CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 769 OF 2009
with
O.A. Nos. 55/2011, 56/2011, 60/2011, 62/2011, 75/2011, 488/2011, 590/2011 & 591/2011

Wednesday this the 9th day of November, 2011

CORAM:

HON'BLE Dr. K.B.S. RAJAN, JUDICIAL MEMBER
HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

O.A. 769/2009

1. A.V. Antony, S/o. (late) Varkey
Ambattu House, (P.O) Thirumarady
Ernakulam District, Pin – 686 687.

2. K.U. Paily, S/o. Ulahannan
Kizhakkumthottathil House, (P.O) Ooramana,
(via) Ramamangalam,Pin- 686 663, EKM. District.

3. P.P. Kumaran, S/o. Kuttappan
Puthenpurackal House
(P.O) Pandappally, Pin – 686 672
(via) Arakuzha, Muvattupuzha
Ernakulam District.

4. M.S. Bhaskaran Nair, S/o. Kuttappan
Mundekudiyil House, Karimattom
(P.O) Ayavana, Pin – 686 676. - Applicants

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum – 695 003.

2. Chief Post Master General
Kerala Circle, Trivandrum – 695 003.

3. Director General (Posts)
Department of Posts India,
New Delhi – 110 001. - Respondents

(By Advocate Mr. Sunil Jacob Jose, SCGSC)

O.A. 55/2011

1. P. Leela Devi (Rtd. Sub-Postmaster)
Poonthottathil Veedu, Thazham
Karimpinpuzha (P.O)
(via) Puthoor, Kollam – 691 513.

2. B. Uma Devi Wariasiar Amma (Rtd. Sub-Postmaster)
Mulackal Wariam, Karickal, Karimpinpuzha (P.O)
(via) Puthoor, Kollam – 691 513.

3. K. Radhamony (Rtd. Sub-Postmaster)
Meera Bhavan, Mangad (P.O)
Kollam – 691 015.

4. N.K. Ananda Lakshmi (Rtd. Sub-Postmaster)
Ananda Vihar, Kottakkakam
Kollam – 691 013.

5. J. Philomina (Rtd. Asstt. Postmaster)
Thoppil House, Neethi Nagar, 58-A
Pattathanam (P.O), Kollam – 691 021. - Applicants

(By Advocate Mr P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum.

2. Chief Post Master General
Kerala Circle, Trivandrum.

3. Director General (Posts)
Department of Posts India
New Delhi.

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

(By Advocate Mr. Thomas Mathew Nellimoottil)

O.A. 56/2011

1. G. Sivaprasad (Rtd. Postmaster)
S/o. N. Govindan, Divya Nagar
No. 65, Manichazhikom
Pattathanam (P.O), Kollam – 691 021.

2. K.J. Koshykunju (Rtd. Postmaster)
S/o. (late) K. Jacob, Kans Villa
Kundara – 691 501, Kollam.

3. N.K. Vijayan (Rtd. Public Relations Inspector [Postal])
S/o. N. Kesavan Nair, Priya Nivas
Kallumthazham (P.O)
Kilikolloor, Kollam – 691 004.

4. P. Surendran (Rtd. Deputy Postmaster)
S/o. K. Purushothaman, Indrasailam
Kottakkakam, Perinad (P.O), Kollam – 691 601 - Applicants

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum.

2. Chief Post Master General
Kerala Circle, Trivandrum.

3. Director General (Posts)
Department of Posts
New Delhi – 110 001.

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

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

O.A. 60/2011

P. Sukumaran (Rtd. Postal Assistant)
S/o. K.C. Panicker, T.C 25/3569
House No.4, Neerazhi Lane
Pulimoodu, Trivandrum – 695 001. - Applicant

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. Chief Post Master General
Kerala Circle, Trivandrum – 695 003.

