pay Band and Grade Pay at which they retired, at the minimum of the corresponding level in the matrix. This amount shall be raised, to arrive at the notional pay of the retiree, by adding the number of increments he / she had earned in that level while in service, at the rate of three percent. Fifty percent of the total amount so arrived at shall be the revised pension.

Validity unknown



200. OM F. No. 38/37/2016-P&PW(A)(ii) was issued for revision of pension of pensioners drawing pension under CCS (Pension) Rules before 01.01.2016, by applying the fitment method. The respondents have placed reliance on this OM to contend that by virtue of paragraph no. 7 therein, they are entitled to revision of pension in terms of the 7th CPC. We deem it fit to reproduce this paragraph hereinbelow:

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

201. A bare reading of this paragraph indicates that, akin to 6th CPC recommendations, the OM has created a separate class for Central Government employees who have been permanently absorbed in

(ii) The second calculation to be carried out is as follows. The pension, as had been fixed at the time of implementation of the VI CPC recommendations, shall be multiplied by 2.57 to arrive at an alternate value

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PSUs, and para 7(a) therein refers to Government servants who “continue to draw pension separately from the government” even after absorption in a PSU. It is an admitted fact that the respondents do not draw a separate pension from the Government; instead, they are combined service pensioners i.e., they will draw pension at the time of retirement from the PSU based on the service rendered under the Government and the PSU together. Hence, the reliance placed by the respondents on this OM to claim revision of pension in terms of 7th CPC, is of no avail.

202. The last OM by which the 7th CPC was given effect is OM No. 38/37/2016-P&PW(A) dated 12.05.2017. By this OM, the first method to revise pension i.e., notional fixation, was approved for pre-2016 pensioners. It was also decided that the higher of the two formulations (notional and fitment method) would be granted to pre-2016 pensioners. We note that paragraph no. 4 applies to “all Central civil pensioners”. Further, paragraph no. 12 states thus:

“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.”

203. We are of the view that this OM dated 12.05.2017, however, does not apply to the respondents for two reasons: (i) As per the Order

Validity unknown for the revised pension.



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of this Court dated 19.11.2025, the respondents confined their prayer to revision of pension based on multiplier of 2.57 in terms of OM dated 04.08.2016; (ii) the respondents are combined service pensioners and do not draw separate monthly pension from the Government after permanent absorption in BSNL/MTNL in terms of the aforesaid para no. 12.

204. After the advent of 7th CPC but before the issuance of the aforesaid OM, the DoT by OM F. No. 47-63/2015-Pen(T)(pt) dated 16.03.2017, clarified that revised rates for payment of death gratuity pursuant to 7th CPC (as per OM F. No. 38/37/2016-P&PW(A)(i) of 04.08.2016) was indeed applicable to BSNL/MTNL absorbees, who were combined pensioners governed under Rule 37A.

205. It is pertinent to note that this OM dated 16.03.2017 stated in its para no. 3 that, “*there is no change in the formula for pension/family pension w.e.f. 01.01.2016. BSNL/MTNL absorbees will, therefore, continue to get pension based on the same formula*”. Hence, it is evident that there was no change in the formula of pension of the respondents pursuant to the 7th CPC.

206. We note that the aforesaid direction with respect to death gratuity was implemented by BSNL by Order No. 48-11/2016-Pen(B) dated 21.03.2017.

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207. It is also relevant to note that the DPE *vide* OM dated 10.07.2018⁶⁴ clarified that the enhanced gratuity ceiling in terms of 7th CPC was not applicable to CPSEs⁶⁵ employees. This further underscores the distinction between the Central Government employees and PSU absorbees with respect to application of CPC recommendations.

208. In summary, while the 7th CPC revised pension for Central Government employees, the combined service pensioners of BSNL/MTNL governed by Rule 37A continue to receive pension in accordance with the formula applicable at the time of their respective retirement. No provision in any OM or Circular confers on such absorbees a right to revision of their pension under the 7th CPC analogous to Central Government employees.

(xi) 3rd PRC

209. After the 2nd PRC (as effective from 01.01.2007), pay revision for CPSUs again became due on 01.01.2017. In this regard, the 3rd PRC was constituted under the Chairmanship of Justice Satish Chandra (Retd.).

210. The recommendations of the 3rd PRC were approved by the DPE on 03.08.2017 *vide* its OM No. W-02/0028/2017-DPE(WC)-GL-XIII/17. However, paragraph no. 3 subjected the implementation of

⁶⁴ OM No. W-02/0036/2018-DPE(WC)-GL-XIX/18

⁶⁵ Central Public Sector Enterprises

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these recommendations to the financial health of the PSU in the following terms:

“3. Affordability: The revised pay scale would be implemented subject to the condition that the additional financial impact in the year of implementing the revised pay-package for Board level executives, Below Board level executives and Non-Unionized Supervisors should not be more than 20% of the average Profit Before Tax (PBT) of the last three financial years preceding the year of implementation.”

