



**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**O.A. No. 1272/2020
M.A. No. 1581/2020,
M.A. No. 76/2020,
M.A. No. 1582/2020**

With

**O.A. No. 1271/2020 &
O.A. No. 1329/2020**

**Reserved on : 24.08.2023
Pronounced on : 20.09.2023**

**Hon'ble Mr. Tarun Shridhar, Member (A)
Hon'ble Mrs. Pratima K. Gupta, Member (J)**

OA No 1272/2020

1. All India Retired Bharat Sanchar Nigam Limited
Executive Welfare Association
Through its General Secretary
Shri Prahlad Rai
Registration Number: S/00108/NE-12010 C-8/230,
Having its registered office at:
8/230, Yamuna Vihar,
Delhi-110053
2. Sanchar Nigam Pensioners Welfare Association
Through its General Secretary
Shri Girdhari Lal Jogi
Having its office at:
SNEA Bhawan, B-11/1&2, Ground Floor,
Opp. to Sanatan Dharma Mandir.
Ramesh Nagar, New Delhi-110015



3. Shri Ashim Kumar Dey

Group: B

Designation: Ex. Accounts officer, Calcutta

Telephones, BSNL

Aged about 68 years

S/o Late Shri Ramendra Nath Dey

R/o Kingshuk Apartment, 3rd Floor, Flat-
7, 344 Parnashree Pally, Kolkata -700060

4. Shri Subhas Chandra Mitra

Group: C

Designation: Ex TTA, Calcutta Telephones, BSNL

Aged about 71 years

S/O Late Shri Prafulla Chandra Mitra

R/o 22 Hind Road, Flat 6, 3rd Floor

New Santoshpur, Kolkata- 700075

5. Shri Gopal Chandra Naskar

Group: D

Designation: Ex Canteen Bearer, Calcutta

Telephones, BSNL

Aged about 66 years

S/o Late Shri Bhusan Chandra Naskar

R/o 41/A Biren Roy Road (East),

Kolkata -700008

6. Shri Rajendra Singh

Group: B

Designation: Ex SDE

Aged about 65 years

S/o Late Shri Sohan Singh

R/o 43, Shahbad Ext (Gail-2), Sector 17,

Rohini, Delhi- 110081



7. Shri Kiran Kumar Prabhakar

Group: B

Designation: Ex SDE

Aged about 67 years

S/o Late Shri M. L. Prabhakar

R/o Flat no 201, 2nd Floor, BSNL Govt. Employee

Diamond CGHS LTD., Plot no GHS-07,

Sector 65, Bullabgarh,

Faridabad 121004

8. Shri S. Sundara Murthy

Group: C

Designation: Telecom Mechanic

Aged about 66 years

S/o Shri Saminathan

R/o 28, Tirupatcheeswaran, Ayanavaram,

Chennai - 400023

....Applicants

[By Advocate : Ms. Gauri Puri and Ms. Aditi Gupta]

VERSUS

1. Union of India,
Through its Secretary,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashok Road,
New Delhi- 110001

2. Bharat Sanchar Nigam Ltd.
Through its CMD,
Having its registered office at:



Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane, Janpath,
New Delhi-110001

3. Department of Pension & Pensioners' Welfare
Through its Secretary
3rd Floor, Lok Nayak Bhawan,
Khan market,
New Delhi- 110003

4. Department of Public Enterprises
Through its Secretary
Public Enterprises Bhawan
Block No.14, CGO Complex,
Lodhi Road,
New Delhi- 10003

.... RESPONDENTS

[By Advocate : Mr. R.V. Sinha and Mr. Amit Sinha for R-2, Mr.
S.N. Verma]

OA No 1271/2020

1. Retired Telecom Officers' Welfare Association,
New Delhi
Through its General Secretary
Shri Shyam Sunder Nanda
Registration Number: S/57799/2007
Having its registered office at:
C-20, Mukhram Garden
Tilak Nagar, New Delhi -110018



2. Retired Telecom Officers' Welfare Association,
Mumbai

Through its President

Shri K. Jawahar

Registration Number: F-37187 / Mumbai of 2008

Having its office at:

402, Gayatri Avenue, 90' Road, Thakur Complex,
Kandivali (E)

