

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH, CALCUTTA

C.A. NO.1415 of 1997

(Addition of Petition)

Dated 22 - 8-2002

1. Shri Dulal Roy
2. Shri Niranjan Bera
3. Shri Kalyan Kumar Mallick Chowdhury
4. Shri Ranjit Kumar Bagchi
5. Shri Sudarshan Sau
6. Shri Kanai Singh
7. Shri Rakhal Chandra Das.

Applicants

-versus-

1. Union of India through Directorate of Telecom, through Director General of Telecom, New Delhi.
2. The Director General of Telecom, Sanchar Bhawan, New Delhi.
3. The Additional Director General (TE), Telecom, New Delhi.
4. The Chief General Manager, West Bengal Telecom Circle, Calcutta.
5. The Chief Supdt. Central Telegraph Office, Calcutta.
6. Shri Nityananda Das
7. Shri Patharoo Ram
8. Smt. Manju Daw
9. Smt. Gouri Dey
10. Smt. Namita Chatterjee
11. Smt. Gouri Guha Majumdar
12. Smt. Anjali Roy
13. Smt. Tandra Bhattacharjee

Respondents

Counsel for the applicants.. Mr. P.K.Guha

.. Mr. H.Chakraborty

Counsel for the respondents.. Ms. K.Banerjee

PRESENT: The Hon'ble Mr. L.R.K.Prasad, Member (A)

The Hon'ble Mrs. M.Chibber, Member (J)

O R D E R

L.R.K.Prasad, Member (A):

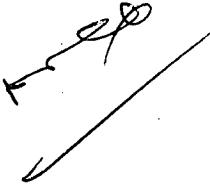
1. This application has been filed by seven persons who are posted in various capacities at the Central Telegraph Office (CTO) Calcutta (Department of Telecommunication). Their prayer to file the instant application together has been allowed.
2. The applicants were initially appointed as Time

Scale Clerks in the scale of Rs.110-240 and revised by 3rd Central Pay Commission in the scale of Rs.260-480. All of them were appointed in the C.T.O., Calcutta. It is stated that even though the private respondents ~~as~~ are junior to the applicants, they have been allowed certain benefits, ignoring the claim of the applicants. The private respondents had been <sup>appointed</sup> as T.S. Clerks in the same grade along with the applicants. After completion of 10 years of service as T.S. Clerk, the applicants had appeared for departmental selection against 1/3rd quota fixed for departmental candidates for promotion to the post of L.S.G. Clerk in the scale of Rs.425-640. As they were declared successful in the said test, they were given promotion as such with effect from 22.6.1983. On the other hand, the private respondents had not been given any such promotion prior to the said date. The applicants were ranked senior over those who remained in the scale of Rs.260-480, as the applicants were assigned supervisory duty with effect from 22.6.1983 and designated as Section Supervisor, they had been supervising the work of private respondents. In the meantime, a scheme was implemented which declared that T.S.Clerks/Telegraph Assistants, who had worked for 16 years and more in the post of T.S. Clerks/Telegraph Assistants in the pay scale of Rs.260-480 would be placed in the scale of Rs.425-640 as one Time-Bound Scheme, which is generally known as O.T.B. Scheme to be implemented without requiring to appear for in selection test. Under the said scheme, T.S. Clerks/Telegraph Assistants, who were all junior to the applicants, as mentioned in para 4.6 of the G.A., were given the scale of Rs.425-640 from 30.11.1983 and they were designated as Section Supervisor. While the applicants

