

BharatSancharBhawan,
HCMathurLane,Janpath,NewDel
hi:110001,
Off:011-23734181
Fax:011-23766143



भारत संचार निगम लिमिटेड
(भारत सरकार का उपक्रम)

BHARAT SANCHAR NIGAM LIMITED
(A Govt. of India Enterprise)

No. 60-1/2022- SCT

Dated: 23.09.2022

To,

Sh. P.C. Chouida
Director, 509 Parliament House Annexe
Ext. Building, B- Block
New Delhi 110001

Sub: Promotion in different cadres and other important concurrent issues of SEWA BSNL- reg.

Sir,

Kindly refer your office OM No. 8(182)/SCTC/2022 dated 02.09.2022 on subject mentioned above vide which the comments on issues raised in forwarded Representation dated 10.06.2022 of Sh N.D Ram GS, SEWA BSNL CHQ, New Delhi has been asked.

2. In this context, it is submitted that the aforesaid representation dated 10.06.2022 has been examined in detail and the comments thereupon are furnished parawise in enclosed Annexure -A for placing it before Hon'ble Chairman, Parliamentary Committee on the Welfare of SCs & STs for appraisal and consideration.

3. This is issued with the approval of the competent Authorities

Enclosure: As above

Ranvir Singh Chauhan
23/09/2022
(Ranvir Singh Chauhan)

Deputy General Manager (SCT)

E-mail: sctcellbsnlco@gmail.com

Copy for information to:

1. Sh T K Kanaso, Under Secretary, Department of Telecom (SCT Section), Sanchar Bhawan, New Delhi w.r.t. Your office OM No. 10-06/2022-SCT dated 09.09.2022.
2. Shri Sh N.D Ram GS, SEWA BSNL CHQ, New Delhi.

Scanned with Ca

Scanned with CamScanner

Annexure -A

The Parawise comments on issues raised in representation dated 10.06.2022 of SEWA CHO, BSNL are given hereunder in detail for appraisal of facts thereupon for consideration:

Para 1: Implementation of recent DoPT guidelines issued vide its OM No. 36012/16/2019-Estt (Res.) dtd 12.04.2022 in true spirit in the matter of reservation in promotion:-

Reply: Above guidelines, dated 12.04.2022, of DOPT is under consideration for implementation in BSNL in consultation with DoPT.

Para 2: Not considering the Backlog Vacancies while determining and issuing revised sanctioned strength despite our repeated request- request for filling of all Backlog Vacancies in all cadres in BSNL:-

Reply: As a part of legacy of erstwhile DoT/DTS/DTO, some 400000 posts with incumbents were transferred to BSNL on its formation on 01.10.2000. It is a matter of record that BSNL was facing difficult financial conditions to the extent that its losses were widened for some years. Based on the financial performance, DoT classified BSNL as "Incipient sick CPSE" in September 2017. Through retirement of over the years and controlling fresh recruitments, around 150000 posts were existing when the revival plan was approved in 2019 by GoI. As part of the Revival Plan, curtailing the number of posts through VRS Scheme was given a priority. Since, during 2019, the VRS Scheme was conceived under the Revival Plan with a clear objective to downsize the existing manpower.

It was administratively and financially not advisable to assess vacancies in particular grade for conducting any recruitment which would have mitigated the benefits of the coming VRS Scheme. Subsequently, the BSNL VRS Scheme was notified on 04.11.2019, whereupon more than 78000 employees across all grades opted for VRS Scheme. The retirement under VRS for these employees became effective on 31.01.2020 and these posts became automatically abolished after this date, as per the Scheme approved by BSNL Board. Thereafter, the Company undertook the Restructuring exercise to decide the hierarchical structure of the Company and all the cadres/grades were restructured with new Sanctioned Strength in consonance with its business requirements and financial limitations.

Further, abolition of large number of posts in BSNL through VRS, retirement and restructuring exercise approved by BSNL Board rule out any utilization of posts that may have been available in the previous years and which are non-existent now. The restructuring exercise shall have no meaning if the vacancies are filled based on the basis of old Sanctioned strength of the cadre. The cadre restructuring approved by BSNL Board cannot be undone by claiming recruitment/promotions against abolished posts. This exercise was tuned according to the survival needs and business prospects of the Company. As all the cadres and their Sanctioned Strength has been restructured, any backlog will arise once the process of recruitment/promotion is undertaken as per restructured sanctioned strength and which shall be filled up as per the prescribed rules by BSNL.

