

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A.NO. 582/2001

Monday, this the 19th day of January, 2004.

CORAM:

HON'BLE MR A.V.HARIDASAN, VICE CHAIRMAN

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

K.C.Xavier,
Postal Assistant(Circle Office)(BCR-HSG-II),
O/o Post Master General,
Central Region,
Kochi. - Applicant

By Advocate Mr TC Govidaswamy

Vs

1. Union of India represented by
the Secretary to Government of India,
Ministry of Communications,
Department of Posts,
New Delhi.
2. The Chief Post Master General,
Kerala Circle,
Trivandrum.
3. The Post Master General,
Central Region,
Kochi.
4. Smt.Radha.K.K.
Section Supervisor(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle,
Trivandrum.
5. Abdul Rahiman.M.
Section Supervisor,
(Circle Office) BCR,
O/o Post Master General,
Calicut.
6. Smt.J.Padmakumari Amma,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
7. Smt.Rachel Rajan Mathew,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.

8. Smt.P.K.Sasikala,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
9. Smt.T.Sudha,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Calicut.
10. K.Muraleedharan,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Calicut.
11. K.Harihara Iyer,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
12. S.Vaikuntanathan,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
13. Smt.Thankamma John,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
14. Smt.D.Radhakumari Amma,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
15. P.V.Ramachandran,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Kochi.
16. K.N.Krishnankutty,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Kochi.
17. Smt.O.Valsala,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Calicut.
18. P.A.Subramanian,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Kochi.
19. Smt.Susamma Thomas,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Calicut.

20. Smt.A.Nirmala,
Postal Assistant(Circle Office)BCR,
O/o Post Master General,
Kerala Circle, Calicut.
21. G.Appukuttan,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
22. Smt.K.Savithri Devi,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
23. Kurian C Abraham,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
24. C.K.Mohanachandran,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.
25. K.Premachandran Nair,
Postal Assistant(Circle Office)BCR,
O/o Chief Post Master General,
Kerala Circle, Trivandrum.

By Advocate Mr C.Rajendran, SCGSC(for R.1 to 3)

By Advocate Mr Vishnu S.Chempazhanthiyil(for R.4)

By Advocate Mr Abdul Rahiman.M. (R-5 Party in person)

O R D E R

HON'BLE MR T.N.T.NAYAR, ADMINISTRATIVE MEMBER

The applicant is working as Postal Assistant (Circle Office) (Biennial Cadre Review - Higher Selection Grade- II) in the scale of Rs.5000-8000 at Kochi. He is aggrieved by the determination of seniority in the cadre of Postal Assistant (Circle Office) (BCR HSG-II) vis-a-vis respondents 4 to 25 as reflected in A-2 circle gradation list dated 16.4.98, A-6 instruction dated 17.5.2000 to the extent it validates their placement under TBOP and BCR scheme given on the basis of the previous order/instruction No.22-5/95-PE.I dated 8.2.96 and A-10 order dated 14.5.2001 whereby his representation A-7 dated 11.8.2000 addressed to the DG, Posts has been rejected.

