

Corporate Office
Pension Section, 5th floor
Bharat Sanchar Bhawan
H.C. Mathur Lane,
New Delhi-110001



भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)
BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

No.48-2/2021-Pen (B)

Dated: 02-07-2021

To

**All Heads of Circles/Telecom Districts/ Regions/Projects/
Telecom Stores/Telecom Factories & Other Administrative Offices
Bharat Sanchar Nigam Limited**

Sub: Grant of benefit of one notional increment for the pensionary benefits to those who had retired before drawing their next increment – Guidelines regarding defending the Court Cases.

Sir,

Of late, this Office has been receiving intimation from various Telecom Circles regarding filing of Court Cases in various benches of CAT by retired employees of BSNL, regarding grant of benefit of one notional increment for calculation of the pensionary benefits to those, who had retired before drawing their next increment. While filing Court Cases, all these applicants have sought the aforesaid benefit in pursuance of the Hon'ble High Court of Madras judgement dated 15/09/2017 in W.P. No. 15732 of 2017 in the case of P. Ayyamperumal Vs. Union of India & Ors.

2. As per rules, in order to earn the annual increments, the concerned employee has to be on duty on the 1st day of the month in which his/her annual increment falls. However, in the Court Cases filed by the retired employees of BSNL, the applicants, who had retired from service on attaining the age of superannuation on various dates, were not on duty on the 1st day of the month in which their annual increment falls. Hence, they are not entitled for drawl of annual increment on the next day of their retirement.

3. DoP&T vide its OM No. 1396752/2019-Estt (Pay-I) dated 11/11/2019 has clarified as under :-

“In so far as P. Ayyaperumal case is concerned, referred in the instant cases also, it is stated that the judgment Hon'ble High Court of Madras in P. Ayyamperumal case is in personam.

4. Further, DOP&T vide its O.M. No. 19/2/2018-Estt (Pay-I) dated 03/02/2021 has been intimated that the P. Ayyamperumal judgement is 'in personam' in nature. It has further been intimated that in a similar case, the Hon'ble Supreme Court, vide judgement dated 29/03/2019, while dismissing the SLP (C) Dy. No. 6468/2019 filed by DOT against the judgement dated 03/05/2017 of Hon'ble High Court, Lucknow Bench in W.P. No. 484/2010 in the matter of UOI & Ors. Vs. Sakha Ram Tripathy & Ors., has, *inter alia*, observed the following : “There is delay of 566 days in filing the special leave petition. We do not see any reason to condone the delay. The Special leave petition is dismissed on delay, **keeping all the questions of law open.**” Hence, vide its aforesaid O.M., DOP&T has clarified that since the question of law is open and not yet decided, decision for implementation of the judgement dated 15/09/2017 of Hon'ble High Court of Madras in W.P. No. 15732 of 2017 in Shri P. Ayyamperumal case, *in rem* has not been taken. Hence, DOP&T has advised all Ministries/Departments to dispose of all pending grievances seeking notional increment for pensionary benefits and also to defend the various pending Court Cases in this matter. The aforesaid O.M. of DOP&T has earlier been circulated vide this Office letter of even no. dated 18/02/2021, for information of all Telecom Circles/Other Units of BSNL.

5. Now, I am directed to forward herewith DOP&T O.M. No. 1453545/2021-Estt (Pay-I) dated 24/06/2021, regarding granting of notional increment for pensionary benefits in pursuance of the judgement dated 15/09/2017 of Hon'ble High Court of Madras in W.P. No. 15732 of 2017 in the case of P. Ayyamperumal Vs. Union of India & Ors.

6. DOP&T vide its O.M. dated 24/06/2021 has intimated that in a case involving Ministry of Railways in O.A. No. 170/677/2019, CAT, Bangalore Bench vide its judgement dated 18/12/2019 allowed grant of notional annual increment to an employee who superannuated from service on 30/06/2014. Ministry of Railway challenged this judgement in the Hon'ble High Court of Karnataka in W.P. No. 146967 of 2020 (S-CAT), which was rejected by the Hon'ble High Court on 22/10/2020. Thereafter, Ministry of Railways filed a Special Leave Petition {SLP (C) No. 4722/2021} against the judgement dated 22/10/2020 of the Hon'ble High Court of Karnataka. Hon'ble Supreme Court heard the matter and issued the following directions in its Order dated 05/04/2021 :

"Issue notice returnable after three weeks. In the meanwhile, there will be a stay of operation of the Order dated 18th Derember, 2019 of the Central Administrative Tribunal, Bangaore Bench in Original Applicant No. 170/00677/2019, affirmed by the judgement and order impugned. The Petitioner, shall, however, in the meanwhile without prejudice to the rights and contentions of parties pay retiral dues of the Respondent computed on the basis of the last pay drawm by him on the date of his retirement, that is, 30/06/2021."

7. Hence, DOP&T has requested all Ministries/Departments to take note of the contents of instructions issued vide its earlier O.M. dated 03/02/2021 and the Order dated 05/04/2021 of Hon'ble Supreme Court and defend the similarly placed Court Cases.