211. It is an undisputed position that the recommendations of 3rd PRC were not given effect due to the financial constraints of BSNL/MTNL.

212. One of the contentions advanced by Mr. Ghose, learned Senior Counsel for the respondents in W.P.(C) 4955/2025, was that it was not within the remit of the PRC to revise pension. However, it is apparent from a plain reading of OM dated 03.08.2017 that the 3rd PRC was not silent on the aspect of revision of pension. It is also evident that DoT issued OM dated 15.03.2011 for the revision of pension pursuant to 2nd PRC as noted in the preceding discussion. However, no statutory provision or executive order has been placed before us to substantiate that the aspect of revision of pension is *ultra vires* the authority of PRCs.

213. We note that the respondents categorically submitted before this Court on 19.11.2025 that they do not seek revision of pension as per 3rd PRC. However, for the sake of clarity we shall express our views on the same hereinbelow.

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214. In the present case, PRC recommendations are issued by the DPE. In light of *Sureshchandra Singh (supra)*, it is clear from para no. 13 of DPE OM dated 03.08.2017 with respect to the 3rd PRC, that Board of Directors of each CPSU is required to consider the proposal of pay revision based on their affordability to pay and submit the same to the concerned Ministry for approval. Thereafter, the concerned Ministry will issue the Presidential Directive for each PSU separately. Thus, it is evident that this OM dated 03.08.2017 falls under the former category, i.e., it is an administrative direction and therefore, this Court cannot issue a writ to enforce such directions which does not carry the force of law.

215. Now that we have delineated the relevant legal framework and taken a comprehensive view of the numerous OMs, Circulars etc. placed before us, we shall now advert to the facts of the case.

216. It is not in dispute that the respondents opted to be permanently absorbed in BSNL/MTNL. It is also not disputed that the respondents are combined service pensioners. It is also a matter of fact that the respondents are fitted in the IDA pay scale.

217. It is not the respondents' case that they are not receiving pension altogether, but only that their pensions have not been revised since 2007. Consequently, they seek revision of pension by applying multiplier of 2.57 in terms of the 7th CPC. They seek this relief primarily on three grounds:

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(i) They were assured that the terms of their service will remain intact post absorption in BSNL/MTNL.

(ii) They are entitled to revision of pension by virtue of Rule 37A, particularly sub-Rule (8).

(iii) On strength of various OMs which have either granted them benefits of 6th and 7th CPC or are applicable to *all* pensioners governed by CCS (Pension) Rules without any discrimination on grounds of being absorbed in PSUs.

218. Thus, the bone of contention that runs to the core of this dispute is whether the respondents are entitled to be treated at par with Central Government employees for the purposes of pension revision based on CPC recommendations.

219. With respect to the first ground, the respondents have heavily relied on various documentary evidence to demonstrate that they were granted assurance that their terms of Government service will be retained after their absorption. We are of the view that this ground is untenable for the reasons to follow.

220. The OM dated 05.07.1989 ceases to hold any relevance since it has materialized into Rule 37A. Even if taken at face value, it clarifies that the Government servants who opt to be absorbed in PSUs will, as per a date fixed by the concerned Ministry/Department, will cease to

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be Government servants. Further, the Note dated 25.09.2000 also does not hold any binding force since it is merely a Note submitted for Cabinet approval and even this Note clarified that upon absorption, the transferees will cease to be Government servants and that their pensionary benefits would be calculated in the IDA scale. Similarly, the Circular dated 09.11.2000 clarifies that the absorbed persons in BSNL would be entitled to the Government pension scheme post their absorption and, in this regard, Rule 37A was inserted on 30.09.2000. We reiterate that this Rule only extended the formula for the calculation of pension to these absorbed employees which was applicable to Central Government servants at the time of retirement. The OM dated 14.01.2002 by which options were called from Group 'B' officers provided that the optees would fall under CDA scale only till they are absorbed and the IDA scale is announced, after which they would fall under the IDA pay scale.

221. Therefore, it is evident from the aforesaid that the respondents were aware that upon absorption, they would cease to be Government servants and fall under IDA scale. The only promise under Rule 37A was with respect to calculation of pension at the time of retirement from the PSU.

