

Pension- Revision – Tension

***By Shri S.Ratnasubramanian, Dy.G.M. Telecom BSNL (Retd)
Joint Secretary(South) , AIBSNLREA CHQ***

The pay scales of BSNL executives have been revised w.e.f. 01-01-2007 and the orders on pay revision were released on 05th March 2009. The arrears have also been paid in two installments. However, the pay scales of non executives are still not released and these are waiting for DoT's approval. The fitment formula for revised IDA pay scales of non executives is the same as that of the executives. In this background, we are to look into the issue regarding revision of pension of the absorbed BSNL pensioners who retired between 1.10.2000 and 31.12.2006.

In Central Government, the revision of pay scales and revision of pension are done almost simultaneously. It is a settled law, according to various judgments of the SC, that the pension is to be revised as and when pay scales of the serving employees is revised. There should not be any discrimination in respect of the amount of pension received by the retirees based on the date of their retirement. That means there cannot be any difference in pension amount for the past and present pensioners who were receiving the same pay.

Prior to 5th CPC the pensioners were not given any fitment benefit or equal fitment benefit which was given to the serving employees for their pay fixation in the revised pay scales. This created a condition that a person retiring in senior rank at the time of 2nd or 3rd CPC (from 1960 to 1985) got lesser pension than an official of very junior rank to him and retired after 1986. It is TESA (I) which took up this issue with V CPC and asked for one cadre one pension concept. Thanks to the landmark judgments of the SC, the fifth Central Pay Commission recommended that the same fitment formula given to the serving employees should be extended to the past pensioners as well. Not only that, the V CPC recommended that the pension of the past pensioners, at whatever date they might have retired, should be updated at each pay revision date from 2nd CPC to 4th CPC giving the same fitment formula as given to the serving employees in the pay revision of each CPC and then be given the fitment formula for 5th CPC and their pension revised accordingly. There was also an additional provision that with all the updating, the pension also be subject to 50 % of the minimum of the pay scale of the cadre in which the employee had retired i.e., one cadre one pension concept as pleaded by TESA (I). The Government also accepted the above stated recommendations of the V CPC.

The PSUs, which were having absorbed Central Government Employees, also followed the above principle. The Port Trust of India, Food Corporation of India, which were converted as Autonomous Body/PSU from Central Govt. Departments and in which the Central Govt. employees got absorbed, revised the pension of the past pensioners with effect from the same date on which the pay scales of the serving employees were revised by applying the same fitment formula as given to the serving employees.

As we all know that the BSNL absorbed employees are covered under Rule 37 A which was introduced in CCS (Pension) Rules 1972 on 30-09-2000. Earlier, the employees absorbed from Central Govt. to the Autonomous Bodies/PSUs were covered under Rule 37 which also allowed an option either to have a pension calculated for their combined service in Central Government and the PSU **or** to have a pro rata pension. This option was allowed in Rule 37 A also subsequently and with retrospective effect from 01-10-2000. Such of those who opted for pension based on combined service as per Rule 37 got their pension in IDA scales based on the emoluments received by them in IDA scales and also got IDA DA.

Thus there is no difference between those who were absorbed in PSU vide Rule 37 and opted for Govt. pension on combined service and those absorbed vide Rule 37 A. The only difference is that **while in Rule 37 the pension is the responsibility of the respective PSU and thereby its nodal ministry**, Rule 37 A provided a special safe guard that payment of pension to the Central Government Employees absorbed in BSNL is the responsibility of the Central Government.

Thus it should be seen that the main difference between BSNL absorbed pensioners on one hand and the pensioners of Port Trust, FCI etc. on the other is in respect of the responsibility for payment of pension and revision of pension to the past pensioners. While in case of absorbed BSNL pensioners, the responsibility for payment of pension lies directly with the Government and for the rest of the pensioners the respective PSU/nodal Ministry shoulders the responsibility. But there is no difference in the settled law that the revision of pension is to be made as and when the pay revision of the serving employees is allowed and also the same fitment benefit given to the serving employees should also be extended to the past pensioners.

Now the issue of revision of pension for the past pensioners of BSNL (absorbed CG Employees) retired prior to 01-01-2007 is with DoT. Though there is no official communication about the present views of DoT on this issue, some information is well available to many. This information collected by the few is spread as a gossip in many places which creates anxiety in the minds of the past pensioners. This further creates a knee jerk reaction not only in the affected pensioners but also in some important functionaries of the unions/associations. These persons, without confirming whether the stated proposals of the DoT, as gathered by them are the final views of DoT or not, tend to give their own suggestions. They fail to realize that many a times these suggestions are impracticable and against the interest of the pensioners since these are not aired by them after careful in depth study and home work but out of knee jerk reactions on hearing the unconfirmed views of DoT from some quarters. These create further panic among the pensioners.