1/7

Ranjana

Para 3: Violation of DPC rules in promotion from AO to CAO during year 2018:-

Reply: The promotion order from AO to CAO was issued vide letter No. 2-4/2018-SEA-BSNL dated 20.11.2018 as under:

Mode of Promotions	OC	SC	ST	Total
On regular basis	276	66	36	378
On adhoc basis	74	16	0	90
Total promoted	350	82	36	468

In this regard, the information involved in above matter is given below for appraisal of the facts-

- The CAO promotion orders were issued on the basis of AO seniority list published on 27.10.2016.
- As there was no clarity emerged on Own merit issue at the time of issuing promotion order, CPC members had decided over an extended period of discussion, that 124 posts to be occupied by SC/ST candidates as per own merit criteria were kept vacant till the final outcome in the matter.
- Against CAO promotion order dated 20.11.2018, OA No. 060/01435/2018 was filed by Anupamyadav & other before Hon'ble CAT, Chandigarh on the grounds that in an identical matter where the catch-up rule has not been applied, this court allowed the OA by directing the respondents to go for promotion after applying the principle of catch-up rules. The Tribunal vide its order dated 30.11.2018 directed BSNL to maintain status quo.
- As a corrective measure, BSNL has conducted Corporate Promotion Committee (CPC) for left out 33 SCs for promotion to the grade of STS on regular basis on 30.01.2019. However, promotion order could not be issued due to status quo as directed by the Hon'ble CAT Chandigarh in its order dated 30.11.2018.

The matter is subjudice as court cases have been filed by Shri Prakash Vir and Shri Anupam Yadav in distinct cases, status of which is detailed as below:

Prakash Vir Case:

The applicant filed the OA No.332/2017 before CAT, Chandigarh bench, seeking to quash order dated 3.7.2014, whereby BSNL had rejected his representation for review of promotion made from the post of JAO to the post of Accounts Officer w.e.f. 2008, by not applying the reservation in matter of promotion and to review the promotions made from the post of JAO to AO vide order dated 8.10.2008 and 6.7.2016 and to consider and promote the applicant to the grade of Accounts Officer w.e.f. 8.10.2008, the date on which the private respondents no. 5 to 245 were promoted. It was also prayed that after reviewing the promotions made after the judgment of M. Nagraj (supra) to the post of Accounts Officer, promotion to the next higher post of Chief Accounts Officer be also made strictly in accordance with the mandate of Hon'ble Supreme Court in the following cases:- i) **Union of India vs Veerpal Singh Chauhan**, reported in JT 1995 (7) SC 231; ii) **S.B. Meena vs State of Rajasthan**, JT 2010 (13) SC 341; (iii) **S. Paneer Selvam and Ors. vs. Government of Tamil Nadu and Ors.** reported in (2015) 1 SCC 292; (iv) **B.K.**

2/7

Ranulmu

Scanned with Ca

Scanned with CamScanner

Pavitra, JT 2017 (2) SC 277 read with mandate in M. Nagraj versus Union of India reported in (2006) 8 SCC 212 by applying the catch up rule.
One MA was filed by BSNL for vacation on interim order granted through order dated 28.03.2017. Hon'ble Tribunal vide its order dated 07.9.2018 modified its order dated 28.03.2017, to the extent that if the respondents carry out promotions, the same will be subject to final outcome of the OA.

After completion of the final hearing in the case, the Hon'ble Tribunal has disposed the OA vide its order 25.02.2020, the observations and the order passed thereon is as under:

"15....the petition is disposed off in the same terms as in the case of **SUNKARA RADHAKRISHNA & OTHERS** (supra), by reiterating the directions as under :-

1. The respondents, in general shall take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions, which shall include:
(i) the verification of the representation of the category of Scheduled Castes & Scheduled Tribe employees in the post or cadre for promotion to which, reservation is sought to be effected and the resultant effect of any on the efficiency of the administration; (ii) the manner in which the concept of creamy layer shall be applied in enforcing such reservations in promotions; and (iii) the duration up to which the promotion shall be in force.

