

## Personnel Section

Corporate Office  
4<sup>th</sup> floor, Bharat Sanchar Bhawan,  
H.C.Mathur Lane, Janpath  
**New Delhi - 110001**

Tel.: 011 - 23328815  
Fax: 011 - 23328498



भारत संचार निगम लिमिटेड  
(भारत सरकार का उपक्रम)  
**BHARAT SANCHAR NIGAM LIMITED**  
(A Govt. of India Enterprise)

BSNL  
Faster than your thoughts  
2010

### **MOST URGENT**

No: - 400-106/2011/Pers.-I/93

Dated 5/12/2012

To,  
All Heads of Telecom Circles/ Metro Districts & Other Administrative Units  
All GMs/PGMs of BSNL CO New Delhi  
Bharat Sanchar Nigam Limited.

**Subject: - ACRs/APARs with below bench mark grading considered in past DPCs and upgradation of grading in compliance of Hon'ble Court orders-Regarding.**

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Kindly refer to the DoT letter No. 404-25/2012-STG-III dated 27.11.2012 and DOPT OM no. 21011/1/2010-Estt.A dated 28<sup>th</sup> September, 2012 (copy enclosed) regarding ACRs/APARs with below bench mark grading considered in past DPCs and upgradation of grading in compliance of Hon'ble Court orders.

In this connection you are requested to strictly comply all the instructions issued vide DOPT OM 28<sup>th</sup> September 2012 while dealing such court cases in future.

This may also be brought to the notice of all concerned authorities.

This may be treated as **MOST URGENT** please.

This issues with the approval of competent authority.

**(Deepak Agrawal)**  
Dy. General Manager (Pers.)  
BSNL CO New Delhi

Enclosure - As above

Copy to:-

1. PPS to CMD/All Directors, BSNL, Corporate Office, New Delhi.
2. CVO BSNL Corporate Office, New Delhi.
3. ED (CN/CA/NB/Fin.), BSNL Corporate Office, New Delhi.

BSNL/Secy | 31-1-12 | P.../253

3/12/12

853-cc  
30/11

**MOST URGENT**  
**COURT CASE**

F.No.404-25/2012-STG-III

Government of India

Ministry of Communication and Information and IT

Department of Telecommunications

STG-III Section

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Room No. 419, Sanchar Bhawan,  
20, Ashoka Road, New Delhi-110 001

Dated: ..27.11.2012

Devs  
30/11/12

~~SO-AM(L)~~

To

~~SO-AM/Secy~~

(i) The Chairman and Managing Director  
Bharat Sanchar Nigam Limited,  
Bharat Sanchar Bhawan,  
Janpath, New Delhi

(ii) The Chairman and Managing Director,  
Mahanagar Telephone Nigam Limited,  
Jeevan Bharti Building,  
Connaught Circus, New Delhi.

9836  
3/12/12

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3/12/12

Subject: Upgradation of ACR/ APAR grading in compliance with the Hon'ble Courts Orders.

For n/a to  
may be informed to Sir,  
all concerned  
3/12/12

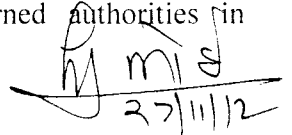
In continuation of earlier letters dated 29<sup>th</sup> August, 2012 and 10<sup>th</sup> October, 2012 on the subject cited above, it is informed that Department of Telecommunication is receiving several representations from every quarter wherein they are requesting for holding of review DPCs for promotion/ NFU etc. after being upgraded ACRs/APARs in compliance with the Hon'ble Courts Orders, by various Offices of BSNL/MTNL. Some matters have been taken up with UPSC and UPSC has returned back the proposal to obtain the advice/ comments/ concurrence of DoP&T in terms of recently guidelines issued by DoP&T.

