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

Reserved on: 8<sup>th</sup> January, 2020

Decided on: 24<sup>th</sup> January, 2020

**W.P.(C) 10019/2017 and CM APPL. 40921/2017 (stay)**

UNION OF INDIA & ORS

..... Petitioners

Through: Ms. Mrinalini Sen with Ms. Kritika  
Gupta, Advocates.

versus

ALL INDIA BSNL PENSIONERS WELFARE ASSOCIATION  
AND ORS

..... Respondents

Through: Mr. Ranvir Singh, Advocate for R1.  
Mr. Naresh Kaushik with Ms. Vibhuti  
Tyagi and Mr. Tapasvi Raj, Advocates  
for R4, R9, R10 and R12.

**CORAM: JUSTICE S. MURALIDHAR  
JUSTICE TALWANT SINGH**

**J U D G M E N T**

**Dr. S. Muralidhar, J.:**

1. The Department of Telecommunications (DOT), Government of India, (Petitioner No.1), the Bharat Sanchar Nigam Limited (BSNL) through its Chairman-cum-Managing Director (Petitioner No.2) and the Department of Pension & Pensioners Welfare ('DPPW'), Ministry of Personnel Public Grievances & Pensions (Petitioner No.3) have jointly filed this petition challenging an order dated 16<sup>th</sup> December, 2016 of the Central Administrative Tribunal, Principal Bench, New Delhi ('CAT') disposing of OA No. 2173/2014 filed by the Respondent No.1 and Respondents No. 4 to

14 thereby quashing an order dated 15<sup>th</sup> January, 2003 issued by the DOT in regard to payment of pension to employees who retired from the DOT between 1<sup>st</sup> October, 2000 and 31<sup>st</sup> July, 2001 and were subsequently absorbed in the BSNL. OA No. 2173/2014 was filed before the CAT by the All India BSNL Pensioners Welfare Association (hereafter Association) (Respondent No.1 herein) on behalf of 4230 affected pensioners in a representative capacity.

2. By the impugned order, the CAT has held that there was no justification for the DOT to deny the benefit to the Respondents 2 to 14 the benefit of formula adopted in Office Memorandum (OM) dated 18<sup>th</sup> October, 1999. The CAT has issued a direction to the Petitioners to re-fix the pension of the said Respondents; give them notional benefit of the IDA pay scale and thereafter grant all consequential benefits from the date of their respective dates of retirement in accordance with law.

3. It must be noted at the outset that on 23<sup>rd</sup> January, 2018 an interim order was passed that no coercive steps will be taken against the Petitioners for implementing the impugned order of the CAT.

4. The facts in brief are that on creation of the BSNL with effect from 1<sup>st</sup> October, 2000 all serving Group 'A' officers were transferred to it on deputation basis. An OM dated 27<sup>th</sup> October, 1997 was issued by the DPPW on the issue of implementation of the recommendations of the 5<sup>th</sup> Central Pay Commission ('CPC') regarding revision of the provisions regulating pension/commutation of pension. This provided that pension shall continue

to be calculated at 50% of average emoluments in all cases subject to a minimum of Rs.1275/- and maximum upto 50% of the highest pay in the Government.

5. The OM dated 27<sup>th</sup> October, 1997 further provided that those Government servants who opted for revised scales of pay and retired within ten months from coming into force of the revised scales of pay, basic pay for ten months preceding retirement shall be calculated as under:

“(i) For the period during which pay is drawn in the pre-revised scale-

Basic pay plus DA and Interim Relief I and II appropriate to the basic pay at the rates in force on 01.01.1996 drawn during the relevant period and

(ii) For the period during which pay is drawn in revised scale-  
Basic pay in the revised scale.”

6. The above OM was further revised by an OM dated 17<sup>th</sup> December, 1998 specifying that pension shall not be less than 50% of the minimum pay in the revised pay scale.

7. Another OM dated 18<sup>th</sup> October, 1999 was issued by the DPPW modifying the earlier OM dated 27<sup>th</sup> October, 1997. This stated that the average emoluments for those retiring within ten months of coming over to the revised pay scales would be calculated thus:

“The average emoluments based on the basic pay of the preceding ten months of those Government Servants who had opted to come over to the revised scales of pay and had retired within a period of 10 months reckoned from January 1, 1996

shall be calculated as follows for the purpose of determining their pension entitlement.

