

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA No.2649/2017

MA No.2791/2017

MA No.3225/2017

New Delhi this the 21<sup>st</sup> day of December, 2017.

**Hon'ble Mr. K.N. Shrivastava, Member (A)**

1. All India Bharat Sanchar Nigam  
Limited Executive Association  
Through its General Secretary,  
Sh. Prahlad Rai  
S/o Sh. Keshar Lal  
Aged about 59 years  
Group: A, Department: BSNL  
Designation: General Secretary,  
Nature of grievance: Fear of Pay reduction  
Central Headquarters,  
New Delhi.
2. Nand Lal Sharma  
S/o Sh. Sita Ram Sharma  
Aged about 56 years  
Group: A promoted from Group B,  
Department: BSNL  
Designation: AGM (Intra Sales),  
Nature of grievance: Fear of Pay reduction  
BSNL Corporate Offices,  
Janpath, New Delhi-110001.
3. S. Sivakumar  
S/o Sh. L. Sankaran  
Aged about 56 years  
Group: B, Department: BSNL  
Designation: DM (IA),  
Nature of grievance: Fear of Pay reduction  
BSNL Corporate Office,  
Janpath, New Delhi-110001.
4. Rai Pal  
S/o Sh. Jai Narain  
Aged about 51 years  
Group: B, Department: BSNL  
Designation: DM (IA),  
Nature of grievance: Fear of Pay reduction  
BSNL Corporate Office,  
Janpath, New Delhi-110001.

(By Advocate: Mrs. Rani Chhabra)

-Applicants

**Versus**

1. Union of India  
Ministry of Communication  
Department of Telecommunication  
Through its Secretary,  
Sanchar Bhawan, 20,  
Ashoka Road, New Delhi
2. Under Secretary,  
Department of Telecommunication  
Sanchar Bhawan, 20 Ashoka Road,  
New Delhi.
3. Bharat Sanchar Nigam Limited  
Through its Chairman-cum-Managing Director,  
Bharat Sanchar Bhawan,  
Janpath, New Delhi.

-Respondents

(By Advocates: Shri Subhash Gosain & Shri D.S. Mahendru)

**ORDER (ORAL)**

MA No.2791/2017 for joining together in single application under Rule 4 (5) (a) of Central Administrative Tribunals Act, 1985 is allowed in the interest of justice.

2. Through the medium of this OA, filed under Section-19 of the Administrative Tribunals Act, 1985, the applicants have prayed for the following main relief:-

“a. Quash letter No.40-12/2004-Pen(T)(Pt.) dated 5.7.2017 issued by respondent no.2;”

3. The brief factual matrix of the case, as noticed from the records, is as under:-

3.1 The applicant No.1 is an Association of BSNL Executives, registered under the Societies Registration Act, of which Shri Prahlad Rai is General Secretary. The applicant nos.2, 3 and 4

are members of this Association. The Bharat Sanchar Nigam Limited (BSNL) was created as a company on 01.10.2000. Prior to the creation of the BSNL, the telecommunication services were being rendered by the Department of Telecommunication (DOT) itself.

3.2 The BSNL vide Annexure A-2 OM dated 18.01.2007 pronounced Time Bound/Post Based Executive Promotional Policy (EPP) for its Group B officers. In the second part of this OM, **Post Based Promotion Policy** has been spelt out. Para (v) of this part reads as under:

“(v) Consequent to grant of any post based promotion, the officer’s pay will be fixed under FR 22 (1) (a) (1) only in cases where such post carries higher scale from the current scale of the executive being promoted. Further, where executives pay scale is the same as that of promoted post, benefit of one increment in the current scale of the executive shall be granted on promotion. Nowhere, in cases where the executive’s pay is higher than that of promoted post, such post based promotions will be treated as placement with grant of substantive status of the post. Further, except as provided in instant guidelines, no claim will lie on account of any of the other provisions of FRSR in the context of pay scales, pay fixation, substantive status etc.”