222. With respect to the OMs that gave effect to the 6th CPC, as relied upon by respondents, we reiterate that these OMs categorically apply to employees absorbed in PSU drawing pension on pro-rata basis, not combined service pensioners. The clarification issued in this regard on 27.04.2009 also states that only the formula that was revised

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as per the 6th CPC was applicable to these absorbees and that the OM dated 01.09.2008, which pertains to revision of pension, did not apply to such persons. The respondents further relied on OM dated 04.05.2009 and 12.08.2009 to contend that they were extended the various benefits following from the 6th CPC. In this regard, we are of the view that these OMs only furthered the aim and object behind Rule 37A, i.e., extending the pensionary benefits to the absorbees, without creating entitlement to pension revision based on CPC recommendations. Further, the OM dated 20.07.2016 only stipulates the liability of the Government with respect to pensionary benefits of the BSNL, which has no bearing on entitlement to revision of pension and does not, by any stretch of imagination, create a substantive right to revision of pension.

223. The OM dated 15.03.2011, which allegedly revised the pension of the respondents as per 6th CPC, in our view, actually extended the benefits in terms of 2nd PRC from the effective date of 01.01.2007, consistent with the cut-off date stipulated therein.

224. The OMs that gave effect to the 7th CPC also do not come to the rescue of the respondents since they explicitly apply to the absorbed employees of PSUs who draw separate pension from the Government, i.e., pro-rata pensioners. The OM dated 21.03.2017 only extended the rates for payment of death gratuity pursuant to 7th CPC and does not alter the formula for pension of combined service pensioners. This, in our view, is aligned with Rule 37A, i.e., it extends pensionary benefits to the respondents as applicable to Central Government employees.

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225. Based on our comprehensive analysis of the numerous OMs, we have arrived at the conclusion that at the time of absorption, what the absorbees were granted was an option to either be permanently absorbed in the PSU or remain in Government service. There were explicit stipulations that once they chose to be absorbed, they shall cease to be Government servants and that their benefits would be calculated in the IDA scale. We reiterate, that IDA and CDA scales are distinct, as also recognized in *Ajit Kumar Kar (supra)*, whereby it was held that retirees falling under the IDA scale did not have any right to receive dearness relief as per the CDA scale. We also emphasize that employees of PSUs and that of Central Government are subject to distinct systems of rules and regulations and that they stand on different footing, as also reiterated in *A.K. Bindal (supra)*. The only aspect that overlaps for the respondents herein is the formula for calculation of their pension, which is to be employed at the time of their retirement as per Rule 37A.

226. In the light of the foregoing discussion, the reliance placed by the respondents on OMs dated 05.07.1989, 25.09.2000, 30.09.2000, 09.11.2000, 14.01.2002, 01.09.2008, 02.09.2008, 27.04.2009, 15.03.2011, 20.07.2016, 04.08.2016, 21.03.2017, and 12.05.2017 to contend that they were assured at the time of their absorption that their Government service conditions would be retained post absorption, is of no avail.

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227. Consequently, the finding returned by the learned Tribunal in the impugned order that the respondents were extended an unequivocal and perpetual assurance that their terms and conditions of service shall remain intact post absorption in the PSU is erroneous and cannot be sustained. Such finding overlooks the express stipulations contained in Rule 37A and the terms governing absorption, which clearly contemplate cessation of Government service upon acceptance of the option for absorption.

228. Tuning to the second limb of the respondents' case, we note that Rule 37A undoubtedly lies at the heart of this dispute. To reiterate the preceding discussion and upon a holistic reading of the provision, we are of the considered view that Rule 37A embodies a limited statutory protection. This Rule grants: (i) a formula to absorbees for calculation of their pension, (ii) this formula is applicable to Central Government servants under CCS (Pension) Rules, and (iii) this formula is applied at the time of retirement/death of the absorbee.

229. Beyond the aforesaid limited protection, we cannot give any other expansive meaning to this Rule so as to confer subsequent benefits to the respondents which accrue to Central Government employees, particularly in view of the categorical mandate that they have ceased to be Government employees after absorption. Any interpretation to the contrary would not only render otiose the express declaration that the absorbee ceases to be a Government servant upon absorption but would also amount to judicial legislation.

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230. Significantly, there is nothing in Rule 37A to suggest that it envisaged the grant of future benefits, especially revision of pension without revision in the underlying pay structure. The only entitlement created by the Rule is with respect to the formula for calculation of pension at the time of retirement. This entitlement, by no stretch of imagination, extends to revision of pension under the IDA scale solely on the ground that pension of Central Government employees under the CDA scale has undergone revision.

231. Thirdly, with respect to entitlement based on the various OMs, in our view, the basis of this claim stands on murky waters.