2. Director General (Posts)
Department of Posts India,
New Delhi – 110 001.

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

(By Advocate Mr. Varghese P. Thomas, ACGSC)

O.A. 62/2011

1. N.N. Thomas (Rtd. Sub-Postmaster)
S/o. Chandy, Thottakad
Changanacherry, Residing at
Nankulathu Pattasseril
Pongamthanam (P.O)
Vakathanam – 686 538, Kottayam.

2. M.P. Sudhakaran Nair (Rtd. Sub-Postmaster)
Kannur – 2, S/o/ P.K. Narayanan Nair
'Vigneshwara' (P.O) Chovva – 670 006

3. O.K. Divakaran (Rtd. Assistant Manager)
(Forms), PDS, Thrissur
S/o. Kannu, Ollekkat House
Thaikulam – 680 569, Thrissur.

4. R. Ramachandraiyer (Rtd. Postmaster)
S/o. (late) Ramanarayanaiyer
'Vinayaka', Near Ganapathy Temple
Kottarakkara, Kollam.

5. Jacob John (Rtd. Postmaster)
S/o. John, Mankoottathil
Edayar (P.O), Koothattukulam – 686 662. - Applicants

(By Advocate Mr. P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum.

2. Chief Post Master General
Kerala Circle, Trivandrum.

3. Director General (Posts)
Department of Posts, New Delhi.

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

(By Advocate Mrs. Deepthi Mary Varghese, ACGSC)

O.A. 75/2011

1. Cecillia Correya (Rtd. Sub-Postmaster)
W/o. Pinson Correya 'Cecilia'
Vellilam Road, Mambra (P.O)
West Koratty, (via) Chalakkudy – 680 308.

2. K.M. Mathai (Rtd. Sub-Postmaster)
S/o. (late) Mathai, Kudiyirickal House,
Kavakkad (P.O), Kalloorkad
(via) Muvattupuzha.

3. T.M. Simon, S/o. (late) Mathew
Thukalan House, Kureekad (P.O)
Thiruvankulam – 682 305.

4. V.N. Ayyappan (Rtd. Sub-Postmaster)
S/o. (late) Neelakantan, 3/215
Anil Bhavan, Pulikkillam West Road
Kakkanadu West (P.O) – 682 030.

5. C.A. Francis (Rtd. Sub-Postmaster)
S/o. (late) C.P. Antony
Cheruvathus House, Mary Bhavan
Vaka Post, Thrissur – 680 602. - Applicants

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum – 695 002.

2. Chief Post Master General
Kerala Circle, Trivandrum – 695 002.

3. Director General (Posts)
Department of Posts India, New Delhi – 110 001.

4. Union of India represented by its
Secretary, Ministry of Communications
New Delhi – 110 001. - Respondents

(By Advocate Mr. Millu Dandapani, ACGSC)

O.A. 488/2011

1. C.P. Mathew (Rtd. Sub-Postmaster)
S/o. C.K. Paulose, M.G. Road Post Office
Kochi -16. Residing at Chembakasseril House, Vazhakkala
Thrikkakkara, Kochi – 682 021.

2. B. Prasannakumari
Sub-Postmaster
Perinad (P.O), Kollam – 691 601. - Applicants

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum – 695 033.

2. Chief Post Master General
Kerala Circle, Trivandrum – 695 033.

3. Director General (Posts)
Department of Posts India,
New Delhi – 110 001.

4. Union of India represented by its
Secretary, Ministry of Communications
New Delhi – 110 001. - Respondents

(By Advocate Mr. Millu Dandapani, ACGSC)

O.A. 590/2011

1. T.A. Divakaran (Rtd.) Deputy Postmaster
Kunnamkulam Head Post Office
S/o. Ayyappan, Mullekad House
Field Nagar, Pattambi Road
Kunnamkulam – 680 503.

2. P. Saraswathy (Rtd.) Sub-Postmaster
D/o. P. Sankunny Menon, Sarovaram
Viyyur, Thrissur – 680 010.

3. V.S. Raghavan (Rtd.) Sub-Postmaster
Kandassankadavu, S/o. Sankaran,
Veluthur House, (P.O) Veluthur,
Thrissur – 680 601.