3.3 It is envisaged in the OM that first upgradation of IDA scale of individual executive will be due for consideration on completion of four years of service in the current IDA scale and subsequent upgradation of IDA scale to the next higher IDA scale will be done on completion of five years service in the current IDA scale. The OM lays down upgradation criteria as well as envisages determination of fitness of the eligible

executives for upgradation by Screening Committee. In para 8-e of the OM it is envisaged that the IDA Time Bound Upgradation Scheme would be effective from 01.10.2004. The OM envisages Time Bound Upgradation Scheme from Executive-I (E-1) and upto Executive-5 (E-5) levels. The pay scales of these five levels are as under:

E-1 9850-250-14600

E-2 11875-300-17275

E-3 13000-350-18250

E-4 14500-350-18700

E-5 Rs.16000-400-20800

3.4 The Scheme of financial upgradation, as pronounced in Annexure A-2 OM has been operating uninterruptedly. The DOT, Ministry of Telecommunications (respondent no.1) vide impugned Annexure A-1 order dated 05.07.2017 rescinded para 1.11 (v) of BSNL Annexure A-2 OM dated 18.01.2007 under which one extra increment on the Post Based Promotion under Executive Promotion Policy (EPP) was being granted. This OM reads as under:

**“Subject: Pay fixation matters relating to BSNL employees- Issue of increment on regular promotion to a scale-reg.**

P&T Audit team while reviewing the accounts of Pr.CCA Delhi, raised an audit para in relation to the Executive Promotion Policy (EPP) of BSNL. It has been observed that time bound promotion to executives of BSNL has given advantage of double

fixation of pay, i.e., one at the time of time bound upgradation and another at the time of regular promotion to the same scale. This is contrary to the provisions of similar scheme of MACP for Government employees under which fixation benefit is available at the time of financial upgradation while there is no further fixation of pay at the time of regular promotion to the same upgraded post.

2. The matter has been examined in consultation with Finance Branch of DoT and following have been decided:

(1) Para 1.11(v) of BSNL O.M.No.400-61/2004-Pers.1 dated 18<sup>th</sup> January, 2007 regarding grant of an extra increment on post based promotion under EPP stands rescinded.

(2) For serving employees, BSNL will revise the pay fixations to bring them in line with the Government rules and in such manner as to ensure that no additional pensionary liability arises for the Government when these officers retire. Recoveries from the employees on this account may be decided by BSNL

(3) Cases of existing pensioners shall not be reopened and BSNL shall make good the additional burden on the exchequer on this account.

This issues with the approval of Secretary (T).”

3.5 Aggrieved by the impugned Annexure A-1 order of respondent no.1, the applicants have filed the present OA, seeking the relief, as indicated in para-1 supra.

4. In support of the relief prayed for, the applicants have urged the following important grounds:

4.1 The EPP (Annexure A-2) has been framed by the BSNL Board, who is the competent authority and while doing so, consultation with DOT, respondent no.1, was done. Hence,

respondent no.1 after having approved the EPP of BSNL cannot rescind/withdraw the benefits already given to the BSNL employees.

4.2 The members of the executive association of BSNL who were earlier employees of DOT were encouraged by DOT to join BSNL on absorption basis. The EPP was one of the incentives offered. Hence, such an incentive cannot be allowed to be withdrawn by DOT after 17 long years of creation of BSNL.

4.3 The P&T audit team has erroneously compared the EPP of BSNL with Modified Assured Career Progression (MACP) Scheme of Government of India, as the two are on different footings. The Central Government employees to whom MACP is applicable, are governed under the Central Pay Commission, whereas the Public Sector Undertakings (PSUs) are governed by the Pay Revision Committee.

4.4 Several categories of BSNL have availed the benefits of EPP and have retired from service and their pensions have been fixed accordingly. Hence, the impugned Annexure A-1 order dated 05.07.2017 is going to adversely affect a large number of serving and retired executives of BSNL.

4.5 The impugned Annexure A-1 order dated 05.07.2017 is discriminatory and violative of Fundamental Rights guaranteed under Articles 14 and 16 of the Constitution.

5. In response to the notices issued, the respondents entered appearance and filed their reply. A common reply has been filed on behalf of respondents 1&2, whereas respondent no.3 has filed a separate reply. Respondents 1&2 have broadly made the following averments in their reply:

5.1 After absorption in BSNL, the applicants ceased to be government servants and are deemed to have been retired from government service from the date(s) of their absorption. They are eligible for pensionary benefits on the basis of combined service rendered by them with Central Government and BSNL and in terms of the CCS (Pension) Rules, 1972.

5.2 Under the Memorandum of Understanding (MOU) between the BSNL and the Central Government, BSNL is mandated to grant pay scales and promotion to various categories of its employees. However, pay fixation on promotion/upgradation of BSNL employees are regularized as per Government rules viz. Fundamental Rules (FRs), CCS (Pension) Rules, 1972 etc. The financial burden of the absorbed employees of BSNL is shared upto 60% of the annual receipts by the Central Government. The EPP of BSNL provides for time bound upgradation of pay scale. However, the pay fixation of the executives on the promoted post is to be done in terms of FR 22 (1) (a)(i). The EPP of BSNL has been approved by the DOT.

