

**CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH
HYDERABAD**

**OA/21/515/2018 & MA Nos. 402/2019,
403/2019, 519/2019 & 226/2020 with
OA No. 21/517/2018 & MA Nos. 386/2019,
387/2019, 484/2019 & 225/2020**



**Reserved on : 22.07.2020
Pronounced on : 19.08.2020**

CORAM:

**Hon'ble Mr. Ashish Kalia, Judl. Member
Hon'ble Mr. B.V. Sudhakar, Admn. Member**

OA 515/2018

1. Bharatiya Postal Employees Association Group C,
Telangana Circle,
Represented by its Circle Secretary,
Sri M.S. Baig, S/o. late Sri M. Silar Baig,
Aged about 53 years, Postmaster,
Somajiguda Post Office,
Hyderabad – 500 082.
2. Podugu Laxminarayana,
S/o. Hussen,
Aged 45 years, Occ: Sub Postmaster,
Musheerabad NDSO – 500 020.
3. B. Vittal Rao,
S/o. B. Balaiah,
Age: 45 years,
Occ: Postal Assistant,
O/o. SSPOs Hyderabad City Division,
Hyderabad – 500 001.
4. B. Sapthagiri Vas,
S/o. B. Bhoomaiah,
Age: 46 years,
Occ: Postal Assistant,
Golconda PO, Hyderabad – 500 008.

... Applicants

(By Advocate: Mr. M. Venkanna)

Vs.



1. The Union of India rep. by its Secretary,
Government of India,
Ministry of Communications and IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.
2. The Chief Postmaster General,
Telangana Circle,
Hyderabad – 500 001.
3. The Postmaster General,
Hyderabad HQ Region,
Hyderabad – 500 001.
4. The Postmaster General,
Hyderabad Region,
Hyderabad – 500 001.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

OA 517/2018

1. All India Postal Employees Union Group C,
Secunderabad Division,
Represented by its Divisional Secretary,
Sri A. Shravan Kumar, S/o. A. Lingaiah,
Aged about 45 years, Sub Postmaster, IICT SO,
Hyderabad – 500 082.
2. N. Vinod, S/o. N. Vishnu Murthy,
Age: 45 years,
Occ: Postal Assistant,
Himmath Nagar SO – 500 025.
3. S. Ravi Kanth,
S.o. S. Narayana Advaiah,
Age: 45 years, Occ: Postal Assistant,
Begumpet SO, Hyderabad – 500 016.
4. D.B. Vijaya Durga,
W/o. V. Jaipal, Age: 45 years,
Occ: Postal Assistant,
Secunderabad HO 500003.

... Applicants

(By Advocate: Mr. M. Venkanna)

Vs.

1. The Union of India rep. by its Secretary,
Government of India,

Ministry of Communications and IT,
Department of Posts – India,
Dak Bhavan, Sansad Marg, New Delhi – 110 001.

2. The Chief Postmaster General,
Telangana Circle, Hyderabad – 500 001.

3. The Postmaster General,
Hyderabad HQ Region,
Hyderabad – 500 001.



4. The Postmaster General,
Hyderabad Region, Hyderabad – 500 001.

5. The Sr. Superintendent of Post Offices,
Secunderabad Division,
Gandhinagar, Hyderabad – 500 080.

... Respondents

(By Advocate: Mrs. K. Rajitha, Sr. CGSC)

COMMON ORDER

(as per Hon'ble Mr.B.V. Sudhakar, Admn. Member)

2. The OAs are filed by the Postal Employees Unions in the representative capacity along with some aggrieved applicants challenging the cadre restructuring scheme of Group 'C' employees vide Memo dated 27.5.2016 and the consequent transfers. Later, MAs were filed raising additional grounds and seeking appropriate directions to the respondents.

The cause of action, relief sought and the respondents being one and the same in both the OAs, a common order is issued.