got the said scale on the basis of selection under 1/3rd quota, the private respondents were given the scale under O.T.B. Scheme only on the basis of length of their service. Another scheme was brought into force by the official respondents, which was known as "Biennial Cadre Review" (B.C.R. Scheme), according to which, those who had rendered 26 years or more service as T.S. Clerk and under O.T.B. Scheme, would be placed in the scale of Rs.1600-2660 and further 10 per cent of those in the scale of Rs.1600-2660 would be placed in the scale of Rs.2000-3200 without their undergoing for any selection test. The Scheme was to be implemented on the basis of length of service. Under the B.C.R. Scheme, the private respondents and other retired personnel named therein had been placed in the scale of Rs.1600-2660 with effect from 16.10.1990 ignoring the claim of the applicants, who had been placed in the supervisory grade much earlier than the private respondents. It is the claim of the applicants that as they got promotion in the supervisory scale earlier than the private respondents, they should also have been given promotion in the scale of Rs.1600-2660 prior to 16.10.1990, the date on which the persons junior to the applicants have been placed in the said scale. It is further stated that under 10 per cent quota of B.C.R. Scheme, persons junior to the applicants have been promoted in the scale of Rs.2000-3200 from 16.10.1990, thereby also ignoring the rightful claim of the applicants. The applicants have already been given due seniority, which was recognised in the letter dated 30.12.1992 of Directorate of Telecom, New Delhi (referred to in para 4.7). It is stated in the said letter that such officials will retain their seniority vis-a-vis their juniors have been placed in the scale of Rs.1600-2660 on

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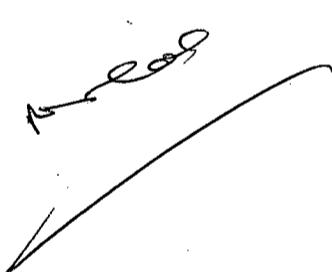
completion of 26 years of service. Relying on the said letter dated 30.11.1992, the applicants have stated that they having been promoted along with their juniors on the same date under B.C.R. Scheme in the scale of Rs.1600-2660, they would retain their seniority above their junior since they had already become senior before the introduction of B.C.R. Scheme. It is further stated on behalf of the applicants that departmental circular clearly provides that in case of promotion under B.C.R. Scheme, those employees will retain their seniority who had been promoted along with their juniors in the scale of Rs.1600-2660 and Rs.2000-3200 from the same date their juniors were placed in the said grade, and the position of those who were promoted earlier due to their being selected against 1/3rd quota will be above those who were promoted under B.C.R. Scheme. It is alleged that inspite of clear cut departmental circularly their juniors (private respondents) have been given promotion under B.C.R. Scheme ignoring the claim of the applicants, even though they were senior to them. It is also stated that retired officials, who retired before 16.10.1990 and who are junior to the applicants, have also been given benefits ignoring the claim of the applicants, who are entitled for such benefits before the same was granted to the private respondents as well as those who retired before 1990. In view of the reasons explained in the O.A. and grounds given therein, the applicants have sought following reliefs:



- (a) A direction upon the official respondents to promote the applicants in the grades of Rs.1600-2660 and Rs.2000-3200 from the date 16.10.1990 giving the retrospective effect

and consequential benefits of the aforesaid grades from 16.10.1990 and ever since along thereafter to upto date accordingly as the official respondents have given the retrospective and consequential benefits of both the aforesaid grades to the juniors to the applicants namely S/Shri D.N. Sanyal, S.N. Missir, N.K.Chakraborty, and K.K.Mitra in the office order No.E-130/Clerical dated 7th March 1997 and namely s/shri B.K. Chattopadhyay and Jamuna Singh in the office order No.E.130-/BCR/clk dated 23rd June,1997, amongst others, as annexed as in Annexure A-2 collectively herein, and with the direction to pay the applicants the arrears and differences of the said grades from 16.10.1990 and ever since along thereafter with 18% interest therein till the date of actual payment.

(b) A direction to place the names of the applicants above all the juniors in the said impugned orders, the private respondents and retired others impugned herein as named in the impugned office orders dated 7.3,1997, 23.6.1997 and 30.6.1997 as annexed as in annexures A-2 collectively herein, in the relevant gradation lists of the grades of Rs.1600-2660 and Rs.2000-3200 having promoted the applicants in the said grades with effect from the date 16.10.1990 from which date those juniors to the applicants have been promoted in the grade of Rs.2000-3200 and also Rs.1600-2660 (both in the same date the 16.10.1990) as the applicants are seniors according to the previous seniority lists as annexed as in Annexure-A- collectively herein.



