

No.A-11013/26/2008-Admn.II/Abs.Cell
Government of India
Ministry of Communications & Information Technology
Department of Telecommunications
(Absorption Cell)

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

Dated October 1, 2008

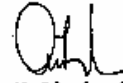
OFFICE MEMORANDUM

Subject: Calling of Option for Absorption of Group A officers of various services in MTNL/BSNL

Reference is invited to this Department's following letters:-

- (i) Letter No.A-11013/1/2005-Admn.II/Absorption Cell (ITS/TTS/TFS, GCS, IP&T A&FS, P&T BWS) dated 26.08.2008 calling for option of Group A officers (excepting those already absorbed in BSNL/MTNL) for their absorption in MTNL/BSNL, and
- (ii) Letter No.A-11013/1/2005-Admn.II/Absorption Cell dated 29.09.2008 carrying a revised Annexure-III i.e. General Terms and Conditions for absorption of Group A officers of various services in MTNL/BSNL to this Department's above-said letter dated 26.08.2008

2. This Department received representations from individual officers (already absorbed as well as yet to be absorbed) seeking clarifications on some of the issues related to the Terms and Conditions for absorption (since revised vide letter dated 29.09.2008) stated in this Department's above-said letter dated 26.08.2008. After considering the said representations, this Department's response i.e. clarifications to the points raised in the representations is forwarded herewith as per enclosed statement and also posted on the website of DoT at www.dot.gov.in for information of all concerned.



(L.N. Anchal)

Deputy Secretary to the Govt. of India
T.No.011-23372590

To

1. Members of Telecom Commission
2. Secretary, D/o Posts/CMD, MTNL/CMD, BSNL/Sr.DDG(BW)/DDG(Establishment)/DDG(FEB), DoT with the request to bring the contents of this letter to the notice of all concerned officers including those in the field formations.

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Copy to:-

DDG(C&A), DoT with the request to get the contents of this letter posted on the website of DoT at www.dot.gov.in

Copy for information to:-

PS to Hon'ble MoC&IT/PS to Hon'ble MoS(C&IT)/PS to Secretary, DoT/Sr. PPS to Additional Secretary/PS to Joint Secretary (T)

Department of Telecommunications' response i.e. clarifications to the points raised in the individual representations by (already absorbed as well as yet to be absorbed) Group A officers.

S.No	Points Raised	Response/Clarification
<i>Representations from already absorbed officers</i>		
1.	Revised option letter dated 26.8.2008 issued by DoT contains a clause that this letter does not re-open the absorption process in case of already absorbed Group A officers except for the purposes of incentives/ benefits stated in the General Terms and Conditions of absorption. Since the terms and conditions have been modified substantially in the latest option letter dated 26.8.2008, the principle of natural justice and right to equality demand that Group A officers who have already been absorbed should be allowed an opportunity to exercise their option afresh.	Officers already absorbed in BSNL/MTNL are no longer the Government employees. In contrast, the officers who exercised option for Government or did not exercise the option at all on earlier occasion, continue to be the Government servant. Keeping in view the Government's inherent right to give opportunity to its employees for exercising the option, there is nothing wrong in doing so as has been done vide this Department's letter dated 26.08.2008. Moreover, the additionalities offered to the officers yet to be absorbed are available also to the absorbed officers.
2.	As per option letter dated 4.10.2005, the corresponding IDA pay scale prescribed for the CDA pay scale of Rs. 14300-400-18300 was Rs. 17500-400-22300. However, in the revised option letter dated 26.8.2008, the IDA pay scale prescribed for the said CDA pay scale for BSNL has been enhanced to Rs. 18500-450-23900.	IDA pay scale of Rs.18500-450-23900 in lieu of the earlier IDA pay scale of Rs.17500-400-22300 in BSNL, is also applicable to the officers already absorbed in BSNL. This move does not affect in any manner the already absorbed officers of equivalent rank in MTNL adversely.
3.	As per option letter dated 4.10.2005, compensatory payments made to Group A officers while on deemed deputation to BSNL/MTNL were to be recovered from all, whether absorbees or opting for Government. However, as per revised option letter dated 26.8.2008, in the case of absorbed officers, the said compensatory payments are to be	Compensatory payments made to Group A officers while on deemed deputation will not now be recovered from Govt. Optees. This does not adversely affect the already absorbed Group A officers. In their cases also, there will be no recovery, but only adjustments on fixation of pay in IDA pay scale.