3. Brief facts of the case are that on the postal side, certain restructuring in the Group 'C' Cadre had taken place vide memo dated 27.5.2016 the salient features of which include the following:-

(a) upgrading Single Handed and Double Handed Post Offices into Lower Selection Grade Post Offices (for short "LSG")

- (b) upgrading the Triple Handed Post Office as Higher Selection Grade II (for short “HSG-II”) post offices;
- (c) creating a non functional grade in HSG- I.



Based on the said orders, the 2nd respondent has promoted and allotted employees of Telangana Postal Circle to different regions on 17/18.5.2018 & 14.5.2019 under the control of the 3rd and 4th respondents for further postings in Divisions under the jurisdiction of the regions, without giving an opportunity to exercise options to different regions and posts in divisions. Staff Unions represented to the respondents on 21.5.2018 and with no fruitful results, the logical consequence is judicial remedy.

4. The contentions of the applicants are that the mandatory requirement of circulating the circle gradation list every 2 years amongst those concerned was not abided by. As per the respondents' admission, it was prepared in 2007 and that too, when the combined Postal Circle was functional in the undivided State of A.P. Without issue of fresh gradation list after the bifurcation of the Circle into A.P. and Telangana Postal Circles on 1.7.2016 and even without conducting DPC or referring to APARs, promotions accompanied by transfers were effected on 17/18.5.2018 & 14.5.2019. Consequently, eligible were ignored and ineligible promoted. The promotions ordered under restructuring do not provide for any financial gain and on the contrary, caused transfers to distant places causing financial burden. Recruitment Rules were not revised as per DOPT instructions. Not issuing notice before implementing an administrative decision of promoting the applicants, which was not sought and transferring them is against law.



Aggrieved, applicants approached the Tribunal in different OAs and in violation of the interim orders issued, respondents forced the employees who are unwilling, to decline promotions and thereon debarred them for one year to be eligible for promotion, resulting in adversely affecting their seniority and future career. Factually, on approaching the Tribunal, as an interim relief respondents were directed not to fill up the vacancies opted by the applicants vide order dated 11.6.2018 and thereafter, in MA No.386/2019 in OA 517/2018, the impugned order dated 14.5.2019 effecting further promotions under restructuring was suspended vide Tribunal order dated 29.5.2019. The applicants for having challenged deficiencies in the restructuring order, in principle, have been penalised by debarring them for promotion for a period of one year, which is grossly unfair.

5. *Per contra*, respondents contend that the cadre restructuring of Group 'C' in the operative side was done by a Cadre Restructuring Committee consisting of National representatives of the different Staff Unions of the respondents' organisation. Committee, after consulting all the stake holders and on their agreeing to the recommendations, approval was taken from taken from the Dept. of Expenditure and Cadre Restructuring order was issued on 27.5.2017. Consequent to the issue of the order many issues were raised and to resolve the same a committee was formed, which consulted the stake holders and based on its report, another order dated 10.11.2017 was issued to bring further clarification on the contentious issues. Thereafter, 2nd respondent, in order to implement cadre restructuring, has effected promotions on 17/18.5.2018 and allotted those promoted to regions for further postings in the divisions at different locations. There was a gap



of 2 years in implementing the order and during that period, the applicants were silent. Respondents claim that there has been no difficulty in posting officials of graded postmaster scheme and have branded the contentions made by the applicants at para(vi) of the OA as hypothetical. Allotment of promoted officials to regions was based on seniority with minimum displacement as far as possible. The cadre restructuring being time bound it was not practical to obtain options in regard to postings from thousands of employees who were in the zone of consideration for promotion. The promotion and postings issued by 2nd respondent on 17/18.5.2018 are based on circle gradation list issued on 31.5.2007. Review of recruitment rules every 5 years is only an administrative exercise and does not necessarily call for amendment or notification of revised recruitment rules. Staff Union representation dated 21.5.2018 was appropriately replied on 20.6.2018 by the 2nd respondent. Employees were debarred for a period of one year on declining promotion and relevant financial upgradation under MACP Scheme was not granted as per DOPT instructions on the subject. The bifurcation of the Circle took place on 1.7.2016, whereas the restructuring orders were issued in May 2016 and hence, the Circle gradation list issued for the combined circle as on 31.5.2007 was adopted in effecting promotions on 17.5.2018 and consequential transfers. While granting promotions on 14.5.2019, the Circle gradation list issued on 24.4.2019 for Telangana Postal circle was reckoned. The impugned order dated 14.5.2019 was suspended on 29.5.2019 and before receipt of interim orders, 42 of the 422 officials, who figured in the impugned order, joined the posts to which they were posted.



