

FORUM OF ASSOCIATIONS OF BSNL (AIGETOA-SNEA-SEWA-AIBSNLEA-TOA)

No: Forum /BSNL/Corr/5

Dated 16-01-2023.

To,

Shri. P.K. Purwar ji
Chairman and Managing Director,
Bharat Sanchar Nigam Limited
Janpath, New Delhi

Sub: Request for promoting all the eligible executives and filling vacant posts as per the existing BSNL MSRRs 2009 and comply with the existing Judgements delivered by Hon. Supreme Court of India in court cases against BSNL and the subsequent guideline/s issued by DOP&T as the basic essentiality for the MSRRs-2023. The methodology recently used for promoting additional candidates than available vacancies in CSS cadre shall strictly be followed in all other streams also to enable maximum promotions in these streams- regarding

Ref: 1.Forum Letter No: Forum /BSNL/Corr/1 dated 16.12.2022.

2. Forum Letter No: Forum /BSNL/Corr/2 dated 26.12.2022.

3. Forum Letter No: Forum /BSNL/Corr/3 dated 26.12.2022.

4. DOPT OM No: 28034/6/86-Esst(D) dated 17.11.1986.

5. The Hon. SC Judgment, Medini VS BSNL Dated 21.09.22.

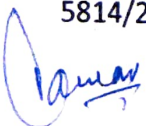
Respected Sir,

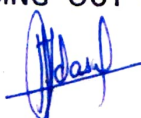
In addition to the multiple fervent appeals in person to your kindness and as per letters under reference 1, 2 & 3, we the leaders of the Forum of Associations of BSNL representing almost all the executives in BSNL has been repeatedly requesting your kindness to notify the new MSRRs with effect from 1st April 2023 or at any other succeeding date for considering the promotions of all the executives who are completing their residency period as on 31.12.2022 and eligible for promotions as on 01-01-2023 so that thousands of BSNL executives eligible for promotion with effect from the magical date i.e. 01.01.2023 will be covered for their eligible promotions.

To our dismay, on the late evening of 31st Dec 2022, just hours before the eligibility date of promotion viz 01-01-2023, BSNL Management unilaterally notified new BSNL MSRRs without considering any of the prevailing Hon. Supreme Court of India Judgement and the standing DOPT guideline/s and neglecting all the humble requests from all Associations in BSNL. **We totally reject this unilateral move of management and place our firm opposition to these amendments till our concerns are taken care of.**

As per the DOPT OM in ref No.4, it is clearly instructed that **"the Supreme Court has also ruled that Vacancies should be filled according to the rules in force when the vacancies arose"**. It is not considered in the new MSRRs 2023.

Further, in the Supreme Court of India judgment against BSNL in 2021, CIVIL APPEAL NOS.5811-5814/2021 (ARISING OUT OF SLP(C) NOS.26435-26438/2019) MEDINI. C & ORS. ETC. ETC.









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APPELLANT(S) VS. BHARAT SANCHAR NIGAM LIMITED & ORS. ETC. ETC. RESPONDENT(S) WITH CIVIL APPEAL NO.5815-5816/2021 (ARISING OUT OF SLP(C) NO.14959-60/2021 @ DIARY NO.41354/2019), it is richly citing that "the decision of this Court in Y.V. Rangaiah & Ors. vs. J. Sreenivasa Rao – AIR 1983 SC 852, it was observed that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules. Consequently, all the original petitions and writ petition filed by the respondents-BSNL herein were dismissed by the High Court vide judgment dated 04.11.2011." This also been uncared by BSNL management while devising new MSRR 2023.

BSNL being a 100% GOI PSU, BSNL is mandated to follow all the guidelines of DOPT by default and compulsive to follow all the judgements/guidelines of Hon. Courts of Laws in India. As the very fundamental guidelines to be honored while devising the BSNL MSRRs-2023 are standing disregarded. **Despite objection from all the concerned stakeholders and without taking executives into confidence, the MSRRs have been unilaterally notified by management which is nothing but a breach of trust with the loyal executives of BSNL who gave their heart, soul, mind and precious years of their life to the organization.** In fact, the hurried approach of management is very much visible or proven by the fact that while they sent SDERR 2022 to DoT for concurrence but BSNL Management completely ignored the administrative ministry (DoT) while notifying these MSRRs despite presence of many clauses in the Rules which pertained to DoT. This vividly shows that management is not fair while notifying and modifying these MSRRs.

The executives of BSNL stood shoulder to shoulder during most turbulent times of BSNL and doing their best to fulfill the social/commercial obligations of BSNL even by spending the money from their family when BSNL was unable to disburse Salary/Temporary advance in time and now when the health of organization have started improving, the very same executives have been put on bay by bringing this MSRR-2023 in the name of meritocracy and fast track promotions while actual fact is that even normal promotions will stop due to the introduction of retrograde provisions in MSRRs which are definitely going to fail legal scrutiny and at the end there will be complete frustration, agony and unrest in minds of all executives.

None of us is against the concept of fast-track mode of meritocracy but at the same time management is duty bound to ensure that the normal track of promotions should not become dead slow track or **to be precise in reference to the just notified MSRRs – a completely stagnant track.** We fail to understand that **when management speaks about meritocracy, why they do not apply the same concept to higher posts of GM level onwards, where merit and competency is a must for manning those posts.** It will be pertinent to mention that despite provisions of Selection-cum-Merit at higher posts of GM, CGM onwards in MSRR 2009, the same were never implement and to our much astonishment, **the word "Selection Cum Merit" has completely been removed for promotions to the post beyond the Level of DGM/Equivalent in the amended version of MSRRs.** This preferential and prejudiced use of Merit word in MSRR 2023 clearly proves the fact that actual intent is not to introduce meritocracy in the system but **to keep existing executives in a state of unrest and demotivation and at the same time give an easy path to selection of GM/Equivalent level officers from outside without any screening or judging competency.**

Another very important aspect is that management has been very magnanimous while executing promotions in CSS cadre before promulgation of the MSRRs 2023 to an extent where more persons were selected in the panel than the number of vacancies available. *It's a good thing that management is so magnanimous in promoting officers in one cadre and we request for application of the same methodology/magnanimity in Telecom and Finance Stream also which will give opportunity of promotion to all the eligible executives.*

In view of the above said aspects, we feel that there is a huge need for keeping the new MSRRs 2023 in abeyance, promote all the eligible executives first and start of dialogue process with all the stake holders to address the concerns and then notify any new amendments, if the need is felt of doing so. We the leaders of the Forum of Associations of BSNL once again earnestly request your kindness to look into the above aspects and reconsider the decision for implementing new lamed MSRRs 2023 in such a hurried way.

It is requested to give due consideration to our following requests.