4. M. Balakrishnan (Rtd.) Sub-Postmaster
Kottapadi, S/o. Kunhikrishnan Nair
Ponthiyedath House, Temple Road
(P.O) Velur, Thrissur – 680 601.

5. C. V. Simon, (Rtd.) Postmaster
Wadakkancherry. S/o. (late) C.C. Varghese
Chungath House, Green Valley
Kadavaram Road (P.O), Pullazhi – 680 012.

6. M.A. Vilasini (Rtd)Sub-Postmaster
Anthikkad. D/o. Ayyappan
Vadakkepura House
Anthikkad, Thrissur – 680 641.

7. T.A. Aravindakshan (Rtd.) Sub-Postmaster
Engandiyur. S/o. T.R. Ayyappan
Thalekkara House, Karamukku
Kandassankadavu, Thrissur – 680 613.

8. Johnson Babu V.J (Rtd) Postmaster
Koothattukulam. S/o. Babu
Valiyaveettil House, Parappur
Thrissur – 680 552.

9. T.R. Valsala, (Rtd.) Sub-Postmaster
Collur, W/o. M.P. Narayanan Nambiar
'Muttath Pushpakam', Cherumukku Temple Road
City (P.O), Thrissur – 680 020. - Applicants

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum – 695 033.

2. Chief Post Master General
Kerala Circle, Trivandrum – 695 033.

3. Director General (Posts)
Department of Posts India,
New Delhi – 110 001.

4. Union of India represented by its
Secretary, Ministry of Communications
New Delhi – 110 001. - Respondents

(By Advocate Mr. Thomas Mathew Nellimoottil)

O.A. 591/2011

1. A.M Chadasu (Rtd.) Sub-Postmaster
Peechi. S/o. (late) Manickan, Arackal House
Kuruchikkara (P.O), Thrissur – 680 028.

2. V.G. Prakasam (Rtd.) Sub-Postmaster
Kundaliyr. S/o. Govindan, Vailappilly House
Anthikkad (P.O), Anthikkad – 680 641.

3. V.K. Mohamed (Rtd.) Postal Assistant
Vadakkancherry. S/o. Kunhimoideen
Vattaprambil House, Putharithara
Pazhayannur – 680 587.

4. M.V. Jacob, Sub-Postmaster
Erumapetty. S/o. (late) M.J. Varappan
Mekkattukulam House
(P.O) Amalanagar – 680 555.

5. Kochanna Samuel
Deputy Postmaster
Kunnamkulam Head Post Office
S/o. (late) P.T. Samuel, Valappil House
(P.O) Kizhur – 680 523.

6. T. Madhavan (Rtd.) Sub-Postmaster
Kunnamkulam Head Post Office
S/o. (late) C. Appu Nair, Thiyyath House
(P.O) Perumpilavu
(via) Kakkanad – 680 519.

7. C.M. Indira, Manager
Speed Post Centre, Thrissur.
W/o. M. Haridas "Jyothis"
Vivekandas Garden, Adiyat Lane
Poothole, Thrissur – 680 004. - Applicants

(By Advocate Mr.P.K. Madhusoodhanan)

Versus

1. The Director of Postal Services (Headquarters)
Kerala Circle, Trivandrum – 695 033.

2. Chief Post Master General
Kerala Circle, Trivandrum – 695 033.

3. Director General (Posts)
Department of Posts India,
New Delhi – 110 001.

4. Union of India represented by its
Secretary, Ministry of Communications
New Delhi – 110 001. - Respondents

(By Advocate Mrs. Deepthi Mary Varghese, ACGSC)

The application having been heard on 03.10.2011 and 12.10.2011, the Tribunal on 9/11/2011 ...delivered the following:

ORDER

HON'BLE Mrs. K. NOORJEHAN, ADMINISTRATIVE MEMBER

As the facts in the above Original Applications are identical and the legal issue raised is the same, these O.As are heard together and disposed of by a common order. For the sake of convenience, O.A 769/09 is taken as the lead case.

