



भारत सरकार

राष्ट्रीय अनुसूचित जनजाति आयोग

GOVERNMENT OF INDIA

NATIONAL COMMISSION FOR SCHEDULED TRIBES

File No. LS/3/2012/MPNT2/SEFROM/RU-IV

छठी मंजिल, 'बी' विंग,
लोक नायक भवन, खान मार्केट, नई दिल्ली-110003
6th Floor, 'B' Wing, Lok Nayak Bhawan
Khan Market, New Delhi-110003

To

दिनांक/ Dated: 20/5/2015

The Secretary
Department of Communications,
Sanchar Bhawan, Rafi Marg
New Delhi – 110001

2.

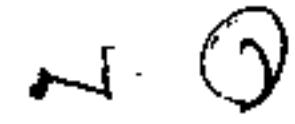
The chairman-cum-Managing Director,
BSNL, Bharat Sanchar Bhawan,
Harish Chandra Mathur Lane,
New Delhi

Sub: Representation dated 20/11/2014 of Shri Lalan Sah, Asst. Manager, BSNL regarding implementation of proceeding of National Commission for Scheduled Tribe

Sir,

I am directed to refer to this commission's letter of even number dated 22/04/2015 on the above subject and to enclose herewith a copy of the proceedings of the sitting held in the Commission on 29/04/2015 for necessary action and to send the compliance report to the commission within 30 days positively.

Yours faithfully,


(N. Balasubramanian)
Research Officer

Copy to:-

Shri Lalan Sah.
Assistant Manager,
BSNL Corporate Office ,
Bharat sanchar Bhawan,
Janpath,
New Delhi -110052

240507
20/5/15

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GOVERNMENT OF INDIA
NATIONAL COMMISSION FOR SCHEDULED TRIBES

File.No. LS/3/2012/MPNT2/SEPROM/RU-IV

Proceedings of the Sitting held by Shri Ravi Thakur, Vice Chairperson, NCST on 29.4.2015 in the case of Shri Lalan Sah, Asstt Manager, BSNL regarding ante-dating of his promotion on the basis of backlog vacancies in the year 2009-10

List of participants (Annexure)

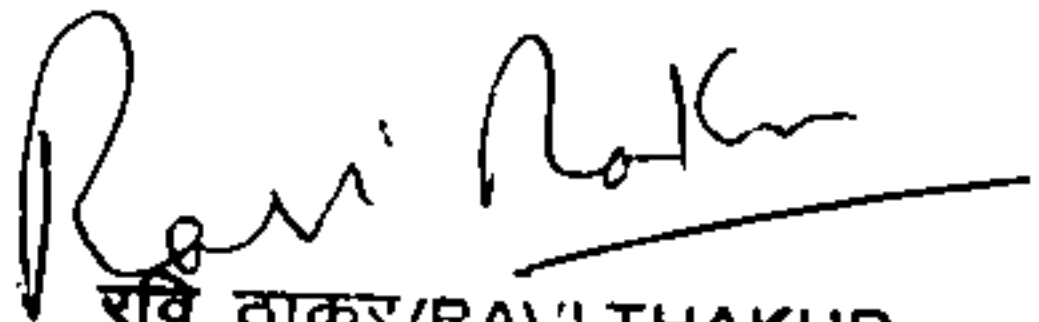
Pursuance to the proceedings of Sitting held on 31.05.2013 and 16.01.2015 in the matter vide which Commission advised BSNL to issue necessary orders for giving relief to the petitioner Shri Lalan Sah and for intimating the Commission within a period of 4 week the NCST has not been informed of the status of action taken and the petitioner has also informed the Commission that BSNL has not issued any such order and hence the Sitting was held on 29/04/2015.

BACKGROUND

2. As per information available on record there were 44 vacancies of Assistant Managers to be filled by promotion from UDCs through the LICE 2010 upto recruitment year 2009-10. This number of vacancies included 6 vacancies reserved for ST candidates. These included ST vacancies for the year 2006-07, 2007-08 and the year 2008-09 beside current vacancy for 2009-10. However, 20 vacancies (16OC, 03 SC and 01 ST) only were filled upto 2008-09 in the LICE 2010 leaving 24 unutilized vacancies (14OC, 05 SC and 05 ST) for the year 2009-10. In vacancy year 2009-10 total 13 (11OC, 1SC & 1ST) vacancies were available and 11 vacancies (3OC, 4SC & 4ST) remained unfilled in which Shri Lalan Sah was eligible.

