



Regd. No. T1833/09

ALL INDIA BSNL PENSIONERS' Welfare Association

Central Head Quarters [Regd. No. T 1833/09]
Identified & Registered under 'Pensioners Portal'

D No.54-19-31, Lakshmi Gokul Enclave, LIC Colony, Vijayawada 520008

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Date: 16/10/2024

The Secretary,
Department of Telecom,
Sanchar Bhawan,
20, Asoka Road,
New Delhi-110001

Sir,

Sub: Grant of Notional increment for the purpose of pension – reg
Ref: DoPT OM No.19/116/2024-Pers.Pol.(Pay)(Pt) dated 14/10/2024

The above issue has a long history which was settled by the intervention of Hon. Supreme Court. In P Ayyamperumal (retired as ADG in Customs & Excise Department, Chennai) Vs Uol case, Hon Madras HC pronounced the judgement in his favour on **15/9/2017** which was challenged by Uol in Hon Supreme Court and the SLP was dismissed on **23/7/2018**. The individual got the benefit of 'notional increment' and he got all the pensionary benefits revised accordingly.

Immediately on **27/12/2018** we wrote a letter to Secretary, DoP&PW, requesting for issuing a general order (copy attached for ready reference).

Later several Tribunals and High Courts delivered similar judgements and they were implemented to the respective individuals.

The above-referred DoPT OM traces the history of judicial pronouncements in the order. The above DoPT OM directs to grant 'notional increment' from **1/5/2023** limited for the purpose of revising the pension. This is an interim order pending disposal of review petition by Hon. Supreme Court which may consider to extend the benefit for all other terminal benefits.

DoT may have a doubt whether this order has to be implemented to the absorbed BSNL employees. To clarify the doubt, we would like to draw your kind attention to the latest judgement pronounced by Hon. CAT, Allahabad Division Bench (copy attached for ready reference) on **1/4/2024** in Prabhu Dayal Vs BSNL in OA No.82 of 2024. CAO (Pension), O/o CCA, U.P East, Lucknow is the 4th respondent in this O.A. The applicant was working as Senior Telecom Office Assistant (STOA) and retired on **31/12/2008**. We quote para 13 of the judgement hereunder:-

In view of the above, the O.A is partly allowed. The respondents are directed as follow:

- (i) The applicant is entitled to get the increment which was payable on 1/1/2009**
- (ii) The applicant is entitled to the arrears of notional increment for the period of three years just before from the date of filing i.e. 19/01/2024 of this O.A**
- (iii) The respondents will issue the revised PPO within a period of four months from the date of receiving the certified copy of this order and will pay the arrear within a period of 4 months, otherwise the simple interest will also be payable at the rate of 6% per annum from the date of filing of this O.A. i.e. till the date of actual payment.**

Several absorbed BSNL employees also approached various judicial forums and obtained favourable judgements. So, DoT need not have any doubt about the applicability to BSNL absorbed employees.

In view of the above factors, we request for implementation of the above-referred DoPT OM dated 14/10/2024 to all eligible absorbed BSNL employees. DoT may issue a general order to the effect with a copy to us.

Thanking you

Yours faithfully,



(V Vara Prasad)
General Secretary.

Encl:

- 1) Our letter dated 27/12/2018 to Secretary, DoP&PW
- 2) CAT, Allahabad Bench order dated 1/4/2024

Copy to:-

Controller General of Communication Accounts, New Delhi
Secretary, DoPT, New Delhi

Prabhu Dayal vs Bharat Sanchar Nigam Limited on 1 April, 2024

(Open Court)

Central Administrative Tribunal,
Allahabad Bench Allahabad

Original Application No. 82 of 2024

Allahabad, this the 01st day of April, 2024.

