

# Sanchar Nigam Executives' Association

## (Only Recognised Executives' Association in BSNL)

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All Communications to  
the General Secretary



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**No: SNEA/CHQ/Committee/2018-21/01**

**Dated 21<sup>st</sup> May, 2020.**

**To**

- 1. Shri. H C Pant, CGM(Legal), BSNLCO, New Delhi.**
- 2. Shri. Arun Kumar, PGM(Pers), BSNLCO, New Delhi.**
- 3. Shri. Sourabh Tyagi, Sr GM(Estt), BSNLCO, New Delhi.**

**Sub: The reversion of JTOs of 2001 Rect year who were promoted as SDE through LDCE 2007 for the vacancy Year 2005-06. Matter may be decided by examining their eligibility as per the provisions of schedule 12, note 5 of the SDE RR 2002 and the clarifications issued by BSNLCO dated 16.04.2007 and 10.07.2007 in connection with LDCE 2007 notification dated 09.02.2007. The Show Cause Notice and other actions taken against 2001 recruited JTOs based on BSNLCO clarification dated 30.07.2010 may be withdrawn as it is not applicable for LDCE 2007 held on 15.05.2007:**

### **History:**

As per column 12 of the SDE RR 2002 (**Annexure-A**), promotion to SDE cadre is through two streams: 75% Seniority quota and 25% Competitive quota.

For 75% SCF, eligibility is stipulated as 3 year regular service in the JTO grade.

For 25% LDCE, eligibility is stipulated as "from amongst JTOs who have rendered not less than 3 years of regular service in the Grade as on **1<sup>st</sup> July of the year of Examination.**

**Under Schedule 12, Note 3 states that: "The crucial date for determining the eligibility list shall be 1<sup>st</sup> July of year to which the vacancy pertains".**

**Under Schedule 12, Note 5 states that: "Where Juniors who have completed their qualifying eligibility service are being considered for promotion, their seniors would also be considered provided they are not short of requisite qualifying/eligibility service by more than one year".**

There is an ambiguity regarding LDCE eligibility, it is defined as not less than 3 years of regular service in the Grade as on **1<sup>st</sup> July of the year of Examination.**

- The LDCE notified vide No. 5-4/2005-DE dated 09.02.2007 for the vacancy years 2001-02 to 2005-06 with eligibility as per Column 12 of schedule to SDE(T) RR 2002.
- The clarification **No. 2-29/2005-Pers.II dated 16-4-2007 (Annexure-B)**, gives the meaning that 1 year relaxation under column 12, Note 5 of SDE (T) RRs 2002 is applicable for LDCE also. This clarification is a reiteration of the fact that Note under Colum 12 is applicable for Seniority Quota as well as LDCE. Otherwise it would have been simply clarified that the Note under Colum 12 is not applicable for LDCE as done in the subsequent LDCE 2010, vide letter dated 30.07.2010.

**Clarification No. 2-29/2005-Pers.II dated 16-4-2007**

No	Doubts raised	Clarification thereof												
1	What is the crucial date for reckoning 3 years regular service for each vacancy year.	<p><b><i>As per column 12 of Recruitment Rules and note below it, the candidate applying for the Examination should have completed three years of regular service in the grade of JTO(T) as on the 1<sup>st</sup> July of the year to which the vacancy pertains as under:</i></b></p> <table><tr><th><b><u>Vacancy year</u></b></th><th><b><u>Eligible Candidates</u></b></th></tr><tr><td>2001-02:</td><td>Completed 3 yrs as on 1.7.2001</td></tr><tr><td>2002-03:</td><td>Completed 3 yrs as on 1.7.2002</td></tr><tr><td>2003-04:</td><td>Completed 3 yrs as on 1.7.2003</td></tr><tr><td>2004-05:</td><td>Completed 3 yrs as on 1.7.2004</td></tr><tr><td>2005-06:</td><td>Completed 3 yrs as on 1.7.2005</td></tr></table>	<b><u>Vacancy year</u></b>	<b><u>Eligible Candidates</u></b>	2001-02:	Completed 3 yrs as on 1.7.2001	2002-03:	Completed 3 yrs as on 1.7.2002	2003-04:	Completed 3 yrs as on 1.7.2003	2004-05:	Completed 3 yrs as on 1.7.2004	2005-06:	Completed 3 yrs as on 1.7.2005
<b><u>Vacancy year</u></b>	<b><u>Eligible Candidates</u></b>													
2001-02:	Completed 3 yrs as on 1.7.2001													
2002-03:	Completed 3 yrs as on 1.7.2002													
2003-04:	Completed 3 yrs as on 1.7.2003													
2004-05:	Completed 3 yrs as on 1.7.2004													
2005-06:	Completed 3 yrs as on 1.7.2005													
3	In terms of Column 12 read with note 5 thereto in RRs, 2002 of SDE(T), where juniors having the qualifying eligibility service are being allowed for the Examination, whether seniors would also be permitted to appear in the examination provided they are not short of requisite qualifying /eligibility service by more than one year	<p><b><i>As per column 12 and note there under of RRs 2002 of SDE(T)</i></b></p>												