3. The Commission, after examining all the documents submitted/ presented by the petitioner and those received from / presented by the BSNL officials including views of the LO(SCT) of BSNL and in view of the discussions held in the Sitting on 31/05/2013, had given detailed findings and recommended in para 6 of the proceedings, as given below:

“In view of the above findings and observations, the National Commission for Scheduled Tribes is of the view that (i) Shri Lalan Sah was


रवि ठाकुर/RAVI THAKUR
उपाध्यक्ष/Vice Chairperson
राष्ट्रीय अनुसूचित जनजाति आयोग
National Commission for Scheduled Tribes
भारत सरकार/Govt. of India
नई दिल्ली/New Delhi

intentionally not given opportunity to appear at LICE 2010 despite the fact that his promotion with retrospective effect was under active consideration in BSNL (ii) the LICE 2011 was held to fill the vacancies including the backlog vacancies from OC, SC as well as ST categories, and (iii) the candidates found successful at LICE 2011 also equally deserve to be given similar treatment as meted out to the candidates who succeeded at the LICE 2010; and therefore Shri Lalan Sah certainly deserves to be promoted against one of the earliest ST backlog vacancies which were covered in LICE 2010 as well as in LICE 2011. **Accordingly, the National Commission for Scheduled Tribes recommends that Shri Lalan Sah may be given promotion against the ST backlog vacancy and placed at the appropriate position in the seniority list of Assistant Manager, as in the case of successful candidates at the LICE 2010. Information about the action taken in the matter along with copies of order issued in this case may be furnished to the National Commission for Scheduled Tribes promptly but not later than 30 days of receipt of these proceedings.**"

4. As there was no progress in the case another Sitting was held on 16/01/2015. The entire position relating to (i) backlog of ST vacancies, (ii) neither permitting nor disallowing the petitioner to appear in the LICE 2010 and (iii) abnormal delay in issuing the order relating to notional promotion of the petitioner from the post of LDC to UDC w.e.f. 01/07/2014 was recalled in the Sitting. The Commission was also informed that the Director (SR) and LO(SCT) in Department of Telecom had also recommended for ante-dating the promotion of the petitioner from the vacancy year 2009-10. After having heard the BSNL authorities and the petitioner the Commission recommended the BSNL authorities to relook the case of the petitioner in the light of the rules of reservation.

SUBMISSIONS DURING SITTING

5. BSNL while presenting their case, submitted letter No.105-5/2010-CSS dated 28.4.2015 in support of their argument.

OBSERVATIONS AND FINDINGS

6. The Commission has noted that it was wrongly mentioned in para 7 of the letter that decision regarding promotion of the petitioner w.e.f. 01/07/2004 from LDC to UDC was taken in the meeting of NCST with BSNL officers on 22/03/2010, as detailed recommendation regarding the promotion had already been communicated to the BSNL vide the NCST letter dated 17/12/2009 wherein BSNL was requested to

reconsider the promotion w.e.f. 01/07/2004 in the light of the Order dated 24/11/2008 of the SCT Cell of BSNL and to furnish the action taken report by 30th December, 2008. As requisite action as per findings given in the Commission's letter dated 17/12/2009 was not taken up timely and no satisfactory reply was furnished to NCST a Sitting with the Secretary, Department of Telecommunication and CMD, BSNL was scheduled for 25/03/2010 (and not 22/03/2010 as wrongly mentioned in the BSNL letter dated 28/04/2015 cited above). The Commission was informed by the GM, BSNL during the Sitting that BSNL had decided to promote Shri Lalan Sah with effect from 1/07/2004 but office orders for promotion were yet to be issued. The promotion orders were finally issued on 31/03/2010. As commission had already communicated its views vide letter dated 17/12/2009 the delay in issuing promotion order was on the part of the BSNL only.

