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# All India Graduate Engineers & Telecom Officers Association

Central Headquarter, New Delhi

( A Recognised Association of BSNL Executives )

( Affiliated to BMS )



Regn. no. HR/019/2018/02138

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**GS / AIGETOA / 2024-25 / 106**

**Dated 22.11.2024**

To,  
**Shri A Robert J Ravi Ji,**  
**Chairman & Managing Director,**  
**BSNL, New Delhi.**

**Subject: Restoration of the "Revised Seniority Lists prepared in 2015 incorporating Hon'ble High Court of Kerala judgment dated 01.07.2013 with respect of 147 group of officers"- Regarding.**

**Respected Sir,**

Reference is invited to the various discussions held on the subject in the wake the judgment dated 16.07.2024 passed by Hon'ble Supreme Court in the SLP (C) No. 30281-30282 of 2019.

The Hon'ble Supreme Court had, on 16.07.2024, dismissed the SLP(C) No. 30281-30282 of 2019 and directed to comply with the judgment dated 10.07.2019 of Hon'ble High Court of Punjab & Haryana passed in CWP No. 25405 of 2018. In this context, it is to state that the Hon'ble High Court of Punjab & Haryana in its judgment dated 10.07.2019 had quashed/ set aside the orders dated 06.06.2018 of BSNL which had been mentioned as impugned orders. This orders dated 06.06.2018 modified seniority of the 147+ executives resulting to reversion of their post/grade from AGM (Regular)/ DGM (Adhoc) to the grade of SDE/AGM. However, instead of implementing the judgement in its true spirit by revoking the orders dated 06.06.2018 which was the impugned order before Hon'ble Supreme Court, BSNL preferred to issue show cause notice from a prospective date instead of reinstating the affected executives to pre-June 2018 position.

In this backdrop, we wish to submit the following facts elaborating the injustice meted out to the 147 group of officers since Jun-2018.

## **2. The brief of relevant facts of the case:**

**a) Event/Action\_01.02.2007:** Circulation of final seniority lists competitive quota officers (i.e. 147 group of officers) allotting vacancy year 1994 to 1996-97 (upto 22.07.1996).

**Outcome/Reaction:** Nobody in the Department objected to the seniority positions given to the 147 group of officers as this was as per the Notification dated 06.11.1998.

**b) Event/Action\_28.07.2008:** Revision of seniority lists of 147 group of officers – seniority was revised from vacancy year 1990 to 1996-97 (upto 22.07.1996).

**Outcome/Reaction:** Officers promoted against SCF quota objected against the revision/upgradation of seniority positions of 147 group of officers on the ground that –

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*LDCE was conducted only against the vacancy year 1990 to 1996-97 (upto 22.07.1996) & some of the officers who were promoted against the vacancy year 1990 to 1994 were not allowed to appear in the LDCE exam citing the reason that their position is not likely to change even if they qualify in the LDCE exam as exam is for vacancy year 1994 onwards and they were promoted against the prior year vacancies.*

The SCF quota officers file an OA before the CAT, Ernakulam (OA 86/2009). The Tribunal vide order dated 05-02-2010 quashed both seniority and promotion of the 147 candidates. BSNL filed an appeal before the Kerala High Court (WP (C) No. 26226/2010) against the Tribunal's order dated 05.02.2010.

**c) Event/Action\_01.07.2013:** Against the order of the CAT Ernakulam Bench, WP (C) No. 26226/2010 filed by BSNL along with other WPs filed by private parties was dismissed by the division bench of Hon'ble High court of Kerala and orders passed on 01-07-2013. The operative para of the High Court judgment dated 01.07.2013 follows as under:

"47. Merely because the LDCE was not held from 1989 that does not create a vested right in the 147 candidates to be assigned seniority in the 1/3rd quota of LDCE from the year 1990 onwards. We have already found that the DQE and LDCE exams held in 2000-2003 were only to the vacancies of 1994-95, 1995-96 and 1996-97 (up to 22.7.1996). The promotion to the DQE quota can only be from the year in which a candidate qualified. The promotion on the basis of the LDCE can also be only to those 1/3rd available vacancies in the year of the LDCE. The distinction is in so far as the DQE is considered to the 2/3rd quota from the year in which he qualifies vis-a-vis the seniority among the DQE candidates; and on the basis of his qualification is considered in all the subsequent years. While the LDCE is considered only to the vacancies available in that year and the rank obtained by a candidate not entitling him to be considered in any subsequent years. Hence the 147 candidates ought to be considered for the 1/3rd vacancies in 1994-95, 1995-96 and 1996-97 (up to 22.7.1996) according to their merit as also their eligibility to appear for the combined examination. The eligibility year has to be considered since, one combined examination was held for three years. A candidate entitled to appear in 1996 (by reason of completing five years of regular service in the feeder category on the 1st of the January of the year) cannot be placed in the vacancy of 1994-1995; however, high his rank may be. If the seniority list requires any re-cast on the above lines; obviously, the official respondent ought to do so. In the circumstances, we do not find any reason to differ from the decision of the Tribunal impugned in the writ petitions or interfere with the dismissal of the review applications impugned in the Original Petitions (CAT). The Writ Petitions and Original Petitions (CAT) are dismissed, however, with no costs."

**Outcome/Reaction:** Challenging the judgment dated 01.07.2013 of Kerala High Court, BSNL filed an SLP 18004/2014 supporting DoT's stand of assigning seniority to this 147 group of officials from 1990 onwards. However, in connection with a proposal to promote AGM (T) to DGM (T) on Adhoc basis, it was decided that seniority assigned by DoT to 147 group of officials from 1990 onwards needs to be changed by giving them seniority from 1994 onwards as upheld by Kerala High Court in its order dated 01.07.2013.

Since, BSNL had previously filed an SLP No. 18004/2014 against this order of Kerala High Court supporting DoT's stand on seniority to 147 group of officials, it was decided to withdraw the said SLP and amend its counter replies in four other SLPs filed by private respondents belong to 147 group of officials thereby contradicting DoT's stand on seniority

to this group of officials. In effect, BSNL's stand before the Hon'ble Supreme Court was in support of the order dated 01.07.2013.

**d) Event/Action\_21.01.2015:** The Hon'ble Supreme Court (**CA No. 4389/2010 & connected matters**) in its judgment dated 21-1-2015 directed the Department to revise the Seniority Lists as per DQE and appointed an Expert Committee.

**Outcome/Reaction:** The Department submitted the Revised Seniority lists before the Expert Committee as per the direction of the The Hon'ble Supreme Court vide its judgment dated 21-1-2015 and also implementing the directions of the High Court of Kerala judgment dated 01.07.2013, wherein 147 officials were assigned seniority against the vacancy year 1994-95, 1995-96, 1996-97 (upto 22.07.1996).

Thus, seniority position of 147 group of officers was reverted back to position assigned against vacancy year 1994 to 1996-97 (upto 22.07.1996) from the upgraded position against the vacancy year 1990 to 1996-97 (upto 22.07.1996).

The Revised Seniority List(s) - *submitted before the Expert Committee as per the direction of the The Hon'ble Supreme Court and also implementing the directions of the High Court of Kerala* - was operated while giving DGM (Adhoc) promotions in 2017 to all eligible officials including officers from 147 group.

Further, an affidavit was also filed by the Department before the Apex court in IA No. 3 dated 31.08.2016 stating the fact that the Department has already revised the seniority lists and 147 officials were assigned the due seniority from 1994 onwards. The relevant portion of the IA is as under:

"2 (a). ... *the view taken by the Hon'ble High Court that the seniority of 147 competitive quota officials may be assigned from 1994 'vacancy year' instead of 1990.*

(c) *Accordingly, the revised seniority lists number 1 to 17 were prepared based on the DQE criteria and **the group of 147 officials, forming a part of these seniority lists, were assigned the due seniority from 1994 onwards.** The said seniority lists submitted before the Ld. Expert Committee constituted by this Hon'ble Court vide its judgment dated 21.01.2015 has accepted the said seniority lists stating that 'the seniority lists submitted by BSNL in compliance of the judgment of this Hon'ble Court dated 21.01.2015 is in accordance therewith.'*