Mumbai-400 101

3 MTNL Pensioners' Welfare Association,
Mumbai

Through its General Secretary

Shri Sadanand Mahadev Sawant

Having its office at:

1st Floor, Sai Ganesh Niwas,
Shivaji Nagar, S.R. Marg, Ville Parle (E)

Mumbai- 400057

4. Shri Ranbir Singh

Group: B

Designation: SDE, MTNL

Aged about 63 years

R/o A-502, Prince Apartment, Plot No. 54

I.P. Extension, Delhi - 110092

5. Shri Manish Kumar Bagchi

Group: B

Designation: SDE, MTNL

Aged about 76 years

S/o Late Shri Sachindra Narayan Bagchi

R/o A-106, U/G Floor, Shankar Garden,



New Delhi -110018

6. Shri Rajendra Kumar

Group: B

Designation: SDE, MTNL

Aged about 67 years

S/o Late Shri R.D. Mudgal.

R/o G-3/83, Sector -11, Rohini, Delhi – 110085

7. Shri Ajay Kumar Kapoor

Group: B

Designation: A.O., MTNL

Aged about 64 year

C-103, 11th Floor, Kunj Vihar C.G.H.S. Ltd., Plot

No. 19, Sector- 12, Dwarka,

New Delhi-110075.

8 Shri Badri R. Pathak

Group: B

Designation: SDE

S/o Rameshwar Pathak

Aged about 70 years,

R/o G-104, shri Swami Samarth CHS.,

Bedurkar Pata, Near Hindustan Bank,

Kalyan (W)

Mumbaj- 421301

9. Shri Janardan Singh Yadav

Group: B

Designation: Deputy Manager, MTNL

Aged about 65 years

S/o Jagannath Chaudhury

R/o Residing at A-402, Gayatri Avenue,



90 Road, Thakur Complex, Kandivali (E)
Mumbai-400 101

10. Shri Virendra Singh

Group: B

Designation: Deputy Manager, MTNL

Aged about 64

S/o Ajab Singh

R/o B-202, Mangal Murti Apartment,
Nalasopara Virar Link Rd.

Moregaon, Nalasopara (E) asai-401 209,

11. Shri Kishore A. Haldankar

Group: C

Designation: Sr. TOA(G), MTNL

Aged about 64 years

S/o Late Ankush Sahdev Haldankar

R/o 9/16, Topiwala Lane, D.B. Marg,

Mumbai- 400007

12. Shri Eknath Maruti Rajpure

Group: C

Designation: Sr. TOA(P), MTNL

Aged about 58 years

S/o Late Maruti Shankar Rajpure

R/o 1/109, Gharkul Building, NM Joshi Marg,

1st Cross Lane, Byculla (West)

Mumbai- 400011

13. Shri Shrinath Kisun Yadav

Group: C

Designation: Works Assistant, MTNL

Aged about 62 years



S/o Late Kisun Yadav
R/o 14/15, Shyamraj Yadav Chawl,
Behram Bagh, Jogeshwari (W),
Mumbai- 400102

....Applicants

[By Advocate : Ms. Gauri Puri and Ms. Aditi Gupta]

VERSUS

1. Union of India,
Through its Secretary,
Department of Telecommunications,
Sanchar Bhavan, 20, Ashok Road,
New Delhi- 110001
2. Mahanagar Telephone Nigam Limited
Through its CMD,
Having its registered office at:
Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane, Janpath,
New Delhi-110001
3. Department of Pension & Pensioners' Welfare
Through its Secretary
3rd Floor, Lok Nayak Bhawan,
Khan market,
New Delhi- 110003
4. Department of Public Enterprises
Through its Secretary
Public Enterprises Bhawan
Block No. 14, CGO Complex,



Lodhi Road,
New Delhi- 10003

.... RESPONDENTS

[By Advocate : Mr. S.N. Verma]

OA No 1329/2020

1. All India BSNL Pensioners' Welfare Association
Represented by General Secretary,
Potharaju Gangadhara Rao,
S/o Late Sh. P. Sudharshanam,
Aged about 72 years,
Residing at : No. 6 G No. 12th Street,
Jogupalaya, Halasuru,
Bengaluru – 560008.
2. Shri Ramankutty Nair PS,
S/o Late R. Sivaraman Nair,
Aged about 76 years,
Residing at TC 52/2369, CTO Colony,
Pappanamcode,
Thiruvananthapuram – 695018
3. Shri Anupam Kaul,
S/o Sh. Jagan Nath kaul,
Aged about 66 years,
Residing at A-402,
PMO Apartments,
C-58/20, Sector 62, Noida
4. V. Latha,
W/o S Vijayan,