The fact realized by all is that absorbed BSNL pensioners are the only one lot which served in a PSU and receive pension from the DoT. But what is being forgotten by them is that despite the above fact, there cannot be any difference

in pension between the retired employees drawing the same pay and having the same length of service only on the ground that some of them retired before a certain date, (i.e. the date of pay revision) and others after the date of pay revision. In the famous Nakara case, the Hon'ble Supreme Court have observed :-

“Recall at this stage the method adopted when pay-scales are revised. Revised pay-scales are introduced from a certain date. All existing employees are brought on to the revised scales by adopting a theory of fitments and increments for past service. In other words, benefit of revised scale is not limited to those who enter service subsequent to the date fixed for introducing revised scales but the benefit is extended to all those in service prior to that date. This is just and fair. Now if pension as we view it, is some kind of retirement wages for past service, can it be denied to those who retired earlier, revised retirement benefits being available to future retirees only?..”

Some people even try to find fault with Rule 37 A and say that it does not say anything about “revision of pension”. It is true that Rule 37 A does not speak about revision of pension. **But in the entire CCS (Pension) Rules 1972, which deals elaborately on “Pension”, there is not a single word regarding “revision of pension” of past pensioners.** Are not the pension of the past pensioners of Central Government revised almost simultaneously with the revision of pay scales of the serving employees and with the same fitment benefit as given to the serving employees right from January 1996, though CCS (Pension) Rules does not speak about revision of pension ? And also that the past pensioners receiving pension even from 2nd CPC got their pension updated giving the same fitment formula as given to the serving employees at every CPC ?

Rule 37 A is a special additional rule introduced for those employees who are absorbed in PSUs on conversion of Central Government Departments into PSUs. It is a part and parcel of CCS (Pension) Rules 1972 which apply in full to the absorbed employees of the PSUs also. Now the 6th CPC recommendations regarding pension calculated on last pay drawn, enhanced DCRG etc are implemented by the modifications made in other rules of CCS (Pension) Rules 1972. Are they not extended equally to the BSNL absorbed employees ? Then where is the doubt about allowing revision of pension of the past absorbed BNL pensioners?

It is also true that there is no precedent for the revision of pension in BSNL. But remember Rule 37 A was introduced in CCS (Pension) Rules on 30-09-2000 and this is the first pay revision in 2007 after introduction of Rule 37-A. How can there be a precedent? Was there any precedent for the clause in Rule 37 A laying down that the liability for payment of pension of the absorbed employees in PSU lies on the Central Government? In the same Nakara case, Hon'ble SC observed : “Every new norm of socio-economic justice, every new measure of social justice commenced for the first time at some point of time in history. If at that time it was rejected as being without a precedent, law as an instrument of social engineering would have long since been dead.”

It should be well remembered that Pension is a right; not a bounty or gratuitous payment. The payment of pension does not depend upon the discretion of the Government but is governed by the rules and a Government servant coming within those rules is entitled to claim pension. It is a settled law right from 1996 that the pension is to be revised from the date on which the pay scales are revised for the serving employees with the same fitment benefit that is given for serving employees. This is implemented in Central Government. It is implemented in CABs/PSUs like Port Trust and FCI etc. The BSNL absorbed pensioners are not on a different footing on this matter. They stand on the same footing as that of the Port Trust and FCI pensioners as far as their eligibility of pension and revision of pension are concerned. **The only difference is on whom the payment of pension liability lies whether it is on the PSU or on the Government.** Definitely for having opted to get absorbed in BSNL under the newly introduced Rule 37 A, which was added to give them a protection of their pension, the same cannot turn as a liability to the pensioners.

The BSNL absorbed pensioners, who retired prior to 01-01-2007, are therefore eligible for revision of pension w.e.f. 01-01-2007 on the same fitment benefit as given to the serving employees. At present the serving employees are given 30 % fitment benefit over their basic pay + 68.8 % DA. As such the past pensioners retired prior to 01-01-2007 are also eligible for fitment benefit of 30 % over their gross pension+68.8 % DA. That is revised pension should be = Gross pension x 1.688 x 1,3. However, percentage of DA which was merged as 68.8% needs to be changed to 78.2% both for the serving employees as well as to the past pensioners for their revision of pay scales and revision of pension respectively.