1. Comply with the DoPT guidelines and directions of Hon. Supreme Court about filling up all the vacant posts before any amendment in existing MSRRs i.e. MSRRS 2009.
2. Take up action for promoting all eligible candidates as per BSNL MSRRs 2009.
3. The Implementation of new MSRRs 2023 may be postponed till promoting all eligible executives or until 31.12.2023.
4. OR find out any way out which will not deprive about 6000 eligible Executives in various cadres under various streams from their due promotions due to the hurried and unilateral implementation of BSNL MSRRS 2023.
5. Meantime, the lacunas, administrative issues, shortcomings found/noticed in the MSRRs 2023 for various streams, can be corrected /modified in tune with DoPT/DoT Instructions and as per directions of different Courts.
6. The magnanimity followed while promoting the selected executives from CSS cadre must be implemented in Telecom and Finance Stream also.

This will certainly pave way for the smooth swinging of both Management and Executives in tandem for the early revival of BSNL, which is essential for the better interest of the much-applauded excellent motives of the Government of India. Important point is that there is no financial implications and burden on BSNL or DoT and only requirement is the review of the issues by your good self in the larger interest of BSNL and its executives.

We are confident that your good office will respect the DoPT Guidelines and directions of Hon. Supreme Court and also our requests and will ensure that the unrest and demotivation which has arisen across all the executives due to this hurried notification of lamed MSRR 2023 not having any sanctity for the rules of law is smoothened by taking care of the concerns raised by all the stake holders. We fervently appeal for considering the same to your kindness.



Pavan Akhand
General Secretary
AIGETOA



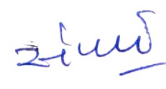
M.S. Adasul
General Secretary
SNEA



N.D. Ram
General Secretary
SEWA



Shaji V
General Secretary
AIBSNLEA



R.K. Upadhyay
General Secretary
TOA

Copy for the Kind intervention and necessary action to:

1. Shri. Ashwini Vaishnav ji, Hon Minister of Communication, Sanchar Bhavan New Delhi.
2. Shri K. Rajaraman, Hon Secretary (Telecom), Sanchar Bhavan New Delhi.
3. Dr. Mahesh Shukla, The DG (Telecom), DOT, Sanchar Bhavan New Delhi.
4. Shri Manish Sinha, The Member (Finance), DOT, Sanchar Bhavan New Delhi.
5. Shri Arvind Vadnerkar, Director HR BSNL Board, Bharat Sanchar Bhavan, New Delhi.

FORUM OF ASSOCIATIONS OF BSNL (AIGETOA, SNEA, SEWA & AIBSNLEA)

No. Forum/BSNL/Corr/2022/1

Dated: 16th Dec 2022.

To,

Shri. P. K. Purwar Ji
Chairman and Managing Director
Bharat Sanchar Nigam Limited
Janpath, New Delhi

Subject: Request for Immediate withholding of further action on draft MS RR 2023 and executing of regular promotions for all eligible executives as per existing MSRR including those who will complete their residency on 01.01.2023 and thereafter start fresh deliberations on the amendments by reconstituting the MS RR Committee with inclusion of representatives from all stake holders (BSNL Executives & Management) – Regarding.

Ref: Draft MS RR Circulated vide letter no. BSNLCO-Pers/15 (17)/4/2022-Pers I dated 14th November 2022.

Respected Sir,

In reference to the MSRR draft circulated by Personnel section vide letter under reference, a joint meeting of Forum of Associations of BSNL (Consisting of AIGETOA, SNEA, SEWA & AIBSNLEA) was held on 15th Dec 2022 to deliberate on the feedback received from various stakeholders. It was felt that the draft MSRR circulated is not fulfilling the aspirations of executives and is further detrimental to the career progression of executives working across various streams and cadres.

Further the draft with many hiccups has been prepared unilaterally by the committee side without consultation and discussions with the stakeholders and the same is neither taking care of the career progression of executives and nor is in the long term interest of our beloved organization. Associations have informally discussed with some of the committee members on the issues but no satisfactory response and clarification was received from their side on the queries and concerns raised by us.

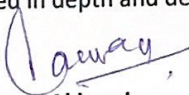
Accordingly, the forum has unanimously resolved that before envisaging any changes in MSRR, BSNL management first should immediately issue the promotions of all eligible executives including those who will complete their residency on 01.01.2023 across various cadres and streams through existing RRs. For this purpose, any shortfall in available posts should be compensated by creating additional posts by virtue of BSNL taking over operations of BBNL and the prestigious 4G saturation project, diversion of quotas etc.

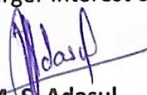
It is our firm view that such unilateral movement on the amendment of MSRRs is nothing but a deliberate attempt to get the promotions entangled in the court cases and the same can only be avoided by constructive and inclusive approach of management and associations by means of mutual discussions.

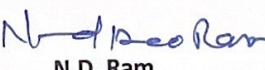
We earnestly request your kindness to withhold any further deliberation and actions on the proposed draft MSRRs-2023 and request to first reconstitute the committee by including the representatives from executive and welfare associations also, so that all possible legal hurdles perceived by various segments, necessary obligations like filling of all vacancies as per different DoPT/DoT guidelines and expectations of executives before implementation of new MSRRs can be fairly addressed so that a smooth and litigation free transition to the amended MSRR can take place


In the absence of above, any changes in the current MSRRs 2009 is not acceptable to us and it will have direct impact on the different project allotted to BSNL by PMO through your valuable efforts.

We made multiple attempts to your good office for time for discussion on this issue but same could not be materialised due to your busy schedules. We once again request to kindly grant the time for same so that issues can be discussed in depth and decided in the larger interest of executives of BSNL.


Pavan Akhand
General Secretary
AIGETOA


-M.S. Adasul,
General Secretary
SNEA


N.D. Ram
General Secretary
SEWA


Shaji V
General Secretary
AIBSNLEA

Copy to:

1. All Directors of BSNL board for kind information please.
2. The Chairman and all the Committee members for kind information please.

FORUM OF ASSOCIATIONS OF BSNL (AIGETOA, SNEA, SEWA & AIBSNLEA)

No. Forum/BSNL/Corr/2022/2

Dated: 26th Dec 2022.

To,

Dr Mahesh Shukla.
Member (Services)
Department of Telecom
Sanchar Bhavan, New Delhi

Subject: Proposed move of BSNL management to impose new BSNL Management Service Recruitment Rules from 1st January 2023 which will not only deny the much awaited promotions to around 6000 eligible executives spread across various streams and grades but also will mar the future career aspects of BSNL executives owing to the various legal complexities – request for your kind intervention in the best interest of executives as well as BSNL, Regarding.

