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EXECUTIVES' ASSOCIATION**

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No. AIBSNLEA/CHQ/CMD/2017

DATED: 05.05.2017

To,

**Shri Anupam Srivastava,
CMD, BSNL,
New Delhi - 110001**

Subject: Illegal promotion orders of ~~42~~ DGMs of 147 LDCE quota SDEs whose seniority has been quashed by the Hon'ble High Court Kerala – our concern thereof.

Reference: BSNL Corporate Office letter number 314-6/2017-Pers.I dated 03.05.2017

Respected Sir,

We are extremely thankful for issuing the promotion orders of 438 DGMs (Engg) but express serious resentment against the illegal promotion of about 42 DGMs (**List attached as Annexure-I**) of 147 LDCE quota SDEs whose seniority has been quashed by the Hon'ble High Court Kerala. Against this judgement these 147 LDCE quota SDEs has filed SLP in the Hon'ble Supreme Court of India which is still pending.

In this context further, we would like to bring to your cognizance towards the judgment delivered by the Hon'ble Supreme Court on 21.04.2015 upholding the TES Group "B" seniority list no. I to XVII prepared and finalized by DoT in the year 1992 following the Hon'ble Apex Court judgment. Also an Expert Committee headed by Hon'ble Retd. Justice Shri Ramamurthy was constituted to examine and protect the interest of those who have been benefited by wrong interpretation of Hon'ble Apex Court judgment delivered in the year 2000.

BSNL Corporate Office Pers. Cell and all the affected parties represented to the Expert Committee and accordingly Expert Committee has directed BSNL to prepare and submit the seniority lists, whereas BSNL Corporate Office Pers. Cell submitted two seniority lists, one including the names of 147 SDEs (LDCE-Quota) in I to XVII

seniority lists keeping 1998 DPC SDEs below and the second seniority list excluding the 147 SDEs (LDCE Quota) and keeping them below I to XVII seniority lists along with 1998 DPC SDEs. The former list is invalid in view of the Hon'ble Supreme Court judgment dated 21.04.2015 wherein it has been declared the TES Group 'B' seniority list No.1 to No.17 as sacrosanct.

The expert committee has submitted its report to Hon'ble Supreme Court of India but till date decision of Hon'ble Supreme Court on these lists is awaited. Hence, none of the list submitted by the Pers. Cell of BSNL Corporate Office to the said expert committee has not attained finality. **Further, the Pers. Cell never circulated the eligibility lists for the DGM (Engg) promotion order amongst the eligible candidates for objections if any, for the reasons best known to them. It is spreading the rumours about the malign intention of the officers working in Pers. Cell of BSNL Corporate Office.**

The seniority of 147 SDEs (LDCE Quota) has been quashed by the CAT Bench, CAT Bench Ernakulum and the judgment of CAT Bench has been upheld by the Hon'ble High Court of Kerala. The SLP filed by the 147 SDEs (LDCE Quota) in the Hon'ble Supreme Court of India is still pending. **It is worthwhile to mention here that Hon'ble Supreme Court has never stayed the implementation of the judgment of Hon'ble CAT Bench, Ernakulum upheld by the Hon'ble High Court of Kerala. Hence, including the names of 147 SDEs (LDCE Quota) along with 1998 DPC SDEs is under violation of Hon'ble Court orders and invite CONTEMPT. A copy of the judgment dated 01.07.2013 of the Hon'ble High Court of Kerala in the matter of WP(C) No. 5406 of 2010(S) against the orders dated 05.02.2010 in OA No. 86/2009 of CAT Bench Ernakulum is attached herewith as Annexure – II for ready reference.**

Operative portion of the judgment by Hon'ble High Court of Kerala on 147 SDEs (LDCE Quota) retrospective seniority case is placed below for ready reference:

