

No.4/13/2012-P&PW (D)
GOVERNMENT OF INDIA
MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES & PENSIONS
(DEPARTMENT OF PENSION & PENSIONERS' WELFARE)

3rd Floor, Lok Nayak Bhawan
New Delhi-110 003.

Dated the 16th March, 2012

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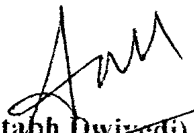
OFFICE MEMORANDUM

Sub:- Absorption of Indian Telecom Service (ITS) etc. cadre officers in Bharat Sanchar Nigam Limited/Mahanagar Telephone Nigam Limited – Issues raised by Department of Telecommunications & ITS officers regarding recruitment in BSNL/MTNL – reg.

The undersigned is directed to refer to the Department of Telecommunications O.M. No.A-11013/33/2011-Abs. Cell (Part) dated 23/2/2012 on the subject noted above requesting the Department of Pension and Pensioners Welfare comments/opinion on queries raised by ITS officers regarding recruitment in BSNL/MTNL.

2. The detailed comments/opinion of Department of Pension and Pensioners Welfare is enclosed at Annexure – 'A'.
3. This issues with the approval of Secretary (Pension and AR&PG).

Encl.: as above (Six sheets).


(Amitabh Dwivedi)
Under Secretary to the Govt. of India
#24644636

Department of Pension and Pensioners' Welfare

Sub:- Absorption of Indian Telecom Service (ITS) etc. cadre officers in Bharat Sanchar Nigam Limited / Mahanagar Telephone Nigam Limited -Issues raised by Department of Telecommunications & ITS officers regarding recruitment in BSNL/MTNL- regarding

Deptt. of Telecommunications have sought views of Department of Pension and Pensioners' Welfare on the issues relating to absorption of erstwhile ITS officers who were en-masse transferred to MTNL in 1986 and BSNL in 2000.

2.1 MTNL came into being by conversion of a part of Govt. department in 1986 and the officers and staff were en-masse transferred in 1986. This conversion and their pensionary benefits was thus to be regulated as per the instructions contained in Deptt. of Pension and Pensioners Welfare OM No.4/8/97-P&PW(D) dated 5/7/1989. The BSNL came into being by conversion of a part of Govt. department in 2000 for which the Govt. had specifically, after detailed discussion in JCM etc., formulated and incorporated a new rule i.e. 'Rule 37- A' in the Central Civil Services (Pension) Rules 1972, whereby the conversion and absorption/pensionary issues were to be regulated.

2.2 Attention is drawn to the para 3 of OM dated 5th July 1989 which is reproduced below:

"As soon as a Central Govt. Deptt, Office or segment of Govt. Deptt. is converted into a PSU/Autonomous Body, the concerned **Government servants will be transferred to such new organization on foreign service terms** in the initial period. The Govt. servants will be permanently absorbed in the PSU/Autonomous Body with effect from a prospective date to be fixed by the concerned administrative Ministry/Deptt. and from that date they will cease to be Govt. servants. **Such of the Government servants who are not willing to be absorbed will have an option to revert back to government service.** In that event, if no suitable vacancies are available in the Office/Deptt./Ministry for such employees, their names will be transferred to Surplus staff Cell."

2.3 Further, attention is drawn to Rule 37-A of Central Civil Services (Pension) Rules 1972 which is reproduced below:

"37A. Conditions for payment of pension on absorption consequent upon conversion of a Government Department into a Central autonomous body or a Public Sector Undertaking –

- (1) On conversion of a department of the Central Government into a public sector undertaking or an autonomous body, **all Government servants of that Department shall be transferred en-masse to that public sector undertaking or autonomous body, as the case may be, on terms of foreign service without any deputation allowance till such time as they get absorbed**

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in the said undertaking or body, as the case may be, and such transferred Government servants shall be absorbed in the public sector undertaking or autonomous body, as the case may be, with effect from such date as may be notified by the Government.

