

**No: SNEA/CHQ/DIR(HR)/2015-18/88**

**Dated 19<sup>th</sup> February, 2018.**

**To**

**Smt Sujata T Ray,  
Director (HR), BSNL Board,  
New Delhi.**

**Sub: Implementation of Hon Kerala High Court order on Pay fixation for Officiating JTOs under FR22(1)(a)(1) without the restriction of FR35. There is no justification in challenging it again in the Hon SC: -**

**Ref: Judgment Dated 15th day of September, 2017 by Hon. High Court of Kerala in W.P.(C) Nos. 7723, 8077, 23015, 23141, 23287, 23753, 23407, 23850, 24091, 24092, 26872, 26873, 26883 of 2010 & OP(CAT) No. 2107 of 2011.**

**Respected Madam,**

Kindly recall the discussions in this regard, requesting to implement the Hon Kerala High Court order dated 15.09.2017 by generalising it as all of them are regularised as JTOs and majority of them are already retired from the service. Moreover the matter has been earlier considered by Hon Supreme Court itself and while disposing the SLP, Hon SC directed that the matter will be finally decided by Hon Ernakulam High Court and the decision will be applicable for all the parties.

Further, we invite your kind attention to the above judgment in which Hon. High Court of Kerala has upheld the order of Hon. CAT Ernakulam directing the BSNL fix the pay under FR22(1)(a)(1) instead of FR35 as contended by BSNL. The above final order has come after a series of litigation spanning nearly more than 10 years. As the case was pending, these officers were denied many benefits like 78.2% IDA merger, pay fixation on promotion etc for years together. Huge recoveries were effected from many, particularly at the time of their retirement. The Hon. High Court has examined the case in details as extracted below in arriving at its decisions upholding the eligibility for fixation of pay under FR22(1)(a)(1) to these officers.

"12. It is worthwhile to extract the "one and only ground" raised in these petitions, for convenience of reference:

*"The Tribunal, it is submitted with respect, erred entirely in taking the view that it is FR 22 that applies to the applicants before it without invoking FR 35. FR22 will apply only to appointees who fulfill all the eligibility conditions prescribed in the relevant Recruitment Rules mainly such as existence of posts/posts which would arise within the validity period of the relevant recruitment rule and completion of pre appointment training and restriction under FR 35 will apply to others who have not fulfilled the eligibility conditions, but officiating temporarily. The contesting respondents will fall in the second category. However initially, the pay of the respondents was fixed under FR 22 alone inadvertently, which on realization was corrected. This is perfectly justified and no legal rights whatever of the applicants before the Tribunal was affected. Any department or institution is entitled to correct errors, if any, in fixing pay if an error has been committed. Admittedly, the affected parties were heard on the direction of this Hon'ble Court in a Writ Appeal and the detailed representation submitted by them was considered by the petitioners and appropriate orders passed. The Tribunal*

*therefore, wholly erred in interfering with the applications before it. Correcting an error will not amount to committing mistake in law. Interference by the Tribunal was totally uncalled for and the common order of the Tribunal evidenced by Exhibit P4therefore, is liable to be interfered with by this Hon'ble Court in exercise of its extra ordinary powers under Article 226 of the Constitution of India. The petitioners and the BSNL will be put to serious prejudice if a patent error is not corrected. Being left with no other alternate remedy, the petitioners are praying for reliefs from this Hon'ble Court including appropriate interim orders.."*

*16. By virtue of the new Recruitment Rules of 2001, the mandatory nature of the requirement of completing the entire extent of 14 weeks' training was taken away, i.e., the relevant words "**before their appointment as Junior Telecom Officers**" have been deleted. The change in the scenario is pursuant to a conscious decision taken, ie. to dispense with the completion of the training before giving appointment, in turn making it possible to have the training **for absorption in the post**. This, in other words, would mean that the period of training can be completed even after appointment, subject to the relevant terms."*

*"In so far as we have already held that it is the '2001 Rules' which are to govern the situation and not the 1996 Rules, the case projected by the BSNL (as in the Ground extracted above) does not remain to sustain the cause projected before this Court."*

*"In the above facts and circumstances, the finding rendered by the Tribunal that the fixation has to be effected based on FR22(1)(a)(i) is perfectly within the four walls of law and is not assailable. The writ petitions/Original Petition fail and they are dismissed accordingly."*

**We appeal to the management to implement the Judgment by generalising it and put an end to this long drawn litigation, without resorting to appeal against this reasoned order by wasting valuable money and manpower of the company. As mentioned above, all of them are regularised as JTOs and majority of them are already retired from the service also.**

**With regards,**

**(Sebastin. K)**

**Copy to:**

1. Shri. H C pant, CGM(Legal), BSNLCO for information and n/a please.
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