6. Heard both the counsel and perused the pleadings on record. MAs filed for directions and the replies received as well as the MA filed to vacate the stay have been gone into in depth. Ld. Counsel for applicants submitted that the respondents ordering the promotions under challenge is grossly irregular since no DPC was held, APARs were not referred to and reservation norms ignored. Applicants/Employees were not taken into confidence while undertaking such a major exercise of restructuring a Cadre. Ld counsel for the respondents opposed by submitting that the applicants failed to agitate when the restructuring order was issued in 2016 and that they have woken up in 2018 when the implementation of the restructuring order began. The 2 years period could have been used for resolving their grievances since the respondents are open to change as is evident from the formation of committee in July 2016 to resolve issues raised pertaining to restructuring.

7. I. The issue under dispute is about promotion and transfer of the applicants on the basis of cadre restructuring of the Group 'C' employees working in the postal side of the respondents organisation, ordered by the 1st respondent in Order No.25-04/2012-P.E.I dated 27.5.2016. The Order is extracted here under:

“Subject: Cadre Restructuring of Group C employees in Department of Posts.

The Cadre Restructuring of Group C employees of Department of Posts has been undertaken in consultation with Department of Expenditure, Ministry of Finance. In pursuance of the approval/ occurrence of the Department of Expenditure vide I.D. No. 2(45)/E.III Desk/2015 dated 12th May, 2016, a list of distribution of the posts, containing the existing and revised posts of Postal Assistants, Lower Selection Grade, Higher Selection Grade II & I and also a new HSG-I (Non Functional Grade) is enclosed for implementation with the following instructions:-



a) The post of SPMs in Single Handed and Double Handed Post Offices, to the extent of LSG Posts (GP Rs.2800/-) shown in the annexure, now allotted to the Circle, will be placed in the Grade Pay of Rs.2800/- in the Pay Band-I;

b) The post of SPMs in Triple Handed Post Offices, to the extent of HSG-II posts (GP 4200) shown in the annexure, now allotted to the Circle, and all other existing norm based LSG Posts in Post Offices will be placed in the Grade Pay of Rs.4200/- in the Pay Band-II. In no case, the total number of HSG-II posts shall exceed the number of posts allotted to the Circle.

c) Existing posts in HSG-II, to the extent of posts now allotted and shown in the annexure, will be placed in the Grade Pay of Rs.4600/- in the Pay Band-II along with the existing HSG-I Posts. Remaining HSG-II posts, if any, shall remain in the GP of Rs.4200/- only. In no case, the total number of HSG-I posts shall exceed the number of posts allotted to the Circle.

d) The Cadre Restructuring of these posts are only in respect of the posts from Postal Side other than the posts of RMS, Circle and Regional offices and SBCO Wings;

e) If the revised number of posts is in excess of the existing strength of a particular grade, the difference will be deemed as newly sanctioned posts in that grade. Similarly, if the revised number of posts in a grade is less than the existing strength, the number of posts equal to the difference will be treated as having been abolished in that grade;

f) The vacancies arising out of the restructuring will be filled up only from amongst the officials who fulfil the eligibility criteria laid down in the restructuring rules for the post;

g) The new HSG-I (Non Functional Grade) with the grade pay of Rs.4800/- is only for those who are senior most and completed not less than a minimum service of 2 years in HSG-I subject to the number of posts specified for the Circle in HSG-I (Non Functional Grade) [for example: the number of NFG officials in AP Circle should never exceed 17], after following the usual procedure of non-functional upgradation (s).

