

**BDPA (INDIA)'s stand repeatedly demanding Pension Revision for BSNL
Employees/Pensioners as per 3rd PRC Recommendation
is now
VINDICATED IN NEW DELHI HIGH COURT JUDGMENT**

Dear Pensioners,

You have seen that BDPA (INDIA) has from the beginning pleaded for our Pension Revision demanding implementation of 3rd PRC for Working Employees/pensioners. We are fully aware of the harden fact that in any eventuality for Pension Revision is Revision in Basic Pay.

In the larger interest of the BSNL Pensioners we have also supported our sister Pensioners Programme demanding Pension Revision in order to see that we are no blamed for their failure.

However, we from the very beginning based upon our experience; were against any legal battle for the BSNL Pensioners knowing the fact that it takes years to gather to come to an end and many of our brethren's have left for their heavenly abode. Furthermore, we have valued the pensioners pension and we can not contest any legal issue by keeping reliance on their contribution.

On the other hand, we have continued to represent the issue to various concerned authorities and able to have our voice heard by DoT.

A joint meeting of all the BSNL/MTNL Pensioners of the country by the DoT in October 23, is unique example; where we all were heard and also the DoT has by slide-show made their stand clear.

However, it was ray of glittering hope that DoT had offered to consider the Pension Revision at Zero Percent fitment. **It is matter of proud that all had unanimously rejected the proposal citing that in 3rd PRC there no provision for Zero fitment,** and it has to be 5%. 10% or 15%.

In order to have unanimity, we have had one meeting of all the participants Pensioners Association in Kidwai Bhawan, New Delhi on next of meeting with DoT. Unfortunately, we could not come to unanimous decision.

Joint Forum of BSNL/MTNL was formed by 8 Pensioners, demanding the Pension Revision as per 3rd PRC recommendation. We meet and continued our struggle. some our Pensioners had continued to pursue the issue with MoC, who was sympathetic with Pensioners agony and there was little bit success as MoC had asked the DoT to prepare

statistics of expenditure for 5%, 10% & 15% fitment based upon the proposed basic pay by working Unions.

We do not know, for any reasons, some of our sister Association preferred a legal battle demanding fixation as per 7th CPC. Pr. CAT New Delhi also delivered favourable judgment but once again Pensioners missed the train, as the applicants trusted the DoT and waited for more than nine months for implementation of the Pr.CAT New Delhi judgment.

The DoT utilized this period secretly preparing appeal in High Court New Delhi containing more than 900 pages and file an appeal contesting the judgment.

We will not elaborate the events that happened thereafter and the PRESENT SITUATION consequent to New Delhi High Court verdict.

Now, it is not too late, let us come to gather and plead for implementation of 3rd PRC recommendation for employees with 5% fitment, which has already been agreed upon, agreement signed and proposal sent to DoT, with the assurance to implement the agreement within their resources.

Joint & Unanimous struggle will definitely pave our way for success.

FOR READY REFERENCE, WE PRODUCE IMPORTANT OBSERVATION IN NEW DELHI HIGH COURT JUDGMENT IN EIGHT PAGES AND YOU NEED NOT READ 108 PAGES AND CONVINCING YOURSELF THAT BDPA (INDIA)'S STAND IS IN THE LARGER INTEREST OF THE BSNL PENSIONERS.

COMMON FACTUAL BACKGROUND

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 DCRG, pension and commutation of pension vide OM dated 12.08.2009.

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.

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

SUBMISSIONS

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.

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 37-A. 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.

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.

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 accrues. 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 circumstances.

(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 01.01.01.20007, 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 Note 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

(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. 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.

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.

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.

235. The principle that pension bears a direct nexus with the pay last drawn stands firmly recognized in service jurisprudence. As per UR 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 statute or executive policy.

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.

238. The respondents do not stand on the same footing as Central Government employees. 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 pension". Their pensionary framework, though protected under Rule 37A, continues to operate within that distinct statutory and administrative setting.

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.

247. On 23.10.2017 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 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.

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.

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 be applied in a blanket manner". 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.

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.

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.R 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.

264. Reliance was placed on communication dated 20.02.2014” 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.

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.

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 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.

D.D. MISTRY GS BDPA (INDIA)

04.07.2026

In judgment emphasize is ours.