



SANCHAR NIGAM EXECUTIVES' ASSOCIATION KERALA CIRCLE

**(Recognised Majority Association of Executives in BSNL)
SNEA Bhavan, Dharmalayam Road, TVM-695001**

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No:- SNEA/KLA/CGM/2016-17/116

dtd at TVM, the 04-04-2017

To

- 1. The PGM(Finance)
O/o CGMT, Trivandrum**
- 2. The CGMT
BSNL, Kerala Circle,
Trivandrum**

Sub: Recovery from pay from Executives in gross violation of existing clear orders from BSNL corporate office/DOT/DOP&T in accordance with decision of the Hon'ble Supreme Court in CA No.11527 of 2014 (arising out of SLP (C) No.11684 of 2012) in State of Punjab and others etc vs Rafiq Masih (White Washer) etc

**Ref: 1 F.No. 18/03/2015-Estt. (Pay-I)Government of India Ministry of Personnel, Public Grievances & Pensions Department of Personnel & Training New Delhi, the 2nd March, 2016
2. No.1-06/2016 –PAT BSNL 9-9-2016
3. No.400-11/2011-Pers.I(Pt) dated 28th Feb2017**

Respected Sir,

It is reported that recovery/reduction in pay is ordered in the circle under following category in violation to the above orders .

- 1. Increment granted to executives on regular promotion who were placed in the same scale under EPP at the time of their retirement.**
- 2. Fixation granted on officiating promotion from JTO to SDE, JAO to AO etc**
- 3. Fixation granted on offg promotion from TTA to JTO and at the time of revision of pay on 1-1-2007 of Offg JTOs.**

As per the letter under reference 1 recovery from pay is impermissible in law under following cases.

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4. The Hon'ble Supreme Court while observing that it is not possible to postulate all situations of hardship which would govern employees on the issue of recovery, where payments have mistakenly been 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 and Class-IV service (or Group 'C' and Group 'D' service).
- (ii) Recovery from retired employees, or 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."

Further as per the letter under reference 3. It is ordered as follows :

- i. The pay [not scale of pay] availed under any Local Officiating Arrangement put in place prior to 18-01-2007 i.e. the date when EPP was promulgated, shall remain protected in any future time bound upgradation or post based promotion under the EPP.

From the above it very clear that the pay availed on officiating promotion is protected and there is no question of recovery as attempted by some SSAs/ units in case of fixation granted to executives on their officiating promotion.

All the cases are covered under clause 1, 2 & 3 of letter under reference 1 which is endorsed by BSNL and as per letter under reference 3. Considering the above position it is requested to instruct SSAs/Units not to make any recovery in violation of above orders. Any attempt to effect recovery from the pay granted to the executives which are covered as above will be a gross injustice, demoralizing the entire executives and will have significant negative impact on the circle performance.

Sincerely Yours



**T Santhosh Kumar
Circle Secretary
SNEA, Kerala Circle.**

Copy to PGMs/GMs of all SSAs