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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9237/2018 & CM APPL. 35671/2018**
UNION OF INDIA AND ANR. Petitioners
Through: **Mr. Ripu Daman Bhardwaj, CGSC**
for UOI

versus

ALL INDIA BHARAT SANCHAR NIGAM LIMITED
EXECUTIVE ASSOCIATION AND ORS. Respondents
Through: **Mr. D.S Mehandra, Advocate**

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MS. JUSTICE SWARANA KANTA SHARMA

ORDER

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28.03.2022

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. At joint request, re-notify on 31.08.2022.

NAJMI WAZIRI, J

SWARANA KANTA SHARMA, J

MARCH 28, 2022

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ W.P.(C) 9237/2018 & CM APPL. 35671/2018 (stay)

UNION OF INDIA AND ANR. Petitioners

Through: Mr. Arun Bhardwaj, CGSC

versus

ALL INDIA BHARAT SANCHAR NIGAM LIMITED
EXECUTIVE ASSOCIATION AND ORS. Respondents

Through: Mr. D.S.Mehandru & Ms. Navneet
Kaur, Advocates for BSNL

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

ORDER
10.02.2020

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1. Mr. Bhardwaj, learned Standing Counsel for the Petitioners states that talks in terms of the order dated 12th September, 2019 between the parties have concluded and that the Petitioners' decision is awaited. He offers to place the said decision on record by way of an affidavit within two weeks.
2. It is open to the Respondents to file a reply to the said affidavit before the next date.
3. List on 19th May, 2020.

S.MURALIDHAR, J.

TALWANT SINGH, J.

FEBRUARY 10, 2020/hk

BHARAT SANCHAR NIGAM LIMITED

CORPORATE OFFICE

(PERSONNEL BRANCH)

4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110 001

No. 61-03/2017-Pers.Legal

Dated: 26-09-2019

To

DDG(Estt), DoT
Sanchar Bhavan,
New Delhi.

Meeting Notice

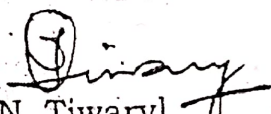
Subject: WP (C) No. 9237/2018 filed by DoT in High Court of Delhi against PB CAT Delhi order dated 21-12-2017 filed by All India BSNL Executives Association [AIBSNLEA] regarding the provisions under EPP for grant of additional increment on post promotion- *Notice for Meeting thereof.*

Sir,

The undersigned is directed to enclose herewith a copy of Hon'ble High Court of Delhi order dated 12-09-2019 directing for a meeting between representative officers of DoT and BSNL preferably on 30-09-2019 at 11-30 a.m. in the office of BSNL Corporate Office, New Delhi to resolve the matter amicably.

Accordingly, it is requested that the representative officers of DoT may kindly make it convenient to attend the meeting scheduled for **30th September, 2019 at 11.30 hours** in the chamber of **PGM(Pers) i.e. Room No. 403, Bharat Sanchar Bhavan, New Delhi**. AIBSNLEA, being the prime litigant in this case, is also invited to the meeting.

All are requested to kindly make it convenient to attend the meeting.


[O.N. Tiwary]

Dy. General Manager [Pers.SM] 26/9/19

Copy to:

- PGM(Pers.), BSNL
- Sr.GM(Estt.), BSNL CO
- GS, AIBSNLEA

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ W.P.(C) 9237/2018 and C.M. No.35671/2018 (for stay)

UNION OF INDIA AND ANR, Petitioners

Through: Mr. Arun Bhardwaj, Advocate.

Versus

ALL INDIA BHARAT SANCHAR NIGAM LIMITED
EXECUTIVE ASSOCIATION AND ORS. Respondents

Through: Mr. D.S. Mehandru, Advocate for
respondent No.5.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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12.09.2019

Pursuant to order dated 04.09.2018, we are informed that the petitioner and BSNL have not been able to sit together to resolve the matter amicably. To avoid any confusion with regard to the time and date we direct that a meeting be held in the office of BSNL, Corporate Office, Janpath on 30.09.2019 at 11.30 a.m. In case the said date and time are not suitable to any of the parties, fresh date and time will be fixed within 15 days thereafter. In case the meeting does not take place, we direct the presence of officers concerned in the court on the next date of hearing.