Aged about 59 years
Residing at New 7 Old 44/2,
VV Colony First Street,
Adambakkam,
Chennai - 600088

....Applicants

[By Advocate : Mr. Sanjoy Ghose, Senior Advocate assisted by
Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Rohan Mandal,
Mr. Harshit Goel, Ms. Akriti Arya and Mr. Siddhant Singh]

VERSUS

1. Union of India,
Represented by its Secretary,
Department of Telecommunications,
Sanchar Bhavan, No. 20, Ashok Road,
New Delhi- 110001

2. The Department of Pension and Pensioners' Welfare,
Represented by its Secretary,
Lok Nayak Bhavan,
Khan market,
New Delhi- 110003

3. Department of Expenditure
Represented by its Secretary
129-A North Block,
New Delhi- 110001

.... RESPONDENTS

[By Advocate : Mr. R.V. Sinha and Mr. Amit Sinha for R-4, Mr.
N.D. Kaushik]



ORDER

Hon'ble Mr. Tarun Shridhar, Member (A)

In all these O.A(s)., the applicants are agitating similar grievance as they are all identically placed and seek identical reliefs; barring number of paragraphs and paginations, facts, circumstances and the issues in all the OAs are identical. Accordingly, with the request and consent of learned counsel for the parties, all the O.A(s) have been taken up together for disposal and these are being decided by a common order. However, facts of only OA No. 1272/2020 are being discussed.

2. Arguments on behalf of the applicants have been collectively put forth, led by Mr. Sanjay Ghosh, learned Senior Advocate, assisted by Mr. Gautam Narayan, Ms. Asmita Singh, Mr. Rohan Mandal, Mr. Harshit Goel, Ms. Akriti Arya and Mr. Siddhant Singh in OA No. 1329/2020 and Ms. Gauri Puri and Ms. Aditi Gupta in OA No. 1272/2020 and OA No. 1329/2020.

3. Arguments on behalf of the respondents have been collectively led by Mr. S.N. Verma, Mr. N.D. Kaushik and Mr. R.V. Sinha, assisted by Mr. Amit Sinha.

4. The applicants were erstwhile employees of the Department of Telecom (DoT), Government of India. The



terms and conditions of their service were in accordance with the service rules applicable upon regular government employees. Subsequent to the corporatization leading to creation of Bharat Sanchar Nigam Limited (BSNL) and Mahanagar Telephone Nigam Limited (MTNL) their services were placed at the disposal of these two organizations.

5. The background and history of the case as briefly explained by Shri Sanjay Ghosh, learned senior advocate for the applicants is that at the time of their initial placement and absorption in BSNL and MTNL, it was stipulated that they shall continue to be governed by the terms and conditions of service as were applicable upon them in their capacity as government servants prior to corporatization.

6. Learned counsel clarifies that the terms and conditions which were to remain in operation in the case of the applicants included pensionary benefits; he draws attention to the documents annexed to the O.A. to substantiate this claim. He further informs that pursuant to the recommendations of the various Central Pay Commissions (CPCs) necessary benefits as recommended by the CPCs and accepted by the Government have been



extended in favour of the applicants except for revision of pensionary benefits pursuant to Pay Commission recommendations. Aggrieved by the same, they seek the following relief(s) by way of the present O.A.:-

"(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 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;

(d) Pass such other further order (s) as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case and in the interest of justice."

7. Learned senior counsel also draws attention towards a communication dated 08.03.2019 placed at page 245 of



the convenience compilation which is a communication from the Department of Pensions and Public Grievances seeking clarification from the DoT as to why benefit of revision of pension is not being extended to these employees.

8. Learned counsel refers to the General Terms and Conditions governing the absorption of erstwhile employees of the Department of Telecommunication into BSNL/MTNL. Particular attention is drawn to clause 5, which reads as under:-

“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.”