Ref:

1. Draft MS RR Circulated vide letter no. BSNLCO-Pers/15 (17)/4/2022-Pers I dated 14th November 2022.
2. Forum of BSNL Executives' Associations letter no. Forum/BSNL/Corr/2022/1 dated 16th December 2022

Respected Sir,

We the Forum of Associations of BSNL representing around 30,000 total executives of BSNL, wish to inform your good self that BSNL management is contemplating amendment in BSNL MS RRs 2009 which was notified in the year 2009 after thorough deliberations with various associations present at that time. **However, its regret to inform that this time management has decided to move ahead unilaterally without taking into consideration the genuine apprehensions raised by various associations of BSNL including the welfare association SEWA.**

The Forum of Associations of BSNL consisting of representatives of almost 30,000 executives of BSNL has submitted its strong denial on the way in which management side has framed the draft on their own without any consultations with associations representing various stake holders. The Forum has further sought formal deliberations with the management side on the draft and reconstitution of the MSRR committee with members from association side including SEWA.

We have requested BSNL management to postpone the implementation date from 1st January 2023 to 1st April 2023 and utilise the window for extending the promotions to all the eligible executives who have completed their residency period.

Sir, we once again categorically emphasise that none of the associations are against meritocracy but we want the implementation and rollout to be smooth and litigation free. Any hasty and hurried implementation of MSRR without considering the genuine and necessary provisions to safeguard the careers of all affected executives, there is an imminent underlying danger that the complete promotions of the executives hereafter will end into a total legal mess. We wish to share the following apprehensions and objections on the implementation of amended MSRR from 1st January 2023:

1. There are almost 6000 executives who are already eligible for next promotion or are going to be eligible on 1st January 2023 for their next promotion. The new MSRRs are going to be implemented on the very same day when many of these executives are becoming due for their next promotion. Not only will this, but also by virtue of the new MSRR, many of these executives be getting debarred from the normal channel of promotions. This is legal unsustainable and will make the implementation of these MSRRs almost impossible.

2. The eligible executives who have completed their residency period have been waiting for their turn since very long. The new MSRRs will force them out of the zone of consideration which is again legally unsustainable.
3. The MSRRs are having the provision of date of implementation as 1st January 2023 while it has to undergo the route of approval of BSNL Board, thereafter the Department of Telecom which will definitely cross 1st January 2023 as we are almost at the end of 2022 and still even Board Meeting has not been convened.
4. Under these circumstances, post approval from DoT, the RRs will have retrospective effect which is totally contrary to the rules of DoPT and directions of Hon'ble Court in many of the cases pertaining to BSNL. It will be against the Hon'ble Supreme Court Directions also and hence the envisaged amended MSRRs will never ever stand the test of court of law. It's a general practice to keep the date of notification of RRs as the effective date of implementation which should have at least been followed by BSNL.
5. The envisaged MSRRs have many inherent lacunas pertaining to various provisions and many of them are totally against the specified norms by DoP&T and hence these MSRRs will not be able to see the light of the day unless these inherent lacunas are taken care of.
6. Even the Government of India guidelines with respect to the representation of weaker sections will get affected. The Representation of Weaker Section is definitely going to be affected in DGM cadre onwards if LICE is conducted against existing vacancies available under SCF Quota.
7. The example of the amended SDE RR 2022 are already there before us which were approved by BSNL Board in March 2022 with date of implementation as 1st January 2022. Now we are moving towards 1st January 2023, still the new MSRRs have not been notified.
8. The Fast Track Policy which is being projected as the management's view for creating a HR succession plan of BSNL is also containing many gaps. First of all, any fast track policy which is being implemented by eating away the posts for existing eligible executives will create a huge unrest and dissatisfaction in the minds of existing eligible executives. Hence provision for additional vacancies should have been made. Further the policy should have contained minimum fixed number of vacancies every year in Higher Grades so that equal opportunity could have been extended to the executives spread across various recruitment years who will become eligible for Fast Track in future years. Many other drawbacks are there which will hold the implementation of even Fast Track policy which will defeat the very purpose for which MSRRs are being envisaged.
9. When the eligible incumbents to the post are already available and further more are going to be available on 01.01.2023, then it becomes imperative on the part of management to extend their promotions first and for that making the cutoff date as 1st April 2023 is an utmost necessity.

Such hasty and hurried implementation of MSRRs are creating a huge unrest, dissatisfaction and demotivation in the minds of all the executives as they are unable to see any of their career aspirations fulfilled from the draft MSRR circulated. Today each and every executive is only concerned about what will happen to their career aspirations and the whole organisation is currently in state of virtual turmoil owing to the prevailing uncertainty and confusion over the current move of management to implement the new MSRRs from 1st January 2023.

Despite objection from all the rank and corners of BSNL, management is moving ahead with their one sided plans which is going to mar the whole career of the executives into litigations and unnecessary complexities. Even the cosmetic changes which management plans to make in the draft will create further unrest amongst the staff who are already agitated because of this untimely and unplanned implementation. The resulting unrest, demotivation and dissatisfaction will not be good for the health of organisation as a whole and will have a huge impact on execution of projects like **MTNL operations, BBNL operations, BharatNet Project, 4G Saturation Project** and many such Projects which BSNL is handling.

Many of these **Prestigious projects** have been given to BSNL by Government of India as a part of **ambitious initiatives** planned by Gol under the visionary leadership of our Hon'ble Prime Minister of

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India for the welfare of common citizens of our country. We must not forget that these projects are not only the pride of our company but also are the crucial cog in the wheel for government's plan to drive India to the pool of top 3 developed nations and a 5 Trillion economy and any casual handling will hugely impact the plans of Government in this regard. By bringing new MSRRs at these crucial juncture and pushing all the staff into an state of dissatisfaction, demotivation and unrest resulting out of denial of their long awaited promotions, what benefit management is going to reap for the BSNL, we completely fail to understand.

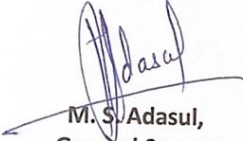
In view of the facts stated above, we once again earnestly request for your kind intervention in withholding the further movement on the proposed draft MS RR and instead direct BSNL to promote all the eligible executives who have completed their residency period or are about to complete their residency period on 1st January 2023.

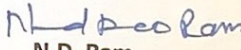
Thereafter the committee should be reconstituted with inclusion of members from association side and SEWA and deliberations should start on the proposed methodology of bringing merit in the new MSRRs and how the expectations of various stakeholders can be fairly addressed. The cut-off date for implementation of the new MSRR 2023 should be from 1st April 2023 or any later date on which proposal will actually notified but not from 01.01.2023.

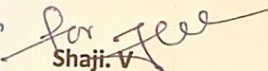
We express our firm resentment on the move of management to implementing the new MSRRs from 01.01.2023 and we sincerely hope that management will recognise the prevailing unrest and discontent in the minds of executives and will take needful necessary action to avoid such unpleasant scenario. However, still if management wishes to move ahead, the blame of its adverse impact on organisation and various impeding projects will lie solely on management.

We request for your office intervention in this matter and specifically look into the date of implementation of new MSRRs 2023 may please be maintained as date of its notification and not with retrospective effect as date of approval of by BSNL board.


