

BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]
CORPORATE OFFICE (PERSONNEL - BRANCH)
4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1.

No BSNLCO-PERS/13(21)/1/2020-PERS1

Dated: 07.10.2021

(Speaking Order)

Subject: OA No 180/00295/2021 filed by Ms Mary Sophia T.T and 2 others in Hon'ble CAT, Ernakulam Bench in respect of provisional seniority list No. 9 of SDEs(T).

In compliance of Hon'ble CAT, Ernakulam Bench directions dated 16.07.2021 in OA No 180/00295/2021 filed by Ms Mary Sophia T.T and 2 others in Hon'ble CAT, ERNAKULAM BENCH Bench in respect of provisional seniority list No 9 of SDEs(T), the representations filed by the applicants in Annexure-A17 of said OA have been considered and examined by the competent authority as per the extant rules and the following is hereby communicated.

1. Prior to advent of SDE(T) Recruitment Rule (RR) 2002, recruitment and service conditions of SDE(T) were governed by Recruitment Rule 1996. Before that, RRs 1981 were applicable. These RRs have been dealt with in S.K.Dubey's judgment according to which RR 1981 provided for ROTA but such provision was dropped in RR 1996. In SDE(T) RR 2002 also, there is no provision of ROTA. In SDE(T) RR 2002, Quota was modified vide 30.07.2007 w.e.f. vacancy year 2006-07 for Seniority Quota (SQ) and Competitive Quota (CQ) from 75% and 25% to 67% and 33% respectively. So, it is clear that ROTA is not provided in SDE(T) RR 2002.

Further, in order to address the issue of inter-se seniority between SQ and CQ, later to S.K.Dubey's judgment (delivered on 12.8.2014), the BSNL Board on 28.8.2015 approved modification of RR 2002 introducing ROTA in the ratio of 2:1 for SQ and CQ category candidates irrespective of year of appointment /date of joining. The said modification was published/circulated to all Heads of Telecom Circle vide 08.05.2018. The modification significantly states that it will be applicable from retrospective date w.e.f. 28.8.2015.

2. A three Judge Bench of the Hon'ble Supreme Court in civil appeal No. 7830/2014 (**BSNL & Ors. Vs S. K Dubey & Ors.**) has held the following.

"Moreover, it is well settled principle in service jurisprudence that a person appointed on promotion shall not get seniority in earlier year but shall get a seniority of the year in which his/her appointment is made. In the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. It is common ground that 1996 Rules or 2002 Rules have nothing to do with inter se seniority between promotes of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Department Competitive Examination."

3. In SLP No. 35756/2012 (**BSNL & Ors. Vs. S. Sadasivan & Ors.**), the Hon'ble Supreme Court of India upheld the orders dated 25.11.2010 in T.A No 06/2009 (S. Sadasivan Vs. BSNL & Ors.) passed by Hon'ble CAT Mumbai Bench and order dated 21.06.2011 passed by Hon'ble High Court Bombay in WP No. 3725/2011 by dismissing SLP (BSNL Vs S. Sadasivan) by passing the following order:

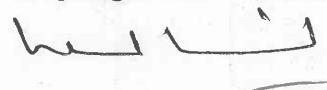
"In paragraph 3 of the impugned order, the Hon'ble High Court has observed thus:

The question is: Whether the tribunal was right in answering the controversy on the principle that the correct date of reckoning seniority of the respondent ought to be taken as 7th December 2001 which is his date of joining. In our opinion, there is no infirmity in the said view taken by the tribunal.

We find no infirmity with the above view taken by the High Court. Special leave petition is, accordingly, dismissed."

4. Subsequently, in civil appeal No. 14967/2017 (**Vinod Verma Vs. Union of India & Ors.**), a Division Bench of the Hon'ble Supreme Court observed that the issue has been delved in the case of S.K.Dubey's (supra) and followed the ratio laid therein holding that-

"In view of the facts as noticed above that the controversy raised in this appeal is covered by three-Judge Bench judgment dated

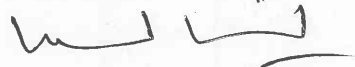


12.08.2014 we see no necessity to delve into various other arguments raise in this appeal. We are not persuaded to take any different view to one which has been taken by three-Judge Bench as noted above.”

Thus, in the facts of the case, particularly when the provision for ROTA was dropped in the 1996 Rules and 2002 Rules from the earlier 1981 Rules, the general observation that *‘determination of seniority can be provided by Executive instructions if the subject matter is not covered by the statutory rules’* cannot be of any help to the CQ candidates. The rule which was conspicuously left, cannot be dragged through administrative/executive instructions.

5. Hon’ble CAT Chandigarh in OA No. T-84 &85-HR-2009 in case of **Dewan Chand etc. Vs UOI etc.** on the same subject of seniority between SQ and CQ has given the following directions in its order dated 25.08.2009.

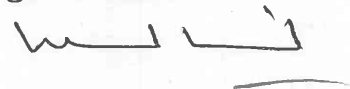
“21. The sub total of the above discussed judgment is that if there is quota provided in the rules for recruitment to by different methods to posts i.e by way of promotion on seniority-cum-fitness basis and recruitment by way of promotion through limited departmental examination or for that matter direct recruitment, in as particular proportion or quota which in this case happens to be 75:25, and recruitment takes in a single process, then it is practical, possible and permissible to follow the rules of rotation of vacancies for fixation of inter-se-seniority of incumbents appointed through both the sources. However, if the selection does not take place in a single process and promotes joined their duties after getting promotion but persons under limited departmental examination quota or direct recruitment get selected after few months or years, they can’t be allowed to claim that they should be granted seniority from the date of occurrence of year of vacancy. However, it has been made clear that quota has to be maintained.