5. *The respondent-Corporation further most respectfully submit that it is and always tries to be a model employer and has no stake whatsoever of its own and is simply eager that the rights of different groups of officials mired in the present litigation are settled by this Hon'ble Court as per law and in accordance with statutory recruitment rules.*

7. *That it is the further respectful submission of the Respondent-Corporation that the legal principles enunciated by the Hon'ble Court in its judgment dated 21.01.2015 and the resultant report of the Expert Committee, constituted vide above said judgment, endorsing **the Seniority List number 1 to 17 of SDEs, has already been acted upon by the Respondent Corporation** in accordance with the spirit and intent of the judgment dated 21.01.2015. Hence, it is submission of the Respondent-Corporation that the judgment dated 01.07.2013 rendered by the Hon'ble High Court of Kerala allowing the petitioners seniority from the year 1994 is in consonance with the legal principles enunciated by this Hon'ble Court in its judgment dated 21.01.2015 supra, and as such the High Court judgment does not suffer from any legal infirmity or vice."*

**e) Event/Action\_12.12.2017:** The Hon'ble Supreme Court upheld the Kerala High Court judgment dated 01.07.2013.

**Outcome/Reaction Ought to be:** The action of the Department, after the outcome of the Hon'ble Supreme Court's judgment dated 12.12.2017 which upholds the Kerala High Court judgment dated 01.07.2013, ought to be the no altercation of the seniority position of the 147 group of officers as their positions were already lowered in 2015 implementing the directions of the Kerala High Court.

**Outcome/Reaction happened\_06.06.2018:** But due to the vested interests of some of the officers (anti 147 group), the Department vide its orders dated 06.06.2018 rendered 96 officers ineligible to appear in 1998 LDCE and other officers were put enblock junior in the List by interpreting the Hon'ble High Court of Kerala judgment dated 01.07.2013 in the following manner:

"2. Now, court cases on above seniority and promotions has attained legal finality having regard to the decision, of Hon'ble Apex Court in the aforementioned CA No. 392/2017 vide Judgement dated 12.12.17. In its Judgment, Hon'ble Supreme Court has upheld the Judgment dtd. 01-07-2013 pronounced by Hon'ble High Court, Kerala in WP (C) No. 5406 of 2010. As per Judgement of Hon'ble Kerala High Court, a candidate should complete 5 years of regular Service in feeder Cadre (JTO) as on 1st January of a Vacancy Year for making him/her eligible."

### **3. Now the Question arises:**

#### **Whether the Department correctly interpreted the Kerala High Court judgment in its 06.06.2018 order?**

**If yes,** it is inferred that the Seniority Lists revised by the Department in 2015 was wrong.

**If yes,** it is inferred the Department in 2015 had submitted the wrong Seniority Lists to the Hon'ble Expert Committee which were upheld by the Apex Court.

**If yes,** then the DGM (Adhoc) promotions given in May-2017 were based on wrong seniority lists.

**If yes,** then whether the affidavit (as I.A. No. 3 dated 31.08.2016) submitted by the Department before the Hon'ble Supreme Court is not the false evidence? (*Punishment for filing a false affidavit is punishable by imprisonment for a term ranging from 3 to 7 years*).

**If yes,** then it is inferred that the Department has gone against the Recruitment Rules (RRs) 1981 and amended in 1986 & 1987 for the post of TES Group-B.

**If the answer is No,** then what should be the correct interpretation of the Kerala High Court judgment dated 01.07.2013?

### **4. The Answer to the above question is absolute NO and this can be understood from the following outcome:**

#### **Decision of the Hon'ble National Commission for Scheduled Castes:**

In the letter dated 15.01.2019 addressed to CMD, BSNL and letter dated 20.06.2019 addressed to Secy, DoT, the Hon'ble National Commission for Schedule Caste (NCSC), intimated that BSNL had overlooked the statutory recruitment rule and observed wrong application of law in the 06.06.2018 orders. It further stated that yardsticks of the rules of the recruitment had not been changed by Hon'ble Supreme Court, and accordingly directed to reinstate the executives to the posts which they held prior to issuance of 06.06.2018 order.

