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GS/AIGETOA/2020/12

Dated 24.02.2020

To,

Shri Arvind Vadnerker Ji,
Director (HR), BSNL Board,
BSNL Corporate Office, New Delhi

Subject: Preparation of List 9 in the ratio 2:1 between Seniority-Cum-Fitness & Competitive Quota in line with the Executive instructions issued by DoP&T on behalf of Government of India as the subject matter is not being covered in the statutory rules available in BSNL.

Respected Sir,

We wish to highlight the plight faced by the LDCE 2012 passed SDEs who have been promoted under 33% quota and their seniority has yet not been fixed in the cadre. As per the discussions held with PGM (Pers) in the third week of December 2019, **it was informed to us that the file for preparing the provisional list 9 in the ratio 2:1 between Seniority-Cum-Fitness & Competitive Quota has been processed and the provisional list shall be circulated on December 20, 2019.** The file was thereafter sent to CGM Legal for the vetting of the decision and the decision for **preparing the provisional list 9 in the ratio 2:1 between Seniority-Cum-Fitness & Competitive Quota did not faced any contrary observation from the unit of CGM Legal, BSNL CO** as informed during the discussions.

Sir, we wish to inform that preparing the list on the basis of date of Joining will be another huge injustice in the already long list of injustices met earlier to BSNL recruits. The meritorious LDCE 2012 passed candidates who already have lost their precious years of service owing to no fault of theirs shall be forced to lose their Inter-Se-Seniority also. **It is a well-settled law that if the existing rules do not cover any aspect/subject, the Government of India rules are to be followed. DoP&T rules on the matter clearly state that in the extant case, the Rota Quota method has to be followed wherever there are two modes of intake. Moreover, on the same subject, the administrative Ministry i.e DoT in consultation with DoP&T and Department of Legal affairs has clearly stated to BSNL that the implementation of the judgment should not be quoted as precedence in other similar cases.** Hence the criteria of S.K. Dubey's case (Date of Joining as criteria of seniority) **can't be implemented for the reason that lists no. 6, 7 & 8 were the only lists impugned before the CAT Chandigarh and not the list no. 9 and the Judgment given in the case of List 6,7 & 8 simply can't be used as a precedence for List 9.**

We wish to submit the detailed facts with regard to preparation of List 9 in the ratio 2:1 between Seniority-Cum-Fitness & Competitive Quota respectively and request to incorporate it while preparing and circulating provisional SDE Seniority list 9. This is already delayed too much and hence request to circulate list-9 at the earliest. **The detailed facts are hereby enclosed as Annexure-I.**

With Regards

---Sd/---

[MD. WASI AHMAD]
General Secretary

Copy to:

1. Shri P.K. Purvar, Hon'ble Chairman & Managing Director, BSNL for kind information pl.
2. Shri Arun Kumar, PGM (Pers), BSNL CO, New Delhi
3. Shri A.M. Gupta, GM (SR), BSNL CO, New Delhi.

Seniority issue

1. Notional Promotion Case-

a) **K.S. Premakumar Case** (OA No. 181/2009):-

Applicants contended that they have been allotted vacancy years from 1996-97 to 2000-01, so their pay should be notionally fixed from the vacancy year and arrears of salary extra may be given from actual date of promotion. Hon'ble CAT allowed their plea and directed BSNL to give notional promotion w.e.f. 23.01.2002 i.e. six months from 23.07.2000, the date on which examination was announced to be held. The matter went upto Hon'ble Supreme Court of India and appeal by BSNL was finally dismissed. Accordingly, order was implemented for the 124 applicants therein.

b) **SK Dubey Case**:- This case was filed on the same line as in K.S. Premakumar & Ors. Case (OA No. 181/2009). SK Dubey case was appealed by BSNL before Hon'ble Supreme Court of India (SCP(C) No. 39932/2012). BSNL appealed the matter as BSNL was in NOT favor of giving notional promotion with consequential benefit to the LDCE SDEs.