The DPE vide its order dated 02-04-09 had allowed benefit of merger of 50 % DA with basic pay for fitment purposes w.e.f. 01-01-2007 effectively amounting to 78.2 % for fitment purposes. **It should be seen that the DPE in its order dated 02-04-2009 has not given any discretion to the PSUs in deciding to give either 68.8 % or 78.2 % in pay fixation. But in BSNL this benefit has not been extended to the serving employees of BSNL. It is upto the Unions/Associations of serving employees to mount enough pressure and get the DA merger benefit in pay fixation which was approved by DPE. But they are yet to live up to the expectation of their members.**

Should the BSNL extend the DA merger benefit to its serving employees and revise the pay scales giving 30 % fitment benefit over the basic pay + 78.2 % of effective DA, then the same should be extended to the past pensioners and accordingly their pension should be revised. In that case the revised pension should be = Gross pension x 1.782 x 1,3. That means the multiplication factor should be 2.3166.

There was also an information that the DoT which was once toying with the idea of CDA pension had now come around to IDA pension. But it is whispered that the DoT is now proposing to give 40 % fitment as given by the Central Govt. for its past pensioners. But the underlying fact which is being forgotten is that under the settled law there cannot be any distinction between

the past and present pensioners in the matter of fitment formula for revision of pay and revision of pension.

Now let us find the impact of stated 40% fitment formula on BSNL pensioners. Take for illustration, the cases of two employees drawing the same pay with the same length of service - one retiring on 31st December 2006 and the other retiring in 31st January 2007. Now the former will get his pension revised as gross pension x (1.688 +0.4) i.e., gross pension x 2.088. The later, on the other hand, will get his pay revised as basic pay x 1.688x1.3 and will get a pension of 50 % on his revised pay. Thus if Rs.10000/- is the pay of both in December 2006, the former will get his Rs.5000/- gross pension revised as Rs 5000 x 2.088= Rs 10440. The latter will however get his pay of Rs.10000/- revised as 21950/-(due to rounding off to next 10) and get his gross pension fixed at 50 % of revised pay i.e., 10975/-. The difference will be Rs.535/- and will increase with every DA sanctioned in every quarter. This is the clear discrimination based on the date of retirement which was held bad in law by SC judgments and the 5th CPC gave a recommendation to set it right for all including those who retired in 1960s and which was accepted and implemented by the Central Government. **If it is really the proposal of DoT to extend 40 % fitment to BSNL absorbed pensioners, then it is trying to put the clock in the reverse direction.**

While stating the above we only want to assert that there should be no discrimination between the past and present pensioners. No discrimination means the past pensioner should not get a rupee less in pension. Likewise he cannot get a rupee more as well.

Can Pension be revised from January 2006 for past pensioners of BSNL ?

Now having got the news that the DoT is proposing to give 40 % fitment benefit very like VI CPC some thought that it would be prudent to ask for the revision of pension w.e.f. 01-01-2006 assuming that the past pensioners will get the arrears for one year more. In their anxiety to get arrears of one more year, they failed to realize that their suggestion is impracticable and suicidal. **The basic question is that whether the pension can be revised on a date prior to the date of revision of the pay scales of the serving employees ?**

Again if pension is revised w.e.f. January 2006 then the IDA as on 01-01-2006 which was 58.1 % only can be taken into for fixation and not the IDA of 68.8 %. **Already one Union of serving employees had written to Telecom Commission suggesting 40 % fitment over 58.1 % DA as on January 2006.** That means with the given dispensation the revised pension of a past pensioner getting gross pension of Rs 5000 will be Rs 5000x (1.581+0.4) i.e., 5000 x 1.981 = Rs. 9905/- which will be further less by another Rs.535/-. This means that it will be less by Rs.1070/- than the revised pension amount of Rs. 10975/- that he is actually eligible to get. True, he will get one year arrears more at the rate of Rs.2000/- per month. (40 % of Rs 5000 i.e his pre-revised gross pension). This comes to Rs.24000/-. But the loss of Rs.1070/- p.m. from 01-01-2007 will offset the gain of one year additional arrears of Rs.24000/- in just 22 months i.e. from January 2007 to October 2008. This means that after the said gain is

offset by the loss upto October 2008, there will be further loss of Rs.1070/- per month from November 2008. As on date i.e. April 2010 itself, it is 18 months and the net loss will be Rs.1070/-x 18 = Rs.19260/- This loss of Rs.1070/- per month will further increase with every DA sanctioned in every quarter.