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2. The facts are: The applicant who started his career as a Sorting Assistant on 16.5.69 under R-1 to R-3, became an Upper Division Clerk on 15.4.83. When the TBOP and BCR schemes were made applicable to Group 'C' staff of the Administrative/Circle Offices in the Department of Post with effect from 26.6.93 subject to the instructions contained in A-1 order dated 22.7.93, the applicant, having exercised his option, was given the benefit of LSG (TBOP) with effect from 26.6.93. Later, he got the BCR benefit and was placed in HSG-II with effect from 16.5.95, the date on which he completed 26 years of service. Respondents 4 to 25 who were appointed to the basic grade on various dates between 23.12.69 and 15.6.76 were granted TBOP from 26.6.93 since as on that date they too had completed 16 years of service. They had not completed 26 years of service in the basic grade and accordingly the benefit of BCR was not given to them. According to the applicant, while total length of service in the basic grade plus other grades put together should have been the criterion for inter se seniority after coming into force of A-1 scheme/orders, it was decided as per the clarificatory instruction dated 8.2.96 that all officials such as UDCs in the Circle Office and SBCO, LSG (both 1/3rd and 2/3rd) P.O. and RMS Accountants whose seniority was adversely affected on account of the BCR scheme placing their juniors in the next higher scale of pay, would be considered for next higher scale of pay from the date of their immediate juniors became eligible for the next higher scale. On the basis of such clarification, respondents 4 to 25 were given the benefit of BCR (HSG-II) with effect from 26.6.93 on par with an
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alleged junior, though they had not completed the requisite qualifying service of 26 years. The applicant also got HSG-II (BCR) with effect from an advanced date viz, 25.4.95 as against 16.5.95 being the date on which he actually completed 26 years. As per A-2 seniority list dated 16.4.98, the applicant's seniority position amongst HSG-II Postal Assistants (scale Rs.1600-2660) is Sl.No.43. Respondents 4 and 5 are at Sl.No.4 and 7 in the HSG-II Section Supervisor and respondents 6 to 25 are at S.No.15,17, 18, 20, 22 to 26, 28 to 32, 34 to 36, 39 and 41 respectively. It would appear that the applicant did not raise any objection against A-2 seniority list thinking that the same was correct. However, on coming to know of a judgement of the Hon'ble High Court of Kerala in O.P.No.20022/97 dated 24.1.2000 by which it was held that a senior could not be granted the benefit of promotion on par with the junior under the TBOP/BCR scheme unless the senior had completed the requisite qualifying service of 16 or 26 years, the applicant made A-4 representation dated 16.5.2000 praying, inter-alia, for rectification of the anomaly and restoration of his seniority above respondents 4 to 25. A-4 representation was rejected by A-5 letter dated 10.8.2000 on the ground that the beneficiaries of placement in HSG-II above the applicant were seniors to the applicant in the UDC cadre inspite of their less length of service and that there was no provision to advance the applicant's BCR promotion to the dates of placement of those senior UDCs with less length of service. Thereafter, the applicant took note of A-6 communication dated 17.5.2000 issued by the 1st respondent in supersession of the earlier clarificatory

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instructions dated 8.2.96. According to the applicant, A-6 was made effective from the date on which A-1 was issued i.e. 22.7.93. In view of the withdrawal of clarificatory instruction dated 8.2.96, the applicant submitted an appeal A-7 dated 11.8.2000 to the Director General, followed by A-8 and A-9 reminders. By A-10 order dated 14.5.2001, the applicant's appeal dated 11.8.2000 was rejected on the ground that as per the existing instructions, seniority could not be the basis for claiming promotions under TBOP/BCR schemes and the basic eligibility condition was that the official should have completed 16 years and 26 years of service for TBOP and BCR benefits respectively. The applicant finds that several officials in the Kerala Circle in the same grade i.e. Postal Assistants having less length of service than him have been given placement to the higher selection under BCR scheme with effect from 26.6.93 and the applicant apprehends that he would be a loser as many officials in his cadre for the reason of having been given placement in HSG-II on an earlier date than his own date of placement in HSG-II may steal a march over him in the matter of further promotion to HSG-I as per another scheme to be implemented shortly. Relying on a decision of the Principal Bench of the C.A.T. in Santhosh Kapur & others Vs Union of India (O.A.No.145/1991) dated 7.7.92, the applicant pleads that respondents 4 to 25 have no right to be promoted to the grade of Postal Assistant (CO) (BCR HSG-II) with effect from 26.6.93. He wants his seniority to be placed above respondents 4 to 25 and grant all benefits of promotion to BCR (HSG-II) with effect from 26.6.93. The main reliefs prayed for are:

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- a) Declare that the applicant is entitled to be placed above respondents 4 to 25 in the seniority list of Postal Assistants (Circle Office) (BCR) under the 2nd respondent A-2 and direct the respondents accordingly.
- b) Call for the records leading to the issue of A-10 and quash the same.
- c) Call for the records leading to the issue of A-6 and quash the same to the extent it protects the illegal and arbitrary promotion given based on the earlier instructions and declare further that A-6 would come into effect from the date of publication of A-1 and direct the respondents accordingly or in the alternative;
- d) Direct the respondents to grant the applicant the benefit of promotion to BCR (HSG-II) with effect from the date of promotion of his juniors viz, respondents 4 to 25 and direct the respondents further to grant all further consequential benefits arising there from.

