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No. AIBSNLEA/CHQ/Secy(T)/2014-15

DATED: 18.11.2014

To,

Shri Rakesh Garg,
Chairman Telecom Commission & Secretary Telecom,
Department of Telecom,
Govt. of India,
New Delhi 110001

Subject: Overlooking the Supreme Court's Judgment on withholding of Pension and pensionary benefits (CA No. 6770 of 2013) Judgment delivered on 14-08-2013 while implementing the 78.2% IDA merger issue to the BSNL pensioners retired before 09-06-2013.

Hon'ble Sir,

Kindly refer our earlier letter dated 29-10-2014 where all aspects of the issue of 78.2% IDA merger for BSNL pensioners, in the light of DoE's memo dated 15-10-2014, have been explained for your kind consideration. But thereafter during a discussion with the officers of DoT on 12-11-2014, we understood that DoT is going ahead for the preparation of a Cabinet Memo in line with DoE's Memo for quick settlement of the issue. We are not against the early settlement but certainly not at the cost of the pension and pensionary benefit arrears. One point in DoE's Memo we could not understand is when they are allowing pension on notional pay, then why they are not allowing pensionary benefits also on notional pay.

I am again drawing your kind attention to the fact that the Supreme Court's Judgment dated 14-08-2013 regarding protection of pension as '**property right**' for the Government Servants is being overlooked by Department of Telecommunication. In the said judgment the apex court has ordered the pension and pensionary benefits are the property right of the employees and cannot be taken away by administrative orders. If the final order on implementation of 78.2% IDA to pensioners is issued as per DoE's Memo then it will withheld the pension and pensionary benefits like gratuity, leave encashment etc for the BSNL pensioners retired prior to 09-06-2013.

The Supreme Court in the said judgment (**copy enclosed for ready reference**) has clearly stated "**It is an accepted position that gratuity and pension are not the bounties. An employee earns these benefits by dint of his long unblemished service**" (para 7) and again in para 8 "**It is thus hard earned benefit which accrues to an employee and in the nature of "property". The right of property cannot be taken away without the due process of law as per the provision of Article 300 A of the constitution of India**". Again in para 12(35) the SC opined "**Having regard to the above decisions, we are of the opinion that the right of the petitioner to receive pension is property under Article 31(1) and by mere executive order the state had no power to withheld the same. Similarly the said claim is also property under article 19(1)(f) of the constitution and as such the writ petition under Article 32 is maintainable.**"

Contd. - 2

Finally in Para 14 **“Article 330A of the constitution is as under: “300A Persons not to be deprived of property save by authority of law – No person shall be deprived of his property save by authority of law ”Once we proceed on that premise, the question posed by us in the beginning of this judgment becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is constitutional mandate enshrined in Article 300A of the constitution. It follows that attempt of the appellant to take away a part of pension or Gratuity or even leave encashment without any statutory provisions and under the umbrage of administrative instruction cannot be countenanced.”**

The total number of BSNL pensioners retired before 09-06-2013 is around one lakh and twenty thousand. As the original employer and as per rule 37A of CCS Pension Rules DoT is committed to pay their pension and family pension as per eligibility from time to time. As original employer DoT cannot do any injustice to them by withholding the due pension and pensionary benefits, particularly during the regime of the present NDA government where Hon'ble prime minister Sh. Narendra Bhai Modiji has assured justice to all citizens. We are citing below examples of some pensioners with the amount of loss they would incur if arrears are held up till 09-06-2013. Their detail calculation sheets are attached.

- 1) **Shri Niloy Kumar Roy.** PPO No 8239 (06-07), Retired on 31-10-2006 (Pre 2007 pensioner)
Total pension arrears he may loose from 1-1-2007 to 31-05-2013 Rs **106410.20**
- 2) **Shri Sunil Kumar Dutta.** PPO No 5753(02-03) Retired on 31-12-2002 (Pre 2007 pensioner)
Total pension arrears he may loose from 1-1-2007 to 31-05-2013 Rs **73980.39**
- 3) **Shri Panchanan Biswas.** PPO No 8776(07-08) Retired on 31-07-2007 (post 2007 pensioner)
His loss for pension is 77708.14, Gratuity 37459.00, Commutation 38747.00 and for leave encashment 16680.00. Total loss is Rs **170594.14**

Thus it can be seen that for pre 2007 pensioners, for earlier retirees amount is less compared to pensioners retired just before 2007. While for post 2007 the pensioners retired early is facing more loss compared to those retired nearer to 09-06-2013, However while concluding this letter again we appeal to your good self once again, Not to deprive these huge number of pensioners and family pensioners from their due right of the arrear pension and pensionary benefits.

With kind regards,

Yours Sincerely

**Sd/-
(Prahlaad Rai)
General Secretary**

- Encl:** 1) Calculation Sheets (three)
2) Copy of the Judgment of Supreme Court dt 14-08-2013

Copy to:

Shri R K Misra, DDG (Estt.), Dept of Telecom, New Delhi