232. It is true that, by virtue of Rule 37A, the respondents continue to draw pension under the CCS (Pension) Rules notwithstanding their absorption. However, upon absorption, the respondents have ceased to be Government servants for every purpose except calculation of pension at the time of their retirement. Therefore, it may be argued that for this limited purpose CPC recommendations shall apply to them. It cannot be construed as preserving in perpetuity, their status or parity as Central Government employees for all pension related matters.

233. It is trite that IDA and CDA scales are distinct and exclusive of one other⁶⁶. Employee governed by either structure form separate classes for the purposes of service jurisprudence.

Validity unknown⁶⁶ Ajit Kumar Kar (supra)



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234. In this light, we acknowledge that the respondents are entitled to the formula for calculation of their pensions as per CPC recommendations by virtue of Rule 37A, but they are not entitled to any consequential revision thereunder since revision of pension under CPC arises out of revision of the CDA pay scale. Pertinently, being granted the same formula for fixation of pension does not by default entail automatic extension of 7th CPC to the respondents. It does not grant parity for any other purposes including revision of such pension, particularly, since the basic scale is different.

235. The principle that pension bears a direct nexus with the pay last drawn stands firmly recognized in service jurisprudence. As per *U.P. Raghavendra Acharya (supra)* and *D.S. Nakara (supra)*, the Supreme Court underscored the relationship between emoluments and pension. Even the Cabinet Note dated 29.12.2010 seeking revision of pension consequent to 2nd PRC duly acknowledges in para 2.5 that pension is linked to the pay drawn at the time of retirement and hence, revision of pension is linked to pay revision of existing employees. We find no reason to depart from this settled principle and affirm this view that pension revision is dependent on the revision of pay, i.e., pension cannot be revised in vacuum in ordinary course, divorced from revision in the underlying pay structure, unless expressly authorized by stature or executive policy.

236. In the present case, the respondents' pay scales have admittedly not been revised after the 2nd PRC owing to the non-implementation of the 3rd PRC since BSNL/MTNL do not have the requisite financial

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health. This Court must exercise judicial restraint and refrain from directing revision of pay in view of the affordability requirement for implementation of the 3rd PRC. The grant of pay scale lies in the domain of the executive⁶⁷ and it is a well-informed decision of an expert body, which has been accepted by the Government. Judicial review in such matters is necessarily limited. It was also held in *M.V. Mohanan Nair (supra)* that recommendations of expert bodies such as Pay Commissions ordinarily warrant judicial deference. Courts ought not to substitute their views for those expert bodies or governmental policy-makers unless the decision suffers from manifest arbitrariness or perversity. Therefore, no interference is warranted unless there exists unreasonableness or hostile discrimination⁶⁸.

237. The position that emerges is thus clear; when an absorbee retires from the PSU, his pension is fixed as per the formula employed for Central Government servants, even though he is not a Central Government employee, by virtue of Rule 37A. He will continue to draw this pension after retirement. However, the enhancement in his pension must necessarily stem from enhancement in his pay scale. Upon such enhancement of his pay, the same formula as for Central Government servants will be employed by using the enhanced basic pay under IDA. This is also evident from the clarificatory OM dated 27.04.2009.

⁶⁷ S.C. Chandra v. State of Jharkhand, (2007) 8 SCC 279

⁶⁸ Shyam Babu Verma (supra)

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238. The respondents do not stand on the same footing as Central Government employees⁶⁹. Upon absorption, they ceased to be Government servants; they are fitted in the IDA scale and are subject to the rules of the PSU. They are subject to the rules of BSNL/MTNL and commercial viability of the concerned PSU is a considerable factor in enhancement of pay and pension⁷⁰. Their pensionary framework, though protected under Rule 37A, continues to operate within that distinct statutory and administrative setting.

239. It may be argued that commercial viability of BSNL/MTNL is irrelevant since the Government has to bear the liability of their pension. While the proposition regarding liability may be correct, however, it is not the respondents' case that they are not receiving pension. Their case is embellished in the sense that they seek a revision (not fixation) of their pensions, notwithstanding, the clear absence of any corresponding revision to their pay.

240. The recommendations of the 6th and 7th CPC explicitly only apply to: (i) Central Government employees drawing pension under CCS (Pension) Rules, and (ii) those absorbees who draw separate pension from the Government. Evidently, this refers to pro-rata pensioners and not combined service pensioners. The respondents admittedly do not fall under either category since they are combined service pensioners drawing pension under the IDA scale pursuant to Rule 37A.