D (AMC Pen)

2. DoPT vide their O.M. dated 28<sup>th</sup> September, 2012 referring their earlier OM dated 27<sup>th</sup> April, 2010 and further referred Order dated 20.24<sup>th</sup> December, 2010 of Supreme Court of India in SLP in Uttam Chand Nahta's case (SLP Civil Appeal No. 29515 of 2010) wherein Supreme Court not only tagged the SLP with A.K.Goel case but also directed that status quo in the DPC proceedings which was subject matter of dispute before the CAT/High Court, shall be maintained. In view of above, DoPT has reiterated that wherever petitions have been filed in the court to grant relief on the basis of the aforesaid decision of the Supreme Court in Dev Dutt case, the Orders of the Supreme Court in Uttam Chand Nahta's case (SLP Civil Appeal No. 29515 of 2010) by order dated 20/24<sup>th</sup> December, 2010 case may be brought to the notice of the Court. While all such petitions are required to be appropriately defended, the "limitation period" for filing review petition should also be strictly followed.

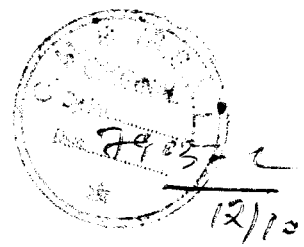
3. In view of above, it is once again requested that before taking any decision regarding upgrading ACRs/APARs in compliance with the Hon'ble Courts Orders, DoT should be consulted. Further, if any court case is under progress on the same matter, the new guidelines may kindly be brought to the notice of Hon'ble Courts.

4. This may kindly be brought to the notice of all concerned authorities in BSNL/MTNL.

Handwritten signature of N.R. Bishnoi in black ink, consisting of stylized initials and a date.

(N.R.Bishnoi)  
Director (Staff)

4239-C  
15/10/12



No. CS/ADV(HRD)/GF/2012  
Government of India  
Ministry of Telecommunication & IT  
Department of Telecom  
O/o Advisor (HRD)  
Confidential Cell

1766  
16/10/12

Sanchar Bhawan, 20, Ashoka Road  
New Delhi, Dated 10<sup>th</sup> October, 2012

To

The CMD  
Bharat Sanchar Nigam Limited  
Janpath  
New Delhi

The CMD  
Mahanagar Telephone Nigam Limited  
12<sup>th</sup> Floor, Jeevan Bharti Building  
Connaught Circus  
New Delhi

The Sr. DDG  
Telecommunication Engineering Centre  
K.L.Bhawan  
Janpath  
New Delhi

*[Handwritten signature]*  
11/10/12

DIR (S.B.) - in copy

*[Handwritten signature]*  
15/10/12

Mani  
16-10-12

*[Handwritten signature]*  
15/10

DAMR

**Subject: Forwading of DOPT OM dated 28<sup>th</sup> September, 2012**

Please find enclosed herewith a copy of the DOPT OM No. 21011/1/2010-Estt.A dated 28<sup>th</sup> September, 2012 regarding ACRs with below benchmark grat ng considered in past DPCs.

It is requested that the instructions issued in the OM cited above may be strictly followed in future while dealing with such court cases.

*[Handwritten signature]*  
10/10/12  
(N.R. Bishr oi  
Director (Sta f))

Encl: As above

7632/17-11/12  
16-10-12

5559  
16/10  
*[Handwritten signature]*

DM (APAR)  
*[Handwritten signature]*  
16/10/2012

No.21011/1/2010-Estt. A

Government of India

Ministry of Personnel, Public Grievances &amp; Pension

Department of Personnel &amp; Training

North Block, New Delhi

Dated the 28<sup>th</sup> September, 2012.OFFICE MEMORANDUM

Subject: ACRs with below benchmark grading considered in past DPCs- reg

The undersigned is directed to refer to this Department's OM of even number of even number dated 27<sup>th</sup> April, 2010.

2. In above mentioned OM dated 27<sup>th</sup> April, 2010, in the light of Orders issued by Hon'ble Supreme Court in the SLP(Civil) No.15770/2009, Union of India Vs. A.K.Goel & Ors, all the Ministries/ Departments were advised that wherever petitions have been filed in the court to grant relief on the basis of the decision of the Supreme Court in Dev Dutt case (Civil Appeal No. 7631 of 2002), the latest Orders of the Supreme Court in A.K.Goel case may be brought to the notice of the Court.

