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No. GS/AIGETOA/2018/15

Dated 11.06.2018

To,

Smt Sujata T Ray
Director (HR)
BSNL Board,
Bharat Sanchar Nigam Limited
Janpath, New Delhi.

Sub: Promotion from JTO (T) to SDE (T) under SCF quota - Implementation of OP CAT 126/2015 Judgment of Hon'ble HC of Kerala - Reg.

Respected Madam,

As you are aware, the Honorable High Court of Kerala has set aside the final eligibility list of JTOs for promotion to the cadre of SDE under seniority quota and directed BSNL to freshly prepare a final seniority list to be published in the manner prescribed by the Hon'ble High Court. The Judgment issued by Hon HC, Ernakulam Kerala on 1:1 seniority case, paves the way for promotions to all categories of executives in line with the Rules in force under Seniority cum fitness quota.

Your kind attention is requested towards the last part of judgment in nutshell as follows:

" The upshot of the discussions is that the directly recruited JTOs like the petitioners and the promotee JTOs in excess of their quota by virtue of quota-rota rule available in DOT, are to be assigned inter se seniority in the integrated eligibility list of JTOs for promotion to the post of SDE taking into account their actual date of appointment and date of promotion certainly, subject to their respective seniority in the concerned appointment order / promotion order and the rules of rotation of quotas. Since the provisional eligibility list of JTOs viz. Annexure A7 in Exhibit P1 and the final eligibility list of JTOs viz., ext. P15 (Annexure A1 in OA 553/2015) are set aside to the extend they relate assignment of seniority to directly recruited JTOs in BSNL and Promotee JTOs

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from DoT in excess of the promotion quotas as mentioned hereinbefore a final eligibility list in respect of those persons shall be prepared expeditiously in the light of the positions settled hereinbefore and it shall be incorporated in the integrated final eligibility list of JTOs for the period mentioned in Annexure A7 of the Ext P1 dated 11.5.2012, for promotion to the post of SDE. This shall be done, at any rate, within a period of six months from the date of receipt of a copy of this judgment. Needless to say that taking into account the dearth of sufficient personnel to man the post of SDE, it shall be open to the official respondents to effect promotions against unfilled vacancies of SDE equally distributing the vacancy among the senior most directly recruited JTOs and senior most promote JTOs, subject to finalization of the final eligibility list of JTOs in the manner mentioned hereinbefore”.

The nutshell of the judgment relates with mainly two parts :

What is to be done (for effecting promotions)?

How it is to be done (for seniority in respective lists)?

The first part : What is to be done?

The judgment is very clear on its direction that the Rota-Quota Rule (1:1) need to be kept with PR & DR JTOs for any future promotions.

a. This is very much imperative in the judgment part itself, that already Hon Court directed for *preparation of seniority lists expeditiously* (with efficiency and correctness) for respective PRs & DRs and ***further incorporation to a Integrated final eligibility list for promotion***. In fact this is the crux of the various DoPT OM's / GoI / legal directions also with regard to inter se seniority between PRs & DRs. i.e. Whenever an outside recruitment is made to a cadre in GoI Dept / CPSE , the same ratio should be interpolated in the Integrated Final list for future promotions (here in BSNL since the **quota ratio is 50% each, the rota will come as 1:1** – i.e. the integrated seniority list for future promotions shall be P1-D1-P2-D2- etc and so on)

b. The last sentence of the judgement of the Hon'ble High Court, the same is reiterated without making any ambiguity or confusion with generosity – that even if BSNL require time to prepare such integrated final list, then BSNL can resort to ***“effect promotions against unfilled vacancies of SDE equally distributing the vacancy among the senior most directly recruited JTOs and senior most promote JTOs “*** with a rider ***subject to finalization of the final eligibility list (which is expected in 6 months).***

Thus it is very much clear that, **in whatever way promotions are going to be given in SDE(T) cadre , it should be with equal distribution of vacancies among PRs & DRs.** Any move on promotions in SDE Cadre without following the mandatory 1:1 ratio of quota, would be a step towards blatant violation of the Hon'ble HC directions in the subject matter. ***It may be coined as contempt of the Honorable High Court of Kerala directions which is much serious in nature and open for further litigations.***

The Second part : How it is to be done ?

