

Short Note On SDE – Reversion Issue

- ➔ Notification of No.2-29/2005-Pers-II dated 07.02.2007 proposing to hold the LDCE for promotion to the grade of SDE (Telecom) for vacancy year 2001-2002 to 2005-2006 as per SDE RR 2002.
- ➔ As per SDE RR 2002 (ANNEXURE – I), The Point No.5 under Column 12 in the Schedule clarifies that where juniors who have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying / eligibility service by more than one year.
- ➔ Column 12(3) which specifies qualifying service period should be not less than three years as on 1st July of the notified Vacancy Year and 12(5) which deals with Senior – Junior clause are independent columns dealing with different situations.
- ➔ The O/o CGM, Gujarat Telecom Circle, vide its Lr.No.Rectt/LICE/SDE(1)/2007/19 dated 04.05.2007 has communicated to the concerned authorities a list of eligible officers who are eligible to appear for the LDCE 2007 for promotion to the grade of SDE (T) under 25% quota relying upon the BSNL HQ New Delhi Lr.No.5-4/2005-DE dated 09.02.2007 and **Lr. No. 2-29/2005-Pers II dated 16.04.2007**. Circles clearly queried Corporate Office prior to date of conducting exam and before preparing eligibility list that whether Senior – Junior clause is applicable for LDCE 2007 or not and BSNL CO responded in the afore mentioned **Lr. No. 2-29/2005-Pers II dated 16.04.2007** (ANNEXURE – II) that this clause is applicable.
- ➔ A batch of JTOs of 2002 approached Hon'ble CAT, Hyderabad in OA.No.238/2009 to permit them to appear for the LDCE held in the year 2007 on the basic ground that some similarly situated JTOs of 2002 Recruitment Year were allowed in Maharashtra Circle. As such the cases at Hon'ble CAT Hyderabad have no basis to have any effect on the entitlement of the 2001 batch who are having junior available to them in their Circle Gradation List as given eligibility in terms of column 12(5) of SDE RR.
- ➔ Depending upon the above Hon'ble CAT Hyderabad OA, in 2009 the Corporate Office in its Lr.No.15-12/2009-Pers.II dated 03.12.2009 sought information / details in respect of the eligibility of the JTOs who appeared for the LDCE of 2007 from the Circles by attaching the list of all those candidates who have the requisite service of less than three years and instructed Circles if these candidates were not allowed under Senior – Junior clause then recommend to disqualify and serve SCN, accordingly Circles

responded. In response to it, various Circles have supplied information including the Gujarat Circle vide their Lr.Nos.Rectt/LDCE/SDE(T)/2007/72 dated 19.12.2009 (Gujarat Circle), Karanataka Circle letter no. R&E/1-5/TES Gr “B”/2006 dated at BG-8 Dated 24/12/2009, Himachal Pradesh circle letter no HRD/R&E/Ex-247/SDE(T)/Vol. 1/7 Dated 6/1/2010, Jharkhand Telecom Circle letter no. CGMT/JKD/LDCE/SDE(T) under 25% quota/2007 dated 20/3/2010, Kerala Telecom Circle letter no. Rectt/2-3/2006/Part III dated at Trivendrum 08/12/2009, Madhya Pradesh Telecom Circle (TDM Shajapur) letter no. L. No. TMD/SJR/Admn/E-145/09-10/ Dated :-15/12/2009. Even Kerala Circle reiterated its stand again on dated 13/06/2010 vide letter no Rectt/2-3/2009-2010 dated at Trivendrum Dated 13/06/2010 and all these circles clarified Corporate Office vide afore mentioned letter numbers that 2001 RY JTOs are eligible as per 2002 SDE RR and as per the clarifications given by Corporate Office. Here if we examine the series of letters written by Corporate Office from 2009 to 2019 in this regard, we can clearly observe gradual change of statement/opinion/stand on Senior – Junior Clause applicability for 2001 RY JTOs.

- ➔ Only TN Circle issued SCN to the 2001 batch JTOs in response to the above-mentioned Corporate Office instructions and to depend the SCN some group of people approached Hon’ble Madras CAT and pleaded that the three years requisition period should be as on date of LDCE Exam instead of 1st July of the Vacancy Year which is against basis principles of SDE RR 2002. These people won the case and the same was quashed upon subsequent review by BSNL. Now this case is pending at Hon’ble High Court Madras. Hence here also case is different than Senior – Junior Clause, i.e 12(5) of SDE RR 2002 and this clause merits were not properly verified at either Hon’ble CAT Madras or at Hon’ble High Court Madras with respect to RY 2001 batch JTOs.
- ➔ Also, this Senior – Junior Clause of 12(5) is applicable within the same Recruitment Year to neutralise the administrative delay or non-availability of RTTC infrastructure and this clause can’t be applicable across the batches. Hence Claim of 2002 RY batch JTOs of 12(5) shouldn’t have any impact on 2001 Batch JTOs.
- ➔ In the Hon’ble High Court Madras, Hon’ble P.CAT / Delhi, Hon’ble CAT Hyderabad and at Hon’ble CAT Mumbai – No court order speaks about applicability of Senior – Junior clause can be restricted to SCF. More over all these court cases predominantly vetted on 12(3) clause which deals with three years’ service requirement as on 1st July of VY. No where applicability of Senior – Junior Clause, i.e 12(5) properly verified with respect to 2001 RY JTOs.

