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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.**

Original Application no. 10/2005

Date of decision: 17.07.2008

Hon'ble Mr. M.L. Chauhan, Judicial Member.

Hon'ble Mr. B.L. Khatri, Administrative Member.

1. Sultan Ahmed, s/o Shri Fakir Mohammad, aged 58 years, Assistant Post Master, Head Office Chittorgarh, r/o 103-D Sector 5 Gandhi Nagar, Chittorgarh.
2. Brij Mohan Rathore, S/o Shri Dil Sukh, aged 55 years, Assistant Post Master, Head Office, Chittorgarh, r/o 18-D Panchwati, Chittorgarh.
3. Mohar Singh, S/o Shri Bahu Singh, aged 57 years, Assistant Post Master, Head Post Office, Chittorgarh, R/o 18-D Panchwati, Chittorgarh.
4. R.P. Saxena S/o Shri Omkar Lal, aged 55 years, Sub Post Master, Collectorate Chittorgarh, r/o Near Masjid Kumbhanagar, Chittorgarh.
5. N.L. Vairagi, S/o Shri Ratan Lal aged 55 years, Sub Post Master, Village, Singhpur, District Chittorgarh, r/o Village Singhpur, District, Chittorgarh.

: Applicants.

Rep. By Mr. Vijay Mehta, Counsel for the applicant.

VERSUS

1. Union of India, through the Secretary to the Government Ministry of Communication (Dept. of Posts) Sanchar Bhawan, New Delhi.
2. Director Postal Services, Office of Post Master General, Rajasthan, Southern Region, Ajmer.
3. Senior Superintendent of Post Offices, Chittorgarh.
4. Post Master General, Southern Region, Ajmer.
5. Chief Post Master General, Rajasthan, Ajmer.

: Respondents.

Rep. By Mr. M. Prajapat, Proxy counsel
for Mr. Ravi Bhansali:

Counsel for the respondents.

ORDER

Per Mr. M.L. Chauhan, Judicial Member.

Five applicants have filed this O.A, whereby they have
prayed for the following reliefs:

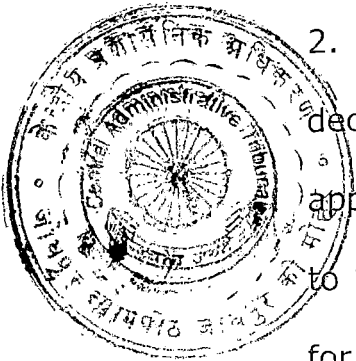
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" (a) The impugned order Annex. A/1 Annex. A/2 and orders mentioned therein may kindly be quashed.

- (b) The respondents may kindly be restrained from altering or modifying the circle level seniority position of the applicants and the circle level gradation list to the detriment of the applicant treating them as having not been promoted and not holding the post of LSG and HSG Gr. II.
- (c) The respondents may kindly be directed to act further on the basis of order Annex A/20 and on the basis of the seniority position of the applicants and the current circle level gradation list and consider the case to accord promotion to the applicants on the post of HSG Gr. I
- (d) The respondents may kindly be directed to post the applicants on norm based posts.
- (e) The respondents may kindly be restrained from posting employees who are junior to the applicants according to the seniority position of the applicants on circle level on norm based posts.
- (f) The respondents be restrained from removing the applicants from present postings on the ground that employees holding norm based posts are now available.
- (g) Any other order, as deemed fit, giving relief to the applicant may also be passed. Costs may also be awarded to the applicant.



