



BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]
CORPORATE OFFICE-PERSONNEL BRANCH
4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110001

No. BSNLCO-PERS/13(22)/5/2021-PERS1

Dated: 16.11.2022

(Speaking Order)

Subject: OA No. 350/01626/2022 filed by Vinod Kumar Nagwanshi in Hon'ble CAT, Kolkata Bench

Reference is invited to Hon'ble CAT, Kolkata Bench order dated 13.09.2022 in OA No.350/01626/2022 filed by Shri Vinod Kumar Nagwanshi vide which the Hon'ble court has directed as under:

"4. Ordered accordingly, let a detailed speaking order be issued on the representation and let a seniority list be published afresh in the light of the DOPT OM dated 13.08.2021 in consideration of the grievance of the applicant as projected in their representations and till such time there shall not be any promotion from SDE(T) to AGM cadre".

2. Further, the Hon'ble CAT, Kolkata Bench vide order dated 11-11-2022 in Review Application No.22/2022 in OA No.2626/2022 ordered as under:

"...4. The order very clearly indicates that the respondents shall consider the representation preferred by the applicants (OA), in the light of the Apex Court decision etc., before any promotion is granted, so that no further rights are created in favour of any class of promotes, to avoid further litigations. There was no mandatory order to accord promotion. Therefore, it would only be fair on the part of the authorities to consider the representation, dispose it of and grant promotions".

3. In compliance of the Hon'ble Tribunal's order dated 13-09-2022 and 11-11-2022, the representation dated 25.11.2021 of Shri Vinod Kumar Nagwanshi has been considered and examined by Competent Authority. Accordingly, the detailed speaking order is furnished as under:

4. Prior to advent of SDE(T) Recruitment Rule (RR) 2002, recruitment and service conditions of SDE(T) were governed by Recruitment Rule 1996. Before that, RRs 1981 were applicable. These RRs have been dealt with in S.K. Dubey's judgment according to which RR 1981 provided for ROTA but such provision was dropped in RR 1996. In SDE(T) RR 2002 also, there is no provision of ROTA. In SDE(T) RR 2002, only Quota was modified vide 30.07.2007 w.e.f. vacancy year 2006-07 for Seniority Quota (SQ) and Competitive Quota (CQ) from 75% and 25% to 67% and 33% respectively. So, it is clear that ROTA is not provided in SDE(T) RR 2002. Thus, provision of ROTA for determining the inter-se-seniority was absent in both 1996 and 2002 SDE(T) RRs.

5. Further, in order to address the issue of inter-se seniority between SQ and CQ, later to S.K. Dubey's judgment(delivered on 12.8.2014), the BSNL Board on 28.8.2015 approved modification of RR 2002 introducing ROTA in the ratio of 2:1 for SQ and CQ category candidates irrespective of year of appointment /date of joining. The said modification was published/circulated to all Heads of Telecom Circle on 08.05.2018. The modification significantly states that it will be applicable from retrospective date w.e.f. 28.08.2015. Thus, this modification in SDE(T) RR 2002 is not applicable to promotions done in the grade of SDE(T) before 28.08.2015.

6. A three Judge Bench of the Hon'ble Supreme Court in its order dated 12.08.2014 in civil appeal No. 7830/2014 (**BSNL &Ors. Vs S. K Dubey&Ors.**)has held the following:

"Moreover, it is well settled principle in service jurisprudence that a person appointed on promotion shall not get seniority in earlier year but shall get a seniority of the year in which his/her appointment is made. In the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. It is common ground that 1996 Rules or 2002 Rules have nothing to do with inter se seniority between promotes of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Department Competitive Examination."

