

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.Nos. 327/98, 620/98, 621/98, 771/98, 1377/98 and 466/99

WEDNESDAY, THIS THE 17TH DAY OF JANUARY, 2001.

C O R A M

HON'BLE MR. A. M. SIVADAS, JUDICIAL MEMBER
HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

O.A.No.327/98

1. K. Surianarayana Pillai
Section Supervisor
A&P Section,
Office of the Chief Postmaster General
Kerala Circle,
Thiruvananthapuram-695 033
2. A. Sreekumari Amma
Section Supervisor,
Mail Section -do-
3. P. Paravathy Amma, Section Supervisor,
I&C Section -do-
4. K.G. Sivakumaran Nair, Section Supervisor,
C.R. Section -do-
5. V. Vijayalakshmy, HSG -II Postal Assistant
A&P Section -do-
6. P. Sreekantan Nair, HSG-II Postal Assistant
Building Section -do-
7. M. Premakumari, HSG-II Postal Assistant
I & C Section -do-
8. M. Moni, HSG-II Postal Assistant
Technical Section -do-
9. C.R. Sankar, HSG-II Postal Assistant
SD Section, -do-
10. Indira G. Nair,
HSG-II Postal Assistant,
PLI Section -do-
11. A. Amina Ummal, HSG-II Postal Assistant
Establishment Section -do- Applicants

By Advocate Mr.O.V. Radhakrishnan

Vs

1. Chief Postmaster General
Kerala Circle,
Thiruvananthapuram
2. Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi-110 001

3. Assistant Director General (Establishment)
Office of the Director General of Posts,
Dak Bhavan, Sansad Marg,
New Delhi.

4. Union of India represented by its Secretary
Ministry of Communications,
New Delhi. Respondents

By Advocate Mr. George Joseph, ACGSC

O.A. No. 620/98

1. Ramany Devi A.
Section Supervisor
Office of the Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.

2. C. Sundaravally Ammal
Section Supervisor,
Office of the Chief Postmaster General
Kerala Circle,
Thiruvananthapuram. Applicants

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Chief Postmaster General
Kerala Circle
Thiruvananthapuram.

2. Director General of Posts,
Department of Posts
New Delhi.

3. Assistant Director General (Establishment)
Office of the Director General of Posts
Department of Posts,
New Delhi.

4. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.

5. Director of Postal Services (Headquarters)
Office of the Chief Postmaster General
Kerala Circle,
Thiruvananthapuram. Respondents

By Advocate Mr. George Joseph, ACGSC

O.A. No. 621/98

1. V.N. Madhusudanan Pillai
Station Supervisor, HSG-II (BCR)
Office of the Postmaster General
Central Region, Kochi-16

2. G. Vasudevan
Higher Selection Grade II Postal Assistant (CO)
PLI Section, Office of the
Chief Postmaster General, Thiruvananthapuram.

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
2. Director General of Posts,
Department of Posts
New Delhi.
3. Assistant Director General (Establishment)
Office of the Director General of Posts
Department of Posts,
New Delhi.
4. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.
5. Postmaster General,
Central Region, Kochi-16
6. Director of Postal Services (Headquarters)
Office of the Chief Postmaster General
Kerala Circle,
Thiruvananthapuram.

Respondents

By Advocate Mr. S. Krishnamoorthy.

O.A.No. 1377/98

1. K. Divakaran Nair
HSG II Postal Assistant
Office of the Chief Postmaster General
Kerala Circle, Thiruvananthapuram.
2. J. Indira Bai -do-
3. J. Padmakumari Amma -do-
4. Raichel Rajan Mathew, -do-
5. K. Harihara Iyer, -do-
6. S. Vaikuntanathan, -do-
7. Thankamma John, -do-
8. D. Radhakumari Amma, -do-
9. K. Savithri Devi, -do-
10. K. Kumaraswamy Achary, -do-
11. Kurian C. Abraham, -do-

Applicants

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Chief Postmaster General
Kerala Circle
Thiruvananthapuram.

2. Director General of Posts,
Department of Posts
New Delhi.
3. Assistant Director General (Establishment)
Office of the Director General of Posts
Department of Posts,
New Delhi.
4. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.

By Advocate Mr. Govindh K. Bharathan, SCGSC

O.A.No. 771/98

1. P. Anantha Subramaniam
HSG II Postal Assistant (CO)
Accounts and Pension Section
Office of the Postmaster General
Central Region, Kochi-16
2. P.V. Ramachandran
HSG II PPostal Assistant (CO)
Officiating Section Supervisor
Office of the Postmaster General
Central Region, Kochi-16
3. D. Vijayalakshmi
HSG II Postal Assistant (CO)
Officating Section Supervisor
Office of the Postmaster General
Central Regioin, Kochi-16
4. K.N. Krishnankutty
HSG II Postal Assistant (CO)
Office of the Postmaster General
Central Region, Kochi-16

Applicants

By Advocate Mr.O.V. Radhakrishnan

Vs.

1. Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
2. Director General of Posts,
Department of Posts
New Delhi.
3. Assistant Director General (Establishment)
Office of the Director General of Posts
Department of Posts, New Delhi.
4. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.
5. Postmaster General
Central Region,
Kochi-16

Respondents

By Advocate Mr. P.J. Philip, ACGSC

O.A.No.466/99

P.T. Kannan
LSG Postal Assistant (C.O)
Office of the Postmaster General
Northern Region, Kerala Circle
Kozhikode - 673 011

Applicant

By Advocate Mr. O.V. Radhakrishnan

Vs.

1. Chief Postmaster General
Kerala Circle
Thiruvananthapuram.
2. Director General of Posts,
Department of Posts
New Delhi.
3. Assistant Director General (Establishment)
Office of the Director General of Posts
Department of Posts, New Delhi.
4. Union of India represented by its Secretary
Ministry of Communications,
New Delhi.
5. Postmaster General
Northern Region,
Kozhikode-673 011.

Respondents

By Advocate Mr. M.R. Suresh, ACGSC for respondents
These Applications having been heard on 23.11.2000, the
Tribunal delivered the following on 17.1.2001.

O R D E R

HON'BLE MR. G. RAMAKRISHNAN, ADMINISTRATIVE MEMBER

As the question of law involved in all the above six O.As is same all of them were heard together and is being disposed of by this common order. The question involved is the method of fixation of pay of the applicants in the first five OAs on their promotion to Higher Selection Grade-II (HSG-II for short) in scale Rs. 1600-2660 and in the sixth O.A. on promotion to the Lower Selection Grade (LSG for short) in scale Rs. 1400-2300 in accordance with the letter of the Department of Post dated 22.7.93 (A-3 of O.A.No. 327/98) introducing Time Bound One Promotion (TBOP for short) and Biennial Cadre Review (BCR for short) Schemes for the group 'C' staff of administrative offices (circle Office)

with effect from 26.6.93 and the other connected orders. The applicants in O.A. No. 327/98, 620/98 and one of the applicants in O.A. No. 621/98 had completed more than 26 years of service as on 26.6.93 and were promoted to HSG-II with effect from that date. One of the applicants in O.A. No. 621/98 and all the applicants in O.A. No. 771/98 and 1377/98 even though had not completed 26 years of service were promoted to HSG-II with effect from 26.6.93. The only applicant in O.A. No. 466/99 who had not completed 16 years of service was promoted to the scale Rs. 1400-2300 with effect from 26.6.93. On the basis of the objections raised by the Audit party, it had been proposed by the respondents to refix the pay fixation made with effect from 26.6.93 and to recover the over payments made in the case of the applicants in all the Original Applications and individual notices to that effect had been issued to each of them. Aggrieved by the notices the applicants had filed the above Original Applications. For convenience we propose to examine the rival pleadings in detail of O.A. No. 327/98 and then deal with the other Original Applications.

