

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 323 of 2009

Original Application No. 481 of 2009

Original Application No. 357 of 2010

Original Application No. 774 of 2010

Tuesday, this the 1st day of November, 2011

CORAM:

Hon'ble Mr. Justice P.R. Raman, Judicial Member

Hon'ble Mr. K. George Joseph, Administrative Member

1. Original Application No. 323 of 2009 -

Jose Dominic, S/o. Dominic,
Assistant Postmaster Accounts (APM Accounts),
Head Post Office, Kalpetta,
Residing at Elavungal House, Thodupuzha.

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Applicant

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to Government of India, Ministry of Communications, Department of Posts, New Delhi.
2. The Director General, Posts, Department of Posts, Dak Bhavan, New Delhi.
3. Chief Post Master General, Kerala Circle, Thiruvananthapuram.

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Respondents

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

2. Original Application No. 481 of 2009 -

1. P.R. Chandrabhanu, S/o. Late Shri K. Raman, Working as Assistant Postmaster (A/cs) Attingal HO, Residing at Plappillil Veedu, Ambalakara P.O., Valakam Village, Kottarakkara.

2. N. Velayudham, S/o. N.P. Neelakantan Pillai,
Working as Assistant Postmaster (A/Cs)
Trivandrum GPO ,
Residing at Priyarag, Parassala PO.
3. P.K. Sujilakumari, D/o. K.R. Balappan Pillai,
Working as Assistant Postmaster (A/cs)
Trivandrum GPO
Residing at Visakh, East Kallada P.O.,
Pin – 691 502.
4. R. Geethakumari, D/o. Radhakrishnan,
Working as Assistant Postmaster (A/Cs),
Calicut Civil Station P.O.,
Residing at Sreeganesh, TKM College PO.,
Kollam – 691 005.

..... **Applicants**

(By Advocate – Mr. K.S. Bahuleyan)

V e r s u s

1. Union of India, represented by Secretary to the
Govt. of India, Ministry of Communications,
Department of Posts, New Delhi.
2. The Director General of Posts, Department of Posts,
Dak Bhavan, New Delhi.
3. The Chief Postmaster General, Kerala Circle,
Trivandrum.
4. The Senior Superintendent of Post Offices,
Thiruvananthapuram North Division,
Thiruvananthapuram – 695 001.

..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

3. Original Application No. 357 of 2010 -

Usha P.T.,
Accountant, Head Post Office,
Kottayam – 686 001.

..... **Applicant**

(By Advocate – Mr. P.R. Padmanabhan Nair)

V e r s u s

1. The Director General Posts, Department of Posts,
Ministry of Communications, Government of India,
New Delhi – 110 001.
2. Assistant Director General (DE), Department of Posts,
Ministry of Communications, Government of India,
Dak Bhavan, Sansad Marg, New Delhi – 110 116.
3. Chief Post Master General, Department of Posts,
Kerala Circle, Thiruvananthapuram-695001.
4. Assistant Director (Rectt), Department of Posts,
Office of the Chief Post Master General,
Kerala Circle, Trivandrum-1.
5. Senior Superintendent of Post Offices,
Kottayam Division, Kottayam-1.

..... **Respondents**

(By Advocate – Mr. Sunil Jacob Jose, SCGSC)

4. Original Application No. 774 of 2010 -

Jose Dominic, S/o. Dominic,
Assistant Postmaster Accounts (APM Accounts),
Head Post Office, Kalpetta,
Residing at Elavungal House, Thodupuzha.

..... **Applicant**

(By Advocate – Mr. M.R. Hariraj)

V e r s u s

1. Union of India, represented by the Secretary to
Government of India, Ministry of Communications,
Department of Posts, New Delhi.
2. The Director General, Posts, Department of Post,
Dak Bhavan, New Delhi.
3. Chief Post Master General, Kerala Circle,
Thiruvananthapuram.
4. Superintendent of Post Offices, Idukki Division,
Thodupuzha, Pin-685584.

..... **Respondents**

(By Advocate – Mr. M.K. Aboobacker, ACGSC)

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These applications having been heard on 11.10.2011, the Tribunal on 01-11-11 delivered the following:

ORDER

By Hon'ble Mr. K. George Joseph, Administrative Member -

Having common issues, these O.As were heard together and are being disposed of by this common order.

O.A. No. 774/2010:

2. The applicant in this O.A. is aggrieved by the reversion from the post of LSG Accountant/APM (Accounts) to the post of PO and RMS Accountant vide Annexure A-1 order dated 06.08.2010 issued by the 3rd respondent. He had passed PO and RMS Accountants Examination held on 17.05.1990. Though as per rules he was entitled to be promoted as LSG Accountant/APM (Accounts), he was not promoted. Aggrieved, he had filed O.A. No. 468/2007 which was allowed directing the respondents to consider him for promotion as LSG Accountant/APM (Accounts). As per order dated 27.08.2008 he was promoted as APM (Accounts) in LSG (Annexure A-6). O.A. No. 323/2009 was filed by the applicant as his representation for retrospective promotion did not yield any response from the respondents. Subsequent to filing of O.A. No. 323/2009, his representation for retrospective promotion was rejected. He was also not allowed to appear for the Group-B examination. These orders were challenged by amending the O.A. No. 323/2009. As per interim order in the

said O.A, the applicant was permitted to appear in the Group-B examination. Meanwhile, O.A. No. 723/2008 filed by seniors to the applicant was allowed directing to grant promotion to them making it clear that if there is any necessity, juniors can be reverted to make room for the seniors. To comply with the said order, the applicant was reverted vide orders at Annexures A-1 and A-2 which are impugned in this O.A.

