

BSNL EMPLOYEES UNION

Recognised Union in BSNL

(Registered Under Indian Trade Union Act 1926. Regn.No.4896)

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BSNLEU / 422 (Wage)

08.10.2010

To

Shri D.P. De,
Sr. GM (Estt), BSNL CO,
Bharat Sanchar Bhawan,
New Delhi- 110 001

Sir,

Sub: - **Pay fixation in revised pay scales-case of those recruited in BSNL on or after 1-1-2007—Reg**

Ref: - **Discussion on Item No. in the Agenda of the National Council Meeting held on 31-8-2010**

This is with reference to the discussion on Items No. 2, 3, and 21 in the Agenda of the National Council meeting held on 31-8-2010, where in it was decided to continue the discussion on these issues, outside the forum of the National Council for exploring the possibility of a solution, pending further discussion in the next National Council meeting if required. In this connection the following is submitted for favour of your consideration:

1. As per Article 14 of the Constitution of India, all the citizens are to be treated equally and as per the Article 39(d) of the Constitution of India, there should be equal pay for equal work. The prescription to fix the revised pay of all those recruited on or after 1-1-2007 at the minimum of the revised pay scale on the date of their appointment clearly violates these two Articles of the Constitution, as illustrated below:-
 - a) With 30% fitment benefit on pay+68.8% DA, the pay of the official appointed as TTA on 1-12-2006 at Rs 7100/- minimum pay in the TTA pay scale would be revised to Rs 15590/- where as for the TTA recruited on or after 1-1-2007,(say on 1-2-2007) would be fixed at the minimum pay in the revised pay scale Rs 13600/- only. These two officials were doing equal work and drawing equal pay Rs 7100/- as on 1-2-2007 before implementation of revised pay scales. The official appointed as TTA on 1-12-2006 was eligible for increment on 1-12-2007 only, after completion of one year service. Before that date (i.e 1-12-2007) there was no cause for disturbing the equality between their wages. But because of wage revision that came into effect from 1-1-2007, the equality existing between them in their pay was disturbed. Without any reasonable change in their service condition (increment or promotion etc), their equal pay was made unequal and the junior appointed on 1-2-2007 was discriminated. In this connection, it is to be consciously and clearly examined whether the wage revision on 1-1-2007 is a sufficient cause for disturbing the equality between their pay that existed before their wage revision.

- b) The question whether such a date from which a revision in wages takes place, can classify reasonably without any arbitrariness the employees into two classes-those appointed before the date of wage revision and those appointed on or after the date of wage revision regarding their pay, has to be examined in the light of the relevant Articles of the Constitution of India, since BSNL as a PSU is bound to implement the Constitutional provisions. Such a question whether a particular classification is arbitrary or fair has been examined by the Hon'ble Supreme Court and it is relevant to note the following extracts from the Judgment dated 17-12-1982 given by a 5 judges Bench of the Hon'ble Supreme Court of India in D.S.Nakara and Ors Vs Union Of India in W.P.No. 5939-5941 of 1980:-

“15. Thus the fundamental principle is that Article 14 forbids class legislation but permits reasonable classification for the purpose of legislation which classification must satisfy the twin tests of classification being founded on an intelligible differential which distinguishes persons or thing that are grouped together from those that are left out of the group and that differentia must have a rational nexus to the object sought to be achieved by the statute in question.”

