



All India Graduate Engineers & Telecom Officers Association

Central Headquarter, New Delhi

(The Recognised Representative Association of BSNL)

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GS/AIGETOA/2020/124

Dated 29.10.2020

To,

The Director (HR),
BSNL Board, BSNL CO,
New Delhi.

Subject: Reinstatement of 147 LDCE executives to the post held by them prior to issuance of BSNL Order No. 56-04/2017-Pers (DPC)/Pt/06-dated 06.06.2018-Reg.

Respected Sir,

This is in reference with the case of executives belonging to 147-LDCE group. These officers are facing reversion up to the post of SDE vide order dated 06.06.2018 of BSNL CO, New Delhi as a fall out of interpreting of Hon'ble HC Kerala judgment dated 01.07.2013 differently i.e. the one put forward through an affidavit dated 31.08.2016 filed by BSNL before the Hon'ble Supreme Court on the basis of the report dated 26.10.2015 of Expert Committee and the one which formed the basis of their reversal on 06.06.2018 was entirely different. In this regard a detailed representation of facts has been compiled and enclosed as Annex-A for your kind consideration as well as a brief is enumerated below for your kind attention:

- The **Hon'ble National Commission for Scheduled Caste (NCSC)** in its letter dated 02.05.2019 states that neither the Hon'ble HC of Kerala nor the Hon'ble Supreme Court has modified statutory recruitment rule and hence the order dated 06.06.2018 is not as per established law.
- **Hon'ble CAT Bangalore in its judgment passed on 02.07.2019** asserts that BSNL in its order 06.06.2018 has improperly interpreted the judgment of Hon'ble HC of Kerala. Accordingly, it has quashed the order dated 06.06.2018 and directed to follow rules & conditions of the notification in recasting of seniority.
- **Hon'ble HC of Punjab & Haryana in its judgment dated 10.07.2019** has quashed the judgment dated 13.07.2018 of the Hon'ble CAT Principal Bench and the Hon'ble HC directed to pass appropriate order by taking into consideration of the findings of the Expert Committee. The review petition filed by BSNL before Hon'ble HC of Punjab & Haryana has also been dismissed.
- The SLP filed against the judgment of Punjab & Haryana HC is pending adjudication before Hon'ble Supreme Court with an interim stay passed on 19.12.2019 on revision of seniority.
- **Hon'ble CAT Guwahati Bench in its order dated 16.03.2020** has quashed BSNL order dated 06.06.2018 by stating that seniority revised on 06.06.2018 is not in accordance with the judgment of Hon'ble HC of Kerala. In addition, the Hon'ble CAT has revoked its interim order passed on 12.06.2018 & 13.06.2018 which stayed the reversion order dated 06.06.2018 and has made the stay orders '**absolute**'.

In the light of above facts and enclosed synopsis, we request for a holistic approach for addressing the seniority issue of 147 LDCE Executives. Even principle of natural justice states that even if thousands guilty escapes the court of law, an innocent person should not be punished. Accordingly, we request to render justice to these executives by reinstating them to the post held by them just before issuance of 06.06.2018 order by appreciating the various court orders and stay thereof, subject to outcome of SLP pending before the Hon'ble Supreme Court. If outcome of SLP comes in favour of these executives, BSNL will be rendering an irreparable damage to the careers of these executives by not reinstating them to the positions prior to 06.06.2018. This becomes further more important in light of the fact that BSNL is facing a huge dearth of Executives at middle management level. We are looking forward to a favourable consideration of our plea to ensure justice to these highly talented and young officers of BSNL who would have proved an asset to organisation if allowed to continue in their previous posts.

Enclosure: as above

With Warm Regards

Sd/--

[MD. WASI AHMAD]
General Secretary

Copy to:

1. The PGM(Pers), BSNL CO, New Delhi for kind information please.

Reinstatement of the 147 LDCE executives to the post held by them prior to issuance of BSNL Order No. 56-04/2017-Pers (DPC)/Pt/06-dated 06.06.2018.