O.A.No.327/98

2. Applicants at the time of filing of the O.A. were working as Section Supervisor/Higher Selection Grade-II Postal Assistants (HSG -II PA for short). They were initially recruited as Time Scale Clerks in the Posts and Telegraphs Department, under the Ministry of Communications. On bifurcation of the said Department of Posts & Telegraphs into two separate Departments in 1974, the applicants opted for the Postal Wing. Government of India later decided to reconstitute the Ministry of Communications to consist of two departments namely Department of Posts and Department of

Telecommunications as per Allocation of Business (164th amendment) Rules 1965 issued on 4.1.85. Thereafter the Posts and Telegraphs Board was reconstituted and Postal Service Board and Telecommunications Board were brought into being as per A-1 O.M. dated 25.3.85. While the Postal and Telecommunication Wings were under the Posts & Telegraphs Department, the Time Bound One Promotion (TBOP for short) Scheme was introduced with effect from 30.11.83. At the time of introduction of the scheme, the staff in the Administrative offices of both the departments were not brought under the gamut of the scheme. According to this scheme all officials belonging to the basic grades in Group-'C' and 'D' to which there was direct recruitment either from outside or by means of limited competitive examination from lower cadres and who completed 16 years of service in that grade would be placed in the next higher grade. The scheme was applicable only to those belonging to operative cadres listed in Annexure to the letter. Subsequently TBOP scheme was extended to Savings Bank Control Organisation Staff with effect from 1.8.91. On the basis of the demands made by the Staff Unions for grant of two promotions to each employee during their service career the Government by Annexure A-2 letter dated 1.10.91 introduced a Biennial Cadre Review Scheme under which incumbents of existing posts would be enabled to draw pay in the higher scale on completion of 26 years of service. The scheme was brought into force w.e.f. 1.10.91 by A-2 letter dated 11.10.91. By A-3 letter dated 22.7.93 Govt. decided to extend the benefit of TBOP and a second promotion after 26 years of satisfactory service to the clerical staff in administrative office with effect from 26.6.93. All the applicants had put in more than 26 years of service as on the date of introduction of the 1993 scheme. By A-4 order dated

21.1.94 the applicants were promoted to the cadre of Lower Selection Grade (LSG for short) in the scale of Rs. 1400-2300 under TBOP scheme w.e.f. 26.6.93. By A-5 order dated 21.1.94 all the applicants were promoted to the cadre of HSG-II in the scale of pay of Rs. 1600-2660 under the second promotion scheme w.e.f. 26.6.93. Applicants who were working as UDCs under the scheme opted for the scale of pay of Postal Assistants. As all of them had put in 26 years of service or more on the date of introduction of the scheme, their pay was fixed at Rs. 1660 at the maximum of the scale of Postal Assistants (Rs. 975-1660) by applying the instruction contained in para 3.7 of A-3. They stated that their pay in the LSG in the scale of Rs. 1400-2300 were fixed without taking into account the special pay of Rs. 70/- drawn by them in the UDC cadre in terms of paras 3.7 and 3.11 of A-3 and their pay in the HSG-II under BCR scheme was also fixed applying FR 22(1)(a)(1) and arrears were disbursed to them. Applicants enclosed with the O.A. a copy of the statement of pay fixation made to the first applicant as Annexure A-10 dated 1.12.95. They were individually served with cyclostyled letters similar to the one at Annexure A-11 dated nil February, 1998 issued to first applicant in which it was stated that the DDPA Trivandrum while checking the pay fixation of applicants had objected to the fixation of their pay twice first in the LSG cadre in the scale of pay of Rs. 1400-2300 and then to the HSG-II in the scale of pay of Rs. 1600-2660 w.e.f. 26.6.93 stating that the officials who had completed 26 years on the date of implementation of the scheme should not be given two simultaneous fixations and that their pay should be fixed only once in the corresponding scale for which the officials qualify on the basis of length of service. It was further stated in the said letter that the above stand had been confirmed in A-12 letter dated

16.1.98 of the 3rd respondent. According to the applicants, A-11 and A-12 had been issued without authority of law and were illegal and inoperative. They assailed A-11 on the ground that the said letter had been issued by the first respondent on the basis of A-12 letter of the 3rd respondent and the first respondent who was subordinate to the 3rd respondent could not take a different stand and calling of representation against the proposal in A-11 was only an empty formality. Further it was stated that the stand of the third respondent in A-12 was the one reflected in A-8 dated 8.8.95 which stood superseded by A-9 dated 1.12.95 and therefore the third respondent had no authority or jurisdiction to supersede A-9 by way of clarification. Further, the Mumbai Bench of the Tribunal vide order dated 31.3.97 in O.A. No. 1482/95 reported in 1997 (36) ATC 70 had quashed and set aside A-8 letter dated 8.8.95. According to the Recruitment Rules, feeder category for HSG-II was the LSG and an official could not be promoted direct to HSG-II from LDC/UDC without promoting him to the feeder category of LSG. Relying on A-7 dated 4.6.91 issued by Chief General Manager, Telecommunications, Trivandrum, it was submitted that the officials in the Telecom department were given pay fixation under the TBOP and BCR schemes applying FR 22(1)(a)(1) even though both the promotions were ordered simultaneously. They claimed that the respondents in the Postal Department could not apply different yardstick in the matter of fixation of pay on promotions under TBOP and BCR schemes without attracting the frown of the equality clauses contained in Articles 14 and 16(1) of the Constitution of India. Referring to para 3.7 and 3.11 of A-3 it was submitted that special pay of Rs. 70/- drawn by the applicants in the UDC cadre had not been taken into account while fixing their pay in the LSG cadre thereby they suffered loss of pay by two

steps in the LSG scale. Before the TBOP Scheme was introduced UDCs of circle Office were allowed the benefit of special pay of Rs. 70/- while fixing their pay on promotion in the SG cadre and therefore, it was not the intention of the department in framing A-3 scheme to deny fixation in the LSG cadre in respect of those who completed 26 years of combined service on the date of introduction of the scheme. A-3 scheme had not been modified and therefore A-11 and A-12 could not modify or outstep A-3 scheme. It was submitted that the proposed action of the respondents had no statutory backing since statutory rules did not prevent fixation of pay in two cadres simultaneously. It was submitted that an official who had not completed 26 years of service would get his pay fixed in the LSG cadre and then in HSG cadre on completion of 26 years whereas an official who enter HSG cadre directly, would get only one pay fixation which would result in an anomalous and inequitable situation and would amount to discrimination without valid classification. A-11 notice was invalid and irregular and bad in law. No amount had been quantified towards the alleged over-payment with notice to the applicants. Therefore the applicants were disabled to make their objections against the amount of over payment proposed to be recovered from their pay. Accordingly, applicants sought the following reliefs:

- i) to call for the records relating to Annexures A-11 and A-12 and to set aside the same
- ii) to declare that the pay of the applicants fixed on promotion to the lower Selection grade in the scale of pay of Rs. 1400-2300 and on promotion to Higher Selection grade-II (BCR) in the scale of pay of Rs. 1600-2660 are not liable to be refixed on the basis of annexure A-12
- iii) to issue appropriate direction or order directing the 1st respondent not to proceed with Annexure A-11 pending the Original Application.
- (iv) to grant such other reliefs which this Hon'le Tribunal may deem fit, proper and just in the circumstances of the case and

v) to award costs to the applicants.