9. Learned counsel would argue that in view of the unambiguous provision contained in the said clause, the respondents cannot absolve themselves of the obligation of



making an appropriate revision of the pension of the applicants in accordance with such a revision which has been extended in favour of regular government pensioners. Further attention is drawn to a notification dated 21.12.2012 vide which Central Civil Services (Pension) Rules have been amended. The amendment to Rule 37A of the CCS (Pension) Rules has been done vide Rule 10 of the Amendment Rules, the relevant extracts of which reads as under:-

“37A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Public Sector Undertaking. –

(1) On conversion of a department of the Central Government into a Public Sector Undertaking, all Government servants of that Department shall be transferred en-masse to that Public Sector undertaking, on terms of foreign service without any deputation allowance till such time as they get absorbed in the said undertaking, and such transferred Government servants shall be absorbed in the Public Sector Undertaking with effect from such date as may be notified by the Government.”

“(21) Nothing contained in sub-rules(13) 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.”

10. Learned counsel would argue that it may be noted that a specific provision has been placed in the said



amendment rules with respect to those employees who were absorbed in BSNL from the Department of Telecommunication (DOT). The amendment categorically states that the liability of pension in case of such employees vests with the Government through the concerned Ministry.

11. Learned counsel reiterates the arguments put forth previously that the Ministry of Personnel, Pensioners and Public Grievances under the DoP&T had also categorically sought a clarification from DOT as to why the benefit of revision of pension was not extended in favour of employees who have been absorbed in BSNL/MTNL from DoT. He has clarified that pursuant to the recommendations of the 7th CPC all other benefits except for revision of pension have been extended in favour of the applicants.

12. Mr. R.V. Sinha, learned counsel appearing on behalf of respondent No. 2 (MTNL in O.A. No. 1272/2020) submits that the liability of pension is to be borne by the Government of India and in this case the relief being sought is directed towards respondent No. 1.



13. Mr. SN Verma, learned counsel for the respondents submits that showing any indulgence to the claim of applicants is going to result in discrimination against another set of employees of BSNL/MTNL. Further, what the applicants seeks is a benefit of both the Government as also the PSU. Once they had consciously opted for absorption under a Public Sector Undertaking (PSU), they shall be governed under the provisions of salary, allowances and pension governing such public sector employees. He argues that, in fact, what the applicants desire is the benefit of higher scales of PSU and better pensionary award of the Government. And they cannot be allowed to choose what suits them at a particular juncture, he submits. He draws strength from the averments made in the counter-reply, specifically, in para 2 and 3, which read as under :

*2. After absorption in BSNL, these employees ceased to be Government servants and they were deemed to have retired from Government service from the date of their absorption as per Sub-rule 4 of Rule *ibid*. As per Sub-rule 8 of Rule 37-A of CCS (Pension) Rules, 1972, these absorbed employees were eligible for pensionary benefits on the basis of the combined service rendered by them with the Central Government and the BSNL in accordance with formula for calculation of pension and family pension under CCS (Pension) Rules, 1972 at the time of their retirement from BSNL. The absorbed employees of BSNL, who retired after 01.10.2000 got pension and dearness relief thereon*



in IDA pattern on the basis of last pay or last ten months' average pay, whichever is more beneficial, as per Sub-Rules 9 & 10 of Rule ibid. The pension to absorbed employees of BSNL is paid by Government as per Sub-rule 21 of Rule ibid.

3. In case of BSNL absorbed employees, IDA pension was made applicable with effect from 01.10.2000 onwards. Therefore, the applicants of the present OA are ex-absorbed combined services pension optees of BSNL and they are getting their pension/family pension in IDA pattern from Government as per Rule 37-A of CCS (Pension) Rules, 1972 (Annexure A-4 of the OA). Subsequently, on implementation of the recommendations of the 6h CPC, DoP&PW issued OM dated 01.09.2008 and 02.09.2008 revising pension/family pension of Government pensioners/family pensioners, who were drawing pension/family pension as on 31.12.2005 (pre-2006 pensioners/family pensioners) and revised rules for grant of pension/Gratuity and Commutation of Pension etc. for Government employees retiring after 01.01.2006 (post-2006 pensioners). However, a substantial number of its recommendations, as contained in DOP&PW's OM No.38/37/08-P&PW(A) dated 01.09.2008, were extended and made applicable to the BSNL DA pensioners also with effect from 01.01.2006, viz (i) calculation of pension, (ii) additional pension with maturity of age, (iii) qualifying service for full pension (iv) commutation (v) limit of gratuity (vi) family pension (vii) leave encashment amount etc.