**(A) For the period during which pay was drawn in the pre-revised pay scales.**

The total emoluments for the number of months for which pay was drawn in the pre-revised pay scales shall be calculated after taking into account the following:

- i. Basic Pay (including increments if any drawn during the intervening period).
- ii. Dearness allowance upto CPI 1510 i.e. @ 148%, III% and 96% of the basic pay as the case may be.
- iii. The first and second installments of Interim Relief appropriate to the Basic pay drawn during the relevant period.
- iv. Notional increase of the Basic Pay by applying the Fitment Benefit of 40 percent on the Basic pay in the pre-revised pay scale.

**(B) For the period during which pay was drawn in the revised pay scales:**

The aggregate of the Basic pay for the number of months for which pay was drawn in the revised pay scales.

The average emoluments of the preceding ten months will thereafter be calculated by adding (A) and (B) and dividing the result by 10. Pension admissible will consequently be 50% of the average emoluments so calculated.”

8. According to the Petitioners, the object behind this modification was to eliminate the anomaly in pension drawn by those retiring within ten months of coming over to the revised pay scale during the period from 1<sup>st</sup> January to

31<sup>st</sup> October, 1996 and those who retired after completion of ten months period with effect from 1<sup>st</sup> January, 1996.

9. Prior to *en masse* transfer of DOT employees to the BSNL on deemed deputation basis with effect from 1<sup>st</sup> October 2000, several rounds of discussions were held with the unions. It was agreed to extend the retirement benefits in the BSNL in accordance with the CCS (Pension) Rules, 1972. This led to insertion of Rule 37A in the CCS (Pension) Rules which came to be published on 30<sup>th</sup> September, 2000. It provided for the conditions for payment of pension and absorption upon conversion of a Government Department into a Central Autonomous Body ('CAB') or a Public Sector Undertaking (PSU).

10. The relevant portion of the newly inserted Rule 37A of the CCS (Pension) Rules read as under:

“(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.

(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 in the Public Sector Undertaking or Autonomous Body 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 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-rule (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 pensioner benefits including family pension shall be paid by the government.

(22) For the purpose of payment of pensionary benefits including family pension referred to in sub-rule (21), the Government shall specify the arrangements and manner including the rate of pensionary contributions to be made by Bharat Sanchar Nigam Limited to the government and the manner in which financial liabilities on this account shall be met.”

11. In other words, Rule 37A provided that those Government servants permanently absorbed in PSU or the CAB would be entitled to pension in the same manner as Central Government employees.

12. A further round of discussions was held with the unions by the management of BSNL on 2<sup>nd</sup> January, 2001. It was agreed that options for absorption in the BSNL would be called in January, 2001. It was further

mutually agreed that pending fitment in the IDA pay scales Group (C) & (D) optees will continue in the Central Government (CDA) pay scales. They were also to be paid an *adhoc* amount of Rs. 1,000/- per month with effect from 1<sup>st</sup> October, 2000 which was to be adjusted from IDA emoluments, perks and benefits upon fitment in the IDA scale.

13. A clarification was issued by the DOT on 19<sup>th</sup> 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”.

14. An Office Order was issued on 7<sup>th</sup> August, 2002 introducing IDA pay scales in replacement of the CDA pay scales for Group ‘C’ and ‘D’ employees w.e.f. 1<sup>st</sup> October, 2000. A net minimum increase of “Rs. 1500/- per month (Basic Pay + DA taken together) has been assured to each employee of Non-executive staff (Group ‘C’ and ‘D’) at the time of change over of pay from CDA pay scales to IDA pay scales with IDA pattern of Dearness Allowance.” It was further stated that “as pension is calculated at 50% of average pay at the time of retirement, the benefit of minimum increase of Rs.750/- per month (basic pension + Dearness relief taken together) will be available for the Non-Executive Staff (Group ‘C’ and ‘D’) at the time of change over of pension from CDA Pay scale to IDA Pay scale with IDA DR.”

15. On 20<sup>th</sup> 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.”

16. After the issuance of the aforementioned Office Order dated 7<sup>th</sup> August, 2002 references were received from various DOT units seeking clarification from the DOT regarding calculation of the average emoluments for payment of pension/family pension for those absorbed employees who had retired before completion of ten months period after they had absorption in BSNL under Rule 37A introduced with effect from 1<sup>st</sup> October, 2000. In response thereto Respondent No.1 i.e. DOT issued the impugned clarification by an OM dated 15<sup>th</sup> January, 2003 in terms of which, “pension shall be calculated on the basis of average pay of the last then months irrespective of the fact whether the same or part thereof is in CDA/IDA pattern, while Dearness Relief will be calculated on IDA pattern.”

