



# ALL INDIA BHARAT SANCHAR NIGAM LIMITED EXECUTIVES' ASSOCIATION

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No. AIBSNLEA/CHQ/Dir(HR)/2020/

Date: 23.07.2020.

To

**Shri Arvind Vadnerkar,**  
Director (HR), BSNL Board,  
New Delhi -110 001.

**Sub: Request for issuance of Clarification regarding Non-recovery of excess payment made for a period in excess of five years to the retired or due to retire within One Year Executives in pursuance to the Hon'ble Supreme Court Judgment- reg.**

Ref: 1. AGM (Estt-I) BSNL CO Lr. No. BSNL CO-A/11(11)/11/2020-EASTB dated 20.07.2020  
2. AGM (Estt-I) BSNL CO Lr. No. 1-06/2016-PAT(BSNL) date 01.05.2019  
3. AGM (Estt-IV) BSNL CO Lr. No. 3-08/2010-Estt-IV date 03.06.2018  
4. DGM (Estt-I) BSNL CO Lr. No. 1-6/2016-PAT (BSNL) dated 08.03.2018  
5. Hon'ble Supreme Court Order in CA No. 11527 of 2014

**Respected Sir,**

We would like to draw your kind attention on the above cited subject and reference under (1) above. In this regard, AIBSNLEA earlier letters may kindly be referred to, wherein we have requested the BSNL Management, that the recovery of Over/Excess payment already paid to the Executives, who have opted for VRS and already retired, may not be made, citing the Hon'ble Supreme Court Judgment which has to be scrupulously followed.

In this regard, it is pertinent to mention that the Hon'ble Supreme Court ordered in CA No 11527 of 2014 (State of Punjab & others Vs Rafiq Masih) that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly be made by the employer, in excess of their entitlement has summarized the following few situations, **wherein recoveries by the employers would be impermissible in Law:**

- I. **Recovery from employees belonging to Class-III & Class-IV service (or Group 'C' and Group 'D' service).**
- II. **Recovery from retired employees, or the employees who are due to retire within one year, of the order of recovery.**

- III. **Recovery from employees, when the excess payment has been made for a period in excess of five years, before the order of recovery is issued.**
- IV. **Recovery in cases where an employee has wrongfully been required to discharge duties of a higher post, and has been paid accordingly, even though he should have rightfully been required to work against an inferior post.**
- V. **In any other case, where the Court arrives at the conclusion that recovery if made from the employee, would be iniquitous or harsh or arbitrary to such an extent, as would far outweigh the equitable balance of the employer's right to recover.**

The same judgment was endorsed by the Establish Branch of BSNL Corporate Office to all field units vide above cited reference under (2).

**Sir**, the above said instructions of BSNL Corporate Office and Hon'ble Supreme Court Judgment has not been followed strictly but to our surprise, a contrary order has recently been issued by the Estt. Branch of BSNL CO vide it's letter cited above under reference (1), resulting lakhs of Rupees have been recovered from the Ex-gratia Payment paid to the retirees who have gone on VRS under the Scheme of BSNL VRS-2019, in the name of excess payment and in violation of the Hon'ble Supreme Court Judgment.

It is not fair on the part of the BSNL Management to recover the said excess payment made to the employees (who have gone on VRS etc.,) before five years in a biased manner, **which would be impermissible in Law and clear deviation from the Hon'ble Supreme Court Judgment as well as BSNL CO instructions issued vide the above cited reference under (2).**

**Sir**, in view of the foregoing facts, we would request your good self to kindly intervene in the matter and cause to issue necessary instructions to the officers concerned to revisit the case in the light of the Judgment of Hon'ble Supreme Court of India and the earlier instructions of BSNL CO issued in this regard and issuance of clarifications in an unbiased manner with reference to the above said judgment to all Circles/Units.

**With kind regards,**

Yours Sincerely,



**(S. Sivakumar)**  
**General Secretary**

**Copy for kind information and necessary action to:**

1. Shri Saurabh Tyagi, Sr.GM (Estt.) BSNL Corporate Office, New Delhi-110001.
2. Shri A.M. Gupta, GM (SR) BSNL Corporate Office, New Delhi- 110001.