3. The above application has been opposed by the respondents as stated in the written statement. It is stated that the applicants were appointed as temporary Clerk with effect from 22.6.65, 9.6.65, 8.6.65, 2.7.65, 3.1.67, 18.8.67 and 11.3.65. On the other hand, the private respondents, as mentioned in para 3 (i) of W.S. were appointed as T.S. Clerk and confirmed on the dates as mentioned in the said para. It is admitted that the applicants qualified under 1/3rd quota departmental examination. Thereafter, they were promoted to the post of SS(D) in the L.S.G. scale of Rs.425-640 with effect from 22.6.1983. In the meantime, One Time Bound Promotion Scheme (OTBP Scheme) was introduced by the Department of Telecommunication with effect from 30.11.1983. The said Scheme increased the existing 20 per cent promotional scheme at that time making it wider enough to avoid ~~the~~ ~~stagnation~~ problem of the employees, whereby the 20 per cent promotional scheme under 1/3rd departmental examination quota stood replaced. Accordingly, with the introduction of OTBP Scheme with effect from 30.11.1983, 1/3rd departmental examination quota under 20 per cent promotional scheme for the post of SS(D) stood withdrawn. Another promotional scheme, namely, B.C.R. Scheme was introduced with effect from 16.10.1990 in exchange of further reduction in the staff strength so as to sort out the stagnation problem of the employees in the Department. Under the said Scheme, those employees who were in regular service as on 1.1.1990 and had completed 26 years of service in the basic grade became entitled for promotion and further 10 per cent of such BCR promottes were

*for 29*

to be upgraded to the pay scale of Rs.2000-3200. The private respondents were promoted under B.C.R. Scheme to the post of Senior Section Supervisor in the scale of Rs. 1600-2660 with effect from 16.10.1990 and again to the post of 10 per cent B.C.R. post from respective dates. The applicants had made representations before the concerned authority for giving them the necessary benefits under the B.C.R. Scheme over the private respondents. The same had been examined and rejected on the ground that the applicants were junior to private respondents in the basic grade seniority and they had not completed 26 years of service in the basic grade as on 16.10.1990 which are main criteria for B.C.R. promotion according to verdict of Principal Bench of CAT dated 7.7.1992 which was upheld by the Hon'ble Supreme Court on 9.9.1993.

4. The applicants have filed the instant O.A. in 1997. It is disputed by the respondents that the office orders dated 7.3.1997, 27.6.1997 and 30.6.1997 have granted 10 per cent B.C.R. promotion to private respondents superseding the claim of the applicants. It is, however, clarified that the aforesaid orders were in compliance with the D.O.T letter No.22-6/94-TE-II dated 13.12.1995 (Annexure-R-1) which clearly states that 10 per cent B.C.R. promotion may be given from amongst the persons in Grade III on the basis of their seniority in the basic grade in supersession of earlier instructions. As such, the D.O.T letter dated 30.11.1992, as referred to by the applicants, cannot be taken into consideration for reckoning their seniority. Even the letters of the Department dated 7.3.1997, 23.6.1997 and 30.6.1997 (referred to in para 4 of W.S.)

in no way supersedes the applicants. The aforesaid letters of 1997 were issued in compliance with the order of the Principal Bench,CAT dated 7.7.1992, according to which the promotion to 10 per cent BCR post in the scale of Rs.2000-3200 is required to be given on the basis of seniority in the basic grade subject to fulfilment of other conditions of B.C.R. promotion.

5. While referring to para 4.2 of the O.A. the respondents have stated that the applicants were appointed as T.S. Clerk in 1965. The private respondents were also appointed as T.S.Clerk in the identical scale in 1962. As such, they were senior to the applicants in the basic grade,i.e. T.S. Clerk. All the private respondents were initially appointed in the same post and in the same scale of pay as that of the applicants. They were also posted in the same Department/office under the administrative control of Chief General Manager, Telecommunication,West Bengal. The private respondents were appointed as T.S.Clerk ~~much~~ before the applicants.