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	adjusted on fixation of pay in IDA pay scale and payments towards Special Allowance, whereas in the case of Government optees, the said compensatory payments shall not be recovered at all. Thus, the absorbed officers may like to opt to continue in Govt. Service.	
4.	In the option letter dated 4.10.2005, it was stipulated that the provisions of Para 4 of DOP&PW OM No. 4/18/87-P&PW(D) dated 5.7.1989 shall be applied as per option of the absorbed officer. However, in the revised option letter dated 26.8.2008, it is provided that already absorbed Group A officers will not be allowed an option to retain Govt. Pay scale, i.e. CDA pay scale till their promotion or retirement (whichever is earlier) as per the said para 4 of DOP&PW O.M. dated 5.7.1989. Thus, the facility already provided in the earlier terms and conditions has been withdrawn in the latest option letter dated 26.8.2008	All Group A officers are to switch over to IDA pay scale compulsorily on their absorption in BSNL/MTNL. Officers absorbed under option letter dated 4.10.2005 had an opportunity to opt for CDA pay scale till their promotion/retirement whichever is earlier. Those who did not avail that option at the material times, are not entitled to do so now and have therefore not been given another opportunity to do so through letter dated 26.08.2008 seeking options from yet to be absorbed officers. Neither there is withdrawal of the facility nor is there any discrimination meted out to any absorbed officer.
5.	It was provided in the option letter dated 24.10.2005 that the option once exercised shall be final and will not be allowed to be withdrawn and further that non option shall be treated as option for Govt. Service. Secretary, DoT vide his DO letter dated 24.9.2005 had clearly indicated that the officers who do not opt for absorption before the stipulated last date may eventually have to be placed on the surplus cell in line with government guidelines. However, not only non-optees/optees for government service have not been sent to the Surplus Cell, but the latest option dated 26.8.2008 has been extended to even those officers who had clearly opted for Government service while denying this option to already absorbed officers.	<p>Latest option letter dated 26.8.2008 incorporating additional benefits/incentives (also made applicable to absorbed officers) for absorption, has been issued by DoT to complete the absorption process.</p> <p>Regarding the fresh option being allowed to those officers who had earlier opted for Govt. Service, this facility is being allowed to them as they are still Government employees and it is considered expedient to allow them this option to successfully complete the absorption process.</p>

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6.	Absorption offer dated 4.10.2005 had no provision for subsequent offers, nor did it contain any provision to alter the terms and conditions contained therein unilaterally. However, subsequent to the option given by the officers, the government has changed the rules of the game by altering the terms and conditions including pension conditions.	As against 5 above.
7.	Issue of Presidential Order for absorption before conclusion of absorption process is highly irregular. Further, PO issued to absorbed officers was subject to the final outcome of the court cases. Therefore, all such Pos do not have any legal sanctity or finality being provisional in nature, due to the fact that the absorption process itself is sub-judice in the court of law.	A mere mention that the Presidential Orders issued by DoT absorbing the officers in BSNL/MTNL are subject to the decision in the pending Court Cases does not, ipso facto, render those orders infructuous. That only meant that in the event of any court passing an order having a bearing vis-à-vis the absorbed officers, that order would also apply to the absorbed officers as per legal advice.
8.	In the clarification issued on 30.5.2005, it was clarified that fresh deputation of officials from DoT to TCIL would not be allowed. However, deputation to TCIL/BSNL/MTNL is still continuing. Not only this, government is diverting posts from BSNL to DoT which has materially impacted the career prospects in BSNL and improved the career prospects in the Government.	Guided by the administrative exigencies, the Government and the PSUs under its control are within their rights to alter the staff structure/strength any time.
9.	In para 1.7 of Annexure I to option letter dated 4.10.2005, it was clarified that pension of Group A officers absorbed in BSNL will be paid on IDA pay scales by the Government of India in all eventualities. Subsequently, it was re-assured that in respect of officers absorbed in BSNL, BSNL will be liable to pay the pension contribution in accordance with FR 116. However, subsequent to the option exercised by us, DoT has issued clarifications to BSNL	Annexure I to the option letter dated 4.10.2005 was issued by BSNL and it was appended with option letter dated 4.10.2005 for information of Group A officers. Besides, para 1.7 of the said Annexure-I only referred to the provisions of relevant rules on payment of pension and thus it still holds good. Clause 21 of Rule 37-A clearly lays down that nothing contained in sub-rules (12) to (20) shall apply in the case of conversion of the Department of Telecom Services and Telecom