O.A. No. 323/2009:

3. This O.A is filed by the same applicant as in O.A.No. 774/2010 for promotion with retrospective effect from the date of occurrence of vacancies in the cadre of LSG Accountant/APM (Accounts) and also challenging the rejection of the applicant's request for admission to the Limited Departmental Competitive Examination (LDCE) and for a direction to the first respondent therein to consider the applicant as eligible to appear for the examination for promotion to the cadre of Postal Service Group-B 2009.

O.A. No. 481/2009:

4. This O.A is filed for a direction to the respondents to grant the applicant therein promotion against norm based LSG Accountant/APM (Accounts) with effect from the date of occurrence of vacancies according to their turn with seniority and other consequential benefits and quash Annexures A-1 and A-2

orders therein to the extent they refused promotion to the applicant retrospectively with effect from the date of occurrence of vacancies in the cadre of APM (Accounts).

O.A. No. 357/2010:

5. This O.A is filed for a direction to the first respondent therein to consider the applicant as eligible to appear for the examination for promotion to the cadre of Postal Service Group-B 2009 on the ground that, had promotions been made to the LSG cadre from the Accounts Line in time, she would have been eligible as per the notification dated 16.02.2009

6. The background of the above cases is briefly stated as under:

7. The Posts and Telegraphs (Selection Grade Post) Recruitment Rules, 1976 came into effect from 20.11.1976 As per the said rules, promotion to LSG APM (Accounts) post is to be made from Clerks in Post Offices with 10 years regular service in the grade who have passed PO & RMS Accountants Examination. On 01.10.1991, Biennial Cadre Review Scheme (BCR) came into existence. Consequently, promotion to the cadre of norm based LSG APM (Accounts) was stopped and BCR officials having PO & RMS Accountants qualification were manning these posts. On 07.02.2002, the existing Recruitment Rules were further amended with the introduction of Fast Track

Promotion Scheme wherein provisions relating to promotion to the cadre of HSG-II and LSG in Post Offices and RMS offices were amended. At present, there are 75 HSG-I posts, 70 HSG-II posts and 299 LSG posts in Post Office General Line and 15 HSG-II posts and 25 LSG Line posts in Post Office Accounts Line available. All the available HSG-I posts in the Circle could not be filled up for want of HSG-II officials having 3 years regular service as stipulated in the 1976 Recruitment Rules. As per Annexure A-4 letter dated 12.11.2002 in O.A. No. 774/10, the norm based LSG/HSG-II posts were allowed to be filled up notionally with reference to the year when the norm based promotions were not given and to fill up the upgraded HSG-I posts by promoting such HSG-II officials with the requisite actual/notional service of three years. Such notional promotion to norm-based posts was to be carried out from year to year with effect from the year the promotion had not been carried out.

8. The applicants contended that as per Annexures A-3 and A-4 instructions in OA No. 774/10, the vacancies should be filled up notionally with effect from the date of occurrence of vacancies. The reversion of juniors need be done only if no vacancies are available to accommodate the seniors. The applicants would have been eligible to appear in the Postal Service Group-B examination, had promotions been made to the LSG cadre from the accounts line in time by the Department to the available vacancies. In terms of the Recruitment Rules, 1976, the norm based LSG/HS-II may be filled up

notionally from the year when norm based promotions have not been carried out and promotions to the upgraded posts of HSG-I are made. All the applicants are similarly placed as in O.A. No. 369/2008 and are entitled to get the benefit of the order of the Tribunal dated 11.03.2009 in the said OA.

9. The respondents in their reply statement submitted that in accordance with the direction contained in Annexure A-4 letter (in OA No.774/10) dated 12.11.2002, the meeting of the Departmental Promotion Committee was held on 29.08.2003 for filling up the newly created 70 HSG-II General Line posts and also the HSG-II General Line vacancies which arose from 2003 onwards on notional basis. 130 officials were also granted notional promotion as a result. Further, on the basis of the said instructions, 17 officials in the cadre of LSG APM (Accounts) were promoted notionally to the cadre of HSG-II APM (Accounts). 9 officials to the cadre of HSG-I were also promoted on ad hoc basis. Further, 15 PO & RMS Accountants were promoted to the cadre of LSG APM (Accounts) on notional basis with effect from various dates from 07.08.1992 to 02.05.2004. Further, 3 more LSG Accountants were notionally promoted to the cadre of HSG-II APM (Accounts). With effect from 07.02.2002, LSG officials are eligible to be considered for promotion only in their own hierarchy. The respondents have taken prompt action pursuant to Annexure A-4 letter and have filled up all available LSG Accounts and HSG-II Accounts posts notionally. There are only 25 LSG APM (Accounts) in the Circle. Applicant in O.A. No. 774/2010 is only at serial No. 37 in the seniority