6. While clarifying the position further with regard to B.C.R. Scheme in the light of order of Principal Bench,CAT dated 7.7.1992, which was upheld by the Hon'ble Supreme Court on 9.9.1993, the respondents have stated that as the private respondents were senior to the applicants in the basic grade, they were granted necessary benefits under the BCR Scheme, which cannot be termed as superseding the applicants on the ground that they had been given promotion in the supervisory grade in 1983 on the basis of departmental examination of 1/3 quota. The respondents have also clarified that in view of the judicial order, as referred to above, their departmental instructions dated

30.11.1992 had already become null and void and the same had been later on superseded by another departmental letter dated 13.12.1995 which is based on the verdict of the Principal Bench of CAT, later on upheld by the Hon'ble Supreme Court. With regard to B.C.R.Scheme (referred to in para 15 of W.S.), the letter dated 13.12.1995 clearly specifies that promotion to 10 per cent B.C.R. posts in the scale of Rs.2000-3200 is based on seniority in the basic grade subject to fulfilment of other conditions of B.C.R. Scheme, namely, thos who are regular employees as on 1.1.1990 and completed 26 years of service in the basic grade, including higher grade. The cases of private respondents have been considered and they have been granted promotion under BCR scheme, which is in consonance with the judicial verdict, as referred to in W.S. According to respondents, in terms of D.Y.P's letter dated 13.12.1995, the applicants are junior to the private respondents. In fact, the seniority list published on 1.6.1998 shows that the applicants are junior to the private respondents in the basic grade. As such, there was no violation of rules while granting BCR promotion to private respondents. This has been explained in para 16 and 17 of W.S.

In view of the position explained in W.S. the respondents have stated that the instant application is not maintainable.

7. The applicants have filed a rejoinder to W.S. While challenging the stand taken by the respondents in their W.S., the applicants have reiterated the points as referred to in the O.A. It is stated that after completing 10 years of service as T.S. Clerk, the

applicants appeared in the statutory departmental examination. After qualifying in the examination, they were promoted to the post of LSG Clerk with effect from 22.5.1983, whereas, the private respondents as well as some retired personnel were still in the feeder post of Time Scale Clerk. The applicants had been designated as Section Supervisor and by virtue of ~~the~~ said status, they had been supervising work of private respondents and other such persons. In the meantime, One Time Bound Promotion Scheme was introduced by the department with effect from 30.11.1983 vide notification dated 17.12.1983. It is the claim of the applicants that introduction of such scheme will not affect the rights of the applicants who had been promoted on regular basis from the basic grade to the next higher grade before 30.11.1983 in accordance with the then prevalent rule and, as such, the applicants would have to be placed senior to the private respondents and other similarly situated persons, who have already retired. In other words, it is the claim of the applicants that inspite of introduction of One Time Bound Promotion Scheme, the applicants are entitled to retain their seniority. In this regard, they have placed reliance on certain judicial pronouncements including the order of Principal Bench of CAT passed in O.A.1455/91 (Srimati Santosh Kapoor & ors. vs. Union of India) which was disposed of on 7.7.1992 and later on confirmed by Hon'ble Apex Court in Civil Appeal No.3201 of 1993 (Union of India & others vs. Smt. Santosh Kapoor and others). Biennial Cadre Review (B.C.R.Scheme) was introduced vide notification dated 16.10.1990. On the grounds as stated in the O.A. as well as in the rejoinder

