

1. On 30.03.2011, the Assistant General Manager (Personnel II), Corporate Office, BSNL issued Office Order bearing No.2-15/2001-Pers. II promoting 1861 JTOs (T) to the post of SDE (T) against 67% seniority cum fitness quota. The applicants are aggrieved by the issue of the said order. The said order of 30.03.2011 is filed herewith as

<b>Analysis of Promotion List for the promotion from JTO(T) to SDE(T)</b>							
<b>Total Candidates in Promotion List = 1861</b>							
<b>Departmental Candidates=1179 (63.35%)</b>				<b>Direct Recruits = 682 (36.65%)</b>			
<b>Category</b>	<b>As Per Promotion List</b>	<b>As Per Rule</b>	<b>Excess/Shortfall</b>	<b>Category</b>	<b>As Per Promotion List</b>	<b>As per rule</b>	<b>Shortfall/Excess</b>
<b>OC</b>	<b>898</b>	<b>721</b>	<b>+177</b>	<b>OC</b>	<b>504</b>	<b>720</b>	<b>-216</b>
<b>SC</b>	<b>264</b>	<b>140</b>	<b>+124</b>	<b>SC</b>	<b>64</b>	<b>140</b>	<b>-76</b>
<b>ST</b>	<b>17</b>	<b>70</b>	<b>-53</b>	<b>ST</b>	<b>114</b>	<b>70</b>	<b>+44</b>
<b>Total</b>	<b>1179</b>	<b>931</b>		<b>Total</b>	<b>682</b>	<b>930</b>	

2. Under the said order, out of the said 1861 JTOs, 1179 are promotees and only 682 are direct recruits; that is 63.35% of the candidates promoted are departmental promotees and only 36.65% are direct recruits. Thus, obviously, the list of candidates for promotion has been drawn up in violation of the post based reservation clearly violating the equitable distribution of roster points between direct

recruits and promotees. It is submitted that the principle of reservation is implemented by the post based rosters not in absolute percentage terms like 15% for SC and 7.5% for ST but according to the recruitment rules of the JTO cadre 50% of the vacancies are ought to be filled by the direct recruitment remaining 50% by promotion from the Group C cadre. Separate Roster 100 point roster to be maintained for the promotee as well as the direct recruited. The promotion order is in direct violation of the instructions contained in DOPT Office Memorandum No. 36012/2/96-Estt. (Res.) dated 2nd July 1997 . The reservation roster has also not been duly followed in the matter of preparation of the eligibility lists which issue is also sub judice before this Honourable Tribunal. As per the Office Memorandum No. 36012/2/96-Estt. (Res.) dated 2nd July 1997, the reservation roster should be post based. Clause 4(c) of the said O.M reads as under:

***"Cadre, for the purpose of a roster, shall mean a particular grade and shall comprise the number of posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. Thus, in a cadre of, say, 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, two rosters-one for direct recruitment and promotion (when reservation in promotion***

***applies)-each comprising 100 points shall be drawn up on the lines of the respective model rosters."***

*Clause 5 of the explanatory note to annexure I of the said Office Memorandum reads as under:*

***"While cadre is generally to be construed as the number of posts in a particular grade, for the purpose of preparation of roster, it shall comprise posts to be filled by a particular mode of recruitment in terms of the applicable recruitment rules. To illustrate, in a cadre comprising 200 posts, where the recruitment rules prescribe a ratio of 50:50 for direct recruitment and promotion, the roster for direct recruitment shall have 100 points and that for promotion shall have 100 points-thus making a total of 200."***

The aforesaid guidelines have not been followed by the respondents. Moreover as per DOPT O.M No. 36012/18/95-Estt. (Res.) Pt. II dated 13.08.1997, the said promotion order of 30.03.2011 is in direct violation of Article 16(4A).