Now the next pay revision is due in January 2017. We may find out the impact of 40% fitment benefit as given to the CG Employees on BSNL pensioners. **With 40 % fitment benefit as per VI CPC, if given from January 2007, the loss in next 10 years would be Rs 535x12x10=Rs 64200/-.** **With 40 % fitment benefit as per VI CPC, if given from January 2006, the loss would be Rs. 1070x12x10= Rs.128400/- and off setting the gain of Rs.24000/- in whole 2006, the net loss in next 10 years would be Rs. 104400/-.**

Not only that. This loss will further increase with every DA sanctioned in every quarter. The increase in AICPI for 3 years from January 1997 to January 2000 was 25.5 % resulting in IDA DA of 25.5 % on 01-01-2000. (On 01-10-2000, it was 28% when absorption in BSNL took place). Now the price increase is steeper than in the past 3 years from January 2007 to January 2010, the IDA DA is 30.9 % on 01-01-2010. The IDA in 10 year period from January 1997 to January 2007 rose from zero to 68.8 %. Now if the present trend continues in inflation, the IDA DA will be well above 80 % or may even touch 100 %. Now since the IDA DA rises over the period of 10 years, assuming it rises uniformly, then the average rise is 40 %. That means taking the DA factor also into account, if the loss is worked out, it would be:

With 40 % fitment benefit as per VI CPC *if given from January 2007*, the loss would be Rs.535x 12x10 = Rs. 64200/- + 40 % of Rs. 64200 = **Rs 89880/-**

With 40 % fitment benefit as per VI CPC *if given from Jan 2006* the loss would be Rs. 1070x 12x10 = Rs.128400/- and off setting the gain of Rs.24000/- in 2006, the net loss would be Rs. 104400/ plus 40 % of 104400 = **Rs 146160/-.**

Not only that. All these are worked out without taking DA merger benefit for pension fixation. If subsequently DA merger benefit is allowed for pay fixation and the fitment formula becomes $1.782 \times 1.3 = 2.3166$ then past pensioners are also to get the fitment benefit. But if the pension is revised from 01-01-2006 then you will not get the DA merger fitment benefit even if it is allowed for serving employees since the DA merger is w.e.f. 01-01-2007 only. Therefore. the loss will be very huge.

I wish the pensioners - specially the well wishers of BSNL pensioners do some homework before jumping on knee jerk reactions to the stated proposals of DoT as heard by them which will be a great service to the pensioners.

While I view the suggestion of revision of pension, I do not analyse on the loss alone. This loss was pointed out only for the sake of clarity for those who may think of an arrears of additional one year. Apart from this, the revision of pension w.e.f. January 2006 for BSNL pensioners will be impracticable since

pension cannot be revised prior to the revision of the pay scales of the serving employees. DoT cannot go on a different path other than the established path followed by FCI and Port Trust. We further analyse as below:

If the pension is revised w.e.f. January 2006 then the DA will be based on the AICPI of January 2006. That means it would be CDA DA. But will the BSNL pensioners are eligible to get IDA pay and CDA DA? Further, the IDA DA is revised every quarter by DPE and the CDA DA once in six months only by DoP. Though CDA DA may be marginally more (4.1 % as on January 2010) will not a pensioner suffer a further loss due to the lesser frequency of CDA DA? Further, Sub Rule 10 of Rule 37 A clearly stipulates that the DA will be IDA DA only. Can the Sub rule 10 of Rule 37 A be negated ?

Again what about the persons who retired from January 2006 to December 2006. With their pay scales in pre revised scales on the date of their retirement, their pension will be 50 % of last pay drawn as per sub Rule 9 of Rule 37 A. Now he gets a gross pension of 50 % of pay and a DA of 58.1 % to 65.2 % based on his date of retirement from January to December 2006. Now if you want to revises the pension of past pensioners who retired prior to January 2006 in January 2006 itself, when and how would you be able to revise the pension of those who retired from January 2006 to December 2006 ? Well, their pension cannot be revised in January 2006 when they were in service. If you revise their pension on the next day of their retirement, will not they get a pension 40 % higher than the 50 % pension which they were eligible right from the date of retirement till December 2006 ? Is it possible ? If you do not revise their pension on the date of their retirement they will get far less than the person who retired prior to January 2006. Again even though it may look as if they get higher pension of 40 % (Rs.2000/- in case of a person whose last pay is 10000/-), the gain upto December 2006 in their case will be only between Rs Zero to Rs 22000/- (and not 24000) depending on whether their date of retirement is from January 2006 to December 2006. Whereas, their loss from January 2007 will be the same as of any other so that their net loss upto 2017 will still be higher for them.

Any benefit in future pension revision if Govt. fixation is given ?