This is regarding case of 147 LDCE executives and post 06.06.2018 judgments passed by various Hon'ble Courts and pre 06.06.2018 statements made by BSNL & Expert Committee on the judgment dated 01.07.2013 of the Hon'ble HC of Kerala before the Hon'ble Supreme Court. On the basis of these judgments and the statements, the seniority of the 147 LDCE executives issued vide Order No. 56-04/2017-Pers (DPC)/Pt/06 dated 06.06.2018 is not in accordance with the judgment dated 01.07.2013 of Hon'ble HC of Kerala. In considering of these the developments, following is placed for your kind consideration and favorable decision.

2. Interpretation of the judgment of Hon'ble High Court of Kerala

The judgment dated 01.07.2013 of the Hon'ble HC of Kerala has been interpreted by BSNL two times. According to the affidavit dated 31.08.2016 filed by BSNL before the Hon'ble Supreme Court and report dated 26.10.2015 of the Expert Committee, the Hon'ble HC of Kerala passed its judgment in accordance with the rules & conditions of the notification. However, the judgment has been interpreted differently in the order dated 06.06.2018 and according to it the seniority drawn for the 147 vide order dated 06.06.2018 is in accordance with judgment of the Hon'ble HC of Kerala, despite it violates rules & conditions of the notification. In other words, the order dated 06.06.2018 states that the rules & conditions for the recruitment held more than 15 years ago in compliance with the judgment dated 25.10.1996 of Hon'ble Supreme Court have **later on** been **modified** on 01.07.2013 by the Hon'ble HC of Kerala to the extent as given below-

- If a candidate passes both DQE & LDCE parts of the combined exam then his eligibility for the combined exam is to be considered under **5 years of regular service** and on the other hand, if the candidate fails LDCE part and passes only DQE part then his eligibility is to be considered under **5 years from the year of recruitment on date of notification**.
- If the candidate passes both the DQE & LDCE parts even under the eligibility condition of 5 years of regular service then the seniority of the LDCE quota candidate is to be fixed below seniority of the those who had qualified DQE and accordingly allowed to appear the LDCE part but failed to qualify the LDCE.

The interpretation of the judgment of Hon'ble HC of Kerala in the 06.06.2018 order has however been proved as incorrect by various Hon'ble Courts in the judgments passed after 06.06.2018.

3. Judgments and statements on the 06.06.2018 order

i. According to the report dated 26.10.2015 of the **Expert Committee** constituted by the Hon'ble Supreme Court, the seniority of the 147 fixed by BSNL in the 1/3rd LDCE quota vacancies of the vacancy years 1994-95, 1995-96 and 1996-97 (upto 22.07.1996) is in accordance with the judgment dated 01.07.2013 of the Hon'ble HC of Kerala. This has been affirmed by BSNL in its **affidavit** dated 31.08.2016 filed before the Hon'ble Supreme Court. Thus, on the basis of the statements of the BSNL and the Expert Committee the seniority revised on 06.06.2018 is not in accordance with the judgment of Hon'ble HC of Kerala.

iii. The **Hon'ble National Commission for Scheduled Caste (NCSC)** in its letter dated 02.05.2019 states that neither the Hon'ble HC of Kerala nor the Hon'ble Supreme Court has modified the statutory recruitment rule and hence the order dated 06.06.2018 is not as per established law. Accordingly, it has directed to reinstate the 147 executives.

iv. The **Hon'ble CAT Bangalore** in its judgment passed on 02.07.2019 asserts that the BSNL in its order 06.06.2018 has improperly interpreted the judgment of the Hon'ble HC of Kerala. Accordingly, it has quashed the order dated 06.06.2018 and directed to follow rules & conditions of the notification in recasting of the seniority.

v. The **Hon'ble Punjab & Haryana High Court** in its judgment passed on 10.07.2019 has quashed the 06.06.2018 order. Besides, it is to mention that the Hon'ble CAT Principal Bench in its judgment passed on 13.07.2018 dismissed the original application that challenged the 06.06.2018 order on the opinion that the 1986 amendment rule did not mention anything about service need not be regular. The issue put forth before the Hon'ble PBCAT was to see if the seniority was to fix in accordance with the relevant recruitment rule and it was not about how to interpret the 1986 amendment rule. The Hon'ble HC of Punjab & Haryana in its judgment dated 10.07.2019 has quashed the judgment dated 13.07.2018 of the Hon'ble CAT Principal Bench and the