3. Respondents filed reply statement resisting the claim of the applicants. Giving a brief history of the case they submitted that A-9 letter dated 1.12.95 was issued for giving some relief on the hardship experienced on account of non-protection of pay in the existing scale and they superseded the previous orders of directorate to that extent only. But the said letter dated 1.12.95 was, by an inadvertent error in its interpretation by the office of the first respondent, taken as one superseding and virtually cancelling the earlier clarification No.2 in A-8 letter dated 8.8.95. Consequently, instead of allowing fixation once in the corresponding scale on the basis of length of service, two simultaneous fixations were given in that respondent's office one in the scale of Rs. 1400-2300 and the other in the scale of Rs. 1600-2660 giving undue and unintended benefits to the concerned officials. Arrears of pay and allowances were drawn subsequently and paid. As the applicants completed 26 years of service in LDC/UDC cadre, their pay should have been fixed only once. The mistake in pay fixation was noticed during Internal Check Inspection of the office of the CPMG, Kerala Circle, Trivandrum in 1996 and the irregular fixation of pay was objected to by them. Consequently the matter was taken up by the first respondent's office with the Directorate who by A-12 letter dated 6.1.98 finally clarified that only one fixation direct from UDC scale to HSG-II scale was to be allowed. Accordingly, 1st respondent took action to refix the pay of officials concerned including the applicants herein to whom two fixations were allowed simultaneously on their promotion to LSG (TBOP) and then to HSG-II (BCR) w.e.f. 26.6.93 under FR 22(1)(a)(1) by issuing notices. They denied the knowledge about A-6 and A-7 referred to in the O.A. as those documents

did not have any relation with reference to the TBOP/BCR schemes introduced in the Department of Posts in which the applicants were working. They submitted that A-8 was distorted version of the original document and they produced R-2 giving the full text of A-8 letter. It was submitted that A-10 fixation order was erroneous and the same had to be rectified. A-11 was necessitated in the circumstances. In A-11 the reasons for the proposal to refix the pay of each of the applicants and recovery of the over-payment had been clearly given. It was submitted that a mistake was committed inadvertently by the department in the matter of fixation of the pay of the applicants and the department had a legal right to rectify the same. The averment that, first respondent was subordinate to the third respondent was wrong and submitted that if any representations were received from the applicants they would have been considered if necessary in consultation with the second respondent. It was submitted that officials working in the Department of Posts and Department of Telecommunications were independent of each other and there was nothing wrong if they follow different yardsticks depending on their functional and operational needs. They further contended that in a similar case in which an official working in the Department of Posts was given TBOP/BCR promotions erroneously by taking into account his earlier service in another Department and also fixation benefit on that count and when action was initiated to recover the amount of excess payment, the official challenged it by filing O.A.No. 1249/96. Relying on the order of the Tribunal in the said O.A. respondents contended that detection of an irregularity by the Internal Audit and recovery as a consequence there of was not illegal.

4. Heard the learned counsel for the parties. Learned counsel for the applicant took us through the pleadings and argued the matter in great detail. The counsel also relied on the judgment of the Hon'ble Supreme Court in Gopalbandhu Biswal Vs. Krishnachandra Mohanty and Others 1998 (4) SCC 447, K.A. Ajit Babu and Others Vs. Union of India and Others 1997(6) SCC 473 reported in 1996 SCC 88 and also the order of this Tribunal in O.A. 1482/95 reported in 1997 (36)ATC 70. Learned counsel for respondents took us through the reply statement and resisted the claims of the applicants and submitted that the Original Applications were liable to be dismissed.

5 After a careful consideration of the submissions made by learned counsel for the parties and the rival pleadings and perusal of the documents brought on record, we have framed the issues involved in this case as

- (i) how according to the scheme introduced by the department by A-3 letter dated 22.7.93, the applicants and other similarly placed employees are to be promoted to LSG in the scale of Rs. 1400-2300 and HSG-II in grade Rs. 1600-2660
- (ii) whether they were entitled for two fixations of pay under FR 222(1)(a)(1)
- (iii) whether the clarification issued on 8.8.95 is still valid in the light of A-9 letter dated 1.12.95 and the order of the Mumbai Bench of this Tribunal in O.A. 1482/95.

6. In order to examine the above issues, we need to go through the contents of A-3 circular letter dated 22.7.93 by which the TBOP and second promotion schemes were extended to the applicants and similar others employees. A-3 circular letter dated 22.7.93 reads as under:

The question of extending the Time Bound One Promotion (TBOP) Scheme and Biennial 'Cadre Review (BCR) to the Group 'C' staff of administrative offices (Circle Offices) has been under consideration for sometime past.

2. It has now been decided to extend the benefit of the Time Bound One Promotion Scheme and Second Promotion after 26 years of satisfactory service to the clerical staff of administrative offices excluding isolated posts like Hindi Translator, Librarian, etc.

3. The following instructions are issued to ensure proper implementation of the schemes mentioned in para two above.

3.1 The scheme will come into effect from 26.6.1993

3.2 The posts of LDCs (Rs. 950-1500) and UDCs (Rs. 1200-2040) in the Circle Offices, except to the extent of the LDCs/UDCs who opt to remain in the existing scale, will be abolished and an equal number of posts of time scale Postal Assistants (C.O) (Rs. 975-1660) will be created. The remaining posts will, however, be converted as Postal Assistants (C.O) as and when the concerned LDC/UDC ceases to hold that post. All the existing LDCs/UDCs will be required to furnish within one month their option under FR 23 according to which they may, if they so like, retain their existing scale of pay which would be personal to such officials. The option once exercised will be final.

3.3. On replacement of the LDCs and UDCs by time scale Postal Assistants (C.O), the existing duties of the LDC/UDC in the Circle Offices will be performed by the time scale Postal Assistants (C.O) Senior Officials would be required to perform the duties at present entrusted to UDCs.

3.4 The officials who do not opt for their old scale will be brought into the grade of Postal Assistants (C.O) and their pay will be fixed under FR 22(I)(a)(2) by treating the post in the time scale as not involving assumption of higher duties and responsibilities.

3.5. 10% of total non-gazetted sanctioned strength (excluding isolated posts) will be surrendered as matching savings with immediate effect on a permanent basis.

3.6 The existing officials who do not opt for the old scales would be considered for grant of first promotion in the higher scale of Rs. 1400-2300 if they complete/have completed 16 years of service as LDC or as LDC and UDC or as Postal Assistants/Sorting Assistant and UDC taken together and then for second promotion in the next higher scale of Rs. 1600-2660 after completion of 26 years of service. Their pay on grant of promotions under Time Bound One Promotion scheme and Second Promotion will be fixed under FR 22(1)(a)(1).

3.7 The UDCs who are drawing pay more than the maximum of the timescale pay (Rs. 975-1660) and who opt for Postal Assistants' cadre (CO) to get the benefit to Time Bound One Promotion Scheme, will have their pay fixed at the maximum of the time scale of pay without any protection of the loss of pay already drawn.

3.8 With effect from the date of implementation of these orders, knowledge of typewriting will be essential for future recruits in the clerical cadre in Circle Offices in the pay scale of Rs. 975-1660

3.9. The minimum educational qualifications for recruitment to the Postal Assistant's grade in Circle Offices shall be 10+2. Further recruitment, if required, will be done by Circle Offices on an interim basis instead of through Staff Selection Commission till new recruitment rules are finalised.

3.10. The Circle Office staff, as on 26.6.93 will retain the existing liability for transfer between the Circle Office and the Regional Offices. In addition, their promotion under this scheme will be conditional, subject to their liability for transfer to any unit located at the headquarters station of the Regional Office/Circle Office.

3.11 The special pay of Rs. 70/- p.m. being paid to UDCs will stand withdrawn from the date of introduction of this scheme.

