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No:- AIBSNLEA/CHQ/CMD/2011-12

Dated 7-4-2012.

To  
**Shri. R.K.Upadhyay,**  
**Chairman-Cum-Managing Director, BSNL**  
**New-Delhi-110001.**

- Sub:-1) Demand for an inquiry in to suspected collusion with in BSNL, for defeating the Board decision on regularization of Officiating JTOs - and**  
**2) Demand for early implementation of BSNL Board Decision to give regular posting as JTOs to all qualified & trained TTAs-reg.**

Respected Sir,

This is in continuation to a series of correspondences made hitherto by this association in the matter of regularization of officiating JTOs ( qualified & Trained TTAs) who are presently working in various parts of the country in different areas of operation for the past seven or more years. Before appraising of the unpleasant situation, let us give a brief history of the case.

**A Brief History of the case.**

*Recruitment to the cadre of JTO was initially governed by the RR of 1990. There was a 35% quota to be filled by qualified officials belonging to Gr-C after passing a qualifying test. An examination to this quota was conducted in 1995. Later the RR was amended and the RR-1996 was promulgated. In the 1996-RR, recruitment was to be made by 50% direct recruitment from outside and 50% by internal candidates. The internal quota comprises of 15% through competitive examination and 35% by promotion through screening test. The screening test for promotion to 35% quota could not be held for various reasons and the same was getting prolonged. Instead, the persons who had qualified in the qualifying test of 1995 were being appointed continuously to all the vacant posts in this quota pertaining to the period of RR-1996. As far as TTAs are concerned, this 35% screening test was the only channel for promotion in the RR-1996. Finally a test for 35% quota was conducted as per RR-1996 in the year 2000. By this time the RR of 1996 was replaced by RR-1999 with the change that the promotion quota of 35% screening test was converted to LICE.*

*In the screening test held in the year 2000 as per RR of 1996, nearly 6000 TTA s were qualified through out the country. It was the only examination conducted under the RR of 1996. It may be noted that in all earlier recruitment rules, competitive channel was not denied to any cadre even if that cadre is eligible under qualifying / screening channel. But under 1996 RR , even that chance was refused to TTA s. For many of the TTA s, this was the first and last chance for a promotion in their entire career.*

*A number of TTAs were qualified in the 35% qualifying examination in 1995 in accordance with RR of 1990. Before all of them got absorbed, the new 1996 RR came in to being. At that time the TTAs qualified earlier to the publication of new rule were given protection in the new rule stating that, " they are deemed to have been qualified in the new RR of 1996." Thereafter 1999 RR and subsequent to the formation of BSNL, 2001-RR also came into existence where in a competitive examination was brought in for the departmental candidates for the post of JTO. The officials who were earlier permitted with various engineering qualifications were restricted and certain branches like electrical, electronics, telecom, computer science etc., were only permitted to appear in exam. Knowingly or unknowingly, those who were qualified in the 1996-RR were not given any protection. Out of those qualified for promotion as per 1996-RR, about 3500 got absorbed as regular JTOs and the remaining 2500 were sent for training in accordance with the syllabus of 2001-RR, and subsequently posted to officiating as JTOs in various states of the country and they have been discharging duties to the satisfaction of superiors at par with other regular JTOs. Majority of them are officiating continuously as JTO for the last 7 years.*

*However, there had been acute shortage in the cadre of JTO, as further direct recruitment from outside quota ( open market) against 50% quota had not been made which resulted in accumulation of about 11, 300 vacant posts of JTO in the DR quota.*

*After formation of BSNL, there was strong demand from trade unions for diversion of DR quota to 35% departmental quota, in order to give promotion to those who have cleared screening test as per 1996-RR. In view of this and also to mitigate the shortage in the JTO cadre, BSNL Board, the supreme body of BSNL, in its meeting held on 30-3-2001, took a policy decision in the larger interest of the company and public, to approve training and recruitment as JTO to all TTAs who have qualified in the screening test but could not be sent for training due to non-availability of vacancies in departmental quota. This would be done @ 500 posts per year by diverting posts from DR quota. Accordingly all such officials were given Phase-I training to the cadre of JTO as per syllabus of the BSNL (Graduate Engineer ) prescribed in 2001 RR.*

### **CWP.5608/2007 in Chandigarh High Court & Contempt of Court case No.1431/2008.**

After completing the diversion of DR quota for years 2001 to 2007 ( 3500 posts) CWP 5608/2007 was filed by Mr. Dalbir Singh & 7 others (TTAs) before Hon. Punjab & Haryana High Court at Chandigarh for quashing the action to fill up posts of JTO for the year 2006 and 2007 from the candidates of waiting list of year 2000 and to scrap the waiting list of the year 2000 etc.