O.A 769/09

2. The applicants are aggrieved by the denial of promotion to Higher Selection Grade (HSG II) under the Biennial Cadre Review (BCR for short) Scheme with effect from 01.01.1995 along with their (admittedly) juniors.

3. The four applicants in this Original Application have retired during different spells ranging from 1997 to 2005 while they were working as Sub-Post Masters/Higher Grade Postal Assistants in Aluva Postal Division. Initially, they filed O.A No. 1148/1996 before this Tribunal seeking promotion under the BCR scheme in the pay scale of Rs. 1600-2660 from the date on which their juniors were promoted, even though, the applicants had not completed the requisite 26 years of service. The juniors who were granted the benefits of BCR Scheme were Rule 38 transferees. This Tribunal allowed the O.A following the decision of the Jaipur Bench of the Tribunal in O.A. No. 113/1993 dated 19.08.1994 which in turn followed the dictum in the

final order of **Smt Leelamma Jacob and others v. Union of India and others** reported in **1993 (3) SLJ (CAT) 514**. Respondents moved O.P. No. 20711/1998 before the Hon'ble High Court of Kerala which in its judgment dated 06.11.2001, set aside the order of this Tribunal while making it clear that the decision in the case of Union of India vs Leelamma Jacob (pending at that time before the Apex Court) would bind the case of the applicants herein.

4. The applicants Nos. 1 to 3 and 4 in the meanwhile were granted BCR promotion on 01.01.2003, 01.07.1999 and 01.07.2001 respectively while they were, according to the applicants, entitled to the same from 01.01.1995. When they came to know that the Apex Court has rendered the judgment in favour of the petitioners in the case of Smt Leelamma Jacob and others reported in **2003 (12) SCC 280** they submitted their A-4 representation to the first respondent to grant them the benefits of BCR with effect from 01.01.1995 (Annexure A-4). As there was no response, the applicants caused a lawyer notice to be issued on 06.03.2009. The 2nd respondent vide Annexure A-11 informed the applicants that the judgment dated 09.10.2002 of the Apex Court relates to the Department of Telecom and the matter is being referred to the 3rd respondent for further instructions. Since the respondents did not take any further steps to comply with the Annexure A-3 judgment, the applicants moved Contempt Case (Civil) No. 581/2009 before the Hon'ble High Court of Kerala. In its Annexure A-12 judgment, the High Court of Kerala directed the 2nd respondent to consider the case of the

petitioners in the light of the decision rendered by the Apex Court in the case of Union of India and others v. Smt Leelamma Jacob and others reported in **(2003) 12 SCC 28**.

The applicants in this O.A are challenging the Annexure A-13 speaking order issued by the 2nd respondent. Vide Annexure A-13, the request of the applicants for granting BCR scale of pay with effect from 01.01.1995 stands rejected. The applicants contend that such rejection of their request is discriminatory as many other employees in Kerala Postal Circle, who have not completed 26 years of service were granted the monetary benefits arising out of the placement under the BCR scheme. In support of their contention, they produced Annexure A-5, A-6, A-7 and A-8. They further obtained information under RTI Act vide Annexure A-9 according to which 82 officials, who have not completed 26 years of service were given placement in the higher scale of BCR. The applicants opposed the stand taken in the impugned order (Annexure A-13) that the applicants' case is on a different footing as compared to the petitioners in the case of Smt Leelamma Jacob and others. According to the applicants, the dictum laid down by the Apex Court is to extend the benefits granted to the juniors to the applicants who are seniors even though the latter had not completed 26 years of service. They relied on the judgment by the Hon'ble Supreme Court in the case of **S.M. Iliyas v. I.C.A.R** reported in **(1993) ISCC 182** where it was held that in granting of new pay scales a situation cannot be created wherein the juniors may become seniors or vice-versa. They averred that promotion to HSG II (BCR) superseding a senior unless the senior is unfit for

promotion is illegal. Under such circumstances, they prayed for setting aside Annexure A-13 and directing the respondents to grant the applicants BCR scheme monetary benefits with effect from 01.01.1995 as was granted to their juniors in Annexure A-1 and disburse all benefits, including arrears.

