

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

ORIGINAL APPLICATION NO. 421/2012
& ORIGINAL APPLICATION NO. 180/158/2015

Friday this the 9th day of September, 2016

CORAM

HON'BLE MR. JUSTICE N.K.BALAKRISHNAN, JUDICIAL MEMBER
HON'BLE MRS. P. GOPINATH, ADMINISTRATIVE MEMBER

1. Jose Dominic S/o Dominic Aged 47 years, Assistant Postmaster Accounts (APM Accounts), Head Post Office, Kalpetta, residing at Elabungal House, Thodupuzha 685584.
2. Geethakumari R., D/o Radhakrishnan, aged 48 years, Accountant, HPO Kollam, residing at Sreganesh, TKM College P.O., Kollam 691005. **Applicants OA 421/2012**

(By Mr.M.R.Hariraj, Advocate)

vs.

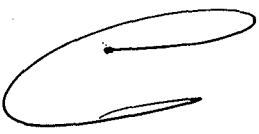
1. Union of India, represented by the Secretary to Government of India, Ministry of Communications, Department of Posts, New Delhi 110 001.
2. The Director General, Posts, Department of Post, Dak Bhavan, New Delhi 110 001.
3. Chief Post Master General, Kerala Circle, Thiruvananthapuram 695 033.
4. Superintendent of Post Offices, Idukki Division, Thodupuzha, Pin 685584.
5. Superintendent of Post Offices, Kollam Pin 691 001. **Respondents in OA 421/2012**

(By Mr.N.Anilkumar, Sr.PCGC (R))

1. Jose Dominic S/o Dominic Aged 47 years, Assistant Postmaster Accounts (APM Accounts) Officiating, Head Post Office, Thodupuzha, residing at Elavungal House, Thodupuzha 685584. **Applicant in OA 180/00158/2015**

(By Mr.M.R.Hariraj, Advocate)

vs.

1. Union of India, represented by the Secretary to Government of India, Ministry of Communications, Department of Posts, New Delhi 110 001.
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2. The Director General, Posts, Department of Post, Dak Bhavan,
New Delhi 110 001.
3. Chief Post Master General, Kerala Circle,
Thiruvananthapuram 695 033.
4. Postmaster General, Central Region, Ernakulam, Kochi 682020.
5. Director of Postal Services, Central Region, Kochi 682020.
6. Superintendent of Post Offices, Idukki Division, Thodupuzha,
Pin 685584.

...Respondents

(By Mr.N.Anilkumar, Sr.PCGC (R) for Respondents)

in OA 180/00158/2015

(This application having been finally heard on 16.08.2016, the Tribunal on 09.09.2016 delivered the following.)

ORDER

Per: Mrs.P.Gopinath, Administrative Member:

The applicants, who were Postal Assistants, appeared and passed the PO and RMS Accountants Examination held in 1990 and 1992 respectively. The applicants were thereafter entitled to be promoted as LSG Accountant/APM Accounts. On the introduction of TBOP/BPCR scheme such promotions were suspended. The 2nd respondent clarified that introduction of time bound promotion scheme does not do away with the necessity to make promotions in accordance with Recruitment Rules. Noting that norm based promotions to LSG and HSG were not done for many years, it was decided to make notional promotions in terms of the relevant rules, from the year since when norm based promotions were suspended. It was also directed to make vacancy based promotions to HSG II based on the notional service. The first Applicant approached this Tribunal in O.A. 468/2007 aggrieved in the above circumstances. The Original Application was allowed directing the respondents to consider the applicant for promotion as LSG Accountant/APM (Accounts). The respondents did not fully comply with the order. Though APM Accounts (LSG) promotions were granted, only prospective promotions were made. Applicants challenged Annexure A/4 before the Tribunal to the extent it denied them the correct date of promotion. OA 323/2009 was filed by the first applicant. The second applicant



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along with others filed OA 481/2009. While the said Original Applications were pending, the Postal Services Group B Examinations were notified. The applicants applied for the said examinations. If all the vacant posts were properly filled at least by giving notional promotion, the applicants would have got a date of promotion as LSG Accountant much prior to the one granted in Annexure A/4. In the examination conducted in 2011 the first applicant appeared after obtaining interim orders from this Tribunal. By a common order dated 1.11.2011 in OA 323/2009 and connected cases, this Tribunal directed that the seniority lists in respect of LSG and HSG II posts in accounts line be updated weeding out the names of those who are no longer in service and all vacancies be filled up as per seniority and eligibility of the employees first in the HSG II and then in LSG cadre in the light of the clarification dated 12.11.2002 (Annexure A/2). Promotions were directed to be given to the applicants from date of occurrence of vacancies year-wise in accordance with their turn in the seniority list, for considering their eligibility to appear for the examination for promotion to the Postal Services Group B, 2009. As per information received under the Right to Information act, there are fifteen posts of HSG II APM Accounts posts which are lying vacant in the Kerala Circle. These are vacancies created in 2002 due to upgradation of 15 LSG posts to HSG II.

2. Applicant submits that under the Right to Information Act information received there were 15 posts of HSG APM Accounts in Kerala Circle vacant from 2002 onwards. The first fifteen in Annexure A/12 are entitled to be posted as HSG II APM Accounts from the date of occurrence of vacancy as per the final order of this Tribunal. There are 25 posts of LSG Accountant/APM Accounts in the circle. The first applicant is thus entitled to be promoted as LSG Accountant/APM Accounts from the date of occurrence of vacancy. Thus it is evident that there were a total of 40 posts in LSG cadre till 15 among them were up graded to HSG II in 2001. As such vacancies which existed in LSG cadre till 2001 were not considered by the DPC conducted on 3.2.2005.




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However, those 15 vacancies in LSG cadre were also not considered in DPC dated 3.2.005. This is evident from para 2 of Annexure RI.

3. Relief sought by applicants is to direct the respondents to implement the final orders of this Tribunal by promoting the applicants as LSG Accountant/ APM Accounts from 2002 onwards and to direct the respondents to publish the results of the examinations for Postal Service Gr. B in respect of the applicants for the years 2010, 2011 and 2012 and to consider them for promotion to Postal Service Gr.B based on their performance in the said examination.