3. The Supreme Court in the SLP in Uttam Chand Nahta's case (SLP Civil Appeal No 29515 of 2010) by order dated 20/24<sup>th</sup> December, 2010 not only tagged the SLP with A.K.Goel case but also directed that status quo in the DPC proceedings which was subject matter of dispute before the CAT/High Court, shall be maintained. (copy enclosed) In Uttam Chand Nahta's case, the Supreme Court has duly taken note of At Nitijit Dastidar case 2009 (16) SCC 146 while granting stay of the High Court order.

4. In view of above it is reiterated that wherever petitions have been filed in the court to grant relief on the basis of the aforesaid decision of the Supreme Court in Dev Dutt case, the Orders of the Supreme Court in Uttam Chand Nahta's case (SLP Civil Appeal No.29515 of 2010) by order dated 20/24<sup>th</sup> December, 2010 case may be brought to the notice of the Court. While all such petitions are required to be appropriately defended, the "limitation period" for filing review petition should also be strictly followed.

Encls:A/A.

  
(Mohinder Kumar)

Director (E-II)

Ph.23093180

All Ministries/ Department of Government of India

Contd...

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. The Cabinet Secretariat, New Delhi.
4. The Rajya Sabha Secretariat.
5. The Lok Sabha Secretariat.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Union Public Service Commission, New Delhi.

Copy also to:-

- (i) All Attached offices under the Ministry of Personnel, Public Grievances and Pensions.
- (ii) Establishment Officer and Secretary, ACC (10 copies).
- (iii) All officers and Sections in the Department of Personnel and Training.
- (iv) NIC (DoP&T) for placing the Office Memorandum on the web-site of DoP&T. ([www.persmin.nic.in](http://www.persmin.nic.in)) – under OMs and Orders (Establishment)-ACR
- (v) Hindi Section for Hindi version of the O.M.

Sl. No. 16R (5)  
**SECTION XVI**

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

**PETITION FOR SPECIAL LEAVE TO APPEAL (CIVIL) NO. 29515 OF 2010**

(with prayer for interim relief).

UNION OF INDIA

..... Petitioner

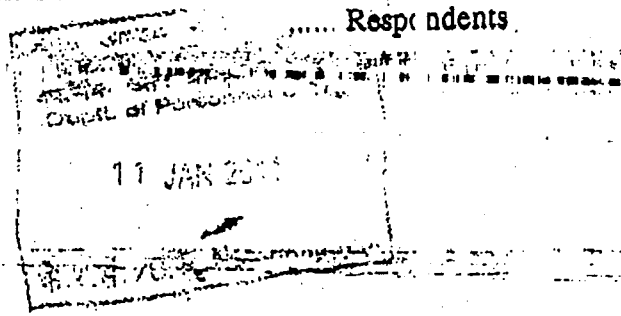
VERSUS

UTTAM CHAND NAHTA & ORS.

..... Respondents

To

1. Shri Uttam Chand Nahta,  
S/o Shri Guman Mal Nahta,  
Aged about 55 years,  
Working as Regional Director,  
Ministry of Corporate Affairs,  
Kolkata, residing at Flat no. 22,  
Type- VI, Nizam Palace, 234/4,  
A.J.C. Bose Road, Kolkata-700020



...R. No. 1

2. Shri Rakesh Chandra,  
Regional Director,  
Ministry of Corporate Affairs,  
5<sup>th</sup> Floor, 100, Marine Drive, Mumbai-400001

...R. No. 2

3. The Secretary,  
Department of Personnel & Training,  
Ministry of Personnel, Public Grievances &  
Pension, Proforma North Block, New Delhi-110001

...R. No. 3

4. The Secretary,  
Union Public Service Commission,  
Dholpur House, Shahjahan Road, New Delhi-110001

... R. No. 4

WHEREAS the petition for Special Leave to Appeal with a Prayer for Interim Relief above-mentioned (Copy enclosed) filed in the Registry by Ms. Sushma Sur, Advocate on behalf of the Petitioner above named was listed for hearing before this Court on 29<sup>th</sup> November, 2010, when the Court was pleased to pass the following order:-