14. Mr. ND Kaushik, learned counsel submits that the relief being sought by the applicants is not maintainable. Drawing strength from the averments made in the counter reply he too argues that what the applicants are seeking is preferential treatment to the detriment of other employees of BSNL and the same organisation cannot and should not



create two sets of employees in terms of financial benefits. Assisted by Mr. Raj Kumar, Director (Establishment) in the Department of Telecommunication, he clarifies that right now BSNL is not in a position to bear the financial liability of pension and in case, the relief sought for by the applicants is awarded in their favour, similar demand on the ground of discriminatory treatment is likely to be raised by other BSNL employees, thus, placing unbearable financial burden on BSNL, which is already reeling under losses.

15. Learned counsel appearing on behalf of BSNL and MTNL submit that in terms of the relief sought and the rules governing the same, the issue is to be decided by the Government and in case there is a financial liability, the same is to be borne by the Government. BSNL and MTNL have neither any role to play nor any responsibility / obligation to discharge.

16. Mr. Sanjoy Ghose, learned senior counsel reiterates that the claim preferred by the applicants in this O.A. is fully covered under the Central Civil Services (Pension) Amendment Rules 2000, wherein Rule 37 A has been inserted. He argues that while provision for a pension fund to be managed by a trust has been incorporated in the said



Amendment Rules, there is a specific dispensation with respect to the erstwhile employees of Department of Telecommunications who was absorbed in BSNL. He again quotes Rule 21 of the said Rules which, though quoted earlier, is reproduced as under:-

"(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."

He further draws attention to a communication of the Department of Telecommunications dated 09.11.2000 which reads as under:-

"Subject: Entitlement for Pension, other Retirement Benefits, Job Security and Carry over of Leave in respect of Employees to be Absorbed in BSNL."

It has been decided by the Government that the employees of DOT who will be absorbed in Bharat Sanchar Nigam Limited (BSNL) will be entitled to the Government's scheme of pension/family pension even after their absorption in BSNL. Payment of pension will be made by the Government and for this, arrangements, are being worked out for obtaining pension contribution from BSNL to be deposited with the Government. It has also been decided that dismissal or removal from service of an employee after his absorption in the PSU for any subsequent misconduct shall not amount to forfeiture of the retirement benefits for the service rendered under the Government and in the event of his dismissal, removal or retrenchment the decisions of BSNL shall be subject to



review by the Administrative Ministry. The Government has already issued Notification dated 30.9.2000 to this effect wherein the pension framework has been made part of the CCS (Pension) Rules, amending Rule 37 using powers under Article 309 of the Constitution of India (Copy enclosed).

It has further been decided that the Earned Leave and the Half Pay Leave at the credit of the employees on the date of absorption shall stand transferred to the PSU.

May be widely circulated in your circle/ unit so that the employees are duly informed of the decision taken by the Government"

In addition, he refers to a clarification issued by the Department of Pension & Pensioners' Welfare on 27.04.2009, with respect to the applicability of revised rules for determining qualifying service of ex-DOT employees who were absorbed in BSNL. The said communication reads as under:-

"Subject: Regarding clarification about the applicability of revised rules with effect from 01.01.2006 with reference to 6th CPC on enhanced amount of DCRG, calculation of emoluments for pension/family pension, Commutation of pension and qualifying service to ex-DOT employees absorbed in BSNL, whose pensionary benefits are regulated under Rule 37-A of CCS (Pension) Rules, 1972.

The Department of Telecom is requested to refer to their ID No. 40-31/2008-Pen (T) dated 18.3.09 for clarification on applicability of DoP&PW O.M. dated 2.9.2008. The Department of Telecom has submitted as under:



Consequent upon the implementation of the Government decision on the recommendation of 6th Central Pay Commission and as per Department of Pension and Employees Welfare OM dated 01.09.2008 (read 2.9.2008), rule regarding limit of DCRG, Calculation of emoluments for pension/ family pension Commutation of pension and qualifying service etc. have changes with effect from 01.01.2006.