4. Respondent in their first reply statement submit that the first applicant, Shri Jose Dominic was a party in earlier filed OAs. No. 323/2009 & 774/2010 before this Tribunal seeking a declaration that they were entitled to be considered for promotion against the norm based LSG Accountants/APM Accounts vacancies available with effect from the date of occurrence of such vacancies according to their turn as per seniority. The second respondent Smt. R. Geethakumari along with three others filed OA No.481/2009 claiming the same reliefs. During pendency of the said OAs, both the applicants in the instant OA were provisionally permitted to appear for the Postal Service Group B examinations for the years 2010, 2011 and 2012 in obedience to the interim orders of this Tribunal subject to out come of the OA. The Tribunal disposed of OA.323/09 and other connected cases by Annexure A-11 common order dated 01.11/2011 directing to update the seniority list in respect of LSG & HSG II posts in accounts line and filling up the vacancies as per seniority and eligibility of the employees first in HSG II and then in LSG cadre as per the clarifications dated 12.11.2002. It was further directed to grant norm based LSG Accountant/APM Accounts promotion with effect from the date of occurrence of vacancies and to consider applicant's eligibility to appear for the PS Group B Examination 2009.


5. In compliance with the directions of this Tribunal in OA 323/2009 and others order, a Review DPC at Circle level was held on 27/07/2012 to carry out the norm



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based promotion to the cadre of LSG in APM (Accounts) with effect from the date of occurrence of the vacancies year wise in terms of 1976 Recruitment Rules. The DPC considered the eligible officials in the seniority list of PO & RMS Accountants who were in service in 2004 and thereafter in order to consider them for granting notional promotion to the cadre of LSG Accountants from the actual date of occurrence of vacancies. The DPC also considered the resultant vacancies occurring from 2009 upto 31.12.2012 due to the promotion/retirement of officials. The LSG APM Accounts is a small cadre of 25 posts for the entire State of Kerala. The 1976 LSG Accountant Recruitment Rules was followed by the DPC for vacancies upto 31.01.2011 and the LSG Accountants Revised Recruitment Rules 2011 for the vacancies occurring after 31.01.2011. Two vacancies arose in the year 2011 after 31.01.2011 and 5 vacancies were due to arise in the year 2012 upto 31.12.2012. The DPC accordingly recommended the notional promotion of the officials as shown in Annexure -II of Annexure R.1 minutes giving notional promotion to the said officials. As evident from the Annexure R-1 DPC minutes, both the applicants have not come under the zone of consideration of officials for notional promotion to the cadre of LSG APM (Accounts). As such the applicants are not entitled to appear for the Postal Service Group B Examination due to non-fulfillment of the mandatory condition of 5 years of regular service in LSG. Hence, the provisional admissions granted to the applicants for the said examinations have been invalidated.

6. Respondent in the reply statement submit that O.A. has been filed by the applicants praying for a direction to implement the final orders of this Tribunal by promoting the applicants as LSG Accountant/APM Accounts from 2002 onwards and for a further direction to the respondents to publish the results of the examination for Postal Service Group B in respect of the applicants for the years 2010 and 2011 and to consider the applicants for promotion to Postal Service Group B based on their performance in the said examination. When the OA was taken up for hearing on



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11.08.2015, this Tribunal directed the respondents to produce the result of the applicant in a sealed cover and also directed the respondents to file an additional affidavit showing how vacancies in LSG and HSG II were calculated and filled up. O.A. No.323/2009 filed by Shri Jose Dominic was disposed of by the CAT vide common order dated 01.11.2011 with the following directions:

- i. Seniority lists in respect of LSG and HSG II posts in the Accounts Line are updated weeding out the names of those who are no longer in service.
- ii. Then, all the vacancies are filled up as per seniority and eligibility of the employees first in the HSG II cadre and then in the LSG cadre.
- iii. The applicants are granted norm based LSG Accountant/APM Accounts promotion with effect from the date of occurrence of vacancies year-wise according to their turn, for considering their eligibility to appear for the examination for promotion to the cadre of Postal Service Group B 2009.
- iv. Those applicants, who appeared for the above examination provisionally, who are found eligible to participate in the examination, and passed the same should be given promotion as per rules.

7. Respondent submits that in 1992, all 40 LSG posts were occupied by eligible LSG Accountants. Before 15.12.2001, there was no HSG II Accounts posts in the establishment of the circle. In accordance with the orders contained in Directorate letter No. 22-1/89-PE I Vol II dated 31.07.2001 and IR/498/PCC/2002 dated 10.02.2003, out of 40 LSG Accounts Line posts, 15 posts were upgraded to HSG II Accounts with effect from 15.12.2001. 15 LSG Accounts officials were promoted to HSG II vide memo No.ST/3-4/2004 dated 08.12.2004 on notional basis to with effect from 15.12.2001, the date from which the LSG posts were upgraded to HSG II. After this upgradation, the number of LSG posts in Accounts Cadre in Kerala Circle was reduced to 25. Hence the upgradation was within the sanctioned strength of 40 and not 40 + 15.

8. In compliance with the order of this Tribunal in OA 323/2009 the revision of the

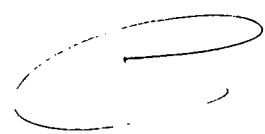


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seniority lists of PO and RMS Accountants was carried out by the respondents on 27.07.2012 to ensure that promotion to the cadre of HSG II was made strictly according to the seniority of the officials in the feeder cadre and with effect from date of creation of HSG II. Vacancies in order to give consequential promotion. Promotion to the cadre of HSG II could be granted only from among the LSG officials. However, promotion already granted to the LSG cadre had become a controversial issue in various CAT cases and based on the revised seniority position, officials had to be notionally posted to LSG cadre for further promotion to HSG II cadre. Accordingly, notional promotion was granted to eligible officials for vacancies up to 31.12.2012 vide memo dated 14.09.2012. After elimination of the officials who were unwilling to accept the promotion to LSG cadre and based on the revised seniority position of the officials in the feeder cadre, 15 senior most officials were granted HSG II promotion vide DPC convened on 19.02.2013. While revising the seniority of the PO and RMS Accountants and mapping the officials who were in service against the LSG posts with effect from the date of occurrence of vacancies, it was found that the applicant who was at in Sl.No.37 could not be accommodated in the LSG Accountants list according to his turn. As the applicants could not be accommodated in the LSG Accountants list even in 2012, the applicants were found ineligible to appear in the PS Group B Examination held in 2009 and 2010.

