



**BHARAT SANCHAR NIGAM LIMITED**

CORPORATE OFFICE  
(PERSONNEL - I SECTION)

4<sup>th</sup> Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110 001

No. 437-01/2017-Pers-I

dated: 27 June-2018

To,

The CGM,  
Chennai Telecom District, BSNL  
Chennai- 600 010

**Subject:** Examination of the ambiguity in Foot-Note-2 below Schedule 1A of MSRR, 2009 as directed by Hon'ble High Court of Madras vide order dated 02-11-2017 in WP No 9300/2011 filed by AIGETOA & Anr-Committee recommendations

The undersigned is directed to refer to the subject mentioned above and to say that in pursuance to Hon'ble High Court Judgment dt 2-11-2017, a committee was formed to look into the ambiguity in Foot-Note-2 below Schedule 1A of MSRR, 2009.

The committee has deliberated upon the issue with reference to the provisions of the MSRR, 2009, the order of CAT, Chennai & BSNL's policy guidelines and finalized its recommendations on dt.18-06-2018. The committee has also taken into account the points raised by the representative petitioners i.e AIGETOA while deliberating on the issue raised by the petitioners before the Hon'ble High Court.

The committee is of the view that, no change is required to be made in the BSNL MSRR 2009 with regard to representation of graduate engineers at DE level beyond what is already provided through entry at JTO level. A copy of the recommendation is enclosed. This position may also be brought to the notice of Hon'ble CAT through BSNL's written/oral submission.

**This is issued with the approval of competent authority.**

  
(Pravin Bhagwat)  
Asst. General Manager (Pers-I)

**Encl:** As above

**Copy to,**

1. The CGMs, Kerala & Punjab Telecom Circle for information and necessary action,
2. The respondent association i.e. AIGETOA for information and necessary action,

**Minutes of the meetings of the Committee formed to examine the ambiguity in Foot Note-2 below Schedule IA of MSRR, 2009 as per the directions of Hon'ble High Court of Madras vide order dt.02-11-2017 in WP no. 9300/2011 filed by AIGETOA & Anr..**

A committee has been formed with the approval of the competent authority vide letter dt.437-01/2017-Pers.I, dt.21-12-2017 to examine the issue under contention in WP No.9300/2011 as per the directions of Hon'ble High Court of Madras on dt.02-11-2017. Due to the transfer of the members of the Committee, the compositions of committee was revised vide order dt.1-02-2018 with the following members:-

1. Sh. Keshav Rao, GM [Pers] : Member
2. Sh. Saurabh Tyagi, Sr.GM [Estt] : Member
3. Smt. Smita Chaudhary, Sr.GM [FP] : Member
4. Shri Surendra Singh, GM & CLO : Member
5. Shri Manish Kumar, Jt.GM [Pers.] : Convenor

**Background & Observations**

Note 2 below Schedule IA of BSNL MSRR 2009 was the matter under contention in WP No.9300/2011 filed by AIGETOA & Anr before the Hon'ble High Court of Madras. Vide order dt. 02-11-2017, the Hon'ble High Court gave the following direction to BSNL:-

*"We do agree that there is some ambiguity with regard to such equation by of the foot note to the Recruitment Rules. No doubt, the BSNL intends to give some concession to the existing incumbents. However, we find that in equating the existing incumbents with the direct recruitees, who possess engineering graduation it appears that **there is some deprivation for the engineering graduates, who are direct recruitees**, the reservation/ priority is not based on any method of equation or ratio. Certainly, this aspect requires clarification at the end of BSNL. Therefore, such disputes shall be gone through by forming a committee by the BSNL to sort out the ambiguity in equating the direct recruitees and the existing incumbents, which exercise shall be completed with a period of three months from the date of receipt of a copy of this order."*

First meeting of the Committee was held on 21-02-2018 where cognizance was taken of the issues coming up in the WP and its precursor (OA no.983/2010 in CAT Chennai). The committee decided that the petitioner's i.e. AIGETOA may be given an opportunity to present their point of view in the next meeting. Such an opportunity was extended vide letter no.347-014/2017-Pers.I dt. 22-02-2018.

