

**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: 18 -02-2021

To

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

Sub: Grant of annual increment falling due on the next day of superannuation/
retirement, for the purpose of pensionary benefits - Guidelines regarding.

Sir,

Of late, this Office has been receiving many Court Cases as well as letters from various Telecom Circles seeking guidelines for disposal of representations received from retired employees, regarding grant of notional increment falling due on the next day of superannuation/retirement etc. for the purpose of pensionary benefits.

2. In this regard, I am directed to forward herewith DOP&T O.M. No. 19/2/2018-Estt (Pay-I) dated 03/02/2021, along with its enclosures, with regard to grant 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.

3. DOP&T vide its aforesaid O.M. has mentioned that 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 is '*in personam*' in nature. In this regard, a brief note reflecting the Government's stand on the instant issue has been attached as Annexure-I.

4. Further, it has been mentioned that in a similar case, the Hon'ble Supreme Court, vide judgement dated 29/03/20219, 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."

5. Since the question of law on the instant issue 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.

6. Accordingly, all the Telecom Circles/Other Administrative Units/Cadre Controlling Units of BSNL Corporate Office are requested to dispose of the grievances/representations received from various retired employees of BSNL in the light of the aforesaid guidelines issued by DOP&T. Further, where Court Cases have been filed by the retired employees in various Courts of Law, for grant of notional increment after retirement for pensionary benefits, it is requested to defend these Courts cases in the above light and also to suitably incorporate the guidelines issued by DOP&T vide its O.M. dated 03/02/2021, while preparing the Counter Reply in such cases. Further, since the issue involves grant of pension and pensionary benefits, all the Telecom Circles/Administrative Units are requested to consult the concerned CCA Unit, while defending the Court Cases pertaining to their respective Circle/Unit.

This issue with the approval of the Competent Authority.

Yours faithfully,

Enclosures: As above.



(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 (Estt./Pers./BW/Elect./Arch/Civil), BSNL CO
4. Guard File
5. BSNL CO Intranet Portal

F. No. 19/2/2018-Estt (Pay-I)
Government of India
Ministry of Personnel, Public Grievances & Pensions
(Department of Personnel & Training)

North Block, New Delhi
Dated 3rd February, 2021

OFFICE MEMORANDUM

Subject: References/Representations/Court cases for granting 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-regarding.

The undersigned is directed to refer to references/representations/court cases/VIP references, received in this Department in large numbers on the issue of granting notional increment for pensionary benefits to those Central government servants who have retired on 30th June/ 31st December of a year, 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.

2. The issue has been examined in this Department in consultation with Department of Legal Affairs and it has been observed that 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. is '*in personam*' in nature. A brief note reflecting the Government's stand on this issue is attached as Annexure-I.

3. Further, it is also mentioned that in a similar case, the Hon'ble Supreme Court, vide judgment dated 29.03.2019 (copy enclosed as Annexure-II), while dismissing the SLP (C) Dy. No.6468/2019 filed by D/o Telecommunications against the judgment dated 03.05.2017 of Hon'ble High Court, Lucknow Bench in WP 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.**"*

4. 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.

5. Accordingly, all Ministries/Departments are, therefore, advised to dispose of all pending grievances seeking notional increment for pensionary benefits and also to defend the various pending Court Cases in this matter.

6. In their application to the persons belonging to Indian Audit and Accounts Department, these orders are issued under Article 148(5) of the Constitution and after consultation with the Comptroller and Auditor General of India.

7. Hindi Version will follow.


3/2/21

(Murali Bhavaraju)

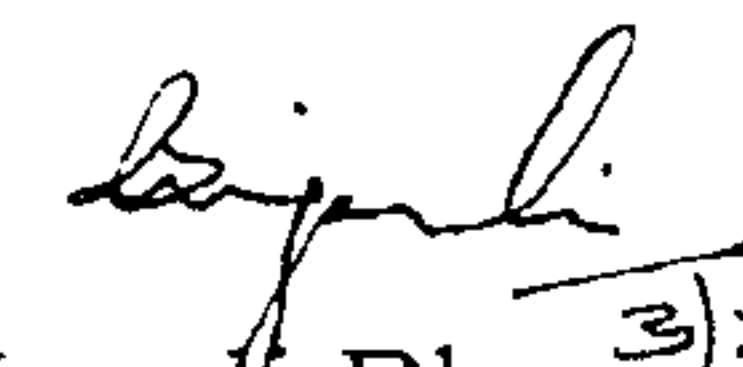
Deputy Secretary to the Government of India
Tel. No.011-23094542

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.


3/2/21

(Murali Bhavaraju)

Deputy Secretary to the Government of India
Tel. No.011-23094542

Annexure-I

Note on issue of granting a notional increment for pensionary benefits in pursuance of the judgment 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.

