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EXECUTIVES' ASSOCIATION
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No. AIBSNLEA/CHQ/CMD/2012-13

Dated:27.09.2012

To

**Shri R.K. Upadhyay
CMD, BSNL
New Delhi-110001**

Sub:- Denial of FR-22(1) (A)(1) fixation to a group of 190 Officiating JTOs in Kerala Circle by CGMT Kerala, disregarding the prevailing court order and the pending litigation in HC of Kerala in this matter.

Ref:- (1) No.HR-III/ 2-5/ JTO (Offg)/2011/25 dated 31-03-2012 and
(2) No.HR-III/ 2-5/ JTO (Offg)/2011/26 dated at Tvm the 31-03-2012. of CGMT, Kerala.
(3) No. HR-III/ 2-5/ JTO -Offg/2011/30 dated 02-04-2012- (Corrigendum)
(4)No. HR-III/ 2-5/ JTO -Offg/2011/61 dated 17-09-2012.-(Withdrawal of corrigendum)

Respected Sir,

We would like to bring to your kind notice that when re-officiating was ordered on 1-4-2012, the Circle HR wing denied continuance of FR-22(1)(A)(1) fixation to 190 officiating JTOs and prescribed FR-35 for them as per letter second cited whereas FR- 22(1)(A)(1) was extended to 126 others as per letter 1st cited subject to outcome of WP(c) 23141/2010 and connected cases filed by BSNL.

FR-22 (1)(A)(1) was denied to 190 persons on the ground that they were not parties in the OAs (TAs) of CAT Ernakulam in this matter. We immediately took up the matter vide our **letter No.AIBSNLEA/KER/GEN/2011-12 Dt.31-03-2012** and explained with facts and figures citing the wording of the court's order which is equally applicable to all officiating JTOs in the Circle and the CGM, Kerala was forced to re-instate the FR-22 for all of them immediately and revised orders were issued on the very next day as a corrigendum dated 2-4-2012 allowing the same facility to the 190 persons also as the court order is applicable equally to all.

But now, after a period of 5 months, the CGMT, Kerala, without any provocation withdraws the corrigendum dated 2-4-2012 and again prescribes FR-35 for the 190 officiating JTOs, **simply citing that it is as per instruction of Corporate Office.** But no order of the Corporate Office is mentioned or cited in it.

The true picture of the matter is as follows:-

- 1) Fixation of pay under FR-22 (1) a (1) originally granted to officiating JTOs in Kerala Circle was once withdrawn by the CGMT Kerala in 2007 based on a general order No. 3-Genl/21/2006-Pers-IV dated 20th Nov 2007 sent by the Corporate Office, but the same (Fr-22 (1) A (1) fixation) was upheld by the Hon. CAT, Ernakulam vide its order delivered on 15th July 2009 in a group of Writ Petitions initially filed before the Hon High Court of Kerala and later transferred to CAT as TAs Nos.84 to 97 of 2008. Thus it was reinstated in the circle.
- 2) In the final Order of the CAT, it was held that **“as held by the single judgment of the High Court(supra)what is relevant in the matter of fixation of pay is whether the applicants are performing duties attached to the post of JTOs having higher responsibilities. There is no dispute in this regard. Hence these TTAs succeed. Consequently, Hon’ble Tribunal set aside the Annexure P-25 & P-26 orders dated 20-11-2007 & 4-12-2007 respectively. Respondents are directed not to recover the pay & allowances already paid to the applicants in the scale of pay of JTO. They are further directed to continue to pay to the applicants pay & allowances due to them in the scale of pay of JTO as per Rule 22(I) A (I) of Fundamental Rules.”**
- 3) Annexure P-25 order dated 20-11-2007 (letter from Corporate Office addressed to CGMT Kerala vide **No.3-Genl/21/2006-Pers-IV dated 20th Nov 2007**) is the letter, which authorized CGMT Kerala to apply FR -35 for **all officiating JTOs.** The honorable Tribunal set aside the said order as such. Hence, nobody is empowered to act according to the contents of the said (P-25 Annexure) letter dated 20-11-2007 of the Corporate Office. **In another words FR -35 cannot be made applicable to any of the officiating JTOs of Kerala Circle with reference to the order of the Corporate Office which stands set aside by the Hon. Tribunal.**
- 4) **By setting aside the basic** instruction dated 20-11-2007 of the Corporate Office, the Tribunal made its order applicable not only to the applicants in the TAs but also to all officiating JTOs in Kerala Circle.
- 5) The Corporate office or any other office cannot issue another similar order denying FR-22 (1)(A)(1) to officiating JTOs till the prevailing court order quashing the instruction of Corporate Office is altered by the High Court or any other court above CAT. This has not happened so far.

- 6) Also please note that, no stay order or any other interim order was granted in the appeal filed by BSNL in the appellate court. Hence it is a matter of subjudice. If any office is still operating the order once set aside by the CAT, or if any office is issuing similar order again it may also amount to contempt of court and invite numerous un-necessary litigations.
- 7) CGMT Kerala's latest order withdrawing the corrigendum, asks to GMs in SSAs to implement FR-35 "as per instructions from corporate office". If it is true, the officer issued such an order in the corporate office at this juncture has to face contempt of court and other legal actions. CGM Kerala or his GM HR/DGM HR might have misguided and trapped the officers in corporate office without furnishing the real background, just to satisfy their ego and show their vengeance on the AIBSNLEA members and leaders for obvious reasons. **They might have even suppressed the original legal opinion given by the senior BSNL counsel who asked them to continue FR-22(1)(A)(1) for all.**
- 8) Your personal attention is also invited to the fact that all the 190 officiating JTOs to whom FR -35 fixation is now made applicable, are at par with all other regular JTOs as well as those officiating JTOs who approached the Tribunal and they are holding the very same responsibilities attached with the higher post of JTO.

In view of the above, we request you to kindly appraise the officers concerned in the case to refrain from the arbitrary and untimely action of implementing FR-35 fixation against the true spirit of the order of CAT Ernakulam. It is not fair to drag hundreds of hard working and dedicated officers of the PSU to the court of Law, especially when this matter is now under the consideration of honorable High Court of Kerala. We may also advise the HR/Admn wing of corporate office to correct the erroneous action at the earliest, as it is **contemptuous** as well as **subjudice**.

Yours Sincerely,
-sd-
(Prahlaad Rai)
General Secretary

Copy to:

- (i) Shri A.N. Rai, Director(HR/EB), BSNL Board, New Delhi-110001
- (ii) The GM(Estt.), BSNL C.O., New Delhi-110001