In the next meeting held on 28-02-2018, the petitioners in the WP presented their point of view vide their letter no.GS/AIGETOA/2018/8 dt.28-02-2018. Discussions were also held between the two sides.

In further deliberations on the issue, the Committee members focused their attention to the Note 2 under Schedule IA of BSNL MSRR 2009 and its related attributes in the scheme of promotions under the Recruitment Rules. The said Note 2 under Schedule I reads:-

*[Handwritten signatures and initials]*

*“Educational qualification for executives to be promoted to the grade of DE/AGM/CAO (see serial no.1b, column no.5) shall be engineering degree or equivalent in Telecommunications, Electronics & Computers/IT /Electrical for Telecom Operations & graduate or equivalent in respect for Finance of BSNLMS. However, existing incumbents holding the posts of Executives on regular basis on the date of notification of these RRs shall continue to be eligible for promotion to the grade of DE/AGM/CAO.”*

The referred sl.no.1b reads (copy enclosed):

1	2	3	4	5
1	DE/CAO /AGM (Equivalent to STS,i.e. E4)	b. 50% of posts by promotion from SDE/AO level executives	Selection cum seniority	From SDE/AO or equivalent grade of concerned stream, who are engineering graduate/graduate (as detailed at note 2 below) from an Indian Institute/University recognized under Indian Laws, with total qualifying service of 7 years as on 1 <sup>st</sup> January of the year.

(Note:-Schedule IA also caters to Accounts stream, but is excluded from the present deliberations)

Other than BSNL MSRRs which deals with the management service grades of DE and above, there are separate RRs for the feeder grade of SDE and JTO. The factual takeaways from the above citing from the BSNL MSRR 2009 (as originally conceived) and other existing RRs for SDE and JTO are the following:-

- i. The grade of JTO is populated with the directly recruited (part of which is recruited from open market and others from internal candidates from among non-executives in 50:50 ratio). The post of JTO is populated only through exam (internal or external)
- ii. The promotion grade of SDE is filled from JTOs through a commonly devised seniority and there are two modes: one, through limited departmental competitive exam and another, through seniority cum fitness
- iii. That the grade of DE/AGM in Telecom is purely a promotion grade. Only 50% of the posts at DE/AGM level in Telecom stream is conceived for promotion route of SDE, which comprises promotees from JTO grade in Telecom stream. The quota of 50% was later enhanced to 75% for Telecom to facilitate more promotions to executives including the petitioners.
- iv. There is no differentiation among the executives (SDEs) being considered for promotion to DE/AGM grade. Only seniority list of executives who have reached SDE grade on regular basis is considered.

Within the above positions, the directive of the Hon'ble High Court at para 5 of the order dt.02-11-2017 has been considered in detail. The observation of Hon'ble High Court preceding the directive is voiced in the following words:-  
*“In the normal course, it appears that when there is a promotional post for which persons from different cadres would be considered, it would be done by fixing them in a common pool and also a ratio for considering incumbents from each*

*Singh*

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*Kishor Kumar*

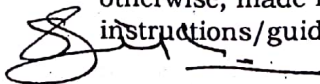
*by*

cadre. In the case on hand, it appears that the petitioners, who possess Engineering Graduation and joined as Junior Telecom Officers as direct recruits and having reached the level of executives like Sub Divisional Engineer are aggrieved against the equation of the non-Engineering graduates, who are the existing incumbents for being promoted to the posts of DE/AGM/CAO on the basis of the foot note introduced to the Recruitment Rules and thereby depriving the petitioners, who are engineering graduates."

Juxtaposing the above observation with the RRs position and its background, it is seen that there are no two cadres being considered for promotion to DE/AGM grade. Instead, it is a common SDE grade comprising a homogeneous mix of executives promoted from JTO grade in defined ratio ( $1/3^{\text{rd}}$  from LDCE and  $2/3^{\text{rd}}$  from seniority quota). By having a common seniority list at SDE level, the difference of source at JTO level (external or internal; graduate or undergraduate) is mitigated to the extent of seniority in the SDE grade. A common seniority makes them eligible to be considered for further promotion in the hierarchy as per the mandate of the RRs.