Pavan Akhand
General Secretary
AIGETOA


M. S. Adasul,
General Secretary
SNEA


N.D. Ram
General Secretary
SEWA


Shaji. V
General Secretary
AIBSNLEA

Copy to:

1. CMD BSNL for kind information please
2. All Directors of BSNL board for kind information please.

FORUM OF ASSOCIATIONS OF BSNL (AIGETOA, SNEA, SEWA & AIBSNLEA)

No. Forum/BSNL/Corr/2022/3

Dated: 26th Dec 2022.

To,

Shri. Manish Sinha.
Member (Finance)
Department of Telecom
Sanchar Bhavan, New Delhi

Subject: Proposed move of BSNL management to impose new BSNL Management Service Recruitment Rules from 1st January 2023 which will not only deny the much awaited promotions to around 6000 eligible executives spread across various streams and grades but also will mar the future career aspects of BSNL executives owing to the various legal complexities – request for your kind intervention in the best interest of 30000 executives as well as BSNL, Regarding.

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2. Forum of BSNL Executives' Associations letter no. Forum/BSNL/Corr/2022/1 dated 16th December 2022

Respected Sir,

We the Forum of Associations of BSNL representing around 30,000 total executives of BSNL, wish to inform your good self that BSNL management is contemplating amendment in BSNL MS RRs 2009 which was notified in the year 2009 after thorough deliberations with various associations present at that time. However, its regret to inform that this time management has decided to move ahead unilaterally without taking into consideration the genuine apprehensions raised by various associations of BSNL including the welfare association SEWA.

The Forum of Associations of BSNL consisting of representatives of almost 30,000 executives of BSNL has submitted its strong denial on the way in which management side has framed the draft on their own without any consultations with associations representing various stake holders. The Forum has further sought formal deliberations with the management side on the draft and reconstitution of the MSRR committee with members from association side including SEWA.

We have requested BSNL management to postpone the implementation date from 1st January 2023 to 1st April 2023 and utilise the window for extending the promotions to all the eligible executives who have completed their residency period.

Sir, we once again categorically emphasise that none of the associations are against meritocracy but we want the implementation and rollout to be smooth and litigation free. Any hasty and hurried implementation of MSRR without considering the genuine and necessary provisions to safeguard the careers of all affected executives, there is an imminent underlying danger that the complete promotions of the executives hereafter will end into a total legal mess. We wish to share the following apprehensions and objections on the implementation of amended MSRR from 1st January 2023:

1. There are almost 6000 executives who are already eligible or are going to be eligible on 1st January 2023 for their next promotion. The new MSRRs are going to be implemented on the very same day when many of these executives are becoming due for their next promotion. Not only will this, but also by virtue of the new MSRR, many of these executives be getting debarred from the normal channel of promotions. This is legally unsustainable and will make the implementation of these MSRRs almost impossible.

2. The eligible executives who have completed their residency period have been waiting for their turn since very long. The new MSRRs will force them out of the zone of consideration which is again legally unsustainable.
3. The MSRRs are having the provision of date of implementation as 1st January 2023 while it has to undergo the route of approval of BSNL Board, thereafter the Department of Telecom which will definitely cross 1st January 2023 as we are almost at the end of 2022 and still even Board Meeting has not been convened.

Under these circumstances, post approval from DoT, the RRs will have retrospective effect which is totally contrary to the rules of DoPT and directions of Hon'ble Court in many of the cases pertaining to BSNL. It will be against the Hon'ble Supreme Court Directions also and hence the envisaged amended MSRRs will never ever stand the test of court of law. It's a general practice to keep the date of notification of RRs as the effective date of implementation which should have at least been followed by BSNL.

4. The envisaged MSRRs have many inherent lacunas pertaining to various provisions and many of them are totally against the specified norms by DoP&T and hence these MSRRs will not be able to see the light of the day unless these inherent lacunas are taken care of.
5. Even the Government of India guidelines with respect to the representation of SC/ST Executives will get adversely affected. The Representation of Weaker Section is definitely going to be affected in DGM cadre onwards if LICE is conducted against existing vacancies available under SCF Quota.
6. The example of the amended SDE RR 2022 are already there before us which were approved by BSNL Board in March 2022 with date of implementation as 1st January 2022. Now we are moving towards 1st January 2023, still the new SDE RRs have not been notified.
7. The Fast Track Policy which is being projected as the management's view for creating a HR succession plan of BSNL is also containing many gaps. First of all, any fast track policy which is being implemented by eating away the posts for existing eligible executives will create a huge unrest and dissatisfaction in the minds of existing eligible executives. Hence provision for additional vacancies should have been made for LICE Quota. Further the policy should have contained minimum fixed number of vacancies every year in Higher Grades so that equal opportunity could have been extended to the executives spread across various recruitment years who will become eligible for Fast Track in future years. Many other drawbacks are there which will hold the implementation of even Fast Track policy which will defeat the very purpose for which MSRRs are being envisaged.
8. When the eligible incumbents to the post are already available and further more are going to be available on 01.01.2023, then it becomes imperative on the part of management to extend their promotions first and for that making the cutoff date as 1st April 2023 or any later date is an utmost necessity.

Such hasty and hurried implementation of MSRRs are creating a huge unrest, dissatisfaction and demotivation in the minds of all the executives as they are unable to see any of their career aspirations fulfilled from the draft MSRR circulated. Today each and every executive is only concerned about what will happen to their career aspirations and the whole organisation is currently in state of virtual turmoil owing to the prevailing uncertainty and confusion over the current move of management to implement the new MSRRs from 1st January 2023.

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Many of these Prestigious projects have been given to BSNL by Government of India as a part of ambitious initiatives planned by Gol under the visionary leadership of our Hon'ble Prime Minister of India for the welfare of common citizens of our country. We must not forget that these projects are

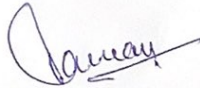
not only the pride of our company but also are the crucial cog in the wheel for government's plan to drive India to the pool of top 3 developed nations and a 5 Trillion economy and any casual handling will hugely impact the plans of Government in this regard. By bringing new MSRRs at these crucial juncture and pushing all the staff into an state of dissatisfaction, demotivation and unrest resulting out of denial of their long awaited promotions, what benefit management is going to reap for the BSNL, we completely fail to understand.

In view of the facts stated above, we once again earnestly request for your kind intervention in withholding the further movement on the proposed draft MSRR and instead direct BSNL to promote all the eligible executives who have completed their residency period or are about to complete their residency period on 1st January 2023.

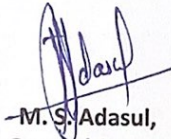
Thereafter the committee should be reconstituted with inclusion of members from association/s side and SEWA and deliberations should start on the proposed methodology of bringing merit in the new MSRRs and how the expectations of various stakeholders can be fairly addressed. The cut-off date for implementation of the new MSRR 2023 should be from 1st April 2023 or any later date on which proposal will actually notified but not from 01.01.2023.

We express our firm resentment on the move of management to implementing the new MSRRs from 01.01.2023 and we sincerely hope that management will recognise the prevailing unrest and discontent in the minds of executives and will take needful necessary action to avoid such unpleasant scenario. However, still if management wishes to move ahead, the blame of its adverse impact on organisation and various impeding projects will lie solely on management.

