

No. 33-47/2015 PA (PEA) *J 2504*
GOVERNMENT OF INDIA
MINISTRY OF COMMUNICATION
DEPARTMENT OF POSTS
P.A. WING: PEA BRANCH
DAK BHAVAN: SANSAD MARG
NEW DELHI- 110001

Dated *08*.03.2018

To,

✓ Assistant Director General (SEA)
Department of Communication
20, Ashoka Road, Sanchar Bhawan
New Delhi - 110001

Sub: RTI request of Sh. /Smt. I.D. Singh under Right to Information Act 2005.

Kindly find enclosed herewith a Ref. No. 29604-RTI/2018 dated 23.02.2018 received from S. O (RTI) & CAPIO, Dak Bhawan along with an RTI application dated 19.02.2018 of Sh. /Smt. I.D. Singh in original on the above mentioned subject. Since, the matter relates to your office, it is transferred under section 6(3) of RTI Act-2005 for furnishing the requisite information directly to the applicant.

Encl: As above.

Yours faithfully,

*Amr - Coll
9-3-2018
ACAO CSEA*

(Banwari Lal)
Accounts Officer
(PEA & CPIO)

Copy to:

- 1. The Section Officer (RTI) & CAPIO, Dak Bhawan for information.
- 2. Sh. I. D. Singh, Advocate, ED-1/282, Sector-D1, LDA Colony, Kanpur Road, Lucknow for information.

*Entered in the RTI register
at s.no (250). Forwarded to
ACAO CSEA-II) & SAO CSEA-L
for further disposal please. A
copy of reply may please be
forwarded to SEA I section*

(Banwari Lal)
Accounts Officer
(PEA & CPIO)

*ACAO CSEA-II, (2) *J* Satish
SAO CSEA-L *J* 09/3/18*

*Amr - Coll
Consultant CSEA,
9-3-2018*

J-51-PEA R 11 11
28.2.2018

B 319

6/

Ref No. 29604 -RTI/2018

Government of India
Ministry of Communications
Department of Posts

Dak Bhavan, Sansad Marg, New Delhi-110001.

Dated the 23-Feb-18

To

AO(PEO) & CPIO
Dak Bhawan, New Delhi-110001


Subject: - RTI Request of **SH/SMT. I.D. Singh** under Right to Information Act 2005.

Sir,

I am forwarding herewith RTI Request dated 19/2/18 of **SH/SMT. I.D. Singh, SS1/282/D1,, Sector D1, LDA. Colony, Kanpur Road,Lucknow-226012,** on the above-mentioned subject. The applicant has deposited IPO Rs.10/-(33F 826925) as fee.

2. Since you have been nominated Central Public Information Officer (CPIO) for the information sought. You are requested to examine the complaint and convey the decision to the applicant under intimation to this office immediately. In case the receipt is not related to you, it may be sent to the CPIO concerned with your comments/advice stating the fact that you are no longer CPIO for the information sought or that the information is held by such and such CPIO.

Yours faithfully


Section Officer(RTI) & CPIO
Tele. No.23036550

Encl: As Above

Copy for information to:
29604 -RTI/2018
SH./SMT. I.D. Singh,
SS1/282/D1,,
Sector D1, LDA. Colony,
Kanpur Road,Lucknow-226012,

You are requested to take up the case with the above mentioned Officer/CPIO in future. The information under RTI Act can be supplied only by the CPIO who is the custodian of the information sought.

copy sent
SA-3
28/02/18



I.D. SINGH

ADVOCATE

(Legal/ Financial Consultant)

DOP (OR SECTION)
SCANNED E-RECEIPT
No. 29604

Tel : 0522-2433001- Mob. : 9415008828

Residence: and Chamber:
SS1/282/D1, ~~SS1/277/MIC,~~
Sector D1, ~~Vindavan~~
L.D.A. Colony, ~~Colony,~~
Kanpur Road, ~~Raibareilly Road,~~
Lucknow. -226012 ~~Lucknow.~~

Ref.:

CIVIL, CRIMINAL, SERVICE AND TAX MATTERS

Date: 19-09-18

To,

The CPIO

O/o Secretary (Posts),

Ministry of Communications & IT,

Dak Bhawan, Ashoka Road, New Delhi-110001

Subject: Seeking information under RTI Act, 2005

Sir,

Your kind attention invited to the orders of Hon'ble Central Administrative Tribunal, Principal Bench, New Delhi in OA Number 4363/2012 (Rajendra Singh Tushir & Ors Vs UOI & Ors) dated 22.09.2015 & CP No. 404/2016 (Rajendra Singh Tushir & Ors Vs UOI & Ors) on dated 17.07.2017.