9. The above contention of the respondents was accepted by this Tribunal while dismissing CP(C) No. 122/12 in OA No. 357/2010 and connected CPs vide order dated 01.10.2013. This Tribunal was pleased to hold that:

“The sensitivity with which the respondents have taken action in pursuance of the order of the Tribunal by convening a DPC on 27.07.2012 cannot be brushed aside though there was some delay in holding the DPC. When the applicants did not come within the consideration zone, their entitlement to participate in the Group B Examinations held in 2010, 2011 & 2012 has been rightly negated as stated in para 5 of the counter Affidavit. The order of this Tribunal clearly states that promotion to LSG was to be given according to the turn and for considering their eligibility to appear for the examination for promotion to the cadre of Postal Services Group B.”



10. The applicants in their rejoinder to the Affidavit dated 29.9.2015 filed by the respondent argue that Tribunal had directed that all vacancies in HSG II were directed to be filled first. Instead first LSG appointments were made. The respondents argue that while above direction of Tribunal was being implemented they were faced by the problem of some officials refusing promotion to LSG as the same involved moving out on promotion to LSG to post located outside the district of their residence. Hence responding to such declination of LSG promotions and promoting juniors and resetting LSG seniority list had to be effected before HSG II promotions could be made from an accurate LSG seniority list. Hence this method had to be followed in the efforts made to implement the third direction of the Tribunal that promotions be made according to turn. It is evident from Annexure A22 that notional promotions to LSG Accountants Cadre were made in 1992, 1994, 1996, 1997 1998, 1999, 2001, 2002 and 2004 based on vacancies in the LSG Accountant cadre.

11. The contention of applicants in para 10 of counter affidavit is not correct as there are no HSG-I posts in Accounts Line.

12. The respondent had produced before this Tribunal the Circle Gradation List dated 01.07.1987 wherein 22 LSG Accountants post were filled up as on 01.07.1987. Respondent submits that all the 40 posts in the cadre of LSG accountants were occupied by eligible officials on 01.07.1987 either on regular promotion or against short term leave vacancies. Every vacancy arising since 1987 has been taken into account in Annexure R-5 and eligible Accountants have been duly promoted against the said vacancies. Notional promotion has been granted strictly in the order of seniority of the accountants with effect from 1992 onwards. The vacancy against which this promotion has been given has also been furnished in column No.9 of Annexure R-5. It is submitted that notional promotion has been given till the vacancy which arose on 31.12.2012 (Sl.No.113 – Shri Roy. V.S.)



13. Respondent would argue that vide common order dated 01.11.2011, this Tribunal had directed the respondents to update the Seniority lists in respect of LSG and HSG II posts in Accounts line weeding out the names of those who were no longer in service and all vacancies be filled up as per seniority and eligibility of the employees first in HSG II and in obedience to the said directions of this Tribunal, the respondents have prepared a revised seniority list weeding out the officials who were no longer in service up to 31.12.2012 and antedated the date of HSG II promotion of the eligible officials to the date of arising of vacancies in the HSG II cadre (notionally) subject to fulfilling the eligibility conditions for appointment to the cadre of HSG II. The resultant vacancies caused by such antedating of notional promotion to the HSG II posts have been duly filled up by notionally promoting eligible officials to the LSG cadre as ordered by the Tribunal by carrying out this exercise of filling up of the HSG II and LSG vacancies with effect from the date of creation of HSG II posts and occurrence of LSG vacancies. Annexure R-6 has been prepared in compliance with the direction of the Tribunal. The first applicant in the O.A at Sl.No.114 is eligible to be notionally promoted to the cadre of LSG Accountant against a vacancy which arose on 31.01.2011. The second applicant in the OA who is at Sl.127 is still not eligible for promotion to the cadre of LSG in view of her lower position in gradation list. Since the Ist applicant is eligible to be notionally promoted to the cadre of LSG Accountant against a vacancy of 2012, he will become eligible to appear in the PS Group B examination only upon completion of 5 years of service in the LSG cadre. The second applicant is not yet eligible to be promoted to the cadre of LSG Accountant as these promotion are vacancy based promotion. Thus both the applicants are not eligible to appear in the PS Group B examinations held in 2010, 2011 and 2012.

14. The Applicants in the rejoinder dated 19.11.2015 submit that there are a total of 40 posts in the cadre of LSG Accountant on 1.7.1987. On the other hand Annexure



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R/5 Seniority List produced by respondent, applicant argues that there are only 22 permanent LSG Accountants indicated in Seniority List. Hence there are 18 vacancies in the cadre of LSG Accountants. 15 among the 22 permanent officials are actually officiating in higher posts as per Table A below.

Sl.No.	Sl.No. In R5	Name	Remark
1	1	K.V.Rajagopal	Post occupied by offg hand as per R4 (sl. 18)
2	2	T.Girijavallabhan	Shown as officiating in seniority List.
3	3	K.V.Raveendran Nair	Shown as officiating in Seniority List.
4	4	P. Savithri	Shown as officiating in Seniority List
5	5	K Karunakaran Nair	Shown as officiating in Seniority List
6	6	V.Sarada	Shown as officiating in Seniority List.
7	7	M. Krishnan	Shown as officiating in Seniority List.
8	8	K.Parameswaran Nair	Shown as officiating in Seniority List
9	9	M Sankarankuttuy.	Shown as officiating in seniority List
10	10	N. D. Mambeesan	Shown as officiating in Group B in Sty List.
11	11.	C.V.Joseph	Post occupied by offg hand as per R4 (Sl.3)
12	14	C. Sivadasan	Shown as officiating in Grp. B in Sty List
13	16	M. Saraswathy Ammal	Post occupied by offg hand as per R4 (Sl.9)
14	20	K. Ramaswamy Iyer	Post occupied by offg hand as per R4 (Sl.16)
15	22	P.V. Sreedharan Nambesan	Post occupied by offg hand as per R4 (Sl.22)

Thus the above 15 officiating vacancies are also available in the cadre of LSG Accountants as on 1.1.1987. As against these 33 vacancies, 25 individuals at serial number 23-47 in Annexure R5) are working as LSG Accountant on officiating basis.