We request for your office intervention in this matter and specifically look into the date of implementation of new MSRRs 2023 may please be postponed from 1st January 2023 to 1st April 2023 or any later date and meantime all eligible Executives may be promoted as per existing MSRRS 2009.



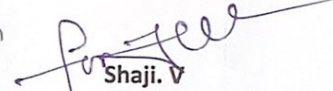
Pavan Akhand
General Secretary
AIGETOA



M. S. Adasul,
General Secretary
SNEA



N.D. Ram
General Secretary
SEWA



Shaji. V
General Secretary
AIBSNLEA

Copy to:

1. CMD BSNL for kind information please
2. All Directors of BSNL board for kind information please.

No. 20034/6/86-Estt(D)
Government of India
Ministry of Personnel, P.C. and Pensions
(Department of Personnel and Training)

New Delhi, the 17 November, 1986.

OFFICE MEMORANDUM

Subject:- Convening of annual meetings of DPCs -
Avoidance of delays in -

Attention of the Ministries/Departments is invited to the marginally* noted instructions emphasising the need for holding meetings of Departmental Promotion Committees at regular annual intervals to draw panels, which could be utilised for making promotions against vacancies occurring during the course of a year.

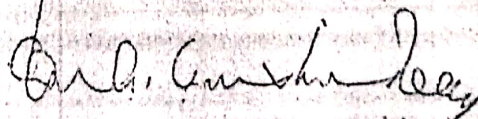
1. OM No.
22011/6/75-
Estt(D), dt.
30.12.76
(F/A)

2. OM No.
22012/2/79-
Estt(D) dt.
19.9.79
(F/B)

3. 22012/2/79-
Estt(D) dt.
25.2.81.
(F/C)

2. In spite of these clear instructions, a number of instances of delay in holding DPC meetings have come to notice. One of the reasons given by Ministries/Departments to justify the delay is that Recruitment Rules for the post are being reviewed/amended. This is not an appropriate ground to postpone the meetings of DPCs. Amendments to the Recruitment Rules can normally have only prospective application and as such the existing Recruitment Rules would continue to be in force till the new rules come into force. The Supreme Court has also ruled that vacancies should be filled according to the rules in force when the vacancies arose. It is, therefore, neither desirable nor permissible to postpone holding of DPC meetings solely on the ground that the Recruitment Rules are under revision/amendment. The DPCs should, therefore, be convened in time and the panel of officers for promotion finalised in accordance with the existing Recruitment Rules.

2. Ministry of Finance etc. are therefore, requested to bring the above instructions to the notice of all officers under them for their guidance and necessary action.



(K.S.R. KRISHNA RAO)
DEPUTY SECRETARY TO THE GOVERNMENT OF INDIA.
Tele No. 301. 12 25.

To

1. All Ministries/Departments of the Govt. of India.

...2/-

NON-REPORTABLE**IN THE SUPREME COURT OF INDIA****CIVIL APPELLATE JURISDICTION****CIVIL APPEAL NOS.5811-5814/2021
(ARISING OUT OF SLP(C) NOS.26435-26438/2019)****MEDINI. C & ORS. ETC. ETC.APPELLANT(S)****VS.****BHARAT SANCHAR NIGAM LIMITED
& ORS. ETC. ETC.RESPONDENT(S)****WITH****CIVIL APPEAL NO.5815-5816/2021
(ARISING OUT OF SLP(C) NO.14959-60/2021
@ DIARY NO.41354/2019)****B.H. SREELAAPPELLANT(S)****VS.****BHARAT SANCHAR NIGAM LIMITED & ORS. ...RESPONDENT(S)****J U D G M E N T****NAGARATHNA J.**

**Delay in filing the Special Leave Petition Diary
No.41354/2019 is condoned.**

2. Leave granted.

**3. These appeals by special leave have been filed by
the appellants against the judgment and order dated
07.08.2018 passed by the High Court of Kerala in R.P.
No.155/2018 filed in W.P.(C) No.29029/2010; R.P.
No.156/2018 in O.P.(CAT) No.20/2010; and order dated
10.10.2019 in W.P.(C) No.29029/2010 and O.P.(CAT)**

No.20/2020; and order dated 07.08.2018 in R.P. No.145/2018 in O.P.(CAT) No.21 of 2010. By the said order dated 07.08.2018, the High Court allowed the review petitions, restored the original petitions and the writ petition on the file of the High Court and directed the parties to maintain status quo till the disposal of the original petitions. On restoration, by order dated 10.10.2019, the High Court dismissed the Original and Transferred Applications, set aside the order of the Tribunal and allowed the Original Petitions. Hence these appeals.

4. These appeals have a chequered history and therefore only the relevant facts are narrated in a nutshell.

5. In Civil Appeal @ SLP(C) No.26435/2019, appellant nos.1 and 2 viz., Medini C and B. Geetha Devi were appointed as Hindi Translators and petitioner no.3 viz., Sobhana Kumari was appointed as a Telecom Office Assistant in Bharat Sanchar Nigam Limited (for short, 'BSNL' for the sake of convenience). The appellant viz., C. Mridula in Civil Appeal @ SLP(C) No.26436/2019 was appointed as a Telecom Office Assistant. Their appointments were made in the years 1988-1989. The appellants in the civil appeal @ SLP(C) No.26435/2019 were promoted as Assistant Director (Official Language) ('OL' for short) on ad hoc basis during the years 1993-1995 and the appellant in the

civil appeal @ SLP(C) No.26436/2019 was promoted to General Central Service Group as Assistant Director (OL) on officiating basis during the year 2000.

6. On 24.12.2002, Assistant Director (Official Language) Recruitment Rules, 2002 (for short, the '2002 Rules') were notified. The said Rules superseded all previous instructions on the subject and came into effect immediately. Under the said Rules, as a "one-time measure", all vacancies in the grade of Assistant Director (OL) on officiating basis were to be filled up by Senior Hindi Translators/Junior Hindi Translators and Group C officials who were to be given ad hoc promotions to the grade of Assistant Director (OL) on officiating basis. The same was by promotion on seniority-cum-fitness basis as was the procedure followed for the above officials who had been officiating as Assistant Director (OL). A Corrigendum dated 01.10.2003 was issued revising eligibility criteria. Another Corrigendum was issued on 13.10.2003 for removing restriction of pay under FR-35 as per the 2002 Rules.

7. Subsequently, Rajabhasha Adhikari Recruitment Rules 2005 were notified on 05.08.2005 (for short, the '2005 Rules'). These Rules were in supersession of 2002 Rules. However, it was notified that the local officiating arrangements/promotions on ad hoc basis which had already been made may not be disturbed till

regular incumbents to such posts become available. The said Rules came into force with immediate effect.