- (2) The Central Government shall allow the transferred Government servants an option to revert back to the Government or to seek permanent absorption in the public sector undertaking or autonomous body, as the case may be.
- (3) The option referred to in sub-rule (2) **shall be exercised by every transferred Government servant** in such manner and within such period as may be specified by the Government.
- (4) The permanent absorption of the Government servants of the public sector undertaking or autonomous body shall take effect from the date on which their options are accepted by the Government and on and from the date of such acceptance, such employees shall cease to be Government servants and they shall be deemed to have retired from Government service.
- (5) Upon absorption of Government servants in the public sector undertaking or autonomous body, the posts which they were holding in the Government before such absorption shall stand abolished.
- (6) The employees who opt to revert to Government service shall be re-deployed through the surplus cell of the Government.

2.4 The minutes of the Committee of Secretaries meeting held on 21.9.2000 on the subject of 'corporatization of Department of Telecom Services' at item (v) observed as under -

"...It was stated that the Department of Telecommunications itself will require services of some Telecom engineers/finance –accounts officers, and therefore, it is possible that a small ITS cadre may continue in Department of Telecommunications. For these services, therefore, **there will have to be only three options: either they continue in reduced ITS cadre in the Department of Telecommunications or they get absorbed in the new corporation, or they make the services available to the surplus pool deployed elsewhere in government.**"

3.1 It is clear from the provisions in the OM dated 5.7.89 as well as Rule 37-A that on creation of a new PSU upon conversion of a Deptt. (completely or partially) the employees transferred to a particular Public Sector Undertaking have option to get absorbed in that particular PSU and in case they are not interested in absorption they are to be brought back to Govt. and re-deployed in the department and if no further vacancies exist transferred to Surplus Cell. This means if a Department is converted into two different Public Sector Undertakings then the two different group of en-masse transferred employees can not be interchanged. They have to decide for absorption in that particular Public Sector Undertaking only to which they are en-masse transferred. **These provisions were taken into account by the Committee of Secretaries as is evident from the minutes of the Committee of Secretaries meeting held on 21.9.2000 quoted in para 2.4 above.**

3.2 Such en-masse transferred employees are transferred to PSU on foreign service terms.

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3.3 The posts in the Govt. are transferred to the new PSU along with employees which means the erstwhile Department has no posts available with it, in case of complete conversion and has only remaining posts in the remaining part of the Department in case of partial conversion.

3.4 Any vacancy arising in the PSU after its creation (may be because of retirement/ promotion of en-masse transferred employee) is a vacancy in PSU as the post have already been transferred to Public Sector Undertaking. **Any promotions/recruitment to such vacancies is appointment in that Public Sector Undertaking**

3.5 Repatriation to the parent Department by the employees who have opted to remain in Govt. would result in **the repatriation of the employees to the posts which he would have held, had he not been on deputation on foreign service terms** i.e the post he held at the time of en-masse transfer to the Public Sector Undertaking.

3.6 Such en-masse transferred employees cannot be re-deployed in remaining part of government Department unless the process of absorption is complete and employee opting to remain in government is redeployed against a vacancy in government Department. This means mobility of employees amongst Public Sector Undertakings and government is not permitted.

4.1 The mobility of Govt. employees to PSU/autonomous body has always been regulated in two distinct categories, viz., mobility on own volition - this is individual mobility and (ii) mobility on conversion of a Department and en-masse transfer. The Govt. has all along regulated these two class of employees by two different set of rules and it has been specifically made clear in this Deptt.'s OM No.4/12/85-P&PW(D) dated 31/3/87. Para 4 of this OM is reproduced below:

"These orders will, however, not be applicable in the cases of those Govt. servants whose Deptts. have been converted into a Central Autonomous Body or a Central Public Sector Undertaking. Their cases are covered by different set of orders on the subject."

