

No. 27-2 /2007-SNG
Government of India
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, New Delhi-110001
(SNG Section)

dated: 19/09/2019

To

The CMD,
BSNL, Bharat Sanchar Bhawan
Janpath, New Delhi-110001

(Attention: Shri G.P Vishnoi, AGM, Estt.III)

Subject: Common order dated 16.11.2015 passed by the Hon'ble CAT, Lucknow Bench in OA No. 16/2010 and 15/2010 in the matter of Shri Shankar Nath Mishra & Ors and Shri Sanjay Sinha & Ors respectively- Regarding option exercised by Shri Sanjay Kumar Singh, Steno, UP (E) Circle for repatriation to DoT.

Sir,

I am directed to refer to letter No. 211-4/2010-Pers.III (Part) dated 11.09.2019 on the subject noted above and to say that the matter has been examined in this Department in terms of order dated 16.11.2015 in OA No. 15-16/2010 pronounced by the Ld. CAT, Lucknow Bench. After going through the entire case, **detailed observations have been made, which are annexed (Annex. A) to this letter,** which infer that instant issue of reversion to Government service clearly attracts principle of estoppel as well as res judicata. Accordingly, any contrary stand taken by the applicant or any similarly situated employee (in contravention to permanent absorption in BSNL), who was party to OA No. 15-16/2010 before the Ld. CAT, Lucknow is clearly barred by the legal as well as administrative principles mentioned in annexure.

2. Accordingly, instant issue of reversion to Government service raised by Shri Sanjay Kumar Singh, Steno, UP (East) Circle has not been acceded to and his contrary option, if any, cannot be allowed/accepted and therefore, by giving due weightage to principle of res judicata as well as estoppel, the above-mentioned employee is deemed to have been permanently absorbed in BSNL w.e.f 01.10.2000 (date on which his juniors were absorbed in BSNL) in terms of Rule 37A of CCS (Pension) Rules, 1972 read with directions contained in order dated 16.11.2015 in above-mentioned OAs, which has been implemented by this Department vide letter dated 29.03.2016 so as to protect his rights.

3. The Presidential orders of above-mentioned employee and other applicants, who were parties in above-mentioned OA Nos. 15-16/2010 for their permanent absorption in BSNL w.e.f 01.10.2000 (date on which juniors of applicant were absorbed) may be issued by the Director (Estt.) nominated in UP (East) Circle and the compliance may be sent to this office.

Yours faithfully,

Subodh
19/09/19

(Subodh Kumar Jayaswal)
Under Secretary to Government of India
Tel. 23036226

Enclosure : As above

Copy to :-

✓ (1) Shri N.K. Sharma, OS, Sr. II for uploading
the letter on website.

Sharma
19-9-19

(श्री. पी. शर्मा)
(J. P. SHARMA)
अनुभाग अधिकारी/Section Officer
दूरसंचार विभाग, भारत सरकार
Deptt. of Telecom, Govt. of India
नई दिल्ली/New Delhi

Issued
19/9

Annexure "A" (Case of Shri Sanjay Kumar Singh, Steno)

1. Observation on Principle of estoppel and Res judicata:-

(a) In instant case, it is necessary to refer the common prayer made by the applicant and similarly situated employees in OA No. 15/2010 and 16/2010:-

- (1) *To quash the impugned order dated 21.01.2009 (communicated vide order dated 02.02.2009) with all consequential benefits and further quash the impugned order dated 15.04.2008, 02.01.2009 and 07.01.2009 (served through Supplementary counter reply), which are contained as Annexure No. A-1A, A-1B and A-1C to this OA*
- (2) *To invite the option from the applicants for absorption in BSNL with all consequential and attending benefits.*
- (3) *To consider the candidature of the applicants for promotion on the post of Stenographer Grade II/Personal Assistant treating the seniority of the applicants w.e.f 1996 under the services of Department of Telecom*
- (4) *To extend the benefits as has been extended to the counter parts of the applicants as detailed in para 17 of this OA*
- (5) *Any other relief this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.*
- (6) *Cost of the present case*

(b) After hearing the submissions made by contending parties, the Ld. CAT, Lucknow Bench vide order dated 16.11.2015 made reference to the **specific contention made by the applicants:-**

Para 4:- *The applicants continued to agitating the matter of (a) permitting them to exercise their option to be absorbed in BSNL (b) considering their promotion on the post of Stenographer Grade II through representation dated 07.01.2006, 12.06.2006 and 23.02.2007. By an order dated 28.05.2007 further option was sought from the Group C and D staff for absorption in Bharat Sanchar Nigam Limited and it was provided that employees, who had not given their option earlier, may exercise option for absorption. The applicants again submitted their representations before the Chief General Manager, Telecommunications, UP (East) Telecom Circle, Lucknow seeking permission to exercise option for the absorption in BSNL.*

