



SANCHAR NIGAM EXECUTIVES' ASSOCIATION KERALA CIRCLE

(Recognised Majority Association of Executives in BSNL)

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No:- SNEA/KLA/CGM/2016-17/156

dtd at TVM, the 07/11/2017

To

The CGMT,
BSNL, Thiruvananthapuram,
Kerala.

Respected Sir,

Sub.: Fixation of pay for officiating JTOs under FR 22.1.a.1

Ref:W.P.(C) Nos. 7723, 8077, 23015, 23141, 23287,23753, 23407, 23850, 24091, 24092,26872, 26873, 26883 of 2010 &OP(CAT) No. 2107 of 2011

Judgment Dated 15th day of September, 2017 by Hon.High Court of Kerala

We invite your kind attention to the above judgment in which Hon.HighCourt of Kerala has upheld the order of Hon.CAT Ernakulum directing the BSNL to fix the pay under FR.22.1.a.1 instead of FR35 as contended by BSNL. The above final order has come after a series of litigation spanning nearly more than 10 years. As the case was pending these officers were denied many benefits like 78.2% DA, pay fixation on promotion etc for years together. Huge recoveries were effected from many particularly at the time of their retirement. The Hon. High Court has meticulously examined the case in details as extracted below in arriving at its decisions upholding the eligibility for fixation of pay under FR 22.1a.1 to these officers.

"12. It is worthwhile to extract the "one and only ground" raised in these petitions, for convenience of reference:

"The Tribunal, it is submitted with respect, erred entirely in taking the view that it is FR 22 that applies to the applicants before it without invoking FR 35. FR22 will apply only to appointees who fulfill all the eligibility conditions prescribed in the relevant Recruitment Rules mainly such as existence of posts/posts which would arise within the validity period of the relevant recruitment rule and completion of pre appointment training and restriction under FR 35 will apply to others who have not fulfilled the eligibility conditions, but officiating temporarily. The contesting respondents will fall in the second category. However initially, the pay of the respondents was fixed under FR 22 alone inadvertently, which on

realization was corrected. This is perfectly justified and no legal rights whatever of the applicants before the Tribunal was affected. Any department or institution is entitled to correct errors, if any, in fixing pay if an error has been committed. Admittedly, the affected parties were heard on the direction of this Hon'ble Court in a Writ Appeal and the detailed representation submitted by them was considered by the petitioners and appropriate orders passed. The Tribunal therefore, wholly erred in interfering with the applications before it. Correcting an error will not amount to committing mistake in law. Interference by the Tribunal was totally uncalled for and the common order of the Tribunal evidenced by Exhibit P4 therefore, is liable to be interfered with by this Hon'ble Court in exercise of its extra ordinary powers under Article 226 of the Constitution of India. The petitioners and the BSNL will be put to serious prejudice if a patent error is not corrected. Being left with no other alternate remedy, the petitioners are praying for reliefs from this Hon'ble Court including appropriate interim orders..”

“Para.14. It is also relevant to extract the relevant Rules (Junior Telecom Officer Recruitment Rules, 2001) as it stood in 1996 and the position after the amendment brought about in the year 2001.

The 1996 and 2001 rules read as follows:

1996 Rule:

*“ The candidates selected both against 50% direct recruitment quota vacancies and the 50% department promotion transfer vacancies, **shall before their appointment** as Junior Telecom Officers, have to successfully undergo prescribed training as per the training plan laid down and amended by the Department from time to time”*

2001 Rules:

W.P.(C) Nos. 7723 of 2010 and connected cases

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*(ii) The candidates selected both against the direct recruitment quota of vacancies and internal promotion quota of vacancies **shall have to successfully undergo training** as per the training plan laid down by the Company.”*

16. By virtue of the new Recruitment Rules of 2001, the mandatory nature of the requirement of completing the entire extent of 14 weeks' training was taken away, i.e., the relevant words **“before their appointment as Junior Telecom Officers”** have been deleted. The change in the scenario is pursuant to a conscious decision taken, i.e. to dispense with the completion of the training before giving appointment, in turn making it possible to have the training **for absorption in the post**. This, in other words, would mean that the period of training can be completed even after appointment, subject to the relevant terms.”

“In so far as we have already held that it is the '2001 Rules' which are to govern the situation and not the 1996 Rules, the case projected by the BSNL (as in the Ground extracted above) does not remain to sustain the cause projected before this Court.”

“In the above facts and circumstances, the finding rendered by the Tribunal that the fixation has to be effected based on FR22(1)(a)(i) is perfectly within the four walls of law and is not assailable. The writ petitions/Original Petition fail and they are dismissed accordingly.”

We appeal to the management to implement the Judgment and put an end to this unnecessarily long drawn litigation, without resorting to appeal against this recent order by wasting valuable money and manpower of the company. Further it is requested to consider the heart burn of the JTOs who belong to this lot who were desperately waiting for a decade to an end to the time and recourse wasting exercise in vain, in court without any cause and good both to BSNL and executives ,but will lead the officers to greater ethos and agony that will curtail the morale and efficiency of the affected thousands .

SNEA, the recognized representative of executives and majority association appeal to you to understand the serious observations and decisions made by the Division Bench of Hon. High Court Ernakulum in letter and spirit and not to resort any appeal to higher courts which lead to delay of another decade for a final decision and at that time ,no affected executives will be in service and kindly uphold the judgement , do and show justice to the affected executives in BSNL since we feel **“JUSTICE DELAYED IS JUSTICE DENIED”**

Sincerely Yours



T Santhosh Kumar
Circle Secretary
SNEA, Kerala Circle.

Copy to:- PGM (Finance), O/o CGMT, Trivandrum