The clarification at sl. no 1 above clarified one issue before conduction of LDCE 2007 itself, that the 3 years qualifying service is to be reckoned with "**1<sup>st</sup> July of the Vacancy year**".

- Again doubts raised by certain Circles regarding the eligibility of JTOs of a later rect year having completed 2 years of service should be allowed to appear in the LDCE comparing with a JTO of earlier rect year and completed 3 years of service who has come on transfer from other Circles under Para 38:

On this matter, kindly refer the Note sheet, page 8 & 9 of File No: 2-29/2005-Pers II(Pt) (**Annexure-C**) of Pers section of BSNLCO dealt with the issue. File noting reproduced:

***Sub: Applicability of relaxed condition of 2 years for LDCE for vacancy years 2001-02 to 2005-06 –clarification reg:***

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***2. It is submitted that though JTO Cadre is a Circle cadre, regular promotion from JTO to SDE(T) grade is given in accordance with All India Eligibility lists of JTOs prepared on the basis of the following parameters in the order given below:***

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***In view of the above, the relaxed condition of 2 years regular service for appearing in the aforesaid Competitive examination will be invoked with reference to the inter se seniority of JTOs prepared on the basis of all India eligibility list of JTOs and the circle seniority of transferees coming under para 38 of P&T Manual will not be taken into account.***

This proposal was approved by DDG(Pers) and Sr DDG(Estt) who is the Cadre controlling authority for JTO cadre and clarification issued on 10.07.2007.

- Establishment section of BSNLCO vide letter **No. 2-29/ 2005-Pers.II dated 10.07.2007 (Annexure-D)** clarified that JTOs of a later rect year will not be permitted to appear in the LDCE at par with the JTOs of earlier rect years and completed 3 years of service, come under Para 38. The doubt raised by the Circle was: "***whether a JTO(T) belonging to a later recruitment year having 2 years regular service in the grade should be allowed to appear in the competitive examination rescheduled on 15.05.2007 under the relaxed condition of 2 years regular service -----***".
- **As per this clarifications dated 16.04.2007 & 10.07.2007 and from the Note Sheets approval, it is clear that the relaxation under column 12, Note 5 of SDE(T), RRs 2002 is applicable for LDCE 2007.**
- Many Circles, **A&N, AP, AS, BR, BSNLCO, CHG, CHTD, GUJ, HP, JKD, KRL, KTK, MH, MP, NE- I, NTR, RAJ, UPE, TLG, TN and WB Circles** (as per the list dated 03.12.2009) implemented the clarification positively and allowed all the 2001 rect JTOs who completed 2 years of service on 01.07.2005 to appear in the LDCE 2007 as per note 5 of schedule 12 of SDE RR 2002 and the clarifications dated 16.04.2007 and 10.07.2007.

Today, after 12 years can anyone say that all these Circles acted wrongly?