2. Seniority Case:-

a) **Diwan Chand Case** (T.A. No. 84 & 85 of 2009):- This case was filed challenging the mode of fixation of seniority in TES Group 'B' Cadre (Seniority Lists No. 6, 7 & 8 of SDEs). The claim was that there should be no Rota & Quota in the fixation of seniority of SDEs. Hon'ble CAT allowed the Petition.

b) The stand of BSNL was to provide Rota & Quota in the fixation of seniority of SDEs and thus appealed the matter before Hon'ble High Court of Punjab & Haryana against the decision of Hon'ble CAT, Chandigarh.

c) **Rajesh Banta**, one of the Respondents in Dewan Chand case, become party before Hon'ble Supreme Court in SK Dubey Case by way of directly filing a TP (Transfer Petition (TP (C) 184/2013).

3. Case(s) in Hon'ble Supreme Court:

a) Before the Hon'ble Supreme Court ((SLP(C) 35927-35928 of 2012, SLP(C) 35930-35931 of 2012, SLP(C) No.21416 of 2013, T.P. (C) No.184 of 2013), BSNL was in dubious situation as both type of cases (Seniority as well as Notional Promotion) were clubbed together and stand of BSNL in Seniority case would have hampered its chance to win Notional Promotion case. Perhaps that may be the only reason that BSNL just became mute spectator in the Case before Hon'ble SC and put no efforts to clear its view point that both types of cases are entirely distinct. Even DoP&T's circular dated 04.03.2014, which governs the inter-se seniority issue and came before the Supreme Court Judgment dated 12.08.2014, was not brought to the cognizance of the Hon'ble Supreme Court. Had the Circular been brought to the knowledge of Hon'ble SC, fate of LDCE passed candidates would have been different in our view.

b) The SC judgment dated 12.08.2014 in BSNL Vs **SK Dubey** & Ors laid down the following:-

"...it is well settled principle in service jurisprudence that a person appointed on promotion shall not get seniority in earlier year but shall get a seniority of the year in

which his/her appointment is made. In the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. It is common ground that 1996 Rules or 2002 Rules have nothing to do with inter se seniority between promotees of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Departmental Competitive Examination...”

c) **Implementation of Judgment** (dated 25.08.2009/12.08.2014):- After the judgment of Hon’ble SC, DoT advised BSNL to file Review Petition but due to Contempt proceedings already initiated before Hon’ble CAT Chandigarh, the process of Review Petition could not be completed. Consequently, DoT, vide its letter dated 30.03.2015, in consultation with DoP&T and Department of Legal affairs directed BSNL to implement the judgment dated 25-8-2009 of Hon’ble CAT Chandigarh. The contents of the letter are reproduced below:-

*In continuation to this Department letters of even number dated 12.02.2015 and 04.03.2015 on the above mentioned subject, I am directed to say that DoT in ... has agreed to implement the judgment dated 25-8-2009 of Hon’ble CAT Chandigarh Bench in TA No. 84/HR/2009. Accordingly, it is requested that immediate action may be taken at your end to revise the seniority of TES Group ‘B’ officers who have been assigned seniority in seniority lists 6 & 7 in accordance with the directions contained in the above said order of Hon’ble Tribunal. Compliance report may be placed before the Hon’ble Tribunal, Chandigarh Bench with a request to dismiss the contempt petition No. 060/00234/14 titled M.L. Sharma Vs. Secretary (T). **However, this should not be quoted as a precedent for other similar cases.** Further progress of the case may be intimated to this office.*

d) **Vinod Verma case**:- The case filed by 2002 LDCE officials and dismissed by the Apex Court vide its judgment dated 02.04.2019 in Civil Appeal No. 14967/2017 titled Vinod Verma Vs. Union of India & Others as the case has already been settled by three Judge Bench. However, the Supreme Court has substantiated the fact that seniority can be provided by the Executive instructions if the subject matter is not covered by the statutory rules. The relevant para is reproduced as below:-