2. Unless and until a decision at the highest level is taken as regards the implementation of the reservation in promotions, the same shall not be affected.

3. If any promotions have taken place contrary to the law as it exists now, it shall be open to the respondents to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.

16. The petition is disposed of in the above terms."

BSNL filed SLP **15148/2020** in the Hon'ble Supreme Court, against the above order and the same has been tagged along with **SLP (Civil) No. 215 of 2020. Case is still pending in the Hon'ble Court.**

Anupam Yadav Case

Promotion from AO to CAO grade vide order No. 2-4/2018-SEA-BSNL dated **20.11.2018**. Consequent to the issuance of the above promotion, certain short comings were noticed with regard to the fact that 33 Senior SC Candidates in the Common Seniority List were left assuming that their respective quota or 15% stands already filled up.

Sh. Anupam Yadav, filed OA No. 060/01435/2018 before CAT, Chandigarh against CAO promotion order dated 20.11.2018 without applying the catch up rule and the mandate as given in M. Nagraj case.

Hon'ble CAT, Chandigarh passed interim order dated **30.11.2018** to maintain 'Status quo. **One WP also filed by BSNL before High Court of Punjab & Haryana** (CWP No. 9614/2019) against CAT, Chandigarh interim orders dated 30.11.2018 which has been **disposed off** by the Hon'ble Court on 28.01.2020 with the following directions.

"....Keeping in view the totality of facts and circumstances as well as the conceded fact that the pleadings before the learned CAT in the aforesaid application are complete and hearing

3/7

Ranbir

is now fixed on 26.03.2020, we deem it appropriate to dispose of the present writ petition with direction to the learned CAT to decide at least the application moved by the BSNL for vacation/modification of the initial impugned orders within 15 days of next date of hearing. Learned counsel for the parties, more or less, agree to the aforesaid direction. The learned CAT is also requested to make an endeavour to dispose of the main original application at the earliest. Disposed of, accordingly."

The OA was listed for hearing on 26.03.2020, but due to lockdown the hearing could not happen and the same has been further listed on 26.03.2020, 10.08.2020, 06.11.2020, 09.02.2021, 19.03.2021, 06.04.2021, 27.04.2021, 18.08.2021, 06.08.2021, 21.09.2021, and now it was listed for final hearing on 04.01.2022.

In this regard, it is submitted that, DOP&T vide No.36028/1/2020-Estt(Res-I) dated 28.04.2020 has issued a clarification on issues relating to reservation in promotion for SCs/STs as per directions of Parliamentary Committee on the Welfare of SCs/STs. Again, in another development, it is learned that Govt. has filed an IA bearing No.53895/2020 and the same came up for hearing on 22.07.2020 before the Hon'ble Supreme Court and the Hon'ble Court directed that " Let the instant application for clarification be considered at the time of final disposal of the main matter(s). List the main matter along with all connected matters after four weeks for final disposal."

It is evident from the above, that multiple MAs, WP SLPs have already filed by BSNL to vacate the status quo order in the case of Anupamyadav. Now the final verdict which is expected to come any time is still pending and next date of hearing is 28.09.2022.

Due to the status quo order, at present BSNL is not able to initiate any promotion in the grade of CAO.

Para 4: Holding of regular DPC for all the vacant post of CAO:-

Reply: In respect of the promotion order issued dated 20.11.2018, the Hon'ble CAT, Chandigarh has issued order in its judgment dated 30.11.2018 to maintain status quo.

Further, in the case of Prakash Vir, the applicant filed the OA No.332/2017 before CAT, Chandigarh bench, seeking for issuance of a direction to the respondents to review the promotions made from the post of JAO to AO vide order dated 8.10.2008 and 6.7.2016 and to consider and promote the applicant to the grade of Accounts Officer w.e.f. 8.10.2008, the date on which the private respondents no. 5 to 245 were promoted, in terms of the judgment in the cases of **M. NAGRAJ VERSUS UNION OF INDIA**, 2006 (8) SCC 212 and **B.K. PAVITRA & ORS. VS. UNION OF INDIA & ORS. JT 2017 (2) SC 277**.