8. Aggrieved by the inaction of the respondent-BSNL in promoting the appellants on regular basis, the appellants filed Writ Petitions bearing W.P. No.28185 of 2005 and WP No.29553 of 2005 before the Kerala High Court. The aforesaid writ petitions were transferred to the Central Administrative Tribunal (for short, the 'Tribunal') and were registered as Transfer Application Nos.44 and 46 of 2008. On 08.04.2010, the Tribunal allowed the Transfer Applications and directed the appellants to be promoted in accordance with the 2002 Rules, against which O.P. (CAT) No.20/2010 and W.P. No.29029/2010 were filed by the respondent No.1-BSNL. Their contention before the High Court was that the 2002 Rules were never in operation at any point of time and reliance was placed on the judgment of this Court in *BSNL vs. Mishri Lal & Ors.* - (2011) 14 SCC 739 (*Mishri Lal*) for the same. But the High Court found that there was no plea raised that the 2002 Rules had never come into force before the Tribunal and it was taken up first time before the High Court. It was found that the 2002 Rules were in fact given effect to and plea to the contrary was without any merit. The High Court dismissed the aforesaid matters by order dated 04.11.2011.

9. Being aggrieved, the respondent - BSNL filed special leave petition being SLP(C) No.8575/2012. This Court dismissed the said special leave petition along with SLP(C) No.8879/2012. The respondent - BSNL filed Review Petition (C) No.2451/2017 in SLP(C) No.8665/2017 and Review Petition (C) No.2452/2017 in SLP(C) No.8575/2012. The said review petitions were also dismissed by this Court on 16.11.2017.

10. Thereafter, Contempt Petition (C) No.151/2017 in TA Nos.44 and 46 of 2008 were filed before the Tribunal in which proceedings the Chief General Manager, BSNL was directed to appear before the Tribunal on 12.03.2018. At that stage, Review Petition No.155 and 156 of 2018 were filed in W.P. No.29029/2010 and OP (CAT) No.20/2010 respectively before the High Court seeking review of its judgment and order dated 04.11.2011 with a delay of 2225 days. It is pertinent to note that the said review petitions were filed after the dismissal of the special leave petitions and the review petitions filed against the order passed in the special leave petitions were dismissed by this Court. Delay of 2225 days was condoned by the High Court against which SLP(C) Nos.8009-8010/2010 were filed which were also dismissed by this Court vide order dated 06.04.2018.

11. Thereafter the High Court allowed the R.P. Nos.145, 155 and 156 of 2018 and other connected

matters recalling the judgment and order in OP(CAT) Nos.20, 21, 142 of 2010 and WP No.29029/2010 dated 04.11.2011 and restored the said matters on the file of the High Court vide order dated 07.08.2018. Further, on restoration of the aforesaid matters, the High Court by its order dated 10.10.2019 allowed the same. Hence, these appeals have been preferred before this Court.

12. During the pendency of these appeals before this Court, the appellants were reverted to the post of Junior Hindi Translators, the post to which they had joined earlier with effect from 16.05.2018.

13. Sri R. Basant, learned Senior Counsel appearing for the appellants, drew our attention to the orders passed in the earlier proceedings that had taken place in these cases and contended that the High Court was not right in concluding that there was an error apparent on the face of the record and therefore, the earlier order dated 04.11.2011 passed by it had to be reviewed and recalled. It was urged that the High Court was not correct in holding that it had made an apparent error in coming to the conclusion that the recruitment Rules 2002 was in operation by a misreading paragraph 9 of the judgment rendered by this Court in *Mishri Lal*; that the said judgment did not declare any law as to whether the recruitment Rules were in operation or not. Though emphasis was made by the second appellant that the 2002 Rules were never in operation, the High Court

was not right in upholding the contention of the review petitioners (respondents herein). The High Court, though at one point found that, there was no specific statement or a declaration of law on the operation or otherwise the recruitment Rules 2002, at the same time found that this Court had given a finding in *Mishri Lal* to the effect that the said Rules were never in operation at any point of time. It was contended that on a misreading of the judgment of this Court in *Mishri Lal*, the High Court allowed the review petitions and recalled the judgment dated 04.11.2011 passed in OP(CAT) Nos.20, 21 & 142 of 2010 and WP(C) No.29029 of 2010 and restored those matters on the file of the High Court. It was submitted that the High Court had misapplied *Mishri Lal* to the facts of these cases as the said judgment was not applicable to the instant cases having regard to the distinctive factual matrix in these cases. It was contended that the High Court erroneously reversed the earlier order passed by it on 04.11.2011, subsequent to the dismissal of the special leave petitions filed earlier against the original order as well as the review petitions filed against the dismissal of the special leave petitions.

14. It was further contended that the 2002 Rules were acted upon in the instant cases and the impugned order has proceeded on an erroneous premise that it was not implemented as the grant of enhanced pay scales was not

sufficient *per se* to establish that the said Rules have been acted upon.

15. Sri Basant, learned Senior Counsel for the appellants, submitted that the High Court failed to appreciate the applicability/ enforceability of the 2002 Rules, as there was no controversy about the same. It was further submitted that the vacancies which arose when the 2002 Rules were in operation and the persons drawing salary based on the earlier Rules had a vested right when the 2005 Rules were in force. In sum and substance, it was contended that the High Court was not right in reviewing its judgment dated 04.11.2011.

16. In elaboration of the aforesaid submission, it was reiterated that the 2002 Rules had been acted upon and enhanced pay scale was also credited. As the vacancies had arisen prior to the 2002 Rules being enforced, the promotions would be governed by the said Rules and appellants would have acquired a vested right when the said Rules were in force as the vacancies had arisen by then. Further, our attention was drawn to Corrigendum dated 01.10.2003 under which the respondent(s) revised eligibility criteria of Mridula C, with effect from 30.12.2002 on the basis of the 2002 Rules. Another corrigendum dated 13.10.2003 was issued removing the "restriction of pay under FR-35" given in the memos of local officiating promotion with effect from 30.12.2002

as per revised eligibility conditions as per the 2002 Rules.

17. It was lastly contended that the respondent(s) having implemented the 2002 Rules it could now not be contended that the rules were never given effect to nor implemented. In fact, the 2002 rules were in supersession of the earlier rules and therefore, between 2002 and 2005 there could not have been a vacuum, was the submission.

18. Sri V. Chitambaresh, learned Senior Counsel appearing for the other appellant(s), made similar submissions as recorded above.

19. Per contra, Sri R. D. Agrawala, learned Senior Counsel appearing for the respondents, at the outset, placed strong reliance on the impugned judgment being in accordance with the ratio of the judgment of this Court in *Mishri Lal* and therefore, the High Court was justified in reviewing its earlier order. It was contended that in *Mishri Lal*, it has been categorically held that the 2002 Rules were never in operation at any point of time; the same was fortified by the fact that no regular appointment was made under the said Rules. It was urged that the High Court was justified in reviewing its earlier order and hence, there is no merit in these appeals.