5.3 On request from various employees associations/unions and also from the BSNL Board about the additional pension liability to be borne by BSNL on account of implementation of the EPP of Group B level officers, orders dated 17.01.2005 and 15.06.2006 regarding prior approval of the DOT relating to the pension and pensionary benefits of absorbed employees of BSNL and the annual pension liability of Government in case of BSNL absorbed employees capped at 60% of annual receipts were withdrawn vide order dated 23.05.2008 (Annexure R-5) and OM dated 20.07.2016 (Annexure R-6). Thus, burden of full pension in respect of absorbed employees of BSNL and family pension in their cases was taken over by the Central Government.

5.4 The P&T audit team pointed out that EPP for Group B level officers of BSNL has given advantage of double fixation of pay, one at the time of time bound upgradation and another at the time of post based regular promotion in the same scale which is contrary to the provisions of MACP Scheme available to government employees under which fixation benefit is only available at the time of financial upgradation and there is no further fixation of pay at the time of regular post based promotion to the same upgraded post. Accordingly, as per the advice of P&T audit vide Annexure A-1 order dated 05.07.2017



the grant of extra increment of post based promotion and EPP was rescinded/withdrawn. The BSNL has been advised by DOT vide letter dated 04.07.2017 (Annexure R-7) that recovery from such employees on this account may be decided by BSNL. It is further mentioned therein that cases of existing pensioners shall not be re-opened and BSNL shall make good the additional burden to the exchequer on this account.

5.5 The impugned Annexure A-1 order dated 5.1.2017 has been issued due to the fact that the Government is paying pensionary benefits, including family pension to the absorbed employees of BSNL from the Consolidated Fund of India and the pay fixation of absorbed employees of BSNL on promotion/upgradation needs to be regularized as per Government rules such as Fundamental Rules.

6. The respondent no.3 in its reply has broadly stated as under:

6.1 Vide OM dated 2.9.2003 (page 103) option for absorption from Group B officers in BSNL was called for. The promotional avenues were also indicated with a view to motivate the executives in BSNL for achieving excellence. They were allowed upgradation to the next IDA pay scale on a time bound basis varying between 4 to 6 years, as may be prescribed for each scale.

6.2 The EPP 2007 was promulgated by BSNL in due consultation with and with the approval of DOT. The EPP is fully backed by BSNL and has matured over the years. It has operated successfully for 17 long years.

7. With the completion of the pleadings, the case was taken up for hearing the arguments of the learned counsel for the parties on 21.12.2017. Arguments of Mrs. Rani Chhabra, learned counsel for the applicants and that of Mr. Subhash Gosain, learned counsel for respondents 1&2 and Mr. D.S. Mahendru, learned counsel for respondent no.2 were heard.

8. As is apparent from the records, after the formation of the BSNL on 1.10.2000 sincere efforts were being put in by the DOT to encourage officers of DOT to get absorbed in the newly created Corporation, i.e., BSNL. For doing so, several incentives were offered, which, *inter alia*, included IDA pay scales, EPP etc. It is also not in dispute that the EPP for Group B officers providing for time bound pay upgradation was introduced by BSNL after due approval of the DOT. The policy has operated without any glitch and hindrance for over a longer period of time. Under this policy, as noticed hereinabove, a BSNL executive is entitled for one additional upgradation in the next pay scale in case his personal basic pay has already reached into the next pay scale. He becomes entitled for

another increment when he gets regular promotion to that higher pay scale. The factum of an employee getting two additional increments in higher pay scale, one at the time of financial upgradation under the EPP and the second at the time of regular promotion must have definitely been taken note of by the DOT and BSNL at the time of promulgation of the EPP. It is quite understandable that incentives had to be offered liberally to the erstwhile DOT officials so as to encourage them to join BSNL. It was need of the hour then presumably due to the fact that DOT could not have given alternate placements within DOT to them after the creation of BSNL. It is also to be noted that the pay fixation in the next pay scale on both the occasions, namely, upgradation under the EPP as well as regular promotion the pay scale of BSNL executive is to be fixed in accordance with FR 22 (1)(a)(i). The objection of P&T audit with regard to grant of additional increment under EPP germinates from their comparison of EPP with MACP meant for Central Government employees. I am of the view that such a comparison was uncalled for. The service conditions of BSNL and Central Government employees are substantially different from each other. One should not forget the background of offering of special incentives to the erstwhile employees for encouraging them to get absorbed in BSNL. Such special

incentives were need of the hour then. If such incentives are withdrawn now, it would amount to breach of trust and cheating. It is on record that BSNL Board is fully in support of the EPP. In its letter dated 03.08.2017 (pages 113-117), the BSNL has urged the Central Government not to rescind para I.II (v) of EPP. The relevant portions from the said letter are reproduced below:

“Sub: Pay fixation matters relating to BSNL employees- Issue of increment on regular promotion to a scale-reg.