Now coming to the preparation of seniority lists of PR JTOs and DR JTOs for incorporation to an integrated final eligibility list

- a. The court has taken a view that the DRJTOs can't be given with a seniority from 1996-2000, as there was no DR recruitment for that period , at the same time the PR JTOs assigned with DR quota vacancies also cannot claim that too.
- b. With this the seniority list for DR JTOs can be started with DR JTOs (if any pending with DoT period) and further the DR batches of 2001, 2002, 2005, 2007, 2008, 2010 & 2017 YOR ***subject to their respective seniority in the concerned appointment order / their actual date of appointment.***

So as such there should not be any difficulty or hindrance in preparation of DR JTO seniority list, which is very much readily available in ERP system.

- c. *But at the same time, the preparation of seniority list of PRs Hon'ble High Court has made some apprehensions such as –*

All the PR JTOs who were selected in excess of PR Quota vacancies during (1996-2000) or selected against DR Quota vacancies for 1996-2000 will have to reckon the seniority afresh, ***actual date of date of promotion certainly, subject to their respective seniority in the concerned promotion order.***

An interpretation of this part of judgement can be that those PR JTOs who were selected well within the quota of PRs can keep their seniority in the PR seniority list, while remaining PR JTOs seniority need to be re-assigned.

The calculation of excess PR quota and seniority rearrangement for PR list can be made more clear after looking into the following details / information such as :

1. Total vacancies in the post of JTO(T) reported from 1996-2000 period.
2. The PR JTOs with YOR 1996-2000 already promoted towards the earlier SDE vacancy years, retired, DoT optees, Absconding etc.

In addition, the following fact also may be taken into account that the out of the pending PR JTOs (around 3792) around 2232 have joined after 01.10.2000, whose date of promotion also need to be taken into account duly as per the Hon'ble HC, Kerala verdict.

Thus on both part Hon'ble Court's has given clear directions as to deriving the intra se seniority (within DRs & with PRs) and further incorporation to integrated final eligibility list. We came to know that again some corners are again trying to make ambiguity in the directions the judgment, which has been delivered in very clear-cut manner.

Thus the integrated final eligibility list should contain all the eligible JTOs (as on date of 5-6-2018, JTOs who have completed 3 years of service as per SDE RR-2002) and promotions be effected in 1:1 with senior most PRs & senior most DRs. It would be prudent if BSNL chooses the above prescribed method of filling up of the whole reported vacancies till 2017-18 otherwise many shall be deprived of the promotions despite being eligible for promotion and availability of sufficient number of vacancies. It will be pertinent to mention that there is no bar in executing the DPCs of multiple vacancy years and in fact, orders of DPC has been issued in past for multiple Vacancy years together. As per Hon court verdict, even BSNL is free to effect any set of promotions towards the vacancies (with 1:1 from DRs & PRs) with ample time of 6 months for clearance of the formalities including finalization of eligibility list.

We humbly request that the court verdict may be followed in true spirit. ***When one door is open for promotion, the same need to be taken without any ambiguity.*** The feasible option which can accommodate maximum number of JTOs is by initiating proceeding for SCF promotions as per the court direction immediately due to shortage of SDE vacancy **by equally distributing the vacancy among the senior most directly recruited JTOs and senior most promotee JTOs subject to finalization of the final integrated eligibility list of JTOs. The integrated final eligibility list in the cadre of JTOs is a essential requirement for implementation of CPSU hierarchy also, as in the approved CPSU promotion policy also the seniority fixation in JTO cadre is envisaged.**

Accordingly, we request you to prepare the final eligibility list taking into account all the available and eligible JTOs and not to limit this opportunity to a select few JTOs, as such limited action would deprive the already suffering cadre including both PRs as

well as DRs as maximum eligible JTOs will remain un-promoted (PRs & DRs). It will be pertinent to mention that there is no bar in executing the DPCs of multiple vacancy years and in fact, orders of DPC has been issued in past for multiple Vacancy years together. Accordingly, we request you to direct Personal cell to initiate process for filling up all the available vacancies in JTO to SDE cadre before moving onto new CPSU policy which is only way to avoid litigations on the new proposed policy. The eligibility particulars of remaining eligible batches should immediately be called for to ensure the promotions in shortest possible time.

Thanks and Regards.

(Ravi Shil Verma)
General Secretary

Copy to:

1. **Shri Anupam Shrivastava Ji, CMD BSNL** – for kind information please.
2. **CGM Legal, BSNL CO, New Delh** – for kind information please.
3. **GM(Pers), BSNL CO, New Delhi** – for kind information and n/a please.