Thus after accommodating personnel upto serial No. 47 in R5, there are $33-25 = 8$ vacancies. In order to implement the directions of the Tribunal, the vacancies available as on 1.7.1987 in HSG and thereafter in LSG must be treated as filled on regular basis notionally from the date of occurrence of vacancies. Therefore the 8 vacancies available on 1.7.1987 also must be treated as filled from candidates available in Annexure R5. Respondent on the other hand argues that officiating arrangements are made in short term vacancies arising out of persons availing short term leave. Hence these cannot be counted as permanent vacancies against which regular promotion can be made. In this O.A. we are addressing the prayer of eligibility of regularly promoted persons.

15. Applicants argue that in Annexure R5, the following officials are already promoted to LSG in General Line as on 1.7.1987 as is evident from the gradation list.

Sl.No.	Sl.No.inR5.	Sl.No.in Gradation List	Name	Working as
1	50	1204	L Sarasakumari	HGPA Kalamassery
2	54	1352	Santha Narayanan	HGPA Irinjalakkuda

16. Respondents argue that above two officials are not LSG Accounts vacancy based promotees but officials who have been given BCR pay scale which is only a pay upgradation.

17. The applicants argue that candidates who before 1987 are already in LSG general line posts cannot be further promoted as LSG Accountants. The appointment to LSG General Line is based on their option. Applicants argue that if the 8 vacancies available on 1.7.1987 are to be filled avoiding candidates in Table B, the following candidates will be appointed as per seniority.



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Sl.No.	Sl.No. In R5	Name
1	48	Devaki E P
2	49	P.R.Radhamany
3	51	K.G.Padmanabhan
4	52	Chidambaram
5	53	Rukmini K. Pillai
6	55	Sarojini Bhai
7	56	P.K. Mathew
8	57	P. Narayanan

18. Two individuals are indicated in Annexure R5 as having have declined promotion to LSG. They are

Sl.No.	Sl.No. In R5	Name
1	73	K.C.Saraswathi
2	76	Lalithamma Koshi

19. The contention of applicants regarding two officials after Sl No. 57 in Annexure R5 who are already included in LSG General Line as evident from the gradation list of 1.7.1987 as indicated below is not accepted by respondents, as they are not regularly appointed LSG officials but are upgraded under BCR scheme.

1	62	384	GSobhana	HGPA Palluruthy
2	66	1032	M Valsala	HGPA, Div Office

There are 11 candidates who are included in Annexure R5 who have been promoted as HSG II in General Line after 1.7.1987 as reflected in CPMG Memo No.ST/3-5/2005 dated 7.6.2005, and ST/3-4/2006 dated 19.10.2006 as below:

Sl.N o.	Sl.No.in Rs.	Name
1	51	K.G Padmanabhan (A25)
2	52	N Achidambaram
3	45	K.P.Varghese (A26, Sl.20)



4	56	P.K.Mathew (A26,Sl.No24)
5	58	P.N. Sivasankaran (A26, Sl.25)
6	60	T.H. Balachandran (A26,Sl.30)
7	64	P.K. Bhaskaran (A26,Sl.32)
8	63	P.K. Ammini (A26, Sl.33)
9	65	S Manikanthan Nair (A26, Sl.36)
10	70	C Unniadi (A26, Sl.47)
11	74	K.Thara (A26, Sl.68)

20. Respondents argue that Smt. Santha Narayanan in Annexure A28, and M. Valsala in Annexure A29 are not included herein because they are already excluded as per Table B indicated above. It is submitted that the vacancies of LSG Accountants being appointed in HSG II General Line will reflect as additional vacancies in LSG Accountant Cadre as the HSG II Accounts posts have been created by upgrading 15 LSG posts. Promotions made in Annexure A28 and A29 are to vacancies created by upgradation of posts to HSG I and HSG II made as per Memo No. 2201/89-PE.I Vol.II dated 31.7.2001 and Memo No.22-1/89-PE.I Vol.II dated 31.7.2001. In Annexure A/29 officials at serial 20, 24, 25, 27, 30, 31, 32, 33, 36, 37, 41, 47, 51, 64 & 68 (total 15) are vide para 7 of the Annexure, HSG II officials with accounts qualifications and posted against identified accounts line HSG II posts. Annexure A30 has upgraded 1622 General Line and not Accounts Line posts to HSG I by upgrading 1429 HSG II and 193 LSG posts. Hence that many HSG II and LSG General Line posts are reduced for promotion in general line to which the accounts line applicants had a chance of promotion in order of seniority. Such a move was made to help seniority based HSG II officials to get promotion to HSG I, which does not benefit the applicant. The vacancies created as per promotions in Annexure A28 and A/29 must be deemed to be those in existence at least on 30.6.2001. It is submitted that as per Annexure A27 promotion order another Eight officials in Accounts Line are promoted to HSG II and then given promotion to HSG I as on



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December, 2004. The officials are :

Sl.No.	Sl.No. In R5	Name
1	30	M Anthru
2	44	Sasikaladevi Amma
3	36	Santhamma
4	39	Ramaswamy R.
5	43	V.K. Varghese
6	47	P.M. Radhakrishnan
7	46	M Sakthivel
8	49	P.R.Radhamony

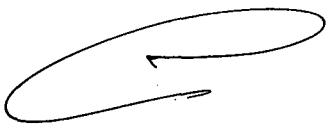
21. Applicants argue that L. Sarasakumari is not included in this list only because she is already excluded by virtue of Table in pre-para. It is submitted that these vacancies are also those arising from upgradation. As such these vacancies also must be treated as those arising as on 30.6.2001. The positions reflected in Tables D to H of rejoinder have to be taken in to consideration while notionally filling LSG posts from 1.7.1987. The personnel in Table D and E (Total 4 numbers) must be excluded from consideration. The appointments granted to personnel in Table F and H must be treated as vacancies arising at least on 30.6.2001. After 1.7.1987 first retirement vacancy is on 31-8-1989, caused due to retirement of Sri. Parameswaran Nair (Sl.No.8 in Annexure R5) Since personnel up to Sl.No. 57 in Annexure R5 are already appointed in LSG (See table C) the next appointment must be of Sl.No.58, P.N. Sivasankaran. Applicants indicate vacancy could also arise due to VRS, retirement, promotion etc and appointment made against the vacancy from the gradation list. K.Subrahmanian (Sl 68 in R5) is shown to be promoted to group B as per Annexure R5 itself. There are four seniors who have been promoted in General Line, (82, 84, 85, 86 in Annexure R5) and are also not excluded for want of exact date of promotion. With the above contention, the applicant is entitled to be promoted as LSG as early as in 2001.