As part of Interim Relief, the applicant prayed for; (i) The candidates belonging to SC/ST category, who were promoted by giving reservation in matter of promotion, in the cadre of AO on 08.10.2008 may be restrained from being considered for further promotion in the cadre of Chief Accounts Officer on Regular/Adhoc/Look after/Officiating basis, (ii) The respondent may also be restrained from making further promotions to the cadre of CAO without finalizing the seniority of AOs taking into the account name of applicant by following catch up rule.

After preliminary hearing the Hon'ble Tribunal vide its interim order dated 28.03.2017 restrained BSNL from making any further promotion to the grade of Chief Accounts officer.

4/7

R. Anubhava

One MA was filed by BSNL for vacation on interim order granted through order dated 28.03.2017. Hon'ble Tribunal vide its order dated 07.9.2018 modified its order dated 28.03.2017, to the extent that if the respondents carry out promotions, the same will be subject to final outcome of the OA.

BSNL filed the reply to the OA and after the final hearing, the Hon'ble Tribunal passed the order dated 25.02.2020, wherein it is said that,

" the petition is disposed of in the same terms as in the case of **SUNKARA RADHAKRISHNA & OTHERS** (supra), by reiterating the directions as under :-

1. The respondents, in general shall take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions, which shall include:
(i) the verification of the representation of the category of Scheduled Castes & Scheduled Tribe employees in the post or cadre for promotion to which, reservation is sought to be effected and the resultant effect of any on the efficiency of the administration; (ii) the manner in which the concept of creamy layer shall be applied in enforcing such reservations in promotions; and (iii) the duration up to which the promotion shall be in force.

2. Unless and until a decision at the highest level is taken as regards the implementation of the reservation in promotions, the same shall not be affected.

3. If any promotions have taken place contrary to the law as it exists now, it shall be open to the respondents to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.

The petition is disposed of in the above terms."

As per the order dated 25.02.2020 in the Prakash Vir case, the Hon'ble Court has generalized all the promotion cases and made it provisional.

BSNL has filed SLP in the Hon'ble Supreme Court, against the above order and the same is still pending. The same is tagged with Jarnail Singh case.

Para5: Not issuing regular promotion to the executives who are already working as DGM (Adhoc) in Telecom Stream as most of executives belongs to SC/ST categories:-

Reply:Regarding DGM(T) Regular promotion, it is submitted that this office vide letter dtd 14.06.2019 had issued a Seniority list of AGM(T), including DGM(T) Adhoc, working on the post as on 01.05.2019 and promoted to DGM(T) Adhoc prior to 01.04.2018 as per Rule 206 of P&T manual-IV. The aforesaid list was however subject to outcome to various court cases.

BSNL is well aware of the provisions of referred DoPT OMs dated 03.04.2013 and 30.03.1988. The difficulty faced by the BSNL in conducting regular promotion to the DGM grade remains that the matter related to reservation in promotion to SC and ST and issue of catch up rule is pending before Hon'ble Supreme Court. Since, the catchup rule is *sub-judice* and pending before Hon'ble Court, the seniority of feeder grade i.e. AGM / DE cannot be finalized. In view of the continuous litigations in the matter of reservation in promotion and catch up rule, regular promotion to the DGM grade may not be conducted by BSNL.

5/7

R. Srinivasan

The promotion orders to DE/AGM in Telecom Stream issued in June-July 2018 were challenged before Hon'ble CAT, Chandigarh Bench in the CP No. 92/2018 in OA no. 750/2018 titled Ramesh Kumar Vs BSNL which was disposed of by the Hon'ble Tribunal vide order dated 25.02.2020. As per order dated 25-02-2020, the Hon'ble Tribunal directed the respondent BSNL to take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions. Further, the following has been mentioned in the order dtd 25.02.2020-" *If any promotions have taken place contrary to the law as it exists now, it shall be open to the respondents to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.*"

BSNL has now filed SLP (C) 000639/2021 in the Hon'ble Supreme court challenging the order dated 25.02.2020 passed by Ld. Central Administrative Tribunal, Chandigarh Bench in OA No. 60/750/2018 praying to tag it with SLP(C) No. 30621 of 2011 titled as Jarnail Singh Vs. LachhmiNarain Gupta &ors and connected matters. The SLP(C) No.639/2021 between BSNL Vs Ramesh Kumar heard on 3-5-2021 along with SLP(C) No.15148/2020 between BSNL Vs Prakash Vir. Notice has been issued in both the SLPs and have been tagged with SLP No.215/2020. The matter is pending in the SC.

