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No. AIBSNLEA/CHQ/CMD/2013

Dated: 12.04.2013

To

Shri Kapil Sibal
Hon'ble Minister of Communications & IT
Govt. of India
New Delhi -110001

Sub.: Illegal deployment of ITS Officers in BSNL-reg.

Respected Sir,

We regret to mention that DoT orders dated 11.03.2013 vide which DoT has deployed the repatriated Group -'A' officers in BSNL while giving a go by to its own statutory rules and provisions of CCS (Pension) Rules 37A and in particular to Sub Rule 6 of Rule 37 A and Hon'ble High Court of Delhi in Judgement dated 17.04.2012 and its subsequent directions dated 15.02.2013 also Hon'ble Principal bench, CAT New Delhi vide OA no. 3124/2009 dated 01.07.2011 delivered judgment on 11.07.2011 "In the light of the above discussion the impugned order dated 24.09.2009 is quashed and set aside with directions to the Respondents not to give any further opportunity to the officers of the Department of Telecommunications , who continue to be on deemed deputation to BSNL and to repatriate them to their parent Department"

Brief History

In response to the above judgment DoT reinitiated the process of absorption of Group -'A' officers in BSNL /MTNL in Sept'2011 but ITSA opposition continued and majority ITS Officers did not exercise option in BSNL/MTNL and opted DOT. On 3rd Nov'2011 DoT issued order vide letter no. A-11013/33/2011-Absorption Cell dated 03.11.2011 regarding repatriation of Group "A" officers of various services working on deemed deputation in BSNL/MTNL back to their parent department of Telecommunications (DOT). The deemed deputation also ended on 08.11.2011. DOT observing the situation and on the request of CMDs BSNL/MTNL and issued order vide letter no. A-11013/33/2011-Absorption Cell dated 08.11.2011 allowing deputationist ITS officers in BSNL/MTNL till their formal relieving. During the period at the instance of DOT, BSNL/MTNL management relieved about 360 ITS officers and about 40 Group-'A' Electrical wing officers in the month of Nov'2011.

Hereafter BSNL/MTNL Managements took a stand not to relive the remaining about 950 in BSNL and 83 in MTNL ITS Officers till the time of alternative arrangements. Immediately BSNL/MTNL notified SLD, DRs 2011 for the recruitment of ITS officers on technical

We under the banner of United Forum BSNL / MTNL Executives Associations strongly protested the back door entry of ITS Officers in violation of BSNL MSRRs-2009 and upgradation of 600 JAG posts to Sr. DGM Posts. These SLD RRs-2011 could not be implemented due to clarifications/ comments / opinion issued vide letter no. 4/13/2012-P&PW(D) dated 19.03.2012 by Deptt. of Pension and Pensioners Welfare on the queries raised by ITS Officers regarding recruitment in BSNL/MTNL.

Meanwhile the Court case filed some ITS Officers and ITSA in the Hon'ble High Court Delhi demanding Prospective Date of absorption came for hearing on 17.04.2012 and decided cut of date of absorption as 08.12.2005 instead of 01.10.2000 and directed applicants to exercise their option in BSNL/MTNL upto 30th April'2012(Two Weeks time) and if they donot opt BSNL/MTNL then they are to be relieved before 16th May'2012.

The operative portion of judgment of Hon'ble High Court Delhi judgment dated 17.04.2012 in the case filed by some ITS Officers is as under:-

- The deemed date of absorption of the petitioners fixed as 1.10.2000, is held to be illegal, being contrary to Rule 37-A (4) of CCS (Pension) Rules;
- The deemed date of permanent absorption of such of the petitioners who seek permanent absorption in BSNL/MTNL shall be 8.12.2005;
- The petitioners before this Court are given an option, to be exercised within two weeks from the date of this order, to revert to the Government or to seek permanent absorption in BSNL/MTNL as the case may be;
- Those Government servants who have already accepted permanent absorption w.e.f. 1.10.2000 will not be entitled to exercise a fresh option in terms of this order;
- BSNL/MTNL shall relieve such of the petitioners, who opt to revert to Government service within 2 weeks of receipt of options from them;
- Such of the petitioners who opt to revert to the Government shall be appropriately redeployed by the Government in Government service through surplus cell of the Government. We have no doubt in our mind that the Government would not like to keep such of the petitioners who opt to revert to the Government idle and, subject to availability of the positions with it, give them such work as is deemed appropriate to be performed by them.