17. It was pointed out by the Respondents before the CAT that this change caused loss in the pension at the time of change over from CDA pay scales to IDA pay scales for those who had retired during the nine month period from 1<sup>st</sup> October, 2000 to 30<sup>th</sup> June, 2001, after their absorption in BSNL with effect from 1<sup>st</sup> October, 2000. The options were called for absorption in BSNL from Group ‘B’ officers/officiating Group ‘A’ officers of DOT who had been transferred to BSNL on deemed deputation with effect from 1<sup>st</sup> October, 2000. These Group ‘B’ officiating Group ‘A’ officers were paid



an adhoc sum of Rs. 2,000/- per month by the BSNL till their absorption and fixation of pay in IDA scales.

18. Detailed guidelines for change over from the CDA to the IDA pay scales were issued on 2<sup>nd</sup> September, 2003. The BSNL, by a letter dated 4<sup>th</sup> September, 2003 and the DOT by letter dated 12<sup>th</sup> September, 2003 intimated that the last date for submitting options would be 20<sup>th</sup> October, 2003.

19. BSNL issued an Office Order dated 18<sup>th</sup> March, 2004 for introduction of IDA pay scales in replacement of existing CDA pay scales for Executive Staff (Group B) absorbed from the DOT in BSNL with effect from 1<sup>st</sup> October, 2000. It stated, *inter alia*, as under:

“In para 2, Fitment method, it is stated that the pay of the absorbed executives will be fixed in the respective replacement/corresponding IDA Pay Scales after issue of Presidential Order for absorption in BSNL in the manner described in this order. In para 2.1, it is stated that in respect of the DOT/DTS/DTO Group ‘B’ and ‘A’ Officers on absorption in BSNL w.e.f. 1.10.2000, the basic pay of the executives as on 01.10.2000 in the IDA pay scales would be fixed at the stage corresponding to the stage which they had reached under CDA pay scale on 30.09.2000 i.e. pay fixation will be on point to point basis. In cases where the minimum benefit (pay + DA taken together) on absorption in BSNL on 1.10.2000, falls short of Rs.2500/- per month, it will be enhanced to Rs. 2500/- per month. However, as per actual calculation, the net benefit in IDA pay + IDA DA is more than Rs. 2500/- per month for most of the scales for Executive staff. It is submitted that minimum increase in pension at the time of change over from CDA to IDA pay scales for the Executive Staff would be 50% of the net increase in Average Basic Pay + DA taken together amounting

to minimum amount of Rs. 1250/- per month.”

20. The Department of Expenditure, Ministry of Finance issued an OM dated 1<sup>st</sup> March, 2004 providing for merger of 50% of DA/DR with basic pay/pension with effect from 1<sup>st</sup> April, 2004. Para 3 of the OM stated that “to ensure that pensioners retiring between 1.4.2004 to 31.1.2005 do not face any loss in fixation of pension, as a special dispensation in their case, DA equal to 50% of the basic pay would be treated as basic pay received by them prior to 1.4.2004.”

21. The Respondents pointed out before the CAT, and have reiterated before this Court, that employees of the Food Corporation of India in similar circumstances were paid pension in accordance with the formula applicable to Central Government employees.

22. On 25<sup>th</sup> October, 2007 a Gazette notification was issued by the DOE substituting sub-Rule (8) of Rule 37A of the CCS (Pension) Rules which took effect from 30<sup>th</sup> September, 2000. It read as under:

“(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 in the public sector undertaking or autonomous body 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 public sector undertaking or autonomous body, as the case may be or at his option to receive pro-rata retirement benefits for the service rendered under the central government in accordance with the orders issued by the Central Government.

EXPLANATION – The amount of pension/family pension of the absorbed employee on superannuation from Public Sector undertaking/Autonomous Body shall be calculated in the same way as would be the case with a Central Government servant, retiring on superannuation on the same day.”

23. The recommendations of the 6<sup>th</sup> CPC were decided to be implemented and for which an OM dated 2<sup>nd</sup> September 2008 was issued. This was further amended by an OM dated 3<sup>rd</sup> October, 2008 in order to provide for those who had retired within ten months from the date of coming into force of the revised pay structure after 1<sup>st</sup> January, 2006. It read thus:

“For the purpose of computing average emoluments in the case of Government servants who have opted for fixation of pay in the revised Pay Structure and retire within 10 months from the date of coming over to the revised Pay Structure basic pay for 10 months period proceeding retirement shall be calculated by taking into account pay as follows:

(i) For the period during which pay is drawn in revised Pay Structure-

Pay drawn in the prescribed pay band plus the applicable grade pay or the pay in the pay scale in the case of HAG + and above.