2. The Hon'ble Tribunal disposed of above OA with the direction that

"In the wake, the present OA is disposed of with a direction that the appointment of the applicants herein

P.T.O.

BSNL should be treated as appointed on absorption
....."

3. Kindly supply authenticated copies of the instructions issued from your end regarding absorption of the petitioners in BSNL in pursuance of the Hon'ble Tribunal order/direction given in above OA & CP.


4. Indian Postal Order No. 33F 226925 for Rs. 10/- is enclosed herein. Name of "Pay to" may be filled in at your end.

Enclosure: IPO No.
33F 226925 for Rs 10/-

Dated : 19.02.2018

Lucknow

Your Sincerely,


(I.D. Singh)

Advocate

ED-1/282, Sector-D1,
LDA Colony, Kanpur Road,
Lucknow-226012
Mob. : 9415008828

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Central Administrative Tribunal
Principal Bench: New Delhi.

OA No.4363/2012
MA No.3647/2012

New Delhi, this the 22nd day of September, 2015

Hon^{ble} Mr. A.K. Bhardwaj, Member (J)
Hon^{ble} Dr. B.K. Sinha, Member (A)

1. Rajender Singh Tushir
S/o Sh. Hardeva Singh Tushir
1125, VPO-Alipur
Delhi-110 036.

By Mr. A.K. Bhardwaj, Member (J):

The applicants herein were initially appointed as Postal Assistants in the Department of Posts. Subsequently, some of them went on deputation to Department of Telecommunication (DoT) and were later repatriated. Finally, they went on deputation during the year 1998-99. In the year 2000, Government of India, Department of Communication, took a policy decision on 30.09.2000 to absorb the Junior Accounts Officers (JAO) in DoT subject to terms & conditions mentioned therein (Annexure A-8), relevant excerpt whereof reads thus:-

□(E) Seniority of deputationists on absorption:

(i) Seniority vis-a-vis Telecom JAOs: All the deputationists, who are absorbed in DoT after qualifying TR paper as discussed above, and after successful completion of Basic Training, will rank en-block junior to all the Departmental candidates declared qualified on the basis of same Part-II examination, irrespective of the fact that some of the departmental candidates may join as JAO at much later date than the last deputationist and might not have joined Basic Training in the same batch due to any circumstances and are sent for training in subsequent batch. Date of joining will not be considered as a criteria for fixation of seniority.

(ii) Inter-se Seniority of the deputationists: The inter-se seniority of the persons so absorbed after following the method mentioned above and who are presently working or have earlier worked as JAO in DOT on deputation from various Ministries/Departments like DoP/Railways/CGDA etc., will be determined with reference to the year of their passing the Part-II (or final part, as the case may be) of the equivalent examination held by their Parent Department. The inter-se-seniority of the two or more persons belonging to two different Departments will be decided on the basis of date of passing the equivalent examination and where all three □ date, month and year □ are same the seniority will be decided on the basis of age i.e, other things being similar, persons older in age will be senior. □

2. As can be seen from Clause (E) of the terms & conditions (ibid), the seniority of deputationists on their absorption was to be fixed en-block below all the departmental candidates declared qualified on the basis of Part-II examination, irrespective of the fact that some of the departmental candidates might have joined as JAO much later than the last deputationist and

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might not have joined the Basic Training. The inter se seniority of the deputationists was to be decided on the basis of their passing the qualifying examination, and in the event the date of passing of the examination being the same, on the basis of the age. Thereafter, the BSNL vide OM dated 05.11.2004 invited applications from the qualified external candidates who were willing to be appointed as fresh candidates against the JAO vacancies in direct recruitment quota available in various Circles/Units of BSNL all over India. The OM reads thus:-

□ The approval of the competent authority in BSNL is hereby conveyed for seeking applications from Qualified External Candidates (on deputation from other Central Government Departments) of December 2000 special examination (two papers) conducted by DoT/BSNL for appointment in BSNL as JAO on immediate absorption basis as per the DPE/GOI guidelines against Direct Recruitment Quota of JAO vacancies as fresh candidates.

The qualified external candidates who are willing to be appointed as fresh candidates against the JAO vacancies of direct recruitment quota, available in various Circles/Units of BSNL all over India, are required to send their application conveying the acceptance of the terms and conditions of appointment in BSNL as per the pro-forma enclosed duly recommended by their respective parent Department/Ministry.