3. Respondents 1 to 3 have filed a reply statement opposing the applicant's claim for seniority over respondents 4 to 25. According to the official respondents, the applicant was given TBOP with effect from 26.6.93. As he had completed 26 years service on 16.5.95 he was also given BCR benefit from that date. Subsequently as per the clarificatory instructions contained in the communication dated 8.2.96 R-1, the applicant

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was given the benefit of BCR with effect from an earlier date, i.e. 24.5.95 when a junior to him was given BCR. Thus he was himself the beneficiary of the clarificatory instruction dated 8.2.96 which he is attempting to question on the strength of the Hon'ble High Court of Kerala's judgement in O.P.No.20022/97. It is maintained by the respondents that the party respondents 3 and 5 were already LSG(Supervisor) with effect from 29.3.90 and 1.6.91 respectively on the basis of their success in the 1/3rd LSG competitive examination. They were thus unquestionably senior to the applicant. All the other party respondents in the O.A. were also senior to the applicant since they came over to the administration office by passing UDC Competitive Examination earlier than the applicant as is clear from A-2 seniority list which has been accepted for long. The applicant having opted to come over under the TBOP/BCR schemes introduced with effect from 26.6.93 was obliged to accept the terms and conditions thereof and also the interse seniority as on that date as it was under FR-23 which laid down that the holder of a post, the pay of which is changed shall be treated as if he were transferred to a new post on the new pay, was governed by the General Principle 7.1 vide R-2 dated 22.12.59 for the purpose of determination of the relevant seniority. As per the General Principle, the party respondents 4 to 25 were all seniors to the applicant on the basis of the order of selection. The seniority of the applicant cannot therefore be changed and he cannot be accorded a position above the party respondents in view of the change over under FR-23 and General Principle 7.1 of R-2, it is urged. The seniority position existing immediately prior

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to 26.6.93 was to be reckoned for the purpose of determining the relevant seniority of the applicant vis-a-vis the party respondents. It would be evident that the applicant was junior to all other party respondents in the basic cadre of UDC. Circle gradation list issued as on 1.7.89 was followed in the next gradation list as on 1.7.95 also. The relative seniority position of the applicant vis-a-vis party respondents as reflected in the gradation list as on 1.7.95(A-2) had been admitted all these years. It is also stated by the official respondents that the BCR placement allowed to the seniors in the gradation list on account of the clarificatory instructions contained in R-1 cannot be reversed now. A-6, according to the official respondents was effective from the date of issue thereof i.e. 17.5.2000 and not from 26.6.93, the date on which A-1 was to take effect. The respondents would contend that seniority for the purpose of further promotion has to be reckoned with reference to the seniority position as on the date on which change over/conversion was made effective. The applicant, inspite of his long tenure as LDC did not avail of the chance to appear for the UDC promotion test while the party respondents had already been promoted to the higher position. Therefore, it is not the length of service in the basic grade of LDC but the date of selection to the higher post of UDC that would be reckoned for the purpose of next promotion. There was no violation of Articles 14 and 16 in this respect. Respondents would maintain that option as per A-1 was exercised by the applicant under FR-23. A-1 makes it clear that option once exercised would be final. Therefore, A-2 seniority position

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cannot be interfered with now. It is true that R-1 clarificatory circular was superseded by A-6. If the TBOP and BCR placements made during the intervening period between 26.6.93 and 17.5.2000 are interfered with it would cause a flurry of litigation, the respondents would maintain. Respondents therefore would state that the O.A. is liable to be dismissed.

4. The party respondents 4 & 5 have strongly contended that the applicant has no maintainable case in view of the fact that they had already been placed in LSG (Supervisor) and that therefore at the relevant point of time they had already become the applicant's senior. In that view of the matter, there was no case for the applicant for any placement above them in the matter of seniority. The respondents 6 to 25 also stated in similar terms that, to be senior to the applicant in the cadre of UDC from which alone further promotions could be expected. Since in the UDC's cadre the respondents 6 to 25 are undeniably senior to the applicant, the applicant could not at this stage argue that he should be placed above them. In any case, the promotions under TBOP and BCR given under R-1 clarification dated 8.2.96 could not be nullified at this distance of time since those were made legitimately under the extant instructions albeit the withdrawal of such instructions as per A-6. Therefore, there is no merit in the O.A. according to the party respondents.