22. The above OA has been filed by the applicants praying for a direction to promote the applicants as LSG Accountant/APM Accounts from 2002 onwards and for a further direction to the respondents to publish the results of the examination for Postal Service Group B in respect of the applicants for the year 2010 and 2011 for which the applicants were provisionally admitted subject to the outcome of this OA and to consider the applicants for promotion to Postal Service Group B based on their performance in the said examination.

23. When the OA was taken up for hearing on 19.11.2015 the applicant filed a rejoinder which according to respondent contained statements which had to be addressed as they were contrary to facts and circumstances of the case and the same had to be presented in correct perspective. The Respondent argues that the averments that the date of promotion of the applicant as LSG Accountants would have been made as early as in 2001 is incorrect and hypothetical. Addressing the presumptions made by applicants, respondents submit that admittedly there were a total of 40 posts in the cadre of LSG Accountants as on 01.07.1987. As is evident from the circle gradation list as on 01.07.1987, 22 officials were borne in the LSG cadre in permanent capacity leaving 18 posts vacant. Respondent argues that of the 22 permanent accountants, 9 (15 according to applicant) persons were officiating in higher posts. If the 9 posts so occupied by persons officiating may be considered as being vacant this brings the total number of vacancies in the LSG cadre to 27 (18+9) as on 1/7/1987. While so 25 officials were working in officiating/leave capacity in the LSG Accounts cadre and all the vacancies were subsequently filled regularly by promoting the officials who were working in officiating/leave capacity in the LSG Accounts cadre.

24. The table presented by the applicant in para 1 of the Rejoinder shows 15 incumbents in officiating capacity. This is factually incorrect because out of the 15 persons included in the lists, persons at serial numbers 11, 16, 20 and 22 were occupying permanent posts but might have proceeded on leave at the time. It is



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submitted by respondent that what is shown in Annexure R-4 as officiating is in fact an incumbent officiating where the permanent occupant is on leave or not available temporarily. The vacancies arising due to short term officiating arrangements of the regular incumbents can not be filled up on a regular basis. The contention of the respondent is that 9 out of the 22 officials were working in HSG II posts and were under probation as on 01.07.1987. Respondent argues that it is not correct to contend that a post should be filled up in the lower cadre on regular basis if the regular incumbent is officiating in a higher post. Regular vacancy is defined in DOPT OM no.22034/1/2006-Esstt (D) dated 15.05.2007 which reads as follows:

"It is essential that the number of vacancies in respect of which a panel is to be prepared by a DPC should be estimated as accurately as possible. For this purpose, the vacancies to be taken into account should be the clear vacancies arising in a post/grade/service due to death, retirement, resignation, regular long term promotion and deputation or from creating of additional posts on a long term. As regards vacancies arising out of deputation, only those cases of deputation for periods exceeding one year should be taken into account, due note, however, being kept also of the number of the deputationists likely to return to the cadre and who have to be provided for. Purely short-term vacancies created as a result of officers proceeding on leave, or on deputation for a shorter period, training etc, should not be taken into account for the purpose of preparation of a panel."

In view of above definition by the Department of Personnel, Government of India the contention of the applicants to fill all vacancies including short term vacancies is contested.

25. Vacancies caused by short term officiating arrangements are not regular vacancies in view of the fact that those officials who were officiating in HSG II cadre were still holding their lien in the LSG cadre. It has been held by the Hon'ble Apex Court in **Balakrishna Pandey vs. State of Bihar (1996) 2 SCC 282; 1996 SCC (L&S) 498** that "it is settled law that an employee holds the lien on his substantive post until it is duly terminated."



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The Hon'ble Apex Court in *State of Haryana vs. Rajendra Sareen AIR 1972 SC 1004; (1972) 1 SCC 267*,

“where an incumbent holds a lien, no substantive appointment can be made to the post on which he holds a lien.”

Thus, leaving aside the 9 vacancies over which its original incumbents sustained their lien, there were only 18 regular vacancies as on 01.07.1987 and senior eligible officials who were officiating in those posts were subsequently given regular promotions to those posts.


The service particulars of the applicants in the OA are as follows:

Sl.No.	Name of the applicant	Date of entry in the PA cadre	Year of passing PO and RMS Accountants exam.
1	Jose Dominic	23/02/83	1990
2	Geethakumari R	23/11/83	1992

As per the Posts and Telegraphs (Selection Grade Posts) Recruitment Rules, 1976, the eligibility condition for an official for being considered for promotion to the cadre of LSG Accountant is “*Clerks in Post Offices with 10 years' regular service in the grade who have passed the Post Offices and Railway Mail Service Accountants Examination.*”

The above eligibility condition is required to be supported by availability of vacancy, as LSG & HSG II are vacancy based promotion restricted to the number of sanctioned posts. It is not a promotion to be made merely on completing qualifying service. The applicants had not fulfilled the eligibility condition for promotion as LSG Accountants as on 01.07.1987 as they had not completed 10 years of service on that date. As a matter of fact they had not qualified the PO/RMS Accountant Exam on the said date as they qualified the examination in 1990 and 1992. Respondent submits the following information of the LSG Accounts Cadre:

	Occupied
Cadre strength of LSG Accountants (A)	40



Number of officials in permanent capacity in the cadre of LSG Accountants (B)	22
Number of officials in B officiating in higher post but retaining their lien in the LSG cadre (C)	9
Thus, number of LSG Accountants in permanent capacity less the persons officiating in higher post (B-C)	13
Number of officials in officiating capacity in the cadre of LSG Accountants (D)	25
Number of officials in position (E) = (B-C) + (D)	38
Number of vacancies as on 01.07.1987 (A)-(E)	2