3.12. Under this Scheme, only such officials as have completed 16 and 26 years' service in the Postal Assistants/UDC/LDC Grade will be eligible for promotion to the next higher grades of Rs 1400-2300 and Rs. 1600-2660 respectively, if they are otherwise eligible. In cases where a senior has not completed the prescribed period of service, whereas his/her junior has become eligible, then only the junior shall be considered eligible for promotion. However, when the senior completes the prescribed service and is adjudged suitable for promotion, then his/her original seniority will be restored vis-a-vis his/her juniors in the lower grade. In such cases, promotion under this scheme will be subject to the condition that the senior employee shall be subject to the condition that the senior employee shall not be able to claim benefit of higher pay fixation merely on the ground that officials who were junior to him in the lower grade are now drawing higher pay by virtue of early promotion.

3.13 In respect of cadres which are covered under the scheme of Time Bound One Promotion the orders issued vide Directorate No. 31-19/74-PE.I dated 15.6.74 and Ministry of Finance O.M.NO. 7(21)-E.III(A)/74 dated 10.1.77 stand withdrawn w.e.f. 26.6.93

3.14 The existing LDCs/UDCs/LSG 1/3 quota officials who do not opt for this scheme will not be eligible for future consideration against the existing promotional channels. All recruitment to LDC, UDC and 1/3 LSG promotion quota will also be abolished on introduction of this scheme.

3.15 The officials who complete 16 or 26 years of service and who are promoted to the next higher scale of pay will continue to perform operative duties until and unless they are posted to regular supervisory posts.

3.16 For promotions under the Time Bound One Promotion Scheme, and 2nd promotion Scheme, the orders relating to the reservation for SC/ST communities already issued by this office on this subject may be followed.

4. The existing instructions applicable to the different cadres to assess their fitness for promotion to the next higher scale of pay will be observed and the formalities in this regard should be completed within a period of three months. The promotion to the next higher scale of pay will be granted from the date on which the eligible officials complete 16 and 26 years of regular service respectively.

5. This issued with the concurrence of Ministry of Finance (Department of Expenditure) vide U.O. No.2(24)/E.III/92 dated 11.5.93 and Dy. NO. F.2265/JS(Per)/93 dated 25.6.93 and in consultation with Finance Advice (Postal) Dy. NO. 1979-FA/93 dated 16.7.93.

7. From paragraphs 2 and 3.1 we find that the TBOP and Second Promotion Schemes have been extended to the clerical staff of administrative offices with effect from 26.6.93. According to paragraph 3.2 all the LDCs/UDCs were to furnish their option under FR-23 to retain their existing scales of pay. the posts of LDCs (Rs. 950-1500) and UDCs (Rs. 1200-2040) except to the extent of LDCs/UDCs who opt to remain in their existing scales of pay were to be abolished and an equal number of Time Scale Postal Assistants (CO) in scale Rs. 975-1660) were to be created. The remaining posts were to be converted as Postal Assistants (CO) as and when the concerned LDC/UDC ceased to hold the post. According to

paragraphs 3.4, 3.7 and 3.11 the officials who did not opt for the old scales of pay were to be brought on to the pay scale of Postal Assistant (CO) fixing their pay under FR 22(I)(a)(2) limiting the same to the maximum of Rs. 1660/in scale Rs. 975-1660 of Postal Assistant (CO) and the special pay of Rs. 70/- being paid to UDCs stood withdrawn. Paragraphs 3.6 and 3.12 specify how the employees who did not opt for the old scale of pay is to be given the grades Rs. 1400-2300 and Rs. 1600-2660 under TBOP and second promotion scheme respectively. According to these paragraphs an employee who had completed 16 years of service or on completion of 16 years of service is to be considered for grant of first promotion in the scale of Rs. 1400-2300 and for grant of second promotion in scale Rs. 1600-2660 after completion of 26 years of service. On both promotion the pay of the concerned employee would be fixed under FR 22(I)(a)(1). We do not find any support in these paragraphs for the plea of the applicant that an employee who had completed 26 years of service or more on 26.6.93 - the date of introduction of the scheme - should first have his pay fixed in the scale of pay of Rs. 1400-2300 under TBOP scheme and then with reference to hat pay have his pay fixed in the scale of pay of Rs. 1600-2660 under second promotion scheme. In fact in our view the use of the word "respectively" in the first sentence of paragraph 3.12 will clearly indicate that an employee who on 26.6.93 had completed 16 years would become eligible for promotion to grade Rs. 1400-2300 and had completed 26 years on 26.6.93 would become eligible for promotion to grade Rs. 1600-2660. "The next higher grades" for these two groups of employees would be Rs. 1400-2300 and Rs. 1600-2660 respectively. Thus in our view nowhere the scheme envisaged promotion of an employee who has completed 26 years of service as on 26.6.93 first in the grade Rs.

1400-2300 and then in the grade Rs. 1600-2660. We also find that this was how the respondents initially acted as observed from A-4 and A-5 orders. In both these orders the designations held by the applicants in the lower grade had been shown as Postal Assistant. This would indicate that those who were placed in the grade of Rs. 1600-2660 by A-5 order will have their fixation of pay with reference to the pay as Postal Assistant (CO) only. Further it had been averred in the reply statement that by an erroneous interpretation to the effect that A-8 clarifications dated 8.8.95 had been superseded by A-9 clarification dated 1.12.95, the employees were given benefit of double fixation by the office of the first respondent. In the light of our finding that under the scheme an employee with 26 years or more service as on 26.6.93 would be promoted to scale Rs. 1600-2660 directly without being promoted to grade Rs. 1400-2300, we hold that the respondents' interpretation of the orders and subsequent action of fixation of pay of the applicants were erroneous.

8. According to the applicants A-8 letter dated 8.8.95 stood superseded with the issue of A-9 letter dated 1.12.95 and further Mumbai Bench of this Tribunal had quashed A-8 letter. A-9 letter dated 1.12.95 claimed by the applicants superseding A-8 letter is reproduced below:

Time Bound One Promotion Scheme (TBOP) and Biennial Cadre Reviews (BCR) were introduced with a view to improve the promotional prospects of the Postal Employees. The Scheme was later extended to Saving Bank control Organisation staff and Administrative Offices staff of the Postal Department by converting their erstwhile cadres i.e. LDCs/UDCs into the grade of Postal Assistants Scheme. The pay scales of some LDCs/UDCs of SBCOs and administrative Offices who had switched over to the PAs cadre were fixed at the maximum of time scale of pay i.e. Rs. 1660/- and similarly special pay of Rs. 70/- to the UDCs (who were entrusted with jobs of complex nature) stood withdrawn and the special pay could not be counted for the purpose of pay fixation. This resulted in

drop in emoluments in some cases after fixation of pay under the extant rules in TBOP/BCR Schemes and consequent representations from the officials concerned.

2. The case has been examined in consultation with the Ministry of Finance, Department of Expenditure and it has now been decided that

a) LDCs/UDCs of these offices with 16 years or more service may directly be placed in the scale of Rs. 1400-2300/- after selection process by a duly constituted DPC is completed. The pay in such cases in the scale of Rs. 1400-2300/- may be fixed by application of FR-22/C (now called FR 22(I)(a)(1)).

b) The special pay drawn by the UDCs posted against identified posts will not be taken into account for the purpose of fixation of pay. However, if, in the pay fixed in accordance with the formulation as in (a) above, there is a drop of emolument, the drop may be protected by grant of special pay.

3. Circle Offices are requested to settle all the pending cases according to the above guidelines within 15 days of issue of the orders.

4. These orders supersede the clarifications issued by this office order No.2-18/93-PE.I dated 8.8.95 in connection with the clarification(s) issued (i) in respect of pay fixation of the officials and (ii) counting of special pay of Rs. 70/- for the purpose of pay fixation.