4.2 This provision means that en-masse transferred employees are to be regulated as per respective OM or Rule 37-A till the process of conversion is complete. The process involves (i) en-masse transfer (ii) exercise of option for absorption or coming back to government (iii) Repatriation of employees who opt to come back to Govt. (iv) redeployment of these employees.

4.3 In view of above it is understood that until the employees who opt to come back to Government, are re-deployed against a post in government, they cannot be treated any differently other than the provisions in OM dated 5/7/1989 or provisions of Rule 37-A. Once the employee is re-deployed, he attains the status of any other employee and then mobility to any PSU could be covered by instructions on mobility on own volition under Rule 37 of Central Civil Services (Pension) Rules 1972. **It is pertinent to mention here that the spirit of the provisions of conversion of a department require the employees to get absorbed in that new PSU in furtherance of the Govt. policy. Any other route**

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for absorption, of such en-masse transferred employees, to the same PSU may not be in the spirit of the policy of the Govt. contained in extant instructions and rules.

4.4 Once such en-masse transferred employee is re-deployed, obviously with reference to the post he would have held had he not been on foreign service, he may apply through proper channel and seek absorption in any Public Sector Undertaking/Central Autonomous Body and would be entitled to pensionary benefits w.r.t the emoluments drawn in government. He would not get pension on the basis of emoluments drawn during foreign service in Public Sector Undertaking as per the Note-7 below rule 33 of Central Civil Services (Pension) Rules 1972. Note -7 is reproduced below-

'NOTE 7. - Pay drawn by a Government servant while on foreign service shall not be treated as emoluments, but the pay which he would have drawn under the Government had he not been on foreign service shall alone be treated as emoluments.'

4.5 Mobility of en-masse transferred employees of MTNL to BSNL and vice-versa is not in conformity with the extant provisions of instruction/rules.

5. This Department had while communicating its comments on the draft note for the Cabinet circulated by Deptt. of Telecommunications vide OM No.12/10/10 raised these issues.

6.1 It is to be appreciated that the Group 'A' officials who were en-masse transferred to MTNL and BSNL on the respective dates of creation of the organizations, are required to be covered by the scheme of things as existed at that point of time.

6.2 Any officer appointed in these organizations after the date of creation of the respective organization, is employee of the respective organization and therefore not amongst en-masse transferred employees. Such employees being employee of Public Sector Undertaking, is not eligible for the benefits of the Central Civil Services (Pension) Rules 1972.

6.3 Any officer appointed in MTNL after 1.1.86 (the date on which MTNL was created) is an employee of the MTNL and is not eligible for Central Civil Services (Pension) Rules 1972 benefits even if he is posted in BSNL before 1.10.2000 because he is MTNL employee and not government employee. The mobility of such employees to BSNL would be as per terms and conditions of the MTNL and not central government rules. Swapping of officers of MTNL and BSNL is restricted to the employees of these two organizations and not government employees who were en-masse transferred. The en-masse transferred officer's transfer from/to BSNL/MTNL is to be considered deputation to PSU (foreign service) where the relevant instructions on the subject viz. rule of immediate absorption etc. comes into operation.

7.1 The Deptt. of Telecommunications has enclosed a copy of option letter dated 22/9/2011 issued to such en-masse transferred employees of

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BSNL/Mahanagar Telephone Nigam Limited as well as government employees working in the Department of Telecommunications. It is to be pointed out here that only group 'A' officers who are en-masse transferred to MTNL in 1986 i.e. on creation of MTNL may be given option to get absorbed in MTNL in the same manner the officers en-masse transferred to BSNL may be given option to get absorbed in BSNL.