2. Briefly stated, the facts of the case, so far as relevant for the decision of this case, are that the applicants were initially appointed as Postal Assistants in various years ranging from 1968 to 1970. On the introduction of Time Bound One Promotion (TBOP for short) Scheme and Biennial Cadre Review (BCR for short) Scheme, the applicants were granted financial up-gradation on completion of 16 years and 26 years of service respectively. It is the case of the applicants that after grant of financial up-gradations and promotions, Applicant Nos. 1 to 3 have been posted as Assistant Post Masters and 4 to 5 were posted as Sub Post Master and thus they are performing the supervisory duties. They have prayed that on account of financial up-gradation they should have been treated as promoted to the higher posts. In support of the above contention they have relied on the order passed by the Madras Bench of this Tribunal in O.A. No. 679/2003 [**K Perumal and anr. Vs. UOI – decided on 19.03.2004**]. However, as per

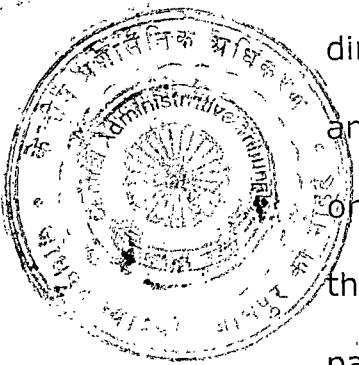
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recruitment rules, the financial up-gradation granted to the applicants cannot be treated as promotion and such financial up-gradation is being given without change in their status. In other words, according to the respondents, though the applicants were given financial up-gradation in the higher pay scale, the applicants are still holding the same post i.e. the post of Postal Assistants. Aggrieved by such action of the respondents in not treating them as promoted to the higher posts, the applicants have filed O.A. No. 232/2004, before this Bench of the tribunal. The said O.A along with two other similar OAs were disposed of by this Tribunal vide common order dated 24.09.2004, vide which the respondents were directed to treat the OAs as representation filed by the applicants and dispose of the same by a detailed and reasoned speaking order. Pursuant to the aforesaid direction given by this Tribunal, the Post Master General (Rajasthan), Southern Region, Ajmer, passed a detailed speaking order dated 17.12.2004 (Annex. A/1), rejecting their representation. It is this order which is under challenge in this O.A. The reasons given by the respondents for rejecting the case of the applicants were that the applicants were merely granted financial up-gradation under TBOP/BCR schemes to enable them to tide over the stagnation in their career progression and do not amount to promotion on the post of LSG & HSG II. It was further observed that there is absolute difference in nature of work of those who were promoted to LSG & HSG II and those who were placed under TBOP and BCR. According to the respondents the official selected on norms based LSG & HSG II posts are performing supervisory work and given more responsibilities,



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whereas the persons like the applicants who were given financial up-gradations under TBOP & BCR schemes perform operative duties as they were doing as Postal Assistants before being financially upgraded.

3. Notice of this application was given to the respondents. The respondents have filed their detailed reply reiterating the stand which had been taken by the appropriate authority while rejecting the representation of the applicants vide impugned order dated 17.12.2004 (Annex. A/1).

4. The applicants have filed rejoinder. In the rejoinder, the applicants have reiterated the submissions made in the O.A. Besides, the applicants have also placed on record a copy of judgement of the Hon'ble High Court of Madras in W.P. No. 27062/2004- dated 24.09.2004 - (Annex. A/33),- upholding the decision rendered by the Madras Bench of this Tribunal in O.A. No. 679/2003 and dismissing the Writ Petition preferred by the Union of India against the order passed by the Madras Bench of this Tribunal in O.A. No.679/2003.

5. We have heard the learned counsel for the parties and perused the records very carefully. The sum and substance of the case as stated by the applicants in this O.A, is that the financial up-gradation given to the applicants under TBOP/BCR schemes is to be treated as promotion and as such they are entitled to be posted against supervisory posts and after grant of financial up-



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gradations they cannot be treated as Postal Assistants. For this purpose they have relied on the decision of the Madras Bench of this Tribunal passed in O.A. No. 679/03, as affirmed by the Hon'ble High Court of Madras vide its judgement dated 24.09.2004 (Annex. A/33). The learned counsel for the applicants argued that on the basis of the above decisions, it is not permissible for the respondents to reject the claim of the applicants solely on the ground that the decision rendered by the Madras Bench, which had been affirmed by the Hon'ble High Court of Madras, is not a good law in view of the decision rendered by a Full Bench of this Tribunal at Cuttack in the case of **D.C. Mishra vs. UOI and ors.** [2005 (2) ATJ 196].



