

PENSION-REVISION-CONFUSION

(Part 2)

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In our earlier part of the article on the above topic, we had stated that "Revision of pension" is not in the provisions of CCS (Pension) Rules 1972. Then how the Central Government pensioners are getting revision of pension? We had also stated that making recommendation for revision of pension for a BSNL pensioner is not in the domain of a CPC. Nor the same is in the domain of a PRC or wage revision committee to suggest revision of pension to BSNL pensioners, since our pension is paid by Government. Then how we, the BSNL pensioners got revision of pension w.e.f. 01-01-2007?

If you go through our earlier article "Pension-Revision-Tension" uploaded in our website on 16th April 2010, we have clearly pointed out that it is because of the settled law based on various judgements of the Hon'ble Supreme Court- the most notable one being the case of D.S.Nakara.

It is a pity that those who pay lip service to the great fighter D.S.Nakara by celebrating 'Pensioners' Day' on 17th December, the day the said Judgement of Hon'ble Supreme Court was delivered, have never gone through the judgement in full or understood the spirit of the landmark judgement. It is very like performing "thithi" or observing "memory day" of our forefathers without understanding or adhering to even a bit of what they advised us.

Let us analyse the issue further.

Pensioners form a homogeneous class. They cannot be classified into subcategories based on the date of retirement. There cannot be a disparity in pension between the past and present pensioners. These are the spirit of various judgements of the Hon'ble Supreme Court- the notable one being the case of D.S. Nakara as already said.

Prior to 5th Central Pay Commission, the pensioners were not given any fitment benefit or equal fitment benefit which was given to the serving employees. This created a condition that a person retiring in senior rank in 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. TESA (I) took up this issue with V CPC and asked for one cadre one pension concept. Thanks to the landmark judgments of the Hon'ble Supreme Court, the fifth Central Pay Commission recommended that the fitment formula given to the serving employees should be extended to the past pensioners as well. Not only that. The 5th Central Pay Commission recommended that the pension of the past pensioners, at whatever date they would 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 is also be not lower than 50 % of the minimum of the pay scale of the cadre in which the employee retired i.e., one cadre one pension concept as asked for by TESA (I).

The 6th Central Pay Commission, vide its Para 5.1.47, had recommended that in order to maintain the existing modified parity between present and future retirees, it will be necessary to allow the same fitment benefit as is being recommended for the existing Government employees.

So it should be clear to one and all that as per the judgement of the Hon'ble Supreme Court, there should be no discrimination and disparity between past and future pensioners. As would be seen from 5thCPC and 6thCPC recommendations, parity between the present and future retirees would be available only when the same fitment benefit as being given to the serving employees in their pay revision is given to the pensioners in their revision of pension.

Thus it is a settled law that right from 1996 that the pension of the past pensioners is to be revised with the same fitment benefit and with effect from the same date that is given for serving employees. This is implemented in Central Government. It is implemented in PSUs like Port trust and FCI. It is implemented in case of BSNL pensioners also that their pension was revised w.e.f. 01.01.2007 by DOT order dated 15.03.2011 with the same date of effect and with the same fitment benefit that was given to the serving employees of BSNL.

So one should remember that the past pensioners get pension revision as per the settled law that there cannot be any distinction between past and future pensioners. That means irrespective of the date of retirement persons of the same cadre with same length of service should not have difference in their pension.

As we have stated earlier that there is wide variation between revision of pay and revision of pension. While the revision of pay depends on the negotiating power of the Unions/associations the revision of pension is based only on the settled law. It is not on any hard bargaining. After all the pensioners Associations cannot call for a strike. The settled law that there should be no disparity between past and future pensioners has stood the test of time for over two decades and it is the only favourable one on revision of pension.

The stand of a few pensioners' associations that first pension fixation immediately on superannuation is only linked with pay structure; but subsequent pension revisions take place based on existing pension/family pension plus DR at that point of time and a recommended fitment benefit of CPC and no way linked with pay is really astonishing which shows their total ignorance to the Rules and settled laws. We have pointed out, as above, that pension revision is not in the CCS (Pension) Rules and the revision of pension is given only as per the settled law that

is obtained after D.S.Nakara case. This we had explained more in detail in our earlier write up "Pension-Revision-Tension" written under similar circumstances and uploaded in our website on 16th April 2010. So we do not wish to elaborate it again.

However, let us analyze what would be the outcome of the stand of the said pensioners' associations, if it is implemented in the present context.