5. This issues in consultation with our Internal Finance advice vide their ID NO. 3255/FA/95 dated 23.11.95.

6. Please acknowledge the receipt of the letter.

Relying on para 4 of the above letter applicants contended that the clarification contained in A-8 letter dated 8.8.95 had been superseded. Respondents alongwith the reply statement enclosed Annexure R-2 being copy of the letter dated 8.8.95 clarifying the points raised. After going through the complete test of A-9 letter dated 1.12.95 and A-8 letter dated 8.8.95 we are of the view that the supersession mentioned in para 4 of A-9 letter reproduced above is only with reference to the nonprotection of pay given under item 6 of the clarification included in R-2 letter dated 8.8.95. We note that A-9 had been issued not only in the context of A-3 order dated 22.7.93 but also in the context of order dated 26.7.91. At that time (i.e. on 26.7.91) the second

promotion scheme under Biennial Cadre Review was not at all in existence, as the same was introduced only by A-2 order dated 11.10.91. Therefore the question of the employees coming under the purview of the order dated 26.7.91 becoming eligible for two higher grades from the same date did not arise. In view of the foregoing, we reject the applicants' contention that A-12 letter dated 1.12.95 superseded A-8 letter dated 8.8.95.

9. We will now examine the plea of the applicant that A-8 letter dated 8.8.95 had been quashed by the Mumbai Bench of this Tribunal in O.A. No. 1482/95 - Baburao Shanker Dhuri Vs. Union of India and Others reported in (1997) 36 ATC 70. Applicant in the said O.A. challenged the fixation of pay done in his favour in terms of the orders relating to implementation of the TBOP/BCR Scheme in the administrative offices of the Postal department. We note from the order in that O.A. that the Tribunal (Single Member) after examining the various pleas raised by the applicant held as follows

However, there appears to be substance in the contention of the applicant that the clarification given by the department that applicants who have completed 26 years of service may be allowed to opt only once whereas the employees who have not completed 26 years of service would be able to opt twice. It has been pointed out by the applicant that an official who completed 25 years 11 months and 29 days on 26.6.93 and falls one day short as on 26.6.93 would get two pay fixations including one in LSG cadre on 26.6.93 but those who enter the HSG cadre directly would get only one pay fixation and to this extent there is an inequity. The employees of the Postal Department to whom the scheme is applicable and who completed 16 to 26 years belong to a homogeneous and uniform class and they cannot be broken up into two arbitrary classes one completing 26 years on the prescribed date and another not having completed 26 years on the prescribed date. The original scheme did not envisage any such differentiation and the clarification subsequently given that pay may be fixed only once in the corresponding scale for which the officials qualify on the basis of their length of service is clearly in derogation of the nature and logic of the scheme.

This clarification contained in circular dated 8.8.95 is liable to be quashed and set aside. Consequently, applicant is entitled to refixation of the pay as if this clarification did not exist. Respondents are directed to refix the pay of the applicant in terms of this direction and give him all consequential benefits including arrears of pay if any one year prior to the date of filing of the O.A. viz. 12.12.94 and also refixation of his pension and full arrears of pension and other pensionary benefits.

We find from the above that even though it was observed that the clarification contained in circular dated 8.8.95 was liable to be quashed and set aside, no order quashing and setting aside the said circular was given.

10. Further, the Tribunal in the above order had come to the above conclusion because it was held that the clarification subsequently given was in derogation of the nature and logic of the original scheme. We have already examined the various provisions of the scheme issued under circular letter dated 22.7.93 and held that the same did not provide for two promotions to employees who had completed 26 years of service on 26.6.93 one to the scale Rs. 1400-2300 and another to scale Rs. 1600-2660 and hence the question of two fixation of pay on that date did not arise. Accordingly, we hold that the clarification issued under letter dated 8.8.95 (A-8/R-2) was not in derogation of the original scheme. Further as already held by us the said clarification letter dated 8.8.95 had not been set aside. The view contained in that order is to be taken as 'per incuriam' and cannot be taken as good law. In the light of the foregoing we hold that the clarifications contained in R-2 letter dated 8.8.95 except to the extent modified by A-9 letter dated 1.12.95 are still valid. We arrive at the same conclusion in view of the following also. By A-3 circular letter dated 22.7.93 promotions under TBOP scheme and BCR were extended to

LDCs and UDCs working in administrative offices. The crucial date for the purpose was stated in A-3 as 26.6.93. The Department while introducing Biennial Cadre Review under A-2 letter dated 11.10.91 with effect from 1.10.91 for other than employees of administrative offices indicated the intention of the scheme as follows:

"However, with a view to providing relief to the employees, Government have accepted the need for Biennial Cadre Review i.e. (one in two years) under which the incumbents of the existing posts would be enabled to draw pay in the higher scales on completion of 26 years of service, not only for providing promotional opportunities for the staff concerned but also on the basis of functional justification."

X X X X X X X

In the Biennial Cadre Review suitable number of posts will be created by upgradation by the Heads of Circles.."

When the above scheme was extended to the LDCs/UDCs of administrative offices by A-3 scheme dated 22.7.93 with effect from 26.6.93, posts of LDCs/UDCs occupied by those who had completed a total service of 26 years on that date would get upgraded to the scale of Rs. 1600-2660 with effect from that date and the concerned employees would be eligible for the fixation of pay in that scale from the scale of pay of LDC/UDC held by them earlier. This is what is stated in paragraph 3.6 and 3.12 of A3 letter.

11. In view of the detailed analysis as given above we answer the three issues formulated in para 5 above as follows

i) Applicants and other similarly placed employees are eligible for promotion to grade Rs. 1400-2300 if they had completed 16 years of service but less than 26 years of service on 26.6.93 and are eligible for promotion to grade Rs. 1600-2660 if they had completed 26 years or more service on 26.6.1993.

ii) In the light of our finding under (i) above, the employees concerned are not eligible for two fixations of pay on 26.6.93

(iii) The clarifications issued under A-8/R-2 letter dated 8.8.95 to the extent not superseded by A-9 letter dated 1.12.95 are still valid.

12. In the light of our above findings for the three issues framed by us, we do not find any infirmity in the Department of Posts A-12 letter dated 16.1.98 and hence the relief sought by the applicants for quashing and setting

aside the said A-12 letter has no merit and accordingly the same is rejected. A-11 notice dated 11, February, 1998 was issued by the Chief Post Master General, Kerala Circle pursuant to A-12 letter dated 16.1.98 as the respondents incorrectly fixed the pay of the applicants by an erroneous understanding that A-9 letter superseded the clarification contained in A-8 letter. Respondents are Government servants and when they handle Government money they are expected to act in accordance with the Government's order/instructions on the subject. If they have by an error interpreted an instruction of the Government wrongly, and this resulted in some employees getting unintended monetary benefits, respondents are well within their rights to recover the amounts irregularly paid to such employees including the applicants. Nobody can be allowed to enjoy the fruits of an erroneous interpretation of an instruction by the respondents. Therefore, there is nothing illegal in the respondents issuing A-11 notice to the applicants so that they (the applicants) get an opportunity to explain their stand. we are unable to accept the applicants' contention that A-11 is an empty formality as the same had been issued pursuant to A-12. A-12 is a clarification issued by the authority who issued the scheme. It is akin to a policy decisions. It is an accepted law that while taking policy decision, Government need not issue notice to the persons likely to be affected.

13. We have also examined the plea of discrimination quoting the treatment given to the employees of Department drawing our attention to A-6 and A-7 letters dated 12.4.91 and 4.6.91 respectively. Admittedly, the applicants are employees of the Department of Posts and are governed by the instructions and schemes issued by the Department of Posts.

