

Corporate Office

5th Floor

Labour Establishment (LE) Section

Establishment Branch

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भारत संचार निगम लिमिटेड

(भारत सरकार का उपक्रम)

BHARAT SANCHAR NIGAM LIMITED

(A Govt. of India Enterprise)

File No.7-16/2020-LE

dated: 13 .08.2020

To

All Heads of Telecom Circles/
All Heads of Telecom Districts/
Other Administrative Units,
BSNL.

Subject: Regarding erroneous Orders of absorption in terms of Rule 37A of CCS (Pension) Rules- Corrective action thereof

Sir,

I am directed to refer to the subject noted above and to say that in various cases of casual workers, who were transferred to BSNL and thereafter regularized by BSNL on or after 01.10.2000, it has been noticed by the Department of Telecom HQ and BSNL, that their orders of absorption for payment of pension in terms of Rule 37A of CCS (Pension) Rules have been issued after their regularization in BSNL while it was apparent that they were not conferred with temporary status by erstwhile DTS/DTO in terms of Casual Labourer (Grant of Temporary Status and Regularization) Scheme, 1989 read with instructions issued by the Government of India. Accordingly, administrative orders (order of absorption) for payment of pension in terms of Rule 37A of CCS (Pension) Rules have been issued by overlooking statutory rules and Scheme of 1989.

2. Accordingly, the Nodal Ministry viz. Department of Telecom/Government of India vide 120/2020/SNG dated 27.07.2020 has approved the draft for cancellation of such erroneous orders, which is required to be issued by the Director (Estt.) nominated in each Circle/Mtce. Region etc. Copy of approved order is enclosed for circulation and taking necessary corrective action on priority basis.

3. In case, some financial benefits have been extended to ineligible casual workers by treating him/her BSNL absorbed employee, the decision on recovery of financial benefits, if any, may be taken after cancellation of Order of absorption. However, principles of natural justice (i.e show cause notice procedure) may be duly complied with before taking decision on recovery by inter-alia giving due weightage to principles settled by the Hon'ble Apex Court in State of Punjab and other versus Rafiq Masih (White Washer); (2015) 4 SCC 334.

4. The corrective action in terms of directives contained in afore-said ID note of DoT Hqrs, may be taken by respective circle by conducting exercise in consultation



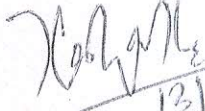
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with Director (Estt.)/DoT, nominated in each Circle. In case, any order has been issued erroneously, the same may be declared ab intio void by the Director (Estt.), nominated in Circle as per above-mentioned approved order under intimation to Department of Telecom HQ and BSNL Hqrs.

5. All SSA/Units/Circles shall carry out this exercise urgently and in a time bound manner within 30 days. GM (HR) or the Circle shall submit a certificate by 30.09.2020 regarding completion of exercise and withdrawal of P.O if found to be issued erroneously.

This has express approval of CMD, BSNL.

Yours faithfully,

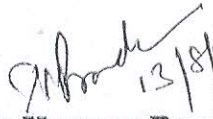

13/8/2020
(Keshav Kumar)

Assistant General Manager (Estt.II)

Encl. As above

Copy to:

1. DDG(Estt.)/(Personnel), DOT Hqrs, Sanchar Bhawan, New Delhi.
2. PPS to CMD, BSNL.
3. PS to PGM (Personnel)
4. Intranet Portal


13/8/2020
(Sanjeev Kumar Pradhan)
Dy. Manager (TE)

Government of India
Department of Telecommunications

(**** Circle)

No.....

dated.....

ORDER

Whereas, Shri/Smt....., the then casual worker, without having temporary status as on 30.09.2000, was transferred to BSNL upon corporatization of erstwhile DTS/DTO (Department of Telecom Services and Department of Telecom Operations) w.e.f 01.10.2000.

2. And whereas, he/she was regularized by the BSNL w.e.f..... vide order dated..... as per instructions prevailing at that point of time.

3. And whereas, the Order of absorption in terms of Rule 37A of CCS (Pension) Rules was issued in favour of employee vide order dated..... erroneously by considering him Government employees transferred on deemed deputation to BSNL.

4. However, Rule 37A of CCS (Pension) Rules, notified on 30.09.2000 by Government of India, which deals with payment of pension from Central civil estimates in respect of BSNL absorbed employees, does not cover Casual worker transferred to BSNL/PSU. As per clarifications issued in context of absorption, it has been clarified by the Department of Telecommunications that all the employees appointed by BSNL on or after 01.10.2000 are BSNL appointee. Accordingly, casual workers upon their regularization in BSNL were BSNL appointee thereby not entitled for pension in terms of Rule 37A of CCS (Pension)

Rules. They were never a Government servant of Department of Telecom transferred to BSNL.

5. And whereas, Casual Labourers (Grant of Temporary Status and Regularization) Scheme, 1989 of Telecom Department pronounced on 07.11.1989, which was one time scheme and cover the casual workers for temporary status in terms of Para 5 of the Scheme, who were engaged on the date of pronouncement of the Scheme i.e 07.11.1989. The Hon'ble Apex Court in catena of judgements has held that such schemes of various Departments including Telecom Department for conferment of temporary status, were one time measure only for casual workers, who were in service on the date of the commencement of the Scheme and fulfilling the conditions of continuity of engagement 240/206* days in a year (*206 for five days working pattern office) either on the date of commencement of scheme or later. Accordingly, various eligible casual workers who fulfilled other conditions of continuity were granted temporary status by the Government of India (erstwhile Circles of DTS/DTO) from time to time. As per para 6 of the Scheme, various benefits upon grant of temporary status, were extended to casual workers which include GPF entitlement, leave entitlement, minimum pay scale of Group D, increment etc and special feature of counting of 50% TSM service for pension in terms of Pension Rules upon regularization. Impending corporatization of DTS/DTO, Department of Telecom Services vide letter dated 29.09.2000 issued instructions prescribing methodology of regularization of full time casual workers in BSNL w.e.f 01.10.2000, which cover the left out Casual workers including those who were granted temporary status by the erstwhile DTS/DTO.

6. And whereas, the Government of India, vide OM dated 20.10.2006, which was issued in supersession to earlier instructions, specifically gave coverage of Pension Rules to the Casual worker with Temporary status as on 30.09.2000 only, who were regularized in BSNL in terms of DTS letter dated 29.09.2000 so that afore-said benefits guaranteed under Scheme of 1989, may be extended/continued upon their regularization. Other casual workers, who were

regularized in BSNL on or after 01.10.2000, it was again clarified that their status would be of BSNL appointee. The employees covered by Rule 37A of CCS (Pension) Rules or Scheme of 1989, are only entitled for GPF and pension in terms of Central Government Pension Rules.

7. Therefore, on careful and due assessment of facts and service records of Shri/Smt..... including comments of Ministry of Communications/DoT Hqrs on afore-said policy/Scheme, it has been found that benefits of absorption in terms of Rule 37A of CCS (Pension) Rules, have been erroneously extended to him/her through an administrative order, which has overlooked afore-said statutory provisions including important features of TSM Scheme, 1989. Accordingly, the order of absorption issued in terms of Rule 37A of CCS (Pension) Rules is declared ab initio void and non est and would not have legal effect for any purpose.

The receipt of order may be acknowledged by Shri/Smt..... and shall be placed in his/her service records.

(Name of Director-Estt.)

Director (Estt.)/Name of Circle

Shri/Smt.....

Working as

Address of employee.....

[Through GM/DGM of concerned SSA]