**Overall arrangement is such that** representation of graduate engineers is ensured at the JTO level to the extent of 50% through open direct examination. For the remaining quota of 50% internal candidates, there is a significant representation of graduate engineers (from TTAs/JEs). Thus, graduate engineers have a share beyond 50% in any promotion to SDE and, subsequently, to DE level.

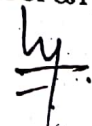
As to why the RRs chose to treat the "existing incumbents holding the post of executives on the date of notification (14<sup>th</sup> July 2009) of these BSNL MSRRs" has to be seen from existential realities of the Company. On the corporatization of the Department of Telecom Services & Department of Telecom Operations into BSNL w.e.f. 01-10-2000, a large number of JTOs and SDEs have got absorbed in BSNL on as is where basis. Many of these officials were recruited prior to 1996 when the DoT RRs prescribed B.Sc. with 1<sup>st</sup> class/B.E. as the qualification required for JTOs. The extant DoT RRs for promotion to DE/AGM grade did not preclude these officers. These officers continued to occupy the posts of JTO/SDE/DE as per the then RRs. BSNL promulgated its own RRs for JTOs in 2001 where B.E./B.Tech. was prescribed for 50% quota of external candidates and separate educational qualification and/or experience was prescribed for internal candidates. BSNL considered and approved its own Recruitment Rules for management services (STS and above level) on 14-July-2009. This RR prescribed Degree in respective streams in a general way for entry into management services at DE/AGM equivalent level. However, the competent authority i.e. BSNL Board could not remain oblivious to the fact that both through the absorption of erstwhile DoT/DTS/DTO employees and through recruitment under its own 2001 RRs for JTO, a homogeneous mix of engineering graduates and other graduates were available in its human resource in the JTO/SDE grades on the date of promulgation of BSNL MSRRs. Also, it could not ignore the fact that at no point in the past were any of the SDEs, where engineering graduate or otherwise, made ineligible for promotion to DE/AGM grades. Besides, in the instructions/guidelines for making RRs issued by DoP&T, vide O.M. No.

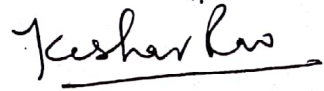




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AB.14017/48/2010-Estt..(RR) dt. 31-12-2010, it has been very clearly stipulated that-

3.1.3 Where the eligibility service for promotion prescribed in the existing rules is being enhanced (to be in conformity with the guidelines issues by this Department) and the change is likely to affect adversely some persons holding the feeder grade posts on regular basis, a note to the effect that the eligibility service shall continue to be the same for persons holding the feeder posts on regular basis on the date of notification of the revised rules, could be included in the revised rules.

### Recommendation


Within the precincts of above contextual facts and guidelines, the competent authority in BSNL was in no position to create a line of distinction at DE/AGM level, which is two level above the grade of induction i.e. JTO, and where both qualification as well as experience matters in terms of the services of the Company. The note 2 below Schedule IA of the BSNL MSRR 2009 has precisely been incorporated for the above mentioned intent and purpose.

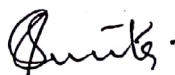
As part of the reasonable differentiation for the meritorious executives, the direct recruitment at JTO level (to the extent of 50% of posts) and Departmental Competitive Examination at the SDE level provide expedited opportunity to the engineering graduates (which is in line with the concern shown by the Hon'ble High Court of Madras) to join higher levels in greater number. The strength of graduate engineers in JTO grade is further buttressed by available graduate engineers among the internal candidates. A new differentiation at DE level, at this juncture, is not in the consideration of the management and, also, is not advisable in the interest of organizational harmony. The arrangement is sufficiently balanced in favor of graduate engineers.

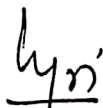
In their discussions with the Committee on 28-02-2018, the petitioner representatives of AIGETOA had submitted a written representation (copy placed below). Parawise reply of the same has been provided.

The Committee is of the view that, at present, no change is required to be brought in the BSNL MSRR 2009 with regard to representation of graduate engineers at DE level beyond what is already provided through entry at JTO level.