P&T Audit team while reviewing the accounts of Pr.CCA Delhi, raised an audit para in relation to the Executive Promotion Policy (EPP) of BSNL. It has been observed that time bound promotion to executives of BSNL has given advantage of double fixation of pay, i.e., one at the time of time bound upgradation and another at the time of regular promotion to the same scale. This is contrary to the provisions of similar scheme of MACP for Government employees under which fixation benefit is available at the time of financial upgradation while there is no further fixation of pay at the time of regular promotion to the same upgraded post.

2. The matter has been examined in consultation with Finance Branch of DoT and following have been decided:

- (I) Para 1.II (v) of BSNL O.M.No.400-61/2004-Pers.1 dated 18<sup>th</sup> January, 2007 regarding grant of an extra increment on post based promotion under EPP stands rescinded.
- (2) For serving employees, BSNL will revise the pay fixations to bring them in line with the Government rules and in such manner as to ensure that no additional pensionary liability arises for the Government when these officers retire. Recoveries from the employees on this account may be decided by BSNL.

(3) Cases of existing pensioners shall not be reopened and BSNL shall make good the additional burden on the exchequer on this account.

This issues with the approval of Secretary (T).”

9. The learned counsel of the respondents has placed reliance on the judgment of the Hon’ble Apex Court in **Ekta Shakti Foundation v. Govt. of NCT of Delhi**, [(2006) 10 SCC 337], wherein it has been observed as under:

“10. While exercising the power of judicial review of administrative action, the Court is not the appellate authority and the Constitution does not permit the Court to direct or advise the executive in matter of policy or to sermonize any matter which under the Constitution lies within the sphere of the Legislature or the executive, provided these authorities do not transgress their constitutional limits or statutory power. (See *Ashif Hamid v. State of J. & K.* (AIR 1989 SC 1899), *Shri Sitaram Sugar Co. v. Union of India* (AIR 1990 SC 1277). The scope of judicial enquiry is confined to the question whether the decision taken by the Government is against any statutory provisions or is violative of the fundamental rights of the citizens or is opposed to the provisions of the Constitution. Thus, the position is that even if the decision taken by the Government does not appear to be agreeable to the Court it cannot interfere.

11. The correctness of the reasons which prompted the Government in decision making, taking one course of action instead of another is not a matter of concern in judicial review and the Court is not the appropriate forum for such investigation.

12. The policy decision must be left to the Government as it alone can adopt which policy should be adopted after considering all the points from different angles. In matter of policy decisions or exercise of discretion by the Government so long as the infringement of fundamental right is not shown Courts will have no occasion to interfere and the Court will not and should not substitute its own judgment for the judgment of the executive in such matters. In assessing the propriety of a decision of the Government the Court cannot interfere even if a second view is possible from that of the Government.”

10. I am of the view that this judgment is not applicable to the facts of this case. The applicants have basically prayed for retention of para I.II (v) of the EPP (Annexure A-2, which has been duly approved by the Government according to its policy. There has been no policy change as such in the Government in regard to the service conditions of the BSNL employees. The controversy has arisen only on account of P&T audit unnecessarily trying to compare financial upgradation under the EPP with that under the MACP, not realizing that these two schemes are applicable to two separate set of employees.

11. In the conspectus of the discussions in the foregoing paras as well as considering the background of introduction of EPP, I am of the view that the impugned Annexure A-1 order dated 05.07.2017 is not at all legally as well as ethically justifiable. Its retention would create trust deficit between the BSNL employees and the Central Government, which is also unwarranted. Hence, I quash and set aside the impugned Annexure A-1 order dated 05.07.2017. Accordingly, the OA stands allowed.

12. Consequently, MA No.3225/2017 also stands disposed of.

13. No order as to costs.

**(K.N. Shrivastava)**  
**Member (A)**

‘San.’