

## **EXPLANATORY NOTE FORMING PART OF LETTER ADDRESSED TO CMD, BSNL**

**Para 3 (i) in Speaking Order:** Restoration of Counting of Residency Period w.e.f. 01.10.2000.

- The reply renders natural justice. Clear instructions as to the action to be taken by CGM, Kerala needs to be incorporated by the Competent Authority.

**Para 3 (ii) in Speaking Order:** Granting of one time option facility for earlier time bound promotion policy of Govt of India like ACP etc. under clause 1(I)(d)(7) of EPP

- It was replied that “option facility to the Applicants of OA 142/2011 cannot be granted up to **31.12.2003**” whereas the Applicants never claimed for option facility up to **31.12.2003**. The Applicants No. 2 to 45 demanded the right to exercise option facility only with effect from **01.01.2004** on which date they were made executives and placed in the executive pay scale. From the reply, it is to be understood that applicant Nos. 2 to 45 can exercise option facility w.e.f. 01.01.2004. However, in the absence of clear cut orders by the Competent Authority, the issue raises confusion. In order to avoid such a confusion, the Competent Authority needs to issue clear instructions that the Applicant Nos. 2 to 45 can exercise option facility w.e.f. 01.01.2004.

**Para 3 (iii) in Speaking Order:** Protection of financial upgradation granted in the revised restructured IDA pay scale.

- The reply for the issues raised vide (iii) is only a compilation of various clarifications issued from time to time on the subject and nothing is new there. The Applicants, in their representation dated 14.03.2012, have neither complained nor objected to these clarifications.

**Para 3 (iv) & 3 (v) in Speaking Order:** Grant of ACP benefit available to the non-executives in the NEPP dated 23.03.1020 vide Clause 6.4 to the members of the Applicant Association and to other applicants

- In the reply it was clarified that EPP and NEPP are not comparable as they have been framed for two different sets of employees. The Applicants are also well aware of the same. The Applicants never requested to make applicable Clause 6.4 or Clause 5.2 of NEPP to them, but only pointed out that by virtue of the above clauses, the non-executives were made eligible to exercise their option up to 23.03.2010 (up to the date of notification of NEPP) whereas the Applicants were denied such

a facility resulting in pay reduction and huge amount of recovery. After all, non-executives and executives are the employees of BSNL and it is for the Management to see that no discrimination would be there between the employees while implementing a new promotion policy for both categories. The issue concerning the Stenographers needs to be seen a different perspective since they have non-executives and executives in their hierarchy. The Applicants had tried to convince the competent authority that the Stenos (non-Executives) who are juniors to the Applicants (PAs in Executive cadre) are permitted to continue / opt the 2<sup>nd</sup> ACP scale of Rs.11875-17275 from 01.01.2004 to 23.03.2010 whereas the Applicants at Sl. No. 46 to 60 who were made executives w.e.f. 01.01.2004 and granted 2<sup>nd</sup> ACP scale during the period 01.10.2004 to 30.09.2006 are denied the option facility under EPP. This has led to an unpleasant situation where the junior stenos in dying cadre (non-executives) are drawing higher pay than their seniors in PA Grade (in Executive cadre). This will affect their retirement benefits also. The Competent Authority has failed to resolve the grievance of Applicants No. 46 to 60 in respect of their core grievance that on implementation of a new Promotion Policy (EPP), the Applicants are subjected to pay reduction resulting huge amount of recovery whereas they were granted the upgradation by virtue of the then existing promotion policy (ACP), as assured by the Competent Authority vide Order No. BSNL/26/ST/2002 dated 07.08.2002 at the time of absorption. There is no reply to the issue that - is it just and fair to withdraw the promotions granted to the Applicants prior to the notification of EPP (18.01.2007) based on the then existing promotion policies and is it fair to reduce the pay of the Applicants consequent to the implementation of a new promotion policy resulting in huge amount of recovery. The grave discrimination shown between the Executives & Non-Executives in this regard is that the benefit already got by a non-executive prior to 23.03.2010 on the basis of the instructions contained in Order No. 25-5/2005-Pers.II dated 12.09.2005 is not required to be reopened/recovered whereas in the case of Executives the same is withdrawn with effect from 01.10.2004 leaving Applicants No. 46 to 60 in reduction of pay, huge amount of recovery and postponement of the date of next upgradation under EPP. In the reply it was stated that the ACP Scheme of the Govt has not so far been extended beyond 1.10.2004 in any specific context to any cadre whereas in Para No. 7 of Clarification No. 15-07/2011-Pers.II dated 07.07.2011 it was stated that the benefits already got by non-executive prior to 23.03.2010 on the basis of instructions contained in Order No. 25-5/2005-Pers.II dated 12.09.2005 is not required to be reopened/recovered.

