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No. AIBSNLEA/CHQ/CMD /2019

Dated: 11.9.2019

To,

**Shri P.K. Purwar,
CMD, BSNL,
New Delhi -110 001**

Subject: Fixation of Pay under FR-22(I)(a)(1) and request for non recovery of Pay & allowances already paid to the Ex. Officiating JTOs – Reg.

Reference:

- 1) AGM (Estt-IV), BSNL Co.Lr.no.3-8/2010-Estt-IV (Pt) Dated 18.9.2018.
- 2) AGM (Estt-IV), BSNL Co.Lr.no.3-8/2010/2019/Estt-IV Dated 30.8.2019.
- 3) DGM (HR), CGM, Kerala Lr. No. Hr-II/3-5/JTO (O) Pay fixation/2012/Part-I/65 Dated 19.8.2019.
- 4) Apex Court Order dated 20.7.2018 in SLP no.19274/18 & 19310/18.
- 5) Apex Court Order dated 30.7.2018 in SLP no.19304/18.
- 6) Judgement pronounced by the Hon'ble CAT, Ernakulum on 15.7.2009 vide TA. Nos. 84 to 97 of 2008.
- 7) Judgement pronounced by the Hon'ble High Court, Kerala on 15.9.2017 vide WP.7723,8077,23015 and connected cases.
- 8) AGM(Estt-I), BSNL Co.Lr.no.1-06/2016-PAT(BSNL) Dated 1.5.2019.
- 9) AGM(Estt-IV), BSNL Co.Lr.no.3-32/2013/Estt-IV Dated 22.12.2015.
- 10) CS AIBSNLEA, Kerala Circle Lr. No:AIBSNLEA/Kerala/2017-20/CHQ/169 Date 10.09.2019

Respected Sir,

We would like to bring to your kind notice on the above cited subject. In this regard, kindly find enclosed herewith the letter received from Circle Secretary AIBSNLEA, Kerala which is self explanatory. We wish to submit that the Pay of the Ex-Officiating JTOs was fixed in accordance with FR.35 instead of FR-22(I)(a)(1) since 2005. After a legal battle at CAT, Ernakulum and PCAT, New Delhi BSNL CO has issued a clarification vide ref (9) stating that Pay is to be fixed in the Scale of Pay of Rs. 9850-250-14600 for the years 2005 & 2006 and thereafter on 1.1.2007, it is to be re fixed in the Scale of Pay of Rs.16400-40500.

After the favourable Judgment of FR-22(I)(a)(1) in Hon'ble Kerala High Court vide ref(7) and dismissal of SLP filed by the BSNL Corporate Office in the Hon'ble Supreme Court against the Hon'ble Kerala High Court Judgement vide ref(4), BSNL corporate Office issued a letter vide ref(1) stating that "in view of the dismissal of SLP the case has been re-examined and it has been decided to extend the benefits of Pay fixation under FR-22(I)(a)(1) to all similarly placed Officials who are at par with the Officials". But whereas in the Judgement pronounced by the Honourable CAT, Ernakulum vide ref (6), which was also upheld by the Hon'ble Kerala High

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Court it was ordered "to continue to pay to the applicants (Ex-Officiating JTOs) the Pay & Allowances due to them in the Scale of Pay of JTO i.e. Rs.9850-250-14600 as per FR-22(I)(a)(1) and the respondents (BSNL) was also directed not to recover the Pay & Allowances already paid to the applicants in the Scale of Pay of JTO i.e. Rs.9850-250-14600".

But in contravention to the Judgment and order of Honourable CAT, Ernakulum and Hon'ble Kerala High Court, (SLP filed by BSNL in this regard in the Hon'ble Apex Court was also dismissed) BSNL Corporate Office issued guidelines and clarifications vide ref(1), (9) and (2) stating that they may be reverted from the post of Officiating JTO from retrospective date and at the time of revision of Pay w.e.f. 1.1.2007, their Pay may fixed in the Substantive Grade(i.e., TTA) and be fixed in the capacity of Officiating JTO as per existing provision of Pay fixation by grant of 3% of basic Pay in the Substantive grade and recovery of overpayment from the concerned officials including those retired and due to retire shortly.

In this regard, it is pertinent to note that the Hon'ble Supreme Court ordered in CA no.11527 of 2014(State of Punjab & Others Vs Rafiq Masih) that "recovery from Retired employees or Employees who are due to retire within one year, of the order of recovery" would be impermissible in Law. The same Judgment was endorsed by the Establishment section of BSNL Corporate Office to all field units vide ref (8) dated 1.5.2019 but to our dismay, the same Establishment Section of BSNL Corporate Office vide ref (2) dated 30.8.2019 issued clarification to Kerala Circle to recover the Over payments from the Retired employees as well as those who are due to retire shortly, which results in further litigation and Contempt Petition from the affected person and BSNL also has to incurred unavoidable expenditure in this regard.

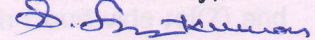
Sir, In view of the foregoing, we, would therefore, request your good self to kindly intervene in the matter and cause to issue necessary instructions to the officer concerned-

- i) To withdraw the BSNL Corporate Office order of AGM(Estt-IV) No.3-32/2013/Estt-IV Dated 22.12.2015 (ref (9), which is in contravention to the Judgment and order of Honourable CAT, Ernakulum and Hon'ble Kerala High Court.
- ii) To modify the clarificatory orders issued to Kerala Circle by AGM(Estt-IV), BSNL CO. Vide No.3-8/2010/2019/Estt-IV Dated 30.8.2019 and to stop the recovery of:
 - a) Over payments from the working employees as per the Judgement pronounced by the Honourable CAT, Ernakulum vide ref (6), which was also upheld by the Hon'ble Kerala High Court.
 - b) Over payments from the Retired employees as well as those who are due to retire shortly as per the Hon'ble Supreme Court orders in CA no.11527 of 2014 (State of Punjab & Others Vs Rafiq Masih)

With Kind regards

Encl: As above.

Yours Sincerely,



(S.Sivakumar)

General Secretary

Copy for favour of kind information and necessary action to.

1. Shri. Sheetla Prasad, Director (CM/HR), BSNL Board, New Delhi - 110001
2. Shri. S.K. Gupta, Director (Finance), BSNL Board, New Delhi - 110001.
3. Shri Saurav Tyagi, Sr.GM (Estt), BSNL CO, New Delhi - 110001.