3. The said promotions are unconstitutional cannot be sustained in the court of law. With candid admission of the respondents that they are in the process of preparation of the rosters and never circulated the updated roster until the formation of BSNL from the DoT proves beyond suspicion that BSNL never followed the post based rosters for

promotions from JTO to SDE. Several correspondence made by the respondent regarding the non existence of roster is annexed in the main OA regarding the non compliance to the constitutional provisions, it is already stated as per DoPT OM No. 43038/2/92-Estt(SCT), dated 31.12.1992 the roster maintained by the administration has to be circulated every year for the compliances of constitutional provisions. The correspondences of the respondent organization clearly show that the roster is never at place while effecting the promotions from the JTO to SDE cadre. Only the mere correspondence regarding the updating of roster is being circulated from the corporate office of the respondent organization to the field units is taking place from the year 18th May 2006 onwards neither it was prepared for the more than 6 years.

4. It is submitted that the procedure for the preparation of the list of candidates for without adhering compliance to the reservation by roster for the promotions has not been duly followed. It is submitted that objections in detail were submitted by the applicants through their association in respect of updation of rosters is not considered at all. Thereafter, however, without duly considering the objections and resolving outstanding issues and without even publishing the final eligibility list, the said order dated 30.03.2011 has been issued.

5. The aforesaid guidelines have not been followed by the respondents along with DoPT OM No. 43038/2/92-Estt (SCT), dated 31.12.1992. Moreover as per DOPT O.M No. 36012/18/95-Estt. (Res.) Pt. II dated 13.08.1997, the said promotion order of 30.03.2011 is in direct violation of Article 16(4A) and 335. It is further submitted that when promotions are effected on the basis of such defective method of extending the reservations and also abnormal procedure of provision reservations on the whims and fancies of the authorities of BSNL ignoring the relevant guidelines and rules, it amounts to penalizing the employees who have a right to be promoted but are not being considered for promotion. It is submitted that if any promotions are effected pursuant to the said order of 30.03.2011, the applicants will suffer great hardship and prejudice. This is because even if the applicants were to ultimately succeed in the Original Application, considering that seniority is generally reckoned on the basis of date of regular appointment in the cadre, applicants would become junior to persons wrongly promoted on the basis of the flawed principles adopted by the respondent company. Therefore, effecting any promotions on the basis of the aforesaid order of 30.03.2011 would result in grave hardship and prejudice to the applicants above named and other similarly placed persons.

6. It is submitted that the Respondent 1 to 5 herein had filed counter in the Original Application candidly admitting that the roster for (SDE (T)) has not been updated while effecting the promotion orders and also never sought objections as per the DoPT OM No. 43038/2/92-Estt (SCT), dated 31.12.1992 respondents are still in the process of updating roster from the year 2006 onwards. the respondents are not maintaining post based rosters in accordance with the reservation policy based on roster point system a constitutional policy under Articles 16(4), 16(4-A), 15(4), 335 and other directive principles. Maintenance of the roster of reservation is the duty of public servant. Failure to perform such Constitutional duties by the concerned officials should attract severe punitive actions.

The Hon'ble Supreme Court in Superintendent Engineer, Public Health, U.T. Chandigarh and Ors. v. Kuldeep Singh and Ors., JT 1997(2) SC 508, a case pertaining to non maintenance of rosters quoted in its judgment as follows "**Every public servant is a trustee of the society and in all facets of public administration, every public servant has to exhibit honesty, integrity, sincerity and faithfulness in implementation of the political, social, economic and constitutional policies to integrate the nation, to achieve excellence and efficiency in the public administration. A public servant entrusted with duty and power to implement**

***constitutional policy under Articles 16(4), 16(4-A), 15(4) 335 and all inter-related directive principles, should exhibit transparency in implementation and of accountable for due effectuation of constitutional goals. Maintenance of the roster and strict adherence to it in accordance with the brochure issued by the Government of India in that behalf to implement the rule of reservation in promotion is the charge and trust put on public servants. The Constitution has trusted the public servant as honest administrator to effectuate public policy and constitutional goals. The petitioner herein, has betrayed that trust and tended to frustrate the public policy. It is deducible from the facts that the petitioner failed to perform that constitutional duty.”***