5. The applicant has filed a rejoinder contesting the pleadings in the reply statement and stating that provisions

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of FR-23 had no application to the applicant's case in relation to the change over to the cadre of Postal Assistant in terms of A-1, that it was not a case of transfer as alleged by the respondents, but creation of a new cadre, that benefit of BCR could be given only on the basis of length of service and not seniority and that by the official respondents' own admission in some other O.A.s. the promotion given to respondents 4 to 25 was by mistake and that therefore, the respondents are not justified in protecting the interest of one class of persons to the prejudice of others. The contention of the respondents that UDC is the basic cadre as regards the applicant and respondents 4 to 25 is erroneous according to the applicant.

6. In their additional reply statement the respondents have maintained their stand as per the reply statement filed earlier. It has been reiterated in the additional reply statement that the cadre change was in effect a transfer as per the provisions of FR-23 vide paragraph 3.2 of A-1. Conferment of TBOP/BCR benefit on the seniors was on account of the anomaly arising out of granting of higher grade and scale to juniors on the basis of the prescribed length of service of 16/26 years. According to the respondents, on the strength of R-1 the applicant and respondents 4 to 25 were given the BCR benefit on par with the respective juniors. Apart from that, even LSG 1/3 officials in Post Offices and RMS were also given similar benefits. Since the applicant himself was a beneficiary of such a dispensation, there was no

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reason why the applicant should feel aggrieved or adversely affected by the implementation thereof. It is clarified by the respondents that the averments made in the reply statement in O.A.1024/2000 to the effect that TBOP/BCR promotion made to some former UDCs given on the basis of R-1 order date 8.2.96 was a mistake was corrected as per submissions made in the additional reply statement in the very same O.A. Since the TBOP/BCR promotions were given at the relevant time in accordance with the instructions contained in R-1, the same could not be faulted according to the respondents. A-6 while superseding R-1 made it clear that cases already settled would not be reopened meaning thereby that promotions ordered upto to 16.5.2000 on the basis of R-1 and its clarifications had to be treated as valid. For the purpose of comparative seniority of the applicant and respondents 4 to 25, the date of their becoming UDC alone could be reckoned. However, it is emphasised by the respondents that BCR given to the party respondents is only a placement and not a promotion. The conferment of BCR on the party respondents with effect from earlier dates on the strength of R-1 would call for no interference at this stage, according to the official respondents.

7. We have heard Shri TC Govindaswamy, learned counsel for the applicant, Shri C.Rajendran, learned SCGSC for R.1 to 3, Shri Vishnu S Chempazhanthiyil for R-4 and Shri Abdul Rahiman for R-5 being party in person.

8. According to Shri TC Govindaswamy, by A-1 scheme a new service came into existence with effect from 26.6.93 in the

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scale of Rs.975-1660. The criterion for promotion in the new service should be the number of years rendered in the cadre of LDCs or Postal Assistants/Sorting Assistants/LDCs/UDCs put together. A-2 gradation list to the extent it determines the seniority of the applicant vis-a-vis the respondents 4 to 25 ignoring the said criterion is arbitrary, discriminatory and contrary to law. It is maintained by the learned counsel that grant of TBOP/BCR benefit to respondents 4 to 25 at a date earlier than the applicant was unsustainable in view of the fact that it was in total disregard of the length of service put in by the applicant in the basic cadre viz, LDC. A-6 letter dated 17.5.2000 whereby the previous orders/instructions dated 8.2.96 and the subsequent clarifications dated 5.8.97 and 1.1.98 were superseded should have been effective from the date on which A-1 scheme came into effect. According to the learned counsel, since instructions dated 8.2.96 (R-1) itself was made effective from 26.6.93, i.e. the date on which A-1 scheme came into force, logically, A-6 communication superseding the same also should have taken effect retrospectively from the date of coming into force of A-1. As per A-6, it is recognised that TBOP and BCR schemes are based on length of service of the official concerned and not on the criterion of seniority and that seniors in the gradation list therefore could not claim higher scale of pay on par with juniors if their juniors had got higher scale of pay by virtue of their completing the prescribed period of service of 16/26 years respectively. These seniors in the gradation list were not eligible to be considered for the next higher scale of pay from the date