  
Manish Kumar  
Jt. GM (Pers)

  
Surendra Singh  
GM & CLO (SCT)

  
Smita Chaudhary  
Sr.GM [FP]

  
Saurabh Tyagi  
Sr.GM [Estt]

  
Keshav Rao  
GM [Pers]

**Annexure-A**

**Para wise comments in response to AIGETOA letter**

**Dt 28-2-2018:-**

<b>AIGETOA/Petitioners' Points</b>	<b>Committee observations</b>
<p>1. The post of DE is a technical post which requires technical qualification and relevant experience and therefore the educational qualification of a degree in engineering has been prescribed for the post in the MSRR. However, the footnote-2 of schedule I A grants a blanket relaxation of the prescribed educational qualification required for promotion to the post of DE. Such a blanket relaxation amounts to rendering the educational qualification prescribed for the post redundant. Thus, the executives in the post of SDE (referred to as 'existing incumbents' in the footnote-2 of schedule I A), who doesn't possess the requisite qualification as per Management Services Recruitment Rules have also become eligible for the post of DE and above which will create serious skill gap.</p> <p>It is important to add here that the telecom sector has gone into a sea off change in terms of advancement in technology and accordingly BSNL is utilizing high end technology to provide diversified telecom services to our customers which requires technically qualified and highly skilled human resources specially from DE and above.</p>	<p>1. The essential qualification to the entry grade of JTO in DoT, GOI was B.Sc. with 1<sup>st</sup> Class/B.E. prior to 1996. Officers were getting promoted to the rank of DE through this channel and qualification i.e. B.Sc. Once the JTO/executives having either of these two qualification get promotion to the next higher grade of SDE, either through LDCE or through seniority, which is a feeder cadre of the STS(AGM/DE), their career aspiration cannot be blocked abruptly by introducing a new qualification for the next higher level post i.e. DE. Foot Note-2 below Schedule IA of BSNL MSRR provides for this safeguard.</p> <p>Instructions/guidelines issued by the DoP&amp;T, which is the apex agency for framing/amending of RRs and issue of model RRs under GOI, vide its letter dt 31-12-2010 make it clear that the interest of existing incumbents having regular service in the cadre have to be protected at the time of framing/amendment of the existing RRs. Para 3.1.1 and 3.1.3 of the above guideline adhere to this requirement. Further, the executives to AGM grade are covered under DoP&amp;T guidelines vide OM No AB-14017/12/88-Estt (RR) dated 25-3-1996. Considering changes in technology, the qualifications were changed to BE in 1996. However, there are adequate numbers of functions at DE level in which B.Sc. as qualification will not prove a draw back and on-job learning adequately compensates for deficiency, if any.</p>

*Fisher Rao*

*[Handwritten signatures]*

<p>2. The fact is that till date not a single SDE promoted from the cadre of JTOs directly recruited by BSNL has been promoted to the post of DE despite possessing the prescribed educational qualification of B. Tech and having the requisite work experience instead the post of DE is being filled up entirely from the pool of absorbed executives almost all of whom do not have the requisite qualification of graduation in engineering.</p>	<p>2. Executives who entered after 1996 have B.E. as a qualification. But, they cannot be placed as senior to those who have entered earlier. Option of competitive examination has been available to those who are more capable and seek fast track promotions. It is also seen that most of the persons who were successful in such exams were those having BE as a qualification. Therefore, as per seniority they will be entitled to faster promotions as per vacancy subject to resolution of pending cases. As such they are availing the advantage of being qualified as BE.</p>
<p>3. Thus, there is no opportunity for upward movement of a large number of directly recruited engineers working on the post of SDE (T) who have the prescribed qualification of B. Tech as well as the requisite experience. These B Tech holders are stagnating in the same post while those who don't possess the requisite qualification are being promoted to the post of DE.</p>	<p>3. There is a provision for further upward movement through MT Recruitment where 50% of the total posts are for internal candidates. It is under these provisions that the recruitment process of MTs for both Telecom and Finance streams was notified in 2015. However, due to administrative reasons, the exam has been postponed and a fresh date has to be decided now.</p>
<p>4. The footnote-2 of schedule I A has thus obviously resulted in great injustice to the B. Tech qualified directly recruited executives of BSNL who have no hope of securing promotion in the near future.</p> <p>5. The footnote-2 of schedule I A is not sustainable in law as it is ultra virus. article 14 of constitution, by including the relaxation of educational qualification, BSNL equated engineering graduates with existing incumbents from feeder cadres of BSNL. The footnote is also not sustainable in law for the reason that it amounts to treating unequal's as equal.</p>	<p>4&amp;5. Executives with BE qualification cannot claim injustice because they are availing fast track promotions/seniority by virtue of LICE. Similar option will be available for them for still higher growth if the associations stop opposing MT recruitment in which a 50% internal quota has been provided for. As such it is denied that footnote 2 of Schedule IA has resulted in great injustice to B. Tech qualified directly recruited executives of BSNL. BSNL has only made a rule taking into account the larger interest of the organization including more than 8000 existing incumbents of SDE vis-à-vis around 800 SDEs with engineering degree, and also the legacy of the criteria in the past RRs of the feeder cadres. Foot note-2 of schedule IA is neither</p>