Hon'ble Mr. Justice B.K. Shrivastava, Member (J)

Prabhu Dayal aged about 75 years, Son of Late Shri Kalloo Ram, retired on 31.12.2008 from the post of Senior Telecom Office Assistant (Sr. T.A.O.) Resident of 238-D/4, Jayantipur, Prayagraj.

.....Applicant

By Advocate: Shri S.K. Kushwaha

Versus

1. The Bharat Sanchar Nigam Limited through its Chairman-cum Managing Director (B.S.N.L.), Corporate Office, Harish Chandra Mathur Lane, New Delhi-110001.
2. The General Manager, Telecom, Allahabad/Prayagraj.
3. The General Manager, Telecom, Agra.
4. The Chief Accounts Officer (Pension), O/o CCA U.P. East, Lucknow, Gomti Nagar, Lucknow-226001.

...Respondents

By Advocate: Shri Anil Kant Tripathi/Shri D.S. Shukla.

ORDER

This O.A. has been filed by the applicant on 19.01.2024 under Section 19 of the Administrative Tribunals Act, 1985 for the following relief(s) stated in para-8 of the O.A.:-

"(i) This Hon'ble Tribunal may be pleased to direct the respondents to grant the applicant one notional increment for the period from 01st January 2008 to 31st December 2008 for purposes of pension and pensionary benefits and accordingly re-fix his pension and pensionary benefits and pay the arrears along with admissible

interest thereupon.

(ii) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicants.

(iii) Award the costs of the original application in favour of the applicant."

2. As per the case of applicant, he was appointed on 03.08.1971 and retired on 31.12.2008 from the post of Senior Telecom Office Assistant (Sr. T.A.O.), Prayagraj.

3. After implementation of Sixth Pay Commission, the date of increment was fixed as 01st January/01st July of every year for all employees. As per the case of applicant, the increment payable from the next date of retirement i.e. 01st January has not been granted by the respondents to him. He was entitled to the aforesaid increment and the pension should be fixed after awarding the notional increment. Therefore, as per the applicant, he was entitled to the increment payable from the next date of the retirement and also entitled for the arrears of the aforesaid increment.

4. On the other side, the respondents opposed the claim of applicant and it is submitted that the increment payable from 01st January cannot be granted to the applicant because he was retired one day before on 31st December of the concerned year.

5. As far as the question of granting the notional increment is concerned, the law has been settled by Hon'ble Supreme Court in the Director (Admn. and HR) KPTCL & Ors. vs. C.P. Mundinamani & Ors., (2003) SCC online S.C. 401 (Civil Appeal No.(s) 2471/2023 decided on 11.04.2023). The Supreme Court considered the divergent views of different High Courts on the issue:-

"Whether an employee who has earned the annual increment is entitled to the same despite the facts that he has retired on the very next day of earning the increment?"

The Supreme Court discussed the manner and importance of increment and observed that denying the benefit of annual increment which he has already earned while rendering a specified period of service with good conduct and efficiency in the last preceding year, would be punishing a person for no fault. The Supreme Court did not approve the contrary view taken by the Full Bench of Andhra Pradesh High Court and the view of Kerala and Himachal Pradesh, High Courts and approved the view of Madras, Allahabad, M.P., Orissa, and Gujrat High Courts. In para 6.7, the Supreme Court said:-

"6.7 Similar view has also been expressed by different High Courts, namely, the Gujarat High Court, the Madhya Pradesh High Court, the Orissa High Court and the Madras High Court. As observed hereinabove, to interpret Regulation 40(1) of the Regulations in the manner in which the appellants have understood and/or interpreted would lead to arbitrariness and denying a government servant the benefit of annual increment which he has already earned while rendering specified period of service with good conduct and efficiently in the last preceding year. It would be punishing