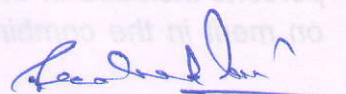
Para-36. Looking at the entire findings in Ext.P4 we are of the considered opinion that the Tribunal while directing the conduct of one consolidated qualifying and competitive examination for the period between 1992-96; also took judicial notice of the fact that all the vacancies prior to 1994 were filled up by candidates who had qualified in the examination of 1989. Specific O.P (CAT) 3019/2011 and connected judicial notice taken of this fact and the observation that one cannot hope to put the clock back for all intents and purposes, in our considered opinion is a pointer to the fact that the Tribunal did not brook any upsetting of filling up of vacancies prior to 1994. It is also pertinent that the candidates who qualified prior to 1991 were held to be admitted seniors of those qualifying later on. Though as contended by the LDCE candidates, who are the petitioners herein, such seniority was only against the quota of qualifying candidates and did not at all affect the competitive candidates; obviously, there is no pleading that any of the petitioners or any of the 147 persons included in the list of competitive candidates had qualified and were placed high on merit in the combined examinations, held prior to 1991. A candidate qualifying in the

examination acquires a right to be promoted to the available vacancy and assignment of seniority only with respect to the year of qualification. **Can a person who O.P (CAT)3019/2011 and connected qualified in the DQE and came out meritorious in the LDCE of a particular year, said to have acquired a right to a position prior to the year of his qualification'. In the absence of any such specific rule, we are unable to answer the question in the affirmative.**

Para-47. Merely because the LDCE was not held from 1989 that does not create a vested right in the 147 candidates to be assigned seniority in the 1/3rd quota of LDCE from the year 1990 onwards. **We have already found that the DQE and LDCE exams held in 2000-2003 were only to the vacancies of 1994-95, 1995-96 and 1996-97 (up to 22.7.1996). The promotion to the DQE quota can only be from the year in which a candidate qualified. The promotion on the basis of the LDCE can also be only to those 1/3rd available vacancies in the year of the LDCE. The distinction is in so far as the DQE is considered to the 2/3rd quota from the year in which he qualifies vis-a-vis the seniority among the LDCE candidates; and on the basis of his qualification is considered in all the subsequent years. While the LDCE is considered only to the vacancies available in that year and the rank obtained by a candidate not entitling him to be considered in any subsequent years. Hence the 147 candidates ought to be considered for the 1/3rd vacancies in 1994-95, 1995-96 and 1996-97 (up to 22.7.1996) according to their merit as also their eligibility to appear for the combined examination. The eligibility year has to be considered since, one combined examination was held for three years. A candidate entitled to appear in 1996 (by reason of completing five years of regular service in the feeder category on the 1st of the January of the year) cannot be placed in the vacancy of 1994-1995; however, high his rank may be. If the seniority list requires any re-cast on the above lines; obviously, the official respondent ought to do so. In the circumstances, we do not find any reason to differ from the decision of the Tribunal impugned in the writ petitions or interfere with the dismissal of the review applications impugned in the Original Petitions (CAT). The Writ Petitions and Original Petitions (CAT) are dismissed, however, with no costs.**

In this connection, it is submitted that even under pendency of the SLP in the Hon'ble Supreme Court if the Pers. Cell of BSNL Corporate Office wants to include the name of 147 candidates as per the above orders, it must have checked the eligibility of the said officer to appear for the combined examination. **A candidate entitled to appear in 1996 (by reason of completing five years of regular service in the feeder category on the 1st of the January of the year) cannot be placed in the vacancy of 1994-1995; however, high his rank may be which unfortunately has not been done.**

These 147 SDEs of LDCE quota does not belong to 1 to 17 TES Group 'B' seniority lists and their inter-se- seniority is yet to be finalized by the Hon'ble Supreme Court of India. But ignoring the judgement of Hon'ble CAT Bench, Ernakulum upheld by the Hon'ble High Court of Kerala and pending the SLP in Hon'ble Supreme Court BSNL Management has illegally promoted about 42 DGMs of 147 LDCE quota SDEs.



