

Corporate Office
[Personnel-IV Section]

Subject:- Representations dated 8-11-2010 and 15-11-2010 by All India Graduate Engineers & Telecom Officers Association (AIGETOA)- Suggestions/Objections regarding fixation of seniority as per DoP&T guidelines and promotion JTO to SDE under the seniority-cum-fitness.

ISSUE RAISED IN REPRESENTATION DATED 8-11-2010-

That the fixation of inter-se-seniority in between direct recruits and promotes JTOs as per DoP&T guidelines has been resolved in the meeting of the association with the CMD BSNL on 25-02-2010.

COMMENTS

- (1) As per letter no. BSNL/31-4/SR/2010 dated 22-04-2010 (Annexure- I), the Revised Records of the meeting held on 25-2-2010 with the AIGETOA under the chairmanship of CMD BSNL, have been issued, wherein under item no. 12, it is mentioned that " It was agreed that the principle of seniority as clarified in DoP&T letter under reference will be followed."
- (2) The DoP&T letter under reference mentioned above is the DoP&T OM No.20011/1/2006-Estt (D) dated 03-03-2008(Annexure-II) and as agreed in the meeting the same has been circulated to all the Telecom Circles vide letter no. 5-38/2009-Pers.IV dated 25-05-2010(Annexure-III) for information and necessary action in the cadre of JTO(Telecom). So the association should not have any grievances in this regard. As regards the OM dated 03-03-2008 it is stated that it is a clarification on the DoPT OM dated 3-7-1986 and provides that the Recruitment year will be year in which a person is appointed on substantive basis and not the year to which vacancy belongs, as was being considered earlier. But, as per the provision contained in para 4 of the OM dated 03-03-2008, the OM is applicable prospectively because it is provided clearly that "cases of seniority already decided with reference to any other interpretation of the term 'available' as contained in DoPT OM No. 22011/7/1986-Estt (D) dated 03-07-1986 need not be opened." As such, the seniority of JTOs already decided based on the vacancy year, as per the interpretation of the term 'available' in DoPT OM dated 3-7-1986, will remain the same and will not be disturbed.
- (3) As regards the data desired e.g. year wise vacancies from 1994 onwards and actual appointments done on substantive basis under both quotas of JTOs, making available the files for inspection containing the recruitment process of JTOs based on JTO RRs 1999, the list of responsibilities of erstwhile JEs in DoT and JTOs in BSNL, it is stated that JTO(Telecom) is a circle cadre as such the AIGETOA may obtain the desired information from Telecom Circle offices.

ISSUES RAISED IN REPRESENTATION DATED 15-11-2010-

It is stated that the issues raised by the AIGETOA in the letter dated 15-11-2010 were raised earlier also in their letter dated 10-09-2010 and the clarifications on the same have been issued vide this office letter no. 5-Genl/AIGETOA/2010-Pers.IV dated 25-10-2010(Annexure-IV). However, the matter is examined afresh and the clarifications issued vide letter dated 25-10-2010 are elaborated as detailed below:-

ISSUE NO 1.

That the DoP&T guidelines vide OM no. 22011/7/1986-Estt (D) dated 3-7-1986 further clarified, vide DoP&T OM dtd 3-3-2008 are not being followed for Circle Seniority List and All India Eligibility List of JTOs.

COMMENTS.