6. We have given our due consideration to the submissions made by both the learned counsel. We are of the firm view that the applicants have not made out any case for our interference with the impugned order. The controversy involved in this instant case had been finally settled by the decision rendered by the Full Bench at Cuttack in **D.C. Mishra & 23 ors.** case (supra). It may be stated that the Full Bench was constituted as different Benches were rendering different decisions on the same issue. i.e. some Benches held that TBOP and BCR schemes are promotion schemes, whereas some Benches have held that the said schemes are only financial up-gradations and not promotions. Therefore the following questions were posed before the full Bench for decision:

" (1) Whether TBOP and BCR schemes introduced by the Department of Posts are promotion schemes.

(2) Whether TBOP and BCR Schemes are in conflict with the Schemes of norms based promotion to LSG and HSG II as provided under the

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Recruitment Rules for Selection grade posts notified in the Gazette of India on 30.09.1976 and are in effect supplementary to the schemes for promotion to norms based posts.

(3) Whether the principle of NBR is applicable in the case of senior official, while placing the eligible junior official in the higher pay scale under TBOP or BCR scheme and

(4) Whether the decision in Sh. Rajinder Singh's case (supra) of the Principal Bench and the decisions in P. Ranasingh's case (supra) and in Niranjana Mahali's case (supra) of Cuttack Bench in the matter of operation of the TBOP and BCR schemes in the Department of Posts have set the law"

The Full Bench after considering various judgements of the Apex Court and the instructions issued from time to time by the Department of Posts on the subject, answered the questions posed before it as under:



a) The TBOP and BCR schemes introduced by the Department of Posts are not promotion Schemes to the next higher posts.

b) The said Schemes are not in conflict with the norms based promotion to LSG and HSG II as provided in the Recruitment Rules. They are supplementary to the rules. The principle of NBR will not be applicable in such schemes.

c) The decisions in the case of Rajender Singh (Supra) of the Principal Bench and in the case of P. Rana Singh (supra) and Niranjana Mahali (supra) do not lay down the correct law.

7. Thus, in view of law laid down by the Full Bench in the case of **D.C. Mishra and ors.** (supra), which we are bound to follow, we see no infirmity in the order dated 17.12.2004 (Annex. A/1) passed by the respondents. Accordingly, we hold that the applicants are not entitled to any relief. Suffice it to say that the decision of the Madras Bench in O.A. No. 679/2003, which has been affirmed by the Hon'ble High Court of Madras, has been rendered without taking into account the instructions issued by the Department from time to time on the subject and the provisions as contained in the relevant recruitment rules. Thus the Hon'ble High Court of Madras has not laid down any law and has simply approved the decision of CAT, Madras Bench. We also noticed that

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the decision of the Hon'ble High Court of Madras has been taken on appeal before the Hon'ble Apex Court by the Union of India vide SLP No. 5501 & 5502/2005 and the same is still pending. Therefore, we have no other option except to follow the Full Bench decision rendered in **D.C. Mishra and ors** case (supra). Further, in view of the pendency of SLP No.5501 & 5502/2005, the judgement of the Hon'ble High Court of Madras has not attained finality.

8. For the foregoing reasons, the present O.A is bereft of any merits and accordingly it is dismissed. The status quo as ordered by this Bench on 12.01.2005, and continued till date shall stand vacated. No costs.


[B.L. Khatri]
Administrative Member

jsv


[M.L. Chauhan]
Judicial Member.



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Part B and C destroyed
in my presence on 15/11/14
under the supervision of
section officer () as per
order dated 19/8/2014

[Signature]
Section officer (Record)

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