



BHARAT SANCHAR NIGAM LIMITED

CORPORATE OFFICE
(PERSONNEL - I SECTION)

4th Floor, Bharat Sanchar Bhawan, Janpath, New Delhi-110 001

No. 400-164/2012-Pers.I

dated 07-01-2016

Subject: Representations from some DR-DGMs, who came from other organizations, for 'fixation of pay equal to pay of juniors' – examination of the claim and clarification thereof.

This office has received several representations from some of the DR-DGMs, who were outside candidates for the post, for fixation of their pay in the grade at par with their juniors (in DR-DGM grade who are BSNL candidates and Rule 37-A absorber). The pay difference has apparently erupted in the wake of BSNL CO's order no.400-164/2012-Pers.I, dt.12-12-2013 whereby the pension scheme, GPF, Leave, pay etc. of Rule 37A absorberes of BSNL selected as DR-DGMs was protected.

2. The names of executives who have represented and their issues are summarized below:

S.No.	Name (S/Sh)	Issues in representation
1.	Kulbhushan Sharma, DGM, Trikut Nagar, Jammu	A. That the Recruitment notice dt.25-06-2009 and the Advt. notice (14-1/2009-Rectt.) assured equal treatment as external candidate and that no liability on issues of pay protection and pension will be borne by BSNL. B. Offer of appointment, at para 5(m) noted that candidates will be treated as rank outsider in BSNL and BSNL will have no liability on issues of pay protection and pension. C. Pay of all candidates was fixed at the minimum of E5 scale. D. Suddenly, in Dec 2013, with utter disregard to the above mentioned assurances and guarantees, vide letter dt.12-12-2013, BSNL entitled four DR-DGMs for additional benefits under rules which nowhere mentioned earlier, and anytime challengeable in the court of law E. That two of these DR-DGMs, Alok Kumar and Nitin Rokade, are junior have got higher pay due to this and so my pay may be revised at par along with arrears.
2	Kaptan Singh, DGM, Faridabad	A. 4 DR-DGMs who were earlier BSNL absorbed officers in STS grade were given past service benefits in terms of pay, pension etc. As a result, pay of junior, Mr.Nitin Rokade, fixed at Rs.46750/- whereas my pay (DR-DGM rank 12) was Rs.35960/-.
3,	Vipin Kumar Maurya, DGM, Sonapat	B. RR does not distinguish between internal and external candidates. The offer of appointment treats everyone as a 'rank outsider' and rules out any liability for pay protection and pension etc. and keeps these beyond litigation. C. As per DoPT OM no.22011/7/86-Estt(D), dt.3-7-1986 2.1, the relative seniority of all direct recruits is determined by the order of merit in which they are selected for such appointment...
4	Dayanand Katyayan, DGM, BBNW, New Delhi.	D. The four BSNL absorberes (two junior to me), despite their acceptance of the same offer of appointment as other joinees, were given pay protection vide letter dt.12-12-2013 thus creating pay anomaly.
5	Sukhdev Singh, DGM (Regn.-II), BSNL CO	E. The representation cites DoP&T rule and Supreme Court rulings in a vague way without citing any specific case or order which matches the situation and seeks re-fixing/stepping up of pay with the juniors.

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6	Pankaj Upadhyay, DGM, Devas, MP	
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3. The issues raised by these executives have been examined holistically. The crux of these representations is that the benefit of pay/pension protection to the BSNL Group 'A' absorbees who qualified as DR- DGM under the provisions of the DR- DGM RRs, has resulted in enhancing their pay w.r.t. outside candidates who also qualified as DR- DGMs and some of whom were higher in the merit list than these BSNL absorbees. This has created what they perceived as 'pay anomaly' in view of their 'seniority'. Some of them referred to Hon'ble Supreme Court's judgements without being specific.

4. A key feature in this case is that the four BSNL absorbees had given technical resignation and the same was accepted with the stipulation that the benefit of past service if admissible as per rules would be examined separately. So, the present representations are away from fact when they informed that the BSNL absorbees had accepted the same offer as that of external candidates.

4. The only DoP&T rule being quoted by them is the one dated 03/07/1986 and relates to fixation of relative seniority among direct recruits as per the order of merit. It may be clearly stated here that seniority is not the sole criteria of pay or pension and related benefits under the GoI dispensation. The order quoted does not speak anything in terms of pay.

