

BSNL EMPLOYEES UNION

Recognised Union in BSNL

(Registered Under Indian Trade Union Act 1926. Regn.No.4896)

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BSNLEU/ 413 (PENSION)

21.01.2014

To

Shri A.N. Rai,
Director (HR) BSNL,
Bharat Sanchar Bhawan,
Janpath, New Delhi – 110 001

Sir,

Sub: - **Judgement of Honourable Supreme Court against withholding of Pension, Gratuity or Leave Encashment due to pending disciplinary/criminal cases- req.**

I would like to bring it to your kind notice that we are in receipt of many representations from field units that a portion of pension or gratuity or leave encashment has been withheld in respect of employees against whom some disciplinary or criminal case is pending.

The Honourable Supreme Court Of India has decided such cases vide its judgement dated August 14, 2013 in Civil Appeal No. 6770 of 2013 (Arising out of Special Leave Petition (Civil) No. 1427 of 2009) with C.A. No. 6771/2013 (arising out of SLP (C) No. 1428 of 2009) A copy of the judgement is enclosed herewith.

The operative part of the judgement reads as under:

“Fact remains that there is an imprimatur to the legal principle that the right to receive pension is recognized as a right in “property.”

14. “Article 300 A Persons not to be deprived of property save by authority of law.”

Once we proceed on that premise, the answer to the question posed by us in the beginning of this judgement becomes too obvious. A person cannot be deprived of this pension without the authority of law, which is the Constitutional mandate enshrined in Article 300 A 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 provision and under the umbrage of administrative instruction cannot be countenanced.


15. It hardly needs to be emphasized that the executive instructions are not having statutory character and, therefore, cannot be termed as “law” within the meaning of aforesaid Article 300 A. On the basis of such a circular which is not having force of law, the appellant cannot withhold even a part of pension or gratuity. As we noticed above, so far as statutory rules are concerned, there is no provision for withholding pension or gratuity in the given situation. Had there been any such provision in these rules, the position would have been different.

16. We, accordingly, find that there is no merit in the instant appeals as the impugned order of the High Court is without blemish. Accordingly, these appeals are dismissed with costs quantified at Rs.10,000/- each.

In view of the above cited judgement of the Honourable Supreme Court of India, I request your goodself to issue necessary instructions /guidelines to all Heads of Circles to release the portion of Pension/Gratuity/ Leave encashment withheld in respect of employees who have retired and against whom disciplinary/criminal proceedings are pending.

Thanking you,

Yours sincerely



(P. Abhimanyu)
General Secretary

Encl: As above.