



IMMEDIATE

No. 15-10/2007Pers-II(DPC)
BHARAT SANCHAR NIGAM LIMITED
[A Government of India Enterprise]
CORPORATE OFFICE

PERSONNEL BRANCH(DPC)
4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-1.

February 19 , 2009

To

All CGMs,
Bharat Sanchar Nigam Limited,

Subject: WP No. 6420-6424/07 & 34430/07 titled Shri P. Kuppusami & others
Vs UoI and others - Clarification regarding fixation of seniority of TES
Gr B equivalent to SDE(T)

Sir,

In this office letter No. 2-13/2008-Pers-II(DPC) dated 11.2.2009 it was requested that representations may be forwarded through proper channel in respect of SDEs(T) in whose case judgments have been passed by Courts for fixation of seniority in TES Gr B equivalent to SDE(T) in accordance with the principle laid down in Allahabad High Court judgment. Doubts have been raised whether the benefit of inter se seniority on qualifying year basis in accordance with the principles laid down by Allahabad High Court is only relevant to applicants who were parties in IA 16/2006 in C.A.No. 4339 of 1995 before the Supreme Court.

In this connection, it is informed that the matter regarding fixation of seniority of TES Gr B equivalent to SDE(T) was discussed in the judgment dated 12.1.2009 in WP No. 6420-6424/07 & 34430/07 titled Shri P. Kuppusami & others Vs UoI and others. The Hon'ble High Court of judicature at Madras has made the following observations in its judgment dated 12.1.2009.

- that in judgment dated 13.2.1997 reported in (1997) 10 SCC 226) in C.A. No. 4339/1995 the Supreme Court has directed preparation of eligibility list of candidates according to the year of recruitment/appointment and not according to the year of passing the examination nor with reference to the year of confirmation.

- that in judgment dated 26.4.2000 reported in (2000) 9 SCC 71, the Supreme Court has held that the Department Promotion Committee is duty-bound to prepare an approved list by selection from amongst the officials who qualify in the departmental examination. In view of the amendment to the Rules made on 4.2.1987, the criterion for selection is seniority cum fitness. In accordance with the prescribed procedure for preparation of eligibility list, notified by the Government on 28.6.1966, the Departmental Promotion Committee has to prepare separate lists for each year of recruitment in the feeder cadre. In this view of the matter, the judgment of Supreme Court in Civil Appeal No. 4339 of 1995 (1997) 10 SCC 226, has rightly been decided in interpreting the relevant provisions of the Recruitment Rules read with the procedure prescribed under the memorandum dated 28.6.1966.

- that in I.A. No. 16/06 the Supreme Court has clarified by order dated 28.9.2006 that the benefit of seniority and promotion given in pursuance to the orders passed by Court or Tribunals following the Principles laid down by the Allahabad High Court and approved by Supreme Court, which orders have attained finality, cannot be reverted with retrospective effect.

- that Supreme Court has clearly clarified the position that the seniority fixed on the basis of the directions of Court, which had attained finality is not liable to be altered by virtue of a different interpretation being given for fixation of seniority by different benches of Tribunal.

- that applying the aforesaid decisions in the present cases (WPs 6420-6427/07 & 34430/07), it is not found that the seniority of the Petitioners had been settled on the basis of their being party to the litigation before the Court or Tribunal. Right of Petitioners was not determined in a duly constituted proceeding which determination has attained finality so as to sustain the same. Therefore, it cannot be said that the petitioners are placed on similar footing as that of Paramanad lal and Brij Mohan whose right have attained finality in a duly constituted proceedings.

- that in Contempt Petition No. 248/2007, the petitioners had obtained similar orders (as that of Paramand Lal) from various Bench of CAT based on the principles laid down by the High Court of Allahabad and those judgment have attained finality. In most cases they were also confirmed by the Supreme Court and in some other cases, Department did not prefer any Appeal against the order of the Tribunal.

- that much emphasis is laid upon the above observations of the Supreme Court to contend that the benefit of the judgment of Supreme Court would be available to all those persons who were promoted on the basis of their qualifying examination. This contention does not merit acceptance.

- That the Supreme Court has clarified that it has not laid down any principle or law having universal application. In the order of the Supreme court in Contempt Petition repeated emphasis was on the fact that the rights of the applicants were determined in a duly constituted proceeding, which determination has attained finality, a subsequent judgment of a Court or Tribunal taking a contrary view will not adversely affect the applicants in whose case the orders have attained finality. The rights of the Applicants in the Contempt Petition were finally crystallized and determined in a duly constituted proceeding, which determination has attained finality.

The aforesaid observations of the Hon'ble High Court of Madras clearly support and conform to the decision and clarifications made by Hon'ble Supreme Court in its order dated 13.2.1997, 26.4.2000, 28.9.2006 and 25.3.2008.

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The Hon'ble Supreme Court has clearly clarified that the benefit will be available to persons whose right to seniority on qualifying year basis has been determined pursuant to orders passed by Courts or Tribunals. In view of the clarification in the matter, Circle offices are requested to forward the cases of such officers through proper channel for consideration.



(B.Surendranath)

ASSISTANT GENERAL MANAGER(DPC)

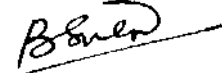
TELE: 23037657

Copy to :

- I. Shri B.M.David, US(SGT), DoT, R.No. 421, Sanchar Bhawan,ND.
- II. ACS & DGM (Legal) with reference to letter No. BSNL/SECTT/54-1/2007/10-14 & 124 dated 5.2.2008
- III. General Secretary, AIBNLEA/SNEA

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