5. The respondents filled reply statement controverting the contentions of the applicants. They submitted that the first applicant entered service as Class IV at Cochin Foreign Post Office in Ernakulam Division on 01.05.1971. He passed the Departmental Test and was promoted as Time Scale Clerk re-designated as Postal Assistant, (P.A for short) on 22.08.1976. He availed a transfer to Alwaye Postal Division on 11.01.1986. On completion of 16 years of service as Time Scale Clerk, he was granted the next higher pay scale of Time Bound One Promotion Scheme (TBOP for short) with effect from 1992 and was designated as Higher Grade Postal Assistant (HGPA). He was granted the next higher pay scale under BCR scheme in 2002.

Similarly, the 2nd applicant, joined service as Class IV at Ernakulam Head Office on 19.05.1968. His promotion as Time Scale Clerk was on 13.12.1972 and he was placed in the higher pay scale of TBOP in 1988.

The 3rd applicant, who joined as Postman at Ernakulam on 12.08.1968 was promoted as Time Scale Clerk on 04.06.1973 and was granted the higher pay scale under the TBOP scale from 10.06.1989 at Aluva Division. He was granted the higher pay scale of BCR scheme on 01.07.1999.

The fourth applicant, who joined as Class IV in Idukki Division in 1965 was promoted as Postman in 1970 and as Time Scale Clerk in 1974. He was granted the higher pay scale of TBOP in 1990 on completion of 16 years of service. He was placed under the BCR scheme with rise in pay scale on 10.07.2001.

6. The respondents submitted that the applicants have not been discriminated vis-a-vis their juniors in respect of the benefits of the BCR Scheme which they have sought from the date their juniors in the Divisional Gradation list got BCR placement even though, they have not completed 26 years of service in the Postal Assistant Grade. The applicants conveniently omitted to mention that these juniors happened to be placed below the applicants in the Divisional PA Gradation List only because of the fact that they came to the Division under Rule 38 transfer. Relevant Rule of P&T Manual Volume IV clearly lays down that when an official is transferred at his own request but without arranging for mutual exchange, he will rank junior in the gradation list of the new unit to all officials of that unit on the date on which the transfer order is issued. As such, because of their request transfer, they were placed below the applicants in the gradation list. However, it is trite law that placement under BCR/TBOP schemes are conferred based on length of service of the officials in a particular grade and not on seniority as made out by the applicants herein. Hence, the said juniors of the applicants, although ranked junior to the applicants in the gradation list, were fully eligible for being given the benefits of BCR as they

had the mandatory service of 26 years as on 01.10.1991. The respondents stated that the judgment rendered by the Bangalore Bench of this Hon'ble Tribunal in the case of Smt Leelamma Jacob relied upon by the applicants was based on an entirely different set of facts. The issue in that case was whether the applicants who were officials of the Telecom Department who had passed a Competitive Examination from Grade I to Grade II were eligible to be promoted to Grade III without insisting on the minimum prescribed years of service in the basic cadre along with their juniors in Grade-I. They submitted that while implementing the BCR scheme, benefit of the scheme could not be extended to some officials who were working in the LSG cadre after qualifying the 1/3rd quota LSG examination as they did not complete 26 years of service; whereas a few officials who had the required length of service of 26 years, working in the basic cadre were given BCR (HSG II) scale of pay. Aggrieved by this, some of these officials, who were working in the LSG cadre, approached the Hon'ble Tribunal and obtained orders in their favour. Subsequently, in the light of the order of the Hon'ble Tribunal, Department issued Annexure R-3 order and consequently Annexure A-6 order was issued from the office of the second respondent. It is clear from R-3 order that those officials working in LSG grade both in 1/3rd and 2/3rd quota should be given BCR (HSG II) scale of pay from the date of promotion of their immediate juniors irrespective of their length of service, but those who are seniors to the officials transferred under Rule-38 of P&T Manual Volume IV should be excluded from the benefit. Annexure A-6 was issued based on R-3 letter from the 3rd respondent. In this regard the respondents invited the

attention of this Tribunal to Para 2 of R-3, which explains the position in clear terms.

