



All India Graduate Engineers & Telecom Officers Association

Central Headquarter, New Delhi

(The Recognised Representative Association of BSNL)



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GS / AIGETOA / 2022-23 / 39

Dated 09.03.2023

To,
Shri P K Purwar Ji,
Chairman & Managing Director, BSNL
Janpath, New Delhi.

Subject : Immediate intervention on the clarification of permission from CPFC/RPFCs for allowing the BSNL Recruited Employees contributions above the statutory prescribed limit in light of various directions from Hon Apex Court/ Hon HCs - Reg

- Ref**
1. EPFO Circular dated 20-02-2023.
 2. EPFO Circular dated 22-01-2019.
 3. EPFO notice dated 07-02-2019.
 4. Hon SC judgement dated 04-11-2022 on SLP(C) 8658-8659/2019.
 5. Hon HC judgement dated 12-10-2018 on WP(C) 13120/2015.

Your kind attention is sought towards an emergency situation wherein CPFC/EPFO has provided the online link for request submission with regard to the eligibility for higher pension in-line with the EPS-95 scheme, its amendments and various court directives including that from Hon'ble Apex Court dated 04-11-2022 in SLP 8658-8659 of 2019. Subsequent to the Hon Apex Court directions, EPFO has issued a circular dated 20-02-2023 where by all BSNL recruited employees who have joined in EPF scheme prior to 01-09-2014 are eligible to apply for higher pension based on actual wages if they wished to. The Hon'ble court directed to enable all the members of the pension fund drawing more than Rs.6500/- and contributing on actual wages to exercise the joint option by employee and employer, as contemplated in paragraph 11(4) of the pension scheme (post 2014 amendment) and shall be in the nature of joint option as per the pre-amended 11(3) paragraph.

Thousands of BSNL recruited employees and members of the EPF are well eligible for opting higher pension as per para - 5 (i,ii,iii) of the circular dated 20-02-2023. At the same time the same circular in para-6(vii) seeks a proof of joint option under para-26(6) of EPF scheme duly verified by the employer. The online link as provided in EPFO website also seeks the same. It may be noted that most employees have joined more than 10 to 20 years back and no such joint option has been submitted by BSNL authorities owing to lack of knowledge w.r.t the rules and procedures of EPF. As a result, no such copy of the joint option is available for submission with most of the employees who are otherwise eligible. However, from various documents available on Intranet, it can be easily inferred that BSNL as an employer had made several communications with EPFO and the CPFC/EPFO was very well informed about the contributions made by BSNL on actual wages.

BSNL being an un-exempted organization and government PSU has paid the full contribution (12%) of employer and (12%) of employee including administrative charges of 1.16% as needed from time to time. EPFO had issued a circular dated 22-01-2019 which stated that " *However an employer and employee have contributed under the EPF Scheme -1952 on wages higher than the statutory wage limit, without joint option of employee and employer and the EPF account of the concerned*

employee has been updated by EPFO, it can be inferred that joint option of employee and employer has been exercised and accepted by EPFO". On 07-02-2019, this circular was withdrawn through a notice on the basis of Hon HC order in WP(c) 13120 of 2015 (where our BSNL employees are also direct applicants in connected cases at same Hon'ble HC) which stated that every eligible employee can submit 26(6) without restriction on cut off date. Thus whichever option is taken, the BSNL recruited employees who are member of EPF and contributed to EPF on actual wages are eligible EITHER through Non applicability of proof for 26(6) joint option / permission of EPFO OR BSNL can submit the 26(6) joint option (request for permission if any such kind is not available) now also for its eligible employees without insisting for the cut off date within the time frame i.e. before 03-05-2023. It is also a matter on record that the circular dated 22-01-20219 had been withdrawn on a contemptuous clarification given with regard to recover of administrative charges of 1.16% and there was no reference on the deemed exercise on 26(6) or on exercising of joint option of 11(3). Thus seeking the proof for 26(6) option /permission is a direct violation various Hon'ble court directions and also against article 14 & 19 of our constitution.

Under these circumstances we humbly request your early and emergent intervention in the matter. Already your goodself is well aware that the BSNL employees are deprived of the social security measures such as government statutory pension and it will be a great relief to those eligible if the EPF enhanced pension is made available to the eligible EPF beneficiaries. We request that a communication may be made to CPFC, New Delhi seeking the exemption of proof for 26(6) for BSNL employees & BSNL who are contributing on actual wages with stipulated administrative charges. BSNL as employer also has the option for reaching EPF appellate authorities or any higher appellate forums to seek the exemption for submission of joint undertaking. We also request that BSNL management may please bring this matter to attention of Hon Telecom Minister & DoT secretary, so that the hapless BSNL recruited employees are not deprived of their eligibility for submitting the online option within the time stipulated by EPFO i.e. 03-05-2023. It will be worth to mention that Employees cannot be punished for the delay from any organization or establishments or any procedural delay of documentation on the part of employer.

Thus in short the BSNL employees who are members of EPFO should be:

- 1.Exempted from submission on 26(6) as the can be inferred as a deemed exercise due to clear contributions and administrative charges remittance.
- 2.The BSNL & Employees shall be entitled to exercise the option stipulated by paragraph 26 of the EPF Scheme without being restricted in doing so by the insistence on a date.

In view of the above , we request your good self to direct the authorities of BSNL dealing with the matter to take the above issue on war footing basis to seek the remedial measures from EPFO else again the BSNL employees will be devoid of another scheme which is stipulated for them with respect to social security benefits. We sincerely believe that BSNL will definitely ensure this exemption for its employees by active pursuance on the matter.

With Best Regards,

Sd/-
[Pavan Akhand]
General Secretary, AIGETOA

Copy to :

- 1.Sh Rajiv Kumar, Director Finance, BSNL Board.