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their immediate juniors became eligible for next higher grade without completing the prescribed period of service as per the eligibility condition of placement in the higher scale of pay. Learned counsel for the applicant would therefore contend that A-6 circular to the extent it is ^{made} prospectively effective from 17.5.2000 would be prejudicial to persons like the applicant inasmuch as respondents 4 to 25 would enjoy unmerited advantage of placement in the higher grade long before the applicant without fulfilling of important condition of completion of 26 years of service in the basic grade. Accordingly, A-6 to the extent it rendered validity to TBOP/BCR promotions given under R-1 was liable to be set aside, the learned counsel would urge.

9. Shri C.Rajendran, learned SCGSC would contend on the other hand that the party respondents had been promoted to the cadre of UDC earlier than the applicant and, as such, in the cadre of UDC they were senior to the applicant. The TBOP and BCR placement given to respondents 4 to 25 was not promotion but only a placement. Such placement was given in view of the clarificatory instruction contained in R-1. Issue of R-1 clarification was based on account of the representations received from senior officials who found themselves placed in lower scale because of the benefit of TBOP and BCR given to the juniors on account of their having completed 16/26 years of service. Thus, conferment of higher scale on the basis of length of service brought about some anomaly as far as the pay of seniors was concerned. It was only to offset this anomaly and bring about parity in pay that R-1 was issued. In other

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words, the benefit of TBOP and BCR was given to the seniors also on par with their juniors. This would make little difference as far as basic seniority was concerned which was to be determined with reference to the position of the officials in the Circle gradation list. A-2 circle gradation list would make it abundantly clear that the applicant is junior to respondents 4 to 25. Applicant was given 15 days clear time to raise objections, if any. A-2 was accepted without demur. While it is true that R-1 clarificatory circular and its further clarifications were withdrawn as per A-6, the latter was made effective only from the date of issue thereof, i.e. 17.5.2000, the reason being that the action taken by the respondents during the intervening period could not be nullified by issue of such a circular as it would be fraught with far reaching administrative and legal consequences. It was with that object in view that a conscious decision not to reopen cases already settled was taken. Thus, cases involving conferment of TBOP/BCR benefit on persons like R-4 to 25 were to remain undisturbed as otherwise it would cause long and costly litigation. In any case, the applicant could not have any grievance since the applicant himself was a beneficiary of R-1 on the ground that his own junior had been conferred with the benefit of TBOP and BCR before him. That was the reason why he was given the benefit of BCR with effect from 25.4.95 as against 16.5.95. Having obtained such a benefit, the applicant could not describe R-1 as illegal. Since the seniority rule regarding the norm-based promotion would remain unaffected, the applicant could have no grievance on account of the action of the respondents, the learned SCGSC would submit.

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10. The learned counsel for the respondents 4 and 5 have stated that respondents 4 and 5 were senior to the applicant as they were already LSG Supervisory cadre and hence the applicant could have no relief against them.

11. We have carefully gone through the averments and other material on record. We have also considered the arguments put forward by the learned counsel for the applicant, and the party respondents as well as those of the learned SCGSC. The applicant seems to be under the belief that with A-1 scheme dated 22.7.93 a new service or a cadre of Postal Assistant(CO) came into existence with effect from 26.6.93 and that the sole criterion for promotion to the next higher grades would be the length of service in the basic cadre of LDC, Sorting Assistant etc. In that view of the matter, the benefit of BCR given to respondents 4 to 25 on the strength of R-1 clarificatory order was erroneous and would be prejudicial to him according to the applicant. The applicant maintains that the fixation of seniority as per A-2 gradation list, the decision in A-6 to legitimise the TBOP and BCR placements already given to respondents 4 to 25 as per R-1 clarificatory instruction dated 8.2.96 inspite of its supersession by A-6 and the rejection of the applicant's representation by A-10 communication are unsustainable. In our considered view, the applicant's contentions are untenable as the length of service cannot be the criterion for determining seniority for norm-based promotions to higher posts though it was the crucial factor for placement in higher grade guaranteed under TBOP/BCR schemes. It is well settled that eligibility to be placed in

