



SANCHAR NIGAM EXECUTIVES' ASSOCIATION

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No: SNEA/CHQ/MOC/2018-21/09

Dated 13.07.2020.

To

✓ **Shri. Ravi Shankar Prasad,
Hon'ble Cabinet Minister for Communications,
Sanchar Bhavan, New Delhi.**

Sub: Denial of Leave Encashment and Ex-gratia to BSNL VRS-2019 optees having Personal Court Case (other than Departmental) pending in the Court.

Respected Sir,

We would like to express our heartfelt gratitude towards the efforts made by your good self for getting unprecedented approval of a best Financial package from Cabinet in connection with Revival of BSNL. Accordingly, a handsome VRS package was offered to the employees which was very much successful and to the satisfaction of the employees opting for VRS.

With utter dismay we want to bring to your kind notice that recently DOT has issued a letter dated 5th June 2020 (**Copy enclosed**) wherein, it has denied the payment of leave Encashment and Ex-gratia to some of the BSNL VRS-2019 optees. The denial is done by quoting Department of Pension and Pensioners' Welfare ID note in the case of an FIR filed on 01.05.2013 against Shri P.K.Shrivastav, PGM BSNL by Ms Jagrati Rastogi, JTO, BSNL alleging sexual harassment and the case was under trial in the court of Manjeet Pal, JMJC, Faridabad.

The ID note from DoP & PW says that the judicial proceedings initiated against a Government Servant by the state police on the basis of complaint by a private party for any action, other than in official capacity would come under the ambit of Rule 69 of CCS (Pension) rules 1972. After issuance of this clarification, the vigilance clearance has not be given in case of such VRS-2019 optees having a Personal Court Case (other than department) pending in Hon Court leading to denial of Leave encashment & Ex Gratia.

The same yardstick can't be applied to VRS-2019 optees in view of the following reasons:

1. The VRS retirement was applied as per BSNL notification No.1-15/2019 PAT/BSNL dated 04.11.2019. The same was accepted by BSNL Corporate Office vide letter No.VRS 2019/Corporate/A/00000000281 dated 08.01.2020. Accordingly, BSNL management have issued the permission to retire on VRS Scheme and were relieved. No reasons for withholding the Vigilance Clearance was made known to the appellant.
2. No provision was incorporated in the VRS Scheme or till the closure of option window, indicating the withholding of vigilance clearance in view of Personal Court Cases (other than department). DOT letter dated 24.03.2003 dealing with such cases was in force during VRS.
3. The VRS optees having such cases were totally handicapped to withdraw from VRS Scheme since it was not allowed as per agreement of VRS Scheme 2019 after closure of VRS window. The appellant was placed in between devil and the deep sea. Through some sources these people came to know that their Vigilance clearance was withheld due to a

personal court case and the same was not informed to such individuals despite their representation.

4. Taking a parallel from the DOP & PW clarification in a case of Shri P. K. Shrivastav, PGM BSNL and Superseding the DOT letter dated 24.03.2003 by DOT letter No. 36-9/2002-Pen(T)pt. Dated 05.06.2020 is not correct as 24.03.2003 letter has the course of power from the department of legal affairs vide – UO No.10412/3/ dated 18.03.2003. It also states that all acts of misconduct under CCS (Conduct) Rules for which the Government servant could be punished under the CCS (CCA) Rules, during the period of service would be covered by the provisions of Rule 9 and Rule 69 of the CCS (Pension) rules. Therefore, after retirement, in cases where the judicial proceedings for any act during service (whether in official capacity or otherwise) which could be termed as misconduct under the provisions of CCS (Conduct) rules are continued after retirement, such judicial proceedings shall come under the purview of Rule 9 and Rule 69 of the CCS (Pension) Rules. After retirement if the Government servant is found guilty of misconduct during service action can be taken under Rule 9(i) of the CCS (Pension) Rules, and his pension/gratuity can be withheld/withdrawn.

5. These VRS-2019 optees are drawing the pension under Rule 69 of CCS Pension Rules 1972. The condition stipulated for provisional pension the appellant does not come under the ambit. In VRS Scheme 2019 does not include 'Gratuity'.

6. In VRS Scheme 2019, Corporate Office letter No.1-15/2019 PAT (BSNL) dated 04.11.2019 read with Annexure-1 page 6, Sl. – 7 (iii) lucidly mentions – the VRS option employees, facing Departmental judicial proceeding shall be accepted and earned leave encashment, transfer grant, GPF/CPF and pension will be released as per Rule 69 of CCS (Pension) Rules 1971.

7. Since the condition provided in Rule 69 of CCS (Pension) Rules 1972 restricts to commutation. There is no bar to pay Ex-gratia and encashment of Leave which is earned by appellant.

8. The appellant is not in receipt of any charge-sheet or judicial proceedings on presumption, imagination, conjecture and surmise it is stopped hence it is bad in law.

9. The official has retired on VRS scheme 2019 on 31.01.2019. On misconception the Ex-Gratia and Leave encashment are withheld. For the retired employee, the Disciplinary action is contemplated under Rule 61 of BSNL CDA Rules 2006 (of course no rules are framed about retired employees).

10. More interestingly, this clarification is applicable only for the VRS optees who retired on 31.01.2020. It is not applicable for those retired on Superannuation on the same day, 31.01.2020.

Sir, with-holding Leave encashment and Ex-gratia is in contravention of Rule 69 of Pension (Rules) 1972. As quoted supra, in provisional pension, only Gratuity cannot be paid. Hence, these VRS optees are entitled for encashment of Leave and Ex-gratia. It is the commitment and mandate in statute.

A) No communication about the specific reason in Vigilance Clearance either for departmental proceedings, judicial proceedings or personal cases. Personal cases are not defined in VRS Scheme 2019.

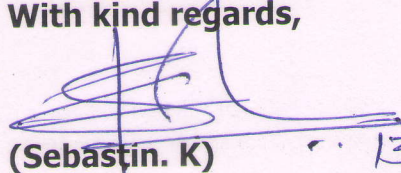
B) The disciplinary actions are to be initiated under Rule 61 of BSNL CDA Rules 2006. Such VRS optees do not come under ambit and scope. For the purpose of these rules "absorbed employee" means DOT including erstwhile DTS/DTO employees who have taken permanent absorption in BSNL.

No rules have been framed after retirement on VRS Scheme 2019 in respect of substantial law or procedural law. In Rule 61 of BSNL Rule the event of four years is put as limitation to

initiate the disciplinary proceedings. Herein, so far the department has not informed the VRS optees of the personal case pending against or judicial case pending against or departmental proceedings pending against. Under the circumstances, the appellant is entitled for Leave encashment and Ex-gratia without driving the appellant in financial stringency.

We most humbly request your goodself to intervene in the matter to release the entitled and eligible Leave encashment and Ex-gratia payment to VRS-2019 optees having Personal Court Case(other than departmental) pending in the Court. This kind act of yours will mitigate their sufferings.

With kind regards,



(Sebastin. K)

13/07/2020

Copy to:

1. Shri. Anshu Prakash, Secretary, DoT for information and n/a pl.
2. Shri. P. K. Purwar, CMD, BSNL for kind information and n/a pl.
3. Shri. Bharat Kumar Jog, Member(Services), Digital Commission for kind info and n/a pl.
4. Shri. Arvind Vadnerkar, DIR(HR), BSNL Board for kind information and n/a pl.