(ii) For the remaining period during which pay is drawn in pre-revised scale of pay –

(a) Basic Pay plus dearness pay and actual D.A. appropriate to the basic pay at the rates in force on 1.1.2006 drawn during the relevant period.

(b) notional increase of the basic pay by applying the fitment benefit of 40% on the basic pay in the pre-revised pay scale.”

24. The Respondents kept representing against the anomaly namely that notional benefit to revise the pay drawn in senior scales before 1<sup>st</sup> October, 2000 on par with the pay drawn in IDA scales after 1<sup>st</sup> October, 2000 during the ten months period before retirement in BSNL was not being extended to them.

25. Meanwhile, the DOT issued an OM dated 15<sup>th</sup> March, 2011 “for revision of pension/family pension in respect of all pre-2007 pensioners/family pensioners who retired during the period from 1.10.2000 to 31.12.2006 in IDA scales; pursuant to Wage revision in BSNL w.e.f. 1.1.2007.”

26. Although the pension of all the Respondents was revised in IDA scales with effect from 1<sup>st</sup> January, 2000, they again got lesser pension when compared to those retired on or after 31<sup>st</sup> July, 2001 after completion of 10 months period at the time of change over from CDA to IDA scales. In other words, the anomaly that existed prior to the 6<sup>th</sup> CPC continued.

27. In view of these anomalies, the DOT by a letter dated 27<sup>th</sup> September, 2011 advised BSNL that “the pension cases of the employees absorbed in BSNL, who retired within ten months from 1.10.2000 i.e. the date of their absorption in BSNL, may be settled by granting them the benefit of full minimum pension at not less than 50% of the minimum of pay in the revised pay scale of post held by them at the time of retirement, if it is beneficial to them.”

28. More representations followed. The matter was taken up at the level of

the Standing Committee of the Voluntary Agencies (SCOVA) under the Chairmanship of the Minister of State for Public Pensions. Finally, the DOT sent a proposal to the DOE on 10<sup>th</sup> February, 2014 requesting that the proposal of the DOT be accepted and the anomaly be removed at the earliest. The DOT then wrote a letter dated 7<sup>th</sup> May, 2014 requesting the BSNL to furnish comments on the observations of the DPPW on the proposal submitted by the DOT. The DPPW observed that the said Respondents:

“would be getting additional amount in their pension as compared to pension they have received in the CDA scale of pay, if the proposal is accepted. In this regard it is submitted that the benefits which have been given to the employees who retired after 30.07.2001 and thereafter has to be given to the applicants also as per the formula of the DOP & PW stipulated in their letter dated 18.10.1999. The benefit given to all other retirees after their absorption in BSNL w.e.f. 1.10.2000 has to be extended to the applicants and other persons who retired from 1.10.2000 to 30.6.2001 as all retirees from one class.”

29. When still nothing happened, the Respondents were constrained to go before the CAT by filing on 27<sup>th</sup> May, 2014 the OA No. 2173/2014 seeking the reliefs noticed hereinbefore. The grievance of the Respondents was that notwithstanding the revision in pension in the IDA scales w.e.f. 1<sup>st</sup> January, 2007:

“they got less pension with effect from 1.01.2007 as compared to those who had retired on or after 31.07.2001 after completion of ten months period at the time of change over from CDA scales to IDA scales after absorption in BSNL with effect from 1.10.2000. It is prayed that the pension of the applicants has to be revised again at all stages after rectification of the anomaly in fixation of pension from the date of their retirement after

absorption in BSNL with effect from 1.10.2000.”

30. Reliance was placed on the decisions in *D. S. Nakara v. Union of India* 1983 SCC (L & S) (145) and *Union of India v. SPS Vains (Retired)* 2008 12 SCALE 360. Reference has also been made to the decision of the Supreme Court in *Videsh Sanchar Nigam Limited v. Ajit Kumar Kar* (2008) 11 SCC 591 where it was observed thus:

“40. Note 10 below Rule 33, CCS (Pension) Rules, as extracted in the earlier part of this judgment was also made. As per this Office Memorandum, earlier clarification has been repeated and reasserted that in the case of transferred employees of VSNL who were drawing IDA pay scales prior to their retirement, the emoluments for the purpose of pension shall be calculated on the basis of emoluments drawn in the IDA pay scales. It was also categorically stated that such employees shall not be entitled to the payment of DR on pension at Central Government rates.”