7. The Commission has also noted different information about number of vacancies for which LICE 2010 was held and the number of vacancies utilized on the basis of the LICE 2010 furnished in the documents of the BSNL. According to the BSNL Circular No. 15-1/2009-Rectt.II dated 29/03/2010 three (3) candidates including 1 ST candidate successfully qualified the exam against vacancy year 2006-07, 2 candidates qualified against vacancy year 2007-08, 15 candidates qualified against vacancy year 2008-09 while 13 candidates including 2 ST candidates (including 1 ST in own merit along with OC candidates) successfully qualified the exam for the vacancy year 2009-10. Thus a total of 33 candidates including 1 ST with own merit and 2 ST with ST merit were declared qualified against 44 vacancies for which LICE 2010 was held. Accordingly, 11 vacancies including 4 ST vacancies remained unfilled after declaration of the result of LICE 2010 for vacancy year 2009-10. The order, in Para 2 mentioned that the seniority of the candidates will be decided by the staff branch as per the existing rules and instructions on the subject. On the other hand, Para 5 of letter F. No. 105-5/2010-CSS (pt) dated 28/4/2015 handed over by the BSNL authorities during the sitting, 3 vacancies of 2006-07, 2 vacancies of 2007-08 and 15 vacancies of 2008-09 (total-20) were utilized and 20 (or 21) vacancies (including 5 ST vacancies) remained unfilled after LICE 2010. The BSNL authorities may separately explain as to which one is the correct information. If 13 candidates declared successful against vacancy year 2009-10 were not promoted then what was the objective of declaring the qualifying list which included 2 ST candidates against the vacancy year 2009-10 and the reason for not granting

promotion while a total of 44 vacancies existed for the examination. The BSNL authority may also inform whether those 2 ST candidates declared successful for vacancy year 2009-10 have been granted promotion and the date from which promotion has been granted to them.

8. Coming back to the latest details furnished by the BSNL vide letter dated 28/04/2015, the Commission has noted that on the basis of LICE 2010, 3 candidates were considered successful against the vacancies for 2006-07, 2 candidates against 2007-08, and 15 candidates were considered successful against vacancy year 2008-09. Moreover, the only ST candidate selected in LICE 2010 was adjusted against vacancy for 2006-07 leaving a backlog of 5 ST vacancies. Thus statement given in para 6 of the letter is not sound that petitioner could have been eligible for vacancy year 2009-10 only had there been a vacancy under ST category in 2009-10. If other ST, OC and SC candidates appearing in LICE 2010 can be adjusted against 2006-07 or 2007-08 etc. why the petitioner could not be considered against backlog ST vacancies of 2007-08 or later year. As per the statement of BSNL if there was no ST vacancy in 2009-10 to adjust the petitioner, then where have the five ST backlog vacancies, which remained unfilled in LICE 2010 had gone or utilized/ diverted. If diversion of ST backlog vacancies has taken place or BSNL does not intend to fill those vacancies then should this construe as violation of the reservation orders and the constitutional provisions.

9. The Commission had compared the promotion case of the petitioner with that of Smt. Nivedita whose name was added for the year 2008-09 subsequently in the promotion list for Assistant Manager. BSNL have kept silent on this parity. However, BSNL in para 7, 8 and 9 have mentioned the matter of parity with the Purnendu Kant's case of Ministry of Defence. Had promotion order in respect of the petitioner been issued timely or the BSNL authority had allowed him to appear for LICE 2010 provisionally, he would have been considered at par with other candidates who were otherwise eligible to appear in LICE 2010. It is further mentioned in para 9 of the letter that Department of Personnel & Training, which was consulted in the matter, have opined that "since Shri Sah is an employee of BSNL they have no comments/ opinion to offer in the case. This statement of DoPT gives full liberty to the BSNL to take a decision in favour of the petitioner. The BSNL in their letter have stated that the matter was under reference to the DoT for issuing suitable guidelines in the

matter to the BSNL for taking appropriate action by BSNL. Here again the Commission had noted that Director (SR) & LO (SCT), Department of Telecom vide their letter dated 20/8/2014 has already advised the BSNL to reconsider the request of the Petitioner in the light of the references made in their letter. The Department of Telecommunication had sought a report on the Action Taken by 29th August, 2014. The Commission has also noted that subsequently, the Secretary Department of Personnel and Training vide his DO letter No. 4761/2015/PG/Secy(AR&PG) dated 6/1/2015 addressed to the Secretary DoT has stated that 'the National Commission for Scheduled Tribes has already passed a favorable order for consideration of his request. Besides, in a similar case of one Shri Purnendu Kant, the Hon'ble CAT, Principal Bench, New Delhi in OA No. 113/2000 ordered in favour of the Applicant, which was reportedly compiled with by the Government of India.'