Hon'ble HC directed to pass appropriate order by taking into consideration of the findings of the Expert Committee. The review petition filed by BSNL before Hon'ble HC of Punjab & Haryana has also been dismissed. **vi.** While the SLP against the judgment of Punjab & Haryana HC is pending adjudication before Hon'ble Supreme Court with an interim stay passed on 19.12.2019 on revision of seniority, the **Hon'ble CAT Guwahati Bench** in its order passed on 16.03.2020 has quashed the order dated 06.06.2018 by stating that seniority revised on 06.06.2018 is not in accordance with the judgment of Hon'ble HC of Kerala. In addition, the Hon'ble CAT has revoked its interim order passed on 12.06.2018 & 13.06.2018 which stayed the reversion order dated 06.06.2018 and has made the stay orders '**absolute**'. In other words, in the recent judgment, the Hon'ble CAT has directed to reinstate the 147 to the posts held by them prior to issuance of the 06.06.2018 order while the SLP against the judgment of the Hon'ble HC of Punjab & Haryana is pending adjudication before the Hon'ble Supreme Court.

Brief **facts** leading to the above judgments and statements are furnished in the following paragraphs.

4. Notification

i. The recruitment to the post of SDE was held for vacancies of the years **1994-95, 1995-96 and 1996-97** (upto 22.07.1996) under 1981 RR as amended in 1986. These rules & conditions published in the notification were in compliance with the judgment dated 25.10.1996 of Hon'ble Supreme Court and the judgment dated 01.05.1998 of Hon'ble CAT Ernakulum. The eligibility condition for appearing the combined DQE & LDCE according to 1986 amendment rule was "**5 years from the year of recruitment of JTO on date of notification of the examination**" while it was "**5 years of regular service**" in the pre-amended 1981 rules. The seniority of the LDCE qualified executives, according to the RR, was to be fixed in the 1/3rd LDCE quota of the vacancy year.

ii. The executives who had cleared DQE in 1991 or before (prior to 1996) and had been promoted to the post of SDE in the 2/3rd DQE quota vacancies of the years **1994-95, 1995-96 and 1996-97** (upto 22.07.1996) were also allowed to appear the LDCE part of the combined exam to help them improve their seniority in the 1/3rd LDCE quota of the above vacancy years.

iii. However, those executives who had cleared the DQE in 1991 or before (prior to 1996) and had been promoted in the 2/3rd DQE vacancies of the **pre 1994-95** vacancy years were not allowed to appear the LDCE as it wouldn't give any benefit to them in seniority.

5. Judgments dated 05.02.2010 of CAT Ernakulum & 01.07.2013 of Hon'ble HC of Kerala

i. In the seniority list issued on 28.07.2008 the seniority of the 147 was fixed from vacancy year **1990-91** onwards. It was challenged at Hon'ble CAT Ernakulum by 11 executives who belonged to the group of executives mentioned in Para 4(iii) above on the ground that seniority fixed from VY 1990-91 onwards was not as per condition of notification stated in Para 4(i) above. The Hon'ble CAT in its judgment passed on dated 05.02.2010 quashed the seniority list 28.07.2008 and directed to recast the seniority of the 147 below those (applicants) who had qualified DQE prior to 1996 and similarly situated individuals who belonged to the group of executives mentioned in Para 4 (iii) above.

ii. The issue raised before the Hon'ble HC of Kerala was see if the seniority was to be drawn from vacancy year **1990-91** onwards in view of the last LDCE held in 1989 or from **1994-95** onwards as mentioned in the notification. The Hon'ble HC of Kerala in its judgment dated 01.07.2013 reiterated the essence of rules & conditions published in the notification considering the judgment dated 25.10.1996 of Hon'ble SC and the judgment dated 01.05.1998 of Hon'ble CAT Ernakulum in fixation of the seniority of 147 [para 40 of judgment]. Accordingly, in Para 47 of the judgment, the Hon'ble HC did not differ with the Hon'ble CAT in quashing the seniority that was drawn from VY **1990-91** onwards and directed to recast the seniority of the 147 in the **1/3rd LDCE** quota vacancies of the years **1994-95, 1995-96 & 1996-97** (upto 22.07.1996) according to their eligibility & merit for the respective vacancy years.

