

NO. 2-13/2008-Pers (DPC)
BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]
CORPORATE OFFICE, PERSONNEL BRANCH
4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi – 1

February 11, 2009

To

All CGMs of Telecom Circles,
All CGMs of Telecom Regions/Telecom Projects
All Heads of Administrative Units,
Bharat Sanchar Nigam Limited.

Subject: - Representations against Seniority Lists of TES Gr 'B' (SDEs(T) in BSNL) – regarding.

A large number of representations from SDEs(T) are being received in this office for extending the benefit of seniority on qualifying year basis in accordance with the principles laid down by Allahabad High Court judgment dated 20.2.85 in Writ Petitions Nos. 2739 and 3652 of 1981 and as per clarifications of Hon'ble Supreme Court in judgment dated 26.4.2000 in Civil Appeal No. 4339/95.

The matter has been examined in the light of the facts and the clarifications of the Hon'ble Supreme Court. It has been found that the claims made in the representations are unfounded as they are not based on merits/facts.

The factual position based on the facts, clarifications of Hon'ble Supreme Court and the methodology for preparing/drawing the revised seniority list of SDEs(T) pursuant to the clarifications of the Court, is given below.

In the year 1981 one Shri Parmanand Lal (1966 Batch) and Brij Mohan (1965 Batch), both of whom passed in the qualifying examination held in 1974, filed aforesaid two WPs complaining of their placement in the eligibility list below the last man who passed the qualifying examination in 1975. The Department of Telecommunications contended that the Eligibility List had been arranged on the basis of seniority, based on the year of recruitment and ignoring the year of passing the qualifying departmental examination, as required by Recruitment Rules, 1966. The Lucknow Bench of Allahabad High Court considered the submissions urged before it in the light of Recruitment Rules, 1966 as also the Recruitment Rules 1981 and para 206 of the P&T manual and concluded that those who qualified in the departmental examination earlier were entitled to be promoted prior to those who qualified later, irrespective of the year of their initial

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recruitment. It was held that Para 206 of the manual was not in conflict with either the rules of 1966 or 1981, but was supplemental to those rules. Relief was accordingly granted to the two petitioners based on the interpretation of the Recruitment Rules and para 206 of the P&T Manual.

Petitions for special leave to appeal were preferred by the Union of India challenging the aforesaid decision of the Allahabad High Court which were numbered as 3384-3386 of 1986. By order of April 8, 1986 the Hon'ble Supreme Court dismissed the Special Leave Petitions observing that the Court is not inclined to interfere with the judgment of the High Court except to a limited extent.

Following the judgment of the Allahabad High Court several petitions were allowed by the Principal Bench, CAT seeking identical relief. The Principal Bench by a detailed order of June 7, 1991 allowed the applications and issued directions for re-fixation of seniority, keeping in view the relevant recruitment rules and Para 206 of the Manual. The order of the Principal Bench of the CAT dated June 7, 1991 was challenged before the Hon'ble Supreme Court both by UoI and JTO Association (India). The Special Leave Petition nos 19716-19722 of 1991 were dismissed on January 6, 1992.

The same questions were again agitated before apex court in 1993 Supp (4) SCC 693 JTO forum and others vs UoI and others. The Apex Court dismissed the Writ Petition and observed that they are satisfied that the issues which the petitioners now wish to raise had been agitated directly and substantially by JTOA and UoI. The order made by the Court in SLP(C) Nos 3384-86 of 1986 is an order made on the merits of the case. The issues were again raised by UoI as well as JTOA in SLP(C) Nos. 19716-22 of 1991 against the judgment of Principal Bench of CAT dated June 7, 1991 unsuccessfully. Those judgments have settled the controversy and have become final and binding in respect of the questions debated therein. By order dt 13.5.1994 Hon'ble Apex Court upheld the above view in SLP(C) No. 16698/92.

Following the judgment of the Allahabad High Court and Supreme Court, various Benches of the CAT decided a large number of cases. In some of the cases appeals preferred by UoI were rejected.

As the Department was finding it difficult to implement the various Court judgments in piecemeal manner, it filed an affidavit before the PB, CAT about its intention to revise the seniority of the entire cadre of TES Gr B. Accordingly it issued seniority lists 1 to 17 on qualifying year basis in accordance with the principles laid down by Allahabad High Court.

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Meanwhile Madras Telephone SC & ST Social Welfare Association had filed a WP before Madras High Court that the eligibility list must be prepared by determining the seniority on the basis of confirmation as Junior Engineer (JTO). The Writ Petition stood transferred to CAT, Madras Bench and the Tribunal by its judgment dt 31.12.1986 held that the year of recruitment for the purpose of seniority is irrelevant and accordingly directed that the eligibility list be arranged according to the year of passing the qualifying examination. Amongst those who pass the exam in the same year, the list should be according to their merit as seen from the marks. The judgment of the Tribunal was challenged before the Hon'ble Apex court in Civil Appeal Number 4339 of 1995 and by judgment dated 13.2.1997 reported in (1997) 10 SCC 226 in UoI vs Madras Telephone SC & ST Social Welfare Association. The Hon'ble Supreme Court observed that the Tribunal neither accepted SC/ST Association case (the respondents) for preparation of EL on the basis of confirmation nor the department's case for preparation of EL on recruitment year basis but directed to draw the EL on the basis of year of passing the qualifying examination. The Hon'ble Supreme Court further held that **what the Tribunal has done by judgment dt 31.12.1986 amounts to re-writing the Rules which should not have been done by it.** The appeal (CA 4339/95 of UoI) was allowed.