- LDCE held on 15.07.2007, result declared vide No: 5-3/2007-DE dated 08.07.2008 and promotion orders issued vide No: 1-14(postings)/2008-Pers II dated 03.11.2008. All these JTOs are promoted and working as SDEs since 2008. Two LDCEs conducted thereafter. Since they are already promoted as SDEs, they could not appear for subsequent LDCEs conducted by BSNL, sealing their future.
- In the earlier LDCE held in 2002 also, similar 1 year relaxation in qualifying service is extended by BSNL/DoT.
- **The case of 2001 rect JTOs of Tamil Nadu Circle is slightly different.** All 2001 Rect JTOs are recruited through an All India Competitive Examination and allotted to different Circles of their choice as per the merit list. Due to a Court order, TN Circle send the Departmental candidates waiting for training before the direct rect JTOs of 2001. Because of that, all the 2001 rect JTOs of TN Circle sent for JTO training only after the crucial date, 01.07.2002. However, large number of JTOs of 2001 rect year, recruited for other Circles and junior to them in the All India Eligibility list of JTOs are completed 3 years of service on the crucial date of 01.07.2005. Considering the fact that SDE cadre is an all India cadre and the promotion to SDE cadre is made from the All India Eligibility list of JTOs, it will be most appropriate to compare the relative position of JTOs from the All India Eligibility list of JTOs and the eligibility of the JTOs to appear in the LDCE as per note 5 of schedule 12 of SDE RR 2002 and the clarifications issued by BSNLCO on 16.04.2007 and 10.07.2007. This position has been made clear by the approved Note sheet mentioned above and the clarification dated 10.07.2007. Acting on this line, TN Circle allowed the 2001 rect JTOs comparing them with Shri Murugappa Perumal, Smt P Kavitha and Shri K Sundaraganapathy, all the three are 2001 rects and came under Rule 38 from Kerala (first 2) and Punjab Circle.
- Most of the Circles did not allowed the 2002 rect JTOs as not a single 2002 rect JTO completed 3 years of service as on the crucial date, 01.07.2005 to invoke the Senior-Junior clause. However, ignoring the clarification dated 10.07.2007; some Circles allowed 2002 recruited JTOs who had completed 2 years of service comparing them with 2001 or earlier rect JTOs completed 3 years of service who had come to the Circle under Rule 38. This lead to litigations by the JTOs of 2002 in AP Circle who are not allowed for the LDCE 2007 in the caption "M. Devi Prasad and others Vs BSNL" through OA 238 of 2009.

- On 03.12.2009, BSNLCO directed the Circles to verify the eligibility of the JTOs who had not completed 3 years of service as on 01.07.2005. It is understood that all the Circles have reported that all 2001 batch JTOs who were allowed to appear in the examination and qualified have duly complied with the eligibility conditions as per the SDE RR2002 and the clarification issued on 16.04.2007 and 10.04.2007.
- LDCE 2010 notified on 22.04.2010 for the vacancy years 2006-07 to 2009-10.**
- In the clarification issued for the LDCE 2010 to be held on 04.07.2010 vide **No. 2-16/2009-Pers.II dated 30-7-2010 (Annexure-E)**, it is clarified that the relaxation under column 12, Note 5 of SDE (T) RRs 2002 is applicable only for Seniority Quota promotion and not applicable for eligibility for appearing in the LDCE.

<b>Clarification No. 2-16/2009-Pers.II dated 30-7-2010</b>		
<b>SI No</b>	<b>Doubts raised</b>	<b>Clarification thereof</b>
<b>1</b>	<b>Column 12 Note 5 of SDE(T) RRs:- Where juniors who have completed their qualifying eligibility service are being considered for promotion, their senior would also be considered provided they are not short of requisite qualifying /eligibility service by more than one year. Whether this rule is only applicable for regular promotion (Through Seniority quota) or it is also applicable for promotion through LDCE.</b>	<b><i>This is applicable only in respect of Seniority Quota promotion conducted by BSNL Corporate Office as per All India Eligibility list prepared -----.</i></b>

- In the letter issued on 30.07.2010, it is adapted that Sl. No.3 of the clarification issued on letter dated 16.04.2007 stand **corrected/modified** to the extent of clarification given under this letter.