a person for no fault of him. As observed hereinabove, the increment can be withheld only by way of punishment or he has not performed the duty efficiently. Any interpretation which would lead to arbitrariness and/or unreasonableness should be avoided. If the interpretation as suggested on behalf of the appellants and the view taken by the Full Bench of the Andhra Pradesh High Court is accepted, in that case it would tantamount to denying a government servant the annual increment which he has earned for the services he has rendered over a year subject to his good behaviour. The entitlement to receive increment therefore crystallises when the government servant completes requisite length of service with good conduct and becomes payable on the succeeding day. In the present case the word "accrue" should be understood liberally and would mean payable on the succeeding day. Any contrary view would lead to arbitrariness and unreasonableness and denying a government servant legitimate one annual increment though he is entitled to for rendering the services over a year with good behaviour and efficiently and therefore, such a narrow interpretation should be avoided. We are in complete agreement with the view taken by the Madras High Court in the case of P. Ayyamperumal (supra); the Delhi High Court in the case of Gopal Singh (supra); the Allahabad High Court in the case of Nand Vijay Singh (supra); the Madhya Pradesh High Court in the case of Yogendra Singh Bhadauria (supra); the Orissa High Court in the case of AFR Arun Kumar Biswal (supra); and the Gujarat High Court in the case of Takhatsinh Udesinh Songara (supra). We do not approve the contrary view taken by the Full Bench of the Andhra Pradesh High Court in the case of Principal Accountant-General, Andhra Pradesh (supra) and the decisions of the Kerala High Court in the case of Union of India Vs. Pavithran (O.P.(CAT) No. 111/2020 decided on 22.11.2022) and the Himachal Pradesh High Court in the case of Hari Prakash Vs. State of Himachal Pradesh & Ors. (CWP No. 2503/2016 decided on 06.11.2020)."

6. Therefore, the controversy has been settled by the Supreme Court and it has been held that the increment payable from 01st January will also be payable to the applicant who was retired on 31st December because the increment is payable for the service, already rendered by the applicant.

7. The respondents' counsel opposed the claim of applicant and cited the case of "Union of India and Others v. Tarsem Singh, (2008) 8 SCC 648" and submitted that if the claim is allowed then, the arrears will not be payable for the period exceeding of three years. The arrears can be paid only for a period of three years before the date of filing of the petition.

8. This O.A. has been filed before this Tribunal on 19.01.2024. The applicant was retired on 31.12.2008, therefore, the case of applicant has not been filed within the period of three years. After three years from the date of retirement, he filed the present O.A.

9. Whether the arrears for the whole period can be granted or the arrears should be restricted only for the period of three years before filing the present O.A.?

10. In the case of Rushibhai Jagdish bhai Pathak Vs. Bhavnagar Municipal Corporation, 2022[3] AISLJ 45 [Supreme Court] [18.5.2022] the 'continuing' cause of action and 'recurring' cause of action has been considered in the light of M.R. Gupta v. Union of India and Others,[(1995) 5 SCC 628] and Union of India and Others v. Tarsem Singh, (2008) 8 SCC 648 = 2009[1] SLJ 371 [SC]. The question of arrear in service matters also considered. The Supreme Court court in paras 10 to

13, observed and held as under:-

"10. At the same time, the law recognises a 'continuing' cause of action which may give rise to a 'recurring' cause of action as in the case of salary or pension. This Court in *M.R. Gupta v. Union of India and Others*, [(1995) 5 SCC 628] has held that so long as the employee is in service, a fresh cause of action would arise every month when they are paid their salary on the basis of a wrong computation made contrary to the rules. If the employee's claim is found to be correct on merits, they would be entitled to be paid according to the properly fixed pay-scale in future and the question of limitation would arise for recovery of the arrears for the past period. Court held that the arrears should be calculated and paid as long as they have not become time-barred. The entire claim for the past period should not be rejected.