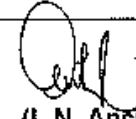
S.No	Points Raised	Response/Clarification
	regarding further contributions to be made by BSNL towards pension. As the absorbed officers were not aware of the changed pension conditions and as the changed pension conditions may affect them adversely, either a categorical clarification in this regard may be issued or the absorbed officers may be allowed to exercise their option afresh.	Operations into Bharat Sanchar Nigam Limited, in which case the pensionary benefits including family pension shall be paid by the Government. This is the primary clause which should assure Group A officers that payment of pensionary benefits including family pension to BSNL absorbees is the responsibility of the Govt. Irrespective of other arrangements made with BSNL regarding contribution etc.
10.	There was a provision in the option letter dated 4.10.2005 that the absorbed officers would also have an option to receive pro-rata benefit for the services rendered under the Govt. However, no such provision has been made in the revised option letter dated 26.8.2008	in the latest option letter dated 26.8.2008, it is provided that pensionary benefits to the employees on their absorption will be regulated as per the provisions of Rule 37-A of CCS (Pension) Rules, 1972, as amended from time to time. The said Rule 37-A, as amended from time to time, also include Sub-rule (8) which has since been amended by the Department of Pension & Pensioners' Welfare vide their notification dated 25.10.2007 thereby allowing the facility of pro-rata pension to absorbed employees in PSUs. Thus the provision for option of pro-rata pension on effective date of absorption is already covered in the option letter dated 26.8.2008.
11.	The terms and conditions governing the Special Allowance has been changed substantially inasmuch much as annual increase of 5% and commutation of SA, as provided in the option letter dated 4.10.2005 have been withdrawn in the revised option letter dated 26.8.2008.	<p>The earlier provision of 5% annual increase of SA in the case of absorbed officers has been done away with in the revised option letter dated 26.8.2008 in pursuance of the Cabinet decision primarily on the ground that minimum financial benefit on absorption to be paid as an amount of SA has been increased from 25% to 36%.</p> <p>The provision of option letter dated 4.10.2005 regarding encashment of full SA based on commutation formula, has been agreed to subject to the condition that the SA, despite being encashed, will be factored in while working out the 50% ceiling on perks and allowances prescribed by the DPE. This change has been notified separately.</p>
12.	As per para 1.10 of Annexure-I to	No change has been made in the option

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	option letter dated 4.10.2005, the prevailing Government GPF scheme shall continue to apply to the absorbed Group A officers of BSNL. Accordingly, GPF contributions of all such officers and balance of account continue to be maintained by the Government. There is no mention of this condition in the revised option letter dated 26.8.2008.	letter dated 26.8.2008 with regard to GPF except in the case of officers opting for pro-rata pension. For the latter cases, it has been provided that the amount of subscription along with employers' matching contribution together with interest thereon at their credit in the GPF account shall be transferred to his/her Contributory Provident Fund (CPF) Account under MTNL/BSNL.
13	The pay fixation method prescribed in the earlier offer of October, 2005 provided for two additional increments in JAG pay scale in BSNL. There is no mention of this in the revised option letter dated 26.8.2005.	In BSNL, in case of executives in the pay scale of Rs.12000-375-16500 (CDA), their pay is to be initially fixed at 2 stages above the minimum and point to point fixation for corresponding increments in CDA pay scale will be allowed. This decision has been notified separately.
14	The manner in which the Government has been proceeding in the matter of absorption of Gr. A officers shows that the Government is not really interested in completing the absorption process and instead it is working overtime to ensure a perpetual deputation to the dominant group in BSNL/MTNL.	Position stated is not only untrue but is also uncharitable in nature.
15	As per earlier offer, those not opting were to be sent to Surplus Cell. There is no mention of Surplus Cell in the revised option letter dated 26.08.2008.	There is hardly any point in mentioning a position which is part of the statutory rules. This is in view that Sub-rule 6 of Rule 37-A of CCS(Pension) Rules, 1972 lays down in no uncertain terms that the employees who opt to revert to Government service shall be redeployed through the Surplus Cell of the Government.
16	Clause 15 of the offer dated 4.10.2005 stipulated that non-optees or optees for Government service will not be entitled to PLI. However, BSNL Board with full support of Government Directors have since agreed to pay the PLI even to non-absorbed officers. This goes to show that the Government is not sincere about	BSNL Board is within its rights to take conscious decisions relating to the matters connected intimately with the smooth and efficient operations of the Corporation. The representationist has avoided to explain as to how the decision of the BSNL Board is disadvantageous to him.