7. In SLP No. 35756/2012 (**BSNL &Ors. Vs. S. Sadasivan & Ors.**), the Hon'ble Supreme Court of India in its order dated 12.08.2014 upheld the orders dated 25.11.2010 in T.A No 06/2009 (S. Sadasivan Vs. BSNL &Ors.) passed by Hon'ble CAT Mumbai Bench and order dated 21.06.2011 passed by Hon'ble High Court Bombay in WP No. 3725/2011 by dismissing SLP (BSNL Vs S. Sadasivan) by passing the following order:

"In paragraph 3 of the impugned order, the Hon'ble High Court has observed thus:

The question is: Whether the tribunal was right in answering the controversy on the principle that the correct date of reckoning seniority of the respondent ought to be taken as 7th December 2001 which is his date of joining. In our opinion, there is no infirmity in the said view taken by the tribunal.

We find no infirmity with the above view taken by the High Court. Special leave petition is, accordingly, dismissed."

8. Subsequently, in civil appeal No. 14967/2017 (**Vinod Verma Vs. Union of India &Ors.**), a Division Bench of the Hon'ble Supreme Court in its order dated 02.04.2019 observed that the issue has been delved in the case of S.K. Dubey's (supra) and followed the ratio laid therein holding that-

"In view of the facts as noticed above that the controversy raised in this appeal is covered by three-Judge Bench judgment dated 12.08.2014 we see no necessity to delve into various other arguments

raise in this appeal. We are not persuaded to take any different view to one which has been taken by three-Judge Bench as noted above."

Thus, in the facts of the case, particularly when the provision for ROTA was dropped in the 1996 Rules and 2002 Rules from the earlier 1981 Rules, the general observation that 'determination of seniority can be provided by Executive instructions if the subject matter is not covered by the statutory rules' cannot be of any help to the CQ¹ candidates. The rule which was conspicuously left, cannot be dragged through administrative/executive instructions.

9. Hon'ble CAT Chandigarh in OA No. T-84 & 85-HR-2009 in case of **Dewan Chand etc. Vs UOI etc.** on the same subject of seniority between SQ and CQ has given the following directions in its order dated 25.08.2009.

"21. The sub total of the above discussed judgment is that if there is quota provided in the rules for recruitment to by different methods to posts i.e by way of promotion on seniority-cum-fitness basis and recruitment by way of promotion through limited departmental examination or for that matter direct recruitment, in as particular proportion or quota which in this case happens to be 75:25, and recruitment takes in a single process, then it is practical, possible and permissible to follow the rules of rotation of vacancies for fixation of inter-se-seniority of incumbents appointed through both the sources. However, if the selection does not take place in a single process and promotes joined their duties after getting promotion but persons under limited departmental examination quota or direct recruitment get selected after few months or years, they can't be allowed to claim that they should be granted seniority from the date of occurrence of year of vacancy. However, it has been made clear that quota has to be maintained.

"23. The respondents have relied upon instructions issued by government of India, Department of Personnel and Training issued vide OM dated 03.07.1986 Para 3.2 of which clearly provides that where absorbee's are affected against specific quota prescribed in recruitment rules, the relative seniority of such absorbee's vis-à-vis direct recruits or promotees shall be determined according to the rotation of vacancies which shall be based on the quota reserved for transfer, direct recruitment, and promotion respectively in the recruitment rules. In this case, a person who has become member of service in 2004 is sought to be placed below persons who qualified an examination on the basis of syllabus prescribed in 2006, against vacancy of 1996 or so. This kind of approach is totally unreasonable, unwarranted and illegal. In any case, official respondents would have done well to issue their own instructions for fixation of seniority of incumbents when there is clash of interest among thousands of officers and there is huge delay in making selection.

24. In view of the above discussion, both these Original Applications are allowed. Orders/seniority lists impugned in these petitions are quashed and set aside. The respondents are directed to re-draw the seniority of



officers of TES Group-B on the basis of dates of joining of incumbents, as discussed above, within a period of six months from the date of receipt of copy of this order. Before undertaking such exercise, respondents may invite objections from the persons likely to be adversely effected before re-drawing seniority as observed herein above. No Costs."

