

Corporate Office
Personnel-IV Section

Bharat Sanchar Nigam Limited

(A Government of India Enterprise)

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Website: www.bsnl.co.in

No. 3-34/2013/Pers-IV

Dated: June 26th, 2013

To

All Heads of Telecom Circles,
Bharat Sanchar Nigam Limited.

Subject: Brief for defending court cases filed by officiating JTOs (Screening Test Qualified TTA's) to quash the notification for LDCE of JTO / Stay of the Result/Regularisation:-

It has come to the notice of this office that the TTA's who are officiating as JTO's have filed cases in different courts in different circles for their regularization and stay on holding of Limited Departmental Competitive Examination for the post of JTO(T) which was held on 02.06.2013 and also for stay of the result.

All such cases may be defended expeditiously as per the brief enclosed herewith in consultation with BSNL counsel. It may be ensured that the brief being provided is invariably incorporated in the reply being filed in the court. Such type of cases may not be forwarded to this office for vetting the same by this office in future .

It is worth mentioning that the brief being enclosed was already uploaded on BSNL Intranet on dated 09.05.2013 , in spite of that cases are being sent to this office which may result in unnecessary delay in filing the reply in different courts .

A.K. Singh
26/6/13
(A.K. Singh)

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Encl:As above

Brief for defending court cases filed by officiating JTOs (Screening Test Qualified TTA's) to quash the notification for LDCE of JTO / Stay of the Result:-

(a)The JTO Recruitment Rules 1996 provided that eligible TTA's will have to qualify a screening test and will have to undergo phase-1 and field training before being promoted as regular JTO followed by phase-II training.

(b)The JTO Recruitment Rules 1999 provide that eligible TTA's will have to appear in the Limited Departmental Competitive Examination and will have to undergo phase-1 and field training for being promoted to the post of JTO(T) followed by Phase-II training. It may be brought to the notice of concerned court that before appointment as JTO, the screening test qualified TTAs have to undergo mandatory field training for their appointment as JTO and these TTAs have not undergone field training for being appointed as JTO.

(c)Since no screening test was conducted from 1996 till 1998. The screening test was conducted on 29-1-1999 & 30-4-2000 as per RR 1996 on the persistent demand of the association even when RR's of 1999 had come into being in which there was a provision of Limited Departmental Competitive Examination.

(d)Over and above the vacancies available under 35% quota, 6000 more officials qualified from all over India in the screening test held in the years 1999 and 2000. There were no vacancies to adjust the over and above screening test qualified officials. Thus, as a welfare measure, BSNL Board took a decision on 30.03.2001 to divert 500 vacancies from the Direct Recruitment quota to 35% quota on the year to year basis in order to adjust the screening test qualified officials. The diversion continued from 2001 to 2007 i.e. 3500 vacancies were diverted from the Direct Recruitment quota to Departmental quota.

(e)It may also be pointed out that since there was no vacancy to adjust these 6000 excess screening test qualified officials and thus while issuing the orders for sending these officials for JTO phase-I training, it was clearly stated that ***the officials so promoted on officiating basis will give an undertaking that they will have no claim for regular promotion. It was also mentioned therein that the regular promotion will continue to be governed by standing provisions.***

(f) The diversion of vacancies was challenged before the Punjab & Haryana High Court by way of a CWP No.5608/2007, which ordered on 30.05.2008 for re-diversion of the posts to the DR quota and this decision of the High Court was upheld by the Hon'ble Apex Court in (SLP) Nos.13220-13221/2009 filed by BSNL officers Association and others.

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(g) Due to the above development, the BSNL management in its 104th meeting on 4.11.2008 decided to re-divert the 3500 posts to the DR quota with immediate effect. Thus the waiting list of 35% departmental quota was declared as cancelled. Since 3500 officials had been working as JTOs against the diverted vacancies from 2001 to 2008, it was decided by the BSNL management to create 3500 supernumerary posts to adjust them. By creation of supernumerary posts 3500 JTOs, who were working on officiating, continued to work as JTOs. **However, this creation of supernumerary posts was treated as illegal by the Punjab & Haryana High Court and during hearing in the contempt petition on 19.11.2008, the Punjab & Haryana High Court observed that "by creating supernumerary posts, the respondents have already created manpower & deliberately committed the contempt of this court".** (Copy enclosed)

(h) The case is still being heard in the High Court of Punjab and Haryana (CWP No.5608/2007) and the next date of hearing is 16.07.2013.

(i) Earlier also notification for conducting LDCE for promotion to the post of JTO was issued in the year 2009 but due to the amendment in the RRs for reducing the length of service from 10 years to 7 years, it was challenged before the High Court of Ernakulam and a stay was granted on conduct of the examination. However, by proper handling of the case by BSNL, the court has allowed the modification of reduction of service from 10 years to 7 years with retrospective date (OP(CAT) No.3714/2011(Z) and process has been started to conduct the examination.

Since Contempt Petition is pending in Hon'ble High Court of Punjab and Haryana, it is not possible to regularize officiating JTO's till final outcome of the Contempt Petition.

Further it is mentioned that a case was filed in CAT Ernakulam by officiating JTO's and Hon'ble CAT has made the following remarks in the concluding part of the judgement that **"Getting qualified for promotion does not confer any indefeasible right to promotion. The applicants who qualified could not be promoted to the post of JTO for want of vacancies. Matter of Recruitment Rules and departmental examinations are absolutely within the domain of executive. Such matters have to serve the needs of the organization. The promotion to the post of JTO is now regulated by RR's of 2001. The applicants have to satisfy the conditions as per RR 2001 and will have to appear for the JTO exam. The applicants can not be regularized as per existing RRs."** (Copy enclosed)

A. Singh