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# SC/ST EMPLOYEES WELFARE ASSOCIATION OF BSNL (SEWA)

(The Recognised Association in BSNL, Regn. No. S/58891/07 Delhi)



## CENTRAL HEAD QUARTER

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SEWA BSNL CHQ/2021-24

Dated 31.10.2022

To

**Shri K. Rajaraman,**  
Secretary, Deptt of Telecommunications,  
Sanchar Bhawan, Ashoka Road,  
New Delhi- 110001.

**Subject: In violation of rules of reservation, the unlawful proposal framed by BSNL Management in the draft amendment of SDE Recruitment Rules (SDE RRs) – our strong objection regarding.**

Respected Sir,

On the above subject matter, we would like to inform your kind self that we have already raised our objections before the DIR(HR) and the CMD, BSNL vide our letters of even no. dated 10.2.2022 and 25.03.2022 respectively and also had several round of discussions at different levels on the same. However, it is learnt that the aforesaid proposal of SDE RR has been approved by the BSNL Board and is sent to your good office for its final approval.

2 In this regard, we would like to re-submit our objections as mentioned below for kind consideration please

The Draft RRs of SDE(T) vide point no V at column 12 of Schedule proposes that:

*v) Promotion on Personal Upgradation basis will be considered on completion of 12 years of regular service in JTO grade as on 1st January of the calendar year as per details in Annexure-'B'.*

The Annexure B of this RRs stipulates that:

: Correspondence : \_\_\_\_\_

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(i) A JTO(T) on completion of 12 years of regular service in JTO(T) as on 1st January of the year, if not promoted to SDE(T) on regular basis, will be promoted to SDE(T) on Personal Upgradation basis with effect from the date of assumption of charge

(iv) On such Personal Upgradation promotion, the post of JTO(T) held by the person, shall stand temporarily upgraded to the SDE(T). The Personal Upgradation promotion shall be personal to the executive concerned and the post shall revert back to JTO(T) once the person gets promoted against a regular vacancy in SDE(T) to which he / she has been promoted on Personal Upgradation basis or on his / her vacating the post on account of retirement, resignation or any other reason.

(v) The person promoted on Personal Upgradation basis will be required to perform duties of the post of SDE(T) and the executives shall be liable to be transferred anywhere in India.

(vi) The services rendered by a person promoted on Personal Upgradation basis in SDE(T) shall count for promotion to the next higher level but such promotion to next higher level shall be made only after the person promoted on Personal Upgradation basis gets promoted against a regular vacancy in SDE(T).

(vii) The regular vacancies in SDE(T) arising from time to time shall be filled in accordance with the recruitment rules and other applicable instructions. The persons promoted on Personal Upgradation basis shall be considered for promotion against regular vacancies in SDE(T).

(viii) For purposes of seniority in SDE(T), the persons promoted on Personal Upgradation basis shall be considered for promotion in regular CPC as per provisions of existing RRs, rules of reservation etc.

(xi) Since, promotion from JTO(T) to SDE(T) on Personal Upgradation basis is personal to the executive concerned, hence, no claim what so ever can be made by comparison on grounds of seniority, class, recruitment year, pay scale, pay, community, cadre, Stream, etc .



3. The above proposal of promotion on personal upgradation basis is actually post based promotion where a post of JTO cadre is required to be upgraded to the higher post of SDE and in the name of personal upgradation, a person will be promoted to the cadre of SDE permanently, so in this case reservation is invariably applicable. However, the stipulation vide Para XI of Annexure B, as mentioned above, contradicts its main body provisions which stipulates that **“8. Saving:---Nothing in these rules shall affect reservations, relaxation of age limit and other concession required to be provided for the Scheduled Castes, Scheduled Tribes, Other Backward Classes, Ex-Serviceman and other special category of persons in accordance with the orders issued by the Central Government from time to time in this regard.”**

4. It is the very basic principle that any recruitment rules cannot be framed in contravention to the statutory provisions. The applicability of reservation roster in post based promotion is mandated by constitution of India. Therefore, merely wording this promotion as “personal upgradation” cannot take away the very applicability of rules of reservation. The existing Executive Promotion Policy clearly defines the post based promotion as well as personal financial upgradation and this EPP 2007 is guiding policy for all the existing RRs as well as any proposed RRs.