to W.S. the applicants have stated that they are entitled for the reliefs claimed by them. The gradation list dated 15.4.1989 (Annexure-A/3) shows that the applicants are senior to the private respondents and other retired personnel as the names of the applicants have been shown in Part II for Section Supervisor in order of merit. As Telegraph Assistants and Section Supervisor (Operative) are junior to Section Supervisor (supervisory), the names of the private respondents and other retired personnel have been mentioned in Part III of the said gradation list. It has also been pointed out on behalf of the applicants that One Time Bound Promotion Scheme and B.C.R.Scheme did not have any statutory force and they are simply administrative orders. In spite of that, the private respondents and other retired personnel on completion of 26 years of service were placed in the scale of Rs.1600-2660 which was further enhanced to pay scale of Rs.2000-3200 on 10 per cent BRC quota with effect from 16.10.1990. Despite the fact that the applicants were promoted to the supervisory post earlier to the private respondents and other retired personnel in the pay scale of Rs.1400-2300 and, as such, the applicants are senior to them. It is alleged that under One Time Bound Promotion Scheme and BCR Scheme, private respondents and other retired personnel have been given double promotion notwithstanding the fact that under BCR Scheme issued vide DOT order No.27/4/87-TE-II (PT.I) dated 30.11.1992 (Annexure-A/1) fully safeguarded the seniority of the applicants who were promoted under 1/3rd merit quota.

8. We have considered the case of the applicants

in the light of submissions made on behalf of the parties and materials on record. There appears to be no dispute so far as the factual position of the case is concerned. However, the dispute has arisen with regard to entitlement of the applicants specially with regard to their seniority and in respect of the reliefs sought by the applicants. The basic question for consideration is whether the applicants are entitled for the reliefs claimed by them.

9. Before we proceed further, it would be relevant to refer to certain circulars of the Department. The applicants have placed reliance on the circular of the Department dated 30.11.1992 (Annexure-A/1), which is a clarification letter issued by the Directorate. The relevant portion of the letter is reproduced below:-

*[Signature]*  
"A reference has been received regarding the seniority of the officials who were selected in the 1/3rd quota of LSG or otherwise and have not completed 26 years of service. The clarifications regarding BGR and restructuring of cadre in Group 'C' and 'D' has already been issued vide Department of Telecom, letter No.27-4/87-TE.II dated 18.3.82.

2. The matter has been examined and I am directed to clarify that the official who are already promoted to the pay scale of Rs.1400-2300/- in the 1/3rd quota of LSG will rank senior to all those who are placed in the scale of Rs.1400-2300/- under OTBP scheme. Such provision is already available in para 22(b) of OTBP scheme order No.1-71/83 - NCG date 17.12.83.

3. Such officials will retain their seniority even if their juniors have been placed in the pay scale of Rs.1800-2660 i.e. Grade-III on completion of 26 years of service. It is further clarified that the promotion of such officials to Grade -IV i.e. in the pay scale of Rs.2000-3200 will also be governed by their seniority as stated above."

10. The arguments advanced on behalf of the applicants with reference to above circular are

contained in para 4.8 of the O.A. In reply to para 4.8 of the O.A. it is submitted on behalf of the respondents that judicial order is superior to departmental order so much so that departmental order dated 30.11.1992 became invalid following the judgment of the Hon'ble Supreme Court dated 9.9.1993 and, accordingly, a letter No.226/94-TE.II dated 13.12.1995 (Annexure-R-1) was issued by the Department of Telecom with regard to procedure for promotion to Grade IV (scale of Rs.2000-3200) against 10 per cent posts in BCR Scheme. It is clarified that promotion scheme under 1/3rd quota for LSG Clerk issued vide letter No.15-14/74-TE dated 16.6.1974 and 1.7.1974 stood withdrawn consequent upon introduction of One Time Bound Promotion Scheme, which was clarified in the Department's letter dated 9.5.1984 (Annexure-R-2). It is further clarified that <sup>the</sup> drawal of the scale of Rs.425-640 does not entitle one for 10 per cent BCR promotion in the scale of Rs.2000-3200, which according to the judgment of Principal Bench of CAT dated 7.7.1992, which was subsequently upheld by the Hon'ble Supreme Court on 9.9.1993 would be based on seniority in the basic cadre, subject to fulfilment of other conditions prescribed in the BCR scheme, namely, those who are regular employees as on 1.1.1990 and had completed 26 years of service in the basic grade. As the applicants neither completed 26 years of service nor were senior to the private respondents and others in the basic grade, the question of supersession does not arise. As per the prescribed scheme and order of the Hon'ble Court, as referred to above, 10 per cent BCR promotion is required to be given on the basis of seniority in the basic grade. As per the verdict of the