- (1) It is stated that DoT/BSNL is following DoPT guidelines and accordingly, as already explained above, the DoPT OM dated 3-3-2008 has already been circulated to all the Telecom Circles, vide this office letter dated 25-5-2010, for information and necessary action in the cadre of JTO(Telecom). But as per the provisions contained para 4 of the OM dated 3-3-2008, the OM is applicable prospectively and as such, the cases of seniority already decided with reference to any other interpretation of the term 'available' as contained in OM dated 3-7-1986 are not required to be reopened.
- (2) With regard to the contention of the AIGETOA that, as per DoPT OM dated 3-7-86(Annexure-V), the relative seniority of all the DR JTO appointed in a batch should have been determined in their order of merit in which they are selected irrespective of their joining/appointment to the post, it is stated that the contention is misplaced because in the Notifications for recruitment of DR JTOs 2001,2002 etc. (Annexure-VI), itself, it has clearly been mentioned that the merit obtained in the competitive examination shall be considered only for allotment of Circle of choice to the selected candidates and that their seniority will be determined as per rules of the Corporation. In the Notification, at para no.2- Selection for a particular circle & service liability- it is clearly mentioned that "A successful applicant will, however, get appointment in the circle of choice strictly, depending upon his/her position in the merit list drawn on the basis of his/her performance in the All India Competitive Examination" and that "The service conditions, seniority etc. of selected candidates will be determined as per prevailing rules of the Corporation from time to time". Once agreeing to the same at the time of applying for the post of JTO(T), turning around and agitating now to fix seniority on the basis of merit in the All India competitive examination is not at all appropriate.
- (3) However, for determining seniority in the cadre of JTO (T), the provisions contained in DGP&T letter no. 1/28/60-NCG dated 26-2-1963(Annexure-VII), as approved by G.O.I./DoPT, are being followed, wherein, it has been provided that the inter-se-seniority of each category of JTOs of a particular recruitment year, promotees and direct recruits, will be determined on the basis of training centre marks. Moreover, DoT HQ/BSNL CO. has issued instructions in this regard from time to time viz. The DoT Training Cell letter no. 4-6/89-Trg dated 23-6-92(Annexure-VIII), the BSNL CO Training Cell letter no.4-13/2002-Trg dtd 16-10-2002(Annexure-IX) and BSNL CO letter no. 4-1/04-Trg dated 23-06-2006 & 09-03-2006(Annexure-X).
- (A) As regards preparing the Circle Seniority List/ Circle Gradation List it is stated that three factors are involved for determining of seniority in the cadre of JTO(T) viz. (1) Allotment of Recruitment year (2) determining inter-se-seniority of each category of recruits of a particular Recruitment year i.e Promotees and Direct recruits (3) determining of relative seniority of promotees and direct recruits of a particular recruitment year.

(1) Allotment of Recruitment Year.

- (1) It is stated that earlier to the DoPT OM dated 3-3-2008, in DoT/BSNL the seniority of JTO(T) in direct recruitments and promotions was linked with vacancy year. The

irrespective of the year in which substantive appointment was made. The procedure being adopted was that the applications for recruitment against the vacancies of a particular vacancy year were invited by way of Notification for recruitment, specifically mentioning therein that vacancies of such and such vacancy year will be filled. And as prescribed in Note below Column 6 of JTO RRs 1990,1996 (Annexure-XI) that "the crucial date for determining the age limit or service conditions for both departmental and direct recruits, as the case may be, shall be 1st July of the year for which applications for recruitment are called for", the candidates fulfilling the eligibility conditions on 1st July of the notified vacancy year were considered against the vacancies of that vacancy year and on appointment they were allotted the same year as Recruitment year. It is clear from the DoT letter no. 5-18/99-NOG dated 5-10-99(Annexure-XII), whereby, it has been clarified that "The matter has been considered and I am directed to convey that the age of candidates appeared in the said special Rectt. Drive for SC/ST direct recruitment for JTO had been reckoned w.r.t. 1st July, 1995. Thus it is quite clear that their recruitment year taken in the instant case is 1995 is quite correct and in order."

(2) Furthermore, the procedure being followed by DoT for allotment of Recruitment year on the basis of vacancy year has also been upheld by a court of law. In TA no. 05-CH-2009 in CWP no. 8762/2004, titled Arun Kumar & Ors Vs UOI & Ors at Hon'ble CAT Chandigarh(Annexure-XIII), some DR JTOs of recruitment year 1995 sought the mainly the following reliefs:-

(i) To quash the final gradation list circulated vide letter dated 10-6-2002 whereby the applicants even though have been selected and appointed as Junior Telecom Officers prior to the respondents have been placed enblock junior to the private respondents.

(ii) To direct the official respondents to re-fix the inter se seniority of the applicants viz-a-viz the private respondents on the basis of year of actual recruitment and date of selection and appointment or in the alternative to fix the seniority of the applicants also according to the year of occurrence of vacancies i.e 1991-92 as has been done in the case of private respondents.