Against the above judgment BSNL /MTNL filed review application seeking twenty five months time to make alternative arrangement and in their relieving but Hon'ble High Court Delhi did not accept the same and allowed retention of ITS officers in BSNL/MTNL up to 30.09.2012. Wherein AIBSNLEA, SNEA(I) and BSNLEU also filed SLP for impledment but the same along with BSNL/MTNL review application was dismissed.

Following is the Judgment given by Hon'ble High Court Delhi on dated 15.02.2013.

CM Nos.16682/2012, 16683/2012, 16685/2012 and 18147/2012 (CM No: 16683/2012 is filed by AIBSNLEA, SNEA(I) and BSNLEU) .

1. The grievance of the applicants in CM No.16683/2012 and CM No.18147/2012 would be met if CM No.16682/2012 and CM No.16685/2012 are disposed of with a direction that within six weeks from today the mandamus issued by this Court as per the decision dated April 17, 2012 would be positively complied with.

2. Issuing a direction that the mandamus issued by this Court as per the decision dated April 17, 2012 shall be positively complied with within six weeks from today, all above captioned applications stands disposed of.

Hon'ble High Court Delhi on **04.03.2013** dismissed DoT review application on ITS repatriation case. DOT filed review application to Hon'ble High Court Delhi praying that DoT is implementing Hon'ble High Court judgment dated 15.02.2013 for repatriation of ITS officers from BSNL/MTNL immediately & as per the decision of Union Cabinet ITS officers will further be sent on deemed deputation to BSNL/MTNL for the next 10 years and during these 10 years period, BSNL/MTNL will create their Management at higher level.

Hon'ble High Court Delhi at first instance itself dismissed the DOT review application & directed to implement Court order in its true spirit.

DOT prayer before Hon'ble High Court Delhi on ITS Case:

12. That in compliance with this Hon'ble Court order dated 15.02.2013 and also with a view to implement the Cabinet decision dated 13.02.2013, the respondent Department of Telecommunications wishes to issue the following orders:-

i. Repatriation of all Group-'A' officers including ITS officers currently on deemed deputation to BSNL/MTNL to DOT with immediate effect and consequent relieving of officers by BSNL/MTNL thereby completing the process of absorption of Group A officers of the DoT in BSNL/MTNL under Rule 37-A of CCS Pension rule 1972.

ii. Deployment of ITS officers in BSNL/MTNL for a period of 10 years on year to year diminishing basis as per the requirement plan on the terms and conditions as approved by the Cabinet w.e.f the date the BSNL/MTNL leave officers in pursuance of (i) above. This deployment has been approved by the Cabinet as a special dispensation to ensure that the services in these organizations are not disrupted and their operation do not suffer due to the lack of manpower and has no relation whatsoever with the absorption process initiated and completed under Rule-37A CCS pension Rules 1972.

iii. Direction to all the cadre Units of group A Services of the DoT to complete the process of cadre review which is already underway and declare the officers as are in excess of the revised sanction strength consequent on cadre review as surplus as per Cabinet approval.

PRAYER:

a) The Hon'ble Court may take cognizance of the course of action proposed in para 12 above pursuant to the decision of the Cabinet and this Hon'ble Court's orders dated 17.04.2012, 01.10.2012 and 18.12.2012 and pass orders clarifying, if necessary, the order dated 15.02.2013.

b) Pass any order or further orders it deems necessary ----.

DoT issued order regarding redeployment of surplus Staff w.r.t. constitution of Surplus Staff Establishment (SSE) for Indian Telecom Services (ITS) on 11.03.2013.

The Contempt petition filed by AIBSNLEA, SNEA (I) and BSNLEU in the Hon'ble High Court Delhi against DOT orders dated 11.03.2013 to deployment of non-optee ITS Officers in BSNL came for hearing on 18.03.2013 in Hon'ble High Court of Delhi and after arguments, the contempt petition is admitted and posted for hearing on 25th July 2013.