10. SDEs(T) seniority List No. 6 and 7 consist of SDEs(T) promoted from JTOs(T) on the basis of SDE(T) Recruitment Rules 1996. SDEs(T) seniority List No. 8 consists of SDEs(T) promoted from JTOs(T) on the basis of SDE(T) Recruitment Rules 2002. The details of seniority lists of SDEs(T) promoted upto vacancy year 2005-06 are given below:-

Seniority List No	Quota	Date of promotion order (Bulk)
6	SQ	26.04.2000
7	SQ	07.12.2001
7	CQ	26.05.2004
8	SQ	16.09.2004
8	SQ	15.03.2007
8	CQ	03.11.2008

11. The seniority lists 6 and 7 were revised and finalized after many rounds of litigations upto Hon'ble Supreme Court and judgment of the Hon'ble Supreme Court as detailed in preceding paras above. Similarly, the seniority list no. 8 has also been prepared on the same principles.
12. The provisional seniority list no. 9 of SDEs(T) which comprises of SDEs(T) from SQ and CQ pertaining to vacancy year 2006-07 was circulated vide this office letter No. BSNLCO-PERS/13(21)/1/2020-PERS dated 10.08.2020 for inviting objections/errors/ omissions etc. It was limited to SQ candidates of vacancy year 2006-07 as a large number of JTOs were promoted to SDE(T) under SQ quota for vacancy year 2007-08 and 2008-09 before the promotions dated 02.07.2013 of CQ candidates of vacancy year 2006-07 and final seniority list 9 was published on 27.10.2021 in compliance of Hon'ble CAT Principal Bench new Delhi judgement dated 15.07.2021 in OA 1263/2021 (T. Jayaseelan & Ors. Vs. BSNL)
13. Thereafter, final seniority list numbers 10 to 13 of SDEs(T) who have been promoted as per SDE(T) RR 2002 before 28.08.2015 i.e effective date of amendment in the SDE(T) RR 2002, as details given below table, adopting the same ratio as in seniority list 9 were published on 22.02.2022 and subsequently, the final seniority list no. 12 revised and published on 22.07.2022.

Seniority List No	Promotion against Vacancy Year	Quota	Date of promotion order
10	2007-08	SQ	15.05.2009
11	2008-09	SQ	30.03.2011
12	2006-07	CQ	02.07.2013
13	2007-08, 2008-09 & 2009-10	CQ	02.07.2013

14. It may be stated that BSNL vide speaking order dated 20-04-2011 has clearly indicated its stand vide para 5 stating that **".....5. Hence, in view of the above, it may be observed that promotions to the grade of SDE(T) are being issued through both the methods viz. LDCE and seniority quotas from time to time without any discrimination. It is clarified that LDCE examination to the grade of SDE(T) is conducted for a combination of vacancy years only due to certain unavoidable administrative reasons. Moreover, the same is as per the spirit of RRs of SDE(T) and in accordance with the Notes under Column 12 of Schedule of RRs. Further, from the position explained in detail in preceding paras, it is apparent that despite holding LDCE or DPC late, seniority has invariably been granted to the JTOs with respect to their respective eligible vacancy year as per SDE(T) RRs causing no loss of seniority etc. as averred by the applicants. Accordingly, the request of the applicants to conduct separate LDCE year-wise for vacancy years 2006-07 onwards does not hold merit and cannot be acceded to".**
15. However, the above stand of BSNL has been negated by the Hon'ble Supreme Court vide judgment dated 12-08-2014 in CA No. 7830/2014 between BSNL & Ors Vs S K Dubey & ors which is re-iterated as under: **"Moreover, it is well settled principle in service jurisprudence that a person appointed on promotion shall not get seniority in earlier year but shall get a seniority of the year in which his/her appointment is made. In the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. It is common ground that 1996 Rules or 2002 Rules have nothing to do with inter se seniority between promotes of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Department Competitive Examination."**
16. It may further be seen that the DoP&T in view of Hon'ble Supreme Court order dated 19.11.2019 Civil Appeal No. 8833-8835 of 2019 K Megha chandra Singh & Ors Vs Ningam Siro & Ors issued revised instructions relating to seniority vide OM No.20011/2/2019-Estt.(D) dated 13th August, 2021 has clarified as under:
".....Para 6(ii) The terms 'recruitment' and 'appointment' have to be read harmoniously and the determination of seniority for recruitees would depend on their actual appointment and not the initiation of recruitment process itself. It thus follows that the seniority of direct recruits and promotes henceforth stands delinked from the vacancy year of vacancy.
6(v) The term 'available' both in the case of direct recruits as well as promotes, for the purpose of rotation and fixation of seniority shall be the actual year appointment after declaration of results / selection and completion of pre-appointment formalities as prescribed.
6(vi) Thus, appointees who join in the concerned recruitment year and those who join in subsequent year(s), would figure in the seniority list of the respective year of their being appointed. To that extent it may not be necessary to go into the question of quota meant for direct recruits and promotes to find out as to the