{ Note:- the petitioners are DR JTOs who have been allotted recruitment year as 1995 in the competitive examination conducted on 27/28-01-1996 and the private respondents are DR JTOs who have been allotted recruitment years as 1993/1994 in the competitive examinations conducted on 13/14-07-1996)

(3) The Hon'ble CAT, vide order dated 03-06-2010, dismissed the OA. The Hon'ble CAT in its judgement has observed that "It is an admitted position that the seniority list is based on the year of recruitment allotted to the candidates as per eligibility conditions for that particular year. In the case of private respondents, their eligibility was seen as on 1-7-1993 or 1-7-1994 whereas that of the applicants was seen as on 1-7-1995." At another place it observed that " Moreover, a well devised system of determination of seniority on the basis of year of vacancy is successfully running in the department."

(4) BSNL also adopted the same procedure and the AIGETOA may appreciate that DR JTOs recruited by competitive examination conducted in the years 2001,2002,2006,2008 and appointed in the later years have been allotted recruitment years 2001,2002,2005,2007 respectively because of the Notification for recruitments, wherein, it has specifically been prescribed that it is "Recruitment for Graduate Engineers JTO -2001" (Annexure-XIV), "Recruitment for Graduate Engineers JTO-2002" (Annexure-XV), "Recruitment for Graduate Engineers JTO-2005" (Annexure-XVI), "Recruitment for Graduate Engineers JTO-2007" (Annexure-XVII). However, in the Notification for recruitments of DR JTOs in the year 2009, the recruitment year was not mentioned in the Notification because of the DoPT OM dated 03-03-2008 which clarifies that recruitment year will be the year in which substantive appointments are made.

(5) As regards the contention of the association that where the Circle Gradaion List are finalized after the OM dated 3-3-2008, the Recruitment Year of the JTOs included in the list should be decided accordingly to their year of substantive

appointments, as per the provisions contained in OM dated 3-3-2008, it is stated that as explained above the recruitment years of JTO (T) are allotted at the time of their recruitment, as per the prevailing rules/regulations. The Circle Gradation List is merely the list wherein the names JTOs of particular recruitment year are included. The year of finalizing of Circle Gradation List has no relevance with allotment of recruitment years to the JTOs.

(2) Determining inter-se-seniority of each category of recruits of a particular Recruitment year, Promotees and Direct recruits.

- (1) As mentioned in paras above, the seniority of JTO(T) is determined not as per the merit obtained in the competitive examination, but is determined on the basis of training centre marks as per DGP&T letter no. 1/28/60-NCG dated 28-2-1963. Subsequent to the issuance of General Principles for determining of Seniority in the Central Services, vide GOI, MoHA OM NO. 9-11/55-RPS dated 22-12-1959, the DGP&T considered the matter of applicability of these general principles to the cadres in the department in consultation with MoHA and, vide DGP&T letter no. 1/28/60-NCG dated 28-2-1963(Annexure-VII), it has been decided that the general principles will be applicable with the modification that the cadres e.g. Engineering Supervisors (subsequently termed as JE and at present termed as JTO), Wireless Operators, RSA, AEA, to which appointment is made only after successful completion of prescribed course of training, the inter-se-seniority of each category of recruits, viz. departmental candidates and outsiders should be determined in the order of the marks obtained by them in the examination or examinations held during or at the end of their training. As JTO(T) cadre still has pre-appointment training, the procedure for determination of seniority on the basis of training centre marks is being followed in BSNL. DoT/BSNL has issued instructions in the matter from time viz. DoT Training Cell letter no. 4-8/89-Trg dated 23-6-92(Annexure-VIII), BSNL CO, Training Branch, letter no. 4-13/2002-Trg dated 16-10-2002 (Annexure-IX) & BSNL CO letter no. 4-1/04-Trg dated 23-8-06 & 9-8-06 (Annexure-X) titled 'Training Procedure for Basic Course of Induction Training of JTOs'.
- (2) As the DGP&T letter dated 28-2-1963 was applicable in parallel to the G.O.I., MoHA OM dated 22-12-1959, it is now applicable in parallel to DoPT OM no. 22011/7/1986- Estt.(D) dated 3/7/1986(Annexure-V) because it nothing but consolidation of instructions on seniority issued vide G.O.I. MoHA OM dated 22-12-1959 and other instructions issued by DoPT from time to time.

(3) Determining Relative seniority of promotees and direct recruits of a particular recruitment year.