"23. The respondents have relied upon instructions issued by government of India, Department of Personnel and Training issued vide OM dated 03.07.1986 Para 3.2 of which clearly provides that where abosorbee's are affected against specific quota prescribed in recruitment rules, the relative seniority of such absorbee's vis-à-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quota reserved for transfer, direct recruitment and promotion respectively in the recruitment rules. In this case, a person who has become member of service in 2004 is sought to be placed below persons who qualified an examination on the basis of syllabus prescribed in 2006, against vacancy of 1996 or so. This kind of approach is totally unreasonable, unwarranted and illegal. In any case, official respondents would have done well to issue their own instructions for fixation of seniority of incumbents when there is clash of interest among thousands of officers and there is huge delay in making selection.

24. In view of the above discussion, both these Original Applications are allowed. Orders/seniority lists impugned in these petitions are quashed and set aside. The respondents are directed to re-draw the seniority of officers of TES Group-B on the basis of dates of joining of incumbents, as discussed above, within a period of six months from the date of receipt of copy of this order. Before undertaking such exercise, respondents may invite objections from the persons likely to be adversely effected before re-drawing seniority as observed herein above. No Costs."

6. SDEs(T) seniority List No. 6 and 7 consist of SDEs(T) promoted from JTOs(T) on the basis of SDE(T) Recruitment Rules 1996. SDEs(T) seniority List No. 8 consists of SDEs(T) promoted from JTOs(T) on the basis of SDE(T) Recruitment Rules 2002. The details of seniority lists of SDEs(T) promoted upto vacancy year 2005-06 are given below:-



Seniority List No	Quota	Date of promotion order (Bulk)
6	SQ	26.04.2000
7	SQ	07.12.2001
7	CQ	26.05.2004
8	SQ	16.09.2004
8	SQ	15.03.2007
8	CQ	03.11.2008

7. The seniority lists 6 and 7 were revised and finalized after many rounds of litigations upto Hon'ble Supreme Court and judgment of the Hon'ble Supreme Court as detailed at para 2 & 3 above. Similarly, the seniority list no. 8 has also been prepared on the same principles.
8. After the seniority list 8, primarily the following bulk promotions from JTO(T) to SDE(T) have been carried out.

Sl.	Date of promotion orders (Bulk)	Quota	Vacancy Year
1	15.05.2009	Seniority-Cum-Fitness quota(SQ)	2006-07, 2007-08
2	30.03.2011	Seniority-Cum-Fitness quota(SQ)	2008-09
3	02.07.2013	Competitive quota (CQ)	2006-07, 2007-08, 2008-09, 2009-10


9. The settled legal position indicated above, on the basis of which list no. 6, 7 and 8 were finalized, will have to be followed in preparing Seniority lists of SDEs(T) who were promoted as per SDE(T) RR 2002 but before amendment dated 08.05.2018 in SDE(T) RRs 2002 which is effective from 28.08.2015.
10. The provisional seniority list no. 9 of SDEs(T) which comprises of SDEs(T) from SQ and CQ pertaining to vacancy year 2006-07 was circulated vide this office letter No. BSNLCO-PERS/13(21) /1/2020-PERS1 dated 10.08.2020 for inviting objections/errors/ omissions etc. It shall now be limited to SQ candidates of vacancy year 2006-07 as a large number of JTOs were promoted to SDE(T) under SQ quota for vacancy year 2007-08 and 2008-09 before the promotions dated 02.07.2013 of CQ candidates of vacancy year 2006-07. All the objections/errors/omissions etc. pertaining to SQ of vacancy year 2006-07 have been duly considered and final seniority list No. 9 of

SDEs(T) consists of SQ vacancy year 2006-07 shall be published shortly.

11. The following provisional seniority list numbers 10 to 13 of SDEs(T) who have been promoted as per SDE(T) RR 2002 before 28.08.2015 i.e effective date of amendment in the SDE(T) RR 2002 shall be prepared shortly primarily on the basis of date of main promotion orders mentioned in the table below.

Seniority List No	Promotion against Vacancy Year	Quota	Date of promotion order
10	2007-08	SQ	15.05.2009
11	2008-09	SQ	30.03.2011
12	2006-07	CQ	02.07.2013
13	2007-08, 2008-09 & 2009-10	CQ	02.07.2013

As per Hon'ble High Court Bombay order dated 21.06.2011 upheld by Hon'ble Supreme Court in SLP (C) No(s) 35756/2012 order dated 12.08.2014, the date of promotion is being taken as date of joining. If any left out (due to un-assessed/VC pending/exoneration etc.) officer is promoted after date of issue of main promotion order and his/her name was there in the select panel, the same shall be included as per his/her position in original select panel. Similarly, if any CQ candidate left out in main promotion order of LDCE due to VC pending/exoneration etc., his/her name shall be placed as per their merit in the LDCE examination.


07/X/2021

(Kuldeep Singh)
AGM(DPC-SM)

To

1. Ms Mary Sophia T.T, SDE, Kerala circle
2. Ms Sindhu. S., SDE, Kerala circle
3. Shri Jose Aloysius, SDE, Kerala circle

Copy to:

CGMT BSNL, Kerala Telecom Circle for delivering the order to all concerned executives under acknowledgement.