The External candidates forwarding their willingness for being appointed as JAO against the direct recruitment quota in BSNL should not sever their connection with their respective parent department unless and until a formal letter of selection for appointment is issued to them by BSNL. The willing candidates can give their option for appointment in a Circle/Unit and it will not in any way give any right to such willing candidates for their posting in the circle of their choice. The decision of the competent authority in BSNL shall be final.

The application form complete in all respect along-with the recommendation of their respective parent departments/ Ministries must reach this office on or before the 31.12.2004 (A/N). □

3. The applicants applied for the post and were finally appointed in BSNL in the year 2005 as fresh candidates. It is worth to note that before joining the duty on deputation, the applicants had qualified in Paper-VII and VIII of JAO examination in DoT itself. After their fresh appointment in DoT, the applicants filed the present OA praying therein -

□ 8.1 Call for the records of the case for perusal.

8.2 Quash the action of the DOT respondent no.1 of handing over the applicants to the BSNL as a fresh candidate in violation of its own policy dated 30.9.2000, the order dated 24.01.2003 (Annexure A-1), minutes of meeting dated 8.9.2004 (Annexure A-2), order/letter dated 5.11.2004 along with its annexures (terms and conditions) (Annexure A-3 Colly), appointment letter (Annexure A-4), Circular No.3-41/2011-SEA-BSNL(Part) dated 06.01.2012 (Annexure A-5 Colly) and the reply dated 26.7.2012 (Annexure A-6) and all the actions/orders to the same effect of the respondents being illegal, arbitrary, discriminatory, malafide, untenable and without jurisdiction.

8.3 declare that the applicants are entitled to assign notional date of their appointment on absorption as JAO w.e.f. 21.6.2001 i.e. after six month of the examination i.e. 21.12.2000 following the decision of Hon^{ble} Supreme Court in the case of Union of India & Anr. V/s. J. Santhana Krishnan & Ors. [2007 (15) SCC 694] and Bangalore CAT and Karnataka High Court decision and the applicants should be treated as regular and absorbed employee in accordance with Appendix 11 of CCS (Pension) Rules, 1972, as amended from time to time (in lieu of provisional, fresh candidate, direct recruit, external, re-employed etc.) w.e.f the said date with all its consequences such as counting of experience/service, promotions annual increments notionally from 21.6.2001 and actually from 14.2.2005.

8.4 Allow costs of application.

8.5 Pass any other order(s), which this Hon^{ble} Tribunal may deem just and equitable in the facts and circumstances of the case.

4. Though the prayer made in the OA is manifold, Mr. Puneet Verma, learned counsel for the applicants submitted that the only grievance of the applicants is that when they were appointed on deputation in DoT and were subsequently on deemed deputation in BSNL and in terms of the policy decision dated 30.09.2000 their appointment has to be on absorption basis, the respondents have treated them as fresh appointees. According to him, the act of the respondents in treating them fresh appointees and not absorbees is against all canons of law as well as the factual matrix of the matter.

5. On the other hand, the learned counsel for the respondents submitted that in OM dated 05.11.2004 it was amplified that the applicants were to be appointed as fresh candidates.

6. We heard the learned counsels for the parties and perused the record.

7. It is not in dispute that the applicants were required to participate in Paper-VII and VIII of JAO Examination in terms of the Policy decision dated 30.09.2000 and in the aforesaid decision the terms & conditions of the deputationists on absorption were amplified. In Clause (E) of the terms & conditions, the manner in which the seniority of those who were appointed on absorption was to be fixed was made clear. Even in the OM dated 05.11.2004 relied upon by Mr. Sameer Aggarwal, learned counsel for the respondents, it has been indicated that the competent authority in BSNL had conveyed its approval for inviting applications from qualified external candidates from other Central Government departments for appointment in BSNL as JAO on immediate absorption basis. Also in para 3 of the OM, it has been made clear that the external candidates forwarding their willingness for being appointed as JAO against the direct recruitment quota should not sever their connection with their respective parent department unless and until a formal letter of selection for appointment is issued to them by BSNL.