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“45. In the facts and circumstances of the case, we are of the opinion that the clarification given by the Government of India in its O.M. dated 22.11.1996 (Annexure P-14) is clear and unambiguous terms stated that the employees of VSNL were drawing the IDA pay scales with the ADR under the IDA pay scales were entitled to pensionary benefits only on the basis of IDA pay scales as IDA pay scales with IDA pattern of DR was already taken into account for pension and other benefits at the time of retirement of such employees of VSNL. It appears from the various communications exchanged between the Government of India and VSNL referred to earlier that due to some error or bona fide mistake, VSNL made wrong payments of DA to the respondent retirees calculated on the IDA pay scales and such employees were getting double benefits of DR. Employees who were getting IDA pay scales with IDA pattern of DR could not draw pension calculated on IDA emoluments

with CDA pattern of DR.”

31. It was contended before the CAT on behalf of the Petitioners herein that:

“the pension of the applicants has to be governed by sub-rule 9 of Rule 37-A of CCS (Pension) Rules and according to that, last ten months average pay has to be taken where a part of the pay was in CDA pattern and for part period, it was in IDA pattern.”

“the applicants had opted for IDA pattern as these were better pay scales and they had the option to revert back to government, which they did not and now they cannot challenge the order dated 15.01.2003, firstly on the ground of delay and secondly because it is as per Rule 37-A and sub-rule 9 of CCS (Pension) Rules.”

32. By the impugned order the CAT negated the above contention by holding that “by creating an artificial distinction between those who retired between 1.10.2000 and 31.07.2001 and others, the respondents have clearly not only gone against the decision in *D. S. Nakara (supra)* but also against their own circulars.” It further held:

“Sub-rule 8 of Rule 37 (A) also states that pensionary benefits will be counted on the basis of combined service in accordance with the formula for calculation of such pensionary benefits as may be in force at the time of his retirement in the same manner as is calculated for Government servants. In view of M.R. Gupta (*supra*) limitation would not apply.”

33. Finally, the CAT held as under:

“25. There is, therefore, no ground whatsoever for the respondents to deny the benefit of formula adopted in OM

dated 18.10.1999. The impugned order dated 15.01.2003 is thus quashed with direction to the respondents to re-fix pension of the applicants from the date of their retirement in the same manner as calculated for Central Government employees/ Public Sector Undertaking like FCI by adopting the formula as contained in OM dated 18.10.1999 and give notional benefit of the IDA pay scales and, thereafter, grant all consequential benefits from the date of retirement in accordance with law. We fix a time frame of 90 days from the receipt of a certified copy of this order for implementation of our directions. No costs.”

34. This Court has heard the submissions of Ms. Mrinalini Sen, learned counsel appearing for the Petitioners, Mr. Ranvir Singh, learned counsel appearing for Respondent No.1 and Mr. Naresh Kaushik, learned counsel appearing for Respondents Nos. 4,9,10 and 14.

35. Before this Court the Petitioners have virtually reiterated their submissions made before the CAT. It is claimed that the impugned order was in contravention of Rules 37A (8) and (9) of the CCS (Pension) Rules, 1972. It was claimed that the CAT also failed to consider the OM dated 18<sup>th</sup> October, 1999 and that it erred in interpreting the OM dated 20<sup>th</sup> December, 2002. It is claimed that the OM dated 15<sup>th</sup> January, 2003 was reiteration of the position in terms of OMs dated 2<sup>nd</sup> January, 2001, 7<sup>th</sup> August, 2002 and 2<sup>nd</sup> December, 2002. It is submitted that:

“After having readily accepted the higher IDA pay scales, the Respondents have no right to raise grievance with respect to calculation of pensionary benefit as per the Rules applicable on PSU employees. Thus, the Respondents are estopped from challenging the OM dated 15-01-2003.”



36. It must be noted at the outset that the present dispute governs a narrow band of employees i.e. those absorbed from the DOT into BSNL and where retirement took place within the ten months of their absorption in the BSNL i.e. within ten months of 1<sup>st</sup> October, 2000.