Hon'ble Supreme Court dated 9.9.1993 (Ann xure-R-3), the BCR promotion is admissible only for those employees who are regular in their post as on 1.1.1990 and have completed 26 years of service as on 16.10.1990. ✓

As the applicants entered in the service in 1965/67 and had not completed 26 years of service on 16.10.1990, they were not entitled for promotion under BCR Scheme in the scale of Rs.1600-2660. On the other hand, as the private respondents and similarly situated persons who have already retired and had completed 26 years of service on the cut off date, they became entitled for the grade under BCR scheme, which was in consonance with the order of the Principal Bench, CAT and the order of the Hon'ble Supreme Court dated 9.9.1993, as referred to above.

11. The letter No.22-6/94-TE.II dated 13.12.1995 of DOT (Annexure-R-1) is very specific and clear. The relevant portion of the said order is reproduced below:

"Sub: As above.

Your kind reference is invited to the instructions contained in this office letters No.27-1/87. TE-II dated 7.1.94 and 18.2.94 and letter No.27-11/94-TE-II dated 30.8.94 which stipulate promotions to Gr.IV in the scale of Rs.2000-3200 (against 10% posts in the BCR), as per the seniority position in Grade III. The said procedure had been challenged by certain officials before the CAT, Principal Bench, New Delhi by filing O.A. No.1455/91.

The Hon'ble CAT vide its judgment dated 7.7.92 directed that the promotions to 10% posts in the scale of Rs.2000-3200 would have to be based on seniority in the basic cadres subject to fulfilment of other conditions of the BCR, viz. those who are regular employees as on 1.1.90 and had completed 26 years of service in the basic grade (including higher grades). The DOT filed an SLP against the said judgment and the Hon'ble Supreme Court vide their order dated 9.9.93 upheld the judgment of CAT Principal Bench, New Delhi. Similar application had also been

filed before other CAT Benches in the country and in those cases as well, the judgments in line with the judgment of Principal Bench, New Delhi had been given.

Review of the existing procedure of promotion to Grade IV (now redesignated as Chief Section Supervisor) under the BCR Scheme has been under consideration in view of the judgment of Principal Bench, New Delhi upheld by the Supreme Court. It has now been decided in supersession of earlier instructions that promotion to the said Grade-IV may be given from amongst officials in Grade-III on the basis of their seniority in the basic grade. The promotions would be subject to fitness determined by the DPC as usual.

The cases of promotion to the said Grade-IV in the scale of Rs.2000-3200 against 10% posts under the BCR scheme may be reviewed and the same may be regulated accordingly restricting the number of officials thus promoted strictly to 10% of the posts placed in Grade-III (scale of Rs.1600-2660) as provided in the BCR Scheme."

12. It would be clear from the letter dated 13.12.1995 that the matter was reviewed by the Department in the context of order dated 7.7.1992 of the Principal Bench of CAT and order dated 9.9.1993 of the Hon'ble Supreme Court. It clearly states that the procedure of promotion to Grade IV under BCR Scheme has been considered in view of those judicial orders and thereafter it has been decided in supersession of earlier instructions that the promotion to said Grade IV may be given from amongst officials in Grade III on the basis of their seniority in the basic grade. The promotion would be subject to fitness determined by DPC, as usual. The cases of promotion to said grade IV in the scale of Rs.2000-3200 against 10% posts under BCR Scheme may, therefore, be reviewed and the same may be regularised accordingly.

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13. Regarding One Time Bound Promotion Scheme, instructions were issued vide letter No. 31-26/83-PE dated 17.12.1983 by the office of the DGP&T giving details

*One Time Bound Promotion Scheme*

regarding procedure to be followed in this regard.

The said scheme was brought into force from 30.11.1983.

It is stated therein that all the officials belonging to basic grades in Group 'C' and 'D' to which there is direct recruitment either from outside and/or by means of limited competitive examination from lower cadre and who have completed 16 years of service in the grade, will be placed in the next higher grade. The officials belonging to the operative cadre listed in Annexure-A of the Scheme were covered.