⁶⁹ A.K. Bindal (supra)

⁷⁰ **Officers & Supervisors of I.D.P.L. v. Chairman & M.D., I.D.P.L., (2003) 6 SCC 490; A.K. Bindal v. UOI, (2003) 5 SCC 163**

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241. This is a careful and cogent distinction carved out by the expert body since the aforesaid class of beneficiaries' fall under CDA scale for the purposes of their pension. Such classification has rational nexus with the object sought, i.e., revising pay, pensions and allowances of Central Government employees. Thus, in our view, such stipulation lies within the bounds of the discipline mandated by Article 14.

242. In addition to the above, since CPC is an expert body, once its recommendations have been accepted and implemented by the Government, courts should interfere sparingly⁷¹ and judicial interference must remain circumspect and exceptional.

243. Even on a demurrer, if the respondents are indeed entitled to CPC recommendations, there is nothing on record to show that they agitated this claim before the 7th CPC. On the contrary, the record suggests that the respondents continued to receive benefits flowing from the IDA and the recommendations as per the 1st and 2nd PRCs.

244. At this juncture, since the respondents had submitted various representations and RTIs applications to the concerned Government authorities, we deem it relevant to advert to the responses issued by these authorities as they not only provide valuable insight into the

⁷¹ *Shyam Babu Verma v. Union of India*, (1994) 2 SCC 521; *UOI v. Mohanan Nair*, (2020) 5 SCC 421; *State of U.P. v. U.P. Sales Tax Officers Grade II Assn.*, (2003) 6 SCC 250; *State of Haryana v. Haryana Civil Secretariat Personal Staff Assn.*, (2002) 6 SCC 72 ; 2002 SCC (L&S) 822; *Virendra Kumar v. UOI*, 2024 SCC OnLine Del 1059; *State of T.N. v. S. Arumugham*, (1998) 2 SCC 198

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Government's position but also lend support to the interpretation adopted by us.

245. The DoT, on 27.12.2016⁷², clarified that OM F. No. 38/37/2016-P&PW(A)(ii) dated 04.08.2016 pursuant to 7th CPC only applied to Government servants permanently absorbed in PSUs and drawing pro-rata pension from the Government, as was evident from para 2.1 and 7(a) therein.

246. The Minister of State (Independent Charge) for Communications similarly issued a clarification⁷³ regarding revision of pension for MTNL absorbees who were drawing combined service pension under Rule 37A in accordance with 7th CPC. It was stated that pension revision is consequent to pay revision. Accordingly, revision of pension of MTNL employees would be taken up when 3rd PRC is implemented in MTNL.

247. On 23.10.2017⁷⁴, the Minister of State (Independent Charge) for Communications again issued a clarification with respect to applicability of 7th CPC to the absorbees of BSNL. It was stated that OM No. 38/37/2016-P&PW(A) dated 12.05.2017 was in continuation of OM dated 04.08.2016 implementing the recommendations of the 7th CPC. As per Paras 7(a) and 12 thereunder, it is clear that OM dated

⁷² In response to RTI application dated 07.09.2016 by one Mr. Amit Kumar Gupta

⁷³ In response to letter dated 12.03.2018 by one Mr. Gopal Shetty; *vide* D.O.No. 34-19/2018-Pen(T) issued from O/o Minister of State (Independent Charge) for Communications and Minister of State for Railways, GoI (Manoj Sinha) [Date is illegible]

⁷⁴ In response to D.O. letter No. 738/MP/AN/17 dated 28.08.2017 by one Mr. Ajay Nishad; *vide* D.O. No. 40-16/2017-Pen(T) dated 23.10.2017 O/o Minister of State (Independent Charge) for Communications and Minister of State for Railways, GoI (Manoj Sinha)

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12.05.2017 applied to absorbees who are drawing pension on pro-rata basis under CDA scale solely for the Government service rendered by them, whilst the absorbees drawing combined service pension under IDA scale were governed by Rule 37A. Since revision of pension is linked to revision of pay, their case for pension revision would be taken up when 3rd PRC is implemented in BSNL.

248. The DP&PW issued its response *vide* Order No. 4/1/2018-P&PW(D) dated 04.07.2018. It was stated that OM F. No. 38/37/2016-P&PW(A)(ii) dated 04.08.2016, as per para nos. 2.1 and 7(a), the absorbees who are entitled to pension under IDA scale based on combined service are not covered by these orders, and are instead subject to the decision of the concerned PSU/Administrative Ministry for revision of pension. Notably, this RTI was forwarded to DoT⁷⁵ and in response⁷⁶, DoT clarified that the aforesaid OM was only applicable to absorbees drawing pro-rata pension. It was further clarified that the orders for revision of pension in pursuance of 6th CPC were not applicable to absorbees of BSNL/MTNL drawing pension under IDA. Instead, a separate order was issued by DoT for revision of their pensions *vide* OM dated 15.03.2011. Therefore, revision of pension of BSNL/MTNL combined service pensioners after 7th CPC is to be taken up by DoT.