(c) Accordingly, by placing the reliance upon the earlier orders of Ld. CAT, Lucknow Bench in OA No. 574/1996, OA No. 608/1998 and TA No. 4/1998, the Ld. CAT, Lucknow Bench in OA No. 15 and 16/2010 pronounced the following directions:-

Order dated 15.04.2008, 02.01.2009, 07.01.2009 and 21.01.2009 are hereby quashed. The applicant are entitled to all the benefits of their notional seniority and date of notional appointment as fixed in order dated 12.04.2006 (Annexure-6) and are further entitled to same treatment/benefits as the persons appointed by DoT in 1996 as Stenographer Grade –III. To clarify, they would be treated as notional employees of DoT, who may be allowed to give their options to join BSNL with immediate effect from the date of their juniors notionally if the dates are prior to their actual joining date and actually if the dates are later. In matters of other service conditions including that of consideration for promotion they would be governed by the next below rules”

2. Findings:-

(i) In view of the above, it is apparent that the applicants in the above-mentioned OA did not prefer any prayer for their repatriation to Department of Telecom. Instead, they strongly asserted that benefits of permanent absorption in BSNL were being denied to them and they were not being provided option for absorption in BSNL though their juniors, who were actually appointed in Department of Telecom (in year 1996) were granted the benefits of permanent absorption in BSNL. By citing the cases of their juniors who were permanently absorbed in BSNL, the applicants in OA No. 15-16/2010 inter-alia sought the said benefit, which was extended to their juniors.

On afore-said apprehension of the case, the Ld. CAT, Lucknow Bench allowed the prayer of the applicants made in their OAs so that complete benefits of promotion in Department of Telecom Services/Department of Telecom Operations (on notional basis), followed by permanent absorption in BSNL in terms Rule 37A of CCS-Pension Rules on notional basis (if date of permanent absorption of their juniors are prior to their actual joining) and actual if the dates are later, and further promotional avenues/monetary benefits may be extended to the applicants, who were deemed to have been appointed in Department of Telecom on notional basis.

(ii) Since the findings of Ld. CAT, Lucknow Bench has attained finality upon implementation of order dated 16.11.2015 in OA No. 15-16/2010, which was neither challenged by Government of India/BSNL nor by the original applicants, the present issue of reversion to Government service is clearly barred not only by principle of res-judicata but also by principle of estoppel as neither such prayer for reversion to Government service was ever made before the Ld. CAT, Lucknow Bench nor the applicants submitted any representation to give up the IDA pay scale (benefits which were extended to them by protecting their pay in

CDA as well as IDA at par with juniors appointed in 1996 before formation of BSNL and later absorbed in BSNL) at any point of time.

(iii) The applicant and similarly situated employees (i.e other applicants in above-mentioned OAs) never gave up the benefits extended to them at par with juniors on IDA pay scale as revised from time to time and continued drawing the benefits in terms of pay rules applicable in BSNL. Accordingly, instant prayer for reversion to Government service clearly attracts the principle of estoppel. Under such circumstances, the above-mentioned applicants, who were employed before formation of BSNL on notional basis may be treated as DoT employees, who has been absorbed in BSNL in terms of Rule 37A of CCS (Pension) Rules so that the benefits of Pension from consolidate fund of India, GPF etc may be protected. Any option contrary to the stand taken by any applicant before the Ld. CAT, Lucknow is barred by doctrine of estoppel

(iv) Looking at the case from different angle, a contrary plea, which was not advanced before the Ld. CAT during the proceedings may not be taken later before the administrative authorities at this stage especially when neither prayer for repatriation/reversion to Government was made by applicant before the Ld. CAT nor the case was heard by Ld. Tribunal on this aspect including recovery of payment made on IDA scale if they are allowed to revert to Government service. However, position could have been different, had the Tribunal considered the issue of reversion to Government service including recovery of IDA pay scale and thereafter gave chance to applicants to exercise the option for reversion to Government service. There is significant difference between "reversion to Government service" and "absorption in BSNL" and it is apparent that in instant case, the issue was heard on latter only before extending the benefits of absorption and other service benefits to applicants. The other employees of Department of Telecom, who have been getting benefits of BSNL IDA pay scale by exercising option for BSNL may not be allowed to revert to Government service after enjoying fruits of higher pay scale on IDA pay scale even if they agree to return the payment made on IDA pay scale. On the similar analogy, the applicants who have been enjoyin the fruits of pay protection in BSNL followed by continuous payment on IDA pattern revised w.e.f 01.01.2007 as per option for pay fixation exercised by them, may not be allowed to act contrary to create administrative and legal chaos.