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No. AIBSNLOA/CHQ/2013/133

Dated: 9<sup>th</sup> July 2013

To

Shri R. K. Upadhyay,  
Chairman and Managing Director,  
Bharat Sanchar Nigam Limited,  
New Delhi

**Subject: Revised results of LDCE for promotion from JTO to SDE (T) held on 4.3.2012 – regarding**

**Ref: BSNL letter No.5-4/2012-DE dated 28.6.2013**

Respected Sir,

We would like to draw your kind attention to BSNL's Office letter cited under reference wherein, in pursuance of the Order of Hon'ble Principal Bench, CAT, Delhi dated 21<sup>st</sup> and 22<sup>nd</sup> May 2013 in OA 207/2013 with OA 2574/2012 and others, the revised lists of candidates who were successful in the LDCE for promotion to the grade of SDE (T) under 33% quota held on 4.3.2012 were released. The earlier result declared vide BSNL letter No.5-4/2012-DE dated 4<sup>th</sup> July 2012 has been declared as cancelled.

2. As per the revised results, names of 119 JTOs who were declared successful in the earlier Order issued vide BSNL letter dated 4.7.2012 are not finding place in the Order circulating the revised results, while new names of 22 JTOs are finding place in this revised result as successful candidates.

3. We are aware that the revised lists have been arrived at based on the Hon'ble CAT, Principal Bench, Delhi direction "to re-evaluate all the answer sheets of all the candidates based on the aforesaid principles and parameters and prepare a fresh list of qualified candidates. Since the examination was held on 04.03.2012 and candidates were awaiting for their promotion for over an year, the Respondent-BSNL shall ensure that the fresh list of qualified candidates is published as early as possible, preferably within 2 months from the date of receipt of a copy of this order."

4. But we are constrained to note that while implementing the direction of Hon'ble PCAT, Delhi, **BSNL has lost sight of a very important and crucial point discussed in the judgment**, citing the case of Manish Ujwal and Others Vs. Maharishi Dayanand Saraswati University and Others JT 2005 (8) SC 382. In this case the Hon'ble Supreme Court of India, while upholding a judgment of Hon'ble High Court of Allahabad, under Para 78 of the judgment has observed that, "Now, the point for consideration at this stage is how is this reevaluation to be done? **We must make it clear that the 275 candidates who have been declared as qualified for the DJS Main Examination (Written) are not before us and, therefore, it would not be fair to disturb their status as qualified candidates.**" [Emphasis added] Under Para 81 of the said judgment, Hon'ble Supreme court has observed that,

*"We must harmonize the requirement of the second condition with the requirement of not disturbing the candidates who have been declared as qualified as also with the requirement of justice, fairness and equity insofar as the other candidates are concerned. We feel that this would be possible:*

*(1) by re-evaluating the OMR answer sheets of all the general category candidates on the lines summarized in the table set out above;*

*(2) by selecting the top 230 candidates in order of merit subject to the minimum qualifying marks of 112.8; and*

*(3) by adding the names of those candidates, if any, who were earlier declared as qualified but do not find a place in the top 230 candidates after re-evaluation.*

***In this manner, all persons who could legitimately claim to be in the top 230 would be included and all those who were earlier declared as having qualified would also retain their declared status.*** [Emphasis added]

5. The Hon'ble PCAT, Delhi, while rejecting the prayer for conduct of the LDCE afresh, has also cited another case of Rajesh Kumar and Others Vs. State of Bihar and Others Civil Appeal Nos. 2525-2516 of 2013 decided on 13.03.2013 by the Hon'ble Supreme Court, wherein the Court has observed that,

*"There is considerable merit in the submission of Mr. Rao. It goes without saying that the appellants were innocent parties who have not, in any manner, contributed to the preparation of the erroneous key or the distorted result. There is no mention of any fraud or malpractice against the appellants who have served the State for nearly seven years now. In the circumstances, while inter-se merit position may be relevant for the appellants, **the ouster of the latter need not be an inevitable and inexorable consequence of such a re-evaluation.**"* [Emphasis added]

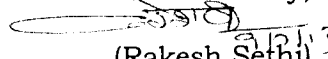
6. The Hon'ble PCAT Delhi orders has also not issued any direction to remove the names of the candidates who had been declared successful in the first instance but could not make it in the revised list. It is very much unfortunate that BSNL has left the fate of such candidates high and dry without having any empathy towards them.

This may also give room to another round of litigations which is not in the interests of anyone.

7. We would therefore request you to kindly bestow your immediate attention to this issue and cause inclusion of the names of 119 JTOs who were declared successful vide BSNL letter dated 4.7.2012 but are now not finding a place in the revised list of successful candidates circulated vide BSNL letter dated 28.6.2013 and thus render justice to them.

With kind regards,

Yours sincerely,

  
(Rakesh Sethi)  
General Secretary

Copy to:

1. Shri. A.N.Rai,  
Director (HR), BSNL
2. Shri P.C. Mehta  
Sr. General Manager (Rectt)