249. On 13.07.2018⁷⁷, DoT issued a response with respect to revision of pension of BSNL/MTNL absorbee pensioners after 7th CPC. It was explicitly clarified that 7th CPC as per OMs dated 04.08.2016 and

⁷⁵ Forwarded by letter no. 4/1/2016-P&PW(D) dated 31.10.2016/25-11/2016

⁷⁶ Response of DoT issued by letter no. 47-35/2014-Pen(T) dated 27.12.2016

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12.05.2017 only applied to CDA pensioners and the pensioners, drawing monthly pension from the Government upon permanent absorption in PSUs on pro-rata basis (based on Government service only) under CDA scale. It was explicitly stated that these orders were not applicable for revision of pension of BSNL/MTNL absorbees who are drawing pension on combined service basis under IDA scale in terms of Rule 37A. It was reiterated that pension revision follows pay revision and that pension of BSNL absorbees was revised as per 2nd PRC in 2007. Accordingly, such revision will be taken up when 3rd PRC is implemented in BSNL/MTNL.

250. Further, the Minister of Communications on 11.03.2020 answered an unstarred question put to him in the Lok Sabha pertaining to revision of pension of absorbed BSNL employees. In response, it was stated that pension revision of such employees of BSNL was linked to the pay revision of the serving employees since pension is calculated on the basic pay which the retired employee was earning at the time of retirement.

251. Consequently, drawing from the aforesaid responses of the Government, we are of the view that the recommendations of the 6th and 7th CPC were only applicable to absorbees of BSNL/MTNL drawing pro-rata pension under CDA scale, especially considering that CPC recommendations pertain to Central Government service and therefore, have no bearing on PSUs or its employees falling under IDA scale in ordinary course. The respondents, however, are

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admittedly combined service pensioners governed by Rule 37A and drawing pension under the IDA scale.

252. Notably, the OM dated 04.05.2009 extended revised rules of pension calculation as per 6th CPC in terms of Rule 37A and OM dated 16.03.2017 extended the revised rates for payment of death gratuity pursuant to 7th CPC to the absorbees of BSNL/MTNL. In our view, these OMs extend a limited aspect of pensionary benefits as per the 6th and 7th CPC recommendations to the absorbees and such extension is aligned with the object of Rule 37A(8), i.e., pension of absorbees shall be calculated in the same manner as that of Central Government employees. However, these OMs cannot be read so expansively so as to entitle the respondents to revision of their pension under IDA scale, particularly in the clear absence of revision of their underlying IDA pay scale. It is trite that CDA and IDA scales are distinct and exclusive of one other. It is also trite that pension is intrinsically linked with pay, as also expressed by the Government in their aforementioned responses, and no revision of the respondents' IDA pay scales have admittedly taken place after the 2nd PRC.

253. This Court is mindful that the respondents' pensions have not been revised since the 2nd PRC. In this regard, the law laid down in *D.S. Nakara (supra)* is well-settled that pensioners cannot be subjected to arbitrary discrimination. However, in the same breath we note that it was rendered in its own specific facts and circumstances. The Supreme Court has time and again held that this decision cannot

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be applied in a blanket manner⁷⁸. It is trite that a judgment cannot be read like Euclid's theorem. The most pertinent distinction being that the present case involves a PSU. Since BSNL/MTNL are granted special dispensation, not only the respondents are governed by the PSU's own rules, various OMs, Circulars etc. issued by the DPE, but also under Rule 37A of CCS (Pension) Rules, thereby creating a unique arrangement. Hence, though there is an overlap with respect to the applicability of CCS (Pension) Rules, the Central Government employees and the respondents, i.e., employees of PSUs do not constitute a homogenous class for all purposes relating to pay and pension revision.

254. The only continuing link keeping the respondents under the umbrella of CCS (Pension) Rules is the aspect of pensionary benefits in terms of Rule 37A. The "assurance" granted at the time of their absorption was admittedly materialized in the form of this Rule and this Rule only extends a limited promise, i.e., when absorbees retire from a PSU their pension will be calculated like that of Central Government servants at the time of their retirement by employing the same formula. The Rule does not go further.

255. This promise does not negate the fact that absorbees ceased to be Government servants or that they are governed by the rules of the PSU under IDA scale post such absorption.