Sir,

Several senior DEs are now forced to work under their juniors (147 SDEs of LDCE quota) which will cause serious frustration and demoralization to them. This manipulation has been made by the Pers. cell of BSNL C.O. knowing the fact that SLP is pending in the Hon'ble Supreme Court to decide 147 SDEs of LDCE quota seniority, for which the reasons are best known to them.

In view of the above, it is therefore, requested to kindly intervene in the matter and get investigate from vigilance cell urgently. Initiatives in this regard are needed to take stern action against the culprits as well as to take necessary corrective actions to undo the wrongs at the earliest to provide justice and to avoid further litigations.

With kind regards,

Encl: As above Annexure-I & Annexure-II

Yours Sincerely


(PRAHLAD RAI)
General Secretary

Copy for kind information to:

1. Shri P.K. Pujari, Secretary (Telecom), DoT, New Delhi – 110001
2. Shri N. Sivasailam, Addl. Secretary (Telecom), DoT, New Delhi – 110001
3. Smt. Sujata Ray, Director (HR), BSNL Board, New Delhi-110001
4. Shri Deepak Kashyap, CVO, BSNL, New Delhi – 110001

Annexure-I

Sl. No.	HRMS No.	STAFF No.	NAME OF THE EXECUTIVE	DD	MM	YYYY	PRESENT POSTING	POSTING ON PRMN
82	199702231	38037	G.SUBHASH-11	5	2	1971	STP	JKND
336	198402800	37907	RAMESH V	4	6	1962	CHTD	WB
337	198100656	37909	TF1ANGAVEL S	2	2	1961	TN	A&N
339	198407514	37797	VIJAYAN A	7	12	1961	KRL	KRL
340	198400106	37911	SHYAMAL MUNSHI	11	11	1959	CTD	CTD
341	198504964	37796	VINOD KUMAR K V	5	4	1962	KRL	KRL
342	198104103	38032	G V BHASKAR RAO	24	8	1962	AP	PB
343	198200251	37536	M. M. MUJAWAR	3	6	1957	MH	MH
344	198402818	37908	SURYA MURTHY-N	2	6	1964	STR	WB
345	198404738	37985	BASKARAN C K	22	5	1960	CHTD	CHTD
346	199002507	37920	DEBENDRA CH.PRADHAN	30	4	1968	OR	OR
347	199001900	37921	RAJENDRA KUMAR BEH ERA	3	6	1966	OR	WB
348	199002511	37923	ABHAYA KUMAR SWAIN	3	7	1966	OR	WB
349	199003635	37924	MANASENDU DAS	20	7	1963	OR	OR
350	199001904	37926	MANOJ KUMAR TRIPATHY	10	4	1968	RAJ	PB
351	199004822	37928	H.D.KULKARNI	11	6	1967	BRBRAITT	AS
352	199001521	37933	BRAHMANANDA PATI	18	7	1966	OR	WB
353	199100717	37934	SAILES MOHAPATRA	10	1	1967	OR	WB
354	199005544	37939	JAYANTI PANDA	5	5	1965	OR	OR
355	199102074	37940	BHAGBAT SAHU	21	2	1967	OR	WB
358	198502377	37941	GOLAK BIHARI NAYAK	28	6	1963	ETR	ETP
360	199001025	37943	UDAYA NARAYAN DAS	28	3	1964	OR	WB
361	199002110	37952	SANJIB KUMAR ROUSTRAY	9	3	1966	OR	WB
363	199001992	37963	S.S.RAJPOOT	1	11	1965	INSP & QA	INSP & QA
364	199205627	37968	CHETAN KU JAIN	15	11	1967	UPW	NE-II
366	199405848	37977	ANUP KUMAR VERMA	22	9	1964	BSNL CO	NE-II
367	199205084	37979	BHUPENDRA KAUSHIK	24	7	1970	UPW	NE-I
368	199003712	37987	AFTAB AHMED KHAN	1	8	1968	BSNL CO	HR
369	199103778	37991	SWATA CHOU DHURY	20	4	1968	TSCA	TSCA
370	199004202	37996	TH.SHARATCHAND MEETEI	1	3	1966	NE-II	NE-II
371	199000528	38001	GEETA RANI SWAIN	29	8	1966	OR	CTD
372	199103764	38002	VIVEKANANDA NATH	9	7	1964	AS	AS
373	199003750	38007	SURAJIT CHAKARBORTY	3	8	1965	NE-I	NE-I
374	199000915	38009	ARUN KUMAR PANDEY	9	8	1965	MP	MP
375	199100045	38014	BRINDA PRASAD	24	2	1964	MH	PB
376	199000809	38015	PREDEEP RATHORE	6	7	1967	MH	AS
377	199205109	38019	SURENDRA BABU	2	9	1964	NTP	PB
379	199000856	38021	YOGESH KUMAR SHARMA	25	11	1965	MP	MP
380	199512484	37635	DHANANJOY MONDAL 1	4	5	1967	CTD	CTD
382	199001998	38023	SHARAD KUMAR SHRIVASTAVA	30	11	1964	WTR	CHGR
384	199004967	38024	B.P.KUYATE .	1	6	1967	ITPC	J&K
386	199103718	37732	SANJIB SARDAR 1 6		1	1965	CTD	CTD