7. Heard the counsel for the parties at length and perused the documents.

8. The schemes of TBOP and BCR in the Department of Posts and OTBP and BCR in the Department of Telecom were introduced in the year 1983 and 1991 respectively. This happened much earlier to the introduction of ACP Scheme in the Central Government Departments in August, 1999. Therefore, there was quite a bit of confusion in dealing with promotion against norm-based promotional posts and granting financial upgradation through TBOP and BCR to offset stagnation in the absence of vacancies in the higher grade. This confusion was confounded by suspending Limited Departmental Competitive Examination to fill up the 1/3rd vacancies in the lower selection grade from the cadre of Postal Assistants from 1983 onwards. Simultaneously, LSG cadre, which was hitherto a circle cadre was converted to a divisional cadre. Since, it is mandatory to convene the DPC meetings to assess the fitness of the officials to be placed in TBOP, there might have been certain omissions to hold timely DPC to promote PAs against the norm-based LSG posts as the vacancies were few and far in between. In 2002, the Limited Departmental Competitive Examination for LSG known as fast track exam commenced. There was a change in the quota as the so called fast track competitive examination was for 2/3rd of the

vacancies and 1/3rd quota was filled up on the basis of seniority. When the second financial up-gradation of BCR was introduced in 1991, the same procedure followed and those who got placement in the BCR were designated as Higher Grade PAs and to work against vacancies in the HSG-II. Later on, after introduction of ACP in 1999, DOPT clarified that it is mandatory to promote the officials to the LSG cadre as that will be the feeder category for further promotion to HSG II and HSG I. On representations from the service unions, the fast track examination for LSG, which was introduced in 2002 was stopped in the year 2006. Simultaneously, the divisional cadre of LSG was once again converted to Circle cadre. This necessitated circle gradation list being drawn up for LSG cadre officials for further promotion to HSG II and HSG I at circle level. The gradation lists have to be maintained in respect of PA, LSG, HSG II and HSG I, while such seniority lists are not necessary in respect of those officials who are granted financial upgradation under TBOP and BCR scheme. The applicants in this case are requesting for the benefits of HSG II promotion under BCR with effect from 01.01.1995. First and foremost, there is no way, whereby a PA, who is placed in the BCR can straight away be promoted to HSG II as he needs to be granted regular promotion in LSG first. Therefore, their contention that they should be given HSG II promotion in BCR from 01.01.1995 as compared to their juniors in PA seniority list not tenable as they have not been placed in the LSG at all. In fact, according to the respondents, in all the Postal Divisions put together as on 15.12.2001, there are only 53 HSG-II posts while 973 officials were granted 2nd financial upgradation under BCR in the pay scale of HSG-II. The

respondents have shown in para 18 of their reply statement that the 4 applicants have never been included in the LSG seniority list to make them eligible for further promotion to HSG-II.

The applicants produced Annexure A-15 divisional seniority list of Postal Assistants where juniors to them in the PA seniority list have been granted 2nd financial upgradation under BCR. Their juniors have un-disputedly joined Aluva Division on Rule 38 transfer. It is settled law that for the purpose of ACP, the service rendered in the previous unit/division will be taken into account and ACP is personal to the officials and their seniority is not affected by such ACP given to juniors. The Rule 38 transferees who lost their seniority on their request transfer to Aluva Division, had 26 years service in PA grade to entitle them for the second financial upgradation of BCR.