We find considerable force in the argument of the respondents that A-6 and A-7 pertaining to the department of Telecommunications have no relation with reference to the TBOP/BCR schemes of the Postal department. Even from A-7 it is evident that BCR scheme had been introduced in the Telecommunication department prior to its introduction in the Postal Department. Moreover, nothing had been brought to our notice of the existence of any rule or instructions to the effect that the service conditions of the employees of the two departments will always be the same even after bifurcation. Accordingly, we reject the plea of discrimination brought in by the applicants.

14. In view of the foregoing we hold that the applicants are not entitled for any of the reliefs sought for in the Original Application. Accordingly, we dismiss the Original Application with no orders as to costs.

O.A.No.620/98

15. The applicants in this O.A. had completed more than 26 years of service as LDC and UDC as on 26.6.93 and were promoted to the cadre of LSG in the scale of Rs. 1400-2300 under TBOP scheme with effect from 26.6.93 as per A-4 order dated 21.1.94 and to the cadre of HSG-II in the scale of pay of Rs. 1600-2660/- under the second promotion scheme with effect from 26.6.93 by A-5 order dated 21.1.94. Their pay fixation in HSG-II in scale Rs. 1600-2660 was done after fixing their pay in LSG in scale Rs. 1400-2300 applying FR 22 1(a)(1) twice. They were issued with A-10 notices dated 4.2.98 for refixation of their pay on the basis of A-11 letter dated 16.1.98 issued by the third respondent. Applicants submitted A-12 and A-13 replies both dated 18.2.98

respectively praying that the proposed refixation of pay and recovery of over payment made in A-10 may be dropped. After considering A-12 and A-13 representations fifth respondent issued A-14 order dated 16.4.98. Applicants have sought the following reliefs:

- i) to call for the records relating to Annexure A-10 A-11 and A-14 and to set aside the same
- ii) to declare that the pay of the applicants fixed on promotion to the Lower Selection Grade in the scale of pay of Rs. 1400-2300 and on promotion to Higher Selection Grade-II (BCR) in the scale of pay of Rs. 1600-2660 are not liable to be refixed on the basis of Annexure A-11
- iii) to issue appropriate direction or order directing the 5th respondent not to proceed with Annexure A-14 pending disposal of the above Original Application,
- iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case and to award costs to the applicants.

16. Applicants have raised identical pleas as raised by the applicants in O.A. NO. 327/98 for the reliefs sought by them. Respondents have resisted the claims by filing reply statement in which the pleas taken are identical to the ones raised in O.A. No. 327/98. We find that the only difference in this O.A. with reference to O.A. 327/98 is that in O.A. 327/98 the applicants approached the Tribunal without filing replies to the notice issued to them whereas in this O.A. the two applicants had submitted their respective replies to A-10 notice and the respondents have considered the replies and passed A-14 orders which have also been impugned.

17. In O.A. No. 327/98 after examining the rival contention we rejected the plea for quashing and setting aside A-12 letter dated 16.1.98 in that O.A. This letter dated 16.1.98 is enclosed as Annexure A-11 in this O.A. and

is one of the impugned orders. A-10 notice had been issued pursuant to A-11 and A-14 is the final order passed. As the validity of the letter dated 16.1.98 had been upheld by us in O.A. 327/98, the applicants in this O.A. are not entitled for the reliefs sought. Accordingly, we dismiss this Original Application with no order as to costs.

O.A.No.621/98

18. The first applicant in this O.A. had completed 26 years of service on 26.6.93 and was promoted to HSG-II with effect from that date on the introduction of TBOP/BCR Scheme for the LDCs/UDCs of administrative offices. The second applicant even though had not completed 26 years of service was promoted to HSG-II with effect from 26.6.93 against the shortfall vacancy reserved for Scheduled Castes (SC for short) as he was the seniormost candidate belonging to SC community. Pay fixation of both the applicants were made first to LSG grade (Rs. 1400-2300) and then to HSG-II grade (Rs. 1600-2660) applying the provisions of FR 22(1)(a)(1) twice. Pursuant to the receipt of A-11 letter dated 16.1.98 from the third respondent confirming the objection raised by the audit against the fixation of pay of the applicants in HSG-II scale Rs. 1600-2660, notices were issued to both of them proposing to refix the pay and recover the over payment made. A-10 notice dated 4.3.98 was issued to first applicant. It was submitted that similar notice was issued to second applicant also. After considering the replies given by the applicants A-12 reply dated 20.4.98 and A-13 reply dated 16.4.98 were issued to the first and second applicants respectively. Aggrieved by A-12 and A-13 applicants have filed this Original Application seeking to set aside A-10, A-11, A-12 and A-13 and to declare that the

pay fixation of the applicants already made were not liable to be refixed. Rival pleadings in this O.A. are similar to the one in O.A. 327/98. After examining the matter in detail we have dismissed O.A. No. 327/98. Following the said ruling this O.A. is only to be dismissed. Accordingly, we dismiss this O.A. with no order as to costs.

O.A.No.771/98

19. Applicants, four in number of this O.A. had completed more than 16 years of service on 26.6.93 and were promoted to grade Rs. 1400-2300 with effect from 26.6.93 in accordance with the provisions contained in A-3 letter dated 22.7.93 under which TBOP scheme and BCR were extended to Group 'C' staff of administrative offices of the Department of Post. The applicants 1, 2 & 4 were promoted to HSG-II scale Rs. 1600-2660 with effect from the same date by A-5 order dated 24.4.96. It is averred in the O.A. that third applicant was promoted to HSG-II (BCR) Postal Assistant (CO) with effect from the same date. According to the applicants all of them received notices similar to A-10 dated 6.3.1998 received by the first applicant in which it was proposed to refix his pay in HSG-II scale Rs. 1600-2660 with effect from 26.6.93 and recover the overpayment involved. On request applicants were supplied with copy of A-11 letter dated 24.9.96 of the Directorate. Thereafter, applicants filed individual representations to the notices received by each of them similar to A-12 dated 27.3.98 filed by the applicant. Each of them received reply issued by the 5th respondent similar to A-13 dated 20.4.98 received by the first applicant. Aggrieved by A-10 applicants have filed this O.A. seeking the following reliefs raising the pleas and grounds as raised by the applicants in O.A. NO. 327/98 and also the

plea that A-11 letter dated 24.9.96 had been issued by way of clarification and clarificatory letter could not amend, modify or outstep the Original scheme:

- i) to call for the records relating to Annexure A-10, A-11 and A-14 and to set aside the same.
- ii) to declare that the pay of the applicants fixed on promotion to the Lower Selection Grade in the scale of pay of Rs. 1400-2300 and on promotion to Higher Selection Grade-II (BCR) in the scale of pay of Rs. 1600-2660 are not liable to be refixed on the basis of annexure A-11
- iii) to issue appropriate direction or order directing the 5th respondent not to proceed with annexure A-14 pending disposal of the above Original Application.
- iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case and
- v) to award costs to the applicants.

20. Respondents filed reply statement resisting the claim of the applicants. According to them when A-3 scheme was implemented none of the applicants were entitled under BCR for promotion to grade Rs. 1600-2660 as they had not completed 26 years of service on 26.6.93. They were later given HSG-II (BCR) with effect from 26.6.93 in the light of the instructions contained in R-1 letter dated 8.2.96 of Director General Posts so as to remove anomaly in which some of their juniors in the cadre of UDC had been given promotion from 26.6.93 as they had completed 26 years of service in LDC/UDC cadres. Thus, they were promoted under BCR from the same date i.e. 26.6.93 on which they were promoted to TBOP. In A-8 dated 8.8.95 it had been clarified that when BCR is implemented on the same date, pay will be fixed only once in the scale for which the employee qualified as per his length of service. In A-11 letter dated 24.9.96, Director General Posts had clarified under item 3 that a Time scale Postal Assistant will jump to BCR scale without being promoted to TBOP scheme and such cases pay fixation should be done

directly from Postal Assistants' cadre to BCR HSG-II Cadre. A-11 had been issued by an authority competent to issue such instructions and orders under delegated powers. As such A-10, A-11 and A-13 orders were valid and sustainable.