The detailed procedure was given in the said letter as to how to proceed in the matter including consideration of the cases by Departmental Promotion Committee.

Another Scheme, namely, BRC Scheme was issued vide DOT No. 274/87-TE-II dated 16.10.1990. The said letter contained detailed instructions with regard to procedure to be followed with regard to promotion under BRC. It is stated therewith that Biennial Cadre Review will be applicable for only those cadres for Group 'C' and 'D' for which Scheme of One Time Bound Promotion on completion of 16 years of service in the basic grade is already in existence. The said Scheme will be applicable only to those regular employees who were in service as on 1.1.1990. Necessary posts were to be created by upgradation under powers of COM's in consultation with their accredited finance. Certain clarifications were also issued vide letter No.26-6/90-TE.II dated 11.3.1991. The Clarification No.8 states that only officials who have completed/ will be completing 26 years of service or more on the crucial dates for Biennial Cadre Review will be eligible. However, the seniority of senior officials will

not be affected. This clarification was given in reply to the question whether seniors, who have not completed 26 years of service, are eligible because juniors have completed. A question had been raised in Item No.10 whether officials, already having scale of Rs.1600-2600 will rank senior to official in the pay scale of Rs.1400-2300 for 10% quota (Rs.2000-3200). The clarification issued in this regard is that seniority of official is to be maintained with reference to the basic cadre and functional promotion post, they hold and not merely with reference to the pay scale. Further clarifications were issued vide DGT No.27-4-TE dated 18.3.1992. On the question of seniority, it was stated that officials already in pay scale of Rs.1400-2300 (Grade II) before introduction of OTBP Scheme will rank en block senior to all those who entered the pay scale of Rs.1400-2300 after introduction of OTBP Scheme. Further clarification was issued vide DGT letter No.27-4/87-TE.II (Part I) on 30.11.1992 clarifying thereby that the officials, who are promoted to the scale of Rs.1400-2300 under 1/3rd quota of LSG will rank senior to all those who are placed in the scale of Rs.1400-2300 under OTBP Scheme. Such officials will retain seniority even though ~~if~~ their juniors have been placed in the scale of Rs.1600-2660, i.e. Grade III on completion of 26 years of service. It was further clarified that promotion of such official to Grade IV in the pay scale of Rs.2000-3200 will also be governed by their seniority as stated in the said letter.

14. The basic issue for consideration is

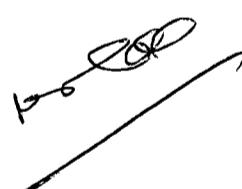
whether the applicants are entitled for promotion in the grades of Rs.1600-2660 and Rs.2000-3200 along with consequential benefits with effect from 16.10.1990 and whether their seniority is required to be determined, accordingly, vis-a-vis those who were junior to the applicants in Grade II as the applicants had been promoted to the post of LSG Clerk in the scale of Rs.425-640 through departmental examination with effect from 22.6.1983, whereas the private respondents were not in the same scale at the relevant time. Before we proceed further, it would be relevant to refer to certain judicial pronouncements on which reliance has been placed by the parties.

15. The learned counsel for the applicants have placed reliance on the order of Bangalore Bench of CAT passed on 3rd August 1993 in O.A.403/92, order passed by Principal Bench of CAT on 7th June 1994 in O.A.1713/93 and O.A.2597/93, order of Hon'ble Supreme Court passed in Civil Appeal No.2736 of 1991 on 13.11.1992 in the matter of Dr. M.S. ~~Ilyas~~ and others vs. ICAR and others (AIR 1993 SC 384), so far as order of Hon'ble Supreme Court is concerned, the facts and circumstances of the case are quite different from the facts and circumstances of the instant O.A. However, there is a similarity between the case of the applicants and the ~~other~~ applicants in which O.A.403/92, O.A.1713/93 and O.A.2597/93, as referred to above. we have gone through these orders. In O.A.403/92 while passing the order, the Bangalore Bench of CAT had taken note of the order of Principal Bench passed in O.A.1455/91 (Smt. Santosh Kapoor and others