The pensioners' associations air their view of pension revision as per 7th CPC only because of their fear that BSNL is in red or not making enough profit and so would not give revision of pay or a higher fitment benefit. The 7th CPC has recommended a multiplication factor of 2.57 which works out to a fitment benefit of 14.22 % only. The revision of pay in BSNL is due on January, 2017. So let us analyse two scenario:-

(1) that in January, 2017 BSNL gives pay revision with lower fitment benefit say 10 %.

(2) that in January, 2017 BSNL gives pay revision with higher fitment benefit say 16 %.

The present IDA DA as on April 2016 is 112.4 %.

At present rate of inflation, it is expected to be 125 % as on 01-01-2017.

Now let us calculate the outcome as per proposition (1) above i.e "that BSNL gives a lower fitment say 10 % in January, 2017".

Let us take the case of Mr. A and Mr. B both in E 4 scale with equal pay of Rs. 40,000/- as on December, 2016 for the sake of our analysis.

Mr. A retires in December 2016. Mr. B retires in January 2017.

	Mr. A	Mr.B
Pay as on December 2016	Rs. 40,000/-	Rs.40,000/-
Date of retirement	DECEMBER, 2016	JANUARY, 2017
Pension Fixed as 50 % of last pay drawn in 31 st Dec 2016 since retired in December, 2016	Rs.20000/-	-----
Revision of pension as per 7 th CPC with 14.22 % Fitment benefit for Mr.A in January, 2017.	Pension 20000/- DA 125 % = 25000/- Total pension + DA = 45000/- Fitment benefit 14.22 % = 45,000 x 14.22/100 = 6399/- Revised Gross pension = (45000 + 6399) = 51399/-	In service, so gets revision of pay at fitment benefit given by BSNL on 1.1.2017. A lower fitment of 10% is assumed as per scenario (1) as stated earlier.

Revision of pay as per BSNL giving fitment benefit of 10 % as on 01.01.2017. Fixation of pay for Mr.B in January, 2017.	-----	Pay Rs.40000/- DA 125 % i.e. Rs.50000/- Total pay + DA = 90,000/- Fitment benefit 10 % of BSNL i.e. 90000 x 10/100 = 9000/- Total revised pay Rs.99000/-
Pension Fixed on retirement for Mr.B who retires on Jan 2017. Pension is 50 % of last pay drawn		Last pay drawn 99000/- Pension fixed 99000/2= Rs.49500/-
February, 2017	Pension Rs.51399/-	Pension Rs.49500/-
Difference in Pension	Draws Rs.1899/- higher pension than B.	Draws lower pension of Rs.1899/- than A.

Thus, there is a clearcut disparity in pension among the two pensioners A and B.

So, when the fitment benefit expected from BSNL in 2017 is lower than what has been recommended by 7th CPC, then Mr. A who retired in December, 2016 (i.e. one month prior to January, 2017) would get more pension than the person of same pay who retired just a month later in January, 2017. Is it not a disparity between past and future pensioners?

Would it not cause disparity between Mr. A and Mr. B? Would it not be a discrimination between past and future pensioner? Will it stand the test of D.S. Nakara case? When it is said that the pensioners form a homogeneous class and there cannot be any discrimination between past and future pensioners based on the date of their retirement as envisaged by the judgement of Hon'ble Supreme Court in the case of D.S. Nakara, it means that neither the past pensioner should get less than the future pensioner nor the future pensioner should get less than the past pensioner.

However, on such a scenario even if it is not as per law or would not stand the scrutiny of Courts, the past pensioner would surely be happy. But what about the future pensioner who would be on service and likely to retire later on or after January, 2017? Would he like to get less pension compared to the person who was in the same cadre drawing the same pay and retired just a month earlier? **It is most unfortunate that even some of the Unions/associations of serving employees are saying that BSNL pensioners should get the same fitment benefit that is given by the 7th CPC without doing any home work of its implications. Is it not a total betrayal of their present membership? Of course it is upto the serving employees to take note of the unprincipled and retrograde stand of their Unions/associations. However, their stand being in violation of settled law will not be found acceptable by competent authority.**

On the other hand, let us consider the second scenario that BSNL turns into profit making PSU next year or the Unions/associations are so capable of wresting a higher fitment benefit in the pay say 16% fitment benefit just marginally higher than 14.22.% as recommended by 7th CPC.

Mr. A and Mr. B both in E 4 scale with equal pay of Rs. 40,000/- as on December, 2016.

Mr. A retires in December, 2016. . . . Mr. B retires in January,2017.