*“16. A perusal of Rules, 1996 indicates that Rules, 1996 provides for the method of recruitment, age and other qualifications. The Rules which have been brought on record as Annexure P-8 to the appeal do not contain any provision relating to determination of seniority. The statutory Rules, 1996 being silent on the question of determination of seniority, Shri Sundaram is right in his submission that for determination of seniority OMs dated 22.12.1959, 24.06.1978, 07.02.1986, 03.07.1986 and 07.02.1990 have to be looked into. **It is settled law that the determination of seniority can be provided by the Executive instructions if the subject matter is not covered by the statutory rules.**”*

It will be again pertinent to mention that the aforesaid case was dismissed on technical grounds and not on merit.

4. **Further submissions with regard to the fact that seniority list 9 should be drawn on the basis of Rota-Quota and not on the basis of date of Joining:**
 - i. The principle of seniority on the basis of date of Joining **cannot** be applied as a “general rule” where there are two sources of recruitment/promotion and the general rule has been provided in the DoPT Instructions issued in this regard which are binding on DoT/BSNL.

- ii. Also, DoT vide its letter no. 20-16/2012-STG-II dated 29.05.2013 (copy enclosed) in response to Pers-II U.O. No. 2-2/2011-Pers-II dated 18.09.2012 with regard inter-se seniority replied to Pers-II Branch of BSNL Corporate office by producing the extracts of note sheets of STG-II Branch & DoP&T in the following manner:

Extracts of note sheets from STG-II:-

“8. Simultaneously, DoP&T may also be requested to intimate as to how or in what ratio the inter-se seniority of the officers promoted under 75% promotion quota and 25% LDCE as per SDE (T) RRs-2002 of BSNL is required to be drawn.”

Extracts of note sheets from DoP&T:-

“In respect of para 8 at p.3/N, the relative seniority of officers promoted under promotion quota and LDCE shall be determined according to rotation of vacancies between available incumbents of both the modes which is based on the quota of vacancies reserved for recruitment through each of the modes, namely in the ratio of 3:1. Consolidated instructions in the matter has been notified by the DOPT in OM No. 2001/12/2008-Estt (D) dated 11.11.2010 available on the website of the Department.”

- iii. The criteria of S.K. Dubey’s case (Date of Joining as criteria of seniority) can’t be implemented for the reason that lists no. 6, 7 & 8 were the only lists impugned before the CAT Chandigarh and not the list no. 9. Moreover, the issue of Inter-Se-seniority of lists no. 6, 7 & 8 was amalgamated with S.K. Dubey’s case wherein the issue was of Notional Promotion (i.e. issue of promotion or seniority from a retrospective date).
- iv. Before the Apex Court, the Department mixed up the two wholly divergent, contradictory and independent issues for the decision of the Court by making SK Dubey’s case as the leading case. SK Dubey’s case was purely on the issue of notional promotion and not on the issue of inter-se seniority. This case killed the spirit of the inter-se seniority issue and LDCE candidates were bound to lose their seniority.
- v. RR interpretation for vacancy year position:- The purpose of allotment of vacancy year is only to assign seniority to the candidates (DPC-Vs-LDCE candidates) for the purpose of making future promotions on the basis of seniority so decided and not for giving any retrospective promotion (or consequential benefits so aroused). This is the well known presumption in the administrative system.

In view of the above reasons and to avoid future litigations and to ensure justice to the LDCE passed SDEs, the Department should decide the issue of inter-se seniority in accordance with RR-2002, DoPT instructions and the DoT’s letter dated 29.05.2013, wherein it is clearly mentioned how to fix the inter-se seniority i.e. list 9 should be prepared in the ratio 2:1 as per the Rota/quota specified in the executive instructions issued by DoP&T on behalf of Government of India.

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