⁷⁸ *Krishena Kumar v. Union of India*, (1990) 4 SCC 207; *Indian Ex-Services League v. Union of India*, (1991) 2 SCC 104; *Commander Head Quarter, Calcutta v. Capt. Biplabendra Chanda*, (1997) 1



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256. At the cost of repetition, Central Government servants are governed by CCS (Pension) Rules and the recommendations of the CPC. On the other hand, absorbees of BSNL/MTNL are also governed under these Rules for the limited purpose of calculation of their pension at the time of their retirement, however, they cease to be Government servants upon their permanent absorption and therefore, are not subject to recommendations of the CPC since they are governed by the Rules of the concerned PSU after such absorption. A logical corollary is that they are subject to the various Circulars, OMs etc. issued by DPE including the PRC recommendations.

257. Acceptance of the respondents' contention would require this Court to disregard the clear distinction maintained throughout the statutory and administrative framework between CPC-governed Central Government employees and PRC-governed PSU employees. Such an approach would not only run contrary to Rule 37A but would also amount to rewriting the scheme consciously established by the Government. In the absence of any statutory mandate, executive direction, or constitutional infirmity, no legal basis exists to extend the benefits of pension revision under the 7th CPC to the respondents.

258. To subject the respondents to CPC recommendations or conflate the recommendations of the CPC and PRC is an approach alien to this Court. Where there is no right, there lies no remedy. Thus, the respondents cannot claim any entitlement to the benefits arising from the 7th CPC recommendations.

SCC 208; K.L. Rathee v. Union of India, (1997) 6 SCC 7; T.N. Electricity Board v. R. Vasarasamy, (1999) 3 SCC 414

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259. In view of the aforesaid, we are unable to concur with the view adopted by the learned Tribunal. The impugned order proceeds on an erroneous understanding of the scope of Rule 37A and the legal consequences of absorption in BSNL/MTNL and, therefore, cannot be sustained.

260. We shall now advert to the remaining contentions of the respondents.

261. It was contended that pay revision under a PSU is dependent upon profitability and financial viability of the PSU and has no connection with revision of pension, which is instead governed under Rule 37A. We are unable to accept this submission. This contention stands belied in view of the very basis for calculating pension. Pension is not an isolated entitlement divorced from the pay structure of the employee. As held in *U.P. Raghavendra Acharya (supra)* and *D.S. Nakara (supra)*, pension bears a direct nexus with the emoluments drawn by an employee. The Note dated 29.12.2010, as well as the consistent stand adopted by the relevant Government authorities, also proceeds on the premise that revision of pension ordinarily follows revision of pay. We, therefore, find no merit in the contention that pension can be undertaken independent of the underlying pay structure applicable to the respondent. We are of the view that pay and pension are intrinsically related.

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262. It was further advanced on behalf of the respondents that the ground taken by the petitioners regarding difference in IDA and CDA scales was a red herring and that revision of pension can be done regardless by applying the formula provided under Rule 37A. The submission overlooks the fundamental premise underlying this Rule. Rule 37A extends the formula for determination of pension to absorbed employees; it does not transplant them into the CDA scale nor confer upon them a right to claim every consequential benefit flowing from subsequent CPC recommendations. In this regard, in the absence of any revision of the respondents' IDA pay scales, this Court cannot grant revision of pension under IDA scale based on CPC recommendations pertaining to CDA pensioners under the 7th CPC scale since their underlying pay has not been revised. If the respondents' pay were revised, they would be entitled to consequential revision in pension in terms of Rule 37A.

263. It was also submitted that classification between absorbees and recruits is overinclusive and violative of Article 14 of our Constitution since only the absorbees were granted protection under Rule 37A and therefore constitute a *suis generis* class. It was submitted that this *suis generis* class has been consistently granted parity with central government pensioners by virtue of Rule 37A, as evident from OM dated 27.04.2009, circular dated 04.05.2009, OM dated 12.08.2009, OM dated 15.03.2011 and OM dated 20.07.2016. In our view, the argument proceeds on a misplaced premise. In this regard, it is not the distinction between absorbees and recruited persons that is relevant for this dispute, but the distinction amongst the absorbees itself. As

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noted in the foregoing discussion, the employees absorbed in BSNL/MTNL are of two kinds i.e., pro-rata pensioners and combined service pensioners. It is this distinction that is material for the present dispute. Further, as noted above such distinction is reasonable and stands the test of Article 14. Additionally, the various OMs relied upon, do not come to the rescue of the respondents in light of the view taken by us hereinabove.

264. Reliance was placed on communication dated 20.02.2014⁷⁹ to assert that the respondents were also extended CGHS facilities. This communication states that, *“the retired employees, who are in receipt of central civil pension/pro-rata pension only from Central Civil Estimates are eligible for joining CGHS, other retired employees of BSNL are not eligible for CGHS”*. A plain reading of the said communication shows that the benefit was extended only to retired employees who were in receipt of Central Civil Pension or pro-rata pension paid from Central Civil Estimates. Hence, in our view, it clearly only applies to pro-rata pensioners of BSNL and not combined service pensioners. The respondents, being combined service pensioners governed by Rule 37A, do not fall within the category contemplated therein. The said communication, therefore, does not advance their case.