O.P (CAT)3019/2011 and connected

: 38 :

with and administrative feasibility to achieve such objectives it was found that one examination for the entire period may be held. A rider was made in so far as recognizing the fact that the JTOs already qualified would be treated as senior to those who were qualified merely at the qualifying examination of the combined departmental examination. The Tribunal took judicial notice of the fact that all the vacancies up to 1993-94 have been filled up by the officers who had already qualified at the departmental examination held up to 1991; despite all the persons who qualified in the 1989 examination not being fully accommodated.

36. Looking at the entire findings in Ext.P4 we are of the considered opinion that the Tribunal while directing the conduct of one consolidated qualifying and competitive examination for the period between 1992 - 96; also took judicial notice of the fact that all the vacancies prior to 1994 were filled up by candidates who had qualified in the examination of 1989. Specific

technical requirement of pre-1996 rules being complied

with and administrative feasibility to achieve such objectives it was found that one examination for the entire period may be held. A rider was made in so far as recognizing the fact that the JTOs already qualified would be treated as senior to those who were qualified merely at the qualifying examination of the combined departmental examination. The Tribunal took judicial notice of the fact that all the vacancies up to 1983-84 have been filled up by the officers who had already qualified at the departmental examination held up to 1981, despite all the persons who qualified in the 1982 examination not being fully accommodated.

36. Looking at the entire findings in Ext. P4 we are of the considered opinion that the Tribunal while directing the conduct of one consolidated qualifying and competitive examination for the period between 1982-83; also took judicial notice of the fact that all the vacancies prior to 1984 were filled up by candidates who had qualified in the examination of 1983. Specific

judicial notice taken of this fact and the observation that one cannot hope to put the clock back for all intents and purposes, in our considered opinion is a pointer to the fact that the Tribunal did not brook any upsetting of filling up of vacancies prior to 1994. It is also pertinent that the candidates who qualified prior to 1991 were held to be admitted seniors of those qualifying later on. Though as contended by the LDCE candidates, who are the petitioners herein, such seniority was only against the quota of qualifying candidates and did not at all affect the competitive candidates; obviously, there is no pleading that any of the petitioners or any of the 147 persons included in the list of competitive candidates had qualified and were placed high on merit in the combined examinations, held prior to 1991. A candidate qualifying in the examination acquires a right to be promoted to the available vacancy and assignment of seniority only with respect to the year of qualification. Can a person who

O.P (CAT)3019/2011 and connected
: 40 :

qualified in the DQE and came out meritorious in the LDCE of a particular year, said to have acquired a right to a position prior to the year of his qualification? In the absence of any such specific rule we are unable to answer the question in the affirmative.