2. These instructions will be effective from the date of issue of the orders. The actual benefit would, however, be admissible to the eligible officials from the date of actual promotion.

3. Receipt of the Order may please be acknowledged, immediate necessary action initiated and compliance report sent at the earliest."

The restructuring is far reaching with upgradation of single handed, double handed post offices to LSG to the extent of LSG posts shown against each postal circle, triple handed post office as HSG –II, granting grade pay of Rs.4600 to HSG-II on par with HSG-I posts in respect of posts identified,

addition/ abolition of posts and creation of a new non-functional HSG-1 grade with grade pay of Rs.4800. The pertinent aspect which requires mention is that as per clause (f) of the restructuring order dated 27.5.2016 vacancies arising out of restructuring have to be filled up by the eligible staff in accordance with recruitment rules for the relevant posts. 2nd respondent issued orders of promotion and allotted the employees/applicants to regions for posting them in the divisions under the control of the respective regions.



II. Respondents claimed that the Service Unions at the National level have been associated in formulating the policy in regard to the restructuring of Group C in the Postal side. All the stake holders have been taken on board before issue of orders after taking concurrence of the Dept. of Expenditure on 12.5.2016. In fact, a committee was formed to resolve issues that arose due to restructuring on 9.6.2017 and its recommendations were accepted on 10.11.2017. Therefore, it cannot be said that the staff side has not been taken into confidence while ordering the restructuring in question. We agree with this contention of the respondents.

Further, the respondents stating that the employees/ applicants who declined promotion, in writing, are to be debarred for an year and financial up gradation has to be regulated accordingly, cannot be found fault with, since their action is supported by DOPT instructions dated 9.9.1992 & 20.3.1995 in regard to refusal of promotion and DOPT Memo dated 19.5.2019 (Annexure R-2) in respect of grant of financial up gradation under MACP on declining promotion.

III. Moreover, restructuring is a policy matter and the Tribunal would refrain from interfering with the policy. However, when it comes to implementation, there are many questions which are to be answered. It is this challenge which we would like to look into and resolve.



IV. The basic document which is banked upon is the circle gradation list to effect promotion since it has important details in regard to seniority, date of birth, community, date of entry, appointment & confirmation dates etc. It has to be circulated every two years for seeking any objections from the staff in regard to status, date of birth, seniority etc. The response of the respondents was that the promotions were effected based on the circle gradation list issued on 31.5.2007 when the combined postal circle was functioning. Eleven years have lapsed, but the same was not revised and was used to order promotions and consequent transfers by the 2nd respondent on 17.5.2018. Besides, a major development took place on 1.7.2016 when the Circle was bifurcated into Telangana and A.P. Postal Circles respectively. Respondents claim that the combined circle gradation list was adopted by deleting the names of the employees who became a part of the A.P. circle. This is surprising, since such a core document, which is the basis to decide the career of the employees has been dealt with in a casual manner giving room for the emergence of the OAs. It requires no mention that the Circle gradation list is a sacrosanct document with certain mandatory features and has to be necessarily prepared based on the principles of seniority, as expounded below:

- i. Primarily the object of a gradation list is that an employee must know his exact seniority position vis-à-vis other employees. It is also



important for the employer to readily locate the precise seniority position of an employee at any given point of time. This is obviously because one of the important incidence of a service career namely, promotion, is either fully dependent on seniority or seniority plays a very important role in the consideration of the promotional process. An invariable practice has thereof developed in respect of publication of a gradation or a seniority list showing the respective seniority placements of the employees. Such gradation lists are published from time to time in accordance with the frequency, if any, stipulated in the rules or administrative instructions. In the instant case, the applicants have pointed out that the circle gradation list has to be circulated every 2 years, which was not complied with by the respondents. Respondents have not denied the same.