11. Relying upon the aforesaid ratio, this Court in the case of *Union of India and Others v. Tarsem Singh*, [(2008) 8 SCC 648] while referring to the decision in *Shiv Dass v. Union of India and Others*, [(2007) 9 SCC 274] quoted the following passages from the latter decision:

"8...The High Court does not ordinarily permit a belated resort to the extraordinary remedy because it is likely to cause confusion and public inconvenience and bring in its train new injustices, and if writ jurisdiction is exercised after unreasonable delay, it may have the effect of inflicting not only hardship and inconvenience but also injustice on third parties. It was pointed out that when writ jurisdiction is invoked, unexplained delay coupled with the creation of third party rights in the meantime is an important factor which also weighs with the High Court in deciding whether or not to exercise such jurisdiction.

10. In the case of pension the cause of action actually continues from month to month. That, however, cannot be a ground to overlook delay in filing the petition. ... If petition is filed beyond a reasonable period say three years normally the Court would reject the same or restrict the relief which could be granted to a reasonable period of about three years."

In *Tarsem Singh* (supra), reference was also made to Section 22 of the Limitation Act, 1963, and the following passage from *Balakrishna Savalram Pujari Waghmare and Others Vs. Shree Dhyaneshwar Maharaj Sansthan and Others*, [AIR 1959 SC 798] which had explained the concept of continuing wrong in the context of Section 23 of the Limitation Act, 1908, corresponding to Section 22 of the Limitation Act, 1963, observing that:

"31...It is the very essence of a continuing wrong that it is an act which creates a continuing source of injury and renders the doer of the act responsible and liable for the continuance of the said injury. If the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. If, however, a wrongful act is of such a character that the injury

caused by it itself continues, then the act constitutes a continuing wrong. In this connection, it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury."

12. Accordingly, in *Tarsem Singh (supra)* it has been held that principles underlying 'continuing wrongs' and 'recurring /successive wrongs' have been applied to service law disputes. A 'continuing wrong' refers to a single wrongful act which causes a continuing injury. 'Recurring/successive wrongs' are those which occur periodically, each wrong giving rise to a distinct and separate cause of action. Having held so, this Court in *Tarsem Singh (supra)* had further elucidated some exceptions to the aforesaid rule in the following words:

"To summarise, normally, a belated service related claim will be rejected on the ground of delay and laches (where remedy is sought by filing a writ petition) or limitation (where remedy is sought by an application to the Administrative Tribunal). One of the exceptions to the said rule is cases relating to a continuing wrong. Where a service related claim is based on a continuing wrong, relief can be granted even if there is a long delay in seeking remedy, with reference to the date on which the continuing wrong commenced, if such continuing wrong creates a continuing source of injury. But there is an exception to the exception. If the grievance is in respect of any order or administrative decision which related to or affected several others also, and if the reopening of the issue would affect the settled rights of third parties, then the claim will not be entertained. For example, if the issue relates to payment or refixation of pay or pension, relief may be granted in spite of delay as it does not affect the rights of third parties. But if the claim involved issues relating to seniority or promotion, etc., affecting others, delay would render the claim stale and doctrine of laches/limitation will be applied. Insofar as the consequential relief of recovery of arrears for a past period is concerned, the principles relating to recurring/successive wrongs will apply. As a consequence, the High Courts will restrict the consequential relief relating to arrears normally to a period of three years prior to the date of filing of the writ petition."

13. In *Tarsem Singh (supra)*, the delay of 16 years in approaching the courts affected the consequential claim for arrears and thus, this Court set aside the direction to pay arrears for 16 years with interest. The Court restricted "the relief relating to arrears to only three years before the date of writ petition, or from the date of demand to date of writ petition, whichever was lesser". Further, the grant of interest on arrears was also denied.

11. The aforesaid ratio in *Tarsem Singh (supra)* has been followed in *State of Madhya Pradesh and Others v. Yogendra Shrivastava [(2010) 12 SCC 538]* and *Asger Ibrahim Amin v. Life Insurance Corporation of India[(2016) 13 SCC 797]*."