37. Pursuant to Ext.P4 order, Ext.P5 dated 6.11.1998 was issued wherein the test as stipulated by Ext.P4 order was notified. However, the said notification permitted only SC/ST candidates to appear for the qualifying examination and permitted all persons who had qualified earlier to appear in the competitive examination. Vacancies which were to be filled up where of the years 1994-95, 1995-96 and 1996-97(up to 22.7.1996) as was specifically indicated in Clause 3(B) of the eligibility conditions as under :-

"B. All qualified JTO's including TES Group 'B' officers promoted against the vacancies for 1994-95, 1995-96 and 1996-97(upto 22.7.1996) shall also be eligible for appearing in the competitive part of the combined limited departmental Examination and will be entitled for the seniority whichever is beneficial

O.P (CAT)3019/2011 and connected

: 50 :

rule became inoperative because the direct recruits were borne in the cadre when they were appointed against the vacancies meant for them. Therefore, the majority view in M.Subba Reddy is of no assistance to the AFHQ Civil Service(Direct Recruits) Officers' Association as the relative seniority between the direct recruits and regularly appointed/promoted candidates within their respective quota, in the present case, shall be determined by the length of the continuous officiation in the grade of ACSOs from their respective appointment to the substantive vacancies in terms of Schedule III within their quota as held by CAT in M.G Bansal case, which has attained finality after dismissal of SLPs filed against the said order of the Tribunal."

Hence, the dictum in M.Subba Reddy(supra)does not survive.

47. Merely because the LDCE was not held from 1989 that does not create a vested right in the 147 candidates to be assigned seniority in the 1/3rd quota of LDCE from the year 1990 onwards. We have already

found that the DQE and LDCE exams held in 2000-2003 were only to the vacancies of 1994-95, 1995-96 and 1996-97 (up to 22.7.1996). The promotion to the DQE quota can only be from the year in which a candidate

O.P. (CAT/2012) and connected
: 20 :
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were come in the cadre when they were appointed
against the vacancies meant for them. Therefore, the
majority view in M. Subba Reddy is of no assistance to
the APHD Civil Service (Direct Recruits) Officers.
Association as the relative seniority between the
direct recruits and regularly appointed/promoted
candidates within their respective quotas in the
present case, shall be determined by the length of the
continuous officiation in the grade of ACOs from
their respective appointment to the substantive
vacancies in terms of Schedule III within their quota
as held by CAT in M.G. Bansal case, which has
attained finality after dismissal of SLP filed against
the said order of the Tribunal.
Hence, the dictum in M. Subba Reddy (supra) does not
survive.
17. Further, because the LDCE was not held from
1988 that does not create a vested right in the 1st
candidates to be assigned seniority in the 1st quota of
LDCE from the year 1990 onwards. We have already

qualified. The promotion on the basis of the LDCE can also be only to those 1/3rd available vacancies in the year of the LDCE. The distinction is in so far as the DQE is considered to the 2/3rd quota from the year in which he qualifies vis-a-vis the seniority among the DQE candidates; and on the basis of his qualification is considered in all the subsequent years. While the LDCE is considered only to the vacancies available in that year and the rank obtained by a candidate not entitling him to be considered in any subsequent years. Hence the 147 candidates ought to be considered for the 1/3rd vacancies in 1994-95, 1995-96 and 1996-97 (up to 22.7.1996) according to their merit as also their eligibility to appear for the combined examination. The eligibility year has to be considered since, one combined examination was held for three years. A candidate entitled to appear in 1996 (by reason of completing five years of regular service in the feeder category on the 1st of the January of the year) cannot

O.P (CAT)3019/2011 and connected
: 52 :

be placed in the vacancy of 1994-1995; however, high his rank may be. If the seniority list requires any recast on the above lines; obviously, the official respondent ought to do so.

In the circumstances, we do not find any reason to differ from the decision of the Tribunal impugned in the writ petitions or interfere with the dismissal of the review applications impugned in the Original Petitions (CAT). The Writ Petitions and Original Petitions(CAT) are dismissed, however, with no costs.

Sd/-
Manjula Chellur,
Chief Justice

Sd/-
K.Vinod Chandran,
Judge.

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P.A to Judge