ii. Seniority, in service law, connotes the precedence or preference in position of an employee over other employees similarly situated. Seniority in simple English means a longer life than of another thing or person taken for comparison. In the case of a Government servant, it means 'the length of service'. If the service of one person is longer than that of another, then such person is called senior to the other.

iii. The object of assigning seniority plays a pivotal role while considering employees for granting promotions. The system of promotion is the essence of modern management and when a person is recruited in an organization, he must be given an opportunity to advance. The object of assigning seniority is to facilitate the filling of



promotional posts. Although under many statutory rules or administrative instructions seniority is not the sole factor in granting promotion e.g. when the rules provide for seniority-cum-merit or merit-cum-seniority, yet it is difficult to find rules or instructions which completely ignore seniority in relation to promotion. Even in cases of selection posts the seniority in the feeder grade from which the selection is to be made can be an important factor because employees of a given seniority are treated in the zone of consideration while granting promotion to the selection posts.

iv. The essential component of object of seniority is the fixation of seniority which is based on statutory provisions. Where statutory provisions (including rules) or administrative instructions provide for the factors to be taken into consideration and the manner to be adopted in fixation of seniority, then subject to such provisions or instructions being constitutionally or otherwise valid, seniority has to be fixed in accordance with such provisions or instructions.

v. The statute, rule and executive instructions are to be constitutionally or otherwise valid. It is axiomatic that the statute or the rules or executive instructions governing seniority must be valid both, constitutionally or otherwise. As far as constitutional validity is concerned although, generally speaking, the relevant provision is tested against Article 14 and 16, yet in some cases they might have to pass the test in the context of other constitutional provisions namely, Article 309 or Article 148 of the Constitution. The rules may be

invalid if they transgress the provisions of the Act under which they are framed. Executive instructions might have to be tested against Article 14 and 16 as well the provisions of Article 73 and 162 which delineate the extent of executive powers of the Centre and the State respectively



vi. To achieve the object of seniority, the principles of seniority are to be adhered to in letter and spirit. The fundamental principles of seniority, are General principles wherein if there are no statutory rules or executive instructions then general principles evolved by judicial precedents are to be followed. The other intrinsic principles of seniority are that the seniority is to be fixed based on length of service, computing length of service based on many factors like the dates relating to appointment, passing exams, absorption, continuous officiating etc. Seniority on being absorbed while being on deputation is fixed after considering the period of deputation and seniority of deputationist in the parent organisation. While effecting rule 38 transfers seniority changes depending on the type of rule 38 transfer effected. In some cases break in service would have been ordered which has a marked impact on seniority. Penalties imposed modify the seniority depending on the order issued. The rota and quota rule have a marked impact on the seniority. In some cases seniority is based on merit as for example in direct recruitment. Date of prior selection does also play a vital role in determining seniority. Some organisations motivate employees to acquire additional qualification which resultantly decide the seniority. Integration and multiplication of services/grades, merger/ restructuring of cadres

which are common in the respondents organisation have a marked influence in deciding seniority. Further, weightage of service rendered in certain cases decides seniority. *Inter se* seniority between the reserved and the General Category which is hotly contested in the legal domain as of now is one another factor which plays a prominent role in deciding seniority.



V. Coming to law, the Hon'ble Supreme Court in a catena of judgments while dealing with seniority has observed as under:

a. In ***Andhra Pradesh Cooperative Oil Seeds Growers Federation Ltd. Vs. D. Achyuta Rao - 2007 (13) SCC 320***, the Supreme Court has held that seniority confers a very valuable right on an employee and his entire future career is at times dependent upon such seniority. Seniority, therefore, must be determined by rules validly framed or norms enunciated and/or followed which are consistent with the principles enshrined in Articles 14 and 16 of the Constitution of India.

