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No. AIBSNLEA/CHQ/MOC/2014

DATED: 28.05.2014

To,

Shri Ravi Shankar Prasad,
Hon'ble Minister of Communication, IT, Law and Justice,
Govt. of India,
Sanchar Bhawan, 20, Ashoka Road,
New Delhi 110001

Subject: Non Implementation of the Supreme Court's Judgment on withholding of Pension and pensionary benefits - (CA No 6770 of 2013) - Judgment delivered on 14-08-2013

Hon'ble Sir,

We are 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 has not been implemented in Department of Telecommunication and in BSNL. 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. Still the DoT is withholding/ attaching the pension and pensionary benefits like gratuity, leave encashment etc of the charge sheeted / punishment awarded after retirement employees on the strength of CCS pension rules 1962 which is only an administrative order.

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."

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.”

Even after promulgation of this Judgment, Department of Telecom continues to withhold a part of pension, gratuity and leave encashment to the officers' charge sheeted prior to their superannuation without any action as per the authority of law. There are hundreds of officers whose pension and pensionary benefits are withheld for number of years after their retirement, by non settling the disciplinary cases. Thus they are subjected to incur huge financial loss in terms of bank interest of the withheld amount. In almost all cases punishment which is awarded after retirement, attachment of a part of pension permanently is being awarded, which is totally against the letter and spirit of the judgment of SC.

All these actions are being taken by DoT on the strength of CCS Pension Rules 1972, which is nothing but a collection of administrative orders and cannot be termed as 'Act'. The provision of the pension rules of Govt. of Bihar and the provisions of CCS pension rules 1972 are similar as far as withholding/ attaching the pension and pensionary benefits are concerned. SC in the judgment clearly stated this rules are against Article 300A of the constitution.

We would therefore request your good office to instruct the DoT to stop such unconstitutional practices immediately and issue suitable order to this effect.
With kind regards,

Encl: Copy of the Judgment of Supreme Court

Yours Sincerely
-sd-
(Prahlad Rai)
General Secretary

Copy to:

1. Shri M.F. Farooqui, Chairman TC & Secretary (Telecom), DoT, Govt. of India, New Delhi – 110001.
2. Shri R.K. Upadhyay, CMD, BSNL, New Delhi - 110001