AIBSNLEA, SNEA(I) and BSNLEU Writ petition 1803/2013 filed jointly praying for quashing the order of DoT dated 11.3.2013 to deploy unabsorbed ITS to BSNL came up for hearing 19.03.2013 in the Hon'ble Delhi HC. Hon'ble Delhi High Court judgment dated 19.03.2013 in Writ Petition 1803/2013 filed jointly by AIBSNLEA, SNEA(I) and BSNLEU praying for quashing the order of DoT dated 11.03.2013 to deploy unabsorbed ITS in BSNL. Hon'ble bench clearly states that the impugned orders dated 11.03.2013, which both in letter and spirit violate the orders which are passed in W.P.(C) 22515/2005 and especially the order passed in CM No. 16683/2012 (our impleadment application).

Judgment:

"Learned senior counsel for the petitioners, on instructions rightly states that the petitioners are really aggrieved by the impugned orders dated 11.3.2013 which both in letter and spirit violate the orders which are passed in W.P.(C) 22515/2005 and especially the order passed in CM No. 16683/2012".

"--- Petitioners are also at liberty to initiate, if so required, appropriate independent proceedings in accordance with law".

The order of Hon'ble High Court is the outcome of DoT and BSNL order dated 11.03.2013 and a clear endorsement of the prayer contained in our WP.

- BSNL had 40,000 Cr cash reserve initially and making 10,000 Cr profit per year from 2001 to 2006. BSNL is claiming that ITS are the only technical experts. But during last three years BSNL registered heavy losses (this year it may go upto Rs 9000 Cr) when the deputationists are holding the key posts. All other operators who are not having ITS on deputation registered profit also.
- There is no difference between BSNL management and ITS as all the top positions are occupied by the ITS on deputation. CMD and 4 functional directors out of 5 are from ITS, all the Executive Directors and almost all the CGMs are non optees on deputation. The absorbed officers are not given promotion as the deputationists are not vacating the posts they are holding in BSNL.
- Their only intention is to continue in Govt. service with full job security, continue in BSNL on deputation till retirement and enjoy all the benefits of a PSU and Govt. and take promotions on BSNL posts illegally till BSNL survives and then go back to Govt. in case collapse of BSNL.
- DOP&T vide its OM dated 08. 10.2010 decided that on conversion of a Govt. Deptt. to a PSU, "A maximum period of 5 years for framing of rules and another 2 years of phasing out repatriation to those opting to come back to Govt. has been prescribed".
- The BSNL's HAG/SAG/JAG level posts are not being filled up by BSNL's absorbed Group-'A' level executives. But these posts are being regularly filled up by deputationists ITS officers illegally. Whereas, BSNL Management should give priority on promotion to the BSNL's absorbed executives in comparison to the deputanist ITS officers.
- For DGM promotion there is no legal issue as Hon Kerala High Court already given direction to BSNL to give promotions based "subject to the outcome of the case" on a seniority related case. Now the final arguments are over and judgment is reserved. DPC for 414 posts completed and orders can be issued any date if Mgt desires.

Sir, In the above background, we would therefore request you to kindly intervene in the matter so that justice is given to absorbed Group-'A' & 'B' Executives and to avoid discrimination which otherwise has forced us to contest legally. Continuation of any deputation in BSNL/MTNL will certainly affect adversely the Viability of these PSUs.

With kind regards,

Yours Sincerely,
-sd-
(PRAHLAD RAI)
General Secretary

Copy to:

- Shri Ajit Kumar Seth, Cabinet Secretary, Govt. of India, New Delhi
- Shri M.F. Farooqui, Chairman TC & Secy (T), DOT, New Delhi.
- The Secretary, DoP&T, Govt. of India, New Delhi
- The Secretary, DoP&W, Govt. of India, New Delhi
- The Secretary, DPE, Govt. of India, New Delhi
- Shri R.K. Upadhyay, CMD, BSNL, New Delhi-110001
- Smt. Rita Teotia, Addl. Secy(T), DoT, Govt. of India, New Delhi-110001