21. We have considered the rival pleadings. In O.A.No. 327/98 we have held that under the scheme introduced under A-3 letter dated 22.7.93, LDCs/UDCs who completed 26 years of service on 26.6.93 and who were promoted to grade Rs. 1600-2660 under BCR were eligible only for one fixation under FR 22(1)(a)(1). We had upheld the validity of the clarification issued under A-8 letter dated 8.8.95 and consequently held A-12 letter dated 16.1.98 as valid. The applicants in this O.A. were not eligible for promotion to HSG-II grade under BCR in accordance with the scheme introduced by A-3 letter dated 22.7.93. They became eligible for BCR only by virtue of the clarification issued under R-1 letter dated 8.2.96 issued by the Director General, Posts. The same authority by his further letter dated 24.9.96 (impugned order A-11) clarified how the pay fixation in such cases was to be done. Having accepted the promotion with effect from 26.6.93 to HSG-II (BCR) on the basis of R-1 clarification dated 8.2.96, the applicants cannot question the further clarification (A-11) issued by the same authority as to how the said order dated 8.2.96 should be implemented. The applicants have no case that they are prepared to be promoted to HSG-II (BCR) from the date of completion of 26 years of service. Hence, we are of the view that the applicants who have not completed 26 years of service on 26.6.93 cannot have the benefit of two fixation of pay which is not available to those who have completed 26 years of service on 26.6.93.

22. In view of the foregoing we dismiss the Original Application with no order as to costs.

O.A/No.1377/98

23. Eleven applicants of this Original Application who had completed more than 16 years of service as on 26.6.93 but less than 26 years were promoted to the grade Rs. 1400-2300 with effect from 26.6.93 in accordance with the provisions contained in A-3 letter dated 22.7.93 under which TBOP scheme and BCR were extended to Group 'C' staff of Administrative offices of the Department of Post by Annexure A-4 order dated 21.4.94. By A-5 order dated 24.4.96 and A-7 orders dated 24.4.96 applicants 1 and 2 and applicants 3 to 11 respectively were promoted to HSG-II (BCR) scale 1600-2660 with effect from 26.6.93. According to the applicants all of them received notices similar to A-12 dated 21.4.98 received by the sixth applicant in which it was proposed to refix his pay in the HSG-II scale Rs. 1600-2660 with effect from 26.6.93 and recover the over payment involved. In A-12 notice reference was made to A-13 letter dated 16.1.98. Applicants filed individual representation similar to A-14 dated 4.5.98 of the first applicant. Each of the applicant received A-15 reply dated 1.9.98. Aggrieved by A-15 applicants have filed this Original Application seeking the following reliefs:

- i) to call for the records relating to Annexure A-12, A-13 and A-15 and to set aside the same.
- ii) to declare that the pay of the applicants fixed on promotion to the Lower Selection Grade in the scale of pay of Rs. 1400-2300 and on promotion to the Higher Selection Grade-II (BCR) in the scale of pay of Rs. 1600-2660 are not liable to refixed on the basis of Annexure A-12 and A-15 orders.
- iii) to issue appropriate direction or order directing 1st respondent not to proceed with annexure A-15 order pending disposal of the above Original Application.

iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case and

v) to award costs to the applicants.

24. Applicants raised the same pleas and grounds as raised by the applicants of O.A. No.327/98 for the reliefs sought in addition to stating that A-13 letter dated 16.1.98 had no applicability in their cases as they were promoted to HSG-II (BCR) before completion of 26 years.

25. Respondents filed reply statement resisting the claim of the applicants on the same lines as done in O.A. 327/98 and O.A. 771/98

26. We find from the pleadings in the O.A. that the case of the applicants in this O.A. is similar to that of the applicants in O.A. No. 771/98 which had been dismissed by us earlier in this order. We have also upheld the validity of the letter dated 16.1.98 of the Postal Directorate. Under the circumstances this O.A. is only to be dismissed. Accordingly, we dismiss this O.A. with no order as to costs.

O.A No. 466/99

27. The applicant in this Original Application joined the Postal Department on 15.9.80 as LDC and was promoted as UDC on 5.7.83. By A-4 order dated 17.3.94 the applicant was redesignated as Postal Assistant (CO) in scale Rs. 975-1660 with effect from 26.6.93 in accordance with the scheme introducing TBOP and BCR to the staff of administrative offices under A-3 letter dated 22.7.93. Thereafter by A-5 order dated 17.5.94 the applicant was promoted to LSG in grade Rs. 1400-2300 with effect from 26.6.93. On promotion to grade Rs. 1400-2300 with effect from 26.6.93, pay of the applicant was fixed from UDC (Rs.1200-2040) to Postal

Assistant (CO) (Rs. 975-1660) and then from Postal Assistant (CO) to LSG Postal Assistant at Rs. 1520. By A-13 note dated 20.1.99 of Circle IFA the pay of the applicant and two other employees were sought to be refixed and overpayments recovered. On coming to know of A-13, applicant filed A-14 representation dated 1.3.99 to the fifth respondent. Senior Accounts Officer in the office of the fifth respondent issued A-15 memo dated 24.3.99 proposing to refix the pay of the applicant and to recover the overpayment (Rs. 10948) and rejecting the request of the applicant to keep in abeyance the recovery of the overpayment. According to the applicant A-14 and A-15 had been issued on the basis of A-11 letter of clarification dated 8.8.95 issued by the 3rd respondent and A-16 letter dated 24.9.96. Applicant has filed this O.A. aggrieved by A-13, A-15 and A-16 seeking the following reliefs raising grounds similar to those in the other O.As.

- i) to call for the records relating to Annexure A-13, A-15 and A-16 and to set aside the same
- ii) to declare that the pay of the applicant fixed on promotion to the Lower Selection Grade in the scale of pay of Rs. 1400-2300 on promotion to Higher Selection Grade-II(BCR) in the scale of pay of Rs. 1600-2660 are not liable to be refixed on the basis of annexure A-16
- iii) to issue appropriate direction or order directing the 5th respondent not to proceed with Annexure A-15 pending disposal of the above Original Application
- iv) to grant such other reliefs which this Hon'ble Tribunal may deem fit, proper and just in the circumstances of the case and
- v) to award costs to the applicant.

28. Respondents filed reply statement resisting the claim of the applicant. It was submitted that according to existing orders a special 40 point Roster was to be maintained for the Time Bound Promotion and if sufficient number of candidates belonging to the SC/ST community having 16 years of service did not become available for promotion

against the points reserved for them in the Roster, to the extent of shortfall SC/ST officials were to be given promotion to make up the quota fixed for them subject to the condition that the candidates promoted had rendered a minimum period of service (10 years) laid down in the LSG Recruitment Rules. The applicant's promotion to LSG cadre was under the above provision even though he had not completed 16 years of service as on 26.6.93 in the grades of LDC and UDC. His pay was initially fixed at Rs. 1520/- in the grade Rs. 1400-2300 irregularly as per A-8 with reference to the pay due to be fixed in the post of PA(CO). With issue of A-5 order dated 17.5.94 promoting the applicant retrospectively with effect from 26.6.93 to the post of LSG PA(CO), there was no occasion for drawal of his pay as PA(CO). Upto 26.6.93 he was UDC. From 26.6.93 he became LSG PA(CO). Hence his pay fixation first from UDC to PA(CO) and then from PA(CO) to LSG PA (CO) was wrong under the rules and also in terms of A-11. It was submitted that the provisions of FR do not permit fixation of pay from a post which was not held by the applicant at the time of promotion. Respondents also advanced the pleas given in the other OAs regarding the validity of A-11 dated 8.8.95 in the contest of A-12 dated 1.12.95. They also relied on R-3 letter dated 6.2.98 R-2 letter dated 22.12.98 and R-5 letter dated 28.4.99 and justified the action proposed under A-13 and A-15.