Vacancy position	Vacancy
Cadre strength of LSG Accountants (A)	40
Number of officials in permanent capacity in the cadre of LSG Accountants (B)	22
Vacancies in the cadre (A-B)	18
Notional vacancies of accountants in B officiating in higher post but retaining their lien in LSG cadre (C)	
Thus, actual number of vacancies in LSG Accountant cadre D=(A-B) + C	27
Number of officials in officiating capacity in the cadre of LSG Accountants (E)	25
Number of vacancies as on 01.07.1987 (D) -(E)	2

26. As per data submitted above, there were only 27 vacancies against which 25 were officiating as LSG Accountants and hence there remained only 2 vacancies which were duly filled up in 1988 as is evident from Annexure R-5. Four vacancies, including the two vacancies that subsequently arose, have been filled up in 1988 (Sl.No.48 to 51 of Annexure R-5) and as such, there were no more vacancies available to be filled up. The averment based on Table No. B in Paragraph 8 of rejoinder that the officials in Table B of the rejoinder were already promoted to LSG in General Line as on 01.07.1987 is not admitted as Smt. L. Sarasakumari and Smt. Santha Narayanan were only placed in under TBOP scheme which was not a promotion against any norm based post but only a financial up gradation as is evident from the fact that both the officials were granted placement under TBOP scheme on completion of 16 years



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of service in the entry grade as detailed below:

Sl.No.	Name of the official	Date of entry into service	Dt of plcmt in TBOP
1	L. Sarasakumari	24/12/69	24/12/85
2	Santha Narayanan	17/02/71	17.012.1987

27. Respondents argues that upgradation under TBOP/BCR scheme and promotion to LSG/HSG-II vacancies as per provisions of recruitment rules are two distinct and separate scheme and promotion cannot be compared or made to stand for each other. Hence, the contention of the applicants that the officials in Table B have been already promoted to 'LSG under General Line' is not accepted.

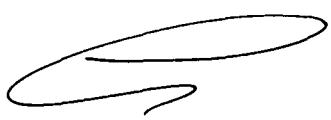
28. Officials in Table D were promoted to the cadre of LSG as detailed below:

Sl.No.	No.in R-5	Name of the official	Date of promotion to the cadre of LSG
1	73	K.C.Saraswathi	02/05/99
2	76	Lalithamma Koshi	02/05/04

Admittedly, the officials mentioned above declined the promotion. However, vacancies caused due to the declining of promotions offered have been duly filled up by ante dating the date of promotion of the next eligible official. The details are furnished below:

Sl.No.	Sl.No.in R-5	Name of the officials	Original date of promotion to LSG	Revised date of promotion to LSG
1	74	K.Thara	01/08/01	02/05/99 promoted vide 1 above
2	75	Nalini Devi. N.	02/10/02	01/08/01
3	77	T.P.Paul	—	02/10/02
4	78	K.K. Aravindakshan	--	02/05/04 promoted vide 2 above.


No date of promotion has been assigned to the officials in Table D and the applicant



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has also accepted the fact that "the respondents have also excluded these two candidates for promotion to LSG." Table E is liable to be rejected on the same grounds as explained with respect to Table B i.e. it is a BCR upgradation not LSG promotion. It is submitted that the applicant has tried to project the officials who were granted financial up gradation upon completion of 16 years of service under TBOP scheme as those who were already promoted to the cadre of supervisory LSG Accounts posts. On the contrary, the fact is the officials in Table E were not promoted to norm based LSG cadre vacancy.

29. The applicant has produced the orders Annexure A 28 and A 29 promoting the officials to HSG II cadre in the general line. From among these officials, persons at Sl. Nos. 9 and 11 declined promotion. Therefore, there are only 9 vacancies in LSG cadre as in 2006. It is submitted that all the officials in Table F who were ordered to be promoted to HSG II cadre had not accepted the promotion. As is evident from Annexure R-5, Shri S. Manikanthan Nair (Sl.No.65 of Annexure R-5) had retired from the cadre of LSG as he had declined promotion to the cadre of HSG II vide his representation dated 14.11.2006. It is further submitted that Smt. Thara K who is at Sl.No.68 of Annexure A-29 and at Sl.No.71 of Annexure R -5 had been promoted to the cadre of HSG II only with effect from 04.04.2008, as the said official had declined the *ad hoc* promotion ordered vide Annexure A-29. Respondent produces true copy of the letter dated 14.11.2006 of Shri Manikantan Nair, 2. and 04.12.2006 of Smt. Thara K. declining their promotion granted marked as Annexures R-9 and R-10. True copy of memo No.ST/3-4/2007 dated 04.04.2008 vide which Smt.. Thara K was subsequently promoted to the cadre of HSG II is produced marked as Annexure R-11. It is further submitted that promotions at Sl.No.68, 69 and 70 are only ad hoc which cannot be counted for determining regular vacancies in the lower cadre. It is also submitted that the vacancies caused due to promotion of any official in 2006 and beyond is totally irrelevant in the context of the applicant's eligibility to take the PS



Group B examination for the vacancies of 2009. The applicants in the O.A. would have become eligible to take that examination only if they were promoted to the LSG cadre on or before 31.12.2002.

30. Regarding the contention of applicants that promotion was granted only in 2006 with respect to the upgradation in 2001, respondent submits that vide Annexure A-31, 112 LSG General Line posts and 15 LSG APM Accounts posts were upgraded to HSG II which include the posts in the postal side, RMS, SBCO, CO/RO, PAO etc. consequent promotions were duly granted to the eligible officials with effect from the date of upgradation, i.e. 15.12.2001 vide Memo No. ST/3-4/2002 dated 18.09.2003 (General line – Sl.No.64 to 130) and ST/3-4/2004 dated 08.12.2004 (in respect of Accounts line officials.) It is further submitted that notional promotion was duly granted to eligible officials by the DPC convened on 03.02.2005 taking into account each and every vacancy arising from 1992 onwards till 2004. This whole exercise was again reviewed in the DPC held on 27.07.2012. In view of above, submission of applicant that the officials shown in Table G were “promoted and appointed to HSG I cadre” vide Annexure A/34 and A/35 is misleading.