year in which the vacancy arose against which the recruitment is made.

7(v)(c) Where in case of promotes or direct recruits, the year of appointment is the next year or an year subsequent to the recruitment year, the seniority such promotes and direct recruits would be determined with reference to the year of their actual joining / appointment to the post, since they were not able to join in the said recruitment year in which the vacancy arose. Thus, they would get seniority of the year in which they actually join i.e. year in which formal appointment order is used or they are borne in the service / cadre and that they shall not get seniority of any earlier year (viz. year vacancy / panel or year in which recruitment process is initiated)".

17. Further, it is intimated that DoPT OM No. 20011/1/2006-Estt.(D) dated 03.03.2008 has been withdrawn vide OM dated 04.03.2014 and the OM dated 04.03.2014 has been withdrawn vide DoP&T OM No.20011/2/2019-Estt.(D) dated 13.08.2021.
18. With regard to inter-se-seniority of SDE(Electrical)/SDE(Civil) as per vacancy year concept, it is stated that the inter-se-seniority of SDEs(Telecom) has been prepared and finalized as per Hon'ble Supreme Court's directions as stated in preceding paras. In the matter of fixation of inter-se-seniority of SDE(Electrical)/(Civil), there is no such directions from any of the Courts. However, inter-se-seniority in respect of SDE(Civil) is under challenge in Hon'ble CAT, Lucknow in OA No. 245/2022 filed by Ramjee & others Vs BSNL.
19. DOPT OM's related to determination of seniority dated 22.12.1959, 24.06.1978, 07.02.1986, 03.07.1986 and 07.02.1990 have been well considered by Hon'ble Supreme court in its judgment dated 02.04.2019 in Civil Appeal No.14967/2017 (Vinod Verma Vs Union of India & Ors) in spite of that Hon'ble Apex Court has upheld the judgment pronounced by three judge bench on 12.08.2014 in S.K Dubey case directing the following as under:
".....the controversy raised in this appeal is covered by three-Judge Bench judgment dated 12.08.2014 we see no necessity to delve into various other arguments raise in this appeal. We are not persuaded to take any different view to one which has been taken by three-Judge Bench as noted above."
As such, there is no concealing of facts as alleged by the applicant. Further, it is stated that seniority list No's 6 and 7 were governed by SDE(T) RR 1996 and seniority list 8 by SDE(T) RR 2002. Since both the RRs didn't have the provision of ROTA for determining the inter-se-seniority, so these SDE(T) RRs were dealt by Hon'ble Apex court in S. K Dubey case to settle the inter-se-seniority dispute between seniority and competitive quota and has held the following:
"....In the absence of any express provision in the rules, no promotion or seniority can be granted from a retrospective date when the employee has not been born in the cadre. It is common ground that 1996 Rules or 2002 Rules have nothing to do with

inter se seniority between promotes of 75% quota based on seniority-cum-fitness and 25% promotion on the basis of Department Competitive Examination."