10. Attention of the BSNL authorities is also drawn towards a fact that a reserved vacancy for a year becomes a backlog vacancy if no eligible candidate is found in that recruitment year. Therefore, a candidate who becomes eligible in the subsequent year is appointed against the backlog vacancy, as was done in the process of LICE 2010 when ST candidate was considered against the backlog vacancy for 2006-07, along with 16 OC and 3 SC who were also considered against the backlog vacancies for the years 2006-07, 2007-08 and 2008-09. On the same pattern the petitioner needs to be considered against any of the, ST reserved backlog vacancy for years prior to 2009-10, irrespective whether any fresh vacancy for 2009-10 is available or not- because oldest backlog points have to be filled first. Moreover, if the merit of the ST candidate is comparable with the OC candidates in the LICE, he can also be considered against OC vacancy (and not only ST vacancy) as per the instructions on the subject and as shown in the successful list for 2009-10.

RECOMMEDNATION

11. The Commission is firmly of the view that the petitioner deserves to be granted promotion against the vacancies for which LICE 2010 was held and recommends that keeping in view the above facts and those brought out in the previous Sittings and in view of the recommendation made by DoT vide letter dated 20/8/2014, by Secretary (DAR & PG) and the advice of the Department of Personnel and Training for taking a decision itself In the matter related to its own employee, the BSNL authorities may issue orders for ante-dating the promotion of Shri Lalan Sah,







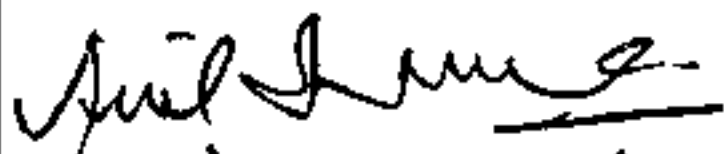
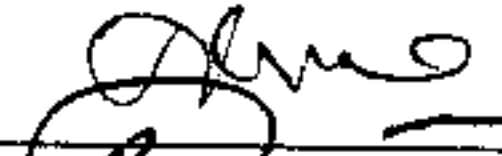



petitioner from the date from which other candidates of LICE, 2010 were granted promotion. A copy of the order issued by the BSNL may be furnished to the National Commission for Scheduled Tribes within 30 days.



रवि ठाकुर/RAVI THAKUR
उपाध्यक्ष/Vice Chairperson
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National Commission for Scheduled Tribes
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S. 2011, P.N. 2/31PRC /RU-11

Sitting held on 29.04.2015 at 05.00 P.M in the case of Shri Lalan Sah, Asst. Manager, BSNL regarding promotion w.e.f. April, 2010.

Sl. No.	Name and Designation	Address & Phone No.	Signature
I	<u>National Commission for Scheduled Tribes</u>		
1.	Shri Ravi Thakur Hon'ble Vice- Chairperson	In Chair	
2.	Mrs. K.D. Bhansor, Director		
3.	Shri N. Balasubramanian Research Officer		
4.			
5.			
II	<u>Officers of Department of Communications</u>		
1.	N. K. Yadav M(S)	9868176814	
2.	RAJVEER SINGH DDG(SA)	9868133010	
3.	Budh Kataria USCSA	9868132707	
4.			29/4/15
5.			
III	<u>Officers of BSNL</u>		
1.	D. Chakrabarti ; GM(Pers)	9868215657	
2.	Manish Kumar, DGM(Pers)	9868511174	
3.	A. K. Sinha, AEM(CSS)	9868520361	
4.		8443216463	
5.	Shiv Singh, AEM(SCT)	9868541254	
6.	P.K. PUNIA, AM(SCT)	9868262435	
IV	<u>Petitioner</u>		
1.	LALAN SAH	9868266002	
2.			
3.			