List on 10th February 2020.

As prayed, *dasti* to both the parties under the signatures of
Court Master.

G.S.SISTANI, J

Sd/-
ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 12, 2019

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True copy

ANUP JAIRAM BHAMBHANI
17/9/2019
COURT MASTER
Delhi High Court
New Delhi



**ALL INDIA
BHARAT SANCHAR NIGAM LIMITED
EXECUTIVES' ASSOCIATION**

**Central Headquarters
New Delhi -110001**

**President
Subhasis Mitra
Mob:9432001010
E-mail:presidentaibsnlea@gmail.com**

**General Secretary
S. Sivakumar
Mob:9 773760445
E-mail:gsaibsnlea@gmail.com**

**Financial Secretary
Ram Nath
Mob:9 868231711
E-mail:fsaibsnlea@gmail.com**

No. AIBSNLEA/CHQ/Director (HR) /2019

Dated: 30.09.2019

To,

**Shri Sheetla Prasad,
Director (CM/HR),
BSNL Boars,
New Delhi -110001.**

Subject: Views of AIBSNLEA (Prime Litigant in the Court Case) in respect of Hon'ble High Court New Delhi Writ Petition No: WP(C) 9237/2018 and CM No. 35671/2018, for the scheduled meeting to be held on 30.09.2019 in respect of Grant of Additional Increment under EPP- Reg.

Ref. No: BSNL CO- Pers. Section letter No:61-03/2017-Pers.Legal dated 26.09.2019.

Respected Sir,

In pursuance to Pers. Section, BSNL CO letter cited under reference, we the AIBSNLEA, Prime Litigant, hereby submit our views for the scheduled meeting to be held on 30.09.2019 at BSNL Corporate Office, Janpath, New Delhi that-

The additional Increment in the same scale on functional promotion under EPP was granted after the approval of DoT and the part of EPP.

DoT vide its letter dated 05.07.2017 had withdrawn this one part of EPP after 17 years. Against this action of DoT, AIBSNLEA immediately filed an OA in the Hon'ble PB CAT New Delhi for quashing the above order dated 05.07.2017 of DoT. Accordingly, Hon'ble PB CAT after some hearings quashed the said order dated 05.07.2017.

Even after that, DoT continued to reduce the Pension of the BSNL retired executives. Against this action of DoT, AIBSNLEA filed a Contempt Petition in the Hon'ble PB CAT New Delhi.

Thereafter DoT stopped reducing the Pension / revising the Pay fixation by obtaining an under taking from the retiring executives, DoT has filed Writ Petition in the Hon'ble High Court of Delhi wherein AIBSNLEA has filed a caveat.

The case was heard on 12.09.2019 and Hon'ble High Court Delhi directed DoT and BSNL to sit together & take a decision in this regard before 30th September, 2019. Pursuant to the orders of the Hon'ble High Court Delhi, BSNL Management invited GS, AIBSNLEA for the meeting to be held on 30.09.2019 at 1130 hrs in BSNL Corporate Office, New Delhi in the capacity of the Prime Litigant in this case. We further submitted that:-