"After taking us through the order of the Tribunal and the impugned order of the High Court, learned Solicitor General appearing for the Union of India has brought to our notice that in similar circumstances this Court has referred the similar issue to a Larger Bench and relied on the reference order of Two Judges Bench dated 29<sup>th</sup> March, 2010:

*Direct*  
*12/11*  
*12/11/11*

*This is seen with ref. to the SCP file in the Supreme Court with regard to the case of Sh. A.K. Level, which has been referred to the larger bench by the Supreme Court.*

"In view of the apparent conflict between the decisions of this Court in *Dev Dutt Vs. Union of India & Ors.*, 2008(8) SCC 725 on the one hand and *Satya Narain Shukla Vs. Union of India* 2006 (9) SCC 69 and *K.M. Mishra Vs. Central Bank of India and others* 2008 (9) SCC 120, these appeals are referred to a Larger Bench. Let the matter be placed before the Hon'ble the Chief Justice of India for this purpose"

It is also brought to our notice the decision of three Judges Bench reported in 2009 (16) SCC 146.

In view of the fact that the similar issue/matter has been referred to Larger Bench, we feel that this issue is also be considered by the Larger Bench. Accordingly, we order notice and post the matter along with Civil Appeal ..... of 2010 @ SLP(C)No. 15770 of 2009 etc

Both the parties are directed to maintain status quo prevailing as on date until further orders.

Counsel of both the parties are permitted to raise all the points before the Larger Bench."

NOW, THEREFORE, TAKE NOTICE that the above petition will be listed alongwith Civil Appeal No. 2872 of 2010 @S.L.P. No. 15770 of 2009 for hearing before the Court in due course when you may appear before this Court either in person or through an Advocate-on-record of this Court duly appointed by you in that behalf within thirty days from the date of service of notice. You may thereafter show cause to the Court on the day that may subsequently be specified as to why special leave and interim relief as prayed for be not granted and the resultant appeal be not allowed.

TAKE FURTHER NOTICE that this Court has passed an interim order pending disposal of Special Leave Petition after notice as follows:

*" that until further order status quo as obtaining between the parties on this the 29<sup>th</sup> day of November, 2010 with regard to the D. P. C. proceedings in question which was the subject matter of dispute before the High court of Calcutta shall be maintained; "*

You may file your affidavit in opposition to the petition as provided under Rule 13(1) of Order XVI, SCR 1966 (as amended) within 30 days from the date of receipt of notice or not later than 2 weeks before the date appointed for hearing, whichever be earlier, but shall do so only by setting out the grounds in opposition to the questions of law or grounds set out in the SLP and may produce such pleadings and documents filed before the court against whose



the SLP s filed and shall also set out the grounds for not granting interim order or for  
granting interim order if already granted.

TAKE FURTHER NOTICE that the prayer for interim relief after notice will also be  
listed before the Court on the aforesaid returnable date.

TAKE FURTHER NOTICE that if you fail to enter appearance as aforesaid, no further  
notice shall be given to you even after the grant of Special Leave for hearing of the resultant  
appeal and the matter above mentioned shall be disposed of in your absence.

Dated this the 20th day of December, 2010.

*24th*

*[Signature]*  
ASSISTANT REGISTRAR

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**No. 21011/1/2010-Estt.A**  
**Government of India**  
**Ministry of Personnel, Public Grievances & Pensions**  
**Department of Personnel & Training**  
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North Block, New Delhi  
Dated the 27<sup>th</sup> April, 2010

**OFFICE MEMORANDUM**

Subject:- ACRs with below benchmark grading considered in past DPCs-reg.