6. Expert Committee & Affidavit

i. The Hon'ble Supreme in its judgment passed on 21.01.2015 constituted an Expert Committee and entrusted the Committee to fix seniority of several thousands of executives belonging to both DQE & LDCE by considering year of passing DQE as criterion for seniority fixation in respect of DQE executives and for the 147 as per relief to be set out by the committee. The Committee set out the judgment dated 01.07.2013 of Hon'ble HC of Kerala as relief to be granted to the 147 and seniority drawn by BSNL in accordance with the judgment dated 01.07.2013 of Hon'ble HC of Kerala was recommended to Hon'ble SC in its report dated 26.10.2015 by stating that the lists submitted by BSNL was in compliance with the judgment dated 21.01.2015 of Hon'ble

Supreme Court. The seniority accepted by the Expert Committee was then acted upon by BSNL and based on it some executives from 147 were promoted to DGM in the year 2017.

ii. The BSNL filed affidavit dated 31.08.2016 before the Hon'ble Supreme Court and stated that the seniority accepted for the 147 by the Expert Committee was in accordance with the judgment dated 01.07.2013 of Hon'ble HC of Kerala and in consonance with the judgment dated 21.01.2015 of Hon'ble SC. The BSNL further stated that the seniority accepted by Expert Committee had been acted upon and pleaded for dismissal of the SLPs in view of the acquiescence of the judgment.

7. Judgment dated 12.12.2017 & 14.12.2017 of Hon'ble Supreme Court

i. The Hon'ble SC perused the records such as report of expert committee, affidavit, and upheld the judgment dated 01.07.2013 of Hon'ble HC of Kerala on 12.12.2017. Further, in its judgment passed on 14.12.2017 the Hon'ble SC stated that it did not consider it necessary to pass any **further order** on the recommendation of Expert Committee thereby resulting to upholding of its **earlier orders** passed on 21.01.2015.

ii. It is worth noting that in compliance with the earlier order of the Hon'ble Supreme Court passed on 21.01.2015; the Expert Committee recommended the seniority of the 147 drawn in accordance with the judgment of the Hon'ble HC of Kerala.

8. Illustration of seniority under 2 different interpretations

The seniority fixed by BSNL as per judgment of Hon'ble HC of Kerala which has been accepted by Committee and seniority fixed vide order dated 06.06.2018 are illustrated below-

Table A: Seniority fixed by BSNL, accepted by Expert Committee and stated before Hon'ble Supreme as seniority fixed in accordance with judgment of Hon'ble High Court of Kerala.					Table B: Seniority fixation in 06.06.2018 order					
RY	VY of RY	5 years completion date	Quota	Eligible VY	RY	Eligible VY (5 Yrs regular service)	Quota allotted in 06.06.18	Allotted VY in 06.06.18	No. of candidates	Remarks
Pre-1989	Pre 1989-90	before 31.03.94	1/3 rd LDCE	1994-95	Pre-1989	94-95	2/3 rd DQE	96-97	20	Seniority is in 2/3rd DQE quota as it is below seniority of DQE executives who were allowed to appear LDCE but failed the LDCE
1989	1989-90	31.03.94	1/3 rd LDCE	1994-95	1989	94-95 & 95-96	2/3 rd DQE	96-97	22	
1990	1990-91	31.03.95	1/3 rd LDCE	1995-96	No. of candidates who passed both DQE & LDCE and declared as ineligible to appear the combined exam under <i>5 years of regular service</i> = 96					
1991	1991-92	31.03.96	1/3 rd LDCE	1996-97	No. of candidates who failed LDCE but passed only DQE part and declared as eligible to appear the combined DQE & LDCE under <i>5 years from year of recruitment</i> = 300					
1992	1992-93	before 06.11.98	1/3 rd LDCE	1996-97						
1993	1993-94	(notification)	1/3 rd LDCE	1996-97						

Conclusion: In view of the above stated facts, the judgments of Hon'ble HC of Punjab & Haryana, Hon'ble CAT Bangalore, Hon'ble CAT Guwahati, the views of NCSC, the Affidavit filed by BSNL before the Hon'ble Supreme Court and on the basis of views of the Expert Committee, a fair and holistic approach is requested for addressing seniority issue of the 147 LDCE Executives. In addition, it is also requested to reinstate the 147 executives to the post held by them just before issuance of 06.06.2018 order by appreciating the stay granted on reversion by the Hon'ble CAT Guwahati and on the condition of subject to the outcome of the SLP pending before the Hon'ble Supreme Court.