The Department of Telecommunications found that the judgment dated 13.2.1997 of Apex Court and the judgment dated 20.2.1985 of the Hon'ble High Court of Allahabad was juxtaposed. It filed CA 4339/95 before the Hon'ble Supreme Court for clarification. In its judgment dated 26.4.2000 in CA 4339/1995 the Hon'ble Apex Court clarified that **once the statutory Recruitment Rules came into force and the procedure was prescribed under the said rules for preparation of eligibility list of officers for promotion to Engineering Service Class II by notification dated June 28, 1966, it is that procedure which has to be adopted, and the earlier administrative instructions contained in para 206 of P&T Manual cannot be adhered to.** It observed that the contrary conclusion of the Allahabad High Court was undoubtedly incorrect. While upholding the correctness of the law as declared in 1997 (10) SCC 226, it further observed that the persons who have already got the benefit like P N Lal and Brij Mohan **by virtue of the judgments in their favour**, will not suffer and their promotion already made will not be affected by this judgment. The Hon'ble Supreme Court further held that though the correctness of the view in (1997) 10 SCC 226 had been upheld, promotions already effected pursuant to the judgment of Allahabad High Court which was upheld by the court by dismissing the special leave petition filed by the UoI, will not be altered in any manner.

The same issue was again agitated in IA No. 16 in CA No. 4339/1995 by Promotee Engineers Forum and the Hon'ble Apex Court by its judgment dated 28.9.2006 has re-iterated its earlier judgment and concluded that the court has **clearly clarified the position in its aforesaid judgment (26.4.2000).** The seniority fixed on the basis of this court which had attained finality is not

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liable to be altered by virtue of a different interpretation. Consequently, the promotions already effected on the basis of seniority determined in accordance with the principles of Allahabad High Court cannot be altered. The claim to seniority and consequent promotion will not be adversely affected by the contrary view. Since the rights of such applicants were determined in a duly constituted proceedings, a subsequent judgment will not adversely affect the applicants in whose case the orders have attained finality. The Hon'ble Apex Court concluded that they have only clarified and given effect to an earlier judgment of the court rendered in an extraordinary situation and that they have **not laid down any principle or law having universal application.**

In judgment dated 25.3.2008 in C.P. No. 248/2007 in IA No. 16 in CA No. 4339/1995, the Apex Court observed that it was specifically held by the court in its order dated 28.9.2006 that such of the employees whose claims for seniority on the basis of the qualifying year had become final **because of the orders of the courts**, should not be disturbed on account of its subsequent judgment dated 26/4/2000. Pursuant to judgment dated 25.3.2008 of the Hon'ble Supreme Court, the Seniority of the applicants were revised by DoT vide order No. 15-28/2003-STG-II dated 19.5.2008 and 15-6/2007-STG-II(i) dated 21.5.2008.

The Department re-arranged the entire seniority of TES Gr B cadre (SDE(T) on Recruitment year basis in accordance with the judgment dated 26.4.2000 of the Hon'ble Supreme Court. The seniority prepared in accordance with the judgment dt 26.4.2000 and the statutory rules are good in law. The seniority of all the employees except the exceptional cases like those of P N Lal and Brij Mohan and similar cases in which judgments have been obtained from courts are to be determined accordingly. There is no direction of the court to revise all the seniority lists in accordance with the principles laid down by Allahabad High Court.

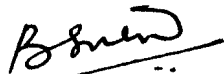
In view of the aforesaid facts, the claim to seniority for fixation on qualifying year basis in accordance with the principles laid down by Allahabad High Court judgment dated 20.2.1985 and clarifications of Hon'ble Supreme Court in judgment dated 26.4.2000, 28.9.2006 and 25.3.2008 may be considered in the case of officers who have got judgments in their favour from the courts.

This may be brought to the notice of all concerned. In cases where judgments have been rendered by the Courts, representations received in the matter may be forwarded by the Circle offices concerned to this office for consideration.

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The representations received from officers other than those who have got judgments in their favour may not be considered in view of the clarifications of Hon'ble Supreme Court in judgment dated 26.4.2000, 28.9.2006 and 25.3.2008. Their representations stand disposed of. In this regard, letter of DOT issued vide no. 15-28/2003 – STG II dated 30.3.2007 circulated by BSNL to HOCs vide letter no. 15-46/2006 –Pers.II dated April 19, 2007 may be referred.

This issues with the approval of the competent authority.



(B. SURENDRANATH)
Asstt. General Manager (DPC)

Copy to:

- 1) Shri B.M. David, Under Secretary (SGT), DOT Hqrs. Sanchar Bhawan, New Delhi.
- 2) AGM (Pers.II), BSNL CO.
- 3) General Secretary AIBSNLEA/ SNEA.