20. Having regard to the contentions raised by the respective counsel, the crux of the matter in these appeals is, whether, the 2002 Rules were given effect to by the respondents vis-a-vis the appellants herein or not.

21. There can be no cavil that these appellants were appointed as Hindi Translators and Telecom Office Assistants. The appellant viz., C. Mridula was promoted to General Central Service Group as Assistant Director (OL) on officiating basis while the appellants viz., Medini C., B. Geetha Devi and Sobhana Kumari were promoted to the post of Assistant Director (OL) on ad hoc basis. This was prior to the enforcement of the 2002 Rules.

22. On 24.12.2002, the respondent(s) issued a notification stating that the 2002 Rules would supersede all instructions on the subject including the instructions contained in DOT's Circular No.372-1/94-STG-III dated 28.04.1994 regarding filling up of the posts of Hindi Officers [Assistant Director (OL)] in field units on local officiating basis. That wherever local officiating arrangements/ad hoc promotions were required, they were to be made in accordance with the provisions of the 2002 Rules. Further local officiating arrangements/promotions on ad hoc basis having already been made were not to be disturbed until further orders.

23. A reading of the 2002 Rules would indicate that the said Rules came into force with immediate effect i.e. on 24.12.2002. Rule 10(iii) and (iv) of the said Rules are relevant and they read as under :

"10. Initial Constitution.

(i)

(ii)

(iii) There are many Sr. Hindi Translators/Jr. Hindi Translators and Group 'C' officials who have been given ad hoc promotions to the grade of AD (OL) in field formations of BSNL. In order to avoid legal and administrative complications as a one time measure, it is provided that all the vacancies in the grade of AD (OL) in the first year of recruitment, irrespective of vacancies earmarked for promotional quota or direct quota, shall be filled up by promotion on seniority-cum-fitness basis, by following due procedures, amongst those officials who have been officiating as AD(OL) in BSNL subject to their fulfilling the basis qualifications and experiences as prescribed in column 12 of the Schedule annexed to these Rules.

(iv) These rules will be subject to review after a period of three recruitment years.

A reading of the same would indicate that it was recognised that there were many promotions made on ad hoc basis in the grade of Assistant Director (OL), even prior to the enforcement of the 2002 Rules. In order to avoid legal and administrative complications as a "one time measure" which was more in the nature of a transitional measure, the vacancies were to be filled by promotions on seniority-cum-fitness basis from

amongst those officials who had been officiating as Assistant Director (OL) in BSNL subject to their fulfilling the basic qualifications and experiences as prescribed in column 12 of the Schedule annexed to the 2002 Rules. The Rules of course were subject to review after a period of three years.

24. Consequently, a corrigendum was issued on by the respondent(s) removing the clause "restriction of pay under FR-35" as given in the memos of local officiating promotion when the appellants in the first appeal viz., Medini C., B. Geetha Devi and Sobhana Kumari were promoted to the post of Assistant Director (OL) on ad hoc basis with effect from the dates notified against each of them as per the revised eligibility conditions given in the Recruitment Rules.

25. In respect of the following persons including appellant Mridula C, the eligible dates for removal of restriction under FR-35 were as under :

Sr. No.	Name of Officiating AD(OL) S/Sri/Smt.	Eligible date for removal of restriction under FR-35
1.	Jobi Joseph	30.12.2002
2.	Prasanna Kumari Amma	04.01.2003
3.	Mridula C	30.12.2002
4.	Sreekumar	30.12.2002

26. A specific reference was made to the revised eligibility conditions of the 2002 Rules while issuing

the aforesaid corrigendum. Another corrigendum was issued on 13.10.2003 in respect of Smt. Mridula C. Her pay scale was also regularised. The above were issued subsequent to the enforcement of the 2002 Rules. It is observed that when the restriction of officiating pay under FR-35 was removed, it would indicate that the respondent in substance regularised the promotions of the appellants herein, by issuance of the Corrigendum(s) referred to above as till then they were receiving pay on officiating basis. Further the removal of such restriction under FR-35 has the effect of recognising the appointment in substantive officiating capacity subject to fulfilment of eligibility conditions as prescribed in the relevant recruitment Rules and carrying on higher duties and responsibilities. For immediate reference FR-35 is extracted as under :

“FR-35. The Central Government may fix the pay of an officiating Government servant at an amount less than that admissible under these rules”.

The effect of removal of the restriction of officiating pay under FR-35 implied that there was regular cadre promotion made as the employees became due for promotion and fell within the zone of consideration and fulfilled all qualifications prescribed for promotion.

27. As per communication dated 05.08.2005, the respondent - BSNL re-designated the post of Assistant Director (OL) as "Rajbhasha Adhikari". Further it is stated that the local officiating arrangements/promotions on ad hoc basis that have already been made may not be disturbed till the regular incumbents to such posts become available in accordance with the recruitment rules.

28. The 2005 Rules were issued in supersession of all instructions issued earlier. However, it was categorically stated that "the local officiating arrangements/promotions on ad hoc basis" that had already been made were not be disturbed till the regular incumbents to such posts available in accordance with recruitment rules. More pertinently clause 10 of the 2005 Rules reads as under :

"10. Power to Relax. - Where the BSNL is of opinion that it is necessary or expedient so to do it may by order for reasons to be recorded in writing and with the approval of Management Committee or BSNL relax any of the provisions of these Rules in respect of any class or category or persons."

Rule 11 of the 2005 Rules reads as under :

"11. Initial Constitution.

(i) All officials holding the post of Assistant Director (Official Language) on regular basis in erstwhile DOT/DTS/DTO before commencement of these Rules and those who have been absorbed in Bharat Sanchar Nigam Ltd shall be deemed to have been appointed as

Assistant Director (Official Language) with the same seniority.

(ii) The continuous regular service of officials referred to in the sub-rule 10(i) above before the commencement of these rules shall count for the purpose of probation, qualifying service for promotion, confirmation and pension.

29. It is not the case of the respondent-BSNL that the appellants were not eligible to be promoted on ad hoc basis and nor were they lacking in requisite qualification and merit when they were so promoted even prior to the 2002 Rules were enforced.

30. It is in the above scenario that the Tribunal by its order passed in TA No.44/2008 and connected matters observed that the 2002 Rules remained in force and were implemented for more than three years till the "Rajbhasha Adhikari Recruitment Rules, 2005" was issued in supersession of all the relevant Recruitment Rules in force; that the appointment/promotion of the employees are to be based on the existing rules and hence the directions for promotions were given under the 2002 Rules. Consequently, a direction was issued to the respondent - BSNL to promote the eligible candidates as Assistant Director (OL) against the vacancies which had arisen prior to the promulgation of the 2005 Rules. They were also to be re-designated as Rajabhasha Adhikari from 2005.