b. In ***State of U.P. vs. Dinkar Sinha- 2007 (10) SCC 548*** and ***Suresh vs. Yeotmal District Central Cooperative Bank Ltd - 2008 (12) SCC 558***, the Supreme Court held that although seniority may not be a fundamental right but a civil right, the infringement of this right is permissible only if there are validly framed rules to this effect. If however, any such rules takes away such right it has to receive a strict construction. But even if on such strict interpretation such civil right cannot be saved then it may amount to arbitrary destruction of the right violating Articles 14 and 16 of the Constitution. Since it is civil right, the Supreme Court has held that

the questions of seniority cannot be effectively adjudicated upon unless the persons who are shown senior to the aggrieved employee are impleaded as parties.



c. In *N.K. Chauhan vs. State of Gujarat, 1977 (1) SCC 750*, the Supreme Court observed that although length of services the generally accepted norm for determining seniority, it is obvious that in some cases length of service cannot be the basis for determining seniority e.g. when two or more persons join a service on the same date. Therefore other norms like merit or age have been adopted to meet such situations where the criteria of length of service cannot be applied.

d. In *State of Uttaranchal vs. Madan Mohan Joshi - 2008 (6) SCC 797 22*, the Supreme Court held that as seniority or inter se seniority is not a fundamental right but a civil right the persons whose seniority might be effected are necessary parties and such rights are to be determined in their presence.

VI. Therefore, there are multiple factors which form the basis for issue of circle gradation list and law has been clearly spelt out in respect of seniority, which is the foundation of gradation list, as elaborated in paras IV & V. Hence, circle gradation list cannot be as simplistic as taking the Circle gradation list of 2007 and removing the names of those who form the part of A.P. Circle and then taking it as the basis for effecting promotions as well transfers in the year 2018 for those employees/ applicants working in Telangana Circle. There are many principles of seniority as outlined

above, which are essentially to be followed and the Circle gradation list has to be issued after resolving any objections raised by the employees concerned. The respondents have not done this critical exercise but went ahead by using a Circle gradation, which is liable for questioning on the basis of law as well as rules expounded above. The respondents had ample time from 2016 to 2018 to prepare the Circle gradation list but they did not.



It is not to be lost sight of the fact that between the years 2007 to 2018 the status of the employees working during that period would have changed in view of various principles of seniority touched upon in the previous paras. Therefore, the moot point is as to whether the respondents can go ahead without looking into the latest status of all those employees who were found to be in the zone of consideration without making a reference to the updated circle gradation list as is required under relevant rules. Furthermore, when the matter was under adjudication and there was an interim order on 11.6.2018 not to fill up vacancies preferred by the applicants, it was an obvious signal to the respondents that the Tribunal was seized of the matter. Even then, respondents again went ahead and issued one more order on 14.5.2019 which was suspended on 29.5.2019 given the drawbacks highlighted by the applicants. Before a copy of the interim order dated 29.5.2019 was received by the respondents, 42 of the 422 promoted as per order dtd. 14.5.2019 joined the promoted posts. Ld. Counsel for the applicants alleged that it was a deliberate attempt made by the respondents to hasten up the process of implementation after knowing that a case has been filed in the Tribunal against cadre restructuring and its consequential fall outs. Generally, it is expected and in fact, appropriate on part of the respondents to await the final judicial order in sensitive issues of



the nature in question to avoid protracted litigations. It is not out of place to adduce that promotions are what employees look for with great enthusiasm and anxiety and if these are not handled with care as per rules and law, the result is what we are seeing now. The Ld Counsel for the applicants has repeatedly driven home the point that while granting promotions on 17.5.2018 and 14.5.2029, DPC was not constituted, APARs were not consulted, rule of reservation and reservations in promotion were not followed. The reply statement and the vacate stay petition are bereft of any responses to these submissions, though they were also pointed out in the Interim order dated 29.5.2019. Reservation in promotion is a significant aspect in the light of constitutional provisions relating to the same and therefore, it has to be necessarily dealt in the context of the Hon'ble Supreme Court Judgment in *M. Nagaraj & Others vs Union of India & Others* { (2006) 8 SCC 212 } and subsequent related judgments on the matter. In fact, since reservations in promotion is a common issue confronting all the Govt. departments, this Tribunal in OA Nos. 20/1162/2013 & Batch, filed against the railways has observed as under:

"22. We, therefore, allow the OAs directing:

1. The South Central Railway or the Railway administration, in general shall take a policy decision indicating the parameters for introduction and implementation of the reservation in promotions, which shall include:

(i) the verification of the representation of the category of Scheduled Castes & Scheduled Tribe employees in the post or cadre for promotion to which, reservation is sought to be effected and the resultant effect of any on the efficiency of the administration;

(ii) the manner in which the concept of creamy layer shall be applied in enforcing such reservations in promotions; and

(iii) the duration up to which the promotion shall be in force.

2. The views of the Association of Scheduled Caste & Scheduled Tribe employees on the one hand and the Association of employees in general on the other hand, shall be taken into account before such parameters are identified.

3. Unless and until a decision at the level of Ministry of Railways & Railway Board is taken as regards the implementation of the reservation in promotions, the same shall not be effected at the lower levels.

4. If such guidelines already exist in respect of any post or cadre, reservations in promotion can be made to such posts or cadre, duly referring to the relevant guidelines and administrative orders.

5. If any promotions have taken place contrary to the law as it exists now, it shall be open to the Railway administration to take corrective steps. Pending such action, the promotions so made shall be treated as provisional, without giving rise to any right to seniority in the promoted post.



6. The entire exercise indicated above shall be completed within a period of six months from the date of receipt of a copy of this order.”

It is not known as to whether the respondents have come out with a policy in regard to reservation in promotion while effecting the promotions referred to, in view of the Hon’ble Supreme Court judgments on the matter in ***Jarnail Singh &Ors. Vs Lachhmi Narain Gupta, (2018) 10 SCC 396***

VII. Given the complexity of the issue, we are aghast at the way in which the respondents have gone ahead in ordering the promotions without preparing the circle gradation list based on principles of seniority and other issues raised like holding of DPC, referring to APARs, revision of recruitment rules, following the legal principle in respect of reservation in promotions etc while issuing the 17.5.2018 promotion order. Coming to the order of 14.5.2019 except issue of circle gradation list on 24.4.2019, other aspects cited have not been addressed. In the replies filed to the OAs and MAs as well as in the MA filed to vacate the stay order, there is no whisper as to whether the basic aspects referred to have been attended to. Further, the restructuring memo dated 27.5.2016 at clause (f) emphasizes the adherence to the recruitment rules while deciding the eligibility for effecting promotions. This instruction was not complied with by the 2nd respondent in view of the factors to be reckoned as explained at Paras IV & V supra.

VIII. The recruitment rules are to be reviewed every 5 years whenever there are changes brought about in the cadre by ushering in new policy



initiatives for meeting demands arising out of advancements in technology, market orientation, customer requirements etc. In the instant case there are whole some changes where in a new non functional HSG-I grade was created, upgradation of single handed, double handed, triple handed post offices as LSG/HSG-II grade and revision of grade pay for some cadres was ordered. In the event of such major changes it was necessary that the recruitment rules had to be revisited as per DOPT OM AB.14017/48/2010-Estt. (RR) dated 31.12.2010 read with memo dated 8.5.2018. (Annexures A-VI & VII). Respondents claiming that every review would not necessarily call for amending the Recruitment Rules, in the context of the major changes due to restructuring, lacks reasoning.

IX. Justification given by the respondents for failure to give options was that the cadre restructuring is a time bound programme and that obtaining options from thousands of employees is highly time consuming. This reasoning has to be simply dismissed. For, it is trite that when certain conditions of services are altered, the concerned individuals have to be properly informed and their objections if any invited. Promotion is one such aspect, which alters the condition of service. Again, while under normal circumstances, transfer may not be treated as a condition of service, in the instant case since, due to division of the State, dislocation of employees would entail change in seniority position, there has, ineluctably, to be an opportunity given to the affected employees to exercise their option, which is one of the vested rights of the employees. Strictly speaking, cadre restructuring is not one of such a time bound issue that it could ignore the vested right of the employees. Even if there be a compelling necessity, within the time available, the Respondents while