From this, it is clear that the modification through the clarification is for the LDCE notified on 04.07.2010 and it has no relevance with the LDCE held earlier in 2007 against 25% competitive quota posts for the VYs 2001-02 to 2005-06. **Further no modification/correction in the rect Rule can be done on a retrospective date.**

- On 03.12.2009, BSNL CO circulates the list of SDEs passed the LDCE 2007 and not completed the 3 years of regular service as on 01.07.2005 to appear in the LDCE. BSNLCO directed the Circles to verify their eligibility. JTO being a Circle Cadre, CGM is the appointment authority. This is in connection with the court case filed by 2002 rect JTOs at CAT, Hyderabad, OA 238/2009 of M Devi Prasad and others (OA 238/2009).
- Circles replied to BSNLCO that they followed Column 12, note 5 of the Rect Rules for promotion to the grade of SDE and allowed the 2001 JTOs completed 2 years of service on 01.07.2005. Reply from Kerala Circle dated 08.12.2009 is attached as **(Annexure-F)**.
- In response to BSNL CO letter dated 03.08.2010 directing the Circles to issue show cause notice, Kerala Circle reply dated 09.08.2010 reveals the confusion on the matter. The letter states that: "-----". Clarification on the subject matter received recently vide order --- dated 03.12.2009 and ----- dated 30.07.2010 indicates that the Column 12, note 5 of the Rect Rules of SDE(T) is applicable in respect of Seniority Quota Promotion only. **In the absence of any clear cut instructions/directions from Corporate Office during the period of LDCE, they were allowed to appear for the examination.** Reversion of the candidates at this stage will create disputes and administrative problems. ----- **(Annexure-G)**.

- The dispute occurred when BSNL management issued show cause notices to the 2001 Rect JTOs (**Annexure-H**), not completed the 3 years qualifying service for appearing in the LDCE, based on the clarification No. 2-16/2009-Pers.II dated 30.07.2010. In the notice it is stated that: **"----. As per BSNL, New Delhi Lr no. 20-16/2009-Pers II dated 30.07.2010 you are ineligible to appear in the said examination.--". This clearly establish the fact that, the first communication from BSNLCO to the Circles stating that the senior-junior clause is not applicable for the LDCE was on 30.07.2010.** 2002 rect JTOs passed the LDCE 2007 also served the notice. In fact this clarification is issued with respect to LDCE 2010 for the vacancy years 2006-07 to 2009-10 and not for LDCE 2007.
- BSNLCO is trying to impose the order dated 30.07.2010 in a retrospective manner, citing court orders and it is a clear violation of the clarifications issued in 2007. The clarification issued on 30.07.2010, after the conduction of the LDCE 2007 should be applicable prospectively, not retrospectively.

### **Relevant Court cases and the judgments**

- The LDCE 2010 notification dated 18.03.2010 was challenged by the JTOs of 2005 batch in the Hon PCAT, New Delhi in OA No: 1562/2010, Vinit Kumar Vs BSNL Ltd and 8 other OAs. **Applicant's prayer was to declare: "1<sup>st</sup> July of the year of examination is the crucial date for considering the period of 3 years of qualifying service for the eligibility of the Applicants as per the RR".** Hon PCAT in its order dated 12.08.2011 rejected the prayer and finally the LDCE was held in 2012.

**"3. -----. It is the case of the Applicants that first of July of the year of examination is the only crucial date for considering the period of 3 years of qualifying service for the eligibility of the Applicants as per the said RR. This claim is contested by the Respondents stating that crucial date for eligibility is also the 1st July of the Vacancy year. -----. The circular dated 18.03.2010 prescribed 1st July of the vacancy year as the crucial date for --- to fill up the SDE vacancies for the vacancy year 2006-07, 2007-08, 2008-09, 2009-10. -----.**

**18. We find that the grounds advanced by the counsel for the Applicants to treat the year of examination to count the eligibility of 3 years regular service as JTO would be irrational and illegal, if the examination takes place some years after the year in which the vacancies has arisen. -----.**

**22. Considering the totality of facts and circumstances of the case and for the reasons indicated within this order, we are of the firm view that the Applicants in all these OAs ha ve not established their case to treat their eligibility as on 1<sup>st</sup> July of the LDCE examination year only. In the result, these nine OAs are disposed of -----.**

It may be noted that the challenge was against the LDCE 2010 notified on 18.03.2010 and not for the LDCE 2007. The clarifications issued on 16.04.2007 and 10.07.2007 during the LDCE 2007 was never presented to the court or adjudicated. None of the JTOs of 2001 rect year passed the LDCE 2007 and become SDE was party in this case.

