



# SANCHAR NIGAM EXECUTIVES' ASSOCIATION

## KERALA CIRCLE

(Largest Association of Executives in BSNL)

SNEA Bhavan, Dharmalayam Road, TVM-695001

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<b>Circle President</b>	<b>Circle Secretary</b>	<b>Circle Treasurer</b>
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**No.SNEA/Kerala/2020-21/II/161**

**dated 7<sup>th</sup> Jan 2021**

To

**Shri. C V Vinod,  
Chief General Manager Telecom,  
BSNL, Kerala Circle,  
Thiruvananthapuram-33**

**Respected Sir,**

**Sub: Recovery of excess payment due to wrong/erroneous fixation- Case of Officiating JTOs.**

**Ref:**

1. No: 1-06/2016-PAT(BSNL) dated 1-5-2019
2. BSNL Corporate No. 3-8/2010/2019/ Est.IV dated 14-10-2019.
3. BSNL CO No. 1-06/2016/PAT(BSNL) dated 4-3-2020
4. Circle office letter No. HR-E/2-3/court cases /A/2020-21 dated 23-6-2020
5. Corporate office no. 3-8/2010-2019/Estt IV dated 9th Dec 2020.
6. CAT EKM order dated 5-1-2017 in MA 1370/16 IN RA-30/2015 in OA No. 1022/12.
7. Corporate office No.3-8/2010/2019/Estt-IV dated 9th Jan 2020

AS per the letter under reference 4, Kerala circle has sought clarification from corporate office as follows:

*"It may be clarified whether the decision of Kerala Circle for recovery of excess payment made to TTAs while they were officiating as JTOs is in line with Corporate Office directions or not."*

*Based on the following ground.*

1. *Kerala Circle is of the opinion that the instructions conveyed through BSNL Corporate Office letter dated 01.05.2019 is not applicable in the said case since the recovery of excess payment pertains to wrong fixation in the JTO Group B cadre even though their substantial grade is Group C. (Also undertaking is given by these officiating JTOs for recovery of excess payment, if any).*
2. *Vide this office letter dated 28.09.2019 certain clarifications were sought from Corporate Office and Kerala vide ref No.2 above, reply was received.*
3. *Based on the reply received from Corporate Office, the IFA/CGM of Kerala Circle decided that the contention of the various representations and the Associations that recovery is impermissible on account of their substantial grade being Group C is incorrect as erroneous fixation happened when they were Group B officers and there is no error in pay fixation in their Group C grade.*
4. *Kerala Circle Office has also taken a stand that the delay in recovery is purely on account of the various Court cases which started from the .year 2012 and got completed in the year 2017. Vide case No. MA 1370/16 IN RA 3012015 in OA No.1022/2012 dated 05.01.2017, the Hon'b1e CAT, Ernakulam Bench has upheld the pay fixation proposed by BSNL and accordingly recovery of the excess payment was initiated (copy attached) and hence the direction issued under ref (2) above are also not applicable."*

**In this regard it is submitted that In spite of the categorical clarification sought by Kerala Circle that “whether the decision of Kerala Circle for recovery of excess payment made to TTAs while they were officiating as JTOs is in line with Corporate Office directions or not.” The Corporate Office did not approved the decision of the Kerala circle. In turn the corporate office directed the Circle to settle the issue as per the instructions issued vide reference-3 dated 4-3-2020 and PAT letter vide reference-1 dated 1-5-2019 both according to Kerala circle is not applicable in this case.**

**As far as ground taken by Kerala circle in deciding that the letter under reference-1 which stipulate the conditions under which recovery from pay is impermissible in law is not applicable in this case, the following facts are submitted for reconsideration to decide the matter on merits as directed by corporate office.**