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	original terms and conditions of absorption and is changing the terms and conditions to the disadvantage of the officers who have given their option for absorption.	
Representations from officers yet to be absorbed		
17.	Whether the option letter dated 26.8.2008 is a fresh offer for calling option or is it in continuation of earlier option offer issued on 24.3.2005 and its subsequent clarifications. If it is a fresh option, then whether it has been issued in suppression of earlier offer dated 24.3.2008 and its subsequent clarifications and to what extent?	Option letter dated 26.8.2008 is a fresh offer for only those Group A officers who continue to be the Government servants after 1.10.2000.
18.	Clarifications issued in continuation of option letter dated 24.3.2005 have also been referred in the present option letter dated 26.8.2008 at various places. Whether various clarifications (referred or not referred in the option letter dated 26.8.2008) issued in continuation to option letter dated 24.3.2005 are applicable to this option offer or not? If yes, then to what extent? If no, then to what extent?	The option letter dated 26.8.2008 is self contained and it contains all the terms and conditions of absorption applicable to all those Group A officers who have either not exercised their option so far or have opted for the Government. This letter covers absorbed officers for incentives/benefits being offered to yet to be absorbed officers excepting the option provided in para 4 of DoP&PW OM dated 5.7.89 i.e. the option to retain the CDA pay scale till promotion or retirement whichever is earlier.
19.	Para 12 of the option letter dated 26.8.2008 states that pensionary benefits to the employees on their absorption will be regulated as per the provisions of Rule 37-A of CCS (Pension) Rules, 1972, as amended from time to time. Further, clause (1) of Rule 37-A states that – "On conversion of a department of the Central Government into a public sector undertaking or an autonomous body, all Government Servants of that Department shall be transferred en-masse to that public sector undertaking or autonomous body..." Since MTNL has been formed not	The Government action is entirely in consonance with the express provisions of Rule 37-A of CCS (Pension) Rules, 1972.

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	<p>by conversion of a department into a public sector undertaking, rather it has been carved out from a Department of the Government, in the case of officers opting for MTNL, whether it will not be against the rule to pay them the pension in terms of Rule 37-A?</p>	
20.	<p>Para 12 of option letter dated 26.8.2008 states about allocation committee, its role and powers. In this regard, the following may be clarified:</p> <p>a) In case an officer opts for Govt. Service, whether allocation committee is empowered to allocate him to BSNL/MTNL against his option and consent?</p> <p>b) In case an officer opts for BSNL only, whether the officer can be allocated to MTNL against his option and consent?</p> <p>c) In case an officer opts for MTNL only, whether he can be allocated to BSNL against his option and consent?</p> <p>In case the answer to the above is affirmative, is it not illegal to allocate the officer to an organisation without his consent and option?</p>	<p>Paras 12 and 15 of the option letter dated 26.8.2008 are explicit and self-explanatory and they do not require any further clarification. Allocation Committee will recommend allocation of officers for absorption in BSNL/MTNL keeping in view the provisions in the said paras 12 and 15 of option letter dated 26.8.2008. In case an officer opts for Government service, Allocation Committee will not recommend him for absorption in BSNL/MTNL. However, if an officer gives his preference for absorption, say, in BSNL only, Allocation Committee will recommend his absorption in BSNL only or will allocate him for the Government. The same will be equally true in the cases of those who opt for absorption in MTNL only.</p>
21	<p>In order to overcome the above ambiguity, the option form should have been worded like as below:</p> <p>3(i) BSNL OR 3(ii) MTNL OR 3(iii) Continue in Government.</p> <p>If the above is followed, there would be no need of Allocation Committee which has been given irregular/ illegal arbitrary powers.</p>	<p>The format of option form prescribed in the option letter dated 26.8.2008 is the same as that prescribed in the original option letter dated 24.3.2005. If the format of option form as suggested by the representationist is followed, it will not be possible to effectively apply the provisions of para 12 of the option letter dated 26.8.2008 regarding criteria to be followed for allocation.</p>
22	<p>As per option letter dated 26.8.2008, the effective date of absorption is 1.10.2000. However, as per clause 4 of Rule 37-A, "The permanent absorption of the Government Servants as employees of the public sector undertaking or autonomous body</p>	<p>Sub-rule 4 of Rule 37-A of CCS (Pension) Rules, 1972 is required to be read in conjunction with Sub-rule 1 thereof. Group A officers are being absorbed w.e.f. 1.10.2000 having regard to the fact that about 3,97,000 officers of Group B, C and D who had also been sent to deemed deputation</p>

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	<p>shall take effect from the date on which their options are accepted by the Government and from the date of such acceptance such employees shall cease to be Government servants and they shall be deemed to have retired from Government Service."</p> <p>It may be clarified whether prescribing the effective date of absorption as 1.10.200 is not in violation of existing Govt. Rules on the subject.</p>	<p>were absorbed in MTNL/BSNL w.e.f. 1.10.2000. The above stand of DoT i.e. the choice of effective date as 1.10.2000 for absorption of Group A officers, has already been upheld by Hon'ble Central Administrative Tribunal, Principal Bench in its judgement dated 31.10.2005 delivered in the cases filed in the matter of absorption of Group A officers in BSNL/MTNL.</p>



(L.N. Anchal)
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