The WP was disposed of with the judgment dated 30-5-2008 as below:-

**" This WP is disposed of with a direction to the respondents to restore the posts diverted from DR quota to 35% departmental quota to admit TTAs who had qualified the screening test held on April 23, 2000, to DR quota as stated by them in the written statement."**

By this time vide letter dated 12-8-2008 order was issued for diversion of another 500 DR quota posts and this was one of the reasons for filing a Contempt of Court Petition,(COCP No.1431/2008) by some of the petitioners.

BSNL authorities took a decision not to file any appeal against the judgment and decided to implement the judgment of HC. Accordingly, the Management Committee decided not to make any diversions further and also all the posts so far diverted were restored to DR quota. BSNL also created 3500 supernumerary posts to adjust the officials already promoted against the diverted posts. The creation of supernumerary posts will no

way affect the promotional aspects of the petitioners. The Court was not satisfied with the action taken so far and observed that “ respondents have already created manpower by creating supernumerary posts and the entire exercise seems to have been made to circumvent the judgment of the court” and also asked to file a Review Petition for clarification of the order. The RP was also dismissed on technical ground. Admittedly, more than 16,000 posts of JTO s were remaining vacant . Supernumerary posts were created due to scarcity of manpower and shall be a separate group and the 35% quota vacancies under RR-2001 shall remain intact for the petitioners and similar others and will no way affect them.

Now it is learnt that a detailed fresh affidavit has been filed thereafter and the hearing on the COCP is still going on.

**The JTO s officiating for the last 7 years are being unnecessarily harassed and subjected to mental agony.** We have been closely watching and pursuing their case, for the last several years and were under the impression that, regularization of all the remaining officiating JTO s scattered all over India ( about 2000 in number) would be completed in a phased manner as it was done in the case of first 3500 persons. The litigation originated in the Haryana High Court created a stalemate condition blocking the further processing of the operation.

**We would like to express our apprehensions in this regard as follows:-**

**I.) Appeal not filed in the Apex Court and interest of the Company not protected.:-** CWP. 5608/2007 is a case where the Hon. High Court of Punjab & Haryana at Chandigarh acted beyond its jurisdiction. Apprehensions regarding diversion of DR quota to 35% departmental quota were already raised by others also in different High Courts like High Court of Kerala, Andhra Pradesh, Himachal etc. But all these courts held that **it is a policy matter and the court will not interfere in it.** It is noticed that the WPC 14213 /2005 of AP High Court alone was mentioned in this case. But it appears that the decisions in WPC 23313/2006 of AP High Court and 18594/2005 of Kerala High Court were not mentioned in the defense statement. All other High Courts agree on the point that, the diversion of DR quota is a policy decision of the competent authority ( the BSNL Board ) and court has nothing to interfere in it. For this reason alone, it was a matter to go for appeal to the appellate court. HC of Kerala and HC of AP are not below the HC of Haryana. The prayer in the petition was to quash the action to fill up the posts of JTO for the year 2006 and 2007 from the candidates of waiting list of the year 2000. But the court has gone beyond its jurisdiction to undo the promotions to vacancies beyond 1-9-1999. Career-prospects of several thousands of employees would be affected by the impugned judgment of the Chandigarh HC, but they were not made parties in this case and they did not get any chance to make their defense. Admittedly, the petitioners were eligible only in the year 2002, and not eligible in 1999, 2000 and 2001. Hence they can not challenge appointments already made. More over, the diversion of quota was in the public interest. **Actually this was reported to be a very fit case to be appealed through SLP in the Apex Court. We learnt that the contesting BSNL counsel, Corporate Office Legal Wing and the authorities concerned in the BSNL HQ were all of the same opinion and an instruction was passed to the CGMT, Hariyana Circle to file the SLP. We understand that this decision was reversed in the Haryana Circle and they could manage to torpedo the decision of the Corporate Office tactfully. Accordingly it was subsequently decided to implement the court order by re-diverting the DR quota and created supernumerary posts to protect those already regularized. Later, when the Contempt of court case**

**and other complications arose, it was proved that the decision for not filing SLP was wrong.** The HC of Haryana did not close the contempt of court petition, but entered in to more internal areas beyond its jurisdiction.

**II) Decision for filing appeal overturned a second time also.**

Later a Review Petition was filed as per the instruction of the HC itself, but the same was also dismissed on technical grounds. **At this stage also there was ample scope for filing an appeal against the impugned judgment. We understand that this time also there was an order from the Corporate office to the CGM, Haryana to file SLP in the Hon. Supreme Court. This instruction was also got torpedoed in the Haryana Circle.** Finally they decided to abandon the idea and they went with some fresh affidavit in the matter of Contempt Petition which is being dragged with uncertainty.