8. Accordingly, all the Telecom Circles/Other Administrative Units/Cadre Controlling Units of BSNL Corporate Office are requested to suitably incorporate the guidelines issued by DOP&T vide its O.M.s dated 03/02/2021 and 24/06/2021, while preparing the Counter Reply in the Court Cases filed in their jurisdiction and also to defend the Court Cases accordingly.

This issues with the approval of the Competent Authority.

Encl: As above.

Yours faithfully,



(Sudhanshu Shekhar Ray)
Asstt. General Manager (Estt.)
Tele. No. 011-23766036

Copy to :-

1. PPS to CMD, BSNL
2. PS to Dir (HR)/Dir (F)/Dir (Ent.)/Dir (CFA)/Dir (CM), BSNL Board
3. PGMs/Sr. GMs/GMs (Pers./FP/BW/Elect./Arch/Civil), BSNL CO
4. Guard File
5. BSNL CO Intranet Portal

COURT CASE
TIME BOUND

F. No. 1453545/2021-Estt (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

North Block, New Delhi
Dated the 24th June, 2021

OFFICE MEMORANDUM

Subject: Grant of benefit of one notional increment (as due on 1st July) for the pensionary benefits to those employees who had retired on 30th of June before drawing the same.

The undersigned is directed to refer to the subject cited above and to state that the issue of grant of notional increment and consequential pensionary benefits on the rationale of the Order dated 15.09.2017 passed by the Hon'ble High Court of Madras in WP 15732 of 2017 filed by Shri P. Ayyamperumal was examined and necessary instructions in this regard were issued vide this Department's OM 19/2/2018-Estt (Pay-I) dated 03.02.2021. This OM is available at the link <https://documents.doptcirculares.nic.in/D2/D02est/19-2-2018-Estt%20Pay-IMVLPO.PDF>) or may be accessed from this Department's website <https://dopt.gov.in> : Notifications : OMs and Orders : 13. Establishment : Pay Rules.

2. Meanwhile, Ministry of Railways have brought to the knowledge of this Department the Order dated 05.04.2021 passed by the Hon'ble Supreme Court of India in a case involving same subject matter {SLP(C) No. 4722/2021}. In the case under reference (OA No170/677/2019), Hon'ble CAT, Bangalore Bench, allowed grant of notional annual increment to an employee who superannuated from service on 30.06.2014. Ministry of Railways challenged this judgment in the Hon'ble High Court of Karnataka in WP No 146967 of 2020 (S-CAT), which was rejected by the High Court on 22.10.2020. Thereafter, Ministry of Railways filed a Special Leave Petition {SLP (C) No 4722/2021} against the Order dated 22.10.2020 of the Hon'ble High Court of Karnataka. Hon'ble Supreme Court heard the matter and issued the following directions in its Order dated 05.04.2021:

"Issue notice returnable after three weeks. In the meanwhile, there will be stay of operation of the order dated 18th December, 2019 of the Central Administrative Tribunal, Bangalore Bench in Original Application No. 170/00677/2019, affirmed by the judgment and order impugned. The Petitioners shall, however, in the meanwhile without prejudice to the rights and contentions of parties pay retiral dues of the Respondent computed on the basis of the last pay drawn by him on the date of his retirement, that is, 30.06.2014."

3. Ministries /Departments are requested to take note of the contents of instructions issued vide this Department's OM 19/2/2018-Estt (Pay-I) dated 03.02.2021 and the Order dated 05.04.2021 of the Hon'ble Supreme Court and defend the Court Cases similarly placed on behalf of Union of India including this Department, in consultation with this Department and other nodal Departments, if necessary, and keep the interest of this Department in view while doing so.



(Shukdeo Sah)

Under Secretary to the Government of India
Tel. No.23040489

To

All Ministries/Departments of Government of India.

Copy also forwarded to:-

1. The Comptroller & Auditor General of India.
2. Secretary General, Supreme Court of India.
3. Controller General of Accounts/ Controller of Accounts, Ministry of Finance.
4. Union Public Service Commission/ Lok Sabha Sectt./ Rajya Sabha Sectt./ Cabinet Sectt./ Central Vigilance Commission/ President's Sectt./ Vice-President's Sectt/ Prime Minister Office/ Niti Aayog.
5. Government of all States and Union Territories
6. Department of Personnel and Training (AIS Division)/ JCA/ Admn. Section
7. Secretary, National Council of JCM (Staff Side), 13-C, Feroz shah Road, New Delhi.
8. All Members of Staff Side of the National Council of JCM/ Department Council.
9. All Officers/ Sections of Department of Personnel and Training/ Department of Administrative Reforms & Public Grievances/ Department of Pensions & Pensioners' Welfare/ PESB.
10. Joint Secretary (Pers.), Department of Expenditure, Ministry of Finance
11. Additional Secretary (Union Territories), Ministry of Home Affairs.
12. NIC, DOPT - with request to upload this O.M. on the Department's website under OMs & Orders (Establishment—Pay Rules) and also under "What is New".
13. Hindi Section, DOPT for Hindi Translation.



(Shukdeo Sah)

Under Secretary to the Government of India
Tel. No.23040489