9. The applicants have produced Annexure A-5 to A-8 series wherein a few officials who have not completed 26 years of service have been granted BCR. They also got some information under RTI Act to show that 82 officials in Kerala Postal Circle got the 2nd financial upgradation in the BCR scheme even though they do not have 26 years of service in their credit. The respondents have explained the circumstances under which such placement in BCR was done in accordance with the instructions given by the third respondent vide Annexure R-2. Relevant paras of DG (Posts) letter No. 22-5/95-PE-1 dated 08.02.1996 are extracted below:-

"To

All Heads of Postal Circles

Sub:- Modification of TBOP/BCR Scheme – Instructions reg.

Time bound One Promotion Scheme and biennial Cadre Review Schemes were introduced vide this office letters No. 31-26/83-PE.1 dated 17.1383, No. 20-2/88-PE.1 dated 26.07.91, No. 22-1/89-PE dated 11.10.91 and No. 4-12/88-PE.1 (Pt) dated 22.07.93 with a view to improve promotional prospects of employees of the Department of Post. As per these schemes, officials who complete prescribed satisfactory length of service in the appropriate grades are placed in the next higher grade. Subsequently, it was noticed that some officials e.g. UDCs in the Circle and SBCO, LSG [both 1/3 and 2/3] P.O & RMS Accountants who were senior before implementation of the schemes were denied higher scales of pay admissible under the schemes while some junior officials became eligible for higher scale of pay by virtue of their length of service. Some of the affected officials filed applications before various branches of the Central Administrative Tribunals demanding higher scale of pay from the date their juniors were made eligible under these schemes.

2 The case has been examined in consultation with the Ministry of Finance, Department of Expenditure. It has now been decided that all the officials, such as, UDCs in the Circle Office and SBCO, LSG [both 1/3 and 2/3] P.O & RMS Accountants, whose seniority was adversely affected by implementation of BCR scheme placing their juniors in the next higher scale of pay will now be considered for next higher scale of pay from the date their immediate juniors became eligible for the next higher scale. This will however, not be applicable to the officials who are senior to those officials, brought on transfer under Rule-38 of P&T Vol. IV and are placed in the next higher scale of pay by virtue of length of service.

3 The inter-seniority of the officials in the lower grade will be kept intact for the purpose of eligibility for promotion to next higher grade."

It was clarified therein that placement in BCR cannot be done in respect of those officials, who are senior to those officials, brought on transfer under Rule – 38 of P&T Vol. IV and are placed in the next higher scale of pay by virtue of length of service. Revised guidelines were issued on 17.05.2000

vide Annexure R-4 for placement under TBOP/BCR scheme in cases where seniors are considered for placement at par with their juniors on receipt of DOPT's O.M No. A.B-14017/12/97-Estt. (RR) dated 240.09.1977 and O.M No. A.B 14017/12/88-Estt. (RR) dated 25.03.1996. D.G. (Posts) has circulated this letter in its office letter No. 137-2/98-SPBII dated 22.05.1998. The letter supra was issued by the DOPT in the light of the judgment dated 08.03.1988 of the Hon'ble Supreme Court in the case of **R. Prabhadevi and others vs. Union of India and others**. The Hon'ble High Court in O.P No. 20022/97 dated 24.01.2000 gave a similar decision. Para 5 is extracted below:-

> "5. In view of the above, we set aside the order of the Tribunal in so far as it directs grant of promotion to the respondents despite the fact that they have not completed 26 years of service. What would be the position of their seniority vis a vis others after they complete 26 years of service can be decided by the authorities in accordance with law, about which we need not give any direction or express any opinion."