8. Indubitably, all the conditions applicable and essence for appointment on absorption were prevalent at the time of appointment of the applicants in BSNL and their appointment may not be treated as fresh appointment. Nevertheless, during the course of arguments, Mr. Puneet Verma, learned counsel for the applicants fairly submitted that in the present OA the applicants have no grievance beyond that they are treated as fresh appointee. In his submission they should be

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treated as absorbee in BSNL. It is clear from the tenor of the Policy decision dated 30.09.2000 as well as OM dated 05.11.2004 that the appointment of the applicants in BSNL has to be treated as absorption and not as fresh appointment. It is not the case of either side that the applicants were appointed as JAO in BSNL in accordance with the recruitment rules meant for the direct recruitment.

9. One of the arguments put forth by the learned counsel for the applicants is that the applicants herein should be deemed to be absorbed from the date they qualified Paper-VII & VIII of JAO examination conducted by the DoT. It is stare decisis that the date of passing of examination cannot be treated as the date of appointment by any mode and appointment becomes effective only on the date when the letter of appointment/absorption is issued.

10. At this stage, Mr. Sameer Aggarwal, learned counsel for the respondents tried to allude that once the applicants herein had given an undertaking that their appointment should be treated as direct recruitment, there could be all reasons to believe and have semblance that the appointment was fresh appointment. We are afraid that such a plea of the learned counsel for the respondents may not be accepted for the reason that subsequent clarificatory OMs/undertaking cannot change the features of the basic policy as has been ruled by the Hon^{ble} Supreme Court in the case of Union of India (UOI) versus N.R. Parmar [2012 (13) SCC 340]. Relevant excerpt of the judgment reads thus:-

□Essentially, a clarification does not introduce anything new, to the already existing position. A clarification, only explains the true purport of an existing instrument. As such, a clarification always relates back to the date of the instrument which is sought to be clarified.□

11. Once the respondents have taken a policy decision and have issued OM in sequel thereto, the absorption of the applicants is to be treated in accordance with the terms and conditions contained therein only.

12. In the wake, the present OA is disposed of with a direction that the appointment of the applicants herein in BSNL should be treated as appointment on absorption with effect from the dates they were given fresh appointment letters. It is made clear that no benefits other than mentioned in policy decision dated 30.09.2000 and OM dated 05.11.2004 would accrue to the applicants. No costs.

(Dr. B.K. Sinha)
Member (A)

(A.K. Bhardwaj)
Member (J)

/Ahuja/

F.No.40-1/2018-SEA-(L)
Ministry of Communications
Department of Telecommunications
Sanchar Bhawan, 20 Ashoka Road, New Delhi-110001

Dated 28.03.2018

25/3/18
9/3/18

To

Shri I.D. Singh, Advocate
ED-1/282, Sector -D I
LDA Colony, Kanpur Road.
Lucknow-226012

Sub: RTI application dated 19.02.2018 of Shri I. D. Singh, Advocate seeking information under RTI Act, 2005.

Sir.

Please refer to your RTI application dated 19.02.2018 received in this office on 09.03.2018 seeking information under RTI Act, 2005. In this regard, the required information is furnished below: -

2 This office (DoT) has issued following letters to BSNL in pursuance of the Hon`ble Tribunal order/direction given in OA No.4363/2012 filed by Shri Rajender Singh Tushir and others and CP No.404/2016 issued by the Hon`ble Tribunal suo-moto. The copies of these letters are enclosed as requested by you.

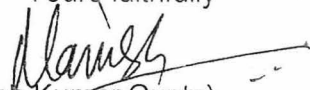
S.NO.	Letter No. with date
1.	37-5/2013-SEA-(L) dated 29.04.2016
2.	37-5/2013-SEA-(L) dated 09.09.2016
3.	37-5/2013-SEA-(L) dated 26.09.2016
4.	37-5/2013-SEA-(L) dated 24.10.2016
5.	37-5/2013-SEA-(L) dated 02.01.2017
6.	37-5/2013-SEA-(L) dated 07.04.2017
7.	37-5/2013-SEA-(L) dated 14.09.2017

3. However you are requested to deposit a sum of Rs.16/- (Rs. Sixteen only) by means of Indian Postal Order / Demand Draft in favor of PAO DoT HQ payable at New Delhi as a cost of papers being supplied to you. It is also pointed out that this office has not requested to deposit the amount in advance to save time in furnishing information called for by you.

4. The appeal, if any, against the information furnished herein may be preferred before Shri Abhay Kumar Singh, Deputy Director General (E&T) Department of Telecommunications, who is the Appellate Authority, within 30 days from date of issue of this letter.

Encls: as above

Yours faithfully


(Manish Kumar Gupta)
Director & CPIO
Tel No.23036059

*Office
Re
27/3/18
Incls sent attached*