In this connection, it is submitted that the Explanation given under Sub-Rule (8) of Rule 37-A of CCS (Pension) Rules, 1972 says that the amount of pension/family pension of the absorbed employees on superannuation from PSU/AB shall be calculated in the same way as would be the case with a Central Government servant retiring on superannuation, on the same date it is worthwhile to add that SNI is the only PSU that has been granted a special dispensation under sub rule (21) of Rule 37-A of CCS (Pension) Rules, 1972 to the effect that the pensionary benefits including family pension to the absorbed employees of BSNL is paid by the Government. This Department is of the view that the change as per DoP&PW's OM dated 02.09.2008 mentioned in para 2 above are also applicable to IDA pensioners of BSNL.

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 37A(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 the PSU/CAB". The formula applicable to Central Govt. pensioners has been changed vide DoP&PW OM. dated 2.9.2008 and therefore, the changed formula provided in OM. 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 OM contains instructions for revision of pension of pre 2006 central Government pensioners only."



17. He argues that it is abundantly clear that not only is the claim of pension of the applicants, being ex-employees of DOT who were absorbed in BSNL, to be determined strictly on the pattern of entitlement of regular Government employees but it is to be revised from time to time, without exception, strictly on the same analogy.

18. Ms. Gauri Puri, learned counsel for the applicants in **O.A. Nos. 1271/2020** and **1272/2020** argues that right from the stage of deputation of the applicants from DOT to BSNL till the clarification of 2009, each and every communication/document/notification establishes that the applicants are to be governed by pension and family pension in accordance with the entitlement of regular Government employees. She emphatically states that their initial terms of deputation leading to absorption have specific terms and conditions to this effect. Reversing the situation now amounts to denying their legitimate claim and expectation. These employees agreed to get absorbed in BSNL only on account of assurance of social security by way of pension which was made applicable to them in their status as the Government servants. She also draws attention to the Office Memorandum dated 20.07.2016 which states that pension liability in respect of employees



of DOT who were absorbed in BSNL and retired on 01.10.2000 is solely to be borne by the Government of India; she clearly mentions that BSNL has no liability in respect of these employees. She further submits that a condition imposed earlier that the liability of pension shall not consist more than 60% of the annual revenue; however, this condition has also been since rescinded. Alleging discrimination she submits that the benefits of revision on account of recommendations of the 7th Central Pay Commission have been extended to serving absorbed BSNL and MTNL employees except for the ones who had retired. This is in contravention to what has been set forth in the amended Central Civil Services Pension Rules, specifically Rule 37 A.

19. Vehemently contesting the averments and the arguments put forth by the learned counsel for the applicants, Mr. S N Verma, learned Senior Central Government Standing Counsel, draws attention to the Rule 375 of CCS (Pension) Rules, 2020 and submits, once the applicants opted to be absorbed in BSNL, they ceased to be Government employees with effect from the date of such absorption. The provisions of CCS Pension Rules which provide for fixation and subsequent revision of pensions is



a general provision applicable on the Government pensioners. Once the applicants have ceased to possess the status of the Government employee and got absorbed in a public sector, they would be outside the purview of these rules as they govern only govt. servants. The provision of revision of pension pursuant to the recommendation of Central Pay Commission was incorporated to redress the anomaly in pension between past and future retirees. In the instant case, if the applicants' prayer is allowed, such anomalies are likely to be created once again. He submits that once the applicants have been absorbed in BSNL, they cannot claim to be governed under CCS Pension Rules. The reason these employees continue to get pension is solely on account of their being erstwhile DOT employees. They cannot claim an open-ended and indefinite benefit of the provisions of CCS Pension Rules considering the fact that when they retired, they were not the employees of the government but of BSNL. The provisions of Rule 37 being quoted by the applicants through their learned counsel is a special dispensation given to these employees and they continue to enjoy the same. However, revision on account of Central Pay Commission is a subsequent event, and hence cannot be automatically extended in their favour.



The Central Pay Commission domain is only for Government employees and not employees of public sector undertakings even though they may have been absorbed, he adds. He further argues that these employees having retired, in this case from BSNL, are already enjoying a different set of benefits and rewards as are extended to PSU employees. Sh. Verma further submits that the issue under consideration in this OA has been a subject of O.A. No. 346/2018 decided on 30.10.2019 by the Ernakulam Bench as also another O.A. No. 116-134/2018 dated 27.11.2019 of the Bangalore Bench. Both these Benches have held that BSNL was a commercial and corporate entity, and once an employee has consciously chosen to opt for absorption in a corporate body, he could not claim the benefits available to a Government employee nor can he claim parity in any other respect.