vs. Union of India ), and the said order was passed on 3.8.1993 granting certain reliefs to the applicants of that O.A. Obviously, at that time the order of the Hon'ble Supreme Court passed on 9.9.1993 (Annexure-R-2) was not available. In O.A.1713/93 and O.A.2597/93 the Principal Bench of CAT had granted certain reliefs to the applicants of those OAs, keeping in view the order passed by the Bangalore Bench of CAT in O.A.403/92. There is no mention of the order of the Hon'ble Supreme Court passed on 9.9.1993 (Annexure-R-2). Even though the order of the Hon'ble Supreme Court was passed on 9.9.1993, there is no mention of the said order of the Hon'ble Supreme Court in the order passed in O.A.1713/93 and O.A.2597/93.

16. The respondents have relied on the order of Principal Bench passed in O.A.1455/91 on 7.7.1992 which was ultimately upheld by the Hon'ble Supreme Court vide their order dated 9.9.1993 (Annexure-R-3). The order of the Hon'ble Supreme Court is very specific. Based on the order of the Principal Bench of CAT in O.A.1455/91 and upheld by the Hon'ble Supreme Court on 9.9.1993, necessary instructions were issued by DGT vide their letter dated 13.12.1995, the relevant portions of which have been reproduced in para 11 above. The letter dated 13. 12.1995 of DGT, as referred to above, is very specific and clear so much so that the promotions under BCR Scheme is required to be given on the basis of seniority in the basic grade and on completion of certain number of years in service as is clear from para 3 of <sup>the letter</sup> ~~the letter~~. The private respondents had entered into service in the basic grade before the

applicants joined as TS Clerk. Hence, they were given the benefits of OTBP Scheme and BCR Scheme. The applicants have claimed that they should also be given the benefits in terms of aforesaid order, as the respondents have given retrospective and consequential benefits to some of the juniors to the applicants, namely, Shri D.N. Sanyal, Shri S.N. Missir, Shri N.K. Chakraborty, Shri K.K. Mitra, Shri B.K. Chattopadhyay and Shri Yamuna Singh. As already pointed out earlier, the promotion under BCR Scheme is not automatic and the same has to be given in terms of the prescribed instructions of the Department. The matter was reviewed by the Department as is clear from the letter dated 13.12.1995, which is based on the order of the Principal Bench of CAT dated 7.7.92 passed in 1455/91 and upheld by the Hon'ble Supreme Court on 9.9.1993. We have taken note of the seniority protection given in the earlier circular of the Department dated 30.11.1992 but the situation significantly changed with the issue of departmental circular dated 13.12.1995, which is based on judicial verdicts. It is settled principle of law that judicial verdict is superior to any departmental instructions and the same has to be followed.



17. From the above analysis of the case, we find that OTBP and BCR Schemes were both discussed by the Principal Bench of CAT while disposing of O.A.1455/91. The basic principle for promotion under the aforesaid Schemes have been laid down therein which was finally upheld by the Hon'ble Supreme Court vide their order dated 9.9.1993. Based on the aforesaid orders, the DOT issued circular dated 13.12.1995. We are convinced with the arguments

advanced on behalf of the respondents in the matter and for issue or circular dated 13.12.1995. With the issue of aforesaid letter, the position significantly changed with regard to implementation of OTBP/BCR Schemes and consequently it had its impact on seniority position. There is a close connection between the two schemes. It is noted that orders dated 7.3.1997, 27.6.1997 and 30.6.1997 (Annexure-A/2 series) were issued in pursuance to DOT circulars dated 13.12.1995 and 10.5.1996 on review of the matter. Therefore, necessary action in this regard was taken by the respondents in accordance with latest prescribed instructions on the subject.

18. In view of the facts and circumstances of the case as stated above, we have reached conclusion that this O.A. has no force and the same is, accordingly, dismissed.

19. No order as to the costs.

  
(M. Chibber)  
Member (J)

  
(L.R.K. Prasad)  
Member (A)

Mahto