“42. If it appears to be undisputable, as it does to us that the pensioners for the purpose of pension benefits form a class, would this upward revision permit a homogenous class to be divided by arbitrarily fixing an eligibility criteria unrelated to purpose of revision, and would such classification be founded on some rational principle? The classification has to be based, as is well-settled, on some rational principle and the rational principle must have nexus to the objects sought to be achieved. We have set out the objects underlying the payment of pension. If the State considered it necessary to liberalise the pension scheme, we found no rational principle behind it for granting the same to those who retired subsequent to that date simultaneously denying the same to those who retired prior to that date. If the liberalization was considered necessary for augmenting social security in old age to Government servants then those who retired earlier cannot be worst off than those who retire later. Therefore this division which classified pensioners into two classes is not based on any rational principle and if the rational principle is the one of pensioners otherwise equally placed, it would be discriminatory. To illustrate, take two persons, one retired just a day prior and another a day just succeeding the specified date. Both were in the same pay bracket, the average emolument was the same and both had put equal number of years of service. How does a fortuitous circumstance of retiring a day earlier will have to be subject to ceiling of Rs 8100 p.a and average emolument to be worked out on 36 months salary while the other will have a ceiling of Rs 12000 p.a and average emolument will be computed on the basis of last ten months average. The artificial division stares into face and is unrelated to any principle and whatever principle, if there be any, has absolutely no nexus to the objects sought to be achieved by liberalizing the pension scheme. In fact this arbitrary division not only no nexus to the liberalized pension scheme but it is counter productive and runs counter to the whole gamut of pension scheme. The equal treatment guaranteed in Art. 14 is wholly violated in as much as the pension rules being statutory in character, since the specified date, the rules accord differential and discriminatory treatment to equals in the matter of commutation of pension. A 48 hours difference in the matter of retirement would have a traumatic effect. Division is thus arbitrary and unprincipled. Therefore the classification does not stand the test of Article 14.”

“65.-----we are satisfied that by introducing an arbitrary eligibility criteria ‘being in service and retiring subsequent to the specified date’ for being eligible for the liberalized pension scheme and thereby dividing a homogenous class, the classification being not based on any discernible principle and having been found wholly unrelated to the objects sought to be achieved by grant of liberalized pension and the eligibility criteria devised being thoroughly arbitrary, we are of the view that the eligibility for liberalized pension scheme of ‘being in service in the specified date and retiring subsequent to that date’ in impugned memoranda, Exhibits P-1 and P-2, violates Art.14 and unconstitutional and is struck down. Both the

memoranda shall be enforced and implemented as read shown under. In other words, in Exhibit P-1, the word : “that in respect of the Government servants who are in service on the 31st March 1979 and retiring from service on or after that date”, and in Ex. P-2, the words “the new rates of pension are effective from 1st April 1979 and will be applicable to all service officers who became/become non-effective on or after that date”, are unconstitutional and are struck down with this specification that the date mentioned therein will be relevant as being one from which the liberalized pension scheme becomes operative to all pensioners governed by 1972 Rules irrespective of the date of retirement. Omitting the unconstitutional part it is declared that all pensioners governed by the 1972 Rules and Army Pension Regulations shall be entitled to pension as computed under the liberalized pension scheme from the specified date, irrespective of the date of retirement, Arrears of pension prior to the specified date as per fresh computation is not admissible. Let a writ to that effect be issued. But in the circumstances of the case, there will be no order as to costs.”

- c) This judgment is the prevailing law of the land. The implication of this judgment is that the action of the State should not be arbitrary and it should be fair, treating its citizens equally, when they are similarly placed and belong to the same class. Evidently the intention behind wage revision is to apply it to all employees in BSNL. Thus as far as wage revision is concerned, all employees, whether recruited before or on or after 1-1-2007 form the same class and they cannot be classified differently without arbitrariness. If the intention is to raise the wages by 30%, it should be made applicable to all employees without linking it to their date of appointment. It is true that those recruited after 1-1-2007 have to be fixed at the minimum of the revised pay scale. But such a minimum cannot be fixed arbitrarily so as to disturb the existing equality. Although we have raised this issue including the legal implications during the wage negotiation, and demanded to fix the minimum in the revised scale by granting 30% fitment benefit on the minimum pay of the pre-revised scale, the management did not consider it. But in any case, Article 14 overrules all executive actions which are contrary to it. Hence it is necessary to review this issue and take appropriate remedial measure.
- d) Besides violating Article 14, this is also violation of Article 39(d) of the Constitution of India which prescribed equal wage for equal work, since the officials appointed on 1-12-2006 and on 1-2-2007 have drawn equal wage before wage revision, but unequal wage after wage revision, thus disturbing the equality.
- e) The issue has all the more become serious in view of the fact that many of the employees recruited after 1-1-2007 are getting emoluments after wage revision less than the emoluments they have drawn before wage revision, some from the date of their appointment and others some time after their date of appointment. For example a TTA appointed in November 2008 has drawn emoluments (Pay+DP+DA) of Rs 14974/- for November 2008 before wage revision and drawn Rs 15354/- after wage revision. But in October 2009, his emoluments in pre-revised scale was Rs 17696/-, whereas in revised scale, it was reduced to Rs 17555/-, with a reduction of Rs 141/-. In May 2010 his emoluments was Rs 19437/- whereas it was reduced to Rs 18886/-, with a reduction of Rs 551/-. While the wage revision order provided protection in case of those drawing less on their date of appointment by allowing the drawl of the difference as personal pay, it is not available in case the difference arises some time after the date of appointment. Even the formula of personal pay, where applicable, is not sufficient since the principle of equality under Article 14 is not followed and instead violated. Besides, the management so far could not find a solution for avoiding reduction in emoluments in these cases, when the reduction is arising some time after the date of appointment. The result is that instead of wage revision, it has become a wage reduction in case of these officials and it is total violation of all laws of the land.