31. The High Court vide its judgment dated 04.11.2011 held that in *Mishri Lal*, this Court had made observations with regard to the implementation of the 2002 Rules vis-a-vis the facts of the said case and the said observations did not apply to the instant cases. The High Court held in favour of the appellants herein by observing that there were 120 vacancies of Assistant Director (OL) when the 2002 Rules were in force and the appointing authority had promoted in terms of the prevailing Rules and the 2005 Rules did not take away the vested right of the appellants herein as the 2005 Rules were prospective in operation. Citing the decision of this Court in *Y.V. Rangaiah & Ors. vs. J. Sreenivasa Rao* - AIR 1983 SC 852, it was observed that the posts which fell vacant prior to the amended rules would be governed by the old rules and not by the new rules. Consequently, all the original petitions and writ petition filed by the respondents herein were dismissed by the High Court vide judgment dated 04.11.2011.

32. As noted above, the aforesaid judgment was assailed before this Court and the special leave petitions were dismissed by order dated 23.03.2017. The review petitions filed by the respondents herein were also dismissed by this Court vide order dated 16.11.2017. Thereafter, contempt petition was filed before the Central Administrative Tribunal (CAT) by the

appellants herein and by order dated 06.02.2018, the Tribunal directed the Chief General Manager of the respondent to appear in person and "explain the reasons for not complying with the earlier order of the Tribunal". It is at that stage that the review petitions were filed by the respondents before the High Court which have been allowed and which is the subject matter of controversy in the present appeals.

33. We have in detail narrated the facts and events that have occurred in these cases and also referred to the Rules of 2002 and 2005 and we have succinctly noted the earlier order dated 04.011.2011 passed by the High Court which were in favour of the appellants herein. The reason as to why the earlier order of the High Court was reviewed and recalled by the impugned judgment is mainly on the basis of the judgment of this Court in *Mishri Lal* in respect of which the High Court in the impugned judgment has stated that the 2002 Rules were not given effect to and hence the appellants had no right to be regularised subsequent to their ad hoc promotions.

34. Hence, we shall consider the judgment of this Court in *Mishri Lal*. In *Mishri Lal* respondent nos.1 to 9 therein assailed the 2005 Rules by which the writ petitioners were told to appear in the Limited Internal Competitive Examination for promotion to the post of Rajbhasha Adhikari [AD (OL)]. The said Rules were

quashed by the Allahabad High Court at the preliminary stage of admission, without service of notice to the respondent BSNL. In paragraphs 9 of *Mishri Lal*, this Court noted that there were some objections to the Recruitment Rules of 2002 as "allegedly" these rules were never in operation at any point of time. Thereafter, the revised 2005 Rules were formulated and issued on 05.08.2005 whereby 120 posts were classified as executive with the nomenclature of Rajbhasha Adhikari. While the educational qualifications remained the same as before, under the 2005 Rules, the entire cadre had to be filled by a limited internal competitive examination. These Rules had been struck down by the Allahabad High Court.

35. In paragraph 10 of *Mishri Lal*, it is noted that the respondents therein were never regularly promoted as Hindi Officer at any point of time. They were appointed on the basis of administrative instructions dated 28.04.1994, purely on officiating basis under the powers delegated to the Heads of Telecom Circles. They were never regular appointees and hence no vested rights for promotion to the post of Hindi Officer under the 2002 Rules inhered in them. Further, this Court observed that when the 2005 Rules were formulated 120 posts were classified as executive and the power of recruitment was changed and such posts were to be filled up by internal competitive examination, the said

posts could not be filled up by promotion by the persons working on officiating basis.

36. Thus, the aforesaid facts in *Mishri Lal* and on a consideration of the reasoning of the judgment(s) of the High Court of Judicature at Allahabad, this Court held in favour of the respondents herein by setting aside the judgment of the Allahabad High Court.

37. In our view the judgment in *Mishri Lal* cannot be applied to the present case as the facts that obtained in the said case are distinct. In *Mishri Lal* it was noted that the respondents therein were never regularly promoted as Hindi Officers at any point of time either under the 1984 Rules nor under the 2002 Rules subsequently. They were appointed purely on the local officiating basis under the administrative instructions dated 28.4.1994. Therefore, this Court held that the respondents in the said case were never regular appointees and hence had no vested right for promotion to the post of Hindi Officer under the 2002 Rules which were not given effect to vis-a-vis the respondents therein.

38. But in the instant case the facts are totally distinct inasmuch as these appellants were provisionally promoted while in the Telecom Department as Assistant Director (OL) as early as on 15.05.1994 but they were not regularised and hence they approached

the Tribunal seeking an order of regularisation. In fact, Rule 10(3) of 2002 Rules categorically stated that as a "one time measure" all the vacancies in the grade of Assistant Director (OL) in the first year of promotional quota or direct vacancies had to be filled by direct quota by following due procedure from amongst the officials who had been officiating as Assistant Director (OL) in the respondent-BSNL subject to their filling the basic qualifications and experience as prescribed. Despite promulgation of the 2002 Rules no order for regularisation of promotion was issued. Hence, the appellants herein approached the High Court for promotion. It is during the said period, the 2005 Rules were issued but by then the appellants herein had already enforced their vested rights regarding their regularisation in their respective posts as per the 2002 Rules on the bases of one time measure that was envisaged under the said Rules. The Tribunal therefore granted relief to them and the High Court by order dated 04.11.2011 dismissed the writ petitions filed by the respondent-BSNL was sustained by this Court in the special leave petitions as well as the review petitions filed by the respondent-BSNL.

39. When such being the factual and legal position, we find that the High Court has misread the ratio of the judgment of this Court in *Mishri Lal* and has applied it to the case of the appellants herein in a straight-

jacket manner without being mindful of the aforesaid crucial aspects of the case. It may be that in the region of Uttar Pradesh, the 2002 Rules may not have been given effect to as has been noted in *Mishri Lal* but that is not the case insofar as the appellants who are working in the Kerala region are concerned. This is because subsequent to the orders of promotions on ad hoc or officiating basis, the clause regarding 'restriction of pay under FR-35' was deleted by issuance of corrigendum and on the basis of the said factual developments, the High Court had rightly sustained the order of the Tribunal vide its Judgment dated 04.11.2011. Hence that order could not have been reviewed/recalled by the impugned judgment of the High Court and the case of the appellants being dismissed by subsequent order dated 10.10.2019.

40. In the circumstances, we find merit in these appeals. Consequently, we allow these appeals, set aside the impugned judgment(s) and order(s) passed by the High Court referred to above and direct the respondent(s) to give effect to the judgment of the High Court dated 04.11.2011 which had affirmed the order of the Tribunal dated 08.04.2010 by recalling orders of reversion, if any, and extending monetary benefits to the appellants herein and thereafter, to consider their cases under the Voluntary Retirement

Scheme (VRS) if they have so applied and if their applications are in order. No costs.

41. In view of the above, all pending interlocutory applications stand disposed.

.....J
[L. NAGESWARA RAO]

.....J
[B.R. GAVAI]

.....J
[B.V. NAGARATHNA]

NEW DELHI;
SEPTEMBER 21, 2021.