effecting the promotions and transfers could have given opportunity to the employees with shorter dates to indicate their preferences/objections to minimise grievances rather than unilaterally– rather arbitrarily promoting/ allotting applicants/employees to the regions in an exercise of major scale and importance as the present one. Transfer is a sensitive issue, where a fine balance is to be struck between organisational interests and employee aspirations/ requirements. Be it regular or on promotion basis. When the fine balance is lost the imbalance would kick in grievances galore as is evident in the instant case. The same could have been avoided with patience and perseverance by looking into the issues agitated. There is no dispute in regard to the involvement of the staff unions in evolving the policy of restructuring as such association and taking into confidence of the Unions reflect the democratic method of restructuring. However, while implementing the restructuring policy the steps taken are not in consonance with rules and law as was portrayed in paras supra.

X. However, while parting we would like to appreciate the efforts taken by the respondents in taking the policy initiative for restructuring of the crucial Group 'C' cadre on the postal side. We are aware of the initiatives taken by the 1st respondent to introduce Time Bound one promotion and Biannual cadre review in 1983 & 1991 respectively to ensure that there is no stagnancy after spending 16 years and 26 years in the same post. Thereafter to rejuvenate the Group C cadre accelerated promotions to the cadre of LSG by way of LDCE for 20% of the Postal Assistant cadre posts was attempted. However, it was subsequently withdrawn and a new scheme of filling 1/3rd of the Norm based LSG through LDCE and 2/3rd by seniority was introduced. The respondents moved ahead in issuing promotions on the



presumption that TBOP financial upgradation was equivalent to LSG and BCR to that of HSG became debatable. Thereafter the 1976 recruitment rules were replaced by 2002 recruitment rules on the basis of which recruitments were done in 2003 and 2004 but abandoned later and reverted to the recruitment rules of 1976. The flip flop was the consequence of not factoring the complications that arise in implementing a new policy or scheme. Later the Fast Track scheme christened as Graded Postmaster cadre was introduced from 22.11.2010 which is one another policy intervention with associated unanswered issues. In the context of the ACP and MACP schemes introduced by DOPT the TBOP and BCR schemes got superseded. The latest initiative is the cadre restructuring ordered on 27.5.2016 in Group C cadre with far reaching consequences. Overall, there were broadly 14 initiatives taken from 1983 till 2016 to ensure that the Postal Organisation responds to the needs of the changing societal needs. However, the running theme in all the schemes is that the implementation has been a grey area leading to extensive litigation. The present case of cadre restructuring is one such instance wherein the policy initiative taken was praiseworthy in the context of expanding rural market, India Post Payment Bank and the role of India post to facilitate online supply of goods by market players like Amazon, Napthol, etc but the implementation of the policy is not in accordance with rules or law. We find many errors committed in implementing the policy by the 2nd respondent and hence intervention of the Tribunal is called for.

XI. In view of what has been said above it is lucid that the 2nd respondent has manifested an indecent haste in implementing the restructuring order of 27.5.2016 of the 1st respondent totally disregarding

the kindred rules and legal principles to be followed in implementing the policy. Consequently, we are constrained to remand the matter back to the respondents to examine and review the promotions ordered on 17.5.2018 and 14.5.2019 keeping in view the relevant rules, DOPT instructions, legal principle relating to reservations in promotion as were elaborately referred to and discussed above. The respondents are granted 6 months time from the date of receipt of this order to review and issue orders as deemed fit in accordance with rules and law. Till such orders are issued those promoted vide orders dated 17.5.2018 and 14.5.2019 shall continue to work in the promoted posts so that operational difficulties do not arise in the field and, their promotions are deemed provisional.



XII. With the above directions, the OAs are disposed of. MAs stand disposed. No order as to costs.

(B.V. SUDHAKAR)
MEMBER (ADMN.)

(ASHISH KALIA)
MEMBER(JUDL.)

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