Further, above said seniority list will be subject to cases pending in various courts which are as under:

- i. Outcome of the OA No. 063/531/2017 filed by Sh. Naresh Thakur &ors Vs Bharat Sanchar Nigam Limited &Ors before Hon'ble CAT Chandigarh Bench.
- ii. Outcome of the OA No. 063/1571/2018 filed by Sh. Pritam Chand &ors Vs Bharat Sanchar Nigam Limited &Ors before Hon'ble CAT Chandigarh Bench.
- iii. Outcome of the OA No. 063/390/2019 filed by Sh. Virender Rana &ors Vs Bharat Sanchar Nigam Limited &Ors before Hon'ble CAT Chandigarh Bench.
- iv. Outcome of SLP No. 18665-18670/2016 between BSNL Vs J N Lakshmikantha&ors.
- v. Any other court cases pending/filed on the subject matter (seniority list).
- vi. It is also intimated that the seniority of the feeder cadre i.e. AGM level can be finalized after completion of ongoing review DPC in compliance of Supreme Court order dtd 14.12.2017 and 21.01.2015.

Therefore, before considering DGM (T) Regular promotion, seniority issues in feeder cadre, as mentioned above, needs to be settled.

Para 6: Promotion for all the vacant post of DGM(T):-

Reply: Subject to outcome to various court cases (related to seniority issues)/review DPC in compliance of Hon'ble SC order. Further, with regard to promotion (to DE(T)/AGM(T) vide order(s) in June/July 2018), the CP No. 92/2018 and the OA no. 750/2018 were disposed of by Hon'ble CAT Chandigarh vide order dated 25.02.2020. As per order dated 25-02-2020, the Hon'ble Tribunal directed the respondent BSNL shall take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions. Further, the following has been mentioned in the order dtd 25.02.2020-" *If any promotions have taken place contrary to the law as it exists now, it shall be open to the respondents to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.*"

BSNL has filed SLP (C) 000639/2021 in the Hon'ble Supreme court challenging the order dated 25.02.2020 passed by Ld. Central Administrative Tribunal, Chandigarh Bench in OA No. 60/750/2018 praying to tag it with SLP(C) No. 30621 of 2011 titled as Jarnail Singh Vs.

6/7

Ranbir

LachhmiNarain Gupta &ors and connected matters. The matter is pending in the SC. The SLP(C) No.639/2021 between BSNL Vs Ramesh Kumar heard on 3-5-2021 along with SLP(C) No.15148/2020 between BSNL Vs Prakash Vir. Notice has been issued in both the SLPs and have been tagged with SLP No.215/2020.

It is also intimated that the seniority of the feeder cadre i.e. AGM level can be finalized after completion of ongoing review DPC in compliance of Supreme Court order dtd 14.12.2017 and 21.01.2015.

Para 7: Promotion from SDE (T) to AGM:-

Reply: The process is under consideration. The matter is subjudice and a stay is granted by Hon'ble CAT Jabalpur, and the next date of hearing is 26.09.2022.

Para 8: Downgrading the seniority of SC/ST executives in the cadre of SDE (T):-

Reply: The final revised SDEs(T) seniority list no. 12 has been finalized as per DOPT OM dated 03.07.1986.

Point 9: Neglecting and not inviting SEWA BSNL in the meeting of BSNL:-

Reply: There are 18 Unions and 10 Associations in BSNL. In accordance to RNEU Rules 2012 and REA Rules 2014, recognised representative unions (two) and recognised representative association and support association are called for official meetings/communications regarding the growth and viability of BSNL. With regards to SEWA BSNL, it is formed for the welfare of SC/ST employees of BSNL and is always consulted in all matters related to SC/ST welfare.

Recently, dated 12.05.2022, a meeting was held under the chairmanship of Dir(HR) on "Reservation in Promotion- procedure to be followed prior to effecting reservations in the matter of promotion by all departments of the Central Government- DOPT OM No. 36012/16/2019-Estt(Pers) dated 12.4.2022". Further, a meeting was held on 28.07.2022, during which worthy CMD BSNL addressed BSNL unions and associations, Regarding second revival package. SEWA team was invited very cordially to these meetings, along with recognized and support associations.

- XXX-

7/7

Ranbir