**Para 3 (vi) in Speaking Order:** In Tamil Nadu, Karnataka, & STP Circles 1<sup>st</sup> TBP was granted /treated to be granted on the corresponding dates on which PAs opted for ACP Scheme during the period 01.01.2004 to 30.09.2004 as envisaged in Para No. 7 of Corporate Office Clarification No. 15-07/2011-Pers.II dated 07.07.2011.

a. As per para 1(I)(d)(7) of EPP, ***“any upgradation due to the Executive on or before 01.10.2004 based on earlier time bound policies, such upgradation will be granted to the executives on the basis of option”***. There were no stipulations in the EPP that the officer working in the Executive cadre as on 01.10.2004 should have been in the substantive grade of Executive as on 01.10.2000 for getting the benefit of Para 1(I)(d)(7). In the Speaking order, a misinterpretation was made by Corporate Office that option facility as per provision 1(I)(d)(7) would be applicable only to those Executives who were in substantive grade of Executive as on 01.10.2000. This interpretation is wrong and against the spirit of the EPP. An Officer who was placed in Executive Grade between 01.10.2000 and 01.10.2004 and granted Executive Pay Scale by virtue of either merger of Grades or Upgradation of pay scales during the above period will be eligible to get the benefit of the provisions contained in Para 1(I)(d)(7). In OA No. 142 of 2011, Applicants No. 2 to 45 were made Executives with effect from 01.01.2004 and placed in the Executive Pay Scale of 11875-300-17275 before 01.10.2004. The following clarification gives more clarity to this point.

- i) As per Para No. 7 of clarification issued by BSNL Corporate Office vide F No.15-07/2011-Pers.II dated 07.07.2011, it was clarified that ***“.....whereas PAs who has opted for ACP Scheme during the period 1.1.2004 to 30.09.2004, it would be treated as their 1<sup>st</sup> time bound scale upgradation and subsequent upgradation would be considered after 5 years.”*** Also CGMT Kerala Circle was instructed to submit this point amongst others before the Hon’ble CAT in respect of OA 142/2011. According to the above clarification, Applicants No. 2 to 45 were eligible to exercise their option for the revised replaced IDA Pay Scales of 11875-300-17275 during the period **1.1.2004 to 30.09.2004**, since they were made PAs (Executives) with effect from **01.01.2004**.
- ii) Further the Applicants had brought the following clarification to the notice of CMD vide Para (iv) in Page No. 7 of their representation dated 24.03.2012:

“In this connection your kind attention is drawn to the clarification on various points/issues relating to the EPP issued vide BSNL CO letter No. 400-175/2004-Pes.I dated 19.02.2010, wherein under Para-10, it is clarified that **if any executive has got time bound scale upgradation (including ACP/LA) during 01.10.2000 to 30.09.2004, it would be treated as his 1<sup>st</sup> time bound scale upgradation and subsequent upgradation would be considered after 5 years”**. According to this clarification, an employee who happened to be placed in executive grade between 01.10.2000 and 30.09.2004 and has got time bound upgradation (including ACP/LA), he/she has the right to exercise option as per Para 1(I)(d)(7) of EPP. The argument that officer must have been in the substantive grade of executive as on 01.10.2000 is a misinterpretation and against the letter and spirit of the provisions of Para 1(I)(d)(7) of EPP, and above mentioned clarifications dated 07.07.2011 & 19.02.2010.

iii) From the above, it is kindly submitted that while replying the issue raised vide sl. no. 3(ii) in the speaking order, the office of CMD did not apply their proper mind on our representation and the pleadings made by the representatives of the Applicants in the personal hearing held on 15.05.2012. It should have been intimated to the Applicants in what way the above clarifications dated 7.7.2011 and 19.02.2010 and the provisions contained in Para 1(I)(d)(7) of EPP cannot not be made applicable to the Applicants at Sl.No.2 to 45.