*Keshav Rao*

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ultra vires of constitution nor there is any doubt regarding its legal validity. The foot note only treats unequals as unequal. Unequals are not being treated equally.

[Refer DoPT order Dt 31-12-2010 mentioned at para 1.]

6. The BSNL Management Service Recruitment rules provides a clear cut distinction between technically qualified and common pool of executives but exercising the footnote-2 of schedule I A in the aforesaid RRs makes it redundant and as a result almost all of the posts of DE are being filled up only from the pool of executives who are not even eligible for the post while the pool of direct recruits who have the prescribed qualifications and experience is being entirely ignored due to introduction of footnote-2 of schedule I A in a MSRR.

6. This point is factually incorrect and denied. Since, both the groups of executives form a part of same cadre and having been assigned seniority in the cadre of SDE based on their promotion through LDCE/seniority from JTO promotion to the post of SDE based on MSRR, one has to follow the same seniority, subject to their being found fit. Any deviation from this seniority will engender further chaos in the cadre which is already replete with numerous litigations. Further, the senior executives have been working for 20-25 years with these RRs. Experience too counts in the up-gradation of individual skill. The Seniority list available with BSNL for promotion to AGM grade shows accounts for almost 85-90% executives are holding qualification of B.E. degree. As such rights of B.E. Holders have not been denied.

Kishor Das

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<p>7. The unfortunate situation at present is that the directly recruited engineering graduated are entirely being deprived of the opportunity of promotion as a result of the footnote-2 of schedule I A and this injustice should be remedied immediately by eliminating the extent of relaxation provided through foot note 2 of schedule I A altogether or by prescribing suitable ratio with clearly defining the <u>existing incumbents who are in the cadre of SDE with 7 years of regular service.</u></p>	<p>7. There is no ambiguity in the Foot Note of the MSRR nor it is causing any denial of rights to anyone. The essential educational qualification of B.Tech/B.E. required for entry into cadre of JTO should not in the long run allow fortuitous benefits to those <u>JTOs who are now SDEs and rank junior to the existing incumbents of SDEs.</u> Hence, the said Foot Note does not amount to any deprivation to the petitioners; nor is it a priority given to the existing incumbents in exclusion of the petitioner with engineering degree who are junior to the former. Further, the ratio is already available at JTO level between internal candidates &amp; direct recruited in the ratio of 50:50. Thus foot note IA is essential to ensure existing officers senior by years of service in same rank are not meted out injustice after having entered service with certain qualifications and rules for career progressions.</p>
<p>8. Considering the prevailing telecom industry situation, need of the hour is to deploy the engineering graduates at the level of AGM/DE and above to handle 5G, IoT, Smart city projects etc. Promoting the qualified direct recruits at the level of AGM/DE and above will enhance that BSNL competitive position in terms of service delivery and will arrest the declining revenues.</p>	<p>8. Keeping in view the changes in technology, DoT had revised the qualifications for entry at JTO level to BE in 1996. With passage of time more and more officers with BE as a qualification will occupy positions of AGM which will take care of these issues. Existing incumbents with B.Sc qualification already had given extensive training in BSNL training centers to keep up with technological changes.</p>

Kishor Das

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