31. The promotions ordered vide Annexures A-34 and A-35 were on “*ad hoc*” basis and hence, the claim of consequential vacancies in LSG cadre on “regular” basis is not admitted by respondent. As regards Table G promotion of 3 persons to HSG-I, they were promoted on ad-hoc basis and their lien continued in HSG II as is evident from Annexures A-34 and A-35. Further, in Table H, 8 promotions were on adhoc basis, meaning that their lien too was continuing. The vacancies caused due to the declining of promotions by the officials in Table D of the rejoinder have been duly filled up by ante dating the date of promotion of the next eligible officials. The details are furnished below:

No.	Sl.No. In R-5	Name of the official	Original date of promotion to LSG	Revised date of promotion to LSG
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1	74	K.Thara	01/08/01	02/05/99
2	75	Nalini Devi N.	02/10/02	01/08/01
3	77	T.P.Paul	--	02/10/02
4	78	K.K.Aravindakshan	---	02/05/04

32. It is further submitted that the officials in Table E, who were only granted financial upgradation under TBOP Scheme on completion of 16 years of service cannot be treated to have been granted norm based promotion to the cadre of LSG and hence cannot be deprived of their right to be promoted to the cadre of LSG subsequently in their due turn.

33. Rebutting para 22 of the rejoinder, respondent submits that the applicants had not fulfilled the eligibility condition prescribed in Annexure R-8 Recruitment Rules as on 01.07.1987 as they had not completed 10 years of service on that date, for promotion to LSG. The vacancy that arose after 01.07.1987 was not due to the retirement of Shri Parameswaran Nair but due to the retirement of Shri K.V. Rajagopal (at Sl.No. D1 of Annexure R-5) on 30.09.1987 and the vacancies of 1987 were duly filled up in 1988. This has been accepted by the Applicants in Annexure A -36 (Sl.No.1 of Annexure A-36). However, the above vacancy was not filled up by the promotion of Shri Sivasankaran but by one of the officials from Sl.48 to 51. A vacancy cannot be filled up on the date of its occurrence itself but will be filled up only following the prescribed DPC procedure stipulated in the Recruitment Rules by convening DPCs and issue of promotion orders. In the instant case, the vacancies of 1987 were duly considered and filled up in 1987. It has been held by the Hon'ble Apex Court in *Nirmal Chandra Sinha vs. Union of India* C.A. No 8058 of 2001 on 31.03.2008 that

"It has been held in a series of decisions of this Court that a promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of the post."

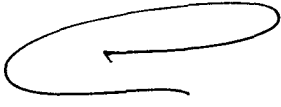
The Tribunal has, in OA 145/2010 upheld the above position and held that “.....it is settled law that the promotion takes effect from the date of being granted and not from the date of occurrence of vacancy or creation of posts.... An employee does not have an indefeasible right to promotion. ..”

34. Annexure A-2 was issued in the extraordinary circumstance to overcome the issue of non-availability of eligible HSG II officials who had completed three years' service in the grade for promotion to HSG I cadre as per the relevant recruitment rules and cannot be applied as a general rule. The relaxation for the purpose granted by the competent authority vide Annexure A-2 and was a one-time measure to fill up the HSG I posts created by the upgradation of 1622 HSG II posts. In the LSG Accounts Line it was not a shortage of qualifying service which had to be addressed but a limited availability of norm based posts.

35. In the M.A.892/2016 the respondents contest that the argument of the applicants that DOP&T OM dated 19/5/1093 and 7/5/1984 had done away with the requirement of probation in respect of promotion from one grade to another within the same group. Respondent argues that para 2 of OM dated 21.7.2014 produced by applicant specifically states that:

“there may be posts in various Ministries/Departments/Organisations where the norms specified in the recruitment rules are different from those prescribed in the Annexure. In such cases norms specified in those recruitment rules shall prevail.”

Thus where recruitment rules specifically stipulate that there shall be a defined period of probation in respect of promotion of an official, the same shall prevail as above. The promotion of officials mentioned in para 6 of the additional reply statement dated 1/7/2016 was governed by P & T Selection Grade Recruitment Rules 1976 at Annexure MA/1 and Col. 10 of the said rules stipulate that an official promote to HSG II cadre shall be under probation for two years. Further norm/vacancy based promotion



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to the cadre of LSG Accountants was made till 1992 and minutes of DPC convened for period 1987 to 1992 and the orders of promotion are produced as Annexure MA2 (1-12).

36. The respondents in MA892/2016 vide Annexure MA2 to MA2 (12) produce copies of promotion/appointment orders to the grade of LSG APM Accounts to discount the applicant's contention that norm based promotions were totally suspended or that only prospective promotions were made or that :

(1) DPC No.6 Minutes dated 31/3/1987 promoting 13 Accountants to LSG Accounts Cadre.

(2) Order dated 26/7/1988 MA2 (1) promoting 4 Accountants to LSG Accounts Cadre.

(3) DPC No.18 Minutes dt. 27.12.1988 promoting eleven officials to LSG Accounts. In this DPC minutes it is noted that 6 Accountants who had declined promotion were not considered, 5 Accountants who had opted for general line LSG promotion were also not considered and one Accountant who had been promoted as JAO Telecom. was also not considered. The posting order of four of the above eleven promoted officials dated ____/4/1989 (date not clearly visible) produced as MA2 (12) mentions that they will be on probation for a period of two years.

(4) DPC No.4 Minutes dtd. 28/3/1990 promoting 15 Accountants to LSG Accounts Cadre.

(5) Order dated 26/5/1990 MA2 (4) promoting 4 Accountants to LSG Accounts Cadre.

(6) Order dated 13/8/1990 MA2 (5) promoting 1 Accountant to LSG Accounts Cadre.

(7) DPC No.13 Minutes dtd.7/11/1990 promoting 4 officials to LSG Accounts Cadre.

(8) DPC No.12 Minutes dated 30/10/1991 promoting 18 Accountants to LSG Accounts Cadre.

(9) Order dated 27/1/1992 MA 2(2) promoting 3 Accountant to LSG Accounts Cadre.