7.2 MTNL officers do not have option to get absorbed in BSNL as well as BSNL officers do not have option to get absorbed in MTNL as they are not en-masse transferred employees of respective organizations. The facility of exercising option in respective PSU is available to the en-masse transferred employees of respective PSU only. **By allowing such option the D/o Telecommunications has gone against the provisions of extant instructions contained in OM dated 1989 and rule 37-A.** This Deptt. had with the approval of MOS (PP) raised this issue of mobility of officers from MTNL to BSNL and vice-versa as well as mobility of officers from MTNL/BSNL to govt. and vice-versa vide OM dated 30.11.2010.

8. Consequent upon conversion of Government Department and transfer of posts along with incumbent to the respective PSU the group 'A' posts in ITS etc. cadre came down to the posts which were retained in Department of Telecommunications. Therefore, **to consider such officers who are en-masse transferred to such PSUs are still holding ITS etc. cadre posts is not correct. These posts belong to cadre of BSNL/MTNL and the ITS etc. cadre has been restricted to the post which remained with Deptt. of Telecommunications.** The 'Demand for Grant' of Deptt. of Telecommunications truly reflected this fact and the group 'A' officers has been therefore, reduced to the post actually available in Deptt. of Telecommunications etc. On repatriation these officers may be adjusted against available posts in Deptt. of Telecommunications and in case no suitable posts are available are to be placed in Surplus Cell.

9. In view of the position explained above following position emerges-

- a) The proposed mobility to Bharat Sanchar Nigam Limited/Mahanagar Telephone Nigam Limited of erstwhile ITS etc. officers shall be under instructions contained in OM dated 1989 and rule 37-A only. The officers may take the individual route only after they are redeployed after repatriation. In such case the officer would be entitled for pensionary benefits based on emoluments that are admissible in government.
- b) The mobility of ITS etc officers undertaken by the Department of Telecommunications including withdrawal of en-masse transferred posts from Bharat Sanchar Nigam Limited to Department of Telecommunications was not in conformity with the extant policy and decision of the cabinet. The decision to en-masse transfer posts along with its incumbents to Bharat Sanchar Nigam Limited (earlier in case of Mahanagar Telephone Nigam Limited also) was taken by the cabinet through cabinet note. It is not known whether the cabinet was approached before transferring back these officials / posts to Department of Telecommunications.

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- c) The mobility of en-masse transferred ITS etc. officials between Mahanagar Telephone Nigam Limited and Bharat Sanchar Nigam Limited needs to be regulated as per guidelines on mobility of Public Sector Undertaking personnel issued by Department of Public Enterprises.
- d) The emoluments of the officers repatriated from Mahanagar Telephone Nigam Limited/Bharat Sanchar Nigam Limited to Department of Telecommunications is required to be regulated as per the 'extant instructions on drawl of pay on repatriation from deputation on foreign service'. **These officials can not continue to draw the pay they drew during foreign service in Bharat Sanchar Nigam Limited/Mahanagar Telephone Nigam Limited.**

10. The Department of Telecommunications has given a detailed status of the Bharat Sanchar Nigam Limited/Mahanagar Telephone Nigam Limited upon repatriation of ITS etc. officers and submitted that to obviate the situation where the (i) services of these organizations are not disrupted and organizational needs do not suffer (ii) highly technically qualified pool of officers await redeployment, the Department felt appropriate that the posts fallen vacant due to reliving of these officers needs to be filled up at the earliest. Department of Telecommunications has further submitted that it would be in public interest if technically qualified and well experienced officers are employed gainfully.

11. In view of the above it is proposed that the Department of Telecommunications moves suitable proposal in consultation with the Ministry of Finance, Department of Expenditure and Department of Personnel and Training, to regularize the acts/omissions committed so far and overcome the constraints as per extant provisions as detailed from (a) to (d) in para 9 above by (i) seeking suitable approval of cabinet and (ii) re-issue separately 'the option' to en-masse transferred ITS etc. cadre officials of (A) Mahanagar Telephone Nigam Limited and (B) Bharat Sanchar Nigam Limited officers. The option document shall also contain the extant provisions regarding status and pay etc. of employees on return from foreign service.