### **Decision of the Hon'ble CAT, Bangalore**

The Hon'ble CAT, Bangalore Bench in its judgment dated 02.07.2019 passed in OA No. 170/00533-534/2018 had quashed the orders dated 06.06.2018 on the ground that BSNL had improperly understood the judgment of Hon'ble High Court of Kerala. It had further asserted that the Hon'ble HC of Kerala in its judgment dated 01.07.2013 did not interfere any rule positions and the rules were nowhere in discussion. The relevant portions of the judgment are as under:

*"12. .... The Hon'ble High Court of Kerala did not issue any order relating to the change of any eligibility condition as per the rules at that point of time. It was merely pointing out that the relative seniority of the individuals who passed the qualifying examination will have to be worked out based on not only ranking but also their eligibility in terms of writing the exam due to the fact that a combined examination was being held for the vacancies of three years and therefore, merely because of higher ranking, a person should not be placed above any person eligible to write the exam before him/her.....In their present proceedings, the respondents have clearly erred in taking the vacancy year for the higher post and then calculating 5 years back service which is no longer the rule position. Vide Document No.1 given to a similarly placed individual in their letter dtd.25.9.2018, the respondents have held as follows:*

*'As per judgment dt.1.7.2013 of Hon'ble Kerala High Court, a candidate should complete 5 years of regular service in feeder cadre (JTO) as on 1st January of a Vacancy Year for making him/her eligible (Para 47) i.e. a candidate is entitled to be eligible in VY 1996-97 (upto 22.7.1996) must complete five years of regular service in the feeder category on the 1st of the January of the year 1996.'*

*13. This is clearly wrong since the rules were amended in the year 1986 and the issue of regular service etc. are no longer relevant. Therefore, we have to hold that **the issue has been handled by an improper understanding of the orders of the Hon'ble High Court of Kerala which did not go into the rule position and the eligibility condition** thereon. This is an interpretation interpolated by the respondents and this cannot come in the way of the promotion given to the applicants and therefore, the order at Annexure-A6 is quashed. The applicants are eligible for all the consequential benefits thereon. The respondents shall do so within a period of two (2) months from the date of receipt of this order."*

**In other words**, it is evident that the Department has wrongly interpreted the Hon'ble Kerala High Court judgment by enforcing regular service etc. as the eligibility criteria which are no longer relevant since the rules were amended in the year 1986.

### **5. Conclusion:**

Thus, the revised seniority position assigned to 147 group of officers in 2015 may please be restored.

As per the directions of Hon'ble SC, the whole exercise was to be completed within a period of three months. Surprisingly three months are already over and department is yet to move in settling the genuine grievances of the affected ones. It seems that department is believing in the dictum of delayed response as according to them is the only solution for resolution of the matter. However, justice being delayed is also equivalent to denial of justice.

The interpretation made by Pers-legal section regarding Hon'ble High court of Kerala judgment dated 01.07.2013, which was upheld by the Apex Court is completely erroneous. Now the same error, though factually knowing that an error has been committed, is repeatedly being defended by the same people on the name of defending its earlier stand is nothing but complete violation of its Statutory RRs and averments made in Hon'ble SC. We are having every apprehension and would like bring into the kind notice of BSNL management that denial of justice to the concerned will certainly lead to contempt proceedings against the department and will lead to a very precarious situation which at this stage can altogether be avoided. We are happy that in one of the case recently management has gone overboard and helped the affected persons getting the much awaited justice.

Now there is an opportunity for the department to correct its earlier erroneous stand dated 06.06.2018 by providing these officers their seniority existed prior to 06.06.2018. This will result into imparting justice to these affected officers and motivate them to work harder with a firm belief that finally the justice has been accorded by the department itself.

**With Regards,**

Sd/-  
**[Ravi Shil Verma]**  
**General Secretary**

**Copy to :**

- 1. Dr Kalyan Sagar N Ji, Director (HR), BSNL, New Delhi.**
- 2. Smt Anita Johri Ji, PGM (SR & Restg), BSNL CO, New Delhi.**