	Mr. A	Mr.B
Pay as on December, 2016	Rs. 40,000/-	Rs. 40,000/-
Date of Retirement	December, 2016	January, 2017
Pension Fixed as 50 % of last pay drawn in 31 st Dec 2016	Rs.20000/-	-----
Revision of pension as per 7 th CPC with 14.22 % Fitment benefit for Mr.A in January 2017.	Pension 20000/- DA 125 % = 25000/- Total pension + DA =45000/- Fitment benefit 14.22 % = 45,000x 14.22/100=6399/- RevisedGross pension =45000+6399 = 51399/-	In service, so gets revision of pay at fitment benefit given by BSNL. A higher fitment of 16% is assumed as per scenario (2) as stated earlier.
Revision of pay as per BSNL giving fitment benefit of 16 % as on 01-01-2017. Fixation of pay for Mr.B in January, 2017. Pension Fixed on retirement for Mr.B who retires on January, 2017. Pension is 50 % of last pay drawn	-----	Pay Rs.40000/- DA 125 % . . . Rs.50000/- Total pay + DA = 90,000/- Fitment benefit 16 % of BSNL i.e. 90000 x 16/100 = 14400/- Total revised pay Rs.104400/- Last pay drawn 104400/- Pension fixed 104400/2= Rs.52200/-
February, 2017	Pension Rs.51399/-	Pension Rs.52200/-
Difference in Pension	Draws Rs.801/- lower pension Than Mr. B	Draws Rs.801/- higher pension than MrA

Thus, there is a clear cut disparity in pension among the two pensioners Mr. A and Mr. B.

So when the fitment benefit expected from BSNL in 2017 is higher than what is recommended by 7th CPC, then Mr. A who retired in December, 2016 (i.e. one month prior to January, 2017) would get less pension than the person of same pay who retired just a month later in January, 2017. Is it also not a disparity between past and future pensioners?

These examples, though worked out for Rs. 40,000/- pay on E 4 scale, equally apply across all cadres, all scales and while comparing any two employees having equal pay.

So, if the fixation of pension is as per last pay drawn in BSNL and revision of pension should be as per 7th CPC as demanded by a few pensioners' associations, then whether the Fitment benefit is higher in CPC than in BSNL or higher in BSNL than in CPC on either way, there would be a clear cut discrimination and disparity between the past and future pensioners. As that the

discrimination arises due to the date of retirement and as such the homogeneous class of pensioners is made into sub categories based on the date of retirement, it is much against the spirit of the judgement of Hon'ble Supreme Court in the case of D.S. Nakara.

We know pretty well that the above said demand is inconceivable and cannot be implemented. Let us just for the sake of argument see what would happen if it is implemented.

As stated earlier the revision of pension is not based on your bargaining power. It is by a settled law that there cannot be any disparity between the past and future pensioners. If you turn the clock back prior to 1986 and unsettle the settled law and disconnect the link between the past and future pensioner in receipt of pension, then even **if no revision in pension is given henceforth you cannot agitate anywhere including a Court of Law.**

The present standing rules and laws are obtained after a great struggle by the leaders of our earlier times who had a vision. Our sincere pray to one and all. Please for heaven's sake do not topple the apple cart.

P.S.:- Even when some pensioners' associations had been raising the demand in their memoranda to 7th CPC to recommend the revision of pension of BSNL pensioners as per 7th CPC, we were aware that it is impracticable. But at that time, we did not give our considered opinion. But their much publicized demand now finds no mention in 7th CPC recommendations. On our part, we took up with 7th CPC only for improvements in the rules related to provisions in the CCS (Pension) Rules 1972 like Gratuity, restoration of commuted value of pension, additional pension for old age pensioners etc., and not revision of pension of BSNL pensioners. **We are happy to say that 7th CPC has indeed recommended Gratuity in the line of our submission.** We did not take up revision of pension for BSNL pensioners with CPC, since we were fully aware that it is not in the domain of the CPC. We refrained earlier from commenting on the memoranda of other associations at that stage, since we thought that better sense will prevail on them at least after getting the 7th CPC report. Now 7th CPC had given its report and it is before the expert committee. We understand that these associations are presenting their case before the expert committee as well. We are not making any such demand since we feel the making of such a demand would be a mocking. We are also not going to oppose them in that forum as we did not in 7th CPC.

Note : Feel free to air your views and comments on this article and send to the author at his e mail address rathan_aangarai@yahoo.com or send SMS to his mobile 9444071700.

If anybody 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 be hosted in the website.