(10) Respondent has produced Annexure R/12 (1) to (3) wherein 130 LSG officials are promoted to HSG II notionally for the years 1993 (14 officials), 1994 (7 Officials), 1995 (6 officials), 1996 (9 officials), 1997 (7 officials) 1998 (6 officials), 1998 (6 officials), 1999 (1 official), 2000 (4 officials), 2001 (75 officials) vide promotion memo dated 18.9.2003. Hence contention of applicants that promotions were not made annually as per available vacancies, has been addressed by making year wise vacancy based promotions for



General Line also.

(11) In Annexure R 13 dtd 8/12/2004 15 LSG Accountants were promoted to HSG II w.e.f. 15/12/2001 i.e. date of creation of HSG II posts, in compliance of the respondent orders upgrading 15 LSG Accounts posts to HSG II.

(12) Annexure R/14 is a detailed document showing persons borne in R/5 PO&RMS Accountant Seniority List who had retired, expired, been promoted to higher posts, along with officials who had replaced them being shown in the sixth column. R/5 document also shows year of passing PO&RMS Accounts Exam, dated of promotion to LSG and date of promotion to HSG II. In the seventh column it is noted that 15 persons at serial No.30 to 49 excluding 4 persons at serial No.32, 40, 41 and 48 have been promoted to HSG II on 15/12/2001. In the sixth column of R/5 Annexure it is noted that four persons were promoted to LSG in 1988, one in 1989 2 in 1990, 5 in 1991, 5 in 1992, 2 in 1994, 3 in 1996, 2 in 1997, 1 in 1998, 1 in 1999, 1 in 2001, 1 in 2002, 3 in 2004, 5 in 2005, 12 in 2006, 2 in 2007, 4 in 2008, 2 in 2009, 1 in 2010, 2 in 2011, 5 in 2012 and the applicant Jose Dominic is the first available person as per seniority list for promotion after year 2012.

At R5/4 the applicant who belongs 1990 PO RMS Accounts Batch appears at serial 114 of the seniority list. Officials at 102 to 113 also belong to 1990 batch, the same batch as applicant and have been promoted to LSG Accounts in year 2008 (officials at Sr. 102-103 of seniority list) year 2009 (officials at serial No.104-105), year 2010 (Sr. No.106) year 2011 (serial No.107-108), year 2012 (Sr.No.109-113). Applicant's name appears thereafter at serial number 114 of the seniority list and below the above promoted officials.

Annexure R1/1 to R1/8 is a record of a DPC held on 27 July 2012 to give notional promotion to LSG Accounts APM. In para 2 of R1 DPC minutes, the DPCs held on



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earlier dates 3/2/2005, 9/9/2008 and 7/3/2011 are also discussed. R1 also mentions DPCs held and notional promotions granted in years 1992 to 2005 giving details of vacancy and date of notional promotion. The DPC further in para 4 assesses vacancies arising from 2002 to 2008, persons promoted, persons retired and those promoted against retirement vacancies. 20 persons were promoted to LSG A/cs cadre in which details of persons who declined promotions and those who were reverted are also indicated and an extended panel was also prepared and the officials thereon promoted against declined vacancies.

37. The orders of the Tribunal in OA 323/2009 and connected cases have been complied with by effecting year wise vacancy based promotion in HSG II and LSG PO/RMS Accounts cadre as directed by the Tribunal. Further the senior of the applicant Mr. V.S. Roy belonging to 1990 PO/RMS Accountant batch placed just above the first applicant has been promoted to LSG on 31/12/2012. The applicant who is his junior, his turn will come at a date subsequent to 31/12/2012. Hence the applicant does not have the requisite five years service in LSG to be eligible for the PSS Group B Examination.

38. Vacancy and Norm based promotions have been made, as per directions in OA 323/2009 as brought out in pre para. Even the Tribunal had ordered in OA.323/2009 that promotions be effected from date of occurrence of vacancies year wise and according to their turn and the applicant was a party in the above O.A. Applicant who appears at serial 114 in Seniority List can therefore, be only promoted in turn after the promotion of his immediate senior at serial number 113. Further the applicant has not impleaded any of his seniors who would be affected if his prayer is to be granted.

39. Respondent argues that there is no merit in the averment of the applicants that vacancies for promotion to LSG Accountants till 1992 were not assessed correctly. There is no dispute that norm based promotions to LSG Accounts cadre was made till 1992. This being so there is no relevance of taking the vacancies from 1987 onwards.




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The applicants appear to have misunderstood facts like placement in TBOP on completion of required years of service as LSG promotion. The arisal and the consequent filling up of each vacancy from 1992 is tabulated and is marked as Annexure R-14. It is further submitted that promotion to the cadre of LSG Accountants was granted upto Smt. S. Sreedevi (At Sl.No.61 of Annexure R-5) on 07.08.1992. Subsequent vacancies were duly filled up by granting notional promotion to the next eligible officials vide the departmental promotion committee held on 03.02.2005. The respondent in pre-para 36 has accounted for year wise promotions to LSG Accounts Cadre made upto the immediate senior of applicant in the OA Jose Dominic.

40. Respondent submits that in the instant case, there is no case that the postponement of the meeting of the DPC was arbitrary or *mala fide*.


41. The eligibility to appear in the PS Group B examination is 5 years regular service in the LSG and above as on 01.01.2008. Therefore, the applicants who have appeared, in the PS Group B examination for the vacancies in 2009, would be eligible only if they were promoted as LSG Accountants on or before 31.12.2002. Both the applicants have not yet been promoted to the cadre of LSG. If the seniority list is revised as per Annexure R-5 in compliance with the directions of this Tribunal, Shri Jose Dominic, the first applicant, is eligible to be considered for promotion to the cadre of LSG Accountant against a vacancy of 31.01.2011 and the second applicant is still not eligible to be promoted to the cadre of LSG Accountant being junior. Thus both the applicants were not eligible to appear in the PS Group B examinations held in 2010, 2011 and 2012. The prayer of applicant to be considered for officiating or regular promotion to LSG and HSG II in preference to his juniors is also not admitted as OA.323/2009 had ordered that promotions be effected from the date of occurrence of vacancies year wise and according to turn, and the applicant was a party in the said O.A.



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42. In the result, both the O.As. are dismissed. No order as to cost,


(MRS. P.GOPINATH)
ADMINISTRATIVE MEMBER


(N.K.BALAKRISHNAN)
JUDICIAL MEMBER

sj/*