265. It was next submitted that, at the time of absorption, there was no option to opt for pro-rata pension and therefore, there are no pro-rata pensioners in BSNL, all absorbed employees are on combined

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service pension. Even assuming this contention to be correct, it does not alter the legal position.

266. We note that the option of drawing pension on pro-rata basis was inserted in sub-Rule (8) *vide* S.O. 1487(E) dated 14.10.2005. This contention does not change our view since irrespective of this option, the respondents upon absorption would cease to be Government servants and fall under the IDA scale therefrom and hence, cannot claim revision of pension consequent to CPC recommendations without revision of their IDA pay. It does not negate the fact that, upon absorption, such absorbees will become PSU employees and therefore, will be subject to PRC recommendations for all purposes except calculation of pension at the time of their retirement. Even the subsequent insertion of an option for pro-rata pension by the said notification does not dilute the legal consequences of absorption. Further, as duly recognized in *M.V. Mohanan Nair (supra)*, this court ought to exercise restraint in interfering with the decisions of an expert body, particularly in the absence of any manifest arbitrariness or illegality, especially where such interference may also lead to adverse effects on public exchequer.

267. The respondents also resisted the additional affidavit filed by the petitioners by way which the latter sought to bring on record clarifications dated 17.07.2018 and 27.03.2025 which state that the OMs relied upon by the respondents only do not apply to them. We note that these clarifications were not part of the record before the Tribunal, we do not propose to place reliance upon them. The conclusions reached by us are independently supported by the

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statutory framework, the contemporaneous OMs and the material that formed part of the record before the Tribunal.

268. Although the respondents have submitted that they shall not place reliance on the decision of the High Court of Kerala, Ernakulum; nevertheless, we shall deal with the same for the sake for completeness. Before Ernakulum Bench, the respondents sought relief based on OM dated 12.05.2017 and before this Court, they seek multiplier of 2.57 as per OM dated 04.08.2016. This decision, in our view, overlooks the inherent distinction between IDA and CDA scales and gives Rule 37A (8) a more expansive reading that what it actually provides. We have already rendered our view as to why OM dated 12.05.2017 does not apply to the respondents and shall not repeat the same for the sake of brevity. Needless to state that a decision of a coordinate Bench of a different High Court only has persuasive value.

CONCLUSION

269. Rule 37A of the CCS (Pension) Rules, 1972 prescribes special statutory framework governing erstwhile Government servants who were permanently absorbed in PSUs. Upon such absorption, the respondents ceased to be Government employees, their posts under the Government stood abolished and they were fitted under the IDA scale. Accordingly, consequent to such absorption, they shall be governed by the rules of the concerned PSU and be subjected to recommendations of the Pay Revision Committee. Hence, they cannot claim benefit of recommendations of the Central Pay Commission.

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270. As per Rule 37A, while the Government bears the pensionary liability of the absorbed employees, such employees are still subject to sub-Rule 8 for the calculation of their pension. The source of payment does not determine the nature or extent of the right.

271. Properly construed, Sub-Rule 8 is nothing but a promise of extending the same formula to the absorbed employees which is applied for Central Government employees for the calculation of pension. The formula referred to is the one which shall be in force at the time of retirement or death of such absorbed employee. The Rule neither preserves the status of the absorbee as a Government servant nor creates a continuing right to claim every future benefit that may be extended to Central Government pensioners. Accordingly, this Rule does not entitle the respondents to any other benefit that may arise in the future after their retirement.

272. We accordingly hold that neither Rule 37A nor any of the Office Memoranda relied upon by the respondents confer a right upon combined service pensioners governed by the IDA regime to claim revision of pension pursuant to the recommendations of the 7th CPC. This is because the recommendations of the 7th CPC only apply to Central Government employees and absorbees of BSNL/MTNL who draw pension on pro-rata basis from the Government. The respondents do not fall under either category. Moreover, since the underlying pay structure applicable to the respondents has not been revised as per the

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3rd PRC, the question of consequential revision of pension does not arise.

273. For all the aforesaid reasons, the impugned order dated 20.09.2023 passed by the learned Tribunal cannot be sustained and is set aside. Accordingly, this batch of writ petitions stands allowed in the aforesaid terms. Pending applications, if any, stand disposed of. There shall be no order as to costs.

OM PRAKASH SHUKLA, J.

C.HARI SHANKAR, J.

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