The matter related to fixation of SDE(T) seniority list No's 9 to 13 is also governed by SDE(T) RR 2002. Therefore, the law/ratio for determining of inter-se-seniority laid down by Hon'ble CAT Chandigarh in OA T-84 &85-HR-2009(in case of Dewan Chand etc. Vs UOI etc.), Hon'ble Supreme court in Civil Appeal No.7830/2014 (BSNL & Ors Vs S K Dubey & Ors) and subsequently in Civil Appeal No.14967/2017 (Vinod VermaVs Union of India &Ors) for seniority list no 6, 7 and 8 is squarely applicable for the seniority list Nos 9 to 13 and the same have been applied in finalizing the seniority list Nos 9 to 13.

20. In SDE(T) RR 2002, only Quota was modified vide 30.07.2007 w.e.f. vacancy year 2006-07 for Seniority Quota (SQ) and Competitive Quota (CQ) from 75% and 25% to 67% and 33% respectively but not the ROTA which is meant for determining the inter-se-seniority. The provision of determining the inter-se-seniority was inserted in SDE(T) RR 2002 vide letter no. 20-24/2001-Pers.II dated 08.06.2018 which is applicable w.e.f 28.08.2015. The seniority list No's 9 to 13 consist of SDEs(T) who were promoted against VY 2006-07 onwards before 28.08.2015 (i.e. before the amendment of SDE(T) RRs 2002) on the basis of SDE(T) Recruitment Rules 2002. Thus, amended RRs are not applicable to the SDEs(T) of seniority list 9 to 10 including the applicant promoted for VY 2006-07 onwards for fixation of their seniority as per ROTA.
21. Para 7(iii) of DOPT OM No 20011/2/2019-Estt.(D) dated 13.08.2021 provides that " In case of direct recruits and promotes appointed/joined during the period between 27.11.2012 and 18.11.2019 and in which case inter-se-seniority couldn't be finalized by 18.11.2019, shall also be governed by the provisions of OM's dated 07.02.1986/03.07.1986 read with Om dated 04.03.2014, unless where a different formulation/ manner of determination for the seniority has been decided by any Tribunal or court.

It can be abundantly clear in the above proviso of DOPT OM dated 13-8-2021 that seniority lists decided as per any Tribunal or Court are final. In the absence of provision of ROTA in SDE(T) RRs 1996 and also in SDE(T) RR 2002, the issue of fixation of inter-se-seniority between seniority quota and competitive quota SDEs(T) has attained finality subsequent to the judgment of Hon'ble Supreme court dated 12.08.2014 in S. K. Dube and S. Sadasivan judgments and dated 02.04.2019 in Vinod Verma Judgment bringing to end decade long litigations and closing of all cases pending before various courts. The Hon'ble Supreme court in the said judgments as stated supra has categorically and decisively observed that the date of joining is the criteria for fixing the seniority between seniority and competitive quota SDEs(T). Thus, manner of determination of seniority between SQ and CQ SDEs(T) had already been decided by Hon'ble Supreme court which is in accordance with the provision of DOPT OM dated 13.08.2021 under para 7(iii). Accordingly, the final seniority list Nos. 9 to 13 were prepared and

finalized by following the law/ratio laid down in the Hon'ble Supreme Court order dated 12-08-2014 in Civil Appeal No.7830/2014 (BSNL & Ors Vs S K Dubey & Ors) and order dated 02-04-2019 in Civil Appeal No.14967/2017 (Vinod Verma Vs Union of India &Ors).

Further, BSNL has time and again re-iterated this stand in view of directions of different Hon'ble Tribunals vide Speaking orders dated 9-7-2021 (in OA No.310/00454/2020 filed by Sh M Kolappan and others Vs BSNL & Others & MA No.310/00028/2021 filed by Sh. K Senthil Kumar & others in Hon'ble CAT, Chennai Bench), speaking order dated 07.10.2021(in OA No. 180/295/2021 filed by Mary Sophia T.T & others Vs BSNL in Hon'ble CAT, Ernakulam Bench) and Speaking order dated 15-11-2021 (in OA No.2087/20221 filed by Ajit Kumar & 11 others Vs BSNL in Hon'ble PB CAT, New Delhi.