12. Therefore, it can be said that the matter regarding arrears has already been settled by the Supreme Court and the case of *Tarsem Singh (supra)* also defined in the case of *Rushi bhai (supra)*. Hence, the arrears cannot be granted for the period of more than three years.

13. In view of the above, the O.A. is partly allowed. The respondents are directed, as follow: -

"(i) The applicant is entitled to get the increment which was payable on 01.01.2009.

(ii) The applicant is entitled to the arrears of notional increment for the period of three years just before from the date of filing i.e. 19.01.2024 of this O.A.

(iii) The respondents will issue the revised PPO within a period of four months from the date of receiving the certified copy of this order and will pay the arrear within the period of 4 months, otherwise the simple interest will also be payable at the rate of 6% per annum from the date of filing of this O.A. i.e. till the date of actual payment.

14. No order as to costs.

(Justice B.K. Shrivastava) Member (J) /Shakuntala/

ALL INDIA BSNL PENSIONERS' WELFARE ASSOCIATION
Central Head Quarters [Regd. No. T 1833/09]
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Date: 27/12/2018

To
Secretary,
Department of Pension & Pensioners' Welfare,
Lok Nayak Bhawan,
Khan Market, New Delhi-110003

Sir,

Sub: Grant of notional increment for the purpose of pensionary benefits for those who completed one year on the date of retirement – Issuance of General orders requested

You may be well aware that the C.G. officials who retire on superannuation, even though they completed one year, (from the last increment) on the date of retirement, were denied increment on the plea that they were not in service on 1st of next month.

This injustice was challenged by one **Shri P.Ayyamperumal, retired as ADG in Customs & Excise department**, Chennai on **30/6/2013** before Hon. CAT, Chennai vide **OA No.310/00917/2015**. Hon. CAT, Madras rejected his prayer on the plea that the official is only entitled to increment on 1st July if he continued in service on that day vide order dated **21/3/2017**.

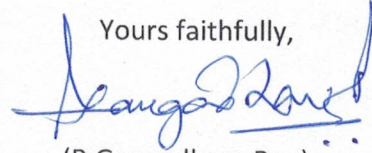
The petitioner challenged this order of Hon. CAT by filing a writ petition before Hon. High Court of Madras vide **WP No.15732/2017**. The respondents in this case include not only CAT, Madras **but also UoI represented by the Chairman, CBEC, North Block, Secretary, DoPT** etc. The petitioner quoted the judgement of Hon. High Court of Madras order dated **20/9/2012** (CDJ 2012 MHC 6525) in a case between Govt. of Tamilnadu Vs M.Balasubramaniam. Finally the Division Bench of Hon. High Court, Madras delivered the judgement on **15/9/2017** directing the respondents to grant a notional increment for the purpose of pensionary benefits. **UoI filed an SLP against this judgement before the Apex Court and the SLP (Civil) Diary Nos 22223/2018 was dismissed on 23/7/2018. So, it has reached the finality and it has become the law of the land.**

Further, we would like to state that **Govt. of Tamilnadu issued a G.O. No.311 on 31/12/2014** granting notional increment to such of those officials and a copy of which is herewith attached for your ready reference. In this connection in a writ petition (WP No.15107/2016 & WMP No.13159/2016) filed by Shri **S.Srinivasan Vs Govt. of Tamilnadu** before the Hon. **High Court, Madras**. Hon. High Court, Madras pronounced the judgement on **16/8/2017** stating that there is no cut-off date for eligibility but monetary benefit only is prospective i.e. 31/12/2014.

In the light of the above facts we request the DoP&PW to issue a general order for granting notional increment for the purpose of pensionary benefits for those who completed one year on the date of retirement on superannuation without insisting that the official should be on service on 1st of next month. In the interest of senior citizens please do not force them to resort to unnecessary litigation wasting the money, time and avoidable burden on the judiciary.

A line in reply is highly solicited.

Yours faithfully,



(P.Gangadhara Rao)

General Secretary.