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the higher grade under the TBOP/BCR schemes and seniority for norm based promotion to higher post are two distinct concepts. True, as per A-1 scheme, the applicant would be eligible for placement in TBOP and BCR positions on the basis of his completing 16/26 years of service and his seniors who had not completed 16/26 years, albeit their seniority, could not be expected to be placed so until they too put in the required period of service. But that would not mean that the applicant would acquire seniority above those seniors who should not have got the benefit of TBOP/BCR placement earlier than him or even along with him purely because of their not having the required length of service. It has to be accepted that A-1 scheme correctly spelt out the eligibility criteria for implementing the TBOP/BCR schemes to Group 'C' staff of the Administrative Offices (Circle Offices) in the Postal Department. Paragraph 3.12 of A-1 is extracted hereunder:

"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 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."

From the above it would be clear that inspite of conferment of TBOP/BCR placement to a junior on the basis of length of

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service, seniority of the senior official is not lost confirming thereby that TBOP and BCR promotions are not in fact promotions but only a placement in the higher grade. In such a situation, seniority cannot be a meaningless or absurd concept. For all norm based promotions, the mere fact that a junior got placement under TBOP/BCR would not render him senior to those officials who are senior to him in the relevant cadre.

12. However, by virtue of R-1 dated 8.2.96 a perceived anomaly of a junior getting higher grade on account of his length of service while his senior not having the required length of service was denied higher scale of pay, was sought to be set right. Thus, UDCs in the Circle Office and SBCO, LSG (both 1/3rd and 2/3rd) Post Offices and RMS Accountants etc. whose seniority was construed to be adversely affected on account of implementation of BCR scheme were given higher scale. In our view, R-1 was issued in the context of a series of litigation involving filing of Original Applications by seniors before various Benches of the C.A.T. demanding higher scale of pay from the date(s) of their juniors were made eligible under the scheme. Though there is nothing to show that the legal legitimacy of R-1 was negated in A-3 judgement of the Hon'ble Kerala High Court in O.P.20022/97, we find that R-1 was acted upon in effect to remove the perceived anomaly on account of placement of a junior in TBOP/BCR grades leading to the junior getting higher scale while the senior remained in lower grade/scale. It would appear that the respondents realised the fallacy of interpreting R-1 in the manner they did and issued A-6 guidelines dated 17.5.2000

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superceding R-1 and related clarificatory instruction thereon by referring to "the recent judgement of the Hon'ble Supreme Court in its judgement of March 8, 1988 in the case of Prabhadevi others Vs Union of India and Ors". Prabhadevi's case was very much there when A-1 itself was issued not to speak of R-1. But already the benefit of BCR scale of pay had been granted to many senior officials including the applicant himself in order to bring ^{them} on par with their juniors on account of grant of TBOP/BCR benefit to the latter. In fact, A-6 unambiguously sums up the object and terms of A-1. But as a matter of grace, cases settled between the date of A-1 and that of A-6 were decided to be left undisturbed. As observed above, like the respondents 4 to 25, the applicant also was a beneficiary of R-1 dated 8.2.96 inasmuch as he got the BCR promotion with effect from 25.4.95 when a junior was given the same benefit. In fact on the basis of length of service he was entitled to be given BCR placement only with effect from 16.5.95. The applicant does not appear to have any objection in such a placement in accordance with R-1. Having availed of such a placement, the applicant now takes the stand that the benefit of BCR given to the party respondents 4 to 25 in the light of R-1 is incorrect. In our view, the applicant's stand is inconsistent.

13. We notice that as per A-2 Circle Gradation list as on 1.5.95 which was published on 16.4.98 the applicant's position is at Sl.No.43 as HSG-II Postal Assistant whereas respondents 4 and 5 are at Sl.No.4 and 7 in Section Supervisors HSG-II and

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respondents 6 to 25 are at Sl.Nos.15, 17, 18, 20, 22 to 26, 28, 32, 34 to 36 and 39 to 41 in the HSG-II Postal Assistants list. It is therefore obvious that the party respondents are all seniors to the applicant as per A-2 seniority list as on 1.7.95 published on 16.4.98. It is not denied that the applicant was served with a copy of the said gradation list and was given an opportunity to make representation against incorrect entries, if any, within a period of 15 days from the date of circulation thereof. The applicant seems to have accepted the seniority list as correct. There is no justification in contending that he was under the bonafide belief that the said list was correct and that was why he did not raise any objection at the appropriate time.

