

SNEA(I)/ CHQ /Dir(HRD)/ 12/ 12-11

Dated 23rd December, 2011.

To,

Sh A. N. Rai,
Director (HR), BSNL,
New Delhi-110001

Sub: Extending the benefit of notional date of promotion and fixation of pay w.e.f. 23.01.2002 and actual benefits from 01.04.2008 in terms of judgment dated 26.04.2010 of the Hon CAT, Bangalore Bench in OA. No. 181/2009 to similarly placed other candidates reg:

Sir,

We are extremely thankful to the BSNL Management for implementing the judgment of the Bangalore Bench of the Hon'ble CAT Bangalore, vide O.A. No.181/2009 wherein Hon'ble Tribunal vide its judgment dated 26.04.2010 has directed the respondents DOT/BSNL to assign the notional date of promotion as SDE w.e.f. 23.01.2002, six months from the date on which the competitive examination was announced to be held with entitlement of arrears of pay from 01.04.2008. The judgment of the Hon Tribunal was upheld by Hon'ble High Court of Karnataka on 21.04.2011 in WP 37322/2010 and SLP in the apex court, 22720/2011 was also dismissed on 25.08.2011. However, the benefits of the above judgment have been extended to the applicants only.

The promotion order against the 75% seniority quota was issued in May 2000 and December, 2001. The competitive examination for the 25% LDCE quota was initially announced to be held on 23.07.2001 and postponed from time to time and finally held on 01.12.2002. However, the result of the examination was declared on 15.12.2003 and the promotion orders were issued on 26.05.2004. About 1500 candidates passed the said LDCE held for the vacancy years 1996-97 to 2000-2001 of which about 500 candidates were regular SDEs earlier. A major anomaly occurred is that the JTOs who are not successful in the LDCE got the TBP in October, 2004 and subsequently the regular promotion also in 2004 itself in the 75% seniority quota and drawing the higher pay.

By the dismissal of the SLP by the Hon Supreme Court, the issue of notional promotion to all those who are declared successful against the 25% LDCE quota has attained judicial finality. Similar litigations are already going on at different

Tribunals and High Courts of AP at Hyderabad and Kerala at Ernakulam. Hon AP High Court has already given a judgment in line with the Hon High Court of Karnataka at Bangalore subject to the final outcome of the RA filed by BSNL at the Hon High Court of Karnataka. Apart from the applicants, there are similarly placed candidates numbering around 850 who are entitled for the same benefit of notional promotion w.e.f. 23.01.2002 with all consequential benefits and arrears from 01.04.2008 irrespective of whether they are petitioners/party in the above mentioned litigations. Almost all the candidates have already represented to the Management to extend the same benefit to them. However it is understood that BSNL filed a Review Application (RA) in the Hon High Court of Karnataka at Bangalore.

The department has given the benefit of Hon'ble CAT judgment to the applicants only. Apart from the applicants, there are similarly placed candidates who are entitled to avail the same benefit irrespective of whether they independently joined the challenge in the above said litigation or not. The ratio of the judgment, as laid down by Hon'ble Supreme Court in the case of Sanjay Singh Vs. U.P. Public Service Commission 2007 (5) SCC 720 shall mutatis mutandis be applicable to their case also and they shall be entitled to be accorded notional promotion w.e.f. the said date i.e. 23.01.2002 with all consequential benefits. This position is further clarified by the constitution bench judgment of Hon'ble Supreme Court of India in Direct Recruit Engineers Association Vs. State of Maharashtra 1990 (2) SCC 715 as clarified in State of W.B. Vs. Aghore Nath Day 1993 (3) SCC 371. In A. Janardhana Vs. Union of India 1983 (3) SCC 601, Hon'ble Supreme Court has clearly held that the principles laid down as regards seniority, shall be applicable to everyone irrespective of whether he/she was individually a party or not.

As the issue has attained judicial finality, it is requested that the benefit of the judgment of Hon Tribunal at Bangalore may be extended to all other similarly placed candidates by assigning notional date of promotion as SDE w.e.f. 23.01.2002 with consequential benefits like counting of experience for further promotions, annual increments etc. and the arrears of pay from 01.04.2008. If the management desires to wait for the outcome of the RA filed at the Hon High Court at Bangalore, then a final decision on the issue may be taken after the outcome of the RA or the management can think positively and withdraw the RA, so that others should not be forced to approach different Tribunals for the same benefit.

With regards,

(G. L. Jogi)

Copy to: Sh A. K. Jain, Sr GM(Pers), BSNLCO for information and n/a please.