- (1) For determining of relative seniority of promotees and direct recruits of a particular recruitment year, the provisions contained in G.O.I., MoHA OM no. 9-11/55 RPS dated 22-12-1959 (para no. 6)(Annexure-XVIII) further consolidated in DoPT OM dated 3-7-1986 (para 2.4.1) (Annexure-XIX) are being followed in DoT/BSNL. It provides that the relative seniority of direct recruits and promotees is to be determined according to the rotation of vacancies between direct recruits and promotees based on the quota of vacancies reserved for direct recruitment and promotion respectively in the Recruitment Rules. The first point in the seniority list to be allotted to a candidate of promotion quota. In this regard it is stated here that the percentage of quota for departmental candidates vis-à-vis outsider candidates was revised to 50:50 for the recruitment year 1990 onwards and accordingly vide DoT letter no. 8-34/2001-SNG dated 26-11-2001(Annexure-XX) it is clarified that since direct quota and promotion quota is 50% each, the seniority between the departmental candidates and outsiders candidates should be fixed in the ratio of 1:1.

- (B) As regards the contention of the association that in BSNL from 1995 to 2001 no direct recruitment has been notified and so promotees JTOs appointed during these year should have been treated as adhoc only, it is stated the association seems to be referring to para 2.4.4. of DoPT OM dated 3-7-1986

(Annexure-XXI). In this connection it is stated that the para 2.4.4. clarifies only that in cases the recruiting authority intentionally notifies the vacancies for promotion in excess of promotion quota, then these excess promotees are to be treated as adhoc. It does not apply in the instant case because here the JTO promotion quota for the year 1995 to 1999 has not been notified in excess, but the case here is that due to some administrative constraints the direct recruitments in JTO cadre could not be made alongwith the promotions.

- (C) As regards the contention of the association that as per the Apex Court orders in State of UP Vs Rafiquddin AIR 1988 SC 162 para 8, in Srilakshmi Vs Nizam's Institute of Medical Sciences and other 1998 (1) SLR 426 (A.P), in CA No. 11961-11963 dated 10-9-2003, the inter-se-seniority is to be fixed on the basis of merit in the competitive examination, it is stated that the orders of the Hon'ble Apex Court are cadre specific. As far as JTO(T) cadre is concerned, it has already explained above that the seniority in JTO(T) cadre is not determined on the basis of merit in the competitive examination but is determined on the basis of training centre marks, as duly approved by G.O.I./DoPT.
- (D) As regards All India Eligibility list for promotion from JTO cadre to SDE cadre, it is stated that the same is prepared by Pers-II section as per the provisions of SDE recruitment rules.

ISSUE NO. 2

That JTO post was upgraded from group-C to group-B in 1999 which involved change or shouldering higher responsibility, requirement of higher qualification, higher pay scale, so the suitability of the incumbents is required to be assessed to be appointed to the upgraded post of group B from the date of notification, as per DoP&T DM no. 22011/10/84-Estt.(D) dated 4-2-1992.

COMMENTS:-

- (1) The pay scale of JTO(T) had been upgraded to Rs. 6500-10500 based on the recommendations of the Vth CPC. On perusal of the recommendations of the Vth CPC under para 31.16(Annexure-XXII), it has been observed that the CPC considered the concern of the incumbent JTOs(T) regarding stagnation in the cadre of JTO(T) and also the proposal of the administrative Ministry of upgrading JTOs(T) to the extent of 80% after 3 years service on account of acute stagnation. It also took note of the findings of the consultancy study who marked this level as critical with substantial possibility of exodus alongwith the need to upgrade qualification so as to meet the requirements of advancing technologies, besides upgrading their pay scales and providing adequate promotion prospects. Accordingly, while agreeing with the findings of the consultancy study, as also the concern of the DoT with the problems of stagnation and advancing technologies, the Vth CPC recommended upgradation of pay scale of Junior Telecom Officer to Rs. 2000-3500 (equivalent Rs.6500-10500), further recommending that the posts of JTO(T) be filled by the existing methods of recruitment, raising the minimum required qualification for direct to a degree in Engineering.
- (2) As per the recommendation of the CPC, the pay scale of JTOs (T) was revised to Rs. 6500-10500 w.e.f. 1-1-1996 with the approval of Ministry of Finance, Vide DoT letter no. 1-1/97-PAT dated 24-10-1997 (Annexure-XXIII). The letter dated 24-10-1997 states that as the CPC has recommended the scale of Rs. 6500-10500 to JTO(T) subject to change in Recruitment rules providing B.E. as minimum qualification for direct recruitment and now DoT has accepted this change in Recruitment Rules and the new Recruitment Rules are under process for issue, the pay scales of Rs. 6500-10500 is granted to the JTOs w.e.f. 1-1-96.
- (3) JTO Recruitment Rules-1999 was promulgated by Govt in supersession of JTO Recruitment Rules 1996 in exercise of powers conferred by the provisio to article 309 of the constitution. So all the JTOs recruited by JTO Recruitment Rules 1996 and earlier Recruitment Rules will automatically become the initial constituents in the JTO cadre when JTO Recruitment Rules 1999 come into force. The eligibility conditions viz educational qualifications, regular service etc. specified in the Recruitment Rules 1999 is applicable for the new recruitments made as per this