<i>Sl no</i>	<i>Issue</i>	<i>Kerala circle stand</i>	<i>Opinion</i>
1	<i>Status of officiating JTO</i>	<i>Gr. B</i>	<i>As per the letter under reference-7 dated 09-01-2020 the Corporate office has clarified that Offg .JTOs are Gr-C cadre that is why the pay fixation done by Kerala Circle treating them regular JTOS (Gr-B ) is considered as erroneous resulting refixation of the pay granted them of implementation of 2<sup>nd</sup> PRC . If offg JTOs are considered to be Gr-B, there is no error in the pay fixation granted and the question of recovery does not arises. BSNL cannot take two diametrically opposite stand on the status of an official in case of pay fixation vs recovery of excess payment.</i>
2	<i>Applicability of order dated 1-5-2019</i>	<i>Not applicable</i>	<i>As per the letter dated 9-12-2020 (ref-5) the corporate office has reiterated that the matter is to be considered as per the letter dated 4-3-2020( ref-3) and letter dated 14-10-2019(Ref-2) both of which are issued with reference to letter dated 1-5 2019 from which it is clear that the matter of recovery of excess payment due to wrong fixation of the officiating JTOs are to be dealt in terms of letter under reference 1 dated 1-5-2019</i>
3.	<i>Applicability of clause 2 of letter under reference 1.</i>	<i>Not applicable since the recovery procedure initiated in 2012 and was pending due to court cases.</i>	<i>The matter was finally settled only in 2017 as per Hon, CAT judgments dated 5-1-2017 (ref-6) as mentioned in the corporate office letter dated 9-12-2020 (ref-5) and the contention of the circle that the case was initiated in 2012 is untenable as the matter has reached finality only in 2017 as per the judgment dated 5-1-2017.</i>
4	<i>Undertaking</i>	<i>Undertaking was given hence recovery can be made.</i>	<i>Though Kerala circle has reported that the officials has submitted an under taking for recovery of excess payment if any, to the corporate office as per the letter under reference dated 23-6-2020 and confirmation of its decision to go ahead with the recovery the Corporate office did not ratify the decision of Kerala circle for recovery on the basis of said under taking. Instead the corporate has directed the Kerala circle to decide on the matter of recovery of</i>

			<p><i>excess payment due to erroneous fixation of pay on the basis of CAT order dated 5-1-2017, corporate office order dated 4-3-2020 and 1-5-2019 as well as letter dated 14-10-2019.</i></p> <p><i>Though a general undertaking was obtained from all Executives and non-executives including those from MP circle BSNL corporate office has clarified as per the letter dated 4-3-2020 that those for whom the normal date of superannuation fall within one year to be considered at par with situation II prescribed vide reference 1 in the matter of recovery for excess payment due to wrong fixation.</i></p> <p><i>It may be noted that no “specific” undertaking was given by these officials in this case and the judgment dated 5-1-2017 direct only to re-fix pay w.r.t the substantive post of TTA and there is no order for recovery though the officials were drawing the higher pay due to wrong fixation.</i></p>
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The legal opinion taken in respect of OA 169/2020 –CAT Ernakulam that officiating JTOs are in the status of Gr-B, and undertaking was given by the employees, is contrary to the stand of corporate office that Offg JTOs are Gr-C. As far as reference to the judgment rendered by Hon’ble Supreme Court In High court of Haryana & Punjab Vs Jagadev Singh the fact and circumstances of the case is not applicable in the instant case wherein specific undertaking was given by the party which not the case in hand.

It may be noted that in the question of eligibility of pay fixation under FR22.1.a.1 in respect of these officiating JTOs, it was dragged to n-number of court cases from Hon. CAT to Hon. Supreme Court for more than 10 years resulting huge financial burden and waste of precious time , both for BSNL as well as the officials

Considering the above facts it is once again requested that the recovery from pay on account of excess payment due to wrong fixation from officiating JTOs may be waived off as it is impermissible in law as the conditions prescribed under reference 1 is fully complied with in the instant case.

Sincerely Yours



**Jithesh K P**

**Circle Secretary**

**SNEA Kerala Circle**

Copy to GM (HR & Admin), BSNL, Kerala Circle