Proponents of the proposal of giving fitment formula very like Central Government pensioners argue that though at present the fitment formula in BSNL which is 2.1944 (1.688 x 1.3) against the Central Government fitment formula of 2.088 (1.688+0.4), during next pay revision BSNL may turn red and the employees will not get a higher fitment than the Central Govt. The issue to be considered is not in monetary terms of gain or loss but should be seen what is due as per settled law on this issue. However for the benefit of those pessimists who think BSNL will give lesser fitment formula than Central Government in next pay revision in 2017, the gain and loss is also worked out here.

For a person having his last pay as Rs.10000/- i.e., pre revised pension as Rs 5000 and if the pension is revised w.e.f. 01-01-2007, we have shown

above that the net loss will be Rs.89880/- till December 2016 i.e. a day before the next pay revision for serving employees in the PSUs comes into effect.

Now in percentage terms, the loss will be the multiplication factor difference 0.1064 (2.1944-2.088) i.e., 10.64 % of the pre revised gross pension. Now this loss is 10.64 % of his monthly pension. That means in next 10 years i.e., 120 months his loss will be $10.64 \times 120 = 1276.8$ %. Adding the average DA ranging from zero to 80 % over 10 years, the loss will be $1276.8 + (1276.8 \times 0.4) = 1276.8 + 510.72 = 1787.52$. say 1790. That is the loss in 10 years will be 1790 % of his monthly pre revised pension. Now assuming that in the year 2017 the Central Govt. may give a higher fitment than BSNL what could be the difference to equalize the loss of 1790 % suffered upto 2017 ?

Now the next fitment will be over and above the pension plus DA as on January 2017. The pension has suffered a loss of 10.64 %. The DA is likely to be above 80 % as per projection of inflation in next 10 years. Already the DA is 30.9 % in 3 years upto 01-01-2010. That means adding the 80 % DA to 10.64 % less pension, the gross difference in pension as on December 2016 will be $10.64 \times 1.8 = 19.152$ %. That is while you compare the pension as on December 2016, it will be 19.152 % less in case the Central Govt fitment of 40 % given in 2007 compared to PSU fixation of 30 %.

So with an initial pension + DA less by 19.152 % prior to revision in 2017 only if the fitment formula of Central Government. is 30 % higher than the fitment formula offered by the BSNL (i.e. assuming Central Govt. gives 40 % and BSNL gives just 10 % in next pay revision), then the revised pension in 2017 will be higher. Such a huge difference is not imaginable.

Now even if the difference in fitment benefit in Govt is 30 % higher than the fitment in BSNL in 2017 and your pension becomes higher, you can calculate how many years it will take for you to equalize the loss suffered by you from 2007 to 2017. It will be 6 years.

For your reference the calculation sheet is attached herewith working out the above for a gross pre revised pension of Rs1000/-. Every one of you may work out on your present gross pension and see for yourself in actual monetary terms. [\[Click here to access the calculation sheet: www.aibsnlrea.org/writeup/prtensioncalculation.xls\]](http://www.aibsnlrea.org/writeup/prtensioncalculation.xls)

As on January 2007, the age profile of a BSNL pensioner will be from 61 to 66 years. (Those retired in October 2000 i.e. immediately after their absorption will be 66 years 2 months as on January 2007). Now when the next pay revision takes place in 2017, their age profile will be from 71 to 76 years. And even if the fitment formula given by Central Government is 30 % higher than the fitment formula to be given by BSNL and also the revised pension in 2017 is higher it will take another 6 years to make good the loss suffered from 2007 to 2017. That is the loss will be made good only in 2023. And then only you stand to gain. Very good. But in 2023, the age profile of the past pensioners who retired prior to January 2007 will be 77 to 82 years. **So after 82 years of age**

you stand to gain that too *if the fitment formula of Central Govt is 30 % higher than the fitment formula of BSNL in 2017.*

In my earlier write up hosted in the website regarding the benefits of 6th CPC for BSNL absorbed pensioners, I had already conveyed my wish that all our absorbed employees live more than a century and get the 100 % additional pension recommended by 6th CPC and also accepted by the Government for the pensioners including absorbed BSNL pensioners. Now again I sincerely repeat my wishes. But alas! The statistics points out otherwise. The pensioners who live beyond 80 years is just 4.5 % of all pensioners.

I again make a fervent appeal to one and all to do a good analysis and home work in all sensitive issues before making any knee jerk suggestions and thereby allow the Administration to unsettle any settled issue to the disadvantage of the pensioners..

ooooOOOOoooo

Note: *If any body wants further queries on this issue of pension revision, the author may be contacted in his e-mail address rathan_aangarai@yahoo.com. After sorting out the queries every month the reply will hosted in website in the 2nd week of next month. This delay is only due to the fact that the author makes frequent tours to other places and may not be available always.*