Recruitment Rules only and not for the initial constituents. Further, as per clause (10) of BSNL JTO RRs 2001-INITIAL CONSTITUTION. All officials holding the posts of JTOs on regular basis in the erstwhile DoT/DTS/DTO before commencement of these rules and those who have been absorbed in BSNL shall be deemed to have been appointed as JTO in BSNL(Annexure-XXIV). Accordingly, erstwhile JTOs are equal to JTOs recruited by BSNL in all respect.

- (4) It is not the case that higher qualification B.E. has been prescribed for JTOs as per Recruitment Rules-1999, rather, B.E. qualification already existed alongwith the B.Sc. from the time JE/JTO cadre came into existence. The JEs/JTOs RRs 1980, 1990, 1996 (Annexure-XXV-1,2,3) may please be referred in this regard. As per the recommendations of the Vth CPC, the only difference in JTO R/Rs 1999 is that B.Sc qualification has been dropped and B.E. is the only minimum qualification for direct recruitment of JTO.
- (5) Further, as per DoPT OM No. 13012/1/98-Estt(D) dated 20-04-1998 (Annexure-XXVI), the posts carrying the pay scale of Rs. 6500-10500 have been classified as Group B. Accordingly the JTO(T) post has been classified as Group B w.e.f. 1-1-99 as per JTO RRs 1999 circulated vide DoT letter no.5-6/97-NCG dated 6-9-99 (Annexure-XXVII). Subsequently, vide DoT letter no. 15-17/99-NCG dated 21-12-1999(Annexure-XXVIII) the CGMs of all the Telecom Circles have been requested to bring this to the notice of all the respective field units under their control for taking further necessary action in the matter accordingly.
- (6) The pay scale of JTO(T) has been upgraded as Rs. 6500-10500 as per the recommendations of the Vth pay commission and subsequently the post of JTO has been classified as Group B because of the provisions contained in DoPT OM no. 13012/1/98-Estt.(D) dated 20-4-1998, the suitability of the incumbent JTOs was not required to be assessed as per the provisions contained in DoPT OM dated 4-12-1992(Annexure-XXIX).

ISSUE NO. 3

Relaxations given by BSNL vide letter no. 12-15/2002-DE dated 10-3-2003 for the 15% quota LDCE conducted by DoT in the year 1999/2000 and allotment of recruitment years 1998, 1999 to the selected candidates is irregular.

COMMENTS:-

- (1) In this connection it is stated that limited departmental competitive examinations were conducted by DoT in the years 1999 and 2000 against JTO(T) 15% quota vacancies of the vacancy years 1998 and 1999 respectively, as per JTO Recruitment Rules 1990, 1996. A large number of vacancies remained unfilled, thereby, causing shortfall of JTOs in the field areas. BSNL came into existence w.e.f. 1-10-2000, to which the DoT had transferred the Powers and Liabilities related to the work force. Accordingly, vide BSNL CO., letter no. 12-15/2002-DE dated 10-3-2003 (Annexure-XXX) a decision was taken to fill up the unfilled vacancies by granting relaxation of qualifying marks to either of the two examinations whichever was later, to meet the shortfall of JTOs in the field units. The relaxation was applicable only for the officials absorbed in BSNL. The above said decision for relaxation in qualifying standards was taken on the basis of the provisions contained under clause 7 of JTO RRs 1996 titled Power to Relax (Annexure-XXXI).
- (2) The candidates who had initially applied for the vacancies of the years 1998 or 1999 fulfilling the eligibility conditions on 1st July of the respective years, were allotted Recruitment year 1998 or 1999 on their selection under relaxed qualifying standards. It was so, because seniority was linked with vacancy year, as explained in paras above. Due to this reason only, nothing is mentioned in the letter dated 10-3-2003 about the recruitment year to be allotted to the selected candidates. It only specifies in para no. (vi) that " The candidate who are selected on the basis of the above relaxed standards, will be sent for training after those candidates who have already been selected as per normal standards." It is pertinent to mentioned here that similar relaxations were given, vide DoT letter no. 12-20/94-DE(Pt.) dated 5-6-97(Annexure-XXXII), for limited departmental competitive examination held on 15% quota vacancies of the year 1993 and 1994.