1. AIBSNLEA applicant of OA No. 2649/2017, MA No. 2791/2017 and MA No. 3225/2017 has obtained the favourable judgement from the PB CAT New Delhi on 21.12.2017 by quashing and set aside the impugned order of DoT dated 05.07.2017 regarding rescinding/ withdrawal of additional Increment.
2. This objection was raised by the P&T Audit with regard to the grant of additional increment under EPP germinate from their comparison of EPP with MACP meant for Central Govt. Employees. MACP is applicable to C.G. employees has nothing to do with absorbed employees of BSNL.
3. The special Incentive had offered to erstwhile DOT Employees for encouraging them to get absorbed in BSNL (at the time of absorption).
4. If such incentives are withdrawn at a later stage i.e. after 17 years, it would amount to **Breach of Trust & Cheating.**
5. The EPP was recommended by the BSNL Board and approved by the DOT after constitution of a committee chaired by Shri Bhavaji, the then AS(T) and on the basis of the recommendations of that Committee, the same was implemented by BSNL after the approval of Secretary, DoT.
6. The EPP framed by BSNL & approved by DOT, does not borrow anything from MACP (Modified Assured Career Progression) either directly or indirectly. The allegation that EPP was contrary to the provision of MACP is fallacious and misleading.
7. The rescinding/ withdrawal of the said action is taken vide letter dated 05.07.2017 without any authority and also without affording any opportunity to the absorbed employees in contradiction of the protection guaranteed to them under provision to Article 311(2) of the Constitution and without giving any notice to the absorbed employees has been taken by DoT after 17 years and this against the Natural Justice also.
8. Rule 37-A does not mention about the applicability of FRSR on the absorbed employees in CPSU. FRSR are not applicable to CPSEs in all intends and purpose. The FR 22(1)(a)(i) is borrowed in EPP for doing Pay fixation on promotion but there is no mention about applicability of FR in EPP in BSNL.
9. The question of any additional liability on the Govt. on the retirement of BSNL absorbed employees does not arise since BSNL is already paying the Pension Contribution at the maximum of the Pay Scales in respect of each absorbed employee as per FR 116.

In view of the foregoing, the DOT letter dated 05.07.2017 is not at all legally as well as ethically justified at a later stage. **Its retention would create trust deficit between the BSNL employees and the Central Govt./DoT which is also unwarranted.**

In respect of AIBSNLEA claim, BSNL Management in its letter dated 03.08.2017 has also urged the Central Govt. not to rescind the Para I-II (v) of Executive Promotion Policy (EPP).

Hence, we would therefore, request your good self to kindly consider our views in the meeting to be held on today i.e. 30.09.2019 between representative officers of DoT & BSNL and render justice by withdrawing the impugned order of DoT dated 05.07.2017 since the issue is not resolved for a pretty long time.

With kind regards,

Yours Sincerely,
-sd-
(S.Sivakumar)
General Secretary

Copy for information and necessary action to:-

1. Shri Arun Kumar, PGM (Pers.) BSNL CO, New Delhi

3.14 Withdrawal of Additional Increment in the same scale on functional promotion under EPP: DoT vide its letter dated 05.07.2017 withdraw additional Increment in the same scale on functional promotion under EPP. Against this, AIBSNLEA immediately file an OA in the Hon'ble PB CAT New Delhi for quashing the order. Accordingly, Hon'ble PB CAT after some hearings quashed the said order dated 05.07.2017. Even after that DoT continued to reduce the pension of the BSNL retiree executives, against this AIBSNLEA filed a Contempt Petition in the Hon'ble PB CAT New Delhi. Thereafter DoT stopped reducing the pension/revising the Pay fixation by obtaining an undertaking from the retiring executives, DoT has filed Writ Petition in the Hon'ble High Court of Delhi wherein AIBSNLEA has filed a caveat. The case was heard on 12.09.2019 and Hon'ble High Court of Delhi directed DoT and BSNL to sit together & take a decision in this regard before 30th September, 2019. Pursuant to the orders of the Hon'ble High Court Delhi, BSNL Management invited GS, AIBSNLEA for the meeting to be held on 30.09.2019 at 1130 hrs in the Chamber of PGM (Pers), BSNL CO, New Delhi in the capacity of the Prime Litigant in this case. AIBSNLEA submitted its views during the meeting as detailed below:

1. AIBSNLEA applicant of OA No. 2649/2017, MA No. 2791/2017 and MA No. 3225/2017 has obtained the favorable judgment from the PB CAT New Delhi on 21.12.2017 by quashing and set aside the impugned order of DoT dated 05.07.2017 regarding rescinding/ withdrawal of additional Increment.
2. This objection was raised by the P&T Audit with regard to the grant of additional increment under EPP germinate from their comparison of EPP with MACP meant for Central Govt. Employees. MACP is applicable to C.G. employees has nothing to do with absorbed employees of BSNL.
3. The special Incentive had offered to erstwhile DOT Employees for encouraging them to get absorbed in BSNL (at the time of absorption).
4. If such incentives are withdrawn at a later stage i.e. after 17 years, it would amount to Breach of Trust & Cheating.
5. The EPP was recommended by the BSNL Board and approved by the DOT after constitution of a committee chaired by Shri Bhaveji, the then AS(T) and on the basis of the recommendations of that Committee, the same was implemented by BSNL after the approval of Secretary, DoT.
6. The EPP framed by BSNL & approved by DOT, does not borrow anything from MACP (Modified Assured Career Progression) either directly or indirectly. The allegation that EPP was contrary to the provision of MACP is fallacious and misleading.
7. The rescinding/ withdrawal of the said action is taken vide letter dated 05.07.2017 without any authority and also without affording any opportunity to the absorbed employees in contradiction of the protection guaranteed to them under provision to Article 311(2) of the Constitution and without giving any notice to the absorbed employees has been taken by DoT after 17 years and this against the Natural Justice also.
8. Rule 37-A does not mention about the applicability of FRSR on the absorbed employees in CPSU. FRSR are not applicable to CPSEs in all intends and purpose. The FR 22(1)(a)(i) is borrowed in EPP for doing Pay fixation on promotion but there is no mention about applicability of FR in EPP in BSNL.
9. The question of any additional liability on the Govt. on the retirement of BSNL absorbed employees does not arise since BSNL is already paying the Pension Contribution at the maximum of the Pay Scales in respect of each absorbed employee

In view of the foregoing, the DOT letter dated 05.07.2017 is not at all legally as well as ethically justified at a later stage. Its retention would create trust deficit between the BSNL employees and the Central Govt./DoT which is also unwarranted. In respect of AIBSNLEA claim, BSNL Management in its letter dated 03.08.2017 has also urged the Central Govt. not to rescind the Para I-II (v) of Executive Promotion Policy (EPP). Hence, we would therefore, request to kindly consider our views in the meeting to be held on today i.e. 30.09.2019 between representative officers of DoT & BSNL and render justice by withdrawing the impugned order of DoT dated 05.07.2017. The minutes of the meeting between AIBSNLEA and DoT has been received by the BSNL and it is submitted to the Competent Authority for approval. But it is reliably learnt that the minutes are not in our favour. If the orders of the DoT/BSNL are not in favour of us, again we will appeal in the Hon'ble High Court, Delhi.

Court Case
Most Immediate

No.38-70/2017-Pen(T)
Government of India
Ministry of Communications
Department of Telecommunications

516, Sanchar Bhawan,
20, Ashoka Road,
New Delhi-110 001

Dated the 30 March 2022

To

Sh. P.K Purwar
The Chairman & Managing Director
Bharat Sanchar Nigam Limited/MTNL
Bharat Sanchar Bhawan,
11V Mathur Lane, Janpath,
New Delhi- 110001

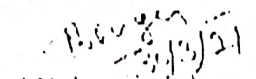
Subject: Rescinding of an additional increment granted to BSNL Executives on functional promotion – reg.

Ref : This office letter of even number dated 07.02.2020 and your DO letter No.BSNLCO.PERS/14(13)/9/2021-PERS.LEGAL dated 22.07.2021 on the above subject.

Sir,

Please refer to your DO letter dated 22.07.2021 to Secretary (T) requesting to withdraw the DoT letter No.40-12/2000M-Pen (T)(Pt.) dated 05.07.2017 in the interest of BSNL Executives.

2. The matter has been re-examined in consultation with PSU Division and IFD and it is intimated that decision conveyed vide letter dated 07.02.2020 may be treated as appropriate and final.
3. Accordingly, necessary action may be taken to implement the decision, under intimation to this office.
4. This issues with the approval of competent authority.


(Neha Singh)
Under Secretary (STP)
Tele No. (011) 23036260

Copy to:

PSO to Secretary (T)/M(S)/M(F)/AS(T)/CGCA
JS (A)/DDG (PM)