5. BSNL vide its letter no. 400-164/ 2012- Pers.I dtd 12/12/2013 conveyed a decision for continuing the benefits of past service in DoT & BSNL in the matter of pensionary benefits and pay protection to such DR-DGMs who were earlier absorbed in BSNL under Rule 37 of CCS Pension Rules, 1972. The issue was deliberated in detail in view of the statutory provisions as well as the views expressed earlier by DoT in consultation with Establishment, EF and Legal branches. The defined benefits as per this order were:-

- i. *Continuance of pension scheme under Rule 37 of CCS Pension Rules, 1972, GPF, Leave etc. **while they continue to serve in BSNL.***
- ii. *Protection of last pay drawn in the previous grade before being appointed as DR-DGM. The last pay thus drawn to be protected on their appointment in DGM grade in **E5** scale.*

The merit of this order was put to test in a court case relating to protection of past pay filed by another DR-DGM (Sh. Rajesh Kr. Bansal) who had come from AAI. While dealing at length with the issue at hand, the court had also sought the concerned file where the decision was taken and fully abreast with the actions taken by BSNL ruled in favour of BSNL. The key part of the judgement was:-

"17. As an aside, let it be mentioned that the appointees including the applicant in this OA was debarred from bringing the issue of protection of past services or pay in any litigation, as per the appointment letter issued to them.

18. We cannot but decline any relief to the applicant. However, the claim of the BSNL absorbees under Rule- 37 A of CCS Pension Rules should have been factored in while issuing the advertisement or issue of appointment letter. This would have cleared the air and could have made the employer look correct and transparent. However, we do not see any malice or malafide in the same".

Thus, the merit of BSNL's action w.r.t. the absorbees vide order dtd 12/12/13 remains established so far.

6. The request from others who have come from diverse organizations including private companies, for re-fixing or stepping up of pay w.r.t. the BSNL absorbees is not supported by any BSNL or DPE or DoP&T orders on the issues of re-fixation of pay or stepping up of pay. Re-fixation of pay is a corrective action for fixing the pay of an individual without a reference to the pay of others. Stepping up of pay is a provision under the FR-22 under the FR/SRs applicable under the GoI dispensation for correcting mid-career minor pay anomalies (in the range of one or two increments) and is applicable only for promotions from lower grade to higher grade. The features of stepping up of pay provided under GoI orders linked to FR-22(I) (a) (1) are enumerated below:-

- i. The order clearly provides that , ' in order to remove the anomaly of a Govt. Servant promoted or appointment to a higher post...drawing a lower rate of pay in the post than another Government Servant junior to him in the lower grade and promoted or appointed subsequently to another identical post'.
- ii. It also provides that the scales of pay of the Govt. Servants being compared should be identical in both the lower and higher posts.
- iii. It further provides that the anomaly should be directly as a result of the application of FR 22 (I) (a) (1). For example, if even in the lower post the junior officer draws from time to time a higher rate of pay than the senior by virtue of grant of advance increments the above provision will not be in vogue to step up the pay of senior officer.

7. In the backdrop of above specifications, the demand of stepping up of pay of outside candidates w.r.t. a Rule-37 A Absorbee in BSNL does not seem admissible. These executives were not in the same service in their respective lower grades and their past services are not comparable even as per GoI guidelines. Besides, it is safely presumed that they have all taken the terminal benefits, as admissible, from their previous employers, unlike the absorbed executives who continue to serve in BSNL.

8. Under the FR 22, in the provisions related to Direct recruitment, there is ample scope of pay fixation at a higher level w.r.t. the previous service (*Though, this office has not used the FRs to justify any of the actions w.r.t. DR-DGMs*). And these do not constitute pay anomaly w.r.t. others not granted the same benefit.

9. Thus, on all the grounds noted above, the representations lack merit. The outside candidates are not entitled to any benefit of past service on any count. Even for conjectural reasons, if any pay parity is conceived for these candidates, they will indirectly become entitled to the benefits of Rule 37-A which is not the mandate of the statute.

10. The representations are, accordingly, rejected with notice to all concerned.

(Manish Kumar)

Dy. General Manager (Pers.)

Copy for information to:-

1. PPS to CMD/Directors, BSNL Board
2. The Circle Heads BSNL
3. All Cadre Controlling Authorities, BSNL
3. The Executives concerned.