2. This reduction in wages is against Section 12 of EPF Act which says “ **Employer not to reduce wages etc:** No employer in relation to an establishment to which any Scheme or the Insurance Scheme applies shall by reason only of his liability for the payment of any contribution to the Fund or the Insurance Fund or any charges under this Act or the Scheme or the Insurance Scheme reduce whether directly or indirectly the wages of any employee to whom the Scheme or the Insurance Scheme applies or the total quantum of benefits in the nature of old age pension gratuity provident fund or life insurance to which the employee is entitled under the terms of his employment express or implied.” In this connection, it is to be noted that because of this reduction in emoluments, there is reduction in EPF contribution also after wage revision, compared to what has been the contribution before wage revision.
3. Besides, the BSNL management already decided that the date of appointment is not the lone criterion for extending the benefit of 30% fitment benefit for those appointed after 1-1-2007. It issued Order No. 1-14/2009-PAT(BSNL) dated 16-4-2010 as per which the disparity in the pay of DR JTOs of 2005 batch who joined before 1-1-2007 and those who joined after 1-1-2007 has to be removed by granting Rs 21620/- pay(revised pay equal to the amount arrived at by granting 30% fitment benefit on pre-revised minimum pay Rs 9850) to the post 1-1-2007 appointees. Thus the management has brought another classification arbitrarily even among those appointed after 1-1-2007, whereas the classification between pre 1-1-2007 and post 1-1-2007 itself is arbitrary in the matter of wage revision as detailed above. In any case since the management itself thus declared that 30% fitment benefit can be extended to some of those recruited after 1-1-2007, it has to be extended to all without any discrimination.
4. It is thus clear that the discrimination in the matter of wage revision between pre 1-1-2007 and post 1-1-2007 appointees and consequent reduction in wage for those appointed on or after 1-1-2007 is illegal, unconstitutional, unwarranted and untenable and it requires immediate solution. We request to settle this problem by granting 30% fitment benefit to those appointed after 1-1-2007 on the pay they have drawn in their pre-revised scale on the date of their appointment. In this connection it is to be noted that the Tamilnadu State Government has amended the “Tamilnadu Revised Scales of Pay Rules, 2009” for avoiding the reduction in the emoluments of those appointed after wage revision by granting the fitment benefit to those appointed between 1-1-2006(Date of effect of Wage Revision) and 1-6-2009(Date of issue of the wage revision order), vide its G.O. Ms. No. 258 dated 23-6-2009, thus partially remedying this discrimination, though not fully. The fitment benefit should be extended to all appointed after wage revision by suitable increase in the minimum pay. This can be the only solution to avoid the reduction in wages for those appointed on or after 1-1-2007.
5. We shall be thankful for considering all these aspects of the problem and for causing orders for extending 30% fitment benefit to those appointed on or after 1-1-2007, as requested above.

Yours sincerely,



(P.Abhimanyu)
General Secretary