29. We have given careful consideration to the submissions made by parties and the documents brought on record. The applicant in this O.A. is similarly placed to those in O.A. No. 771/98 and 1377/98, the only difference being that in those two OAs the applicants who had not completed 26 years and who were promoted to HSG-II (BCR) with effect from 26.6.93 were seeking double fixation of pay first

in LSG scale Rs. 1400-2300 and then in HSG-II scale Rs. 1600-2660 where as in this O.A. the applicant who had not completed 16 years of service and who was promoted to LSG with effect from 26.6.93 is seeking double fixation of pay first as PA(CO) and then LSG(CO). Both O.A. 771/98 and OA 1377/98 have been dismissed by us. We have also upheld the validity of the letter dated 24.9.96 in O.A. No. 771/98, which is A-16 one of the impugned order in this O.A. Moreover the applicant belonging to SC community was eligible to LSG scale Rs. 1400-2300 under TBOP scheme against shortfall reserved SC points if he had completed 10 years of service as against 16 years of service prescribed for General candidates. Therefore, we are of the view that when General candidates are eligible for fixation of pay directly from UDC to LSG, on their promotion under TBOP scheme with effect from 26.6.93, reserved community candidates cannot get a different treatment. In this view of the matter, we cannot find any infirmity in A-13 and A-15.

30. In the result, we hold that the applicant is not entitled for any of the reliefs sought and the O.A. is liable to be dismissed. Accordingly we dismiss this O.A. with no order as to costs.

31. Summarising we dismiss all the six Original Applications leaving the parties to bear their respective costs.

Dated the 17th January, 2001.

Sd/-
(G.RAMAKRISHNAN)
ADMINISTRATIVE MEMBER

Sd/-
(A.M.SIVADAS)
JUDICIAL MEMBER

List of Annexures referred in this Order

O.A. No. 327/98

A1 True copy of the OM NO. 2-1/Cot/IM/82 dated 25.3.85 of the 4th respondent.

A2 True copy of the letter No. 22-1/89-PD-I dated 11.10.91 of the 2nd respondent.

A3 True copy of the letter No. 4-12/88-PE-I (Pt) dated 22.7.93 of the 2nd respondent.

A4 True copy of the order No. ST/300/1/93 dated 21.1.94 of the 1st respondent.

A5 True copy of the order NO. ST/300/1/93 of the 1st respondent dated 21.1.94

A7 True copy of the letter No. AP/90-601/86 dated 4.6.91 of the chief General Manager, Telecom.

A8 True copy of the letter No. 2-18/93-PE.I dated 8.8.95 of the 3rd respondent.

A9 True copy of the OM No. 20-2/92-PE.I dated 1.12.95 of the 4th respondent.

A-11 True copy of the notice No. A&P/110-TBOP/Gen1.97 (Pt) dated nil February, 98 of the 1st respondent.

A-12 True copy of the order NO. 2-18/93-PE.I (Pt) dated 16.1.98 of the 3rd respondent.

R2 True copy of the letter No. 2-18/93-PE.I dated 8.8.95 sent by Mr. Alok Saxena (Asstt. Director General (Estt), Ministry of Communications, Govt. of India, Dak Bhavan, New Delhi.

O.A.No. 620/98

A-4 True copy of the order No. S/300/1/93 dated 21.1.94 of the 1st respondent.

A-10 True copy of the order No. A&P/110-TBOP/Gen1. 197 (Pt) dated 4.2.98 of the 1st respondent.

A-11 True copy of the order No. 2-18/93-PE.1(Pt) dated 16.1.98 of the 3rd respondent.

A-12 True copy of the representation dated 18.2.98 of the 2nd applicant to the 1st respondent.

A-13 True copy of the representation dated 18.2.98 of the 2nd applicant to the 1st respondent.

A-14 True copy of the order No. P/1109/TBOP/Gen1/97 (Pt) dated 16.4.98 of the 5th respondent.

O.A.No.621/98

A-10 True copy of the order No. A&P/20-3/93 dated 4.3.98 of the 5th respondent.

A-11 True copy of the order NO. 2-18/03-PE.I dated 16.1.98 of the 3rd respondent.

A-12 True copy of the Order No. A&P/20-3/93 dated 20.4.98 of the 5th respondent.

A-13 True copy of the order No. AP/110-TBOP/Gen1/97/Pt. dated 16.4.98 of the 1st respondent.

O.A.No. 771/98

A3 True copy of letter No. 4-12/88-PE-I (Pt) dated 22.7.93 of the 2nd respondent.

A5 True copy of the order No. ST/330/2/94 dated 24.4.96 of the 1st respondent.

A8 True copy of the letter NO. 2-18/93-PE-1 dated 8.8.95 of the 3rd respondent.

A-10 True copy of letter No. A&P/20-3/93 dated 6.3.98 of the 5th respondent.

A-11 True copy of the letter NO. 44-60/96-SPB II dated 24.9.96 of the 2nd respondent.

A-12 True copy of the representation of the 4th applicant dated 27.3.98 to the 5th respondent.

A-13 True copy of the order NO. A&P/20-3/93 dated 20.4.98 of the 5th respondent.

R1 True copy of order No. 22-5/95-PE.I dated 8.2.96 issued by the Director General of Post.

O.A.No.1377/98

A4 True copy of the order No. ST/300/1/93 dated 24.4.96 of the 1st respondent.

A5 True copy of the order No. ST/300/2/94 dated 24.4.96 of the 1st respondent.

A7 True copy of the Order No. ST/300/2/94 dated 24.4.96 of the 1st respondent.

A-12 True copy of order No. A&P/110-TBOP/Gen1/97 (Pt) dated 21.4.98 of the 1st respondent.

A-13 True copy of the letter No. 2-18/93-PE.I(Pt) dated 16.1.98 of the 2nd respondent.

A-14 True copy of the representation dated 4.5.98 of ;the 1st applicant to the 1st respondent.

A-15 True copy of the order No.A&P/110-TBOP/Gen1/97(Pt) dated 1.9.98 of the 1st respondent.

O.A.No. 466/99

A-3 True copy of the letter No. 4-12/88-PE-I(Pt) dated 22.7.93 of the 2nd respondent.

A-4 True copy of the Order No. ST/300/2/92 dated 17.3.94 of the 1st respondent.

A5 True copy of the Order No. ST/300/2/93 dated 17.5.94 of the 1st respondent.

A-11 True copy of the letter No. 2-18/93-PE-I dated 8.8.95 of the 3rd respondent.

A-13 True copy of the Notes NO. 500/IFA/98-99 dated 20.1.99 of the Internal Financial Adviser of the Department of Posts.

A-14 True copy of the representation dated 1.3.99 of the applicant.

A-15 True copy of the Memo No.1 A&P/18-1/87/III dated 24.3.99 of the 5th respondent.

A-16 True copy of the letter No. 44-60/96-SPS-II dated 24.9.96 of the 2nd respondent.

CERTIFIED TRUE COPY

Date

Deputy Registrar