37. The clarification issued on 18<sup>th</sup> October, 1999 regarding fixation of the pension of those retiring within ten months of the revised pay scales made it clear that the earlier order dated 17<sup>th</sup> December, 1998 for fixation of pension at 50% of the minimum pay of the revised pay scales resulted in the reduction in pension. The letter dated 18<sup>th</sup> October, 1999 was precisely to mitigate the hardship to the retiring Government servants. Moreover, the DOT itself had recommended removal of the anomalies in the pension of BSNL employees retiring within ten months of their absorption with effect from 1<sup>st</sup> October, 2000.

38. The note sheets in the relevant file of the DOT have been enclosed with the rejoinder affidavit filed by the Applicants in OA No. 2173/2014. While forwarding the case to the Member (Finance) on 27<sup>th</sup> September, 2013 the Member (Services), Railway Board made the following recommendation for removal of the anomaly:

“for rectifying the pension anomaly completely in respect of BSNL IDA pensioners who absorbed in BSNL with effect from 01.10.2000 and retired within 10 months from the date of absorption, the special dispensation for revision of emoluments by taking the notional pay which would have been drawn during the 10 months as is given by a particular group of pension as explained in para 5 above ought to be extended to such IDA BSNL Pensioners. By doing so, the calculation of pension to

those BSNL retired pensioners who superannuated between Oct. 2000 to June 2001 be made by taking into account the average emoluments on notional IDA pay for the last ten months which would have been drawn by them for the period they were drawing pay in CDA scale. For example, if an employee is superannuated in Dec. 2000, his average emoluments for the last ten months should be taken as if he would have been worked in IDA pay scale for the entire period from March to Dec. 2000, instead of March to Sept. 2000 in CDA and October to Dec. 2000 in IDA.”

39. Again in para 16 it was stated as under:

“For rectifying the pension anomaly completely in respect of such group of pensioners, the special dispensation on similar lines as revision of emoluments for a particular group of pensioners as explained in pars 6 & 7 above was extended to such IDA BSNL Pensioners. Accordingly, the calculation of average emoluments of those BSNL pensioners who superannuated between Oct. 2000 to June 2001 would be made by taking into account on notional basis IDA Pay for the period they were drawing pay in CDA scale prior to their absorption.”

40. The CAT was right in its conclusion that within the same class of employees who retired within ten months of their applicability of a revised pay scale and in this case ten months of their absorption in BSNL there cannot be discrimination between those in Central Government and those in PSUs and CABs like the BSNL. A clarification of the nature in the impugned OM dated 15<sup>th</sup> January, 2003 cannot override the statutory provisions contained in Rule 37A.

41. The process of absorption of Group A officers of the DOT in the BSNL formed the subject matter of challenge of the applications before various

benches of the CAT. All the petitions were transferred to the Principal Bench, CAT which delivered a common judgment on 31<sup>st</sup> October, 2005 in OA No. 1963/2005 *inter-alia* clarifying that on absorption the officers would gain in monetary terms by availing the corresponding IDA pay which was higher than the senior pay scales which are available with the Government. Rule 37A of the CCS (Pension) Rules, 1972 was upheld. It was *inter-alia* observed by the CAT as under:

“..... We cannot ignore the fact that on creation of such bodies like MTNL, BSNL or other government companies, in fact the employees stand to gain financially. We may also note the fact that giving a similar and uniform treatment to all employees irrespective of their grade or status whether they belong to Group A or Group D, all will stand absorbed from a uniform date without there being any discrimination or creation of a class or sub-group within the organization. This will also, in our view, need the test of Article 14 of the Constitution, which deals with the equality to all citizens.”

42. This was affirmed by this Court in a judgment dated 17<sup>th</sup> April, 2012 in WP(C) No. 22515/2005 whereby it was *inter-alia* “directed that the petitions be given an option, to be exercised within 2 weeks from the date of the order, to revert to the Government or to seek absorption in BSNL/MTNL”. BSNL and MTNL were also directed to relieve such of the petitioners, who opted to revert to Government service within 2 weeks of receipt of options from them.”

43. Subsequently by another order dated 15<sup>th</sup> February, 2013 the time for complying with the directions was extended by a period of six weeks from that date.

44. In that view of the matter, the question of issuing the impugned clarification to override the statutory mandate did not arise. The conclusions reached by the CAT are also consistent with the case law referred to hereinbefore and therefore call for no interference.

45. For all of the aforementioned reasons, the petitions are dismissed. The interim order stands vacated. The time for implementation of the impugned order of the CAT is extended by a period of eight weeks from today. The pending application is also disposed of.

**S. MURALIDHAR, J.**

**TALWANT SINGH, J.**

**JANUARY 24, 2020**

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