10. In respect of the case of **Union of India v. Leelamma Jacob & Others** relied upon by the applicants, the facts are entirely different. There are 4 grades and there is a Limited Departmental Competitive Examination for promotion from Grade I to Grade II. When the BCR scheme was introduced there were instances when the officials in Grade-I got the benefit of financial upgradation under BCR scheme and got the higher pay scales of Grade III and even Grade IV. This resulted in juniors bypassing seniors like Leelamma Jacob and Others who have passed the competitive examination from Grade I to Grade II and became their seniors in the higher grade. It was

to set this injustice right that the Apex Court dismissed the Civil Appeal filed by the Department of Telecom. Therefore, Leelamma Jacob and others became beneficiaries of the judgment of the Apex Court because the DOT's orders on implementation of BCR specified that those who have completed 26 years in the basic grade will be eligible for financial upgradation to BCR. As per the Department's orders dated 07.07.1992 the criterion fixed was the years of service in the basic grade. It was not linked to the seniority of the officials in the higher grade. It created an anomalous situation of juniors in the lower grade getting higher pay than their seniors. The applicants, in this O.A, have no such claim that they have passed the 1/3rd quota LSG examination and became senior to their admitted juniors in PA seniority list. Therefore, Apex Court's decision in Leelamma Jacob's case does not come to their aid. In fact, a situation similar to Leelamma Jacob's case, whereby seniors in the higher grade were bypassed by juniors in the lower grade was set right as a result of judicial decisions, by the 3rd respondent by issuing Annexure R-3. Para 2 of Annexure R-3 is extracted supra clearly shows that such placement in BCR will not be applicable to "*the officials who are senior to those officials, brought on transfer under Rule-38 of P&T Vol. IV and are placed in the next higher scale of pay by virtue of length of service*" The department was, therefore, given the liberty to modify such a situation. The DOT rectified the same in its circular dated 13.12.1995, whereby promotion to Grade IV can be given only to the senior most officials in Grade III. This was done in supersession of the order dated 07.07.1992. This position has been made amply clear by the Apex Court in **Civil Appeal No. 4369/2006**

filed by Bharat Sanchar Nigam Limited v. Chiddu (2011) 4 SCC 384.

Paras 31 and 32 are furnished below:-

> "31 The language of the Circular dated 13.12.1995 makes it crystal clear that the Government took a fresh decision in supersession of earlier instructions that promotion to Grade IV may be given from amongst officials in Grade III on the basis of their seniority in the basic grade. Hence, the decision of the Government to make promotions to Grade IV on the basis of their seniority in the basic grade could take effect only from 13.12.1995 and not from a prior date and the respondents, who had filed O.A No. 2484 of 1997 and O.A No. 2099 of 1997 in the Central Administrative Tribunal could not claim any promotion to Grade IV on the basis of their seniority in the basic cadre with effect from any date prior to 13.12.1995.
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> 32 The Central Administrative Tribunal was, therefore, not right in allowing O.A Nos. 2484 and 2099 of 1997 by the order dated 11.08.2000, directing the Government to consider promoting the applicants to Grade IV with effect from the dates their immediate juniors in the basic grade seniority were so promoted subject to their being found fit with consequential benefits of seniority as well as arrears of pay and allowance and of retiral benefits in the case of those of the applicants in the O.As who had retired on superannuation. In our considered opinion, the High Court ought to have interfered with the decision of the Tribunal."

11. Viewed in the light of the law laid by the Hon'ble High Court of Kerala in O.P No. 20022/1997 (Annexure R-5) and Tamil Nadu (Annexure R-6) and the Apex Court in R. Prabhadevi and others vs. Union of India judgment dated 08.03.1988, the financial upgradations can be given only on completion of the prescribed number of years. The applicants have compared themselves with Rule 38 transferees, who have the required length of service for grant the financial upgradations even though they are juniors to applicants in the seniority list. If the date of continuous service in the basic clerical grade is to be taken as the criterion, their juniors have

entered the grade of Postal Assistants much earlier to the applicants. The applicants on promotion have commenced their service as Postal Assistants during the period from 1972 to 1976 while their admitted juniors have joined as PAs during the years from 1965 to 1967. The applicants have, therefore, failed to make out a case in their favour. **The O.As being devoid of merit are dismissed.** No costs.

(Dated, the 9th November, 2011)

K. NOORJEHAN
ADMINISTRATIVE MEMBER

Dr. K.B.S. RAJAN
JUDICIAL MEMBER

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