14. The applicant seems to have got the idea that the respondents were wrong in conferring the benefit of BCR on the party respondents on the basis of R-1 when he knew of A-3 judgement of the Hon'ble High Court of Kerala referred to above and also on the strength of A-6 communication dated 17.5.2000. It is also significant to note that by A-5 communication dated 10.8.2000 the applicant's representation A-4 dated 16.5.2000 for advancing his BCR promotion on a par with those officials in his Circle in the same cadre who did not have the necessary length of qualifying service and who were given HSG-II(BCR) placement with effect from 26.6.93, was turned down. The said communication reads as under:

"With reference to your representation cited above, I am directed to inform you that the matter was examined in Circle Office. The officials, who were promoted to BCR Cadre earlier than you, were senior to you in the UDC Cadre, though they were having less

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length of service. They were promoted to BCR by applying the provisions of modificatory orders. There is no provision to advance your BCR promotion to that of those senior UDCs with less length of service."

A-5, it is noticed, has not been challenged.

15. As we have already taken note of, the benefit under the BCR was conferred on the party respondents at an earlier date than the applicant, not on the basis of the length of qualifying service, but on the basis of the fact that their juniors were given BCR promotion. It was by way of removal of anomaly that the said action was taken in the light of R-1. While we want to make it clear that we do not subscribe to the view that the said action was legally correct, we also take note of the fact that a large number of officials have been given the benefit of BCR on the basis of what the respondents believed R-1 to convey. Though such action was legally unsound as is clear from A-3 judgement, the applicant can have no right for advancing his BCR placement on the strength of such action. In the first place, the party respondents herein are not comparable to the applicant as they are indisputably senior to him even before the implementation of A-1 scheme. Secondly, there can be no serious objection to the respondents' decision not to reopen settled cases as is provided in A-6. The respondents have tried to justify the action taken in the light of the then prevailing instructions, contained in R-1 which have been superseded by A-6. In our considered view, the respondents' stand that A-6 is declared to be effective from 17.5.2000, i.e. the date of issue thereof is not correct. A-6 does not say so. A-6 says instructions/guidelines under A-6 would be applicable with effect from the date of issue of orders in regard to

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placements in TBOP/BCR scheme which means it is with reference to A-1. But A-6 certainly protects cases which have been settled under R-1. What apparently weighed with the respondents is that several orders had been made placing large number of officials in the BCR positions during the intervening period between 26.6.93 and 17.5.2000 and that it would open up a flood gate of litigation if such orders were reviewed in the light of A-6. We find no infirmity therefore in the decision of the respondents not to reopen cases already settled on the basis of the instructions in R-1 which later on were superseded by A-6. It would not be out of context here to observe that the respondents have reiterated the principle that placements under TBOP and BCR schemes are made purely on the basis of length of service of the officials concerned and not on the criterion of seniority and that seniority in the gradation list would remain intact. It is also seen that A-6 makes it abundantly clear that TBOP and BCR officials would also be considered against norm based post (Supervisor post) on seniority-cum-fitness basis in their turn. Thus, as observed earlier, the distinction between the concept of eligibility for promotion under TBOP and BCR and that of a promotion to a norm based post are put in sharp focus even as per A-6. There can be no prejudice to the applicant on account of this.

16. In the light of the above discussion we find that there is no merit in the applicant's claim for advancement of the date of his BCR placement and conferment of seniority above respondents 4 to 25 and that therefore A-10

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communication dated 14.5.2001 by which the applicant's representation dated 11.8.2000 was turned down cannot be faulted. We also hold that A-2 Gradation List and A-6 instructions call for no interference.

17. In the result the application is liable to be dismissed and we do so. There is no order as to costs.

Dated, the 19th January, 2004.


T.N.T. NAYAR
ADMINISTRATIVE MEMBER


A.V. HARIDASAN
VICE CHAIRMAN

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