**III). We also understand that, regarding BSNL Board's decision dated 30-3-2001, a false averment was filed by BSNL in the counter affidavit, which only led to the impugned court order.**

The BSNL Board in its meeting on 30-3-2001 decided to approve the training and subsequent recruitment of JTO to all the TTA s who have qualified in screening test but could not be sent for training due to non-availability of vacancies in departmental quota. This would be done @ 500 posts per year to 35%departmental quota. This was a policy decision of the Board to accommodate all the qualified / eligible waitlisted candidates. **There is no mention regarding any restoration of the diverted posts in the Board's decision. But in the written statement filed in court by BSNL, it was mentioned that the posts so diverted from DR quota to 35% quota would be restored back to DR quota in due course. It was on the basis of this written statement that the court directed the BSNL to restore the posts so diverted from the DR quota. If the Board's decision was produced without any alteration the impugned judgment which finally led to contempt of court case would not have happened.** We cannot view it as a mere inadvertent clerical error. Some sort of collusion on the part of somebody favoring the petitioner group must be suspected. This definitely needs an investigation in the interest of the Company.

**IV). It is a fact that the BSNL Board's decision in this regard still exists and remains unchanged.** If at all a decision to restore the diverted quota was taken, it was taken later, at a lower level, after the pronouncement of judgment, for which no authenticity exists above the Board's decision.

**V). We now feel that, to come out from the charges of contempt of court, unnecessary commitments contrary to the Board's decision might have been submitted before the Court of Law, which in turn will be harmful to the interest of the officiating JTOs waiting for regular posting which also warrants an investigation.**

**VI). Shirking from commitments.**

Either to, the concerned wing of the corporate office was maintaining that, the process of regular posting of officiating JTO s ( waitlisted- qualified TTAs) will be commenced after the disposal of contempt of court petition in the HC of Haryana. But now we learn that the concerned wing in the corporate office is not bothered about this issue, but only interested to escape from the "contempt" somehow and now they are trying to ignore the Board's decision on the matter.

**VII). Implement Board decision without mixing it with Court Case.**

BSNL Board's decision (dated 30-3-2001) to divert DR quota to departmental quota, was to give regular posting to all qualified TTAs officiating as JTOs, in a phased manner. The DR quota diverted was happened to be restored back because of improper handling of the court case, as mentioned above. Even then, it was further decided to create equal number of supernumerary posts. **In effect, the Board's decision was to give regular posting as JTO, to all qualified / waitlisted TTAs who passed screening test and now officiating as JTOs. The diversion was ordered for that purpose only. Hence, even if the diversion of vacancy becomes non-feasible, the intention of the Board remains unchanged. Now it is up to the Corporate office to find out a solution for implementing the Board decision to give posting to all qualified TTAs in the absence of DR quota or even if the supernumerary posts are also withdrawn.**

In this context we hereby re-iterate our earlier suggestion to make a one-time up-gradation of the posts now they are holding. The BSNL Board's decision of 30-3-2001 can be implemented in total with out any further hitch.

**VIII). Further we would like to place a demand to conduct an inquiry, through an external agency, in to the following issues:-**

- 1) At whose instance the decision for filing appeal in the apex court was dissolved at various occasions?
- 2) Who was behind filing a wrong version of the BSNL Board's decision dated 30-3-2001 in the matter of diversion of DR quota as part of the counter affidavit, which only finally led to the impugned judgment?
- 3) Why the wrong averment could not be corrected even if court proceedings permit to do so.?
- 4) Whether the DOT's instruction regarding diversion of posts is required to be followed in this particular case? DOT was asking to explain the exigency for diversion. Had it been explained court would not have interfered in it.
- 5) Was there any collusion of vested interests working behind the screen to defeat the purpose of Board decision in order to favor a particular group including the petitioners?

**We once again place our demand that, whether the contempt of court case stands or not, it should not be a reason for deviating from the implementation of the Board's decision to give posting to all officiating JTOs , as it is not because of their fault the contempt of court case arose. We stick on to the suggestions already put forward by us in this regard.**

We also like to stress on our demand that, **before conducting the LICE to JTO as per RR-2001, the issue of regularization of all remaining officiating JTO s may be settled amicably as it is not fair to ask a qualified/ trained person who is**

**working as JTO for the last seven years, to write another examination to become a JTO.**

Hope your good self will order for an immediate action on all the issues raised above in the interest of the company.

With kind regards,

Yours Sincerely,  
**-sd-**  
**(Prahlad Rai)**  
**General Secretary**

**Copy to:-**

- Shri. A.N.Rai, Director (HR) BSNL HQ- New-Delhi.
- Shri. R.K.Goyal, GM (Establishment) BSNL HQ- New-Delhi.