The undersigned is directed to state that this Department has issued O.M. of even number dated 13.04.2010 that if an employee is to be considered for promotion in a future DPC and his ACRs prior to the period 2008-09 which would be reckonable for assessment of his fitness in such future DPC contain final grading which are below the benchmark for his next promotion, before such ACRs are placed before the DPC, the concerned employee will be given a copy of the relevant ACR for his representation, if any, within 15 days of such communication. The representation is to be decided by the competent authority as per provisions in para 2 of aforesaid O.M.

2. The Hon'ble Supreme Court in their judgement dated 12.05.2008 in Civil Appeal No. 7631 of 2002 (Dev Dutt vs Union of India) had held that the 'good' entry in the ACR of the appellant which had not been communicated to him and considered in a past DPC which found him unfit for promotion, should be communicated for representation and if upgradation is allowed by the competent authority, he should be considered for promotion retrospectively by the DPC. When the petitions in SLP (Civil) No. 15770/2009, now converted to Appeal Civil No. 2872 of 2010 (Union of India vs. A.K. Goel & Ors.) were called for hearing, the Supreme Court has taken note of the apparent conflict between the decisions of the Hon'ble Court in Dev Dutt case on one hand and the judgements of Supreme Court in Satya Narain Shukla Vs UOI 2006 (9) SCC 69 and K.M. Mishra vs. Central Bank of India & Ors. 2008 (9) SCC 120 on the other hand and by their Order dated 29.03.2010, the Hon'ble Court has referred these appeals to a Larger Bench (copy attached).

3. In the light of the Orders issued by Hon'ble Supreme Court in the aforesaid SLP (Civil) No. 15770/2009, Union of India Vs. A.K. Goel & Ors., all Ministries/Departments are advised that wherever petitions have been filed in the Courts to grant relief on the basis of the aforesaid decision of the Supreme Court in Dev Dutt case, the latest Orders of the Supreme Court in A.K. Goel case may be brought to the notice of the Court.

  
**(C.A. Subramanian)**  
Director

To

**All Ministries/Departments of Government of India**

Copy to:-

1. The President's Secretariat, New Delhi.
2. The Prime Minister's Office, New Delhi.
3. The Cabinet Secretariat, New Delhi.
4. The Rajya Sabha Secretariat.
5. The Lok Sabha Secretariat.
6. The Comptroller and Auditor General of India, New Delhi.
7. The Union Public Service Commission, New Delhi.

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- (v) Hindi Section for Hindi version of the O.M.

1

ITEM NO.57

COURT NO.4

SECTION XIV

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s) .15770/2009

(From the judgement and order dated 18/07/2008 in WP No. 18706/2005 of The HIGH COURT OF DELHI AT N. DELHI)

UNION OF INDIA

Petitioner(s)

VERSUS

A.K.GOEL & ORS.

Respondent (s)

(With appln(s) for c/delay in filing SLP,impleadment and prayer for interim relief)

WITH S.L.P. (C) ...CC NO. 11585 of 2009

(With appln. (s) for permission to file SLP and c/delay in filing SLP and office report)

Date: 29/03/2010 These Petitions were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

HON'BLE MR. JUSTICE R.M. LODHA

For Petitioner(s) Mr. Gopal Subramaniam, S.G.  
Mrs. V. Mohana, Adv.  
Ms. Sushma Suri, Adv.  
Mr. Aman Ahluwalia, Adv.

For Respondent (s) Respondent-In-Person  
Mr. Shakil Ahmed Syed , Adv  
Mr. D.K. Thakur, Adv.  
Dr. V.P. Appan , Adv  
Mr. Aftab Ali Khan , Adv

UPON hearing counsel the Court made the following  
O R D E R

Leave granted.

In view of the apparent conflict between the decisions of this Court in Dev Dutt vs. Union of India & Ors. 2008 (8) SCC 725 on the one hand and Satya Narain Shukla vs. Union of India 2006 (9) SCC

2

69 and K.M. Mishra vs. Central Bank of India and others 2008 (9) SCC 120, these appeals are referred to a Larger Bench. Let the matter be placed before the Hon'ble the Chief Justice of India for this purpose.

12  
(O.P. Sharma)  
Court Master

SR  
(M.S. Negi)  
Court Master