Moreover, the matter has already been clarified, vide BSNL CO letter no. 5-31/2001-Pers-IV dated 4-3-2008(Annexure-XXXIII), stating therein that "seniority among the officials belonging to any cadre is regulated as per DoPT instructions and it is not linked with the date of joining in the cadre."

- (3) As regards the contention of the association that the seniority of the JTOs(T) appointed under relaxed standards in the year 2004 should be fixed as per DoPT OM No. 20011/1/2000-Estt (D) dated 27th March, 2001 (Annexure-XXXIV), it is stated that the OM is not at all relevant in the instant case. The OM dated 27th March, 2001 is applicable where Recruitment Rules provides for recruitments by "transfer on deputation/transfer".
- (4) As regards submission of the association that in the judgement in TA No. 34-HR-2008, the Hon'ble CAT, Chandigarh has observed that "...incumbents are appointed under relaxed quota then they would get seniority from the date of their appointment", it is stated that either the association do not understand the matter in right prospective or they are trying to misguide the organization to justify their improper demand. On perusal of the matter it may be seen that the matter being discussed by Hon'ble Court is relaxation in quota (promotion quota), whereas the issue of the association here is relaxation in qualifying standards in promotion quota.

There are some unwarranted interpretations on some issues made by the association, which are not expected from the association of qualified professionals. It had been better if the AIGETOA had made plain and simple interpretation of the matters and not the interpretations obtained/gathered between the lines just for the sake of raising an issue. However, comments on the same are as detailed below:-

- (i) The responsibility basically said to have been increased when an official is upgraded from one grade to another grade, if there are two grades in the same post i.e Grade I & Grade II or there is a promotion from the lower post JTO to higher post SDE. As in the instant case the JTOs(T) continued as JTOs(T), the question of increase in the responsibility does not arise.
- (ii) The association is trying to create divide among the JTO recruited by DoT and those recruited by BSNL by trying to impress that the JTOs recruited by BSNL are superior to JTOs recruited by DoT, which is not proper. The association should refrain from indulging in unnecessary/unwanted comparisons as this may generate conflicts in the cadre. Being the responsible officers they should not create unhealthy atmosphere in the organization. It should be appreciated that the JTOs recruited by DoT are JTOs in all respect as they have been recruited as per the prevailing Recruitment Rules. The association should also consider that with the efforts/hard works put in by the DoT JTOs and with the efforts of the then Unions/Associations, the JTO(T) cadre has been classified as Group B Gazetted since 1999, the benefits of which are being enjoyed by JTO(T) recruited by BSNL. The association should realize that JTOs(T) recruited by BSNL, as per BSNL Recruitment Rules-2001, are JTOs in all respect and by merely working alongwith SDEs on some project they do not become superior to other JTOs(T). They are being utilized in new technology areas because they have been imparted training in those fields. Moreover, it has been observed that wherever JTOs(T) and SDEs are deputed on some project, the distribution of JTOs/SDEs post in the said projects is in the ratio of 2:1.

All the points raised have been answered accordingly. As such, with regard to the prayer made by the association that instructions be issued to field units to follow DoPT guidelines for preparation of inter-se-seniority list among suitable promotee JTOs and direct recruit JTOs for promotion to the cadre of TES Gr'B', for assessing the suitability of JTOs for upgradation from Gr 'C' to Gr 'B' etc., it is stated that, as detailed in paras above, DoT/BSNL is already following the G.O.I. DoPT guidelines in respect of the issues raised by the association.