5. It is settled law that what cannot be done directly, cannot also be done indirectly. BSNL is trying to promote the executive beyond its sanction strength in that particular Cadre/Post which is otherwise not available in normal course as it contravenes the restructuring norms approved by BSNL Board itself. Our concern is only that BSNL is adopting a defective path by naming it “Personal upgradation” and declaring therein that it does not have the applicability of reservation roster. It is well known fact that there is less representation of SC/ST category candidates in all cadres of Group -B & Group -A and these shortfall is met out by applying reservation roster at the time of promotion in that Cadre/Post. However, applicability of reservation roster is up



to the AGM level which is Group-A equivalent post. So, this is the backdoor entry of promotion in the name of personal upgradation to snatch away the very right of reservation from SC and ST. If BSNL is so serious about the stagnation of Executives in the cadre of JTO(T), it should bring proposal before BSNL Board to re-consider and revise the recently approved sanction strength of SDE(T) to the extent to reduce the stagnation instead of choosing this illegal & defective path with the motto to disturb the valid ratio/representation of SC/ST in the cadre of SDE(T) which can otherwise be maintained as per reservation rules.

6. It is pertinent to submit herein that the Hon'ble Supreme court of India vide its judgment dated 06.09.2011 in CIVIL APPEAL Nos.5286-87 of 2005 (***Bharat Sanchar Nigam Ltd. ... Appellant Vs. R. Santhakumari Velusamy & Ors. ... Respondents***) has clearly differentiated and defined the promotion and upgradation as well as applicability of rules of reservation. The relevant Paras are mentioned herein under that:

*21. On a careful analysis of the principles relating to promotion and upgradation in the light of the aforesaid decisions, the following principles emerge : (i) Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include an advancement to a higher pay scale without moving to a different post. But the mere fact that both – that is advancement to a higher position and advancement to a higher pay scale – are described by the common term 'promotion', does not mean that they are the same. **The two types of promotion are distinct and have different connotations and consequences.***

*(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.*



(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale. (iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) 20 and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. **Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.** A (v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. **But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.**

Hence, from the aforesaid judgment it is crystal clear that the BSNL Management using the words 'personal upgradation' intentionally instead of the word 'promotion' in its proposed SDE RR just to deprive SC and ST from their legitimate rights of reservation.



7. Furthermore, after analyzing the nature and characteristics of said "Personal upgradation" it is found that:

- i. In the name of personal upgradation, one JTO will get an advancement of his/her career toward higher position i.e. the grade of SDE and the said advancement toward the higher rank/grade i.e. SDE is of permanent nature.
- ii. The services rendered by a person promoted on Personal Upgradation basis in SDE(T) grade will be taken into consideration for his/her next promotion to AGM grade.
- iii. The duties and responsibility of the person once upgraded will be changed similar to the one holding regular post of SDE(T)
- iv. The jurisdiction of service will be changed from Circle to ALL India.
- v. On retirement, if he /she is not adjusted on regular basis in this SDE grade, he/she will not be reverted to JTO cadres. The PPO will have the designation of higher grade of SDE(T)

Hence, the said 'personal upgradation' is purely a post based promotion from the cadre of JTO to SDE and permanent in nature, so the rules of reservations are invariably applicable at the initial stage of promotion named as personal upgradation.

8. It is further submitted that as per DOPT OMs, reservation is applicable in any promotion given for more than 45 days. Hence, BSNL can't deny the statutory provisions by incorporating its own illegal & unconstitutional provisions in the aforesaid SDE RRs.

9. The reservation is also applicable for even a Look-after Arrangement which is only given for 179 days and is purely temporary in nature. BSNL vide its letter no. 412-13/2011-Pers.I dated 29.04.2013 issued the guidelines wherein it is stated that:

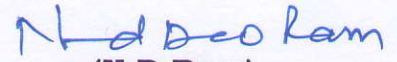
*1. The 'Look after Arrangement' in the given grades may not exceed 180 days at a time.*

*2. Statutory guidelines, relating to reservation in promotion, may also be adhered to in "Look After arrangement".*

Keeping in view of the above submissions it is requested Your Honour to kindly give necessary instructions to the concerned authority in DoT and also to BSNL authority to modify all the relevant paras in the aforesaid proposed SDE RRs to the effect to apply the reservation roster at the initial stage of the promotion termed as personal upgradation from JTO to the grade of SDE.

With kind regards

Sincerely yours'

  
(N D Ram)

General Secretary,  
SC/ST Employees Welfare Association, (SEWA) BSNL,  
New Delhi.

Copy for information and n/a to:

1. The CLO(SCT), DoT, Sanchar Bhawan, Ashoka Road, New Delhi- 110001.