list and many officials senior to the applicant are still awaiting promotion to the cadre of LSG (Accounts). There are 15 APM (Accounts) posts in HSG-II cadre in the Circle. All these posts are at present vacant due to non availability of officials in the LSG Accountants cadre. The meeting of the DPC will be held in September, 2011, when eligible officials are expected to become available for promotion to HSG Accountant cadre. The resultant LSG Accountant vacancies will be filled up subsequently from among the eligible PO & RMS Accountants, including the applicant in OA No. 774/10 as per his seniority. The process of reviewing the promotions already granted in LSG Accounts Line based on the said clarification / direction will have to be conducted and a clear picture will emerge only on completion of such a process of review. As the matters are subjudice, the respondents are not in a position to undertake such a review at this juncture. 15 HSG-II posts in the Accounts Line in Posts Offices are also lying vacant due to pendency of the O.As before this Tribunal.

10. In the rejoinder statement, the applicant submitted that all the vacancies of Accountants from 1991 onwards in the posts covered by Annexure A-14 in OA No. 774/10 ought to be filled up as per Annexure A-14. If all the vacancies upto 2002 were filled up notionally as per Annexure A-4 and regular DPCs as directed by Annexure A-3 was conducted, the applicant would have been promoted as LSG Accountant at least in 2004. Out of 75 HSG-I posts allotted to the postal side, 8 posts are remaining vacant. 9 HSG-II officials in

Accounts Line were promoted only on ad hoc basis. Since the vacancies are regular, the ad hoc promotions are treated to be regular promotions. If notional promotions on year to year basis were done as per the instruction of the department, the promotion could be regularly made. All the 17 officials promoted to HSG-II by Annexure R-9 stand retired as of now. So also, the 7 officials promoted to the cadre of LSG Accountant by Annexure R-11 order have also retired now. The official at Sl. No. 7 in the cadre of LSG Accountant is promoted to Postal Service Group-B on 20.10.2004 creating one more vacancy in the LSG cadre. Thus, there are sufficient vacancies to promote the applicants to the cadre of LSG with effect from a date prior to the year 2004.

11. We have heard the learned counsel for the parties and perused the records.

12. Annexure A-3 O.M. dated 23.04.2001 makes it clear that the Time Bound One Promotion (TBOP) Scheme and Benniel Cadre Review (BCR) Scheme introduced in 1983 and 1991 respectively are aimed at upgradation of pay for the stagnating employees. These schemes are not meant to be a replacement for promotion as per Recruitment Rules. Although it was reiterated therein that the Circles should hold DPC at regular intervals at least once a year to fill up all the vacancies in LSG/HSG-II and HSG-I posts, it appears that meetings of DPCs were not being held regularly since the

introduction of TBOP and BCR Schemes. As a result, eligible officials were not available for promotion to LSG and HSG-II posts. Therefore, the department was advised vide Annexure A-4 letter dated 02.11.2002 to fill up notionally the norm based LSG/HSG-II posts in terms of the relevant Recruitment Rules from the year when the norm based promotions have not been carried out. The respondents averred that they have filled up all available LSG and HSG-II Accounts posts notionally pursuant to receipt of Annexure A-4 letter. However, the applicants have pointed out that a number of such promoted officials on ad hoc basis have now retired and that there are other vacancies too. The respondents have submitted that the process of reviewing the promotions already granted in Accounts Line and filling up of 15 HSG-II posts in the Accounts Line in the Post Offices are held up due to pendency of O.As before this Tribunal. Stoppage of promotion as per Recruitment Rules in the wake of the TBOP and BCR schemes has caused prejudice to the applicants in as much as they are now reverted or are ineligible for not having the required service to be eligible to appear for the exam for promotion. TBOP and BCR schemes were meant for relieving the hardship of stagnation suffered by eligible employees who could not be promoted for want of posts. They were not meant to stop regular promotion to vacancies in higher cadres, as per rules, at least once in an year.

13. In our considered opinion, it would be in the interest of all concerned if 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 and then all vacancies are filled up as per seniority and eligibility of the employees first in the HSG-II cadre and then in the LSG cadre in the light of the clarification dated 12.11.2002 (Annexure A-4 in OA 774 of 2010). The applicants should not be made to suffer for the failure of the respondents to carry out norm based promotion to LSG/HSG-II posts in terms of the relevant Recruitment Rules every year. Therefore, it is only fair and just that the applicants are granted norm based LSG Accountant/APM Accounts promotion with effect from the date of occurrence of vacancies yearwise according to their turn, for considering their eligibility to appear for the examination for promotion to the cadre of Postal Service Group-B 2009. 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. Ordered so. The entire exercise should be carried out within a period of four months from the date of receipt of a copy of this order.

14. The O.As are allowed to the extent indicated above. No order as to costs.

(Dated, the 01st November, 2011)

(K. GEORGE JOSEPH)
ADMINISTRATIVE MEMBER

(JUSTICE P.R. RAMAN)
JUDICIAL MEMBER

cvr.