iv) Even as per the own admission of the Competent Authority in reply to para 3(i), as per order No. 400-61/2004-Pers.I(pt.I) dated 23.08.2011, a Committee under the Chairmanship of PGM(FP), based on the discussions in the meetings, going through all the relevant papers in detail, including MC Memo/Board Memo, recommended to grant residency period w.e.f. 01.10.2000 to Stenographers Grade-I & II of the BSNL field units, who were made PAs w.e.f. 01.01.2004 ie. their eligibility to consider 1<sup>st</sup> Time Bound Promotion under EPP starts from 01.10.2000, though they were Non-Executives during the period 01.10.2000 to 31.12.2003. Hence, granting option is also part of EPP and cannot be differentiated.

**Para 4 of Speaking Order** – It is not correct to say that on a reference made by the Applicant/Representatives to issues falling outside the OA as well as the representation, CMD advised them to submit a separate representation. The fact is that on being convinced about the gravity of the grievances of Stenographers working in the field units of BSNL, Sr. GM(Pers) requested the General Secretary of AIBSNLEA to write a separate letter enlisting the grievances of the cadre, for appropriate action. It was made clear during the request that this is in no way connected with the Court case and will be considered separately. However, for the sake of clarity, the issues raised are replied as under:

**Para 4 (i) in Speaking Order:** Permission of CMD, BSNL for extending ACP Scheme of Govt of India in respect of the cadre of stenographers in the field units of BSNL was already conveyed with the issue of ACP restoration order dated 21.04.2009 which fulfilled the condition of specific context to enjoy the benefit.

- a. It was replied that the ACP Scheme of Govt has not so far been extended beyond 01.10.2004 in any specific context to any cadre and there is no mention of any such provision to Stenographers' cadre of BSNL field units in the BSNL CO letter dated 21.04.2009 issued w.r.t. CMD hearing. At the same time no amicable solution was suggested to the core issue that on implementation of a new promotion policy (EPP), Applicants No. 46 to 60 are suffering due to reduction in pay scale and the resultant pay recovery which has already been granted to them

based on the then existing promotion policy (ACP) as agreed to by Corporate Office vide Order No. BSNL/26/ST/2002 dated 07.08.2002 [Clause 9 (a) under General].

- b. In reply to point No. 3(iii), the Competent Authority himself admitted that “Order No. 25-05/2005-Pers-II dated 12.09.2005 of this office was withdrawn vide letter No. 25-4/2006-Pers-II dated 20.08.2007 on the implementation of EPP vide letter No. 400-61/2004-Pers-I dated 18.01.2007. But it was reinstated on personal hearing by CMD, BSNL vide letter No. 15-70/2007-Pers-II dated 21.04.2009 in compliance to Hon’ble Kerala High Court judgments dated 29.05.2009 and 27.06.2008 in r/w WP(C) No. 28989/07 and 28735/07 and judgment dated 28.10.2008 of the Hon’ble High Court of Madras in r/o Writ Petition No. 5789/08”. This proves that the condition of “specific context” in the EPP has been fulfilled in this case.
- c. Since no creative solution was suggested to redress the grievance of Applicants No. 46 to 60 regarding their loss due to implementation of new Promotion Policy, the reply of Competent Authority would not settle the issue.

**Para 4 (ii) in Speaking Order:** Restructuring Scheme introduced in the cadre of Stenographers of BSNL field units is not to be treated as promotion.

- It was agreed that restructuring in the cadre of stenographers of BSNL field units is not be treated as promotion. As such, the revised restructured IDA pay scale (11875-17275) granted to Applicants No. 2 to 45 as on 01.01.2004 is also not be treated as promotion, but only a replacement scale in revised IDA pay scale. This replaced scale was given with effect from 01.01.2004 i.e. much before the implementation of EPP. There is no provision in the EPP that replacement scale granted by virtue of restructuring (without granting any promotion under any scheme like ACP/BCR/OTBP/In-Situ, etc.) to any executive cadre prior to 01.10.2004 would be withdrawn on implementation of EPP. Hence it is the bounden duty of the Management to retain and protect the revised, restructured, replacement IDA pay scale granted to Applicants No. 2 to 45 without asking for any option, etc.