- ➔ As per the reply received in a RTI application with respect to LDCE 2007, Corporate Office Note sheet clearly states and qualifies applicability of 12(5) for LDCE 2007 for 2001 RY JTOs (ANNEXURE – VI).
- ➔ This Senior – Junior Clause was invoked in the earlier instances and JTOs who doesn't have 3 years' service period were allowed to appear in the LDCE conducted in 2002 and at present some of them are working as DGMs.
- ➔ BSNL Corporate Office vide its **Lr.No.2-29/2005-Pers.II dated 16.04.2007** (ANNEXURE – II) has clarified that the entitlement in respect of a JTO who has a junior having the qualifying eligibility service being allowed for the examination, the senior who is short of the requisite service also will be permitted provided they are not short of requisite qualifying eligibility service by more than one year. Similarly, BSNL Corporate Office vide its **Lr.No. 2-29/2005 - Pers.II dated 10.07.2007** (ANNEXURE – III) has clarified that the provision of 12(5) cannot be applied keeping in view a JTO transferred to a circle under Rule 38 of P&T Manual Volume IV who becomes junior by virtue of his transfer on his own volition. A combined reading of both these two clarifications clearly demonstrates that as on the date of examination the applicants are entitled to appear for the examination in view of column 12(5) due to the fact that there was one junior with the qualifying service vis-à-vis the applicant in their concerned circle gradation list.
- ➔ BSNL Corporate Office vide its **Lr.No.2-16/2009-Pers.II dated 30.07.2010** (ANNEXURE – IV) issued a clarificatory order stating that column 12(5) applies only in respect of seniority quota promotion as per all India eligibility list. However, such clarificatory orders cannot take away the statutory entitlement of a person in terms of the statutory recruitment rules. Even presuming the clarificatory order is appropriate, it will have only prospective application and not retrospective application.
- ➔ BSNL CO amended the rules vide their subsequent notification No.20-24/2001-Pers.II dated 08.05.2018 modifying the recruitment rules and specifying that the said entitlement is only for seniority quota and also clearly mentioned in this letter itself that this modification is applicable with effect from 28/08/2015 in the SDE RRs. The amendment itself demonstrates that prior to 28.08.2015 the statutory position was different and 2001 batch people who appeared in LDCE 2007 were entitled for the benefit of column 12(5).
- ➔ At the relevant point of time the eligibility of the applicants were examined in terms of the gradation list of the JTOs in the concern Circles and the 2001 batch people who are

in reversion case were allowed to appear for the examination on the basis of a detailed examination of the cases by concerned circle heads and the corporate office.

- ➔ This case was heard by the then Hon'ble CMD, Shri R.K. Upadhyay Sir in the year 2012 and he pleased to instruct the Pers section to resolve the issue in toto for 2001 RY JTOs and till such time keep the issue under abeyance and CO issued circular for the same vide letter number No. No. 15-12/ 2009-Pers II dated 24th May 2012 (ANNEXURE – V -i). Here CO issued unconditional abeyance for 2001 RY JTOS as the candidates in this list who belongs to 2001 Batch JTOs are eligible as per RRs whereas for 2002 RY conditionally vide letter no. 15-12/2009-Pers.II dated 23rd MAY 2012 (ANNEXURE – V -ii). This clearly demonstrates at that time itself the then CMD Sir convinced that 2001 RY are eligible under Senior – Junior Clause where as 2002 RY were not eligible.
- ➔ At present cases were pending on these issues at Hon'ble CAT Chandigarh, Hon'ble CAT Madras, Hon'ble CAT Ernakulam, Hon'ble CAT Jabalpur, Hon'ble CAT Allahabad where real verification of applicability of Senior – Junior clause will take place and it is highly difficult and expensive to depend all these cases for BSNL and even it is waste of valuable efforts / time and hard-earned money to the applicants as well. Further this shortage period is very little to some JTOs belongs to this issue, example in case of Gujarat Circle, it is just of 6 days. This shortage is due to administrative delay or non-availability of RTTC Infrastructure, no any fault on the part of the candidate. Even these people were not called for orientation training based upon the merit.
- ➔ Legal complications have arisen due to the filing of court cases to depend SCN in which 2001 RY JTOs were unnecessary tagged by BSNL due to the allegation of 2002 RY people against fault of Maharastra Circle which allowed 2002 RY JTOs even though they are not eligible as per SDE RRs 2002 and BSNL CO Clarification prior to conduction of LDCE 2007 clearly specifies not allow such candidates.