- OA 42, 55, 56 and 736 of 2011 at Hon Madras CAT, filed by 2001 and 2002 rect JTOs passed the LDCE 2007 and served show cause notice in 2010. Judgment dated 02.01.2013:

**"6. -----. The respondents contention is that as per BSNL New Delhi Lr No.20-16/2009\_pers II dated 30.07.2010, the applicants are ineligible to appear in the said examination. -----, ----- and in n way concerned with seniority of the contending candidates, there is no question of the applicability of senior-junior clause stipulated under Note 5 (column 12) of RRs for LDCE. ---**

**7. -----, The respondents contend as per recruitment Rules, 2002 of SDE(T) Schedule-Column 12- sl. No.3, the crucial date for determining the eligibility shall be 1<sup>st</sup> July of the year to which the vacancies pertain is not justified based on any statutory order or rules and the applicants are entitled to take part in the examination held on 15.07.2007 as they have completed 3 years regular service as on 1.7.2007, according to RR. Thus the impugned show cause notice is against the RR and accordingly the impugned order dated 03.12.2009 bearing Ref No: 15-12/2009—Pers II passed by the 1<sup>st</sup> respondent and clarification letter dated 30.07.2010 and the consequent show cause notice dated 20.09.2010 are held as illegal and unlawful. Accordingly we quash and set aside the same and the OAs are allowed with no order as to costs.”**

By this judgment, all the 2001 and 2002 rect JTOs completed 3 years of service as on 01.07.2007 become eligible.

- RA 38, 39, 40 & 41/2013 at Hon Madras CAT. Judgment dated 18.02.2015 of Hon Madras CAT, after considering the views and decisions of the Principal Bench and the Hyderabad Bench, the following orders were passed by recalling the previous order with aforesaid OAs:

**"8. In the instant case the review is sought on the basis of an earlier order/ judgment of the Principal Bench of CAT which according to the applicants (in RAs) was presented to the Tribunal in the OAs but was not taken cognizance of. In OA No. 1562/2010, ---- decided on 12.08.2011 by a common order, where in also the main issue in all the cases was:**

**What is the crucial date for eligibility to be considered for the Junior Telecom Officers (JTO) for appearing in the Limited Departmental Competitive Examination (LDCE) for promotion under 33% quota for the vacancies in the post of Sub Divisional Engineer (Telecom).**

**10. Thus in as much as the judgments in the above cases were rendered by the Principal Bench and the Hyderabad Bench of CAT earlier and were not taken cognizance of when the OA Nos. 42, 55, 56 and 736/2011 were considered and decided by this Tribunal (Madras Bench) by the common order dated 02.01.2013, the order in the aforesaid OAs is recalled, and allowing the instant RAs filed for review of the order in the OAs, all the OAs are dismissed applying the ration laid down by the Principal Bench in OA No: 1562/2010, Vinit Kumar Vs BSNL Ltd and a number of other OAs (batch) decided on 12 August 2011 and followed by the Hyderabad Bench in OA No.221/2010 filed by D. Visweshara Rao, JTO & 63 Ors. Vs UOI & Ors. No order as to costs”.**

- WPs 7683, 12615 to 12617 & 18205 of 2015 filed in the Hon Madras High Court against the judgment of Madras CAT in the Hon Madras CAT Judgment dated 18.02.2015 in RA 38, 39, 40 & 41/2013 were dismissed on 21.02.2017. WPs filed by 2001 and 2002 rect JTOs passed the LDCE 2007 and served show cause notice in 2010

**"9. The issue that was placed before the Tribunal is whether three years of regular service should be reckoned as on 1<sup>st</sup> July of the year of examination or 1<sup>st</sup> July of the year to which, the vacancies pertain?**

- OA 790/2009 at Hon Mumbai CAT and judgment dated 07.05.2014, upholding the decision of Madras CAT in OA 42, 55, 56 and 736 of 2011 Hon Mumbai CAT judgment dated 02.01.2013.
- RA 48/2014 (connected with OA 790/2009) at Hon Mumbai CAT and judgment dated 02.02.2019:

***"5. We are in respectful agreement with the decisions of the Madras bench in RA No. 38, 39, 40 & 41/2013 decided on 18.02.2015 and accordingly the present RA is allowed and the orders in OA 790/2009 decided on 07.05.2014 are recalled and the OAs are dismissed ....".***