Hon'ble High Court of Madras, vide Order dated 15.09.2017, allowed the W.P. No. 15732 of 2017 filed by Shri P. Ayyamperumal relying upon its earlier judgment dated 20.09.2012 in W.P. No. 8440 of 2011 M. Balasubramaniam Vs State of Tamil Nadu. The said case referred by Hon'ble High Court in the said judgement is related to the Fundamental Rules of Tamil Nadu Government whereas the case of petitioner Shri P. Ayyamperumal relates to Central Government Rules. As per the provisions under the Tamil Nadu Fundamental Rule 26(a), the annual increments of the Govt. Servants are regulated in four quarters viz. 1st January, 1st April, 1st July and 1st October. For the Central Government, the increment accrues annually on 1st July only (6th CPC scenario) [now 1st July and 1st January in 7th CPC scenario]. Hence, argument of petitioner is devoid of merits.

2. In light of the relevant provisions of the Fundamental Rules like 9 (21), 9(6), 17(1), 22, 26(a) and 56(a), as also the provisions of CCS (RP) Rules, 2008, a person appointed as a Government servant is entitled to pay, and is also entitled to draw the annual increment as long as such Government servant discharges duties of the post. However, such Government servant may not be entitled to draw the pay and allowances attached to the post as soon as he ceases to discharge those duties. In other words, as per F.R. 17 read with F.Rs. 24 and 26, annual increment is given to a Government servant to enable him to discharge duty and draw pay and allowances attached to the post. If such Government servant ceases to discharge duties by any reason say, by reason of attainment of age of superannuation, he will not be entitled to draw pay and allowances. Such an employee would not be entitled to any increment if it falls due after the date of retirement, be it on the next day of retirement or sometime thereafter. An employee must satisfy not only the condition of becoming entitled for increment, but also should continue to be on duty as a Government servant on the due date (1st July/ 1st January) to avail the increment.

3. Further, in a similar matter, Hon'ble High Court of Andhra Pradesh at Hyderabad, in the year 2005, in the C. Subbarao case, has, inter alia, observed as under:

"In support of the above observations, the Division Bench also placed reliance on Banerjee case (supra). We are afraid, the Division Bench was not correct in coming to the conclusion that being a reward for unblemished past service, Government servant retiring on the last day of the month would also be entitled for increment even after such increment is due after retirement. We have already made reference to all Rules governing the situation. There is no warrant to come to such conclusion. Increment is given (See Article 43 of CS Regulations) as a periodical rise to a Government employee for the good behavior in the service. Such increment is possible only when the appointment is "Progressive Appointment" and it is not a universal rule. Further, as per Rule 14 of the Pension Rules, a person is entitled for pay, increment and other allowances only when he is entitled to receive pay from out of Consolidated Fund of India and continues to be in Government service. A person who retires on the last working day would not be entitled for any increment falling due on the next day and payable next day thereafter (See Article 151 of CS Regulations), because he would not answer the tests in these Rules. Reliance placed on Banerjee case (supra) is also in our considered opinion not correct because as observed by us, Banerjee case (supra) does not deal with increment, but deals with enhancement of DA by the Central Government to pensioners. Therefore, we are not able to accept the view taken by the Division Bench. We accordingly, overrule the judgment in Malakondalah case (supra)."

4. In addition, subsequent to the judgment of Hon'ble High Court of Madras in the P. Ayyamperumal case, Hon'ble CAT Madras Bench vide its Orders dated 19.03.2019 in O.A.No.310/00309/2019 and O.A. No.310/00312/2019 and Order dated 27.03.2019 in O.A. No.310/00026/2019 has also dismissed similar requests related with notional increment for pensionary benefits.

Annexure - II

ITEM NO.14

COURT NO.7

SECTION XI

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

SPECIAL LEAVE PETITION (CIVIL) Diary No(s). 6468/2019

(Arising out of impugned final judgment and order dated 03-05-2017 in Service Bench No. 484/2010 passed by the High Court of Judicature At Allahabad, Lucknow Bench)

UNION OF INDIA & ORS.

Petitioner(s)

VERSUS

SAKHA RAM TRIPATHI

Respondent(s)

(FOR ADMISSION and Interim Relief and
IA No.44315/2019-CONDONATION OF DELAY IN FILING)

Date : 29-03-2019 This petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE UDAY UMESH LALIT
HON'BLE MS. JUSTICE INDU MALHOIRA

For Petitioner(s) Ms. Madhvi Divan, ASG
Mr. Anmol Chandan, Adv
Mr. Amit Sharma, Adv
Mr. Gurmeet Singh Makker, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

We have heard Ms. Madhvi Divan, learned Additional Solicitor General for the petitioner-Union of India.

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.

Signature Not Verified
Digitally signed by
MAHABIR SINGH
Date: 2019.03.29
16:11:37 IST
Reason:

Pending applications, if any, shall also stand disposed of.

(MAHABIR SINGH)
COURT MASTER

(RAJINDER KAUR)
BRANCH OFFICER