20. Mr. N.D. Kaushik, learned counsel for the respondents while supporting the arguments put forth by Mr. S N Verma, learned counsel, further informs that the issue has been settled by the Hyderabad Bench of this Tribunal in O.A. No. 813/2017 dated 11.01.2019, besides the Ernakulam Bench and Bangalore Bench and the said Benches have also identically held that once absorbed in a



public sector undertaking, the applicants cannot be claiming the benefits available to the Government employees. He also places on record, for our consideration, a judgment of Hon'ble Apex Court in Civil Appeal No. 3520/1991 decided on 25.07.1997. The said judgment has extensively discussed the doctrine of precedence and impressed upon maintaining consistency and uniformity in judicial verdicts. He reiterates that once the co-ordinate Benches of the Tribunal have adjudicated this issue, we are bound to adjudicate it on similar lines.

21. We have gone through the voluminous pleadings on record and also heard the detailed arguments put forth by the learned counsel on more than a couple of occasions.

22. The facts of the case are not disputed, nor is questioned any documents relied upon by the respective parties. There is no ambiguity that at the time of their placement and absorption in BSNL and MTNL, it was categorically stated that the erstwhile employees of the Department of Telecommunication shall continue to be governed by their existing terms and conditions of the service which means that they shall continue to be treated as government servants for all intents and purposes. It is also not in dispute that from time to time, the



recommendations of the Central Pay Commission, as accepted and notified by the government, were made applicable in their case too. There is no ambiguity with respect to the general terms and conditions governing absorption, as circulated and quoted in para 5 of this order, stating categorically that provisions of Rule 37 (A) of the CCS (Pension) Rules, shall guide payment of pension to these employees.

23. Section 37 (A) of the CCS (Pension) Rules has to be read in totality and sub para 21 of the same further clarifies that pensionary benefits of these employees, including family pension shall be paid by the government. In fact, several communications and memoranda, extracts of which have been quoted in this judgment, lead only to one inference that a very well-considered conscious decision was taken and expressly stated that the terms and conditions of the service of employees of Department of Telecommunications shall remain protected even on their absorption in BSNL/MTNL and further, it has been emphasized that these terms and conditions are inclusive of pension and family pension.

24. The relevant rules as quoted above have further clarified that since BSNL and MTNL are corporate entities,



the liability of pension and family pension shall be borne by the government. We do appreciate the arguments put forth by the learned counsel for the respondents, especially the fact that once the applicants have ceased to be government employees, they should not and cannot expect the benefits available to government employees in perpetuity. Further, we also appreciate that there may have been specific facts and circumstances at the relevant time of their absorption when the decision to protect their terms and conditions was taken. However, no document has been shown to us which would substantiate these arguments that protection was to be available for a specific period only.

25. Learned counsels have submitted that the applicants have now ceased to be governed by the CCS (Pension) Rules and in case they are allowed to agitate their claim at this juncture, it would open up the Pandora box and thus, strike at the very roots of the governance of corporate entities.

26. We are not inclined to consider the extended arguments on behalf of the respondents even though we acknowledge some merit in these. The decision qua these employees, as further reflected under innumerable communications, is unambiguous and has been, so far,



implemented also. We reiterate that even on their absorption in the corporate undertaking, the terms and conditions of services governing them were to remain the same as they existed when they are employees of the Department of Telecommunications. Further, these terms and conditions include pension and family pension and this has been expressly stated in the rules and several subsequent communications which have been elaborately quoted in some of the preceding paragraphs of this order.

27. We have no hesitation in concluding that the present application deserves positive consideration. The government had given a promise and stated it in black and white. How could it now retract from the promise, that too not by any law or rules but by simply a refusal to honour it?

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 favour of the applicants, analogous to the revision of such pension in case of Central Government pensioners.

29. The directions contained herein shall be complied with within a period of ten weeks from the date of receipt of a certified copy of this order.

30. The OA stand allowed against the background of the aforesaid directions. Pending MA(s), if any, stands disposed of accordingly.

There shall be no orders as to costs.

(Pratima K. Gupta)
Member (J)

(Tarun Shridhar)
Member (A)

/NISHA/