- BSNL quoted the judgment of PCAT in various courts and won the case related to LDCE 2007, suppressing the fact that there were two separate LDCEs and different clarifications were issued during 2007 and 2010, regarding eligibility.
- Now the present development is based on the Hon Madras High Court order dated 21.02.2017. The only issue that was adjudicated before the Hon CAT was whether the 3 years qualifying service is to be reckoned with "**1<sup>st</sup> July of the year of Examination**" or "**1<sup>st</sup> July of the Vacancy year**". The contradictions in **Schedule 12 and note 3 of the SDE RR 2002** were under litigation, not the **note 5 under Schedule 12**. Further, the Senior - Junior clause provided in **Schedule 12, note 5 of the SDE RR 2002** or the clarifications issued by BSNLCO dated 16.04.2007 and 10.07.2007 were never examined by the Hon CAT or the Hon Madras High Court as it was not under dispute.
- **There is no court verdict in any part of the country directing BSNL to revert the 2001 rect JTOs become SDEs through the LDCE 2007 to JTOs cadre. As per the judgment, the eligibility criteria to be decided with reference to 1st July of the vacancy year.**
- By the judgments referred above, all the 2002 rect JTOs become ineligible to appear in the LDCE 2007 as not a single JTO of 2002 batch completed 3 years of regular service as on 01.07.2005 to appear for the vacancy year 2005-06 by invoking the senior-junior clause and the clarification issued on 16.04.2007 and 10.07.2007 in connection with LDCE 2007. However, the 2001 rect JTOs completed 2 years of regular service as on 01.07.2005 become eligible by invoking the senior-junior clause as per the clarification issued on 16.04.2007 and 10.07.2007 in connection with LDCE 2007. This particular aspect has been overlooked by BSNL CO while implementing the judgments.
- Accordingly all the SDEs in the list dated 06.09.2019 of 2001 rect year belongs to the above Circles and completed 2 years of service as on 01.07.2005 are eligible to appear for the LDCE 2007 as their juniors completed 3 years of service as on 01.07.2005.
- **BSNLCO insisting to decide their eligibility as per the clarification dated 30.07.2010, issued 3 years after conduction of the LDCE on 15.05.2007.**
- Again BSNL management issued show cause notices in 2019 to the 2001 Rect JTOs (**Annexure-I**), not completed the 3 years qualifying service for appearing in the LDCE, based on the clarification No. 2-16/2009-Pers.II dated 30.07.2010. In the notice it is stated that: "**--- -. As per BSNL, New Delhi Lr no. 20-16/2009-Pers II dated 30.07.2010 you are ineligible to appear in the said examination.--**". 2002 rect JTOs passed the LDCE 2007 also served the notice.
- **The reversion of the 2001 JTOs can be avoided as all of them are eligible as per the Schedule 12, note 5 of the SDE RR 2002 and the clarifications issued by BSNLCO dated 16.04.2007 and 10.07.2007, during the conduction of LDCE. Ignoring this fact, BSNL served reversion order on them, citing the Hon High Court order which never dealt with this particular clarification.**
- Now the affected SDEs facing reversion, filed a Review Application (RA) in the Hon Madras HC stating these facts and claiming their eligibility to appear in the LDCE 2007 as per schedule 12, note 5 of the SDE RR 2002 and the clarifications issued by BSNLCO dated 16.04.2007 and 10.07.2007. Another OA is filed in the Hon CAT challenging the reversion order on the ground

that they are eligible for appearing in the LDCE 2007 as per the Schedule 12, note 5 of the SDE RR 2002 and the subsequent clarifications.

**Hence it is requested that BSNLCO may be taken a considerate view on the matter based on its own orders/clarifications, to settle the issue and create a healthy working atmosphere. BSNL is spending more time for litigations on HR issues.**

**It will be in the best interest of all to submit the facts to the Hon CAT and HC by BSNL itself in the present RA in HC and OA in CAT, instead of opposing all the petitions straight away so that the courts can take correct decision. BSNLCO should not to proceed against these officers as they did not hide any facts from BSNL. They were made eligible by different Circles based on BSNL CO clarification dated 16.04.2007 and 10.07.2007 and BSNLCO also allowed them to appear the Exam and given them promotions.**

**With kind regards,**

**(Sebastin. K)**

Copy to: DGM(Pers), BSNLCO for information and n/a pl.