Hon'ble CAT, Principal Bench, New Delhi vide order dated 15-07-2021 in OA No. 1263/2021 filed by T. Jayaseelan & Ors Vs BSNL has disposed of the OA with following directions: **"..5.....We, therefore, dispose of the OA, directing the respondents to publish the final seniority list within three months from the date of receipt of a copy of this order, taking into account, the objections submitted by the applicants and others, to the provisional seniority list dated 10-08-2020"**. In compliance of the said directions of Hon'ble PB CAT, New Delhi, BSNL has finalised after considering all the objections received from the stake holders and published the seniority list No.9 vide letter No BSNLCO-PERS/13(21)/1/2020-PERS1 dated 27.10.2021 (Seniority list No. 9). Further, final seniority lists No.10 to 13 were also published in similar manner vide BSNLCO-PERS/13(22)/3/2021-PERS1 dated 22.02.2022 (Seniority list No 10 to 13) and BSNLCO-PERS/13(22)/5/2021-PERS1 dated 22.07.2022 (Revised seniority list No 12).

Further, it is worth mentioning here that the applicant in OA No.1263/2021 (T Jayaseelan & anr) have filed CP No.60/2022. Vide order dated 11-7-2022, the Hon'ble PB, CAT, New Delhi has disposed of the said CP stating that **".....At the outset, learned counsel for the petitioners submits that the directions of this Tribunal in the aforesaid OA has been complied with. Accordingly, the present CP is closed."**. Thus, the Hon'ble Tribunal has uphold the criteria adopted while finalization of the seniority lists No.9 to 13.

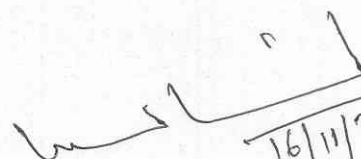
Since all these seniority lists No.9 to 13 were finalised and published after inviting objections from all the stake holders and after consideration of their objections, these seniority lists have attained finality.

22. In response to the orders dated 13-09-2022 passed by the Hon'ble CAT, Kolkata Bench, the manner of determination of seniority of SDEs(T) in seniority lists nos.09 to 13 has been re-examined by the Competent Authority and it is found that these were prepared and finalised as per the law/ratio laid down in various judgments of Hon'ble Supreme Court as detailed above and in accordance to the instructions issued by DoP&T OM dated 13-08-2021. Hence, there is no illegality in issuing final seniority list No.9 and final seniority list Nos 10 to 13 published on

27.10.2021 and 22.02.2022 respectively, and subsequently final revised seniority list no. 12 published on 22.07.2022. Further, it is stated that these seniority lists are also in consonance with the instructions issued by DoPT vide OM dated 13-08-2021 so there is no need to publish the seniority list Nos 9, 10, 11, 12 and 13 afresh.

23. In view of the aforementioned, it is reiterated that the seniority lists No.9 to 13 have been prepared and finalised as per the Hon'ble Supreme Court orders dated 12-08-2014 in CA No.7830/2014 in BSNL vs SK Dubey and order dated 02-04-2019 in CA No.14967/2017 in Vinod Verma Vs BSNL. Thus, as per the para, these seniority lists are in consonance with the DoPT instructions (Para 7(iii)) conveyed vide OM No.20011/2/2019-Estt(D) dated 13-08-2021.
24. Thus, the competent authority found no merit in the contention raised by the applicant vide his representation dated 25.11.2021. Accordingly, the said representation is hereby disposed of being devoid of any merit.

This issues with the approval of competent authority.


16/11/2022
(Kuldeep Singh)
AGM(DPC-SM)

To

Shri Vinod Kumar Nagwanshi, SDE(T), West Bengal Telecom Circle through
CGMT, West Bengal Circle, Kolkata

Copy to:

CGMT BSNL, West Bengal Telecom Circle, Kolkata – with a request to get the speaking order delivered to the Executive and the dated acknowledgement so obtained from the Executive may be forwarded to this office.