

No. 400-146/2011-Pers-I(Pt.)
Bharat Sanchar Nigam Limited
5th Floor, Bharat Sanchar Bhawan,
Janpath, New Delhi - 110001

Dated : 24-11-2011

To
Joint Secretary(T),
Department of Telecommunications,
New Delhi - 110 001.

Sub : Seniority of Govt. Servant on appointment in BSNL through technical resignation - clarification regarding.

Sir,

In connection with the above mentioned subject, the following is brought to your kind notice:-

1. General principles for determining seniority of various categories of person employed in central services were issued vide MHA OM No 9/11/55-RPS 22.12.1959 when DPE was not in existence.
2. Later vide DoP&T OM NO. 200120/7/80-Estt (D) dated 29.05.1986, the following para was inserted in the above mentioned order of 1959

Accordingly, it has been decided to add the following sub-para (iv) to para 7 of general principles communicated vide O.M. dated 22nd December 1959:-

"(iv) In the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "Transfer on deputation/Transfer"), his seniority in the grade in which he is absorbed will normally be counted from the date of absorption. If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,

or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department whichever is later.

The fixation of seniority of a transferee in accordance with the above principle will not, however, affect any regular promotions to the next higher grade made prior to the date of such absorption. In other words, it will be operative only in filling up of vacancies in higher grade taking place after such absorption.

In cases in which transfers are not strictly in public interest, the transferred officers will be placed below all officers appointed regularly to the grade on the date of absorption."

3. As per the latest instruction issued vide OM NO. 20111/1/2000-Estt(D) dated 27.03.01, public interest clause and whichever is later clause underlined above was deleted and the details of the OM are given below:-

The undersigned is directed to say that according to our O.M. No. 20020/7/80-Estt.D dated May 29, 1986 (copy enclosed) in the case of a person who is initially taken on deputation and absorbed later (i.e. where the relevant recruitment rules provide for "transfer on deputation/transfer", his seniority in the grade in which he is absorbed will normally be counted from the date of absorption.

If he has, however, been holding already (on the date of absorption) the same or equivalent grade on regular basis in his parent department, such regular service in the grade shall also be taken into account in fixing his seniority, subject to the condition that he will be given seniority from

- the date he has been holding the post on deputation,

or

- the date from which he has been appointed on a regular basis to the same or equivalent grade in his parent department, whichever is later.

The Supreme Court has in its judgment dated December 14, 1999 in the case of *Shri. S.I. Rooplat & Others Vs. Lt. Governor through Chief Secretary, Delhi, JT 1999 (9)SC 597* has held that the words "whichever is later" occurring in the Office Memorandum dated May 29, 1986 and mentioned above are violative of Articles 14 and 16 of the Constitution and, hence, those words have been quashed from that Memorandum. The implications of the above ruling of the Supreme Court have been examined and it has been decided to substitute the term "whichever is later" occurring in the Office Memorandum dated May 29, 1986 by the term "whichever is earlier".

It is also clarified that for the purpose of determining the equivalent grade in the parent department mentioned in the Office Memorandum dated May 29, 1986, the criteria contained in this Department Office Memorandum No. 14017/27/75- Estt.D(Pt.) dated March 7, 1984 (copy enclosed), which lays down the criteria for determining analogous posts, may be followed.

4 Later the following clarification has also been issued by DOP&T.

"3.5 Seniority of persons who are transferred and absorbed directly without being on deputation.
Some cases has been received in this department seeking clarification whether the (DOP&T) O.M.No.20020/7/80-Esu. (D) Dated 29.5.1986 and No.20011/1/2000-Estt.(D) Dated 27th March, 2001] in the case of a person who is initially taken on deputation and absorbed later, would be applicable also for persons who are transferred and absorbed directly without being on deputation i.e. where the recruitment rules provide for recruitment through absorption. The matter has been considered and it has been decided that, in such cases also the provision as contained in the afore-said O.Ms would be applicable i.e. the date he has been holding the post on deputation or the date from which he has been appointed on the regular basis to the same or equivalent grade in his parent department, whichever is earlier.

5 DPE which was initially called by the name Bureau of Public Enterprises (BPE), was set up in 1965 and as per the information available, DPE has not issued any guidelines on seniority till date. It has been a normal practise that wherever DPE guidelines are not available, guidelines issued by DoP&T are followed. Even in case of all other cadres in BSNL, guidelines issued by DoP&T are being followed and submissions have also been made by BSNL based on these guidelines of DOP&T in various court cases.

6 Submissions have been made by DoT in various court cases related to absorption of ITS officers in BSNL that common seniority list is maintained between ITS officers already absorbed in BSNL and unabsorbed ITS officers.

7 It is proposed that on completion of selection /recruitment process initiated by BSNL, seniority of ITS officers joining BSNL on immediate absorption basis may be decided as per the common seniority list(unabsorbed ITS officers viz a viz absorbed ITS officers) prevailing on the date of appointment.

As such I request DoT to kindly issue clarification on the subject matter of seniority between ITS joining BSNL through 37A and 37 of CCS(pension) rules.

(A.K. Garg)
Director (HR)